No. 19-

In the Supreme Court of the United States

TRUMPF, INC.,

Petitioner

v.

CSI WORLDWIDE, LLC,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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June 8, 2020

QUESTIONS PRESENTED FOR REVIEW

Whether it is unconstitutional and impermissible for a court to usurp Congress' authority by reducing the strict standing and jurisdictional requirements for involuntary bankruptcy established by Congress in 11 U.S.C. § 303?

Whether a party who successfully forces a debtor into involuntary bankruptcy, by representing to the bankruptcy court that there is no bona fide dispute as to that debtor's liability, upon which the bankruptcy court relies to enter its adjudication, is precluded by judicial estoppel from ignoring its representation and that adjudication to bring a subsequent litigation in a different court claiming the same liability against another entity?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner TRUMPF, Inc. discloses the following: its parent companies are TRUMPF International Beteiligungs-GmbH; TRUMPF GmbH + Co. KG, and no publicly-held company owns more than 10% of TRUMPF, Inc.'s stock.

RELATED CASES

United States Court of Appeals
for the Seventh Circuit
Docket No. 19-2189
CSI Worldwide, LLC v. TRUMPF, Inc.
Date of entry of Judgment: December 11, 2019

United States District Court
for the Northern District of Illinois
Docket No. 2018-cv-05900
CSI Worldwide, LLC v. TRUMPF, Inc.
Date of entry of judgment: May 28, 2019

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The opinion of the court of appeals (Pet. App. 1a-5a) is reported at 944 F.3d 661. The opinion of the district court (Pet. App. 6a-22a) is not reported.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on December 11, 2019 (Pet. App. 1a). A petition for rehearing was denied on January 10, 2020 (Pet. App. 23a).

As per Order of this Court dated March 19, 2020, the deadline to file a petition for a writ of certiorari due on or after that date was extended from 90 days to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing (i.e. until June 8, 2020).

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

STATUTORY PROVISIONS INVOLVED

Chapter 525 of the 1938 Bankruptcy Act is set out in Petition Appendix D (Pet. App. 25a-27a).

Excerpts of the 1978 Bankruptcy Act are set out in Petition Appendix E (Pet. App. 28a-31a).

Excerpts of Public Law 98-353 are set out in Petition Appendix F (Pet. App. 32a-33a).

Excerpts of Public Law 109-8 are set out in Petition Appendix G (Pet. App. 34a-35a).

Excerpts of 11 U.S.C.A. § 303 Involuntary Cases are set out in Petition Appendix H (Pet. App. 36a-38a).

STATEMENT OF THE CASE

I. INTRODUCTION

This case concerns a seemingly mundane business dispute that raises momentous and novel questions about this nation's bankruptcy laws and the very integrity of the judicial process that must be addressed by the Court. Company A brings Company B into involuntary bankruptcy under 11 U.S.C. § 303(b)(1). To have standing to do so, Company A swears under penalty of perjury that the debt is not "the subject of a dispute as to liability or amount." Indeed, *involuntary* bankruptcy is as it sounds: a harsh but quick remedy reserved for extraordinary circumstances, wherein an entity that is indisputably liable for a debt is forced into bankruptcy. Company A succeeds, but is unable to collect the contract price in that proceeding. Consistent with Congressional dictates and the principle of judicial estoppel, can it now sue Company C, despite swearing to the involuntary bankruptcy court that Company B is the only debtor and invoking that court's jurisdiction?

The Northern District of Illinois answered in the negative, estopping Company A from suing Company C after it had sworn to another tribunal

that Company B is liable. The Seventh Circuit reversed, analogizing this situation to a tort plaintiff's ability to separately sue joint tortfeasors. As a result of the Seventh Circuit's novel decision, now a party that has a contract claim against one person can avoid costly and time-consuming civil litigation and instead swiftly bring that person into involuntary bankruptcy, but when dissatisfied with its collection efforts there, just sue another person it then claims is also liable for the debt. This Court should address whether such misuse of the involuntary bankruptcy statute and judicial process should be permitted.

II. FACTUAL BACKGROUND

TRUMPF, Inc., a manufacturer of specialty machinery, showcases its products at tradeshows. It hired Lynch Exhibits to help build its exhibit at the 2017 FABTECH trade show in Chicago, and Lynch hired CSI Worldwide, LLC as a subcontractor on this project for a contract price of $529,830.09.

When Lynch did not pay CSI, CSI forced Lynch into involuntary bankruptcy in the United States Bankruptcy Court for the District of New Jersey. In that proceeding and as required by statute, CSI's principal swore under penalty of perjury that (a) CSI was a creditor holding a claim against Lynch in the amount of $529,830.09 for services rendered, and (b) that the debt in question was neither "contingent as to liability or the subject of a bona fide dispute as to liability or amount." 11 U.S.C. § 303(b)(1). Based upon CSI's sworn

representations, on March 12, 2018, the bankruptcy court granted CSI's requested relief and entered an order placing Lynch into liquidation under Chapter 7 of the Bankruptcy Code. Lynch later voluntarily declared bankruptcy, and in the voluntary bankruptcy proceeding, CSI filed a sworn Proof of Claim for the same amount.

Presumably dissatisfied with the potential remedies in these bankruptcy proceedings, CSI then sought to change its tune. Even though it represented to the bankruptcy court that the debt for which it placed Lynch into involuntary bankruptcy was not contingent or disputed, and even though the bankruptcy court accepted and acted upon CSI's sworn representations to grant CSI the relief it sought, CSI filed a lawsuit asserting that claim against another person: TRUMPF, Inc.

III. PROCEEDINGS BELOW

CSI filed a complaint against TRUMPF in the Northern District of Illinois, claiming TRUMPF owes it the $529,830.09 for services CSI provided to Lynch for the FABTECH Show. TRUMPF moved to dismiss the complaint, contending, *inter alia*, that CSI should be judicially estopped from asserting that it is now TRUMPF who is liable for the $529,830.09. Specifically, TRUMPF showed that CSI swore in an involuntary bankruptcy petition filed in the bankruptcy court that another entity—Lynch—actually owed that money, and that no bona fide dispute or other contingencies existed as to Lynch's liability. Based on CSI's

unequivocal representations to the bankruptcy court and that court's acting upon such representations to grant CSI's petition placing Lynch into involuntary bankruptcy, TRUMPF asserted that CSI should be estopped from seeking the $529,830.09 from TRUMPF.

The district court agreed with TRUMPF and granted its motion to dismiss, finding CSI's sworn representations in the bankruptcy proceeding foreclosed its ability to argue that another party was liable for the $529,830.09. Pet. App. 18a-22a. In arriving at this decision, the district court recognized the unique nature of involuntary bankruptcy and explained that "bona fide disputes" exist in involuntary bankruptcy when there is a material issue of fact about whether the supposed debtor actually owes the amount claimed on the petition. Pet. App. 19a. By CSI attesting that there was no bona fide dispute or other contingencies as to Lynch's liability, the district court held that CSI was estopped from asserting in this case that a different company—TRUMPF—owes it the $529,830.09. Pet. App. 19a-20a. The district court further held that CSI prevailed in the bankruptcy proceeding because based on such representations, it had persuaded the bankruptcy court to enter an order placing Lynch into involuntary bankruptcy, and it found CSI would unduly benefit from being permitted to change its position in this proceeding. Pet. App. 21a. Nowhere in the involuntary bankruptcy petition was there any statement that there were any other persons who were or could be liable for the debt on which CSI was seeking to force Lynch into

involuntary bankruptcy. CSI appealed to the United States Court of Appeals for the Seventh Circuit.

