

No. 19-7073

IN THE
SUPREME COURT OF THE UNITED STATES

Anthony G. Thomas—PETITIONER

vs.

Kenmark Ventures, LLC—RESPONDENT

ORIGINAL

Supreme Court, U.S.
FILED

MAR 18 2019

OFFICE OF THE CLERK

[RESUBMITTED] MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner resubmits his motion submitted March 18, 2019, and asks leave To file the attached [corrected] petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

[x] Petitioner has not previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

March 18, 2019

Anthony G. Thomas
Anthony G. Thomas

No. ____

In the

SUPREME COURT OF THE UNITED STATES

Anthony G. Thomas,

Petitioner,

v.

Kenmark Ventures, LLC,

Respondent.

**DECLARATION ACCOMPANYING MOTION FOR PERMISSION TO PROCEED
IN FORMA PAUPERIS**

Declaration in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fee for this Petition and the cost of printing 40 copies thereof. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: Anthony Thomas

Date: 12-23-2019

The issues raised in the Petition are as set forth in points 1-3 below:

1. Whether the Ninth Circuit erred in its October 17, 2018 decision by refusing to grant a recall of mandate in order to apply the change in law relative to 11 U.S.C. § 523 (a)(2)(A) announced by this Court in *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S.Ct.1752 (2018) ("Lamar") to the debt held to be non-dischargeable in this case where the Ninth Circuit's March 23, 2018 decision affirming non-dischargeability was handed down on June 4, 2018, two days before its mandate was received by the BAP on June 6, 2018, and 77 days before the extended time for seeking certiorari expired

on August 20, 2018?

2. Whether the Ninth Circuit erred by failing to consider new evidence in the form of a declaration of counsel establishing fraud on the court that was submitted on February 12, 2018, under the principle in *Hazel-Atlas Glass Co. v Hartford-Empire Co.*, 322 U.S. 238 (1944)?
3. Whether new evidence in the form of judicial admissions by the judge of bias rendered the findings of the Bankruptcy Court void on their face due to judicial bias; whether an appellate court has the jurisdiction to declare a judgment void on its face; and whether the conversion order converting my case from Chapter 11 to Chapter 7 was void based on a deprivation of due process under *Powell v. Alabama*, 287 U.S. 45 (1932)?
4. In addition, the Court should take judicial notice that the Ninth Circuit panel refused to allow me to file a petition for rehearing or rehearing en banc as provided for in the Federal Rules of Appellate Procedure and the Ninth Circuit's Circuit Rules.

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$13,660	\$416	\$10,000	\$0
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$

Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$13,660	\$416	\$	\$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
Unemployed	N/A	1/1/2018-1/31/2018	0
Canus Corp.	27611 Las Paz Road Suite A5 Laguna Niguel California 92677	2/1/2018 - Present	Average monthly - varies depending on overtime. See above.

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay

All Star Boat Care, Inc.	2665 Dickson Road Reno Nevada 89503	5/20-2017 to 8/14/2019	\$624.50
Unemployed	N/A	8/15/2019-Present	\$0

4. *How much cash do you and your spouse have? \$300*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
Wells Fargo Bank	checking	\$625	included
Bank of the West	checking	\$835	included
		\$	\$

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$1,900
		Make and year: Chevrolet 2005 (260,000 miles)
		Model: Avalanche
		Registration #:152-LGD

Motor vehicle #2	Other assets	Other assets
(Value) \$3,600	(Value) \$	(Value) \$
Make and year: Chevrolet 2007 (165,000 miles)		
Model: Suburban		

Registration #:649-XJT		
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6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
Tech-Masters, Inc.	\$ 15,000.00	N/A
	\$	\$
	\$	\$
	\$	\$

7. *State the persons who rely on you or your spouse for support.*

Name	Relationship	Age(s)
Wendi Thomas	spouse	53
K.T., J.T.	Daughters (2)	19, 12
E.T., A.T.	Sons (2)	20, 18

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$2,042	included
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$900	"
Home maintenance (repairs and upkeep)	\$100	"
Food	\$3,300	"

