7/10/19

No. 19-84

In the Supreme Court of the United States

LAWRENCE MULLIGAN,

Petitioner,

v.

BRUCE JALBERT and PAMELA JALBERT,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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JULY 10, 2019

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QUESTION PRESENTED

Whether the United States Circuit Court of Appeals erred when it affirmed the granting of Respondents' Motion for Summary Judgment based exclusively on collateral estoppel, which Motion lacked any reference to the State Court Record as required by the applicable law of the State of Connecticut, thereby failing to accord Full Faith and Credit to the law of that State, thus denying Petitioner Due Process of Law.

PARTIES TO THE PRECEDINGS BELOW

PETITIONER

- Lawrence R Mulligan was the Defendant in a civil action in the Superior Court State of Connecticut, Judicial District of Waterbury bearing Docket Number UWY CV-08-6001044 S; *Jalbert v. Mulligan*, 153 Conn. App. 124 (2014); *Jalbert v. Mulligan*, 315 Conn. 901 (2014), a Debtor in a Chapter 7 bankruptcy proceeding for non-dischargeability, *IN RE: Lawrence R. Mulligan and Renee T. Mulligan*, Debtors; *Bruce K. Jalbert and Pamela D. Jalbert*, v. *Lawrence R. Mulligan*, 577 B.R. 6 (Bkrtcy. D. Conn. 2017); and the Appellant in the United States District Court for the District of Connecticut and the Court of Appeals for the Second Circuit.

RESPONDENTS

- Bruce K. Jalbert and Pamela D. Jalbert were Plaintiffs in the Superior Court civil action; the non-dischargeability action before the Bankruptcy Court, and Appellees in the District Court for the District of Connecticut and the Court of Appeals for the Second Circuit.

LIST OF ALL PROCEEDINGS

Bruce K. Jalbert et al. v. Lawrence R. Mulligan et al.
Superior Court of Connecticut,
Judicial District of Waterbury
Case No. UWY CV-08-6001044-S
Decision Date: June 11, 2013 (App.64a)

Bruce K. Jalbert et al. v. Lawrence R. Mulligan et al.
Court of Appeal of Connecticut
Case No. AC 35824
Decision Date: September 23, 2014 (App.41a)

In re: Mulligan Lawrence R. Mulligan
and Renee T. Mulligan
United States Bankruptcy Court,
District of Connecticut, New Haven Division
Case No.: 10-50037 (AMN), Chapter 7
Adv. Pro. No. 10-05023 (AMN)
Decision Date: October 27, 2017 (App.13a)

Lawrence R. Mulligan v.
Bruce K. Jalbert and Pamela D. Jalbert
United States District Court, Connecticut
Case No. 3:17-cv-01873 (JAM)
Decision Date: May 3, 2018 (App.9a)

In re Lawrence R. Mulligan, Lawrence R. Mulligan v.
Bruce K. Jalbert, Pamela Jalbert
United States Court of Appeals, Second Circuit
Case No. 18-1657
Decision Date: March 5, 2019 (App.1a)
Date of Order Denying Motion for Rehearing
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- *Jalbert v. Mulligan*, UWYCV086001044S, Superior Court of Connecticut, Judicial District of Waterbury (2013).
- *Jalbert v. Mulligan*, 153 Conn. App. 124, 101 A.3d 279, *cert. denied*, 315 Conn. 901, 104 A.3d 107 (2014).
- *In re Mulligan*, 577 B.R. 6 (2017).
- *Mulligan v. Jalbert*, United States District Court, Connecticut, Docket No. 3:17-cv-01873 (JAM) (May 3, 2018).
- *In re Lawrence R. Mulligan, Lawrence R. Mulligan v. Bruce K. Jalbert, Pamela Jalbert*, United States Court of Appeals, Second Circuit, Docket No. 18-1657
- *In re Lawrence R. Mulligan, Lawrence R. Mulligan v. Bruce K. Jalbert, Pamela Jalbert*, United States Court of Appeals, Second Circuit, Order Denying Motion for Rehearing and Rehearing *en banc*, Docket No. 18-1657

JURISDICTION

The order denying a timely filed Motion for Rehearing and Rehearing *en banc*, was denied by the United States Court of Appeals, Second Circuit was entered on April 15, 2019. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Jurisdiction in the court of first instance, the Connecticut Bankruptcy Court, New Haven Division, was invoked under 28 U.S.C. §§ 1334(b) (App.103a) and 157(b) (App.105a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following Constitutional and statutory provisions are set forth in the appendix:

