19-7579

No. 19-

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

PHILIP G. BARRY,

Petitioner,

v.

THOMAS PERKINS, SALLY PERKINS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PHILIP G. BARRY
Petitioner pro se

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QUESTION PRESENTED

Whether the so-called "Rooker-Feldman Doctrine" strips bankruptcy and other lower federal courts of jurisdiction to avoid or otherwise declare a state court judgment void ab initio upon a finding that the state court action was taken in violation of the United States Bankruptcy Code's Automatic Stay provisions. (11 U.S.C. §362(a))

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Petition for a Writ of Certiorari

Petitioner Philip G. Barry respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Second Circuit as upheld by all the active members of the court polled pursuant to a motion for reconsideration en banc, which affirmed a judgment of the United States District Court for the Eastern District of New York in an appeal from a decision of the Bankruptcy Court dismissing in part a bankruptcy adversary proceeding brought by the Petitioner.

Opinions Below

The Second Circuit's orders are unpublished and are reproduced in the Appendix. The district court's bankruptcy appeal opinion is accessible at 2019 US Dist LEXIS 42767 (17-CV-3078 EDNY) and also reproduced in the Appendix. The bankruptcy court's order dismissing the adversary proceeding in part is unpublished and reproduced in the Appendix.

Jurisdiction

The Second Circuit's order dismissing the appeal from the district court's decision was entered on September 11, 2019. The Second Circuit's order denying panel rehearing and reconsideration en banc was entered on October 25, 2019. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

Relevant Statutory Provisions

This case principally involves the United States Bankruptcy Code's ("The Code") Automatic Stay Provisions ("The Stay") and the U.S. Constitution's mandate that Congress "establish uniform Laws on the subject of Bankruptcies throughout the United States."

Statement of the Case

The subject case is a bankruptcy adversary proceeding brought by the Petitioner against the Respondents by the filing of a complaint on July 27, 2016 in the Bankruptcy Court for the Eastern District of New York. ("E.D.N.Y.") The Petitioner had been the Debtor, and the Respondents creditors in the underlying bankruptcy case. The bankruptcy court assigned case number 16-1135(nhl) to the adversary proceeding. That court had jurisdiction pursuant to Federal Rules of Bankruptcy Procedure Rule 7001.

The Complaint alleged multiple violations of 11 U.S.C. 362(a). It was specifically alleged that the defendants had engaged in myriad prohibited acts with respect to both real property of the Debtor and personalty of the bankruptcy estate during the pendency of the bankruptcy case without relief from the Stay being granted.

The defendants moved for dismissal of the action. A hearing on the motion was held on March 28, 2017. On April 14, 2017 the bankruptcy court issued a final order dismissing the causes of action respecting the real property. The causes of action relating to the personalty remain active as of the present date.

The dismissed causes of action consisted of two principal elements. One was a state foreclosure action against real property of the Debtor. The other was the portion of that state court foreclosure action which sought a deficiency judgment for the unsecured balance of the debt. That portion of the foreclosure action is the subject of this petition. A judgment in the amount of approximately $1.2 million was ultimately granted by the state court.

An appeal from the bankruptcy court's order of dismissal was taken to the district court which had jurisdiction pursuant to

28 U.S.C. §158(1). The district court affirmed the decision of the bankruptcy court on March 18, 2019. With respect to the deficiency judgment, the court affirmed on the ground that under the "Rooker-Feldman doctrine" the bankruptcy court has no jurisdiction to vacate the deficiency judgment [even if it was granted in violation of the Automatic Stay] "because it would be a modification of a state court judgment." (District Ct. Decision p. 9)

An appeal from the district court's affirmance was taken to the Second Circuit Court of Appeals which had jurisdiction pursuant to 28 U.S.C. §158(d)(1) and Federal Rules of Appellate Procedure II Rule 6(b). The appellate panel dismissed the appeal by order dated September 11, 2019. The court denied panel rehearing and reconsideration en banc on October 25, 2019.

