18-9201

ORIGINAL

No. 17A1122

In the Supreme Court of the United States

Galen Amerson and Frances M. Scott,
Petitioners

v.

UNITED STATES BANKRUPTCY COURT
FOR THE DISCTRICT OF COLORADO
Respondent,

On Petition For Writ of Certiorari To The United States Court of Appeals Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This is the second time the court has seen this case. The issue to be considered is subject matter jurisdiction, and did it ever exist in this long running case, and this singular issue making its way once again before this Court. On September 21, 2016, oral arguments confirmed the lack of jurisdiction by the bankruptcy Court over two law suits filed during the pendency of Bankruptcy. On March 3, 2017, subject matter jurisdiction was raised and challenged by petitioners.[1] The result of the jurisdictional challenge was a denial of the petitioners' rights to due process, and protections of those rights. The Bankruptcy Court failed to direct the Bankruptcy Trustee, who asserted jurisdiction in 2013, to prove subject matter jurisdiction after it was challenged. Petitioners' efforts to invoke Bankruptcy Rule 5011-1, Withdrawal of Reference, seeking a neutral *de novo* review of subject matter jurisdiction, were blocked by the Bankruptcy Court. Petitioners' motions seeking a review of jurisdiction were ordered, struck from the record.

Petitioners, sought/seek the *de novo* review of subject matter jurisdiction, regarding two Florida counterclaims, filed during the 180 day pendency of bankruptcy. The counterclaims sought to revoke the latest of two legally valid, original Wills and Trusts, and reinstate a previous Will containing Trust. The Counterclaims were, alleged to be an asset, after the Bankruptcy Trustee

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[1] Jurisdiction can be raised at any time, even at appeal, *Basso v. Utah Power & Light Co.* 495 F 2d 906, 910.

was contacted by the Respondents in the two counterclaims. The Florida Respondents offered compensation to the Trustee in exchange for a settlement of the Florida counterclaims in their favor, using the Trustee's position in the Bankruptcy Court.

The question of the Bankruptcy Court's jurisdiction over the Petitioners Florida counterclaims can be established by a reading and *de novo* review of both original Wills and Trusts of Seale A. Moorer Sr., along with the Petitioner's two Florida counterclaims. These five (5) documents speak clearly for themselves. Jurisdiction did not exist because the only possible outcome of the Florida cases is a testate outcome, and neither testate outcome of the testate estate of Moorer Sr., could ever under either Will and/or Trust could legally, augment the Petitioners' bankruptcy estate.

Having been denied the basic right and right to expect the Bankruptcy court to establish jurisdiction before proceeding further, Petitioners, seeking to find a way to escape control of the Estate of Seale A. Moorer Sr., by the Bankruptcy Court though the issue of lack of jurisdiction, seek and sought a neutral court, to review the jurisdiction of the Bankruptcy Court/Trustee over the Petitioner's Florida counterclaims, Petitioners discovered Bankruptcy Rules 5011-3(a)(b) and 5011-1 which are coupled and set forth the right of any interested party to remove an issue from the bankruptcy court, to the United States District Court for review.

The Bankruptcy clerk, under orders of the bankruptcy court, refused first to follow Bankruptcy Rule 5011-3(a)(b), Transfer of Proceeding, and then fourteen

(14) days later, the Bankruptcy Court Clerk, under orders of the Bankruptcy Court, refused to follow Bankruptcy Rule 5011-1, Withdrawal of Reference.

This Court has ruled that subject matter jurisdiction, once raised cannot be assumed, and must be proven. Further, the court claiming jurisdiction cannot rule on its own jurisdiction. As stated by the United States Supreme Court in *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872), '[w]here there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction.'

