

NO. 18-9103

ORIGINAL

Supreme Court, U.S.
FILED

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In The
SUPREME COURT OF THE UNITED STATES

MILTON THOMAS SR.

Petitioner
vs

THE CITY OF PHILADELPHIA
and THE SCHOOL DISTRICT OF PHILADELPHIA;
WILLIAM MILLER, U.S. BANKRUPTCY TRUSTEE

City of Philadelphia; The School District of Philadelphia

Respondent

On Petition for Certiorari to the United States Court of
Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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267-401-0978



QUESTION(S) PRESENTED

- 1) Can the 3rd Circuit Court of Appeals deny the Act of Congress conferring original and exclusive jurisdiction on the District Court of all civil proceedings arising under title 28 U.S.C. § 1334 (a)-(b) after the District Court has adjudicated a case?
- 2) Does a Bankruptcy Court have jurisdiction to enter a final order in a matter that is a non core proceeding in which the petitioner filed a counterclaim against the respondent in Federal District Court for a fraudulent transfer of property in State Court after the Bankruptcy case was terminated and discharged?
- 3) Whether the Third Circuit's opinion , which renders 28 U.S.C § 1334 (a)-(b) surplusage in light of ; *Continental Airlines*, 203 F. 3d 203, 211 (3d Cir 2000), *Morristown & Erie Railroad Co.*, 885 F.2d 98 (3d Cir. 1990), *Pertuso v Ford Motor Credit Co.*, 233 F.3d 417, 420 (6th cir. 2000), *Joubert*, 411 F3d at 456, contravenes Congress's intent in enacting Article III of the United States Constitution?

LIST OF PARTIES

All parties appear in the caption of the case on the cover
page.

iii
TABLE OF CONTENTS

OPINIONS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF	
CASE.....	4
A. Facts Giving Rise To this Case.....	4
B. The District Court Proceeding.....	5
C. The Appellate Court Proceeding.....	6
REASONS WHY CERTIORARI SHOULD BE GRANTED	7
I. Review Is Warranted Because The Opinion By The Majority Panel of the Third Circuit Conflicts With An Earlier Opinion Rendered By the Third Circuit.....	7
II Review is Warranted Because the Majority's Decision Conflicts With This Court's Holding in Stern v Marshall.9	

III Review is Warranted Because The Stern and Marathon Standards are Based on Unique Fact Patterns Similar to Thomas v. The City of Philadelphia and The School District of Philadelphia.....	10
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CONCLUSION.....	11
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INDEX TO APPENDICES

APPENDIX A

IV
TABLE OF AUTHORITIES
CONSTITUTIONAL PROVISIONS

<u>U.S. Const. Amend. XIV, sec. 1</u>	3
<u>Article III, §1, of the Constitution</u>	3
Cases	
<u>Arbaugh v Y & H Corp</u> 546 U.S. 500, 516 (2006).....	8
<u>Henderson v Shinseki</u> 562 U.S. 428 (2011).....	7
<u>Murray's Lessee v Hoboken Land & Improvement Co.,</u> 18 How. 272, 284 (1986).....	12
<u>Northern Pipeline Constr. V. Marathon Pipe Line Co</u> 458 U.S. 42 (1982).....	8 9 10 11 12
<u>Reed Elsevier, Inc. v. Muchnick</u> 559 U.S. 154.....	7
<u>Stern v. Marshall</u> 131 S. Ct. 2594 (2011).....	9
<u>United Mine Workers of America v Gibbs</u> 383 U. S. 715 (1966).....	11
Statutes	
28 U.S.C. § 1334 (a)-(b).....	1
28 U.S.C. § 1254(1).....	2
11 U.S.C. § 524.....	1 5 9
11 § 157(b)(2)(C)	10
Rules ...U.S. Sup. CT. Rule 10.....	9

1

OPINIONS BELOW

All opinions of the United States Court of Appeals appears at Appendix A to this petition. The courts opinions are unpublished.