- U.S. Const. Art. IV, § 1 (App.101a)
- U.S. Const. amend. V (App.102a)
- U.S. Const. amend. XIV (App.102a)
- 11 U.S.C. § 523(a)(4) (App.103a)
- 28 U.S.C. § 1254(1) (App.103a)
- 28 U.S.C. § 1738 (App.101a)
- 28 U.S.C. § 1334(b) (App.103a)
- 28 U.S.C. § 157(b) (App.105a)

STATEMENT OF THE CASE

Rules of the Supreme Court of the United States adopted April 18, 2019, effective July 1, 2019, Rule 10 § (c):

> (c) a state court or a United States court of appeals has decided an important question

> of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

On January 8, 2010 (the "Petition Date"), the Debtor and his spouse, Renee T. Mulligan, filed a voluntary petition for relief under Title 11 of the United States Code (the "Bankruptcy Code").

As of the Petition Date, Petitioner was a defendant in a civil action brought against him by Respondents which was then pending in the Superior Court, Judicial District of Waterbury under Docket No. UWY CV-08-6001044S (the "State Court Action"). The details of the State Court action are not relevant to the questions presented in this Petition.

After a three-day court side trial, Connecticut State Superior Court Judge Robert Shapiro found in favor of Respondents and against Petitioner on 4 of the 5 state counts they brought in the Superior Court. The Court found in favor of Petitioner on Respondents' count in fraud.

The State action resulted in a money judgment against Petitioner and in favor of Respondents.

On March 29, 2010, the Plaintiffs filed a five-count Complaint against Debtor Objecting to Dischargeability of Debt (the "523 Complaint") with the Bankruptcy Court, State of Connecticut, New Haven Division.

All counts of the 523 Complaint brought under section 523(a)(4) were asserted to be non-dischargeable "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny".

At a June 15, 2010 hearing, the Court, by Judge Alan Shiff, was apprised of the pendency of the State Court Action. In response, the Court suggested that the parties finish the State Court Action. This order was not reduced to writing.

The Bankruptcy Court proceeding then went forward before Judge Ann Nevins who was appointed to fill the vacancy created by Judge Alan Shiff's retirement.

There is no question that the law of the State of Connecticut applies as to collateral estoppel application.

Respondent made a motion for summary judgment based exclusively on collateral estoppel. The motion was only supported by an attached copy of Judge Shapiro's Decision with no required references to the Record necessary in their effort to establish entitlement to collateral estoppel as to each factual finding proposed. Connecticut requires the record of the original trial or other tribunal be scrutinized and the Bankruptcy Court's attention drawn to those parts of the Record which show the fact findings in the Decision are supported by that Record.

The Bankruptcy Court's Amended Memorandum of Decision and Order on Motion for Summary Judgment recited the Court's belief that neither party nor the Court was entitled (thus, not obligated) to look to or refer to the State Court trial Record in support of collateral estoppel, despite the Court's plenary jurisdiction and its reference to a leading Connecticut case to the contrary.

When seeking collateral estoppel, Connecticut law specifically requires either the Court or the moving party direct the Court's attention to those parts of the Record (including but not limited to the Decision) to show the Record supports the following criteria:

- The fact issue(s) must have been a necessary finding supporting a valid verdict;
- The fact issue must have been in support of a different claim than that under consideration;
- The fact issue(s) must have been determined by the earlier tribunal;
- The fact issue(s) must have been actually defended by the non-moving party;
- The fact issue(s) must be identical to the fact issue necessary to the claim before the current Court.

Lighthouse Landings, Inc. v. Connecticut Light & Power Co., 300 Conn. 325, 15 A.3d 601 (2011) (cited by Judge Nevins in her Memorandum (Nevins' Amended Memorandum of Decision and Order, p. 11, App.26)

For practical reasons, the burden is on the moving party to direct the court's attention to those portions of the trial Record which support his claim that each requirement is supported therein, although the Court has the right to conduct that review based on its plenary jurisdiction. In a case which is appropriate for collateral estoppel application, these requirements can be easily met, however, these criteria for collateral estoppel application cannot be determined without such review of the entire Record.

