

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ELDON BUGG,)
Appellant,)
vs.)WD80480
MARC HONEY, WM.)
MARSHALL HUBBARD,)Order:
CYRIL GRAY and HONEY)December 12, 2017
LAW FIRM, P.A.,)
Respondents.)

APPEAL FROM THE CIRCUIT COURT OF
COOPER COUNTY, MISSOURI THE HONORABLE
ROBERT L. KOFFMAN, JUDGE

Before Division Three: Lisa White
Hardwick, Presiding Judge, Victor C.
Howard, Judge, and Alok Ahuja, Judge

ORDER

PER CURIAM:

Eldon Bugg appeals the dismissal of his petition by the Cooper County Circuit. He complains in two points on appeal that the trial court erred in finding Bugg's petition did not allege sufficient facts to support personal jurisdiction over the defendants in the state of Missouri. Because a published opinion would have no precedential value,

a memorandum has been provided to the parties.
The judgment is affirmed. Rule 84.16(b).

IN THE MISSOURI COURT OF APPEALS
ELDON BUGG,
Appellant,)
vs.)WD80480
MARC HONEY, WM.)
MARSHALL HUBBARD, CYRIL)Filed:
GRAY and HONEY LAW FIRM,)December 12, 2017
Respondents.)

MEMORANDUM SUPPLEMENTING ORDER
AFFIRMING JUDGMENT PURSUANT TO
RULE 84.16(b)

THIS STATEMENT DOES NOT CONSTITUTE A
FORMAL OPINION OF THIS COURT. IT IS NOT
UNIFORMLY AVAILABLE. IT SHALL NOT BE
REPORTED, CITED, OR OTHERWISE USED IN
UNRELATED CASES BEFORE THIS COURT OR
ANY OTHER COURT. IN THE EVENT OF THE
FILING OF A MOTION TO REHEAR OR TRANSFER
TO THE SUPREME COURT, A COPY OF THIS
MEMORANDUM SHALL BE ATTACHED TO ANY
SUCH MOTION.

Eldon Bugg appeals the dismissal of his petition by the Cooper County Circuit Court. He complains in two points on appeal that the trial court erred in finding Bugg's petition did not allege sufficient facts to support personal jurisdiction over the defendants in the state of Missouri. The judgment is affirmed.

Facts

Cyril Gray entered into a Contract for Deed with Eldon Bugg in 2007 to purchase real estate located in Arkansas. The contract required monthly payments for principal and interest over the course of 30 years. Gray fell behind on his payments.

In October 2013, Gray filed for relief under the Federal Bankruptcy Code in the Bankruptcy Court for the Western District of Arkansas. Gray, a resident of Arkansas, hired the Honey Law Finn, an Arkansas firm, to represent him. Marc Honey and Wm. Marshall Hubbard were the attorneys from the Honey Law Firm working for Gray.

Gray listed Bugg as a secured creditor on Gray's primary residence. Gray proposed to treat the monthly payments on the home as a long-term debt. Gray claimed he had an equitable interest in the home equal to the amount that he had paid to Bugg pursuant to partial performance of the Contract for Deed. By February 2014, Gray was unable to afford the monthly bankruptcy plan payments.

On February 19, 2014, Gray filed a modification of his repayment plan to voluntarily surrender his interest in the home in satisfaction of the claim against the home held by Bugg. On February 20, 2014, the Bankruptcy Court held a hearing where the parties announced that Bugg's motion to terminate the automatic stay would not be opposed. Pursuant to Rule 4001(a)(3), the automatic stay remains in effect for fourteen days after the entry of an order terminating the automatic stay for collateral to be pursued under state law remedies. Gray did not waive this rule.

Bugg evicted Gray from the residence and removed his truck and personal effects therefrom. Gray, by and through his legal counsel, filed a Motion for Contempt for Violation of The Automatic Stay the following week. He requested that all personal property be returned as part of the bankruptcy estate.

The Bankruptcy Court found that the stay had been violated and ordered Bugg to pay approximately \$12,800 in damages to Gray. Bugg appealed to the Bankruptcy Appellate Panel where the lower court's ruling was affirmed in part and overturned only as to the \$2,000 punitive damages award. Bugg appealed to the Eighth Circuit Court of Appeals where the trial court's ruling was overruled in its entirety. *in re Gray*, 642 F. App'x 641 (8th Cir. 2016). The April 2016 decision found that Bugg did not violate the stay. *id.* at 643.

