No. 19-_____-

IN THE UNITED STATES SUPREME COURT

JEFFREY G. THOMAS,

Petitioner,

v.

NORMAN SOLOMON

Respondent.

On Appeal from the Denial of Review on the Merits
Supreme Court of the State of California
Case No. S253647

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether a Judgment of a State Court Violates the Automatic Stay in Bankruptcy Because the Judgment Was Because of Collateral Estoppel to Attack A Prior Judgment Which Violated the Automatic Stay in Bankruptcy?

(2) Whether the New York Times v. Sullivan Standard of Willful Falsity Applies to a California State Court's Monetary Sanctions of a So-called Frivolous Appeal by a Party Asserting Public Rights in the Public Interest?

(3) Whether the Monetary Sanctions of a So-called Frivolous Appeal by an Internal Revenue Code Section 501(c)(3) Public Charity are Preempted By Federal Taxation Law?

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CITATIONS TO THE UNOFFICIAL REPORTS

(A1) Decision of the State's Second District Court of …….
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(A2) Order of the State's Supreme Court Denying Review
…… 2019 Cal. Lexis 1662

I. STATEMENT OF THE BASIS FOR JURISDICTION

Jurisdiction to consider this petition for the writ of certiorari is authorized under *28 U.S.C. §1257(a)*, and it is discretionary.

28 U.S.C. §2101(c) allows a petition for writ of certiorari to be filed in this court on or before ninety (90) calendar days from the denial of a petition for review on the merits in the state's highest court. The ninety (90) day period of *Supreme Court Rule 13.3* began on March 13, 2019 and expired on June 11, 2019.

Petitioner filed a nonconforming petition postmarked before June 11, 2019. By letter from the Clerk of the Court dated June 24, 2019, Petitioner was granted sixty days to file this conforming petition for the writ of certiorari, ending on August 23, 2019.

II. CONSTITUTIONAL AND STATUTORY PROVISIONS

Art. I, Section 8 of the United States Constitution:

"The Congress shall have power to . . . establish an . . . uniform laws on the subject of Bankruptcies throughout the United States."

Art. VI Section 2 of the United States Constitution:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment One of the United States Constitution:

"Congress shall make no law . . . abridging the freedom of the speech or of

the press; or of the right peaceably to assemble, and to petition the government for a redress of grievances."

Amendment Fourteen of the U. S. Constitution, Section One:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U. S. C. §1331:

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

28 U.S.C. §2101(c):

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

42 U.S.C. §1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of

any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Cal. Code Civ. Proc. §907:

"When it appears to the reviewing court that the appeal was frivolous or taken

solely for delay, it may add to the costs on appeal such damages as may be just."

III. STATEMENT OF THE CASE
A. BACKGROUND FACTS

On May 22, 2014, Petitioner's client, the registered public charity under *Internal Revenue Code Section 501(c)(3)*, True Harmony, filed a complaint in state court alleging its right to recover title to property at 1130 Hope Street in Los Angeles, California which clerk's deeds executed on February 18, 2009 and a void judgment of title in the state court dated April 22, 2010 vested in a limited liability company owned and controlled by Respondent Solomon and various affiliated other defendants. Respondent filed a Second Amended Complaint in January of 2017 to include causes of action, among others, of the independent equitable action to set aside judgments because of fraud on the court, to quiet title, to set aside voidable transactions and for restitution under the *Uniform Voidable Transactions Act* and the state *Unfair Competition Act*, and for damages for

defendants and Respondent's conversion of a limited liability company membership.

Petitioner Thomas, a licensed attorney at law in the state, filed the action for the charity. True Harmony *("True")* named as Defendants, among others, Rosario Perry, Law Offices of Rosario Perry, Norman Solomon, Hope Park Lofts 2011-02910056 LLC, BIHMF, LLC (the current titleholder), and 1130 South Hope Street Investment Associates LLC, the titleholder in 2014, in action no. BC546574 in state court.

The background to the Second Amended complaint is discussed in the petition for writ of certiorari in *no. 18-1113, Thomas v. Zelon*, and in the petition for rehearing of the writ of certiorari therein filed therein. To summarize briefly, Rosario Perry Esq. (and defendant Law Offices of Rosario Perry LLP, or *"LORP"*) had represented True Harmony in a quiet title and specific performance action against Mr. Perry's law school classmate and lifelong associate and friend,

Respondent Solomon *("Solomon"),* in action no. BC244718. Despite the court's announcement of a verdict for True in 2004, Mr. Perry alleged that True had signed a settlement agreement at the beginning of the trial in 2003 splitting ownership of a *"new"* entity (1130 South Hope Street Investment Associates LLC, or *"South"*) 50%-50% between itself and Respondent Solomon's entity Hope Park Lofts LLC (the predecessor of Hope Park Lofts 2001-02910056 LLC). Defendant Perry named himself as manager of South.[1]

