No.19- 19-7421

In the U.S.Supreme Court Of America

Lawyer J. Henderson,

Petitioner,

VS

U.S. Security Associates, Inc

Respondent,

On petition for a writ of Certiorari to
The United States court of Appeals
For the 11th circuit

Petition for writ of certiorari

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i. **Question Presented**

Courts of appeals are divided on the question presented in this case and left open in New Hampshire V. Maine; whether a debtor who has inadvertently failed To disclose the existence of a potential claim in a bankruptcy petition should be stopped from litigating that claim because he is attributed a presumption of deceit where he had knowledge of the facts that gave rise to the undisclosed claim without regard to her subjective intent. In Addition, when a chapter 7 trustee abandons a claim, does this claim go back to the debtor.

QUESTION 2

And Using the Doctrine of Judicial Estoppel on Pro-Se Parties is deemed Unconstitutional based on the Judicial act of 1789.

Corporate disclosure statement

Pursuant to supreme Court Rule 29.6, petitioner Lawyer J. Henderson provides this court with all parties of interest, but asserts, that he does not own a public company and or limited liability companies/corporation nor own any stock of any company(S).

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Jan 3, 2020
Date

Appendix

Court of Appeal Memorandum filed on Oct 10, 2019

APPx 1

Letter issuing mandate Oct 10 APP'x 1(B)

Final Judgment on mandate and hearing enbanc Oct 18, 2019 App'x 1(b)

Court of Appeals Order July 31, 2019

APP'x 2

District Court Ordering Granting Defendant's motion for

Summary Judgement filed Oct 17, 2018

APP'x 3

FLSA Civil suit filed

App'x 4

District court order granting motion for ordering taxes and

Fees on Jan 1, 2019

APP'x 5

Order denying the motion for reconsideration

APP'x 6

Court of Appeals Order denying Petition for rehearing enbnac

Filed on Oct 17, 2019

App'x 7

order from the Chapter 7 Bankruptcy court (GEORGIA)

App'x 8

Recalled mandate letter August 29, 2019 APP'x 9

Copy of judgment after final manadate Oct 18, 2019 APP'x 2(A)

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OPINION BELOW

The 11th circuit's order summarily affirming the District court is unpublished and appears at APP 'x2. The 11-circuit order denying Henderson's Petition For rehearing en banc is unpublished and appears at App'x7. The District courts order granting defendant's Motion for summary judgement (APP'x 3) and order granting defendant's Motion for costs and taxes is unpublished and appears at APP'x5. . The district court's order denying plaintiff's Motion for reconsideration is unpublished and appears at APP'x 6.

JURISDICTION

The 11th circuit entered its order affirming the district court On Oct 10, 2019. App.'x1. A timely petition for Rehearing enbanc was denied by the 11th circuit on Oct 18, 2019. App'x-7. This court has Jurisdiction Under U.S.C --1254(1).

STATUTORY PROVISION INVOLVED

11 U.S.C. –521 (a)(1)(b) provides in relevant part:

The debtor shall file...(i) a schedule of Assets and liabilities.

11 USC—521 (A)(1)(b) (1)

Fed. Bankr. P. 1009(a) provides a general right to amend:

A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed.

FED. R BANKR.P 1009(a).

11 USC –350(b) provides in relevant part:

A case may be reopened in the court in which

Such case was closed to administer assets, to

Accord relief to the debtor, or for other cause.

11 USC 350(B)

11 U.S. code 554Abandonment of property of the estate
(A) After notice a hearing, the trustee may abandon any property
Of the estate that is burdensome to the estate or that is of
Inconsequential value and benefit to the estate.

STATEMENT OF THE CASE

This case presents a square circuit split on an important and increasingly Frequent recurring question regarding the viability of a plaintiff's Meritorious cause of action and the intersection of bankruptcy and Its effect on that claim that has remained on open question in need of Clarification after this court's decision in New Hampshire V. Maine, 532 U.S. 742, 121 S ct. 1808, 149 L. Ed 2d 968 (2001) on the doctrine Of judicial estoppel.