In July 2016, Bugg filed a petition in the Cooper County Circuit Court in Missouri. The named defendants were Gray, the Honey Law Firm, Marc Honey, and Wm. Marshall Hubbard. The petition alleged: Count I - Abuse of Process, Bankruptcy; Count II - Abuse of Process, Stay Violation; Count III - Malicious Prosecution; Count IV - Conspiracy; Count V - Negligence; Count VI - Prima Facie Tort; and Count VII - Fraudulent Misrepresentation.

The action was removed by Honey to the federal bankruptcy Court of the Western District of Missouri in September 2016. Bugg filed a First Amended Petition with the bankruptcy court alleging the same seven counts. Honey filed a motion to dismiss. The case was remanded back to Missouri state court in December 2016.

In December 2016, Honey filed an amended motion to dismiss alleging, *inter alia*, that the court lacked personal jurisdiction. The trial court found that Bugg's First Amended Petition failed "to allege sufficient facts to support personal jurisdiction over the defendants in the state of Missouri." It granted the motion to dismiss. This appeal followed.

¹ The defendants are collectively referred to as Honey in this opinion unless otherwise noted.

Standard of Review

"A trial court's dismissal of a case for lack of personal jurisdiction presents a question of law to be reviewed *de novo*." *Andra v. Left Gale Prop. Holding, Inc.*, 453 S.W.3d 216, 224 (Mo. bane 2015). "A plaintiff has the burden to establish that a 'defendant's contacts with the forum state were sufficient.'" *Id.* (quoting *Angoff v. Marion A. Allen, Inc.*, 39 S.W.3d 483, 486 (Mo. bane 2001))... A reviewing court will take the allegations of the pleadings as true to determine whether they establish facts adequate to subject the defendant to jurisdiction in the forum state" *Id.*

Point I

In his first point on appeal, Bugg argues the trial court erred in using minimum contacts to determine whether Missouri acquired personal jurisdiction over Honey. He states Missouri acquired personal jurisdiction over Honey as a matter of law. Bugg claims (1) bankruptcy law attached "general and specific jurisdiction" to Honey; (2) Honey consented to personal jurisdiction by entering general appearances; and (3) Honey failed to timely plead and thus defaulted.

Bankruptcy courts only have subject matter

jurisdiction to adjudicate matters of equity that arise under Title 11 (Bankruptcy), in a Title 11 case, or are related to a Title 11 case. *See* 28 U.S.C. §1334.

If a creditor brings a civil action in his home forum against his debtor, a threshold question arises whether the claims in the civil action will impact the administration of a debtor's estate. The issue turns on whether the claims have their origin in Title 11 or in state law (origin of claims). Bankruptcy and state courts have concurrent jurisdiction under 28 USC § 1334(a), and either can determine the origin of claims.

Under 28 USC §1452(a) a debtor "may" remove the civil action to the Federal District Court for the district where the civil action is pending, provided the district court has jurisdiction under 28 USC §1334. Federal District Courts refer all bankruptcy matters to bankruptcy court. In a permissive removal, bankruptcy courts make the origin-of-claims determination. If the origin of claims is under Title 11, the bankruptcy court has subject matter jurisdiction. If the origin of claims is state law, the bankruptcy has no power except to remand. Bankruptcy courts can also remand on equitable grounds.

Bugg filed his suit in Missouri state court. Honey removed the suit to federal court pursuant to §1452.

The bankruptcy court determined that the origin of claims was not under Title 11 and that it did not have subject matter jurisdiction over the case. It remanded the matter back to Missouri state court. Bugg now argues on appeal that Honey consented to personal jurisdiction when he filed the removal under §1452.

Removing a case to federal court does not waive personal jurisdiction. *See Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 409, 49 S. Ct. 360, 362, 73 L. Ed. 762 (1929) ("Petitioner suggests that, by removal of the case to the federal court, objection to jurisdiction over the person of respondent was waived. Our decisions are to the contrary."). Bugg, however, argues that this does not apply to removal pursuant to § 1452. He frames this as an issue of first impression.

Bugg essentially argues that the removal suit under §1452 is a new lawsuit, filed in this case in Missouri. He says that, through the removal, Honey availed himself of Missouri law, sought affirmative judicial relief in Missouri, and entered a general appearance in Missouri. Bugg says that if a party takes a risk and removes to federal court pursuant to §1452 and that party loses the removal lawsuit then that party has consented to personal

jurisdiction. If they did not want to consent to personal jurisdiction, Bugg says Honey could have filed a motion under Rule 55.27 contesting the Cooper County court's power over their persons.