The court of appeals reversed the decision of the district court, finding CSI was not judicially estopped from asserting its claim against TRUMPF because (1) CSI did not prevail in the bankruptcy court in that it had not yet recovered the monies in the bankruptcy court; and (2) CSI did not claim that Lynch was solely responsible for payment of the $529,830.09 when it filed its involuntary bankruptcy petition. Pet. App. 3a-5a. In arriving at this decision, the Seventh Circuit criticized the district court's conclusion that making a claim in involuntary bankruptcy necessarily abandons all claims against other potentially responsible persons. Pet. App. 4a. The court then analogized this scenario to cases involving guarantors or joint tortfeasors and held it is common and proper to seek and recover one debt from multiple persons. Pet. App. 4a. Though the court of appeals held that, generally, filing a claim in bankruptcy does not foreclose claims against non-bankrupt obligors, it did not explain how its reasoning extended to involuntary bankruptcy petitions, which require a party to certify under oath that no bona fide dispute or other contingencies exist as to liability or amount. Instead, it eschewed the unique nature of involuntary bankruptcy and the strict standing and jurisdictional requirements imposed by Congress, and ultimately reversed and remanded the case, holding that CSI's claim against TRUMPF was not contrary to its claim against Lynch. In so doing, the court of appeals usurped Congress' authority

and effectively lowered the bar imposed by Congress, opening the door to unscrupulous litigants seeking to gain strategic advantage by the threat and improper use of involuntary bankruptcy, without consequence. TRUMPF timely filed a petition for rehearing *en banc*, which was denied on January 10, 2020. Pet. App. 24a.

IV. CONGRESS' STRICT REQUIREMENTS FOR INVOLUNTARY BANKRUPTCY

Involuntary bankruptcy is a severe remedy with serious consequences. Unlike voluntary bankruptcies, which are commenced by the debtor, involuntary bankruptcies occur when eligible creditors force a putative debtor into bankruptcy, often causing utter disruption and irreversible damage to the debtor's affairs and reputation. Congress, recognizing the devastating effects involuntary bankruptcy can have on a debtor, purposefully limited the circumstances in which creditors may force a debtor into such a proceeding. Indeed, over the span of nearly seven decades, Congress continually made it clear that involuntary bankruptcy actions were proper only in situations involving debts that were, as a practical matter, non-contingent and undisputed.

Article III of the United States Constitution vests Congress with the power to determine what cases and controversies federal courts have jurisdiction to review. Likewise, Congress also has the authority to define the standing requirements of Article III. Congress, by legislation, may either

expand standing to the full extent permitted by the Constitution or limit standing to cases in which certain prerequisites are met. These standing limitations act as a gatekeeper, ensuring that a plaintiff has a stake in the action and a factual basis to hail another party into court.

Section 303 of the Bankruptcy Code, which addresses the prerequisites for involuntary bankruptcy actions, is just one example of a statute that limits federal court jurisdiction and enumerates certain prerequisites for standing. Under that section, federal bankruptcy courts are prohibited from adjudicating, and creditors are proscribed from commencing, involuntary actions that involve debts that are contingent as to liability or the subject of a bona fide dispute as to liability or amount. The purpose behind these limitations is clear: because involuntary bankruptcy is a harsh remedy with severe consequences, Congress did not want creditors to be able to force an entity into bankruptcy unless the debt at issue was indisputably owed by the alleged debtor.

Congress' initial foray into establishing strict conditions and prerequisites for the filing of involuntary bankruptcy petitions dates back to at least the 1930s, when Congress passed the Chandler Act of 1938 and prohibited creditors from filing involuntary bankruptcy actions unless the "provable claims" at issue were "fixed as to liability and liquidated as to amount." Pet. App. 26a. Congress kept these limitations in place for nearly forty years; then, in 1978, Congress removed the Chandler Act's "provable claims" requirement and

set forth a new definition of "claim" for purposes of bankruptcy. Pet. App. 28a-29a. Under this new definition, a "claim" included any contingent, liquidated, unliquidated, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured debt. Pet. App. 28a-29a.

Nevertheless, Congress still prohibited creditors from bringing involuntary bankruptcy actions where the claims at issue were contingent as to liability. Pet. App. 29a. Given Congress' past recognition of involuntary bankruptcy as a severe remedy, there was confusion in some courts as to how to address disputed debts in the involuntary bankruptcy context. *See e.g.*, *In re B.D. Int'l Discount Corp.*, 701 F.2d 1071, 1076 (2d Cir. 1983) (finding it difficult to believe "that Congress intended that . . . a claim qualifies [for involuntary bankruptcy] when the claim is subject to serious dispute"); *In re Covey*, 650 F.2d 877, 881 (7th Cir. 1981) (finding fact that "creditor's claim is disputed does not disqualify a creditor from joining an involuntary bankruptcy petition"); *In re All Media Props., Inc.*, 5 B.R. 126, 134 (S.D. Tex. 1980) ("[T]he definition of the term 'claim' is far reaching and clearly indicate[d] that Congress intended that even holders of disputed claims should be able to seek a determination of whether a debtor is generally not paying its debts as they became due.").

In 1984, Congress sought to end the confusion regarding disputed debts by passing an amendment that prohibited involuntary

bankruptcy petitions involving debts that were the subject of a "bona fide dispute." Pet. App. 33a. In proposing this amendment, Senator Maxwell Baucus explained the problem plaguing the courts:

> The problem can be explained simply. Some courts have interpreted section 303's language on a debtor's general failure to pay debts as allowing the filing of involuntary petitions and the granting of involuntary relief even when the debtor's reason for not paying is a legitimate and good-faith dispute over his or her liability. This interpretation allows creditors to use the Bankruptcy Code as a club against debtors who have bona fide questions about their liability, but who would rather pay up than suffer the stigma of involuntary bankruptcy proceedings.

130 Cong. Rec. S.7,618 (daily ed. June 19, 1984). Senator Baucus believed that adding the "bona fide dispute" language was "necessary to protect the rights of debtors and to prevent misuse of the bankruptcy system as a tool of coercion." *Id.* The amendment passed without objection. *Id.*

In 2005, Congress added one final requirement to involuntary bankruptcy actions: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 required that creditors hold claims "not contingent as to liability or the subject of a bona fide dispute *as to liability or amount*." Pet. App. 34a-35a (emphasis added). When the House of Representatives voted on the amendment,

Representative Edward Royce explained "Congress' long-standing intent that an involuntary bankruptcy action should not be predicated on disputed claims," stating:

> [O]pportunistic litigants seeking to gain advantage in contract disputes may improperly employ the leverage of the bankruptcy court. . . Put simply, the bankruptcy courts in this nation should now uniformly hold that any claim that is subject to a dispute or litigation, or if it is contested, whether as to the amount of the claim, or as to liability for the claim, that claim cannot be used to commence an involuntary bankruptcy case. This is the bright line that Congress intended to create in 1984 because involuntary bankruptcy carries with it, not only a responsibility, but the burden on behalf of petitioning creditors to be accurate and certain that their provable claims are qualified by being without dispute as to either liability or amount before commencing an involuntary bankruptcy case. The consequence of bad faith or even sloppy work here is more disastrous than in garden-variety litigation or through the voluntary use of the bankruptcy laws. . . . [I]t is the intent of Congress, as expressed through the unique retroactive application of Section 1234, to require the dismissal of any involuntary petition brought by using disputed claims, including any bankruptcy

> cases that are pending as a result of the misapplication of Section 303.