When New Hampshire V. Maine was decided, the issue of Judicial estoppel Was rarely litigated. It was new, especially to pro-se plaintiffs who were Naïve that omitted a potential claim in a bankruptcy filing can stop their lawsuit. Furthermore, since the decision of New Hampshire, 206 cases have flourished Between 1988 through 2003 where judicial estoppel cases mostly likely barred a Plaintiff's/debtor's claim altogether. Since the 2001 ruling of this court, The circuit courts continue to be split on the appropriate used of how

The doctrine should be applied. Especially, in this case. The Question for this court Is do Pro-se plaintiffs also gets to use the doctrine or does it only apply to Plaintiff/ Debtors who are represented by counsel (even after changing their precedent to protect us as well).

On March 3, 2017, Petitioner Lawyer Henderson through counsel filed a petition for Chapter 13 bankruptcy. His attorney responded to a question on the property schedule Which asked whether he had any claims against third parties, whether or not he had filed A lawsuit or made a demand for Payment". Mr. Henderson's attorney responded "no" Not knowing that the claims exit at the time. On June 19, 2017, his attorney filed an Amended property schedule, which changed the answer about claims against third

Parties to "Yes" listed a "Potential personal injury claim against Marta," and Explained that the debtor has not yet received an offer and does not have an Attorney in this matter." On September 1, 2017, the same day that he filed his

Complaint in this case, Henderson move in this case.18-14739. (Date filed; Chapter 7 petition). On January 8, 2018, Henderson's attorney amended this petition to add Creditors. The bankruptcy court discharged Henderson's debt on January 22, 2018. While his bankruptcy case was ongoing, the circuit court argues on September 1, 2017, Henderson filed the complaint in this matter. He alleged that his employer, USSA Had required him to work "Off the clock", failed to keep accurate time sheets, failed to pay him overtime wages, and deducted maintenance and uniforms fees from his wages, and deducted maintenance and uniforms fees from his wages in violation of the FLSA. Henderson also alleged that he was fired in retaliation for complaining about these violations. On May 23, 2018, USSA, filed a motion for summary judgement, arguing that Henderson's claim was barred by judicial estoppel because he represented to the bankruptcy court that no such claims existed.

USSA also argued in the alternative that Henderson lacked standing because the bankruptcy trustee was the real party in interest and therefore the only party with standing to pursue the claims.

However, Henderson Bankruptcy trustee abandon his claims prior to the submitting his reply brief to the 11th circuit which the courts only did pass by references as who was the real interest of party after abandon. (Wendy's emphasis).

The 11th circuit noted, but didn't expound on the terms of standing, the real party in interest question is not one constitutional standing, which this court claims are act a limitation on its subject-matter jurisdiction, but rather a question of who may litigate the claim, which does not. Referencing (Barger V. City of Cartersville, 348 F.D 1289(11th Cir. 2003) overruled on the other grounds by Slater, 871 F.D at 1185 & n. 10. This argument fails for two reasons: First, when The court deny both Henderson and Weakley, it uses Barger, Barnes, Slater, and Tyson to do so, but when A party is represented by an attorney and makes the same mistakes, it uses Slater 11to reverse sanctions. Second, the question by the appellee himself, suggests he could no longer used judicial estoppel doctrine after the chapter 7 trustee is no longer interested in a claim makes this court argument contradictory.

Let's look at the Illinois Supreme Court decision on judicial estoppel, which defers from all Circuit courts. In New Hampshire, referencing the Seymour V. Collins, Illinois court perhaps may have rule just like the US Supreme Court would if it ever revisits New Hampshire Vs. Maine. The Illinois Supreme Court noted, five prerequisites before a court can invoke judicial Estoppel, disagreeing with the appellate courts. The five requirements are (1) Take two positions (2) that are factually inconsistent (3) in separate judicial or quasi-judicial administrative proceedings (4) intending for the trier of facts to accept the truth of the facts alleged. And (5)

Have succeeded in the first proceeding and received some benefit from it. A statement under oath was not, however a requirement for applying judicial estoppel.