Clothing	\$1,000	"
Laundry and dry-cleaning	\$300	"
Medical and dental expenses	\$558.33	"
Transportation (not including motor vehicle payments)	\$300	"
Recreation, entertainment, newspapers, magazines, etc.	N/A	"
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$264	"
Life:	N/A	"
Health:	\$1,500	"
Motor vehicle:	\$485	"
Other:	N/A	"
Taxes (not deducted from wages or included in mortgage payments) (specify): Federal and State income taxes net of refund	\$2,256.67	"
Installment payments		
Motor Vehicle:	N/A	"
Credit card (name):	N/A	"
Department store (name):	N/A	"
Other:	N/A	"
Alimony, maintenance, and support paid to others	N/A	"
Regular expenses for operation of business, profession, or farm (attach detailed statement) Union Dues	\$36.67	"
Other (specify): Legal Expenses (average over past 54 months)	\$3,981.48	"
Total monthly expenses	\$17,024.15	"

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

Yes No If yes, describe on an **attached sheet**.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* [x] Yes [] No

If yes, how much? \$250,000 - \$300,000. See attached sheet.

11. *Provide any other information that will help explain why you cannot pay the docket fees for the Petition.*

It is not just the docket fee, which is only \$300, but also the cost of printing 40 copies, which was estimated at \$3,500. Since this case began in mid 2015, I have paid over \$165,000 in legal fees and expenses and currently owe about \$40,000 in additional legal fees (for a total of over \$205,000 to date). I have had to borrow thousands of dollars from friends and relatives and have taken on work on the side to help cover the expenses. My wife and I expect to incur another \$45,000 through the grant or denial of certiorari, and, if the case is remanded to the Ninth Circuit, we will incur a further \$20,000-\$50,000. I have lost my home; my major high-value assets (the Bahia and Thomas Emeralds) have been disposed of by the Chapter 7 Trustee for a tiny fraction of their value; and my funds are depleted. I will only be able to cover my future legal expenses by taking on additional work on the side because my ability to borrow money will likely be hampered by the nondischargable debt of \$4.5 million (plus post-judgment interest) at issue in this case. That debt would have been dischargeable if this Court's decision in *Lamar, Archer & Cofrin. LLP v. Appling*, 138 S.Ct.1752 (2018) - which was decided *before* the Ninth Circuit's mandate was returned to the BAP and *before* the time for seeking certiorari expired - had been applied to my case.

12. *State the city and state of your legal residence.*

Reno, Nevada

Your daytime phone number: (408) 640-2795

Your age: 56 *Your years of schooling:* 12 + 1 yr engineering contractor school

Last four digits of your social-security number: 3971

See attached additional sheet re: Questions 9 and 10.

Questions 9 and 10

Question 9:

I expect my legal expenses to increase in 2020, as more fully described below.

Question 10:

To date, I have paid approximately \$165,000 in legal fees and expenses in connection with this case, as follows:

- Alan Smith, 505 Ridge Street Reno Nevada 89501 (~\$5,000)
- Michael Lehners 429 Marsh Avenue Reno Nevada 89509 (\$5,000)
- Jeffrey Cogan 6900 Westcliff Drive 502 Las Vegas Nevada 89145
\$25,000
- Laurie McCauley 5470 Kietzke Lane Suite 300 Reno Nevada 89511
(\$35,000)
- Gerald D.W. North, 125 S. Wacker Dr., 10th Fl., Chicago IL60606
(~\$34,248) and Keith M. Knowlton ([included in Mr. North's fees]).
- Robert Ross, Class, Hellman & Ross, 16133 Ventura Boulevard
Encino California 91436 (\$1,500)
- Paralegal expense: \$50,000
- Court reporter and filing fees: \$9,302.59,

I have incurred an additional ~\$42,000 in attorney's fees in connection with this case since November 14, 2019. I have only been able to pay \$2,000 in cash to date. I have assigned the \$15,000 that is owed to me [see response to Question 6] to counsel in partial payment of the balance, but still owe approximately \$25,000 after the assignment. I expect to incur another \$45,000 in attorney's fees through the grant or denial of certiorari. If certiorari is granted, and the Ninth Circuit's October 17, 2018 order is vacated and the case remanded, I will incur an additional \$20,000-\$50,000 through proceedings on remand in the Ninth Circuit, depending on the scope of those proceedings.