The "Rooker-Feldman" Doctrine: An Overview

The so-called Rooker-Feldman doctrine is the spawn of inverse inferences from the cobbling together of 28 U.S.C. §1331 which codified a portion of Article III Section 2 of the Constitution with respect to district courts having "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," with 28 U.S.C. §1257 which permits this Court to review "final judgments or decrees rendered by the highest court of a State in which a decision could be had."

The two cases which gave the doctrine its name are Rooker v Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68L. Ed. 362 (1923) and District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983). Although Rooker predates the statutes upon which the doctrine is putatively built, that decision did cite the years 1911 and 1916 Judicial Code forerunners of the current statutes.

The Black's Law Dictionary definition cites this Court and the doctrine accordingly appears straightforward and innocuous:

> "...This doctrine precludes 'a party losing in state court... from seeking what in substance would be appellate review of [a] state court judgment in a U.S. district court, based upon the losing party's claim that the state judgment itself violates the loser's federal rights.' Johnson v. Degrundy, 512 US 997, 1005-06 114 S. Ct. 2647 2654 (1994)"

It is of course acknowledged that district courts need to have the means to dispose of cases in which parties attempt to improperly shoehorn a losing state case into the ambit of a federal question. Although the courts already had the mechanisms for doing so, i.e. preclusion, abstension, and full faith and credit, Rooker-Feldman

held out the promise of a catchall streamlined approach which soon coalesced into a simplistic four-question jurisdictional test.

Although this Rooker-Feldman test functioned to provide the correct decision most of the time, its inherent flaws and the reflexive application of its formulaic template have produced enough contradictory decisions and reversals of bankruptcy and district court decisions so as to rank the doctrine among the most troublesome judicial creations of all time.

In the words of this Court, "[T]he Rooker-Feldman doctrine has been applied by [the] Court only twice, i.e., only in the two cases from which the doctrine takes its name..." Skinner v. Switzer, 562 U.S. 521, 531, 131 S. Ct. 1289, 1297, 179L. Ed. 2d 233 (2011) Nevertheless, "lower federal courts have variously interpreted the Rooker-Feldman doctrine to extend far beyond the contours of the Rooker and Feldman cases." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 283, 125 S. Ct. 1517, 1521, 161 L. Ed. 2d 454 (2005). As a consequence, this Court has been compelled to often take up this issue to reinforce the narrow parameters of Rooker-Feldman, and to admonish lower courts for their expansive applications thereof. See Id.; Lance v. Dennis, 546 U.S. 459, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006); Skinner v. Switzer, 562 U.S. 521, 531, 131 S. Ct. 1289, 1297, 179 L. Ed. 2d 233 (2011).

Despite the above-cited cases and the admonishments therein, Rooker-Feldman, and in particular, overly-broad applications thereof, have continued to exhibit preternatural resiliency within some of the Circuits, much to the chagrin of legal scholars and jurists.

Although Rooker-Feldman related difficulties beleaguer courts to this date,[1] Justice Stevens was quite passionate in expressing his hopes that he'd penned this Court's final words on the subject back in 2006:

> "Rooker and Feldman are strange bedfellows. Rooker, a unanimous, three-page opinion written by Justice Van Devanter in 1923 correctly applied the simple legal proposition that only this Court may exercise appellate jurisdiction over state-court judgments. Feldman, a non-unanimous, 25-page opinion written by Justice Brennan in 1983 was incorrectly decided and generated a plethora of confusion and debate among scholars and judges. Last Term, in Justice Ginsburg's lucid opinion in Exxon Mobil Corp. v. Saudi Basic Industries Corp., the Court finally interred the so-called "Rooker-Feldman doctrine." And today, the Court quite properly disapproves of the District-Court's resuscitation of a doctrine that has produced nothing but mischief for 23 years."
>
> (Lance v. Dennis 126 S. Ct. 546 U.S. 163L. Ed. 2d 467, 468 (2006)) (internal citations omitted) (emphasis added)