In preparation for Court review, Petitioners sought the opinions of multiple experienced counsel to review the two original Wills and Trusts of Seale A. Moorer Sr., to tell them what, if anything petitioner Scott was entitled to from each Will and/or Trust. Each time the answer was resounding and clear, petitioner Scott was entitled to nothing from either Will and/or Trust during 2012, and to the present day; therefore the Bankruptcy court lacked jurisdiction from the beginning, over the Florida civil matter (counterclaims) pursuant to the *"Conceivable Effect."* The "*Conceivable Effect*" test states, that a bankruptcy court will have jurisdiction over a civil proceeding when "*the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.*" *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

On the morning of September 21, 2016, during oral arguments, before the United States Court of Appeals for the Tenth Circuit, counsel for the bankruptcy

Trustee, Mr. Douglas Pearce's, made a judicial admission regarding the lack of jurisdiction over the petitioner's Florida counterclaims, without using the word, "jurisdiction." Mr. Pearce, stated *the petitioner in fact had nothing on the date of filing bankruptcy, and would still have nothing if petitioner won her counterclaim in Florida;* (paraphrased and condensed)[2]. This is a clear admission by the trustee's counsel that subject matter jurisdiction by the Bankruptcy Court over the Florida counterclaims never existed. Neither possible testate outcome could augment the Petitioners' bankruptcy estate. In short, the Bankruptcy Court never had jurisdiction to pursue, or settle the Petitioner's Florida counterclaims. Further, the Bankruptcy Court never had any legal basis to strip the Petitioner of her standing, as an heir, to her father Moorer Sr.'s estate in the future, in the Florida counterclaims. Finally, the Bankruptcy Court had no jurisdiction to enter an illegal, intestate settlement in favor of the Florida respondents, which augmented the bankruptcy trustee, not the Petitioner's bankruptcy estate.

Counsel for the Bankruptcy Trustee, Mr. Pearce admitted the actual asset being administered, by the Bankruptcy Trustee, was the case itself. Of course, it is not legal for the Bankruptcy Trustee to sell, administer, or settle, which has been admitted to have been done, any thing or action the Bankruptcy Court lacks jurisdiction over, and to have done so, appears to be an alleged criminal act.

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[2] The Trustee's counsel's statement is an admission that Petitioner Scott had no inheritance due to her in either outcome, based on the contents of both wet ink Wills and Trusts. Which makes the statement that Scott had inheritance due to her in the opinion of the District Court October 16, 2017 completely inaccurate.

The questions presented are:

1) Can the Bankruptcy Court Clerk refuse to follow Bankr. Rule 5011-1, if ordered by the Bankruptcy Court, to ignore the rule, which states the "*The clerk shall transmit each document to the clerk of the district court who shall file and treat the documents as a civil action and deliver the documents to a district judge for disposition...*"

2) Can the Bankruptcy Court Clerk be ordered to refuse to follow Bankr. Rule 5011-1 by the Bankruptcy Court without consequences?

3) What remedy(s) exist to assure a challenge of jurisdiction has a neutral *de novo* review under Bankr. Rule 5011-1?

LIST OF PARTIES

Frances Moorer Scott is the sole petitioner. United States Bankruptcy Court for the District of Colorado is the sole respondent.

RULE 14.1 AND 29.6 STATEMENT

There are no corporate parties or parent corporations of parties in this case.

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Writ of Mandamus Regarding Bankr. Rule 5011-1
Seeking de novo Review of Subject Matter Jurisdiction,
and the Right to Due Process

Petitioners seek to VOID all decisions made by the Bankruptcy Court and Appeals Courts,[3] regarding the Estate of Seale A. Moorer Sr., including the illegal intestate settlement[4] entered into the Florida court by the bankruptcy Trustee, and the usurpation of Petitioner Scott's standing as a named heir, in the Florida Court, for lack of subject matter jurisdiction, coupled with violations of Petitioners right to due process, which occurred as a result of and during the process of Petitioners seeking a *de novo* review of jurisdiction.

This is a challenge of jurisdiction, which has been summarily ignored by the Bankruptcy court, the District court and the Tenth Circuit Court of Appeals, and a review of due process violations by all three courts. By reiterating the past of this issue the District Court and the United States Court of Appeals for the Tenth Circuit, in their opinions, avoid the truth, herein that the Bankruptcy Court issued a non-final Order and not ripe for an appeal. The district and appeals Court's, opinions also ignore the lack of jurisdiction as they continue along the lines that the case has been adjudicated, through two appeals,[5] and never mentions the Petitioners appropriate challenge of jurisdiction, from the very beginning. All three

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[3] Both appeals were improper, as the July 24, 2014 Order was "non-final" due to lack of consent of all parties, which removed the authority of the Bankruptcy Court to issue final, appealable, Orders. The proper action was a Bankr. Rule 5011-1 Withdrawal of Reference, to the United States District Court for a *de novo* review and final Order.