151 Cong. Rec. E677-78 (daily ed. Apr. 18, 2005).

Thus, since 2005, to force a debtor into involuntary bankruptcy, a creditor must swear, under penalty of perjury, that the debts are not "the subject of a bona fide dispute as to liability or amount." *See* Pet. App. 36a-37a.

REASONS FOR GRANTING THE PETITION

I. THIS CASE IS OF CRITICAL IMPORTANCE AND IMPLICATES A NOVEL AREA OF LAW

This case presents critically important questions that will have an immediate and serious impact on involuntary bankruptcy actions across the nation: whether a creditor can make sworn representations to one court to force a debtor into involuntary bankruptcy and then renege on those representations when the involuntary bankruptcy proceedings ultimately prove unsatisfactory. The Seventh Circuit answers these questions in the affirmative, thus allowing a creditor to swear, under oath, that the debt at issue is not the subject of a contingency as to liability or bona fide dispute as to liability or amount, but later pursue another for the same debt it had represented to be undisputed. Such a holding defies reason and eschews the limitations of Section 303 that were implemented by Congress to avoid incompatible

manipulation such as this. So long as the questions presented remain unanswered, creditors will be permitted to mislead the courts and misuse the bankruptcy system. Review by this Court is thus urgently needed and warranted.

Indeed, grant of certiorari here would allow this Court to clarify the intersection of judicial estoppel and involuntary bankruptcy—something that has not been done before. The Seventh Circuit incorrectly believed that this is "not a novel problem," as it appears that only one other court has addressed this precise issue, and that court estopped a party from doing precisely what CSI did in this case: adding an alleged debtor after forcing another entity into involuntary bankruptcy for the same alleged debt. *In re Wyo. Cty. Builders, LLC*, No. 12-21046, 2014 WL 1801679, *4 (10th Cir. B.A.P. 2014) ("Appellant took an inconsistent position by first positing that WCB was the alleged debtor in the involuntary petition signed by her, and now argues Van Vleet is the alleged debtor."). The Seventh Circuit's decision splits from *In re Wyo. Cty. Builders, LLC* in a dangerous way, and confusion among the lower courts is bound to arise. But involuntary bankruptcy is too harsh a remedy to be the subject of a circuit split; debtors and creditors alike need clarity, and this case is the ideal vehicle for providing it.

If the Seventh Circuit's decision stands, it will allow a creditor to attempt to recover from two separate parties—in two separate proceedings—after it forced one of those parties into involuntary

bankruptcy by swearing that the debt at issue was not the subject of a bona fide dispute. This decision violates Article III of the Constitution, as Congress explicitly limited the situations in which a creditor has standing to bring a putative debtor into involuntary bankruptcy, and will have a monumental effect on the involuntary bankruptcy landscape from here on out; creditors will now be able to force an entity into bankruptcy even where the standing requirements of Section 303 are not met. *See* 11 U.S.C. § 303(b)(1) (permitting involuntary bankruptcy where debt "is not contingent as to liability or the subject of a bona fide dispute as to liability or amount"); *see also Dep't of Revenue v. Blixseth*, 942 F.3d 1179, 1184 (9th Cir. 2019) (noting requirements of Section 303 "aim to prevent creditors from using the threat of an involuntary petition to bully an alleged debtor into settling a speculative or validly disputed debt") (citation omitted). This is unconstitutional and not what Congress intended or directed when it amended the Bankruptcy Code in 2005.

Thus, this case presents a novel question of exceptional importance – *i.e.*, can a party cause a debtor to be placed into involuntary bankruptcy by representing there is "no bona fide dispute as to liability," only to later claim in a separate litigation that the same debt was owed by another? Petitioner submits the answer is no; because there are multiple alleged debtors for the same debt, there must have been a bona fide dispute as to liability. *See In re TPG Troy, LLC*, 793 F.3d 228, 234 (2d Cir. 2015) ("'[P]ending litigation over a

claim strongly suggests' the existence of a bona fide dispute, even if it does not suffice to firmly establish that existence.") (citation omitted); *In re Vortex Fish Sys., Inc.*, 277 F.3d 1057, 1064 (9th Cir. 2002) ("A bankruptcy court is not asked to evaluate the potential outcome of a dispute, but merely to determine whether there are facts that give rise to a legitimate disagreement over whether money is owed, or, in certain cases, how much."); *In re Busick*, 831 F.2d 745, 746 (7th Cir. 1987) (holding that when there is a question as to who owes a debt, involuntary bankruptcy is improper because it creates a bona fide dispute as to liability).

The Seventh Circuit's decision here dramatically lowers the barriers to involuntary bankruptcy and undermines the purpose of Section 303: to prevent creditors from playing fast and loose with the facts and improperly forcing an entity into involuntary bankruptcy. The Court should grant certiorari.

II. THIS CASE IMPLICATES THE INTEGRITY OF THE JUDICIAL SYSTEM

Judicial estoppel is designed to prevent parties from misleading the courts with inconsistent representations in different judicial proceedings. As this Court has recognized, "[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who

has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895)). The Court has observed that the circuit courts have uniformly recognized that the purpose of the doctrine "is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Id.* at 749–50 (internal quotations and citations omitted).

With the goal of preserving judicial integrity, circuit courts often consider three factors in determining whether a party should be judicially estopped: (1) a party's later position is clearly inconsistent with its earlier position; (2) the party's former position has been adopted in some way by a court in earlier proceedings; (3) the party asserting the two positions derives an unfair advantage. *Id.* at 749–50. These factors are not "inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel" but rather are "guideposts," and "additional considerations may inform the doctrine's application in specific factual contexts." *Id.* at 751.

Reneging on prior sworn statements can present a unique threat to the court system. "[E]ven when the prior [inconsistent] statements were not made under oath, the doctrine may be invoked to prevent a party from playing 'fast and loose with the courts." *Konstantinidis v. Chen*, 626 F.2d 933, 937 (D.C. Cir. 1980) (quoting *Scarano v. Central R.R.*, 203 F.2d 510, 513 (3d Cir. 1953)).

But, "[t]o the extent that prior sworn statements are involved, the doctrine upholds the public policy which exalts the sanctity of the oath. The object is to safeguard the administration of justice by placing a restraint upon the tendency to reckless and false swearing and thereby preserve the public confidence in the purity and efficiency of judicial proceedings." *Id.* (quotation omitted).