Bugg cites no authority in support of his contention that removal to federal court pursuant to §1332 (Diversity of citizenship) is different from removal pursuant to § 1452 (Removal of claims related to bankruptcy cases) with respect to consenting to personal jurisdiction. We note that §1452 allows removal to federal district court if the district court has jurisdiction pursuant to § 1334. Both § 1334 and §1332 fall under Chapter 85 of the United State Code: District Courts; Jurisdiction. They set out alternate methods through which federal district courts have original jurisdiction.

Bugg also focuses on the fact that removal pursuant to §1452 is optional. We note that removal pursuant to §1332 is not mandatory and can be denied. *See Sil MegaDiamond, Inc. v. Am. Superabrasives Corp.*, 969 P.2d 430, 432 (Utah 1998) (wherein the federal court determined that removal was untimely and remanded back to state court).

Bugg argues that removal under §1452 is special because the removed lawsuit has its own rules of procedure, has a separate case number, and requires

a response admitting or denying the allegations in the removal notice. Cases removed to federal court pursuant to federal diversity also have a separate case number and operate under the federal rules of procedure as opposed to state rules. We see no difference with respect to waiver of personal jurisdiction between these two types of cases.

Bugg next contends that Honey consented to personal jurisdiction in the federal court and was in default in the federal court. He says that the case came back to Missouri state court with Honey in default. In removal under §1452, a case comes to the bankruptcy court in the same procedural posture as in the state court. *In re Montalvo*, 559 B.R. 825, 837-38 (Bankr. S.D. Tex. 2016). "The state court receives the case on remand from federal court removal in the posture it is in when remanded." *Craig v. Missouri Dep't of Health*, 80 S.W.3d 457,460 (Mo. bane 2002) (internal quotation omitted).

The case was removed to federal court on September 6, 2016. Honey first filed a motion to dismiss the petition for lack of personal jurisdiction on September 9, 2016 in federal court. Bugg filed an amended petition on September 27, 2016. Federal Rule 15(a) gave Honey fourteen days to answer. Honey filed

a motion to dismiss the amended petition for lack of personal jurisdiction on October 21, 2016. Bugg says that because the motion to dismiss was untimely, Honey had defaulted in bankruptcy court. Thus, he concludes they were out of time to contest personal jurisdiction because the case came back to Missouri state court in the same posture it left the bankruptcy court.

While Bugg has concluded that Honey was in default, no court has ever reached such a conclusion. Neither the bankruptcy court nor the state court ever entered a default judgment against Honey because of late pleadings. Bugg does not contend that the bankruptcy court or state court had no other option but to enter a default judgment because of late pleadings. And, they did not.

In this case, the bankruptcy court expressly stated that it would not make a determination about whether personal jurisdiction existed or any other substantive matter. The judge stated:

"I must determine whether I have subject matter jurisdiction. If I don't, I don't have the power to do anything else." The court concluded it did not have subject matter jurisdiction.

Upon remand to the state court, Bugg moved for order of default based on late pleadings. The

state court did not enter a default judgment. Instead, it determined it lacked personal jurisdiction over Honey.

The point is denied.

Point II

In his second point on appeal, Bugg argues the trial court erred in dismissing his petition for failure to allege sufficient facts to support personal jurisdiction over Honey. He claims the petition did allege sufficient facts. Bugg states the petition alleges extraterritorial tortious acts and alleges their consequences in Missouri.

"Missouri courts employ a two-step analysis to evaluate personal jurisdiction." *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227,231 (Mo. bane 2010). "First, the court inquires whether the defendant's conduct satisfies Missouri's long-arm statute, section 506.500." *Id.* "If so, the court next evaluates whether the defendant has sufficient minimum contacts with Missouri such that asserting personal jurisdiction over the defendant comports with due process." *Id.*

Section 506.500 states in relevant part:

Actions in which outstate service is authorized--jurisdiction of Missouri courts applicable, when

1. Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:

(3) The commission of a tortious act within this state;

3. Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

Bugg argues that Honey used the bankruptcy process to commit torts upon his person. He says that he was injured in Missouri because that is where he felt the consequences. This, he asserts, is sufficient to satisfy Missouri's long-arm statute. We need not decide this issue, however, because Bugg's personal jurisdiction argument fails with respect to due process analysis.