The Second Circuit previously recognized the burden on the moving party both as to the extraordinary benefits of summary judgment and collateral estoppel:

> The material factual issue in the case at bar is whether the arbitrator denied BBS's breach of fiduciary duty claim on its merits, or for some other reason. To obtain summary judgment on collateral estoppel grounds, the defendants must make a showing so strong that no fair-minded jury could fail to find that the arbitrator necessarily denied the claim for the reason they assert. This is a heavy burden, and it cannot be met with equivocal evidence. Only after the moving party meets the initial burden does the burden shift to the non-moving party.

BBS Norwalk One, Inc. v. Raccolta, Inc., 117 F.3d 674, 677 (Cir. 1997). (citations omitted).

As Respondents did not refer to any portion of the Record in support of their Motion, and Judge Nevins believed she was prohibited from doing so, Petitioner's opportunity to defend those claims never materialized. The Motion should have been denied for failure to meet the requirements of Connecticut law.

> In this last respect, the plaintiffs have performed unsatisfactorily. They have not shown with clarity and certainty that the issues, as they relate to the exception to discharge provision of the Bankruptcy Code, have been previously determined in the NASD arbitration proceeding because they have not pinpointed those issues in the record

> with any exactitude, and this simply because they have left it to this Court to establish the record for them.

Arizona Tomato, L.L.C. v. Guccione (In re Guccione), 268 B.R. 10, 15 (2001).

". . . the burden of supplying the Court with a record that pinpoints the controlling facts and exact issues litigated requires 'at least a modicum of effort to direct the Court to those portions of the record which best serve the Plaintiffs' argument.'" *Arizona Tomato, L.L.C. v. Guccione (In re Guccione)*, 268 B.R. at 16 (Bankr. E.D.N.Y. 2001);

"The Court most certainly will not engage in a mining expedition, in which it must extract isolated nuggets of testimony of witnesses and findings . . . which will then create the plaintiffs' case for them; let the plaintiffs' counsel proceed to pinpoint." *Arizona Tomato, L.L.C. v. Guccione (In re Guccione)*, 268 B.R. at 16, *see also U.S. v. McLee*, 436 F.3d 751, 760 (7th Cir. 2006) (noting that it is not the court's obligation to "research and construct legal arguments open to parties, especially when they are represented by counsel");

Morrissey v. Stuteville, 349 F.3d 1187, 1189 (9th Cir. 2003) ("the duty of the court is not to develop the debtor's arguments for him, find the legal authority to support those arguments, or guess at what part of the record may be relevant").

Regarding the actually defended requirement, it has been held by the Eighth Circuit that a non-moving party may succeed in this argument even if he had the opportunity to defend but there existed reasons

why a fact issue was not vigorously defended by him "because he may have had little incentive to defend vigorously." *American Federation of Television and Radio Artists Health and Retirement Funds v. WCCO Television, Inc.*, 934 F.2d 987, 991 (Cir. 1991), *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979). (Emphasis supplied).

Collateral estoppel cannot be fairly deliberated without review of the trial record.

As described in an early case on point in a Connecticut matter,

> To insure such an identity of standards [in a collateral estoppel analysis], a bankruptcy court must scrutinize the entire record of the state court proceedings. In the present case, the record consists of pleadings filed in state court . . . , a promissory note signed by the debtor, a Judgment on Stipulation also signed by the debtor, and a transcript of the proceedings before Judge Naruk . . .

MA&M Inc. v. Supple (In the Matter of Supple), 14 B.R. 898, 904 (Bankr. D. Conn. 1981) (Emphasis supplied).

In a Florida based case, this Court on a similar issue said:

> Where a previous judgment of acquittal was based upon a general verdict . . . [the rule of collateral estoppel] requires a court to examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that

> which the defendant seeks to foreclose from consideration.

Simpson v. Florida, 403 U.S. 384, 385, 91 S.Ct. 1801, 29 L.Ed.2d 549, (1971). (Emphasis supplied) (citations omitted).

Connecticut case law citations describing these requirements were brought to the Bankruptcy Court's attention in Petitioner's Opposition to Motion for Judgment filed 07/15/13. (CT Bankruptcy Ct., Doc. No. 57).

The Bankruptcy Court's reasoning for not requiring Record review:

> The decision of the State Court was appealed and affirmed; it is therefore a final judgment and this court has no authority to review final judgments of a state court in judicial proceedings.

Judge Nevins' Amended Memorandum of Decision and Order. (App.34a) (citation omitted).