The doctrine's application in ensuring the integrity of bankruptcy courts by enforcing the accuracy and transparency of party representations and filings is well established. *See, e.g.*, *Moses v. Howard Univ. Hosp.*, 567 F.Supp.2d 62, 67 (D.C. Cir. 2008) ("Many courts have applied the doctrine of judicial estoppel to bar plaintiffs from pursuing claims . . . because those plaintiffs failed to disclose the existence of their claims to bankruptcy courts in prior or parallel [voluntary] bankruptcy proceedings.")(listing cases). *See also In re Green Hills Dev. Co.*, 741 F.3d 651, 655 (5th Cir. 2014) (citing 11 U.S.C. § 303(b)) ("A claimholder does not have standing to file a petition under § 303(b) if its claim is 'the subject of a bona fide dispute as to liability or amount.'").

This Court must answer whether it is an affront to judicial integrity to bring a party into involuntary bankruptcy based on the *sworn* representation that there is no dispute as to a (disputed) debt, only to sue another potential debtor in federal district court. As of now, due to the Seventh Circuit's decision in this case, a creditor can do just that. This result allows for

manipulation of, and undermining the integrity of, the judicial system, as a party can effectively cross its fingers in an involuntary bankruptcy proceeding, knowing it can pursue its claim should it fail to collect in bankruptcy. Misrepresentation of this sort would be particularly pernicious in an involuntary bankruptcy petition, which, unlike a traditional civil complaint, requires certain factual representations—namely the absence of contingencies or a *bona fide* dispute—for a party just to get through the courthouse doors, so to speak.

Furthermore, it would not take the most cunning creditor pursuing a disputed debt easily to decide whether to pursue costly traditional litigation, or bring one of several potential debtors into involuntary bankruptcy for the full amount of the debt. The former strategy requires drafting pleadings, participating in discovery, and going to trial, among the other hallmarks of litigation—all at considerable time and legal expense. The latter requires merely filling out a single form and presenting it to a bankruptcy court. And, both avenues can achieve the same result. The Seventh Circuit's decision here has opened the door to highly questionable litigation tactics—the exact behavior that the judicial estoppel doctrine is designed to prevent. This Court must decide whether that door should remain open, or whether such behavior is legally intolerable and repugnant to the integrity of the judicial system

III. THIS CASE IS AN IDEAL VEHICLE FOR DECIDING THESE CRITICALLY IMPORTANT QUESTIONS

The questions presented are critically important, and for three reasons this case is the right vehicle to decide them.

First, factually and procedurally, this case is straightforward. As outlined above, CSI sued TRUMPF in the Northern District of Illinois, seeking payment for a debt that CSI previously asserted under oath was indisputably owed by Lynch. TRUMPF moved to dismiss, contending CSI was judicially estopped from maintaining such a conflicting position. The district court granted the motion to dismiss, and the court of appeals reversed. In arriving at its decision, the district court noted that Lynch's voluntary bankruptcy action, filed March 7, 2018, remains ongoing in the United States Bankruptcy Court for the District of New Jersey. That proceeding reinforces the need for this Court's review because it shows, firsthand, that CSI is currently trying to collect the same debt from two parties even though it swore under oath that only one entity—Lynch—owed the money without dispute. Permitting both cases to move forward would implicitly authorize this duplicitous behavior and allow creditors to renege on sworn representations made to the bankruptcy courts. This is not what Congress envisioned when it implemented Section 303.

Next, though the Seventh Circuit analyzed the multi-factor judicial estoppel test of *New Hampshire v. Maine*, the crux of its opinion concerned the inconsistency factor, and granting certiorari on this specific issue would be outcome-determinative here. Indeed, if this Court finds that Section 303 of the Bankruptcy Code precludes a party from seeking money from one entity when it already swore, under penalty of perjury, (1) that a different entity owes the debt; and (2) that the debt was not the subject of a "bona fide dispute," this case will end. The district court will not need to reevaluate whether CSI was successful in the bankruptcy proceeding or decide whether CSI gained an unfair advantage over Lynch and TRUMPF because inconsistent positions, alone, would now be enough to invoke judicial estoppel in the involuntary bankruptcy context.

Finally, the questions presented will not benefit from further assessment in the lower courts. Congress' intent regarding the limits of involuntary bankruptcy under Section 303 was clear: Congress did not want creditors to misuse the bankruptcy system or coerce debtors into involuntary bankruptcy over debts that were legitimately the subject of a bona fide dispute. Permitting the Seventh Circuit's opinion to stand will contravene this purpose and allow debtors to essentially get another bite of the apple when involuntary bankruptcy proves unfruitful. This will broaden the scope of Section 303 in a dangerous way, authorize manipulation of the judicial system, and cause the whole involuntary

bankruptcy system to tumble down. This Court should not delay intervening.

CONCLUSION

The petition for a writ of certiorari should be granted.

June 8, 2020 Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DATED DECEMBER 11, 2019

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 19-2189

CSI WORLDWIDE, LLC,

Plaintiff-Appellant,

v.

TRUMPF INC.,

Defendant-Appellee.

December 9, 2019, Argued;
December 11, 2019, Decided

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 2018 CV 05900 — **Charles R. Norgle**, *Judge.*

Before EASTERBROOK, ROVNER, and SCUDDER, Circuit Judges.

EASTERBROOK, *Circuit Judge*. TRUMPF Inc., the U.S. subsidiary of an international business, makes specialty tools such as precision laser cutters. Trade shows are among its selling venues, and it hired Lynch Exhibits

to handle its appearance at the 2017 PABTECH show in Chicago. Lynch subcontracted with CSI Worldwide to provide some of the necessary services.

CSI contends that it told TRUMPF that it was unsure of Lynch's reliability and would do the work only if TRUMPF paid it directly or guaranteed Lynch's payment. According to CSI, TRUMPF assented—though it did not sign any undertaking to that effect. CSI did the work and billed Lynch, which did not pay. CSI filed an involuntary bankruptcy petition against Lynch, which soon filed a voluntary bankruptcy petition. CSI claimed approximately $ 530,000 as a creditor. It also filed this suit against TRUMPF under the diversity jurisdiction, seeking $ 530,000 on theories including unjust enrichment and promissory estoppel. The district court dismissed the suit on the pleadings, ruling that, by making a claim in Lynch's bankruptcy, CSI necessarily represented that Lynch is the sole debtor. The district court called its approach judicial estoppel.

The Supreme Court describes judicial estoppel this way:

> "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis v. Wakelee*, 156 U.S. 680, 689, 15 S. Ct. 555,

> 39 L. Ed. 578 (1895). This rule, known as judicial estoppel, "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Pegram v. Herdrich*, 530 U.S. 211, 227, n.8, 120 S. Ct. 2143, 147 L. Ed. 2d 164 (2000); see 18 *Moore's Federal Practice* §134.30 (3d ed. 2000) ("The doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding"); 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* §4477 (1981) ("absent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory").

New Hampshire v. Maine, 532 U.S. 742, 749, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) (cleaned up). See also *id.* at 750-51. The Court's description shows that judicial estoppel does not block CSI's suit, for CSI has not prevailed by collecting the debt from Lynch's estate in bankruptcy. The district court believed that success in the earlier suit does not matter to the doctrine of judicial estoppel, but the Supreme Court views the matter differently, as do we. See, e.g., *Astor Chauffeured Limousine Co. v. Runnfeldt Inv. Corp.*, 910 F.2d 1540, 1548-49 (7th Cir. 1990). Because CSI has not prevailed in the bankruptcy court, judicial estoppel cannot block its claim against TRUMPF.