Respondent Solomon and defendants Perry and LORP presented this agreement to the court for enforcement after the court announced the verdict in BC244718 for True and before it entered judgment. Mr. Perry testified for Respondent Solomon and Hope Park Lofts LLC in hearings in the court, including false

[1] Mr. Perry, LORP, Respondent Solomon, Hope Park Lofts LLC and/or Hope Park /lofts 2001-02910056 LLC are sometimes referred to herein simply as the *"co-conspirators."*

testimony that the state Attorney General failed to disapprove a notice of sale of the Property under *Cal. Corp. Code §5913*, and therefore the state approved it. In 2005, the court entered a judgment for True Harmony, and an amended judgment and second amended judgment for True and Hope Park Lofts LLC (South did not intervene as a party) stating that South had ownership of the property (not stating that it had title).

The fake settlement agreement named Mr. Perry as manager of the *"new llc."* Neither Perry nor LORP nor Solomon nor Hope Park Lofts LLC obtained True's written consent to the settlement agreement independent of the agreement (and True testified that its agent did not sign the agreement. Neither did the co-conspirators advise True of its right to independent legal advice before the date that Mr. Perry testified True's agent Mr. Marzet signed it.

And the fake settlement agreement first presented to the court after the verdict established a rock bottom minimum sales price for the Property of no less than One Million Four Hundred Thousand Dollars ($1,400,000) between them (supposedly agreed before the trial began. But the contract that Solomon sued True to enforce in action no. BC244718 was for a net value of less than One Hundred and Eighty-eight Thousand Dollars ($188,000) ($200,000 sales price minus Solomon's commission), and Mr. Perry defended True in the trial alleging the contract was unauthorized and a forgery.

Under state law, such a sales agreement for a fraction of the agreed upon value which is tainted by allegations of forgery is void. Mr. Perry knew the law, and he did not rebut false testimony by the appraiser witness for Hope Park Lofts LLC that the property was worth $200,000 in the trial. He did not move the court to dismiss Hope Park Lofts LLC's complaint based on a void contract.

Under state law, the unconsented to conflict of interest continued after entry of judgment because the fake agreement designated Mr. Perry as the manager of South. *River West Inc. v. Nickel (1987) 188 Cal. App. 3d 1297.* It was fraud on the court under federal law, too, because of a severe conflict of interest involving an attorney as a party on both sides of the lawsuit (counting Mr. Perry as a *"party"* as manager of South. *U. S. v. Throckmorton (1878) 98 U. S 61.*

True appealed in no. B183928, *Hope Park Lofts LLC v. True Harmony, Inc.* (*sic*). In 2007, the court of appeals affirmed the judgment. Its unpublished opinion stated that *"the settlement agreement is enforcible,"* and it rejected the argument that *Internal Revenue Service Rev. Rul. 98-16* required True to have fifty-one (51%) percent control of South, and tainted the agreement with illegality. The ruling is unclear. It is also unclear how the appellate court concluded that True waived the

argument of illegality because of the consented conflict of interest of Mr. Perry.

The appellate opinion may well be the only example of a judicial opinion which fails to enforce the *"charity majority control"* requirement of *Rev. Rul. 98-16* for a joint venture between an Internal Revenue Code *("Code") §501(c)(3)* charity and a for profit entity. This petition argues that *Rev. Rul. 98-16* is essential to the right of individuals to freely associate to form a charity. *See infra at III.D.*

In 2008, the officers of True caused the state's Secretary of State to cancel the articles of *"California"* South, and formed a new South in Delaware with the same name. They caused True to transfer title the property to the new Delaware South. Rosario Perry caused the California South (although now dissolved) to bring suit against the Delaware South and True and True's officers in 2008, in action no. BC385560, and

caused the trial court to stay the action for arbitration in 2008.

Mr. Perry caused the state court, post second amended judgment and post appeal, in BC244718 to confirm an arbitration award as a judgment (but labeled simply as a *"judgment"*). South at this time moved to intervene; it is unclear whether the court decided this motion and ruled for South. This judgment purported to require True to convey title to the Property to South, although in 2008 it was dissolved.