"The Fourteenth Amendment's Due Process Clause bars Missouri courts from exercising personal jurisdiction over a defendant where to do so offends 'traditional notions of fair play and substantial justice.'" *Bryant*, 310 S.W.3d at 232

(quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). "Accordingly, absent one of the traditional territorial bases of personal jurisdiction-presence, domicile or consent-a court may assert personal jurisdiction over a defendant only if certain minimum contacts between Missouri and the defendant are established." *Id.* "When evaluating minimum contacts, the focus is on whether 'there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its Jaws.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)). "This inquiry 'cannot be simply mechanical or quantitative.'" *Id.* (quoting *Int'l Shoe*, 326 U.S. at 319, 66 S.Ct. 154).

The debtor (an Arkansas resident) entered into a contract with Bugg (a Missouri resident). The contract was entered into in Arkansas. The subject of the contract was land located in Arkansas. The debtor hired an Arkansas law firm to file bankruptcy in Arkansas. All of the bankruptcy proceedings occurred in Arkansas.

Other than Bugg being a Missouri resident, the only other connection with Missouri are the documents sent to Bugg in Missouri, often by the Arkansas bankruptcy court, as part of the bankruptcy proceedings. Bugg argues that the 450 plus notices he received in Missouri as part of the bankruptcy proceedings are sufficient. He cites

cases that "show many means tortfeasors use to cause consequences and effects in this modern, technological age." These include mail and the internet. He compares his case to "an Arkansas deer hunter firing his rifle across the state line accidentally killing a Missouri farmer's prize prize bull." He concludes: "To find that killing the prize bull happened in Arkansas, merely because that's where the hunter pulled the trigger is not well reasoned."

Bugg's argument is without merit. Unlike the cases he cites and his hypothetical, Bugg's petition does not assert that the contacts from the bankruptcy proceeding caused the alleged torts. Instead, he claims the filing of the bankruptcy proceeding itself, and naming him as a creditor, is what caused the torts. That all happened in Arkansas.

To use Bugg's hypothetical, imagine a Missouri resident bought a bull in Arkansas. The bull was kept in Arkansas. An Arkansas resident shot the bull in Arkansas. The Arkansas resident then sent mail to the Missouri resident concerning the deceased bull. That correspondence would not be sufficient to convey personal jurisdiction over the Arkansas shooter in a Missouri court.

"The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in

a meaningful way." *Walden v. Fiore*, 134 S. Ct. 1115, 125, 188 L. Ed. 2d 12 (2014). The Walden court found that the "[p]etitioner's relevant conduct occurred entirely in [another state], and the mere fact that his conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id.* at 1126. The same is true here as well.

Bugg also argues that due process was satisfied when Honey hired a Missouri attorney. Bugg relies on *Strobehn v. Mason*. 397 S.W.3d 487, 500 (Mo. App. W.D. 2013). Unlike in *Strobehn*, though, Honey hired the Missouri attorney after Bugg filed suit in Missouri state court. That attorney represented Honey in Missouri state court and Missouri federal court, all the while asserting a lack of personal jurisdiction. That is not sufficient to comport with due process. Moreover, Bugg does not refer to the hiring of a Missouri attorney in his amended petition.

The point is denied.

Conclusion. The Judgment is Affirmed

IN THE SUPREME COURT OF MISSOURI
Eldon Bugg Circuit Court No. CO16-00027
Plaintiff Court of Appeals No. WD80480
vs. Supreme Court No. SC96960
Marc Honey et al. Court of Appeals, Western
District Circuit Court
for Cooper County

Defendants

APPLICATION FOR TRANSFER

Transfer is sought after opinion X

Record on appeal was filed May 5, 2017

Appellate opinion was filed December 12, 2017

Motion for rehearing / application for transfer was
filed December 26, 2017 ,

and ruled on January 30, 2018

APPLICATION FILED February 14, 2018

PARTIES:

Eldon K. Bugg Plaintiff/Appellant;
party seeking transfer pro se

88 Pawnee Ln. Boonville, MO 65233

ebugg@sbcglobal.net

Marc Honey, Wm. Marshall Hubbard,Cyril Gray,
and Honey Law Firm P.A. Defendants / Respondents;

Anthony W. Bonuchi

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APPLICATION FOR TRANSFER

As a matter of first impression in Missouri,

the questions of general interest and importance are personal jurisdiction under the Fourteenth Amendment of the U.S. Constitution and Missouri's long-arm statute (§ 506.500), within the context of federal bankruptcy law's national jurisdiction. Amendment XIV and § 506.500 must be reexamined in light of the Bankruptcy Amendments and Federal Judgeship Act of 1984; Public Law 98-353. ("1984 Bankruptcy Act"). The appeals court grossly misapplied each of these laws, and abrogated its constitutional duty to follow this Court's controlling decisions in *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 231 (Mo. 2010), *Craig v. Mo. Dep't of Health*, 80 S.W.3d 457, 459 (Mo. 2002); and controlling decisions of federal bankruptcy courts because there is no bankruptcy counterpart in Missouri law.