[4] Fla Stat. §736.0502(3), there is no basis for an intestate settlement in a testate estate.

[5] Ibid

Courts, Bankruptcy, District and Appeal, based their opinions solely upon the presumption of jurisdiction, resulting in the mistaken conclusion that the petitioners seek to re-litigate the matter, which could not be further from the truth. Petitioners have no desire or reason to re-litigate this matter, in fact there was no reason to litigate the matter in the first place, because jurisdiction was never present.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit, attached in App. 1a – 3a. The October 16, 2017 Ruling of the United States District Court for the District of Colorado, attached in App. 4a – 11a. The October 17, 2017 Orders of the United States Bankruptcy Court for the District of Colorado, 12-17345 KHT, attached in Appendix 12a-14a.

JURISDICTION

The opinion of United States Court of Appeals for the Tenth Circuit on October 16, 2017. Pet App. 1. This Court's jurisdiction is invoked under 28 U.S. Code § 1254(1). Court for the District of Colorado, on October 16, 2017. Pet App 2, invoked jurisdiction exercised jurisdiction pursuant to 28 U.S.C. § 158(a)(1), 28 U.S.C. § 158 (b)(1), and 28 U.S.C. § 158 (c)(1). The United States Bankruptcy

Court for the District of Colorado on October 16, 2017, exercised jurisdiction pursuant to 28 U.S.C. § 1334.

STATUTORY PROVISIONS

The relevant provisions of the United States Bankruptcy Code are, 11 U.S.C. § 541(a)(1); 11 U.S.C. 157(c)(2); 28 U.S.C. § 157(b)(5); Fed. Rule Bankr. Proc. Rule 5011-3(a)(b); Fed. Rule Bankr. Proc. Rule 5011-1;

The relevant statute of the State of Florida is Fla. Stat. §736.0502(3).

STATEMENT OF THE CASE

A. Summary of the case

The bankruptcy estate is formed, containing all the legal and equitable interests of the debtor(s) in property, at the commencement of a case under Title 11. 11 U.S.C. § 541(a)(1). Causes of action belonging to the debtor fall under 11 U.S.C. § 541(a)(1).

Even though the petitioners' counterclaims fell into the 11 U.S.C. 541(a) broad definition of property of the debtor, that is not an absolute definition, the existence of a cause of actions, does not automatically establish subject matter jurisdiction, when applied to claims and counterclaims. Causes of action must also follow the property of the debtor, and causes of action must have some possible outcome which will in fact add assets to the debtors bankruptcy estate, additionally, the possible value added, must exceeds the cost of litigation. In this case, because the Estate of petitioner Scott's father Seale A. Moorer Sr., was/is governed by two legally valid wills, which do not offer any testate possibility of conveyance of property resulting from either outcome of the Florida counterclaims, to petitioner Scott, or to the petitioner's bankruptcy estate, jurisdiction over the Florida state matter, never existed.

The Bankruptcy Court ignored the facts stated in the Florida counterclaims, as well as both wet ink Wills and Trusts of Seale A. Moorer Sr., and allegedly, enticed by the offer of a financial incentive of $75,000, from the respondents named in the

Florida counterclaims to "sell" them the case, and act on their behalf, to terminated the debtor/Petitioner's case against them. By doing so, the Bankruptcy Trustee acted well outside the clearly defined jurisdictional limitations and restrictions of Title 11 Bankruptcy law, to get involved and force an illegal intestate outcome which the petitioner did not have the right to demand for money which was not due to the petitioner. On top of the mandatory abstention from state matters, the Bankruptcy Court simply never had jurisdiction over the Petitioner's counterclaims, from the beginning, according to the *"Conceivable Effect"* test.