In BC385560, Mr. Perry caused the court to order it to arbitration in September of 2008 (*See docket, Exhibit 11 in the Appendix, A191*). In the official (ie. approved by the state courts in BC244718 and B183928) version of the settlement agreement the word *"binding"* before *"arbitration"* is struck through with a line. South's attorney at law caused the court to compel arbitration with a declaration to which an unofficial

version of the agreement was attached that did not have a strike-through of the word *"binding."*

Mr. Perry held an arbitration hearing in 2009 at which True did not appear because of insufficient advance notice and opportunity to prepare. Mr. Perry caused the arbitrator to rule that True and its officers fraudulently cancelled the articles of *("California")* South, that *("California")* South had title to the property, and True owed damages and attorneys to Respondent Solomon's Hope Park Lofts, LLC.

Before the court could confirm the award, the officers of True and True caused the new titleholder, *"Delaware"* South, to file a petition in bankruptcy on May 5, 2009, 2009, which initiated the automatic stay. It should have stopped the state court from confirming the arbitration award as a judgment, and True and the Debtor filed and served notice of the automatic stay in bankruptcy twice in BC385560 (*Docket, Exhibit A11 in the Appendix, A185-186*). Nevertheless, on June 3, 2009

state court judge Hon. John Kronstadt confirmed the award as a judgment anyway. During the bankruptcy in December 2009, the same judge Hon. John Kronstadt granted summary judgment in action no. BC385560 based on the arbitration award. Before the trial date of March 15, 2010, Mr. Perry caused the *("California")* South to obtain an order lifting the automatic stay prospectively from the bankruptcy court.

On the trial date in March, 2010, Judge Kronstadt denied a continuance of the trial to True's attorney to prepare for trial, and denied True and the Debtor *"Delaware"* South the right to present evidence in its own behalf. The transcript of the trial is included as Exhibit 10 in the Appendix. The only evidence that defendants presented at the so-called trial in 2010 consisted of the quitclaim deeds to the Debtor from True that the judgment (*Exhibit A9 in the Appendix*), and a reading of the so-called summary judgment (which is the same text as the arbitration award confirmed in the

judgment violating the stay dated June 3, 2009) that the state court granted in the hearing in the previous December of 2009. Judge Kronstadt decided the trial for the co-conspirators *"on the spot,"* and entered judgment (again, Exhibit A9) for defendants and Hope Park Lofts LLC (which the officers of True also caused to be dissolved) on April 22, 2010.

On or about May 10, 2010, South filed a second motion to lift the automatic stay prospectively. In 2011, South contracted to sell the property to BIHMF, LLC through an intermediary nominee.

Deputy Assistant Attorney General Sonja Berndt signed a cease and desist order against sale of the property prohibited by *Cal. Corp. Code §5913*, and served it on the co-conspirators and BIHMF, LLC on or about April 1, 2011 (*Exhibit A8 in the Appendix*). The co-conspirators and BIHMF, LLC ignored the order (*Exhibit A7 in the Appendix*). On or about July 11, 2011, the co-conspirators sold the property and recorded the

deed. The events concerning the fake interpleader action in state court (no. BC466413) brought by the nonexistent plaintiff 1130 Hope Street Investment Associates LLC are explained in the petition and petition for rehearing in *Thomas v. Zelon*, *no. 18-1113 herein*, including the story of the Hon. Judge Kronstadt in the federal court accepting the co-conspirators' explanation of multiple split personalities for South and dismissing that complaint. *See Oliver v. Swiss Club Tell (1963) 222 Cal. App. 2d 528.*

True began an action in state court in 2014 action no. BC546574 to recover title to the Property. True filed a Second Amended Complaint in January of 2017, and Defendants (including Respondent Solomon) demurred to the Second Amended Complaint in action no. BC546574 based on *collateral estoppel* and *res judicata* on or about March 1, 2017. On April 7, 2017 the court sustained the demurrer without leave to amend (the court's minute order is Exhibit A5 in the Appendix). To

justify the ruling, the court *sua sponte* invoked judicial notice of a judgment of title that defendants had filed in June of 2009 in action no. BC385560 despite the automatic stay (it is verbatim the same judgment as the judgment dated April 22, 2010 but the judgment in 2009 contains some handwriting rather than typewritten text).

The judicial officer had announced her intention to retire from the bench to the parties in March of 2017, and the courtroom doors were closed from April 10, 2017 to April 28, 2017, and the minute order was not posted on the court's internet website and was not available in the clerk's office. True filed a motion for reconsideration from its recollection of the verbal announcement of the demurrer on April 17, 2017.