> "I would provide the creature with a decent burial adjacent to the resting place of the Rooker-Feldman doctrine."
>
> (Marshall v. Marshall 126 S. Ct. 1735, 1752, 164 L. Ed. 2d 480 (2006) (J. Stevens, concurring)

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1. For a recent example of an appellate court wrestling with Rooker-Feldman, see Mahan v. Sec'y of United States Dept. of State, Attorney General of New Jersey et al. 938 F. 3d 453; 2019 U.S. App LEXIS 28047 (Sept. 18, 2019) The case is a remarkable example of navigation down tortuous Rooker-Feldman roads.

Reasons for Granting the Writ

1. The Second Circuit's decision is in direct conflict with the decisions of multiple other United States Courts of Appeals on this important matter of enforcement of the Bankruptcy Code.

By its affirmance of the E.D.N.Y.'s bankruptcy appeal decision, the Second Circuit has endorsed the following grounds for declining to exercise federal jurisdiction over a violation of the Bankruptcy Code's Automatic Stay provision. (11 U.S.C. 362(a)):

> "...Judge Lord held that the Rooker-Feldman doctrine deprived her of subject matter jurisdiction to review the adverse, final state court judgments because the state court had rejected the same arguments regarding the violation of the stay. ("[E]ven if it was a violation you raised it and the judge did not accept that and issued it anyway. So now you have a [Rooker]-Feldman [issue] and I have no jurisdiction.")... I find no reason to disturb Judge Lord's well-reasoned decision.
>
> . . .
>
> Judge Lord's dismissal of the deficiency claim on this ground is affirmed. Under the Rooker-Feldman doctrine, lower federal courts lack subject matter jurisdiction over a case if exercise over that case would result in the reversal or modification of a state court judgment. Federal district courts are barred from reviewing a state court judgment where the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Here, the appellant conceded that the state court rejected the argument he raised before Judge Lord— that the deficiency action violated the automatic stay. In order to find in the appellant's favor, Judge Lord would have had to determine that the state court wrongly decided the issues before it, which Rooker-Feldman does not allow. Moreover, under the Rooker Feldman doctrine, the Bankruptcy Court has no jurisdiction to vacate the deficiency judgment entered in state court, because it would be a modification of a state court judgment."
>
> (Memorandum Decision and Order p. 6, 9)
> (brackets and parentheses in original)
> (internal citations omitted) (emphasis added)

The affirmance of the above-cited decision places the Second Circuit at one far end of a now wide circuit split. At the opposite pole, the Sixth, Ninth, and Fourth, in roughly that order, are the circuits which are most emphatic in categorical disagreement with the Second Circuit's holding. The Third Circuit is emblematic of a middle ground among the appellate courts.

The following recent case which includes citations to earlier Sixth Circuit cases, is a good representation of how the Circuit evolved with respect to Rooker-Feldman, as well as giving a clear showing of that court's present posture thereon:

> "Likewise, reasonable minds could debate whether Saghafi's counterclaims breached the Rooker-Feldman doctrine. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 291-93, 125 S. Ct. 1517, 161L. Ed. 2d 454 (2005) (clarifying the limited scope of the doctrine); see also In re Sun Valley Foods Co., 801 F 2d 186, 189 (6th Cir. 1986) (stating that the doctrine does not bar collateral attacks on state judgments "alleged to have been procured through fraud, deception, accident, or mistake" (cleaned up)). In fact, in dismissing the counterclaims, the district court relied on Rooker-Feldman precedent that we have since repudiated. See Coles v. Granville, 448 F. 3d 853, 859 n. 1 (6th Cir. 2006) (acknowledging that Exxon Mobil abrogated Catz v. Chalker, 142 F. 3d 279 (6th Cir. 1998)). As one member of this court has explained, "the Supreme Court has enforced the Rooker-Feldman limit on the jurisdiction of the federal courts just twice. The Court's most recent applications of the doctrine suggest that may be it-that, if the party's name is not Rooker or Feldman, or if the case does not present a virtually identical challenge, it is unlikely that the doctrine strips the federal courts of jurisdiction to hear the claim." In re Smith, 349 F. App'x 12, 17 (6th Cir. 2009)"
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> (Simonoff v. Mehdi Saghafi et al. 2019 U.S. App. LEXIS 29046 19a0496n.06 Case No. 19-3001 9/26/19)
> (emphasis added)