GROUNDS FOR TRANSFER

Whether under Amendment XIV, § 506.500 RSMo., and the 1984 Bankruptcy Act; Arkansas residents can fraudulently use national bankruptcy jurisdiction to tortiously injure a Missouri resident, without consenting to personal jurisdiction in Missouri to answer for their tortious conduct? The overarching issue is diversity jurisdiction as between states versus bankruptcy jurisdiction which is national.

STATEMENT OF FACTS

1. Appellant's brief showed the appeals court that in bankruptcy administration, jurisdiction is national. (*Federal Fountain, infra*). ("National Jurisdiction").
2. Bankruptcy jurisdiction was first codified in April, 1800 (Public law, Sixth Congr. Sess. I, Chpt. XIX), adjudicated first in circuit courts until replaced with District Courts in 1911. In 1978 Congress enacted the present Title 11 (11 USC §§ 101 et seq.). Throughout, federal courts had original, but not exclusive jurisdiction of bankruptcy matters.
3. In 1984 Congress enacted the 1984 Bankruptcy Act, which:
 - a. Established an Article I bankruptcy court adjunctively attached to each District Court and authorized the appointment of bankruptcy Judges. (28 USC §151).
 - b. Amended 28 USC § 1334 giving District Courts original and **exclusive** jurisdiction over bankruptcy cases under Title 11.
 - c. Enacted 28 USC § 1408 mandating bankruptcy adjudication in the District Court where the person filing a bankruptcy case resides. ("District Venue").

- d. Enacted 28 USC §1452 mandating exclusive bankruptcy jurisdiction over the removal of civil actions from state courts to bankruptcy courts in the District Venue where the state-court is located.
- 6. Because of bankruptcy's unique nature, it has its own Rules of Procedure (FRBP), which are separate from Federal Rules Procedure (FRCP). (Relevance shown *infra*).
- 7. Plaintiff's briefs and post-opinion motion clearly showed the following which is generally acknowledged in the appeals court's Memorandum Opinion:
 - a. That 28 USC § 1332 deals with personal jurisdiction where there is diversity of citizenship; **but not citizenship in bankruptcy matters.** Id.
 - b. That in all bankruptcy cases, the United States is the Sovereign and attaches National personal jurisdiction irrespective of state citizenship. Id.
 - c. That plaintiff is a citizen of the United States for purposes of bankruptcy jurisdiction, and a citizen of Missouri for purposes of all other jurisdiction. Id.

- d. That defendants are citizens of the United States for purposes of bankruptcy jurisdiction, and citizens of Arkansas for purposes of all other jurisdiction. Id.
- e. That defendants filed a bankruptcy petition in the District Venue of Western Arkansas which conferred National Jurisdiction on plaintiff and defendants. Id.
- f. That in the bankruptcy process, defendants fraudulently claimed a “property interest” and fraudulently instigated a “contempt action” against plaintiff. Id.
- g. That under National Jurisdiction, defendants served summons and complaint on plaintiff in the District Venue of Western Missouri for the bankruptcy, the property-interest claim, the contempt action, and served other process of over 450 documents related to the bankruptcy. Id.
- h. That after the Eighth Circuit Court of Appeals held that defendants did not have a property interest, and reversed the contempt action, plaintiff filed a civil action against defendants in Missouri for tortious conduct in the bankruptcy case. Id.

- i. That defendants appeared in Missouri and filed a notice under 28 USC §1452 to remove the civil action to the District Venue of Western Missouri. Id.
- j. That unlike diversity removal, a removal under 28 USC § 1452 is a separate lawsuit defined in bankruptcy law as an Adversary Proceeding 1. Id.
- k. That the Adversary Proceeding is governed by FRBP, not FRCP 2. Id.
- l. That under FRBP, a copy of the Adversary Proceeding (separate lawsuit) must be filed in the state court from whence the civil action is being removed. Id.
- m. That as a settled principle of law, a person filing a lawsuit in any court consents to that court taking personal jurisdiction over the filing party. Id.
- n. That by filing the separate lawsuit in Missouri, defendants consented to personal jurisdiction in Missouri. Id.
- o. That because the property-interest claim and

contempt action were fraudulent, then defendants used bankruptcy jurisdiction to smuggle their fraudulent pleading and other process contacts into Missouri. Id.