The "*Conceivable Effect*" test states that a bankruptcy court will have jurisdiction over a civil proceeding when "*the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.*" *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

The presumptive illusion of jurisdiction over the petitioner's Florida counterclaims was deliberately created with false testimony and perjury. The 2012 Will was withheld from the Bankruptcy Court to deliberately misled the Court to believe that the matter before it was a "core" matter, involving actual assets of inheritance due to the Petitioner, through the false testimony by the Bankruptcy Trustee and others, regarding the 2012 and 1983 Wills, Trust, and counterclaims.

Having kept the actual evidence, which proved the Bankruptcy Court had no jurisdiction over the Petitioner's Florida counterclaims, the Bankruptcy Trustee and counsel proceeded to engage in defamatory allegations that of the debtor acted in

bad faith, had and hid property, committed perjury and lied about having inheritance, etc, to move the Bankruptcy Court into assuming jurisdiction over the counterclaims and in that assumption, the Bankruptcy Court acted outside of and without jurisdiction, to grant the Bankruptcy Trustee Orders to substitute for the Petitioner in the Florida Counterclaims, in violation of the mandatory abstention from State Court matters, and enter an illegal intestate settlement, despite Petitioners' opposition.

The Bankruptcy Court's Orders dated July 23, 2014, referred to herein in each opinion from lower courts, and in and the findings of fact completely relied upon the false testimony which was reversed by Trustee's counsel in oral arguments before the Tenth Circuit on September 21,2016, therefore, in this present case, those findings of facts must be set aside, 11 U.S.C. § 158(a); Fed. Rule Bankr. Proc. 8013 (findings of fact "shall not be set aside unless clearly erroneous").

The Bankruptcy Court lacked and lacks jurisdiction over the Petitioner's Florida counterclaims and over the Estate of Seale A. Moorer Sr., deceased, a non-debtor, whose desires are set forth in two original Wills which are well beyond the reach of the Bankruptcy Court and the Bankruptcy Trustee to change.

Petitioners challenged jurisdiction on March 3, 2017, and to date, jurisdiction has never been proven. The Petitioner's rights to due process and their right to protection of the rights to due process have been ignored and violated. Petitioners challenge of jurisdiction of the Bankruptcy Court, over the Florida counterclaims, after appeals, witnessed the Bankruptcy Trustee seek and be paid $100,000, mostly

for the Bankruptcy Trustee and other attorneys, not to augment the Petitioners' bankruptcy estate from the Estate of Seale A. Moorer Sr.[6] Petitioner Scott did not consent to as a party and rightful heir, and was never entitled to have.

Petitioners have relentlessly sought the remedy of a *de novo* review by a neutral court, through all means possible to remove the issue of jurisdiction, the Bankruptcy court and Trustee refused to address, from the Bankruptcy court in pursuit of a neutral, *de novo*, review and ruling on subject matter jurisdiction, over petitioner Scott's Florida counterclaims, which has been denied to the petitioners at every turn. In the process of seeking justice in this matter, petitioners rights to due process have been violated, and petitioners were threatened with sanctions by the bankruptcy court.

B. Facts and Procedural History

Petitioner Scott in the present case is also one of two Petitioners in the counterclaims in the Florida State Court. The Petitioner is the daughter of and heir, to the Estate of Seale A. Moorer Sr. The Petitioner's standing in the Florida counterclaims is therefore unimpeachable, and cannot legally be taken by the Bankruptcy Trustee with false claims as was done.

The Petitioner and her half-sister, filed two counterclaims into the appropriate Florida Court on June 22, 2012, challenging the validity of their father's, Seale A. Moorer Sr., January 9, 2012 Will and Trust (2012). The 2012

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[6] Petitioner Scott did not consent to the Trustee's intestate settlement, and as a named party and rightful eventual heir, Petitioner was never entitled to seek an intestate settlement. The same non-rights to an intestate can apply to the Bankruptcy Trustee.

documents were drafted and executed 29 days, prior to Mr. Moorer Sr.'s death, on February 7, 2012. The complaints seek to have the Florida Court review the evidence and if the 2012 Will and Trust are found to be invalid, to review the 1983 Will, which is presumed to be valid, and reinstate the 1983 Will, for probate.