As seen above, the Sixth Circuit has correctly followed the guidance of this Court and arrived at a very narrow view of the doctrine. The Second Circuit on the other hand, has inexplicably

lurched in the opposite direction, thereby evincing the transience of their past fidelity to this Court's directives in this regard.

The Ninth Circuit, sitting en banc, has provided perhaps the best analysis of the Rooker-Feldman problem relative to bankruptcy jurisprudence:

> "Of course, the statutes that form the basis of the Rooker-Feldman doctrine co-exist among other federal jurisdictional laws. To derive a coherent theory of federal jurisdiction, one must consider the entire federal jurisdictional constellation. In this case, aside from the statutes of general jurisdiction, two other fixed jurisdictional stars draw our attention: the federal laws of habeas corpus and bankruptcy. It is well-settled that the Rooker-Feldman doctrine does not touch the writ of habeas corpus. Indeed, federal habeas-corpus law turns Rooker-Feldman on its head. Rather than leaving state court judgments undisturbed, it provides expressly for federal collateral review of final state court judgments... through statutory writ of habeas corpus Congress has created a comprehensive system of federal collateral review of state court criminal judgments. Thus, habeas corpus is not an "exception" to Rooker-Feldman, but a procedure with roots in statutory jurisdiction parallel to— and in no way precluded by— the doctrine.
>
> So, too, it is with bankruptcy law. In apparent contradiction to the Rooker-Feldman theory, bankruptcy courts are empowered to avoid state judgments, see e.g. 11 U.S.C. §§ 544, 547, 548, 549; to modify them, see e.g. 11 U.S.C. §§ 1129, 1325; and to discharge them, see e.g. 11 U.S.C. §§ 727, 1141, 1328."
>
> (In re: Gruntz 202 F 3d 1074 (9th Cir. en banc 2000)) (internal citations omitted) (emphasis added)

That court then went on to cite this Court with specific respect to judicial violations of the Automatic Stay:

> "...actions taken in violation of the automatic stay are void. Further, 'judicial proceedings in violation of the automatic stay are void.' As the Supreme Court explained in Kalb, discussing the weaker predecessor statute to 11 U.S.C. §362(a), 'because that State court had been deprived of all jurisdiction or power to proceed with the foreclosure, [all acts in aid of collection] — to the extent based upon the court's actions— were all without authority of law.'" Kalb 308 U.S. at 443.
>
> (Id.)

The remainder of the Circuits are not particularly remarkable in their Rooker-Feldman stances, although inter-circuit inconsistencies are prevalent among them. Some of their jurisdictional calls turn on the issue of whether the federal question is "inextricably interwined" with issues decided in state court, while others draw the line at whether there are "independent claims" of harm which did not result from the collaterally attacked state judgment itself. Meticulous analysis to determine whether there is an independent source of federal jurisdiction is scarce among the relevant decisions of these middling circuits.

Although arguably more nuanced than those of the Fourth, Sixth, and Ninth Circuits, pertinent decisions of the Eighth and Tenth Circuits nonetheless conflict with the subject Second Circuit decision. See e.g. Caldwell v. DeWoskin 831 F 3d 1005 62 Bankr. Ct. Dec. 252 (8th Cir. August 5, 2016) (Vacating bankruptcy appeal decision due to overly broad application of Rooker-Feldman) and In re: Kline 514 Fed Appx 810 (10th Cir. April 18, 2013).