Nor is CSI's claim against TRUMPF "contrary" to its claim against Lynch. CSI has not asserted, in either the involuntary or the voluntary bankruptcy case, that Lynch is *solely* responsible for payment. It has not tried to recover twice on one debt. The district court believed that making a claim in bankruptcy necessarily abandons all claims against other potentially responsible persons, but it did not explain why or cite authority. As far as we are aware, there is no such authority to be found. Seeking to recover one debt from multiple persons is common and proper.

Think of joint tortfeasors, one of whom is bankrupt. The victim may seek to recover from both, and the fact that one is bankrupt does not force the victim to elect which it will pursue. Suppose the debtor in bankruptcy has insurance; seeking to prove the claim against the asserted tortfeasor in bankruptcy does not block recovery from a solvent insurer. Or think of a commercial transaction in which a firm borrows money and the debt is guaranteed by one of the firm's investors. Making a claim against the borrower in bankruptcy does not cut off recourse against the guarantor. Instead of a guarantor, the debt may have the support of a bond. Many a subcontractor insists that the general contractor or the project 's owner put up a bond to ensure that the general contractor pays. If the general contractor goes bankrupt, the unpaid subcontractor may file a claim without abandoning its recourse against the bond. Indeed, bonds may require the subcontractor to seek whatever can be had in bankruptcy. If the district court were right, however, all of these claims against third parties would be blocked by the doctrine of judicial estoppel.

This is not a novel problem, and the Bankruptcy Code itself provides the answer. Filing a claim in bankruptcy does not foreclose claims against non-bankrupt obligors. Even a discharge in bankruptcy does not do that. 11 U.S.C. §524(e). Many decisions recognize that a claim in bankruptcy does not block recovery from third parties such as guarantors or jointly responsible persons. See, e.g., *In re Shondel*, 950 F.2d 1301, 1306 (7th Cir. 1991). See also *Union Carbide Corp. v. Newboles*, 686 F.2d 593, 595 (7th Cir. 1982) (same outcome under §16 of the Bankruptcy Act of 1898, which preceded the Bankruptcy Code of 1978).

CSI may or may not have a good claim on the merits and TRUMPF may or may not have a defense that it has paid what it owes. These matters must be resolved on remand.

REVERSED AND REMANDED

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED MAY 28, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CSI WORLDWIDE, LLC,

Plaintiff,

v.

TRUMPF, INC.,

Defendant.

Case No. 2018 CV 05900

Hon. Charles R. Norgle

OPINION AND ORDER

Plaintiff CSI Worldwide, LLC ("Plaintiff") filed the instant action against Defendant TRUMPF, Inc. ("Defendant") on August 28, 2018 claiming that Defendant owes $529,830.09 for services provided by Plaintiff at a trade show in Chicago in 2017. Plaintiff, pleading in the alternative, brings four claims—promissory estoppel, payment over notice of assignment, unjust enrichment, and breach of contract—in this diversity action. Defendant's motion to dismiss, which alternatively pleads that this case should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) or 12(b)(6), is granted for the following reasons.

Appendix B

I. BACKGROUND

Defendant, a Connecticut corporation with its principal place of business in Farmington, Connecticut, manufactures machinery. Plaintiff is a Delaware limited liability company with two members, who are citizens of the states of Florida and South Carolina respectively, with its corporate headquarters in Glen Mills, Pennsylvania. Plaintiff provides labor for installing and dismantling exhibits being displayed at trade shows. Defendant exhibits its products at such trade shows. Broadly, Defendant makes three arguments in its motion to dismiss: first, that personal jurisdiction is lacking in this Court; second, that Plaintiff is taking a position that contradicts a position it advanced (and which was adopted) in bankruptcy court and thus Plaintiff should be judicially estopped from putting forth its "new," contradictory theory in this Court; and third, that there are substantive deficiencies in the way that Plaintiff has pleaded its claims. The Court need only address the first and second arguments to resolve this matter in favor of Defendant.

The following facts are before the Court.[1] On June 14, 2017, Defendant met with Plaintiff and a third party not

1. Unless otherwise noted, all facts in the ensuing background section are taken directly from Plaintiff's complaint and are assumed to be true for purposes of this motion. *See Killingsworth v. HSBC Bank, N.A.*, 507 F.2d 614, 618 (7th Cir. 2007). This section also draws from an affidavit Plaintiff has submitted to provide factual information relevant to the issue of personal jurisdiction, along with a number of documents from the U.S. Bankruptcy Court for the District of New Jersey, of which the Court takes judicial notice (as discussed further herein).

named as a defendant in this suit, Lynch Exhibits, Inc. ("Lynch"), to discuss Defendant's desire to participate in the FABTECH 2017 trade show ("trade show") at McCormick Place in Chicago, Illinois, from November 6-9, 2017. Compl. ¶¶ 7-8. At the meeting, individuals from the three companies discussed Lynch designing, engineering, and building Defendant›s exhibit for the trade show, and Plaintiff providing the onsite labor to build and subsequently dismantle Defendant's exhibit. *Id.* In July 2017, Lynch informed Plaintiff that Defendant had hired Lynch to design and create the exhibit. *Id.* ¶ 9. Lynch further informed Plaintiff that Defendant wanted Plaintiff to perform the labor to install and dismantle the exhibit. *Id.* Plaintiff then informed Lynch that Plaintiff would provide labor for the trade show only if it could bill Defendant directly for the work, as Plaintiff believed that Lynch had a history of poor credit. *Id.* ¶ 10. In response, in an August 28, 2017 email, a Lynch employee stated to Plaintiff that it could directly bill to Defendant—though no Defendant employee was copied on the correspondence. *Id.* ¶ 10.

Plaintiff further alleges that in September 2017, at a number of meetings in which Defendant's employees were present, one of Plaintiff's employees "reiterated at meetings . . . that CSI [Plaintiff] was billing Trumpf [Defendant] directly for CSI's labor." *Id.* ¶ 12. According to the complaint, "[n]o Trumpf representative ever took issue with those representations." *Id.*

Over the next several months, Plaintiff provided the labor in Chicago for the November 6-9, 2017 trade show.

Id. ¶ 13. Throughout that process, TRUMPF employees-including some executives-were in Chicago for various meetings throughout the lead-up to the trade show. Dkt. 24-1, Declaration of William Joyce ("Joyce Declaration"). According to Plaintiffs Vice President of Marketing William Joyce, who managed Plaintiffs employees who were installing and dismantling Defendant's exhibit, executives and representatives were present in Illinois for strategic planning and implementation meetings in the months and weeks leading up to the trade show. *Id.* ¶¶ 12-14. According to the Joyce Declaration, Joyce met with one of Defendant's representatives twenty times and another approximately fifteen times, all in Chicago. *Id.* ¶ 15. Moreover, Joyce attests that during the trade show, at least six of Defendant's executives and fifty employees were present in Chicago. *Id.* ¶ 16.