The order of the Third Circuit denying re-hearing and rehearing and rehearing *en banc*, filed January 30, 2019 and is unpublished as of yet but can be found in appendix A.

The opinion of the Third Circuit filed January 3, 2019 wherein the Court held any sanction for violating § 524 must be imposed by the bankruptcy court and the District Court therefore lacked subject matter jurisdiction to sanction the defendants for violating § 524 and is unpublished as of yet in but can be founded in appendix A.

The opinion of the Third Circuit filed March 16, 2017 wherein it ordered that the District should decide anew, in the context of the petitioner's current complaint that if it is determined that the city had notice of the 2004 bankruptcy, then it will decide what effect, if any, the discharge had on the matters in the petitioner's current complaint. This opinion is unpublished as of yet but can be founded in appendix A

JURISDICTION

The date on which the United States Court Of Appeals decided my case was January 3, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals on January 30, 2019, and a copy if the order denying rehearing appears at appendix A.

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. XIV, sec. 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article III, §1, of the Constitution: mandates that “the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish,” and provides that the judges of those constitutional courts “shall hold their Offices during good Behavior” and “receive for their Services a Compensation that shall not be diminished” during their tenure.

STATEMENT OF THE CASE**A. Facts Giving rise To This Case**

Petitioner Milton Thomas Sr. On January 6, 2004 institute a instant Chapter 13 voluntary bankruptcy case. On September 8, 2009, the bankruptcy court granted the petitioner's discharge. On July 21, 2015 the City violated the discharge injunction after they sold at sheriff sale the subject property 1620 So. 58th st and listed the subject property 1618 So. 58th st. for Sheriff sale for debt that had been discharged. The proof of claim that was used to sell and list the subject properties for sheriff sale in the State Court included debt that had been discharged in the bankruptcy case.

B. The District Court Proceedings

On June 13, 2015 petitioner filed a complaint against the respondents in the United States District Court for the Eastern district of Pennsylvania, seeking declaratory, injunctive relief and damages.

The District Court imposed a sanction on the respondents based upon its conclusion that the respondent's efforts to collect those taxes by sheriff Sale violated a discharge injunction that had been entered in the petitioner's bankruptcy proceedings pursuant to 11 U.S.C. § 524.

C. The Appellate Court Proceedings

On January 3, 2019 the U.S. Court of Appeals for the 3rd Circuit entered a decision in conflict with an earlier decision entered on March 16, 2017 by the 3rd Circuit U.S. Court of Appeals. The March 16th 2017 decision gave the U.S. District Court jurisdiction over a non core bankruptcy matter, involving a fraudulent transfer of property by the respondent in which the petitioner file a counter claim against the respondent in the District Court. The District

Court decided the matter and issued a final order. On January 3rd 2019 The Court of Appeals vacated the District Court's March 16, 2017 decision stating that the District Court did not have subject matter Jurisdiction and only the Bankruptcy Court had jurisdiction to enter the final order.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. Review Is Warranted Because The Opinion By The Majority Panel of the Third Circuit Conflicts With An Earlier Opinion Rendered By the Third Circuit And Ultimately Could Effect All Citizen's Rights Within The Third Circuit.

Branding a rule as going to a court's subject matter jurisdiction alters the normal operation of our adversarial system. *Henderson v Shinseki*, 562 U.S. 428 (2011).

Federal courts have an independent obligation to ensure that they do not exceed the scope of their subject-matter jurisdiction and thus must raise and decide jurisdictional questions that the parties either overlook or elect not to press. Jurisdictional rules may also cause a waste of judicial resources and may unfairly prejudice litigants, since objections may be raised at any time, even after trial. A rule should not be referred to as jurisdictional unless it governs a court's adjudicatory capacity, i.e., its subject matter or personal jurisdiction. *Reed Elsevier, Inc. v. Muchnick*, 559 U. S.