p. That defendants communicating a fraudulent summons, pleadings, and other process into Missouri attached general and specific jurisdiction to defendants in Missouri; and satisfied due process. Id.

q. That while the civil action was nested in the District Venue of Western Missouri, defendants sought judicial relief of moving the civil action to the District Venue in Western Arkansas. Id.

r. That defendants also fell into default in the District Venue of Western Missouri for untimely pleading. Id.

s. That the case was remanded back to Missouri for lack of National Jurisdiction, with defendants still in default. Id.

t. That the Missouri trial court refused to recognize bankruptcy law, defendants' default, and ignored this court's decision in *Craig*. Id.

8. The appeals court acknowledged plaintiff's aforesaid arguments and the removal under §

1452. (Memo. Opin. p 5). Then, however, the court stated that: "Removing a case to federal court does not waive personal jurisdiction"; citing the case of *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 409, 49 S. Ct. 360, 362, 73 L. Ed. 762 (1929). *Id.*

The court then equated the § 1452 separate lawsuit, to a diversity removal which has no separate lawsuit. (Memo. Opin. p 6).

10. The appeals court conflated FRBP versus FRCP versus Missouri Rules of Civil Procedure. (Memo. Opin. p 6). Bankruptcy removal uses FRBP. All other federal removals use FRCP. None of the removals use state rules.

11. After the appeals court affirmed the trial court and issued its Memorandum opinion, plaintiff moved for rehearing, or transfer, or an amended opinion explaining how the case was diversity. Plaintiff showed:

a. Several reasons why *Morris & Co.* was inapposite. *Id.*, p 9.

b. That there are clear and mandatory distinctions between the federal jurisdiction statutes, Chapter 85, and their correlated federal removal statutes, Chapter 89. *Id.* p 10.

c. That this case was neither diversity jurisdiction or a diversity removal. (Id. p 2 et seq. specifically The Removal Primer).

12. *Morris & Co.* was decided five (5) decades before Congress enacted the 1984 Bankruptcy Act with its exclusive jurisdiction under § 1334, and exclusive bankruptcy removal under § 1452 – all separate from diversity jurisdiction and removal.

SUGGESTIONS IN SUPPORT

Diverse citizens versus united citizens?

Both of the lower courts failed to apprehend the distinction between personal jurisdiction involving “diverse citizens”, and personal jurisdiction involving “non-diverse citizens”; hereafter “united citizens”. “Congress . . . granted district courts original jurisdiction in civil actions between citizens of different States . . . § 1332”. (Emphasis added). *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, (2005). “Diverse citizens”.

By contrast, personal jurisdiction under bankruptcy law is **national**. (AB 12, citing *In re Federal Fountain*, 165 F.3d 600 (8 Cir. 1999)(en banc)); ARB p 11). *Federal Fountain* found that FRBP 7004(d): “quite clearly allows national

service of process because it provides that a ‘summons and complaint ... may be served anywhere in the United States”. The court in *Mid-Continent Cas. Co. v. Garrett (In re S. & S. Commun. Specialists, Inc.)*, (2017 Bankr. LEXIS 579, E.D. OK) agreed with nationwide service under Rule 7004(d), and referred to a familiar term that: “in bankruptcy cases ‘the forum’ is the United States in general, not the particular forum state”; hence “united citizens”. (Emphasis added). In short, each of the 94 federal judicial districts of the United States and Territories are merely *venues* within the United States forum just as each County Circuit Court is a separate venue in Missouri.

Defendants filed the subject bankruptcy in the United States, in the District Venue of Western Arkansas; not the state of Arkansas! Thus, the bankruptcy proceedings occurred in the United States forum; not in Arkansas 3. From that District Venue, defendants served the fraudulent property-interest claim, the contempt action, and many other fraudulent documents on plaintiff in the United States all pursuant to Rule 7004(d) 4. In other words, united-citizen defendants had ongoing, consistent, and meaningful contacts with united-citizen plaintiff; in the United States forum.

While the bankruptcy case was nested in the District Venue of Western Arkansas; plaintiff appealed the fraudulent property-interest claim, and contempt action. The Eighth Circuit Court of Appeals held that defendants had no property interest, and reversed the contempt action. (*In re Gray*, 642 F. App'x 641 (8th Cir. 2016); Memo. Opin. p 3).