The district court, nor did the 11th circuit, which had jurisdictional standing to consider the facts to which the Appellant presented to the courts, could not include, because of the denial of A trial. A direct violation of six Amendment of the constitution (see Washington V. Texas, 388 U.S. 14 (1967) and United States V. Scheffer, 523 U.S. 303(1998).

Furthermore, the district court ignore title 11 U.S.C-Section 554, claims of abandon, and the sanding went back to Henderson.

Henderson teaches that after the district court determines that after pro-se debtor has been judicial estopped, it exaggerates, and the circuit judges allow, the district judges to claim that unsophisticated debtor like pro-se plaintiff have several filings which still don't explain the intent to deceive. However, in Slater, upon rehearing enbanc, the 11th circuit court overruled the portions of Burnes, that permitted the interference that A Plaintiff intended to make a mockery of the judicial system simply because he failed to disclose a civil claim and remanded the case back to the panel for further consideration of the district court's judicial estoppel ruling. (see Slater V. U.S. Steel Corp). (Slater 2), 871174, 1185, 911th cir.2017).

However, in Henderson, determing the district court review of abuse of discretion, the district (Robinson V. Tyson Foods, Inc, 595 F.3.1269,1273 (11th Circ. 2010). In determing it's factual finding for clear error. The 11th circuit granted Slater an enbanc based on an abuse of discretion although she didn't tell her attorney about the omitted claims in her initial bankruptcy filings. This is a complete contradiction in Henderson's appeal.

The Ninth Circuit yet again in a recent court case rejected the Burnes test and Slater precedent in Sadlowski V. Michael Stores, Inc, 2016, it applied three test model in New Hampshire Vs. Maine, 2001 U.S. Supreme Court). Using Ah Quinn_____733 F.3d 267, 270, the 9th circuit added the third test, whether the party asserting an inconsistent position would derive an unfair advantage or impose an unfair detriment on its opponents if not estoppel (New Hampshire emphasis). This court noted, that bankruptcy court never "Accepted" or relieve upon Sadlowski's non-disclosure of her wage and hour claim. In Henderson, the bankruptcy court explain, that the claim returns back to him if abandon by the trustee. It's apparent, that the bankruptcy court rules under (Parker vs Wendy's 11thth circuit, 2004). The claims were abandoned, and this means that the motion for reconsideration should have been granted under rule 37€, Another reason for granting enbanc or rehearing.

In Clark V. Advanced Composites Group, the Second circuit reverse the lower court's decision in using judicial estoppel when it ruled a district court must inquire whether the particular factual Circumstances of a case tip the balance of equities in favor of doing so, since the defendants admitted that the Clark's failure to disclose the personal injury lawsuit did not prejudice the defendants in any way.

The fifth circuit, uses a third prong test which states that leaving out claim must have been inadvertent when applying the judicial estoppel doctrine. In its recent case, Wells Fargo, N.A. V Oparaji, (5th circuit) affirm the all three-prong test were met.

This still continue to show that the circuit courts, including state supreme courts do not know how to determine the appropriate way to invoke judicial estoppel, nor did congress or the supreme court brought another case since New Hampshire, to explain how circuit courts are to used the doctrine.

Parker V. Wendy's Intl, INC, 365 F.3d 126 8, 1272 (11th Cir. 2004) (Citing 11 U.S.C.---323).

Plaintiff's statement of Material facts "– page 4

Slater, 781 F.3D at 11 80-81 (Ryan operations gpv. Santian Midwest /under Co. 1, F3d, 355, 358, (3d cir, 1996).

REASONS FOR GRANTING THE PETITION

This case presents a critical issue of importance regarding the viability Of a debtor's meritorious litigation claims when a debtor has Pursued remedies under the bankruptcy laws and inadvertently failed to Disclose the existence of the claim as an asset.