On March 16, 2017, the Third Circuit issued an opinion which inferred jurisdiction on the District Court. On August 21, 2017 the District Court issued an opinion adjudicating the matter but the petitioner appealed the matter again to the Third Circuit because he was not fully compensated for the damages that he suffered. On January 3, 2019 the Third Circuit issued an opinion that the District Court did not have subject matter jurisdiction and vacated the district court's order. On January 30, 2019 the Petitioner's petition to the Third Circuit for re-hearing by the panel and the Court en banc was denied. Character. *Arbaugh v Y & H Corp.*, 546 U.S. 500, 516 (2006).

II

**Review is Warranted Because the Majority's Decision
Conflicts With This Court's Holding in Stern v
Marshall**

**THE COURT SHOULD GRANT THE WRIT TO
DECIDE WHETHER ARTICLE III COURTS MUST
APPLY THE *STERN* STANDARD WHEN
DETERMINING IF THE BANKRUPTCY COURT
HAS JURISDICTION OVER A NON CORE MATTER
WHEN ONE OF THE PARTIES DOES NOT GIVE
THEIR CONSENT.**

The Supreme Court has addressed the limited jurisdiction of the bankruptcy courts most notably in *Stern v. Marshall*, 131 S. Ct. 2594 (2011) and *Northern Pipeline Constr. V. Marathon Pipe Line Co.*, 458 U.S. 42 (1982). This Court should grant certiorari in this case, an issue of jurisdiction, and a question of federal law, should be resolved by this Court. *U.S. Sup. Ct. Rule 10.*

A. The *Stern* and *Marathon* Standards are Based on Unique Fact Patterns Similar to *Thomas v. The City of Philadelphia and The School District of Philadelphia*.

In the *Stern* decision it was determined that congress's grant of jurisdiction to the bankruptcy court to hear state law actions against a third party to collect assets for the estate was unconstitutional. An Article III court was required to finally decide such matters as was done in this case by the District Court. Although 11 § 157(b)(2)© permits Bankruptcy Courts to enter final judgement on the respondents counterclaim, Article III of the constitution does not.

Article 1, Section 8, Clause 4 of the United States Constitution provides: The Congress shall have Power To...establish...uniform Laws on the subject of Bankruptcies throughout the United States....Nov 26, 2013. Although § 157(b)(2)(C) permits the Bankruptcy Court to enter a final judgement on a counterclaim, Article III of the constitution does not. Article III is an inseparable element of the constitutional system of checks and balances that both defines the power and protects the independence of the Judicial Branch. Northern Pipeline, 458 U. S., at 58

(plurality opinion).

Even if the petitioner consented to allowing the bankruptcy court to enter a final judgement on the respondents counterclaim Article III of the constitution does not. Article III judge's are required to adjudicate this law suit because it is one "under state common law ", there is a pending state claim to sheriff the petitioner's property and a federal claim for violation of the discharge that arises out the same nucleus or facts . See United Mine Workers of America v Gibbs 383 U. S. 715 (1966). Article III judges are required in all federal adjudications . Article III protects liberty both only through its role in implementing the separation of powers, but also by specifying the defining characteristics of Articles III judges.

Article III could neither serve it's purpose in the system of checks and balances nor preserve the integrity of judicial decision making if the other branches of the federal government could confer the Government's judicial power on entities outside of Article III. Congress may not withdraw from judicial cognizance any matter which from its nature, is subject of a suit at common law or equity or in equity. *Murray's Lessee v Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856).

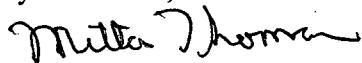
When a suit is the subject of a suit at common law, and is brought in the bounds of federal jurisdiction, the responsibility for deciding the suit rests in the laps of Article III judges and Article III courts. *Northern Pipeline*, 458 U.S. at 90 (Rehnquist, J., Concurring in judgement).

Conclusion

Based on the foregoing, the Petitioner respectfully submit that this petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the decision of the Third Circuit Court of Appeals.

Date: 4/30/19

Respectfully submitted,



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