Prejudice to the Petitioner here caused by this split among the Circuits is plainly apparent. Had the Petitioner resided in, and therefore been a bankrupt debtor in most other Circuits, he would not presently have a civil judgment of $1,176,971.60 recorded against him.

It is also nearly certain that in the absence of Supreme Court review, Rooker-Feldman bankruptcy-related conflicts will continue to afflict the federal courts. Given the current lack of consensus, there is virtually no chance that the lower courts will be able to resolve their differences without direction from this Court. The

unique aspect of bankruptcy appellate procedure, whereby a single district court judge often effectively has the final word, increases the likelihood of more outlier Rooker-Feldman decisions going forward. Without this Court's interdiction, a worsening of the extant circuit split is more likely than not.

2. The Second Circuit has sanctioned a district court bankruptcy appeal opinion which was a radical departure from the long-accepted course of jurisprudence on this issue.

Although the Federal Bankruptcy Acts which are the precursors of the present-day Bankruptcy Code, did specify the Supreme Court[1] as the authority having jurisdiction to review state court judgments purported to have been granted in violation of bankruptcy law a watershed 1940 case in this Court is instructive in several respects. In Kalb v. Feuerstein 84 LED 370, 308 US 433-444, decided January 2, 1940, it was held that the filing of a bankruptcy petition triggers an "automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property..." Id. at 375.

In Kalb, the Supreme Court of the State of Wisconsin had held that the stay provisions of the Bankruptcy Act were not self-executing, and therefore, in the absence of a specific judicial stay, the subject foreclosure and sale were valid and not in violation of the Act. This Court reversed and remanded.

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1. The Rules of Appeal at the time likewise gave rise to a reasonable inference that only this Court had such power: "Appeal §599 Federal Questions-bankruptcy-stay of foreclosure actions.
3. A determination by a state court of the question whether a provision of the Bankruptcy Act operates as an automatic stay of foreclosure proceedings in state courts presents a Federal question subject to review by the Supreme Court."

By the findings in Kalb, this Court helped bring clarity to to lower court bankruptcy jurisdiction questions. Being that the Stay was found to be self-executing, then it operates as an injunction against, inter alia, state court proceedings to collect pre-petition debts of the bankrupt debtor, and such injunction issues automatically on the petition date.

Therefore, a state court which issues a judgment in contravention of the Stay has proceeded without jurisdiction, and has also thereby engaged in an impermissible modification of the Stay. When a bankruptcy court enforces its pre-existing injunction, it is not second-guessing a state court after the fact, but rather, it is the state court which second-guessed or otherwise misread or ignored the federal court injunction.

Even if the Rooker-Feldman doctrine could be properly applied in bankruptcy jurisprudence, the four-part jurisdictional short-cut test it spawned in many of the circuits is fraught with risk of fundamental errors.

At least two such subsidiary errors occurred here. A determination was made that the state court judgment preceeded the commencement of the district court (i.e. bankruptcy court by standing order of reference) proceedings. This would appear to meet one of the prongs of the Second Circuit's four-part Rooker-Feldman quiz. While it is true that the adversary proceeding was initiated after and in part as a result of the state court judgment, the district court started the clock at an arbitrary point in medias res.

An adversary proceeding is just that— a proceeding among adversaries within an overarching bankruptcy case. For this reason, it is required that the proceeding be captioned with the complete

bankruptcy case title, case number, and Chapter number, above the adversary parties caption and adversary proceeding number. It is therefore the bankruptcy petition date which is determinative of which came first— state judgment or federal jurisdiction. Here, the petition date preceeded the state court judgment by approximately six years, and the commencement of the state case by four.