Neither legal, testate outcome, of the Petitioner's Florida counterclaims could or would change the Petitioner's rights to demand and claim property. Without the Petitioner having rights to demand and claim property, the Bankruptcy Trustee has no rights to demand and claim property, therefore, the Petitioner's bankruptcy estate could not be augmented under either testate outcome. The only two legally valid outcomes of the Petitioner's Florida counterclaims are/were:

1. The 2012 Will and Trust of decedent Seale A. Moorer Sr., would enter probate, under which the Petitioner was entitled to nothing, as it all went to the Petitioner's mother, or

2. The 1983 Will of decedent Seale A. Moorer Sr., which contained Trusts, would be reinstated as the only valid Will and enter probate granting the Petitioner a beneficial interest in a valid spendthrift trust, which is not property of the Petitioner, and which could not be invaded by creditors or to pay creditors.

Both Wills and Trusts, (1983 & 2012) are testamentary, and both provide for all the assets to pour over into trusts, Marital and/or Family, at the time of death.

Under the terms of both Wills, (1983 & 2012) the Trust to which the Petitioner is named as a beneficiary in a valid spendthrift trust, the terms and

language in both Wills and Trusts, (1983 & 2012) meet all three (3) provisions of a valid Spendthrift Trust, as set forth in the Uniform Trust Code (2000), which are the same as spendthrift provisions contained in Florida Statutes pertaining to Spendthrift Trusts. Spendthrift Trusts have long been recognized as valid in Florida

April 13, 2012, the Petitioner and her husband filed a voluntary petition for Chapter 7 bankruptcy protection, due the failure of a franchise business. On the date of filing the Petitioner had no additional property or rights to property resulting from the death of her father, and had no beneficial interest in a Spendthrift Trust, at the time of filing under the 2012 Will and/or Trust. Due to the filing of the Florida counterclaims, neither the 2012 Will or the 1983 Will were in probate, but had the 1983 Will been submitted for probate at the time of filing, or substituted as a result of the Florida Court invalidating the 2012 Will and Trust, at any time prior to, during or after the Petitioners filing for bankruptcy protections, the Petitioner would still not have had any additional property or rights to property, but, she would have had a beneficial interest in the valid Spendthrift Trust named the "Family Trust."

The Petitioner disclosed the death of her father, and the 2012 Will and Trust, and the 1983 Will to Bankruptcy counsel William Horlbeck for his review. The Petitioner sent an email clearing expressing her intent to "not let this stand," to her counsel over a month prior to the petition for Bankruptcy was filed. Petitioner's counsel did not inform the debtors that a claim or counterclaim filed regarding a

matter that existed prior to or during the 180 days after petition was filed was considered property of her estate.

Petitioner, not the Bankruptcy Trustee, filed a Motion to Reopen the bankruptcy on December 28, 2012. After conferring with counsel, and the Bankruptcy Court, an Amended Motion to Reopen was filed by Petitioners on March 8, 2013, disclosing all the claims and counterclaims.

Not until September 21, 2016, in oral arguments before the Tenth Circuit, when the Trustee's counsel stated truthfully, that the Petitioner had nothing on the day of filing under the 2012 Will and Trust, and/or if Petitioner prevailed in Florida Court and the 2012 Will and Trust were found invalid and revoked, then, and only then the Petitioner have had a beneficial interest in a spendthrift trust under the 1983 Will. At that time, the Petitioners realized the Bankruptcy Court never had jurisdiction over the Florida counter claims. Mr. Pearce's testimony was overlooked by the Tenth Circuit in their October 28, 2016 opinion,[7] even though it is a judicial admission, established under the law. The truth is, Petitioner Scott, never had or had expectations of any property to gain or hide as has been falsely advanced by Court after Court, defaming Petitioner Scott at every turn. The Bankruptcy Court, never had jurisdiction, because there was never any money or property to augment the Petitioners bankruptcy estate, and further, the Bankruptcy Trustee could never legally entertain any offer to enter the State Court in place of the Petitioner, and/or in place of a named heir.