Petitioner submits the crux of the error was Judge Nevins' expressed opinion that any review of or reference to the trial Record was the equivalent to relitigating the facts of the trial, therefore not permitted. This opinion was shared by the Appellate Courts despite Petitioner's effort to describe the distinction between relitigation and review. If Judge Nevins is correct, plenary jurisdiction has no meaning.

While the Bankruptcy Court enjoyed plenary review over the State Court Record in respect to the summary judgment issue, (Nevins' Amended Memorandum of Decision and Order, p. 10, App.24, 25, citing

Kearney v. New York State Dep't of Corr. Servs, 581 F. App'x 45, 46 (2d Cir. 2014), *cert. denied*, 135 S.Ct. 2919, 192 L.Ed.2d 932 (2015), *reh'g denied*, and also as to collateral estoppel "Application of the doctrine of collateral estoppel is a question of law over which we exercise plenary review." *Lighthouse Landings, Inc. v. Connecticut Light and Power Co.*, 300 Conn. at 345, Judge Nevin's opinion that Record review was prohibited by the Constitution is not reconcilable with the Court's plenary review power, which power was not employed for either summary judgment or collateral estoppel consideration.

The District Court said it plainly,

> Indeed, the whole point of collateral estoppel is to pretermit [prevent] a review of the underlying evidence where there have been factual findings in another proceeding between the same parties by another competent court of jurisdiction."

District Court Order (App.11a) (Emphasis supplied). This position is in direct conflict with Connecticut law as described herein.

A clear illustration of the Court's misunderstanding of Petitioner's description of required Record review, not relitigation, is set forth by the Second Circuit Court of Appeals:

> Indeed, the review in which Mulligan urges the federal courts to engage-looking to the state court record to determine whether the state court's factual findings were correct-is not a prerequisite to collateral estoppel, but

> rather precisely the review that this doctrine precludes."

Court of Appeals Summary Order (App.7a).

Petitioner made no such request.

If this Decision is left as the law of the land, applications for collateral estoppel will become based on decisional review only, thereby eliminating the non-moving party's ability to defend the application. Its approval without the Record will result in a foregone conclusion in favor of collateral estoppel, even where not appropriate, as in this matter. This is not Connecticut law. Petitioner's ability to show the Court that collateral estoppel should not apply to a particular fact finding, which he submits he was entitled to do, was thereby eliminated.

In *Matter of Herman*, 6 B.R. 352, 357 (1980), the District Court for the Southern District of New York affirmed the Order of the Bankruptcy Court which had performed its own extensive review of the record of the trial court:

> Judge Lewittes [Bankruptcy Court] did not ipso facto accept the state court findings as to fraud. Rather, he made his own independent and extensive examination of the state court record, and thereafter applied federal law to the state court findings of fact.
>
> Accordingly, Judge Lewittes concluded, "My examination of the pleadings, evidence and charge in the state court action convinces me that the jury, on the evidence presented to it, and on the law as charged by the court, could, and did, rationally find facts adequate

> to hold for the plaintiff on its fraud and noted earlier, tracks those acts deceit cause of action, which, as sufficiently, in my judgment, to bar a discharge under Bankruptcy Act § 17a(2).

Id at 358. (Emphasis supplied).

In their decisions, none of the three Courts below discussed Connecticut's requirements of record review set forth in the Connecticut case law cited in Petitioner's several Briefs on appeal. If the final order is permitted to stand, it does, by implication, result in a Circuit Court of Appeals decision that every fact finding in every decision of every state trial court and administrative tribunal is based on facts that do exist in the record of those proceedings, without any confirmation.

As a simplistic illustration, if a state court decision found that a particular defendant was intoxicated at the time of an accident, but a review of the trial record indicates an absence of any evidence of such intoxication, collateral estoppel would not apply to that fact finding under Connecticut law, but would nevertheless be applied based on the decisions in this matter. The defending party would be denied the benefit of the State law under full Faith and Credit and thus create a likelihood of being denied due process and a fair trial on that fact issue. The required reference does not require relitigation but is rather a safeguard against the unfair application of the collateral estoppel doctrine.

> We also have explained that "[c]ourts should be careful that the effect of the doctrine [collateral estoppel] does not work an injustice. . . . Thus, [t]he doctrines of preclusion . . .

> should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies."

Lighthouse Landings, Inc. v. Connecticut Light and Power Co., 300 Conn. at 344-345. (citations omitted).

Petitioner has found no case involving collateral estoppel, except this one, which indicates a request for collateral estoppel application can be granted by a review of a court or tribunal decision alone.