Defendants kept serving bankruptcy documents on plaintiff in Missouri under Rule 7004(d). In the meantime, united-citizen plaintiff filed his civil action in a Missouri court. (Memo. Opin. p 3). Under bankruptcy law, a common question is whether such a civil action

is part of the bankruptcy case, or just arose out of the bankruptcy case? Defendants wanted the bankruptcy court to answer the question, so they filed their notice under § 1452 to remove the civil action to the **District Venue of Western Missouri**. While in that venue, defendants moved to have the civil action transferred to the District Venue of Western Arkansas; further acknowledging that both District Venues were part of the United States forum.

The Missouri-venue court remanded the civil action for lack of jurisdiction as not being part of

the bankruptcy case. Notwithstanding, united-citizen defendants kept serving bankruptcy documents under Rule 7004(d) because the bankruptcy case was ongoing.

Plaintiff argued in both lower courts that defendants used Rule 7004(d) to communicate their fraudulent pleadings and process into Missouri. That because the pleadings and process were fraudulent, their communication into Missouri was sufficient contacts to satisfy due process. (AB, Argumentation, p 34 et seq. specifically a single Meaningful Contact, p 36). Ignoring National Jurisdiction and the United States forum, the appeals court affirmed on grounds of diversity jurisdiction; finding in its Memorandum Opinion, p 9, that:

- the contract between plaintiff and defendant Gray was entered into in Arkansas,
- the land which was the subject of the contract was located in Arkansas, the debtor hired an Arkansas law firm to file bankruptcy in Arkansas,
- all of the bankruptcy proceedings occurred in Arkansas, and
- the only other connection with Missouri are the documents sent to Bugg in Missouri, often by the Arkansas bankruptcy court, as part of the bankruptcy proceedings.

The appellate opinion is contrary to all the aforesaid facts and law because: Not a single event occurred in Arkansas. They all occurred in the United States forum.

Waiving personal jurisdiction by instigating an adversary proceeding.

The appeals court also ignored plaintiff's argument that defendants removal under 28 USC § 1452 triggered a separate lawsuit; an adversary proceeding. (AB 16, et seq.; ARB 1 et seq.). A bankruptcy case is distinguished from an adversary proceeding which is filed under FRBP 7001. *In re St. Michael Motor Express*, 2016 Bankr. LEXIS 959 (WD, TN, 2016).

An adversary proceeding is a free-standing lawsuit which is totally separate from the bankruptcy case. *In re Roberts*, 570 B.R. 532, (SD MS, 2017); citing *In re S. Indus. Banking Corp.*, 189 B.R. 697, 702 (E.D. Tenn. 1992). *Plan 4 College, Inc. v. Gregus (In re Plan 4 College, Inc.)*, (Bankr. D. Md. Sept. 24, 2009). The term "adversary proceeding" is equivalent to the term "action": both refer to a lawsuit. *Husky Int'l Elecs., Inc. v. Ritz (In re Ritz)*, 567 B.R. 715, (Bankr. TX. 2017). (See also AB, p 14 et seq.).

Under § 1452 the complaint is the notice of removal. Id. In filing the adversary lawsuit in Missouri, defendants consented to personal jurisdiction. (AB 18; ARB 4 et seq.). The appeals court acknowledged the § 1452 removal (Memo. Opin. 3), but gave it no consideration, other than comparing it to a diversity removal under § 1332 which – notably – is not a removal statute at all. Plaintiff exhaustively informed the appeals court of the distinction between the several federal removal statutes and how they were misapplied. (Mtn. Rehear, Memo. p 2 et seq.).

Minimum contacts.

The appeals court acknowledged plaintiff's argument that defendants serving 450 plus documents on plaintiff in Missouri was sufficient to satisfy due process. (Memo. Opin. p 9). However, the court quickly added that the argument is without merit because: "That all happened in Arkansas". To the contrary, the 450 contacts did not happen in Arkansas, they happened in the United States. Because defendants fraudulent property-interest claim, and contempt action were outside bankruptcy law, those fraudulent contacts satisfy due process with respect to plaintiff's civil action in Missouri.

More important, the *Federal Fountain* court

holds that minimum contacts are irrelevant to bankruptcy cases because all parties are citizens of the United States. Citing from the United States Supreme Court case of *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 110 S. Ct. 2105, 109 L. Ed. 2d 631, (1990), *Federal Fountain* notes at page 602 that “physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define ... due process”. Because all parties in a bankruptcy case are physically present in the United States forum, their presence satisfies due process. *Id.*

Here, defendant Gray (the debtor) was physically present in the United States when he filed bankruptcy. Because defendants Honey et al., conspired with Gray to use the bankruptcy process for fraud – as well as filing the § 1452 removal in Missouri – they also made themselves physically present in the United States forum. In short, the physical presence of all defendants’ in the United States forum constitutes due process.