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[7] United States Court of Appeals for the Tenth Circuit case no. 15-1343, not being reviewed in this Writ.

February 6, 2014, in violation of the mandatory abstention from a State action, in a non-core matter, 28 U.S.C. § 1334(c)(2), *"the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction."*

Trustee's counsel stated the truth on the record, on September 21, 2016 before the Tenth Circuit Court of Appeals, about what the Petitioner had and didn't have, Mr. Pearce's statements referencing the 2012 Will and Trust. The Tenth circuit completely disregarded the judicial admissions stated by Trustee's counsel, when he stated, *"But what the debtor [petitioner] had on the – the actual asset here that's being administered by the trustee are these litigation claims, these claims to void the 2012 estate plan."*

March 3, 2017, petitioners properly raised the issue of subject matter jurisdiction, which can be raised at any time. March 20, 2017, the Bankruptcy Court in an Order denying a Stay requested by the Petitioners, and ignored the Petitioners appropriate, legal challenge of jurisdiction and again ignored the judicial admissions of the Trustees' counsel before the Tenth Circuit.

June 7, 2017, Petitioners filed a motion into the Bankruptcy Court, seeking a *de novo* review of jurisdiction to the US District Court in keeping with Bankr. Rule 5011-3(a)(b), "Transfer of Proceeding" which was ignored.

June 22, 2017, Petitioners filed a motion into the Bankruptcy Court, seeking a *de novo* review by the US District Court according to Bankr. Rule 5011-1, "Withdrawal of Reference." The motion was overtly denied, by the Bankruptcy

Clerk of Court upon Orders of the Bankruptcy Court, in direct violation of Bankr Rule 5011-1.

July 31, 2017, Petitioners again filed motions for *de novo* review of the US District Court according to Bankr. Rule 5011-1, "Withdrawal of Reference," into both the Bankruptcy Court and the US District Court, which were denied, by the Bankruptcy Clerk of Court, however the Clerk of the US District Court stood properly on procedure, and confirmed Petitioners had correctly filed the matter with the Bankruptcy Court, then returned the Petitioners' filings explaining the file had to come from the Bankruptcy Clerk of Court. Letters were also sent to the Bankruptcy Clerk of Court. August 1, 2017, Orders in a letter of "No action," was sent to Petitioners by the Bankruptcy Court.

September 10, 2017, petitioners filed a Petition for Writ of Mandamus, regarding Bankr Rule 5011-1, Withdrawal of Reference and the ongoing quest for a *de novo* review of subject matter jurisdiction into the US District Court for the District of Colorado and case no. 2017-cv-02177, was opened, in the hope that finally the jurisdiction question would be reviewed in an evidentiary hearing.

October 16, 2017, US District Court for the District of Colorado case no. 2017-cv-02177 issued orders denying the Petition for Writ of Mandamus, completely ignoring the challenge of jurisdiction, and instead claiming the non-ripe appeals of the non-final Order of the Bankruptcy Court, somehow override the critical establishment of jurisdiction. The US Bankruptcy Court never answered or entered an appearance.

October 17, 2017, The US Bankruptcy Court struck multiple filings by petitioners from the court records, including challenges to jurisdiction, and Petitioners were threatened with sanctions if they persisted in seeking justice.

October 27, 2017, Petitioners filed a Motion for Reconsideration with the US District Court which was denied on October 31, 2017.

November 8, 2017, Petitioners filed Notice of Appeal to the United States Court of Appeals for the Tenth Circuit.

November 17, 2017, Certificate of Service and Notice of Appearance were filed into United States Court of Appeals for the Tenth Circuit, case no 17-1406.

December 29, Petitioners Amended Brief filed, the US Bankruptcy Court did not respond.

February 6, 2018, Writ of Mandamus denied by United States Court of Appeals for the Tenth Circuit.