Another Rooker-Feldman test-prompted error is readily apparent in the subject decision:

> "In order to find in the appellant's favor, Judge Lord would have had to determine that "the state court wrongly decided the issues before it," which Rooker-Feldman does not allow."
>
> (Memo, Decision & Order p. 9 Appx at 5)

While the question of a court's jurisdiction with respect to the Automatic Stay could be loosely termed one of the issues before the court, it is deceptive to place it on the same plane as the causes of action, evidence, etc. of the case itself. Jurisdiction is rather, a gatekeeping question— arguably the most important— and if that question is answered incorrectly in the affirmative, then the case is a nullity and no actual "issues" were enforceably decided by it.

The Ninth Circuit in Gruntz cited Kalb to succinctly wrap up these questions:

> "In sum, by virtue of the power vested in them by Congress, the federal courts have the final authority to determine the scope and applicability of the automatic stay. "The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land." Kalb, 308 U.S. at 439. Thus the Rooker-Feldman doctrine is not implicated by collateral challenges to the automatic stay in bankruptcy. A bankruptcy court simply does not conduct an improper appellate review of a state court when it enforces an automatic stay that issues from its own federal statutory authority. In fact, a reverse Rooker-Feldman situation is presented when state courts decide to proceed in derogation of the stay,

because it is the state court which is attempting impermissibly to modify the federal court's injunction."

(Gruntz at 21-22)

As important as Kalb was for precedent and guidance in deciding federal vs. state jurisdictional and deference questions, one must delve into the body of the facts of the case to find an illustrative narrative of the perils of the shirking of lower federal courts' unflagging duty to exercise jurisdiction, as the Second Circuit has assented to here. Through inattentive hasty application of the Second Circuit-approved yet flawed Rooker-Feldman four-part test,[1] the district court talked itself out of its own proper jurisdiction in place at least since Kalb eighty years ago.

Ernest Kalb was a Wisconsin farmer whose farm was purchased by the mortgagees at a foreclosure sale which was confirmed subsequent to Kalb having filed a petition for bankruptcy protection. The Supreme Court of the State of Wisconsin sustained a lower state court dismissal of his suit against the mortgagees and others for inter alia, violation of the bankruptcy court's exclusive jurisdiction over the farmer and his property.

His suit was brought "against the mortgagees, the sheriff, and the judge who confirmed the foreclosure sale and issued the writ of assistance, seeking damages for conspiracy to deprive plaintiff of possession, for assault and battery, and for false imprisonment." Kalb at 372

1. The test is: 1. The federal court plaintiff lost in state court. 2. The plaintiff complains of injuries caused by the state court judgment. 3. The plaintiff invites district court review of the judgment; and 4. The state court judgment was rendered before the district court proceedings commenced.

While Kalb was asserting, correctly as it turned out, that he was lawfully under federal law remaining in his home, he was apparently physically dragged out of his home, off his farm, and jailed. This is just one of countless unconscionable scenarios along the detour the Second Circuit has just taken. Kalb's property was acquired by the mortgagees. A more common occurrence is that a blameless unrelated third party submits the winning bid in a mortgage foreclosure. In that case, for example, a young couple may renovate and move into their first home purchased at a foreclosure auction, only to be notified later that their deed is invalid under federal bankruptcy law.

The Second Circuit's departure from eighty years of accepted jurisprudence must be checked before exploited by creditors and an almost unthinkable extent of harm ensues. "It is but slight hyperbole to say that chaos would reign in such a system." Gruntz at 24.

3. The Second Circuit has decided this important federal question in a way which is contrary to several relevant decisions of this Court, and which flouts this Court's emphatic admonishments on the failure of lowers courts to exercise due federal question jurisdiction.