It is clear from a review of Connecticut case law that the requirements imposed upon the moving party exist for the protection of the non-moving party's right to a fair trial. Collateral estoppel is an extraordinary remedy that runs the risk of denying the non-moving party's constitutional right to a fair trial and should be applied cautiously. *First American Title Ins. Co. v. Moses (In re Moses)*, 10-51769-ess, 2013 WL 3804721, at *6 (Bankr. E.D.N.Y. July 19, 2013) and *In re Moses*, 547 B.R. 21, Bkrtcy. E.D.N.Y. (2016), finding collateral estoppel did not apply and the debt was dischargeable.

There, specifically relating to the § 523 case before this Court, "collateral estoppel 'must be applied with the utmost caution' to avoid inflicting upon a debtor the 'severe' consequences of denying the discharge of debts where such denial may not be warranted." *First American Title Ins. Co. v. Moses (In re Moses),* 10-51769-ess, 2013 WL 3804721. (citations omitted).

It is therefore submitted that the Bankruptcy Court's failure to apply full faith and credit as to the case law of the State of Connecticut with respect to

this Motion for Summary Judgment, concluding in its Amended Decision finding non-dischargeability based on defalcation as to one 523 Complaint Count was error, an error that has far reaching effect. Does this Decision eliminate the record review obligation in the several states that require it in any decision from another state or a federal court? Does it affect plenary jurisdiction? Does it create an exception to a state court's obligation to give Full Faith and Credit to the law of another state or a federal court' obligation to a state law?

The lack of due process and the opportunity of a fair trial of those fact issues to which collateral estoppel should not apply, demonstrates the inherent danger of the erroneous granting of collateral estoppel.

> . . . the preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute, which provides that state judicial proceedings shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.
>
> 28 U.S.C. § 1738. This statute directs a federal court to refer to the preclusion law of the State in which judgment was rendered. It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by

> the State from which the judgment is taken. Section 1738 embodies concerns of comity and federalism that allow the States to determine, subject to the requirements of the statute and the Due Process Clause, the preclusive effect of judgments in their own courts. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274, 53 U.S.L.W. 4265 (1985). (citations omitted).

The Second Circuit described Petitioner's argument as:

> Mulligan argues that . . . the court was required to inquire into the record underlying the state court's judgment to determine whether the issues were fully and fairly litigated and the judgment valid. (Court of Appeals Summary Order, p. 5, App.6a)[1].

This is a true description of Petitioner's position as to those two criteria, which he submits is in accord with Connecticut law.

Mulligan asserts that Connecticut law requires an inquiry into the record underlying a state court judgment to confirm whether that judgment is "valid." That assertion misconceives the doctrine of collateral

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[1] Petitioner included in his Brief to the Court of Appeals an illustration of the determination of verdict validity for collateral estoppel and the necessity to look beyond the Decision alone. The statement was not submitted for adjudication by the Court of Appeals as it was an issue not raised in the lower Courts and its adjudication cannot occur until after the moving party sets forth its position based on Record support. Non-moving parties cannot be expected to defend in a vacuum.

estoppel. (Court of Appeals Summary Order, p. 6, App. 6a, 7a). (citation omitted).

This statement is accurate as to that requirement and is precisely what Connecticut case law requires as indicated in the cases cited herein.

Connecticut state law determines the validity of a judgment in that state. The claim and allegations of fact must be set forth in the pleadings and papers, such that adequate notice was provided to the defendant of the specific claims being made against him. Any discussion of this criteria can only be considered by looking outside the decision alone.

Judge Nevins' Opinion was affirmed by the District Court (Judge Jeffrey Alker Meyer) and the Second Circuit Court of Appeals, by Judges Walker, Livingston and Katherine Polk Failla (sitting on assignment from the Eastern District), without any discussion of the Connecticut case law submitted.

WAIVER

In her Amended Memorandum of Decision and Order filed October 27, 2017 Justice Nevins stated "at a hearing held before the undersigned on these motions on May 3, 2016, the parties acknowledged that the court could not reconsider findings of fact made by the trial court . . . " (Nevins' Amended Memorandum of Decision and Order, p. 7, App.21a). The Court misunderstood this discussion because it believed review and relitigation were synonymous. That discussion had nothing to do with the moving party's obligation to refer the Court's attention to relevant portions of the Record in support of their Motion, as

Connecticut law requires. Connecticut's requirements do not imply relitigation of facts.