Other consent to Missouri jurisdiction, and default.

The appeals court also ignored defendants’ general appearance in the bankruptcy court seeking judicial relief, and their falling into

default. (AB 23 et seq.; ARB 11 et seq.; Mtn. Rhr. 19).

Conclusion.

Appellate courts are constitutionally bound to follow Supreme Court Decisions. (*State ex rel. Beisly v. Perigo*, 469 S.W.3d 434, (Mo. 2015); *Chavez v. Cedar Fair, LP*, 450 S.W.3d 291, (Mo. 2014)). Not only did the appeals court misapply National Jurisdiction, but abrogated its constitutional duty to follow this Court's decisions in *Bryant* and *Craig*.

WHEREFORE, plaintiff prays this Honorable Court enter its order transferring the case as a matter importance to protect an injured Missouri citizen within the meaning of § 506.500, to reexamine Amendment XIV and § 506.500 in light of National Bankruptcy Jurisdiction, and bring the case in line with this Court's controlling decisions in *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 231 (Mo. 2010) and *Craig v. Mo. Dep't of Health*, 80 S.W.3d 457, 459 (Mo. 2002); as well as those federal cases expressly elucidating National Jurisdiction in bankruptcy case.

RESPECTFULLY SUBMITTED;

/s/ E. Bugg
Eldon K. Bugg
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Boonville, Mo. 65233
660/882-9305
ebugg@sbcglobal.net

Supreme Court of Missouri

(en banc)

SC96960

WD80480

Eldon Bugg

Appellant

vs: TRANSFER

Mark Honey, William Marshall Hubbard,
Cyril Gray, and Honey Law Firm, P.A.,

Respondents

Now at this day, on consideration of the Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Set.

I, Betsy AuBuchon. Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session. 2018, and on the 3rd day of April. 2018. in the above-entitled cause.

SEAL:

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 3rd day of April. 2018.

/s/ Betsy AuBuchon, CLERK

/s/ Christina Vinson, DEPUTY CLERK

* * *

NOTE: PURSUANT TO SUPREME COURT RULE
14.1.(i)(v) PETITIONER INCLUDES A VERBATIM
EXCERPT FROM HIS APPELLATE BRIEF WHICH
HE BELIEVES IS ESSENTIAL TO UNDERSTAND
THE PETITION.

* * *

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT
APPEAL NO. WD80480

ELDON BUGG APPELLANT
v.
MARC HONEY ET AL. RESPONDENTS

ON APPEAL FROM THE CIRCUIT COURT OF
COOPER COUNTY DIVISION I
Case No. 16CO-CC00027

APPELLANTS BRIEF

Eldon Bugg
88 Pawnee Ln.
Boonville, MO 65233
660-882-9305
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* * *

Part VII governs "adversary proceedings" which are separate lawsuits independent of the bankruptcy case. *Teta v. Chow (In re TWL Corp.)*, 712 F.3d 886; (Fifth Circuit, 2013); citing Fed. R. Bankr. P. 7001; 10 Collier on Bankruptcy ¶ 7001.01, Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010. *Richards v. Stevens*, 310 Fed. Appx. 898; (Seventh Circuit, 2009).

"An adversary proceeding is not a 'case under Chapter 11' but a separate law suit to which only the parties in that action have standing". Fed. R. Bankr. P. 7001, 28 U.S.C. § 157(a). *In re Nemee*, 2012 Bankr. LEXIS 6111, Page 37; (U.S. BC, CA; 2012). (Emphasis added).

Rule 7001(10) of Part VII specifically applies to "a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452". (Emphasis added).

Thus, removal under § 1452 is a full-fledged lawsuit in all respects. ("Removal lawsuit"). It has its own rules of procedure separate from the bankruptcy case, it is commenced when debtor files a copy of the removal notice in the state court, and it requires a response admitting or denying allegations in the removal notice. (Rule 9027(e)(3); see also SLF A37 4 doc. 10). It even has a case number separate from the underlying bankruptcy case. The removal lawsuit at bar is "Adversary Proceeding #16-02019-drd" (SLF 1); whereas the

underlying bankruptcy case is 6:13-bk-73445. (LF 31).

A removal lawsuit ends in a judgment on the merits deciding the origin-of-claims, or other abstention. The judgment on the merits is entitled to all attending doctrines of law such as: *res judicata*, collateral estoppel, and law of the case.