In 2017 in *Thomas v. Zelon*, the escrow company responded to Petitioner's subpoena of evidence that was denied to True in bad faith in BC546574. With his motion for reconsideration of the demurrer filed for True, Petitioner cited the cease and desist order

discovered in the document production of the escrow holder, which cited the co-conspirators for a violation of *Cal. Corp. Code §5913*, as a reason for reconsideration in addition to the denial of constitutional due process in the court's *ex parte* judicial notice of the former judgments in BC546574 for its collateral estoppel, and the denial of due process in the co-conspirators' bad faith use of anti-slapp motions and motions for protective order to cordon off discovery. *See eg., Brannon v. Superior Court (2004) 114 Cal. App. 4th 1203; San Diego Watercrafts, Inc. v. Wells Fargo (2002) 102 Cal. App. 4th 308; Mediterranean Construction Co. v. State Farm Fire & Casualty Co. (1998) 66 Cal. App. 4th 257, 265.* The motion also cited the violations of the automatic stay in bankruptcy pleaded in the Second Amended Complaint (Exhibit A6 in the Appendix). The state court precedent holds that real property transfers that violate the automatic stay are void. *Shorr v. Kind (1991) 1 Cal. App. 4th 249.*

The motion was pending for months, and the state court reassigned the case to a different department in the summer of 2017. The state court denied the Petitioner's request to submit a supplemental memorandum of law that the public interest in *Cal. Corp. Code §§5142, 5913* required it to ignore the collateral estoppel of the prior judgments in BC385560.[2] The state court pushed the hearing date on the motion back to October 17, 2017. At that time the superior court denied the motion for lack of jurisdiction because the defendants had *ex parte* lodged judgments for the various defendants and the court ostensibly entered one judgment for three co-conspirators on April 7, 2017 (although it was not available to Petitioner in the clerk's office the following week). And the court *ex parte* entered judgment on May 1, and May 19, 2017 for the remaining co-conspirators *ex*

[2] *See Louis Stores, Inc. v. Dept. of Alcoholic Beverage Control (1962) 57 Cal. 2d 749; see also Chern v. Bank of America (1976) 15 Cal. 3d 866.*

parte despite the pending motion for reconsideration. In his reply to the opposition, Petitioner argued that the *ex parte* entry of judgments denied due process of the laws, and the state court rejected the argument.

The state trial court granted Respondent Solomon's motion for sanctions under *Cal. Code Civ. Proc. §128.7* accepting the hypothesis that the motion for reconsideration was frivolous because it had no jurisdiction of it due to the *ex parte* entry of judgments for all defendants. It awarded approximately $23,500 in sanctions to Respondent(s) against Petitioners on November 30, 2017. True and Petitioner filed notices of appeal dated December 18, 2017 (*see Docket, Exhibit 11 in the Appendix*).

Pursuant to Respondent Solomon's motion, the court of appeals dismissed True's appeal as untimely in spite of the various objections raised to the lack of due process in the sustaining of the demurrer and the *ex parte* entry of judgments therefore. In particular the

court of appeals ignored the argument that the motion for reconsideration could be deemed a nonstatutory motion to vacate judgment (a petition for writ *coram nobis*), or simply, a motion to vacate judgment, which includes both statutory and nonstatutory motions.

In its decision of Petitioner's appeal and the sanctions (*Exhibit 2 to the Appendix*) the court of appeals also got the date of the notice of appeal wrong, which was December 18, 2017, which was within the sixty days time period after October 17, 2017 allotted under state statute *Cal. Code Civ. Proc. §904.1*. The state court denied the Petitioner's appeal of the Respondent Solomon's sanctions in the trial court and sanctioned Petitioner for a so-called frivolous appeal under *Cal. Code Civ. Proc. §907* in the amount of approximately Fifty-eight Thousand Dollars ($58,000). The court of appeals refused to consider that the sanctions infringed upon Petitioner's constitutional rights of free speech and petitioning in the public

interest. The court of appeals denied a petition for rehearing based on Petitioner's complaint that recurring lower back pain caused him to cut his live argument in half.

In his petition for review in the state supreme court, the Petitioner again raised the argument that the *ex parte* entry of judgments on the demurrer denied due process of the laws, and the precedent for treating the motion for reconsideration as a nonstatutory motion for vacating the judgment, *see People v. Thomas (1959) 52 Cal. 2d 521*, and that Amendment One of the U.S. Constitution required review of the record for violation of his rights of free speech and petitioning (*Exhibit 3 in the Appendix*). Petitioner argued that the only decision on point in the state courts, *Berri v. Superior Court (1955) 43 Cal. 3d 856*, and a statute, *Cal. Code Civ. Proc. §581(f)(1)*, requires a motion for entry of judgment pursuant to a demurrer sustained without leave to amend while a motion for reconsideration is pending,

and that the *ex parte* judgments denied due process of the laws. And the state supreme court denied review regarding an unpublished appellate court opinion which the state supreme court's own precedent contradicted!