This court's decision in New Hampshire V. Maine created an exception To the doctrine of judicial estoppel base upon mistake: "(I)t may be Appropriate to resist application of judicial estoppel when a party's Prior position was based on inadvertence or mistake". New Hampshire, 532 U.S. at 753 (internal citation omitted).

An entrenched and substantial conflict among the courts Of appeals has since developed over the analysis required

To determine if "a party's prior position was based on in-Advertence or mistake." The conclusion is critical, however, That it makes the difference between a debtor who will be Able to pursue a valid cause of action and return value to His estate and one who will not. Debtors in five circuits Benefits from an analysis of their subjective intent-but Debtors in five circuits are presumed to have deceived the

Courts without any consideration of their actual intent or Evidence of mistake.

The application of the doctrine based upon a pre-Sumption of deceit has extraordinary consequences On the debtor and his creditors, resulting in a windfall Provided only to the alleged bad actor. These decisions cannot be squared with the equitable doctrine as intended and the exception set forth by this court in New Hampshire V. Maine:

> Just as equity frowns upon a plaintiff's pursuit of a claim that He intentionally concealed in bankruptcy proceedings, equity Cannot condone a defendant's avoidance of liability through A doctrine premised upon intentional misconduct without Establishing such misconduct.

Slater, 871 F.3 at 1188.

I. New Hampshire v. Maine recognized judicial estoppel Ought not apply where the inconsistent disclosure was Inadvertent or mistake

;

In New Hampshire V. Maine, 532 U.S. 742 (2001), this court Analyzed the doctrine of judicial estoppel recognizing it was a Rule that "generally prevents a party from prevailing in one Phase of a case on an argument and then relying on a contra-dictory argument to prevail in another phase." New Hampshire,532, U.S. at 749 (internal citation omitted).

This Court recognized the inequity of allowing a party to change its Position based upon circumstance, particularly at the detriment of a Party who acquiesced as a result of the first position taken:

> [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.}

Id. At 749 (citing Davis V. Wakelee, 156 U.S. 680, 689, 15 S. Ct.555, 39 L. Ed. 578 (1895).

The purpose of the doctrine is "to protect the integrity of the judicial process"., Id. Recognizing that circumstances where it is appropriately invoked are not Reducible to any general formulation or principle, this court highlighted Several factors that inform the decision:

"First, a party's later position must be clearly inconsistent' with its earlier position." Id. At 750 (international citation omitted).

Second, courts inquire whether the party succeeded in persuading a court to accept The party's earlier position (because judicial acceptance of the later position would Evince that either the first or second court was misled) id.

With regard to the second factor, the court reasoned: "Absent success in a prior Proceeding, a party's later inconsistent position introduces no risk of inconsistent position introduces no risk of inconsistent court determinations, And thus, poses little threat to judicial integrity". ID. At 750-51.

Third, courts consider whether the party seeking to assert an inconsistent position Would derive an unfair advantage or impose an unfair detriment to the opposing

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14 The court recognized that by "enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of Judicial estoppel." New Hampshire, 532 U.S. at 751. Unfair advantage or impose an unfair detriment to the opposing party if not estopped. Id. At 751. USSA was not required by the district court nor the 11th circuit court to address this issue before Henderson was judicially estopped.

Unfair advantage or impose an unfair detriment to the opposing party if not estopped.ID. at 751.

The court made clear there was an exception to application of the doctrine where an inconsistent position Was mistaken: "We do not question that it may be appropriate to resist application of judicial estoppel when a party's prior position was based on inadvertence or mistake." Id. At 753. The court next inquired as to whether New Hampshire's prior position could have Been an inadvertent.

Applying judicial estoppel-based New Hampshire's clearly inconsistent statements in two Litigation matters on the same subject, the court found evidence in the record contradicted Any claim of inadvertence or mistake: "The pleadings [in the earlier case] show that New Hampshire did engage in 'a searching historical inquiry into the [subject of the Dispute]", New Hampshire, 532 U.S. at 753.

Despite the court's clear exception to the application of judicial estoppel and its Warning that the doctrine should not be applied with "inflexible prerequisites", six Circuits have instead applied the three factors narrowly in the bankruptcy context.