Regardless of this discussion, Respondents' Motion papers were fully filed almost three years before this discussion, the last on August 30, 2013 and contained no reference to the trial Record, so their Motion papers could not have been influenced by any post-motion conference. The Bankruptcy Court was, from the outset, independently of the opinion that no review nor discussion of the Record beyond the State Decision was permitted. This position, shared by the District Court and the Court of Appeals, cannot be reconciled with Connecticut collateral estoppel law nor the Bankruptcy Court's plenary jurisdiction related thereto.

Regarding the references by all three Courts to Petitioner's waiver of all legal requirements for collateral estoppel application, as described earlier, the Courts misconstrue the above conversation. Petitioner's then attorney only agreed the Court had no power to relitigate facts.

At that same conference, on May 3, 2016, (Audio File CT Bankruptcy Ct. Doc. No. 92 at 6:30 minutes), Petitioner's then counsel argued to the Court that it did have the right to review the trial Record. The Court disagreed. It said:

> Is there a finding about this? I can't go back and look at people's testimony. I really need to . . . focus on what the State Court has already done in sifting through testimony in its opinion. Is there something in the opinion you can point too?

Petitioner never waived any requirements for collateral estoppel record review.

Petitioner has not been provided the benefits of Connecticut law (as also described in many other jurisdictions) to which he is entitled in order to ensure he might finally have a fair hearing on the non-dischargeability claim.

REASONS FOR GRANTING THE PETITION

Without this Court's clarification, the summary order of the Court of Appeals for the Second Circuit stands for the following propositions:

A party's motion for summary judgment based on collateral estoppel of facts determined in a state court matter is to be decided on a review of the court's or administrative tribunal's decision only, despite State law to the contrary. Plenary jurisdiction does not apply.

As a matter of law, a federal court's consideration of a collateral estoppel request regarding a state proceeding is based on decision review only.

This limited review precludes the possibility of determining whether the state court proceeding resulted in a "valid" verdict, precludes the possibility of determining whether the matter was fairly and vigorously defended by the nonmoving party in the state proceeding and whether the fact finding is identical to the fact to be decided in the current court. No case was found which supports this limited review in a collateral estoppel application.

Failing to grant this Writ will change the procedure for granting collateral estoppel by the Federal Courts, creating a rule of law that ensures that some non-moving parties will be denied their right to a fair trial on the facts at issue.

I. CONFLICT WITH EXISTING DECISIONS

The Decisions in this matter conflict with the Decisions of this Court, Circuit Courts of Appeal, Federal District Courts and Bankruptcy Courts, in addition to those cited herein, such as:

A. Supreme Court Decisions

Dowling v. United States, 493 U.S. 342, 110 S.Ct. 668, 107 L.Ed.2d 708, 58 U.S.L.W. 4124 (1990), (review of testimony);

Simpson v. Florida, 403 U.S. 384, 91 S.Ct. 1801, 29 L.Ed.2d 549 (1971) (as cited herein) (" . . . the rule of collateral estoppel requires a court to examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter . . .) citing *Ashe v. Swenson, id.*

Schiro v. Farley, 510 U.S. 222, 223, 114 S.Ct. 783, 127 L.Ed.2d 47, 62 U.S.L.W. 4064, (1994) ("Specifically, because an examination of the entire record shows that the trial court's instructions on the issue of intent to kill were ambiguous . . . ")

B. Circuit Court of Appeals Decisions

Gjellum v. City of Birmingham, Ala., 829 F.2d 1056, (11th Cir. 1987)

Trikona Advisers, Ltd. v. Chugh, 846 F.3d 22 (2nd Cir. 2017) (applying Connecticut law to collateral estoppel)

C. Federal District Court Decisions

Karin Aparo v. Superior Court for Judicial Dist. of Hartford/New Britain at Hartford, 956 F.Supp. 118, (1996); (review of trial transcript).

United States v. Mock, 640 F.2d 629 (CA5 1981); (review of trial transcript).

D. Bankruptcy Court Decisions

Nate B. And Francis Spingold Foundation, Inc. (In re Halperin), 215 B.R. 321, 336 (Bankr. E.D.N.Y. 2001)

Trost v. Trost (In re Trost), 545 B.R. 193, 205 (Bankr. W.D. Mich. Feb. 3, 2016); (review of trial transcript).

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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JULY 10, 2019

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