In 2001, True also owned seven single family homes in the area which the defendants in the quiet title action no. BC244718 stole from the charity and transferred to other persons under forged signatures. The charity hired Defendants Perry and Law offices of Rosario Perry to recover the title of these homes, but Mr. Perry and LORP did nothing to recover the titles. These derelictions of duty were not alleged in BC546574.

B. VIOLATIONS OF THE AUTOMATIC STAY IN BANKRUPTCY

The state court of appeals seems to have ruled that Petitioner had no standing to raise his client's defenses to premature dismissal of its appeal in defense of his appeal and the motion for sanctions (*Exhibit 2 in the Appendix*). But clearly, the interests of a client and its attorney at law are joint when sanctions are

requested, and therefore the general rule must apply that the attorney has standing to argue the client's issues in defense of the sanctions. *U. S. Dept. of Labor v. Triplett (1990) 494 U. S. 715, 720-21; Caplin & Drysdale v. U.S. (1989) 491 U.S. 617, n.3.* And the sanctions ruling is based on the finding that Petitioner frivolously continued to argue the client's appeal in defense of his own appeal, after True's appeal was dismissed. Therefore Petitioner has standing to argue that the state court violated the automatic stay in bankruptcy in sustaining the demurrer in BC546574.

In *Pope v. Manville Forest Products Corp. (5th Cir. 1985) 778 F. 2d 238*, the Fifth Federal Circuit reversed the lower court, and emphasized that *"absent the bankruptcy court's lift of the stay, … a case such as the one before us must, as a general rule, simply languish on the court's docket until final disposition of the bankruptcy proceeding." Id. at 239.* The district court had dismissed a Title VII – Civil Rights Act claim

against the defendant after the defendant had filed Chapter 11 proceedings in the bankruptcy court.

While the automatic stay on related state court proceedings generally operates to ensure that a *"debtor [is given] a breathing spell from his creditors,"* even a judgment entered in favor of the debtor during the automatic stay does not change the outcome. As one court noted, *"whether a case is subject to the automatic stay must be determined at its inception." Association of St. Croix Condo. Owners v. St. Croix Hotel (3rd Cir. 1982) 682 F. 2d 446, 449*. The rule of the unhindered operation of the stay applies whether the district court finds for or against the debtor.

The state court in BC385560 violated the stay by entering a judgment for the co-conspirators confirming an arbitration decision on June 3, 2009 after the Debtor commenced the action by filing its petition in May, 2009. Although the state court deemed the arbitration not to include the Debtor, clearly the First Amended

Complaint treated the debtor, True and its officers as alter egos, and so did the arbitration award. *Transcript, Exhibit 10 in Appendix*, and *Judgment dated April 22,* 2010, *Exhibit 9 in Appendix*.

The state court and the co-conspirators violated the stay again on or about December 24, 2009 by hearing the Defendants' motion for summary judgment against Debtor and Harmony (but purporting to grant it only against True and its officers). They violated the stay a third time by inviting and allowing South's attorney at law to read the summary judgment granted in violation of the automatic stay based on the arbitration award confirmed in violation of the automatic stay into the transcript of the trial on March 15, 2010, as evidence (*Exhibit 10 in Appendix*).

The state court and the co-conspirators in BC466413 violated the stay a fourth time by accepting from the co-conspirators the proceeds of a sale of the Property by the split personality California LLC

(including the nonexistent personality 1130 Hope Street Investment Associates LLC) which held title to the Property in violation of the automatic stay for the Debtor *("Delaware")* South. *See Petition for Writ and Petition for Rehearing of the Writ of Certiorari in Thomas v. Zelon, case no. 18-1113.* And they violated the automatic stay by allowing the action in BC466413 to continue and to allow the split personality South to voluntarily dismiss the action and drive its motion and the order that they drafted thereon, to dispense the cash to the co-conspirators by order of the court in BC466413 *"semi-automatically." Ibid.*

The federal court has exclusive jurisdiction to decide the issue of violation of the automatic stay, and the law of *collateral estoppel* or *res judicata* of a judgment entered in violation of the stay is exclusively federal. *Eg., In re Benalcazar (Bank. N.D. Ill. 2002) 283 B. R. 514; see Kalb v. Feuerstein (1940) 308 U.S. 433.* The law of fraud on the court pertaining to the

issue of violation of the automatic stay is federal common law. *United States v. Throckmorton, supra*.

The state court in BC546574 violated the stay at Defendant's invitation a fifth time by sustaining a demurrer to the complaint of True to recover title to the Property based on the state law of *collateral estoppel* and *res judicata*. Because the federal court has exclusive jurisdiction to decide violations of the automatic stay, and to exclusively apply the federal law of *collateral estoppel* and *res judicata* to deny it to a judgment that violates the automatic stay. *In re Benalcazar, supra*.