Those circuits, as set forth in detail below, ignore the issue of inadvertence and ask

Only whether the debtor knew about the potential claim when she filed her Bankruptcy and failed to disclose that claim. The rationale in these circuits is Irreconcilable with New Hampshire V. Maine and expands the doctrine of Judicial estoppel in a way it was never intended.

Henderson's pointed out to the 11th circuit court that leaving out claims was A mistake and inadvertence and provided evidence to courts which totally ignored the law because I was Pro-se plaintiff.

PETITION FOR WRIT OF CERTIORARI:

The petitioner also argues that judicial estoppel uses on pro-se plaintiffs is also unconstitutional because it violates the 14th amendment and violates judiciary Act of 1789.
The district court took U.S. Security Associates, LLC claims Without the merits and considering the evidence of mistake Or inadvertence and violated the "Due Process clause".

The district court failed to consider numerous of Henderson's Claims as to why the claims was not presented which is the Most important in which he argues that the two-year statutes of limitation Was about ran out 17 days if Henderson didn't file his Fair Standard and Labor Act of 1938 law suit. Along with the 90 days right to sue letter that the district court ignored.

The 11th circuit failed to give plausible legal explanation why it took the District court and USSA's argument on Judicial estoppel without meaningful evidence To the contrary. When a case is converted from A chapter 13 proceeding to a chapter 7 proceeding, the chapter 7 estate consists of all property belonging to the to a debtor as of the date the original chapter 13 petition was filed Harris V. Viegelahn,135 SCT, 1829, 1837(2015).

CONSTITUTIONAL PROVISIONS INVOLVED:

The district court violated the Supreme Court's ruling in Faretta Vs California.

11th circuit and the district court have violated Henderson's constitutional rights under the sixth, Seventh and fourteenth amendments in addition to Judiciary act of 1789

Rule 35 provides enbanc when the court misinterprets the law and violates Constitutional laws, there is no doubt the 11th circuit and the district court

Violated Henderson's due process rights (see Griswold V. Connecticut, U.S. Supreme court, 1965).

The 11th circuit panel in Henderson versus U.S. Security Associates Inc (case no. 1:17 03329) has duty to be fair to pro-se plaintiffs and if not, are in violation of the Judiciary act of 1789, 1 stat. 73,92, provided that all courts in the United States, protects the rights of the pro-plaintiffs, (See Faretta V. California , US Supreme Court).

The right to "Due Process" is what our constitution was established for, not to Put parties who represents themselves in one category and those who are represented By counsel in another, a direct violation to the fourth tenth amendment. (See Bolling V. Sharpe, US Supreme Court, 347, US 497, 1954) congress intended for all laws to interpreted by judges should be fair and impartial.

Since the district court nor circuit court did not interpret the law fairly in Henderson's case, it violated his constitutional rights under these amendments (sixth, seventh, and fourteen amendments. See, e.g. Eisented tv, Baird 1972, US Supreme Court, 405 U.S. 438, Griswold V. Connecticut, 381 U.S. 479-486, 1965 US Supreme).

Not only did the district court violate Henderson rights to A fair trial, it denied Henderson rights to jury trial under Amendment six of the U.S. Constitution (See Pena Rodriquez V. Colorado, US_, 137. CT, 855, 860, 2017). Article III, the U.S. Constitution).

Henderson, now argues to this US Supreme Court, he was not granted equal protection under the law of the fourteen amendment of the US constitution (See Brown V. education, 1954, US Supreme court). Finally, Henderson argues that he should have effective counsel during his bankruptcy proceedings, a direct violation under the sixth amendment (see Strickland V. Washington, 466, US 668, 1984).

Conclusion

The Petitioner Lawyer J. Henderson again argues, when claims are abandoned by the chapter 7 trustee, Judicial estoppel does not apply, therefore the district and circuit courts violated the judicial act of 1789 by not protecting the rights of pro se plaintiffs is why the petition for Writ of Certiorari should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: JAN 6, 2020