The clear direction this Court provided in Kalb as discussed in detail supra, should have precluded the tack taken here by the Second Circuit. A more recent series of general admonitions regarding over-application of Rooker-Feldman renders their decision

all the more unaccountable:

First, Justice Ginsburg delivering the unanimous opinion of this Court:

> "This case concerns what has come to be known as the Rooker-Feldman doctrine, applied by this Court only twice, first in Rooker v. Fidelity Trust Co. (1923) then, 60 years later, in District of Columbia Court of Appeals v. Feldman (1983). Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the Rooker and Feldman cases, overriding Congress' conferral of federal court jurisdiction concurrent with jurisdiction exercised by state courts... In the case before us, the Court of Appeals for the Third Circuit misperceived the narrow ground occupied by Rooker-Feldman, and consequently erred in ordering the federal action dismissed for lack of subject-matter jurisdiction. We therefore reverse the Third Circuit's judgment."
>
> (Exxon Mobil Corp. vs. Saudi Basic Indus. Corp., 544 US 280, 283, 284 125 S. Ct. 1517, 1521, 161 L. Ed. 2d (2005)) (internal citations omitted)

Then, in a per curiam opinion the following term:

> "Neither Rooker nor Feldman elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since Feldman have tended to emphasize the narrowness of the Rooker-Feldman rule... Indeed, during that period, this Court has never applied Rooker-Feldman to dismiss an action for want of jurisdiction. In Exxon Mobil, decided last term, we warned that the lower courts have at times extended Rooker-Feldman far beyond the contours of the Rooker and Feldman cases... A more expansive Rooker-Feldman rule would tend to supplant Congress' mandate under the Full Faith and Credit Act... The judgment of the District Court is vacated, and the case is remanded for further proceedings consistent with this opinion."
>
> (Lance v. Dennis 546 US 459, 464, 467 126 S Ct 1198, 163L Ed 2d 1059 (2006))
>
> (internal citations omitted)

And, then again in 2011, Justice Ginsburg delivering the opinion of this Court:

> "Skinner's litigation, in light of Exxon, encounters no Rooker-Feldman shoal. If a federal plaintiff present[s]

> [an] independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court... There was, therefore no lack of subject matter jurisdiction over Skinner's federal suit... For the reasons stated, the judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion."
>
> (Skinner v. Switzer 562 US 521 131 S Ct 1289, 179L Ed 2d 233, 243, 246 (March 7, 2011)
> (Brackets in original) (internal citations omitted)

The above-cited words from three cases in the High Court should have been sufficient to deter the Second Circuit's sanction of the district court's reflexive disavowal of Congressionally mandated lower court jurisdiction. Unfortunately, the guidance of this Court went unheeded, and another Rooker-Feldman related interdiction is now essential.

4. This decision, if left standing, will seriously undermine conformance with the Constitution's mandate of Bankruptcy Law uniformity as applied among the states.

The United States Constitution, Article I, §8 states that "The Congress shall have Power To... establish... uniform Laws on the subject of Bankruptcies throughout the United States;"

To fulfill this mandate, jurisdiction and authority over bankruptcies have been vested in the federal district courts since virtually the beginning of the Nation. See e.g. Bankruptcy Act of 1800, §2, 2 Stat. 19, 21; Bankruptcy Act of 1841, §6, 5 Stat. 440, 445; Bankruptcy Act of 1867, § 1, 14 Stat. 517; Bankruptcy Act of 1898, §2 30 Stat. 544, 545.

The expansive application of the Rooker-Feldman doctrine as now sanctioned by the Second Circuit would seriously undermine the uniform bankruptcy system as manifested through the Bankruptcy Code. If state courts are permitted to issue binding judgments which effectively modify the federal injunction emanating from the Automatic Stay, as was the case here, the existing regime, whereby each class of creditors is treated equally in bankruptcy, would be replaced by a creditors' race to the state courthouse. Even if this malady were to be confined to the Second Circuit, the ambit of which includes the financial capital of the world, the Constitution's mandate of bankruptcy law uniformity would be substantially dishonored.

Perhaps the best way to encourage violation of a law is to publicly announce that the law, and in fact, the Constitution will not be enforced. Astonishingly, that is precisely what the Second Circuit has done here. The district court invoked the Rooker-Feldman doctrine to effectively hamstring itself, and the Second Circuit approved.