REASONS FOR GRANTING CERTIORARI

1. **Establish and confirm the [debtors] right to due process in a bankruptcy proceeding, including the right to challenge the bankruptcy court's jurisdiction over alleged assets and the right to have jurisdiction proven by the asserter and reviewed and established by a neutral court.**

This court and other courts have ruled time and again regarding jurisdiction, stating clearly, that jurisdiction is a universal principle;[8] jurisdiction is fundamental;[9] jurisdiction must exist for a court to proceed;[10] jurisdiction once challenged must be established;[11] stating where there is no jurisdiction the proceedings of a court are absolutely void,[12] and that a court cannot establish its own jurisdiction.[13]

Perhaps there is no other court where jurisdiction must be established multiple times over multiple complex issues, than in a bankruptcy court's proceedings. Further, there is little question that the bankruptcy court's presiding over trillions of dollars in assets every year, makes scrutiny of the Bankruptcy Court and the establishment of clear directives and rules especially critical to prevent the temptation of the Bankruptcy Court to act improperly.

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[8] "A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." *Norwood v. Renfield*, 34 C 329; Ex parte *Giambonini*, 49 P. 732

[9] "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio."In *Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846

[10] "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S.* 505 F 2d 1026

[11] "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners* 94 Ca 2d 751. 211 P2d 389. "Jurisdiction, once challenged, cannot be assumed and must be decided." *Maine v Thiboutot* 100 S. Ct. 250.

[12] "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P 27

[13] "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." See *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

Inseparable from the establishment of jurisdiction, is the right to due process. This Court and others have ruled that Courts must follow recognized and established requirements of law;[14] and the failure to observe safeguards amounts to violations of due process;[15] in a ruling that combines jurisdictional challenge with due process, it was ruled in 1943:

> ...the law places the duty and burden of subject-matter jurisdiction upon the plaintiff [Bankruptcy Trustee]. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge under court decisions has immediately lost subject-matter jurisdiction. In a court of limited jurisdiction, the court must proceed exactly according to the law or statute under which it operates. *Flake v Pretzel*, 381 Ill. 498, 46 N.E.2d 375 (1943)

Based on the above ruling alone, the fact the Petitioners were forced to file the underlying United States District Court case and the appeal to the United States Court of Appeals for the Tenth Circuit Court, and are now filing this Petition for Writ of Certiorari, because the Bankruptcy Court didn't place the burden of establishing and proving jurisdiction where it belongs, with the Trustee, it would seem that not only did jurisdiction never exist, but even if it had, jurisdiction was lost when the Petitioners rights to due process were violated, by forcing the Petitioners to prove that jurisdiction didn't exist.

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[14] "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." See *Wuest v. Wuest,* 127 P2d 934, 937.

[15] "Where a court *failed to observe safeguards*, it amounts to denial of due process of law, court is deprived of juris." See *Merritt v. Hunter*, C.A. Kansas 170 F2d 739.

Regarding the Petitioner's Florida counterclaims, specifically, the Bankruptcy Court lacked jurisdiction from the beginning, according to the *"Conceivable Effect."* The "*Conceivable Effect*" test states that a Bankruptcy Court will have jurisdiction over a civil proceeding when "*the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy." Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). The Bankruptcy Trustees counsel, Douglas Pearce's judicial admission, admits there was no outcome that would have met the requirements of the *Conceivable Effect.*

The July 2014 Settlement Agreement issued by the Bankruptcy Court, and the subsequent appeals, should never have happened. Jurisdiction simply never existed and to date the challenge of jurisdiction has never been answered, therefore jurisdiction is not established.

2. Assure the established legal path a debtor's challenge of Subject Matter Jurisdiction can take, to seek remedy outside of the control of the Bankruptcy Court which may or may not be acting legally or appropriately, without fear of retribution and threats of sanctions.

The Petitioners' relentless, dedicated pursuit of justice, truth, fairness, and the rules, landed them squarely opposed to the Bankruptcy Court, and many attorneys and judges across Colorado and Florida, who have no interest seeking to validate

subject matter jurisdiction of the Bankruptcy Court it was raised. As a result, the Petitioners were threatened with sanctions if they continued to seek relief, on top of the loss of up to $14,000,000 in future possible inheritance, five (5) years after the death of Petitioner Scott' mother, Betty Jane Quinn Moorer.

All the petitioners' filings were summarily struck from the record, none of which were frivolous, or petty.