Defendants' violations of the automatic stay were willful, because as the docket of the state court proves, the Defendants had written notice filed with the state court that the Debtor filed this petition in bankruptcy. *Docket, A11 in Appendix at 185 – 186. "A willful violation does not require a specific intent to violate the automatic stay. The standard for a willful violation . . . is met if there is knowledge of the stay and the*

defendant intended the actions which constitute the violation." *Fleet Mortg. Group v. Kaneb (1st Cir. 1999) 196 F. 3d 265, 269 (citations omitted). "In cases where the creditor received actual notice of the automatic stay, courts must presume that the violation was deliberate." Id.*

The co-conspirators deceived the bankruptcy court in their motion to the bankruptcy court which sought to lift the stay in February of 2010 prospectively only. This bankruptcy court must have condoned violations of the automatic stay that occurred before February of 2010 irrelevant to its decision to grant the motion. When co-conspirators violated the stay by reading the conformed arbitration award and so-called summary judgment into the record at the trial on March 15, 2010 in action no. BC385560, the state court and co-conspirators and Respondent Solomon treated the order lifting the stay as retroactive to the date of the petition in bankruptcy on May 6, 2009 in violation of the

bankruptcy court's order lifting the stay, a willful violation. And the willfulness of co-conspirators' fraud on the court and their violations of the automatic stay is conclusively proven by their second motion to this court to lift the automatic stay filed on May 25, 2010 which like the first motion sought to lift the stay prospectively only.

For a willful violation of the automatic stay, the bankruptcy court may award actual damages and punitive damage. Emotional distress is considered *"actual damage"* under *§362(k)(1)*, and its analog *§105(a). Heghmann v. Indorf (In re Heghmann) (B.A.P. 1st Cir. 2004) 316 B.R. 395, 405*. Emotional distress damages may be awarded without corroborating evidence or special medical damages. *Varela v. Quinones Ocasio (In re Quinones Ocasio) (B.A.P. 1st Cir. 2002) 272 B.R. 815, 824-25*.

The rule of *In re Benalcazar, supra*, is necessary to enforce the automatic stay in bankruptcy which is

jurisdictional. *Kalb, supra*. Federal law of bankruptcy deprives thus state courts of authority to *"bootstrap"* or to simply assume jurisdiction to enter a judgment of collateral estoppel to attack the judgment violating the automatic stay in bankruptcy from the mere existence of the judgment. State law here seems to provide for this bootstrapping authority, *see Moffat v. Moffat (1980) 27 Cal. 3d 645,* which was a gross violation of the constitutional due process of the law rights of True and a perpetuation of the co-conspirators' conspiracy and fraud on the courts.

Federal courts must be free to apply fraud on the court as defined by federal common law, and the federal standards of constitutional due process of the laws in defense of the exclusive jurisdiction of the bankruptcy court to decide the state court's violation of the automatic stay under the Bankruptcy Act, the Bankruptcy Clause of the Constitution, and the Civil Rights Act of 1871. *Throckmorton, supra*. And the

Petitioner was surprised and prejudiced by the sustaining of the demurrer and the denial of the motion for reconsideration because heretofore the state courts had established precedent following the federal law that all transfers of property in violation of the automatic stay are void *ab initio*. *Shorr v. Kind (1991) 1 Cal. App. 4th 249*. The arbitrary and capricious refusal of the state courts to follow the *Shorr* decision denied the equal protection of the laws, class of one, to True and Petitioner. *Village of Willowbrook v. Olech (2000) 528 U. S. 562*.

C. THE SANCTIONS DECISION FAILS THE WILLFULLY FALSE STANDARD OF NEW YORK TIMES V. SULLIVAN

Cal. Code Civ. Proc. §907 authorizes an award of *"damages"* for a so-called frivolous appeal. It is not a so-called *"prevailing party"* statute which mandates an award of fees to the victorious party. Both the award of fees and the amount of fees are entrusted to the discretion of the court.

The judgment of the court in evaluating frivolity is subjective. Frivolity, like obscenity and prurient interest, is an inherently vague concept which is dependent upon the viewpoint of the observer. *WSM Inc. v. Tennessee Sales (6th Cir. 1983) 709 F. 2d 1084.* Frivolity is as subjective and vague as the concept of outrageous slander and defamation of character involved in tort suits for those damages.

Petitioner's defense to the motion argued that the action and the appeal therefore were brought in the public interest, and therefore Amendment One of the Constitution required the court of appeals to independently scrutinize the record for violations of Petitioner's free speech and petitioning rights under Amendment One of the Constitution. The court of appeals did not independently scrutinize the record for infringement of Petitioner's constitutional rights. And apparently the court of appeals assumed *sub silentio* that the vague *"chilling effect"* standard of *In re Marriage of*

Flaherty (1982) 31 Cal. 3d 650 was not offended in its conclusion that no reasonable attorney would have brought the appeal outside of its calculation of the statutory time frame. Its assumption is grossly erroneous and is plain error.