Sometime following the trade show, "Lynch reviewed [Plaintiff's] . . . bills to confirm their accuracy[.]" Compl. ¶ 15. On December 6, 2017, Plaintiff submitted its invoices to Defendant in an email chain that contained the August 28, 2017 Lynch statement that Plaintiff could invoice Defendant directly. *Id.* ¶¶ 16-17. Roughly two weeks later, Plaintiff again sent the invoices to Defendant. *Id.* ¶ 18. Finally, on or about January 18, 2018, a Plaintiff employee called Defendant and "reminded" Defendant that it was supposed to pay Plaintiff directly. *Id.* ¶ 19. A Defendant employee then represented to Plaintiff that Defendant was aware of Plaintiffs expectation and that it was "working on a solution to provide CSI with compensation for the labor it provided Trumpf at the Fabtech trade show." *Id.* In all, the total amount Plaintiff invoiced Defendant was $529,830.09. *Id.* ¶ 14.

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On February 15, 2018, Plaintiff, along with two other creditors of Lynch, petitioned the United States Bankruptcy Court for the District of New Jersey to place Lynch into involuntary Chapter 7 bankruptcy. Dkt. 13-2, Involuntary Petition Against a Non-Individual ("Involuntary Bankruptcy Petition"). The Bankruptcy Court, on consideration of that February 15 petition, entered an order placing Lynch into Chapter 7 Bankruptcy on March 12, 2018. Dkt. 13-4, March 12, 2018 U.S. Bankruptcy Court Order for Relief ("Involuntary Bankruptcy Order"). Prior to that March 12 Order, on March 7, 2018, Lynch filed a voluntary bankruptcy petition. Dkt. 13-3, Voluntary Bankruptcy Petition ("Voluntary Bankruptcy Petition"). On May 9, 2018, the involuntary bankruptcy was dismissed "for Debtor's [Lynch] Failure to File Documents in an Involuntary Case" and because, according to Plaintiff's responsive briefing on this motion, "the Court believed that the matters asserted in the Involuntary Bankruptcy were subsumed into Voluntary Bankruptcy." Dkt. 24-7, May 9, 2018 Order Dismissing Case on Court's Order to Show Cause ("Involuntary Bankruptcy Dismissal"). The voluntary bankruptcy proceedings remain on going.

As a final matter with respect to the bankruptcy proceedings, the Court notes that Plaintiff, in its Involuntary Bankruptcy Petition (which was signed by both an attorney and a principal for Plaintiff), claimed that Lynch owed it $529,830.09. In this case, Plaintiff demands $529,830.09 from Defendant.

Appendix B

II. DISCUSSION

A. Standard of Review

In considering a motion to dismiss, the Court accepts "all well-pleaded allegations of the complaint as true and view[s] them in the light most favorable to the plaintiff." *Indep. Trust Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 934 (7th Cir. 2012). To survive a motion to dismiss under Rule 12(b)(6), a plaintiffs complaint "must actually *suggest* that the plaintiff has a right to relief, by providing allegations that raise a right to relief above the speculative level." *Id.* at 934 (internal quotation marks and citation omitted); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (stating that a complaint must allege "enough facts to state a claim to relief that is plausible on its face"). Determining plausibility is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citation omitted).

B. Facts Outside the Pleadings

As an initial matter, both Plaintiff and Defendant have attached various exhibits to the relevant pleadings—both to the complaint and to the briefs submitted for the present motion. Before deciding the motion itself, the Court first considers which of these exhibits can be properly drawn from. The presented materials take two forms—those relevant to the personal jurisdiction issue and those relevant to the 12(b)(6) judicial estoppel issue.

First, with respect to personal jurisdiction, the Court may accept and consider relevant affidavits in making a determination as to the existence of personal jurisdiction. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003). Here, the Joyce Declaration is thus properly before the Court and will be considered and discussed below as pertinent to the Court's determination on personal jurisdiction.

Second, and subject to a more nuanced analysis, the parties additionally provide a number of exhibits bearing on Defendant's argument that Plaintiff should be judicially estopped from claiming that Defendant is liable for the $529,830.09. As relevant to this argument, the Court considers the Involuntary Bankruptcy Petition, the Involuntary Bankruptcy Order, the Voluntary Bankruptcy Petition and the Involuntary Bankruptcy Dismissal.

Pursuant to Fed. R. Civ. P. 201(b), the "court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The Seventh Circuit in *Gen. Elec. Capital Corp. v. Lease Resolution Corp.* cautioned:

> Judicial notice is premised on the concept that certain facts or propositions exist which a court may accept as true without requiring additional proof from the opposing parties. It is an adjudicative device that substitutes

> the acceptance of a universal truth for the conventional method of introducing evidence. . . . Judicial notice, therefore, merits the traditional caution it is given, and courts should strictly adhere to the criteria established by the Federal Rules of Evidence before taking judicial notice of pertinent facts.

128 F.3d 1074, 1081 (7th Cir. 1997). The Involuntary Bankruptcy Order and the Involuntary Bankruptcy Dismissal are the quintessential types of documents that may be judicially noticed, as these are public judicial determinations not subject to dispute. *In the Matter of Lisse*, 905 F.3d 495, 497 (7th Cir. 2018). The Court thus takes judicial notice of these documents.

With respect to the Involuntary Bankruptcy Petition filed by Plaintiff in the New Jersey Bankruptcy Court on February 15, 2018, the Court takes judicial notice of this petition not for the purpose of accepting the truth of the facts contained therein, but rather as evidence of the position that Plaintiff has previously taken in another court. While it would be improper for this Court to consider the petition as evidence of the truth of the arguments asserted within it (for example, to take it to mean that it is beyond dispute that Lynch actually owes Plaintiff the $529,830.09), it can be considered as evidence of Plaintiff's previous position. *See Id.* at 498. Likewise, the Court will consider the Voluntary Bankruptcy Petition not for the truth of the underlying matters asserted within it, but rather for the adjudicative fact that the voluntary petition was eventually filed.

C. Personal Jurisdiction

Defendant first argues this case should be dismiss for lack of personal jurisdiction. Once a defendant has challenged a court's exercise of personal jurisdiction, the plaintiff has the burden of demonstrating that the court's exercise of personal jurisdiction over a defendant is proper. *See RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1276 (7th Cir. 1997). It is well established law that "[a] federal court's exercise of personal jurisdiction over a non-resident defendant is proper 'only if a court of the state in which it sits would have such jurisdiction.'" *Edelson v. Ch'ien*, 352 F. Supp. 2d 861,865-66 (N.D. Ill. 2005) (quoting *Klump v. Duffus*, 71 F.3d 1368, 1371 (7th Cir. 1995)); *see also Deluxe Ice Cream Co. v. R.C.H. Tool Corp.*, 726 F.2d 1209, 1212 (7th Cir. 1984). This court therefore has jurisdiction over this matter "'only if [an Illinois state court] would have such jurisdiction.'" *Edelson*, 352 F. Supp. 2d at 866 (quoting *Klump*, 71 F.3d at 1371).

The inquiry into whether this court has jurisdiction over the Defendant must therefore begin with "an application of the statutory law of [Illinois]." *Jennings v. AC Hydraulic A/S*, 383 F.3d 546, 548 (7th Cir. 2004). After considering Illinois's statutory framework concerning jurisdiction over non-resident defendants, the court must then consider whether its exercise of jurisdiction would "comport[] with due process." *Id.* at 549. The Seventh Circuit has determined that "there is no operative difference between the limits imposed by the Illinois Constitution and the federal limitations on personal jurisdiction." *Hyatt Int'l Corp. v. Coco*, 302 F.3d 707,

715 (7th Cir. 2002). One due process inquiry is therefore sufficient. *Edelson*, 352 F. Supp. 2d at 866.