This Court has always considered the resolution of a split among the circuits to be one of its highest priorities. When the outlier circuit has taken a position which is not merely an errant interpretation of a statute, but has done so with the result being a violation of a Constitutional mandate of uniformity among the states [circuits], then the priority and urgency of rectification is even higher than a quotidian circuit split.

Given the well-known creativity and aggressiveness of creditors' and collection attorneys, it would not be an overstatement to say that time is of the essence.

5. The same Rooker-Feldman rationale as condoned by the Second Circuit, if unchecked, will have harmful spill-over effects on the enforcement and uniform application of other Bankruptcy Code provisions, and of federal law generally.

Here, the Second Circuit has given its stamp of approval to the district court's reasoning and conclusion that the Rooker-Feldman doctrine deprives it and the bankruptcy court of jurisdiction to remedy state court violations of the Automatic Stay.

If one views the Automatic Stay as a temporary restraining order or injunction, the discharge order is analogous to a permanent injunction against attempts to collect a debt. Applying the identical Rooker-Feldman "test" at issue here, renders bankruptcy and lower federal courts equally impotent to rectify violations of a discharge order. Under such a scenario, creditors would have little or no disincentive to violate discharge orders.

In these times of frequent sale and other transfer of debt, and the sale of delinquent receivables at a discount to third-party collection entities, the assignees thereof would lack motivation to be diligent in ascertaining if acquired debt from the confines of the Second Circuit had been discharged.

The Second Circuit Court of Appeals has now invited the toppling of the two bookends of bankruptcy case administration—the Automatic Stay and the discharge of debt. Other long-standing proper exercise of lower court federal question jurisdiction will, if no corrective measures are taken, likely join in the cascade.

Each of the five distinct reasons presented herein, even standing alone, meets the high bar this Court sets for eligibility for its intervention. Taken together however, the intercircuit conflict, the radical departure from abiding jurisprudence, the disregard of Constitutional mandate and of this Court's guidance, coupled with the likely derivative harm to the federal judiciary, the confidence therein, and to the public, ranks this case exceptionally warranting of this Court's attention.

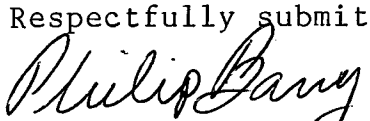
This case furthermore offers this Court an ideal opportunity to issue an emphatic admonition to the lower courts with respect to abdication of proper federal jurisdiction. By doing so, this Court may, albeit belatedly through no fault of its own, fulfill Justice Stevens' aspiration for an enduring end to thus far perennial Rooker-Feldman-induced error.

CONCLUSION

The writ of certiorari should be granted.[1]

Dated: January 8, 2020

Respectfully submitted,



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Joint Base MDL, NJ 08640

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1. Although not directly the subject of this Petition, this Court may wish to consider exercise of its supervisory authority in response to two disturbing aspects of the lower courts' orders. The district court stated that, "any appeal would not be taken in good faith," which is tantamount to a finding of frivolousness, and attempted to block appellate review of its own decision by denying forma pauperis status for purpose of an appeal. Similarly, the 2nd Circuit stated that the issue wasn't "arguable."

CERTIFICATE OF SERVICE

I, the undersigned Philip Barry, hereby affirm under penalty of perjury that a true copy of the Petition for Writ of Certiorari submitted herewith was addressed to Jared Rich Esq., attorney for the respondents, 44 Court Street, Suite 917, Brooklyn, NY 11201, and deposited in the outgoing inmate legal mail at Fort Dix, New Jersey on January 14, 2020 with sufficient First Class Postage affixed thereto.

Dated: January 14, 2020

Philip Barry

CERTIFICATE OF MAILING

I, the undersigned Philip Barry, Petitioner, hereby affirm under penalty of perjury that the Petition for Writ of Certiorari submitted herewith, along with supporting documents, were deposited in the outgoing legal mail system at Fort Dix, New Jersey on January 14, 2020 with sufficient First Class Postage affixed thereto.

Dated January 14, 2020

Philip Barry
Petitioner pro se