The public interest involved in BC546574 is clear and indisputable. Respondent Solomon, and co-conspirators Rosario Perry and LORP are licensed attorneys at law with ethical duties to the public and to clients under the State Bar Act. The state's bar administration unreasonably refused to investigate the claims of True of fraud and criminal misconduct in the theft of its Property. The *Cal. Corp. Code §5142* authorizes the nonprofit corporation True to proceed to recover its property when the state's attorney general has declined to intervene or to bring his own action. *See the cease and desist order, Exhibit 7 in the Appendix; compare Cal. Gov't. Code §12580 et seq*. The antislapp law even defines the state's attorney general as a public

official exempt from its operation. *Cal. Code Civ. Proc. §425.16; City of Montebello v. Vasquez (2016) 1 Cal. 5th 409.* And any doubt remaining as to the public interest involved is quelled when the right of persons to freely associate to form a registered public charity is considered. *See discussion infra at III.D.*

Clearly, the court of appeals ignored the commandment of Amendment One of the Constitution to independently scrutinize the record for violations of Petitioner's free speech and petitioning rights. *Harper & Row Publishers Inc. v. Nation Enterprises, Inc. (1985) 471 U. S. 539; Bose v. Consumer Union (1984) 466 U. S. 485; compare People v. Lindberg (2008) 45 Cal. 4th 1, 36 (state court); compare Wolfgram v. Wells Fargo Bank (1997) 53 Cal. App. 4th 43 (same).* Amendment One required the court of appeals to:

> *"conduct[] an independent review of the record both to be sure that the speech in question actually falls within the unprotected category and to confine the perimeters of any unprotected category within acceptably narrow limits in an*

> *effort to ensure that protected expression will not be inhibited." Bose v. Consumer Union (1984) 466 U. S. 485, 505 (libel).*

Courts must *"exercise [independent] review in order to preserve the precious liberties established and ordained by the Constitution." Bose, supra*. And the courts must vigilantly review claims of violations of these civil liberties to establish reliable rules for the protection of these liberties in the future.

And in performing this review of the record, the court of appeals should have permitted itself to be guided by the willful falsity rule of *New York Times Co. v. Sullivan (1964) 376 U.S. 254*. The motion procedure employed by the court of appeals is similar to an original tort action, there is no presumption of liability, and the motion requires the court of appeals to consider the damage to the reputations of opposing counselors at law.

The rule in *New York Times Co. v. Sullivan, supra*, does impose an additional requirement that the attorney at law for the moving party or the moving party

itself be deemed to be a limited purpose public figure before the willfully false rule is applied. *Silvester v. American Broadcasting Companies (11th Cir. 1988) 839 F. 2d 1141; Della-Donna v. Gore Newspaper Co. (Fla. 1986) 489 So. 2d 72*. But this threshold requirement is easily met in this instance because the co-conspirators ignored a cease and desist order of the state's attorney general in proceeding with the sale of the Property, they defied all ethical duties to the public and to their client by becoming parties on opposing sides of the property dispute, and they stepped on the right of free association to form a registered public charity.

The arguments that Petitioner made in support of the reasonableness of the appeal – the violation of due process of the law in the entry of ex parte judgments against a sole precedent of the state's supreme court requiring a motion therefore, and the authority for no time limit for decision of a nonstatutory motion to vacate judgment or a petition for the writ of coram nobis, also

based on precedent of the state's supreme court – easily satisfy reasonableness. *See M. Pritchett, The Writ of Error Coram Nobis in California, 30(1) Santa Clara Law Review 1 (1990).*

As a matter of law, these arguments for jurisdiction of the appeal could never be willfully false, and therefore this Supreme Court of the United States must reverse the sanctions order. And the state court never provided any of the due process of the law safeguards that the Ninth Federal Circuit applies to punitive requests for sanctions in federal actions. *Knupfler v. Lindblade (In re Dyer) (9th Cir. 2003) 322 F. 3d 1178; F. J. Hanshaw v. Emerald River Development Co., Inc. (9th Cir. 2001) 244 F. 3d 1128; In re Yagman (9th Cir. 1986) 796 F. 2d 1165; compare Goodyear Tire & Rubber Co. v. Haeger (2017) 137 S. Ct. 1178.* The requested sanctions are punitive, because of the clear public interest of True as a registered public charity in retaining the property, and because the property is

valued at Five Million Five Hundred Thousand Dollars ($5,500,00).