Under the Illinois Long-Arm Statute, an Illinois court may exercise personal jurisdiction over a non-resident defendant who engages in "[t]he making or performance of any contract or promise substantially connected with this State." 735 ILL. COMP. STAT. 5/2-209(a)(7).

A court's inquiry into whether its exercise of jurisdiction over a nonresident defendant would be consistent with due process of law should begin with the familiar "minimum contacts" rule articulated by the United States Supreme Court in *International Shoe Co. v. Washington*:

> Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory ofthe forum, he [has] certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The Supreme Court, in *Hanson v. Denckla*, went on to explain that the necessary minimum contact with the forum state is "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 laws." 357 U.S. 235, 253 (1958).

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The Supreme Court elaborated on the notion of "purposeful availment" in *Burger King v. Rudzewicz*:

> This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solel y as a result of random .. . contacts, or of the unilateral activity of another party or a third person. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himse(fthat* create a substantial connection with the forum State. Thus, where the defendant deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and the residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by the benefits and protections of the forum's laws it is presumptively not unreasonable to require him to submit to the burden of litigation in that forum as well.

471 U.S. 462, 475-76 (1985) (citations and internal quotation marks omitted). In addition to the concept of purposeful availment, "[t]he minimum contact requirement contains the notion of foreseeability." *Deluxe Ice Cream,* 726 F.2d at 1213 n.4 (citing *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980)). When a corporate defendant conducts activities within the forum state sufficient to establish minimum contacts, "it has clear notice that it is subject to suit there." *Volkswagen*, 444 U.S. at 297.

Here, it is clear that Defendant is subject to this Court's personal jurisdiction and that Plaintiff, through both the allegations in the complaint and the Joyce Declaration, has met its burden in this respect. First, Defendant cannot dispute that its alleged promise to allow Plaintiff to bill it directly was related to work that Plaintiff would be carrying out in Illinois in November 2017. Moreover, through the Joyce Declaration, Plaintiff has attested that Defendant was consistently involved with the strategic planning and direction of the work that Plaintiff was performing in Illinois, and that Defendant regularly sent executives, representatives, and other employees to Chicago or the Chicagoland area to take part in work directly related to the trade show. These actions are directly related to the dispute at issue and confer specific personal jurisdiction on this Court over Defendant.

The exercise of personal jurisdiction in this case comports with due process as these facts illustrate that Defendant has purposely availed itself of the privilege of conducting business in this state—namely displaying its technology at McCormick Place. Because the nature of the actions that led to the underlying dispute—that is, the actual labor—took place in Chicago, and the fact that Defendant was involved with strategic meetings and planning in Chicago involving Plaintiff, the exercise of personal jurisdiction is clearly proper and reasonable.

D. Judicial Estoppel

Defendant next argues that this Court should apply the equitable principle of judicial estoppel to bar Plaintiff

from recovering money that, Defendant argues, Plaintiff has previously asserted was owed by Lynch in another court proceeding. Specifically, Defendant points to Plaintiffs Involuntary Bankruptcy Petition and argues that Plaintiffs statements in that pleading should preclude it from now claiming that Defendant owes it the exact same amount of money—down to the penny—that it previously claimed was owed by Lynch.

Judicial estoppel provides that a party who prevails on one ground in a prior proceeding cannot tum around and deny that ground in a subsequent one. *Ogden Martin Sys. Of lndianapolis, Inc. v. Whiting Corp.*, 179 F.3d 523, 526 (7th Cir.1999). *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001) explains:

> Courts have observed that "[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle[.]" ... Nevertheless, several factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be "clearly inconsistent" with its earlier position.... Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled[.]" . . . Absent success in a prior proceeding, a party's later inconsistent

> position introduces no "risk of inconsistent court determinations," . . . . and thus poses little threat to judicial integrity. . . . A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

As to the first factor—whether Plaintiff is taking a position in this Court that is "clearly inconsistent" with an earlier position—it is necessary to closely review Plaintiff's Involuntary Bankruptcy Petition. The Involuntary Petition, which was signed and submitted under penalty of perjury by an attorney for Plaintiff and also a principal, Thomas McLaughlin, names Lynch as a Debtor to Plaintiff in the amount of $529,830.09 for "[g]oods delivered and/or services rendered[.]" Involuntary Bankruptcy Petition, 3. With respect to that amount, the petition contains the following allegation (which is one of two choices allowed on the form): "The debtor is generally not paying its debts as they become due, unless they are the subject of a bona fide dispute as to liability or amount." *Id.* at 2. Defendant argues that by selecting this option, Plaintiff was asserting that Lynch owed it $529,830.09 and attesting that there was no dispute that Lynch owed it this money. The Court agrees. Case law suggests that a bona fide dispute exists in the context of an involuntary bankruptcy petition where there is a material issue of fact about whether the supposed debtor actually owes the amount claimed on the petition. *See Matter of Busick*, 831 F.2d 745, 750 (7th Cir. 1987); *In re Regional Anesthesia Associates PC*, 360 B.R. 466 (Bankr. W.D. Pa. 2007). By

attesting that no bona fide dispute existed as to Lynch's liability to Plaintiff or as to the amount that Lynch owed, Plaintiff took the position there was no material factual question about what company owed it the $529,830.09.

In the present case, however, Plaintiff now attempts to claim that it is in fact Defendant TRUMPF that owes it the $529,830.09. This is clearly inconsistent with its position in the bankruptcy petition. Plaintiff argues that the Involuntary Bankruptcy Petition does not attest that Lynch was solely responsible for the debt, and Plaintiff claims it has consistently maintained the position that either Lynch or TRUMPF owes it the $529,830.09. This claim is belied by the plain language of the Involuntary Bankruptcy Petition and the case law delineating the standard for determining whether a "bona fide dispute" exists as to liability or amount. By certifying that there was no dispute that Lynch owed the money in the bankruptcy proceeding, Plaintiff foreclosed its ability to argue that in fact another party actually owed that money.

Moreover, the primary case cited by Plaintiff in its attempt to circumvent judicial estoppel is inapt. In *Traeger v. Am. Express Bank FSB,* 2014 WL 340421, at* 10 (N.D. Ill. Jan. 30, 2014), the party against whom estoppel was sought, in the earlier state court proceeding, maintained the same position—i.e. that both an individual and a corporation were both liable—as it did in the later suit. Here, on the other hand, there is no indication in the Involuntary Bankruptcy Petition that Plaintiff actually took the position that Defendant was liable for the $529,830.09. In reality, as discussed above, Plaintiff, through counsel and a principal, attested that

there was no dispute (1) that Lynch was liable for the debt and (2) that the amount it was liable for was not in dispute—$529,830.09.