If as in this case, the underlying circumstances of wrongdoing, are pervasive and persistent, so as to create and alleged collaboration to break laws and profit from law breaking, a crime of opportunity so to speak, how is a debtor to seek justice if the rules are not followed which support finding the truth. Supported by officers of the Court(s), and by sheer number and powers of the probable collaborators, how is the truth to come out for the underdog, the debtor? What remedy is there for a debtor, down on their financial ability to mount a defense, and up against a preverbal human machine, if Bankr. Rule 5011-3 and 5011-1 are and can be ignored by the Bankruptcy court without consequences?

3. Clarify the Bankruptcy Clerks responsibilities under Bankr. Rule 5011-1 Withdrawal of Reference and perhaps more critical, are debtors rights to due process violated in the refusal to follow Bankr. Rule 5011-1

The wording of Bankr. Rule 5011-1, is straightforward and unambiguous, the "*clerk shall transmit each document to the clerk of the district court...,* which was not done:

> A request for withdrawal of reference shall be made by motion filed with the clerk of the bankruptcy court. The motion shall show that relief by way of abstention, remand or transfer was first sought and not obtained or could not be sought from the bankruptcy court. Any other party in interest may serve and file a response within 14 days after service of the motion. The clerk shall transmit each document to the clerk of the district court who shall file and treat the documents as a civil action and deliver the documents to a district judge for disposition. A motion for a stay under Federal Rule of Bankruptcy Procedure 5011(c), shall first be made to the bankruptcy court. If such relief is later sought in the district court, the request shall be made by additional motion filed with the clerk of district court, which shall show that the relief requested was first sought and not obtained from the bankruptcy court. If withdrawal is ordered, the clerk shall transmit all documents in the relevant file and the docket to the clerk of district court who shall file and treat the documents as a civil action filed in the district court and assign the action to a district judge. These local rules shall continue to apply unless the district court orders otherwise.

The opportunity for clarification comes in the question of whether there is any discretion allowed to the Clerk of the Bankruptcy Court, and whether there is any allowance for the Bankruptcy Court to intervene and stop Bankr. Rule 5011-1 from being followed. Or in the alternative, the question to be answered is, was the refusal to transmit petitioners file to the district court, yet another violation of the petitioners' rights to due process? There is a pressing need to establish with clarity how the Bankruptcy rules are to be applied as an established the remedy for debtors to seek justice, without fear of retribution, if the same or similar violations occur.

REQUEST FOR EXTRAORDINARY RELIEF

Not only is jurisdiction clearly lacking, but there is a statutorily mandated, abstention prohibiting the Bankruptcy Court from intervening in a State Court

proceeding, and Petitioner Scott had/has no rights to demand and was not due any money or property from the Estate of her late father Seale A. Moorer Sr. These three (3) "errors" have led to an ever widening legal vortex of appeals and filings in case after case, as the Petitioners make every possible attempt to seek and secure natural, justice for themselves and the Estate of Seale A. Moorer Sr., deceased father of Petitioner Scott, which has proved impossible, thus far, as violations of the Bankruptcy Code and Bankruptcy Rules, have been ignored and justice has been obstructed, along with the petitioners rights to due process in this single matter.

Statements made by counsel for the Trustee during oral arguments, before the Tenth Circuit Court of Appeals, were judicial admissions that resolved every issue in this case, as they were completely supported by the facts and the law, under both the 1983 and 2012 Will, but were summarily ignored by the Tenth Circuit.

Therefore, this Court has a clear basis to remand this matter to the District Court, with a change of venue, (to be determined), specifically to read both wet ink Wills and Trusts with new eyes, and void all actions and decisions made by the Bankruptcy and Appeals Courts, regarding Petitioner's Florida Counterclaims, along with clear direction for further and future, proceedings to fashion an appropriate remedy to make the petitioners whole.

And further with the direction that all matters relating to counterclaims, regarding the validity of the Wills be left exclusively to the Florida State court.

CONCLUSIONS

For all the aforementioned, petitioner requests extraordinary relief and that their Petition for Certiorari should be granted.

Respectfully submitted by:

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