D. THE MONETARY SANCTIONS OF A SO-CALLED FRIVOLOUS APPEAL BY AN INTERNAL REVENUE CODE SECTION 501(C)(3) CHARITY ARE PREEMPTED BY FEDERAL TAX LAW AND THE CONSTITUTIONAL RIGHT OF FREEDOM OF ASSOCIATION

As the attorney at law representing his client True, Petitioner has standing to raise this issue. *U. S. Dept. of Labor v. Triplett, supra; Caplin & Drysdale v. U.S., supra*. Because as the state court stated, it sanctioned Petitioner for attempting to argue his client's appeal after the court of appeals dismissed it.

26 U.S.C. 501(c)(3) defines registered public charities as corporations organized for the purpose of holding title to property. This is a federal definition of Property. The Supreme Court of the United States has described the definition of Property in a similar context in *United States v. Craft (2002) 535 U.S. 274, 278* as: *"[One] look[s] to state law to determine what rights the*

taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as 'property' or 'rights to property' within the compass of federal tax lien legislation." [quoting Drye v. United States (1999) 528 U.S. 49, 58].

The definition of *"property"* is jurisdictional in *Internal Revenue Code Section 501(c)(3).* Because it is jurisdictional, it mandates the deference of the courts to the interpretation of *"property"* in *Rev. Rul. 98-16* for the charities.

In B183928, the state court of appeals rendered a decision beyond its jurisdiction in refusing to defer to the application of *IRS Rev. Rul. 98-16* to the property belonging to the registered public charity True Harmony. In refusing to defer to *IRS Rev. Rul. 98-16* in its decision, the state court of appeals violated the federal rights of the Plaintiff True Harmony secured by *Section 501(c)(3)* of the Internal Revenue Code, and the Supremacy Clause

of the Constitution. The state court of appeals and the co-conspirators violated True's federal civil rights secured by federal taxation law under the Civil Rights Act of 1871. *42 U.S.C. §1983; Golden State Transit Corp. v. Los Angeles (1989) 493 U.S. 103.*

The state court of appeals and the co-conspirators violated the rights of True's members to freedom of association in a registered public charity guaranteed by Amendment One of the Constitution. *Nelson, James D. The Freedom of Business Association, 115 Col. L. Rev. 461 (2015).* It infringed upon True's access to courts guaranteed by Amendment One of the Constitution. *Christopher v. Harbury (2002) 536 U.S. 403; see Hart v. Gaioni (C.D. Cal. 2005) 354 F. Supp. 2d 1127.* The infringement on freedom of association and access to the courts was a separate violation of True's federal civil rights secured under Amendment One under the Civil Rights Act of 1871. *42 U.S.C. §1983.*

IV. REASONS FOR GRANTING THE WRIT

The trial court and the court of appeals have damaged Petitioner's reputation as an attorney at law, and his rights to liberty and property under the due process of the laws clause of Amendment Fourteen are offended because of the unclear reasons provided by the court of appeals for granting sanctions. And it is serious permanent damage because if the sanctions continue to be unpaid, the State Bar Administration will proceed to suspend Petitioner's law license. See *Codd v. Velger (1977) 429 U. S. 624; Paul v. Davis (1976) 424 U.S. 693*.

The Supreme Court must grant this writ to guaranty uniform enforcement of the automatic stay in bankruptcy in all federal and state courts under the Supremacy Clause and the Bankruptcy Clause of the Constitution and to prevent forum shopping for bankruptcy courts depending on the depth of commitment of the state courts in federal districts to enforcement of the automatic stay. The Supreme Court must grant the writ to guaranty attorneys at law

committed to bringing actions in the public interest the protection of free speech and petitioning under Amendment One of the Constitution. And the converse proposition is true, that this Supreme Court must grant the writ to by the state courts to guaranty uniform standards of professionalism and commitment to legal ethics in actions involving the jurisdiction of the federal courts.

Finally, the Supreme Court must grant the writ to vindicate the rights of all persons to freely associate to form a public charity and to hold property for charitable purposes under federal taxation law, as an individual civil right secured by federal taxation law and Amendment One of the Constitution.

V. CONCLUSION

This Supreme Court should grant the writ in this petition, for all three issues. A victory for Petitioner on any one of the three issues will reverse the sanctions on this appeal for Petitioner, and a victory for Petitioner on

issues nos. one and three should as a matter of Supreme Federal Law require the state courts to reverse the sanctions in Thomas v. Zelon and the additional sanctions levied on Petitioner by the trial court after the remittitur arising out of those appellate sanctions.

Dated: August 20, 2019 JEFFREY G. THOMAS

/s/ Jeffrey G. Thomas

Petitioner