Per *New Hampshire v. Maine*, the second factor for the Court to consider, and a requirement identified by the Seventh Circuit, is whether the litigant against whom estoppel is sought succeeded in convincing the earlier court to accept its position. *Matter of Cassidy*, 892 F.2d 637, 641 (7th Cir. 1990). Although the involuntary bankruptcy was eventually subsumed into the voluntary proceeding (which is still pending according to Plaintiff's briefing), a party need not ultimately prevail in the earlier case for judicial estoppel to apply. *Id.* ("party need not finally prevail to be estopped from changing a successful position on a preliminary matter") (citing *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 n. 5 (6th Cir.1982).

In the involuntary bankruptcy, Plaintiff persuaded the court to enter an order placing Lynch into involuntary Chapter 7 bankruptcy, which the court noted it did after "consideration" of the Involuntary Bankruptcy Petition. Involuntary Bankruptcy Order, 1-2. To put it simply, Plaintiff made representations to that court about what it was owed and, based on the debt, requested that the court place Lynch into bankruptcy. The court granted that relief as sought, thus implicitly crediting Plaintiff's arguments. This Court is satisfied that this constitutes a success by Plaintiff in persuading the bankruptcy court to adopt its position and thus finds this requirement satisfied.

Finally, Plaintiff would unduly benefit from being permitted to change its position at this juncture, as

it would be effectively getting two bites at the apple in attempting to collect the money it previously has unequivocally stated under oath is owed to it by Lynch. To the extent that Plaintiff can collect in the bankruptcy, particularly if it is successful in advancing the theory that money Defendant paid to Lynch should be considered as having been held in trust (rather than as Lynch's direct property to be distributed amongst creditors), this Court would potentially be in the position of awarding Plaintiff a windfall if it were to succeed on its claims here. As such, the Court applies the equitable principle of judicial estoppel to bar Plaintiff from advancing a position which is clearly inconsistent with that which it succeeded in having adopted in the bankruptcy court.

III. CONCLUSION

For the aforementioned reasons, Defendant's motion to dismiss is granted and this case is dismissed.

IT IS SO ORDERED.

Enter:

s/_____
CHARLES RONALD
NORGLE, Judge
United States District Court

DATE: May 28, 2019

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT CHICAGO, ILLINOIS 60604, FILED JANUARY 10, 2020

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT CHICAGO, ILLINOIS 60604

No. 19-2189

CSI WORLDWIDE, LLC,

Plaintiff-Appellant,

v.

TRUMPF INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 2018 CV 05900
Charles R. Norgle, *Judge.*

January 10, 2020

Before

Frank H. Easterbrook, *Circuit Judge*
Ilana Diamond Rovner, *Circuit Judge*
Michael Y. Scudder, *Circuit Judge*

Appendix C

ORDER

Defendant-Appellee filed a petition for rehearing and rehearing *en banc* on December 26, 2019. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

APPENDIX D — 1938 BANKRUPTCY ACT, CHAPTER 575

***

[CHAPTER 575]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto; and to repeal section 76 thereof and all Acts and parts of Acts inconsistent therewith.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 1 to 11, inclusive; 14; 15; 17 to 29, inclusive; 31; 32; 34; 35; 37 to 42, inclusive; 44 to 53, inclusive; and 55 to 72, inclusive, of an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended, are hereby amended; and sections 12, 13, 73, 74, 77A, and 77B are hereby amended and incorporated as chapters X, XI, XII, XIII, and XIV; said amended sections to read as follows:

***

"CHAPTER I—DEFINITIONS

"SECTION 1. MEANING OF WORDS AND PHRASES.—The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

Appendix D

***

"(2) 'Adjudication' shall mean a decree that a person is a bankrupt;

***

"(4) 'Bankrupt' shall include a person against. whom an involuntary petition or an application to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

***

"Sec. 59. Who May File and Dismiss Petitions.—a. Any qualified person may file a petition to be adjudged a voluntary bankrupt.

"b. Three or more creditors who have provable claims fixed as to liability and liquidated as to amount against any person which amount in the aggregate in excess of the value of securities held by them, if any, to $500 or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

"c. Petitions shall be filed in triplicate, one copy for the clerk, one for service on the bankrupt, and one for the referee.

Appendix D

"d. If it be averred in the petition that the creditors of the bankrupt, computed as provided in subdivision e of this section, are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses and a brief statement

****

APPENDIX E — EXCERPTS OF 1978 BANKRUPTCY ACT

Public Law 95-598
95th Congress

AN ACT

To establish a uniform Law on the
Subject of Bankruptcies.

Be it enacted by the Senate and House of representative of the United States of America in Congress assembled,

TITLE I—ENACTMENT OF TITLE 11 OF THE UNITED STATES CODE

SEC. 101. The law re1ating to bankruptcy is codified and enacted as title 11 of the United States Code, entitled "Bankruptcy," and may be cited as 11 U.S.C. § , as follows:

***

§ 101. Definitions

In this title—

***

(4) "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated,

fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

***

11 USCS § 303

§ 303. Involuntary cases

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or an indenture trustee representing such a holder, if such claims aggregate at least $5,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $5,000 of such claims;

(3) if such person is a partnership—

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or

(4) by a foreign representative of the estate in a foreign proceeding concerning such person.

(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.

(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for

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APPENDIX F — EXCERPT OF PUBLIC LAW 98-353

PUBLIC LAW 98-353—JULY 10, 1984

Public Law 98-353
98th Congress

An Act

To amend title 28 of the United States Code regarding jurisdiction of bankruptcy proceedings, to establish new Federal judicial positions, to amend title 11 of the United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bankruptcy Amendments and Federal Judgeship Act of 1984".

TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE

SEC. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

"§ 1334. Bankruptcy cases and proceedings

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SEC. 426. (a) Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" after "involuntary case".

(b) Section 303 of title 11 of the United States Code, is amended—

(1) in subsection (b)(l) by inserting "or the subject on a bona fide dispute," after "liability"; and

(2) in subsection (h)(1) by inserting "unless such debts that are the subject of a bona fide dispute" after "due".

SEC. 427. Section 303(j)(2) of title 11 of the United States Code is amended by striking out "debtors" and inserting in lieu thereof "debtor".

* * * *

APPENDIX G — EXCERPTS OF PUBLIC LAW 109-8

PUBLIC LAW 109–8—APR. 20, 2005

Public Law 109–8
109th Congress

An Act

To amend title 11 of the United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * *

SEC. 1234. INVOLUNTARY CASES.

(a) AMENDMENTS.—Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting "as to liability or amount" after "bona fide dispute"; and

(B) striking ''if such claims'' and inserting "if such noncontingent, undisputed claims"; and

(2) in subsection (h)(1), by inserting "as to liability or amount" before the semicolon at the end.

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after such date.

* * * *

APPENDIX H — EXCERPTS OF 11 U.S.C.A. § 303 INVOLUNTARY CASES

11 U.S.C.A. § 303.
INVOLUNTARY CASES

EFFECTIVE: DECEMBER 22, 2010

* * *

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title--

> **(1)** by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least $10,000[1] more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;
>
> **(2)** if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $10,000[1] of such claims;

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1. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104. 11 U.S.C.A. § 303, 11 USCA § 303 Current through P.L. 116-140.

(3) if such person is a partnership--

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or

(4) by a foreign representative of the estate in a foreign proceeding concerning such person.

* * *

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if--

(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount; or

(2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed

or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

* * * *