

No. _____

In The
Supreme Court of the United States

—◆—

FRED S. PARDES,
A Professional Corporation,

Petitioner,

v.

SUSAN DOAN AS TRUSTEE
OF FIRST COASTAL TRUST,

Respondent.

—◆—

**On Petition For Writ Of Certiorari
To The California Supreme Court**

—◆—

PETITION FOR WRIT OF CERTIORARI

—◆—

FRED S. PARDES, ESQ.
LAW OFFICES OF FRED S. PARDES
A PROFESSIONAL CORPORATION
34145 Pacific Coast Highway, Suite 520
Dana Point, CA 92629
Telephone (949) 443-3400
fred@fredpardes.com
Attorney for Petitioner

January 24, 2020

QUESTIONS PRESENTED

This case involves a dishonest Bankruptcy Debtor [Susan Doan, Respondent] who intentionally failed to include a Two Million (\$2,000,000.00) Dollar Eight Unit apartment complex in her Bankruptcy Schedules.

Doan filed her individual Bankruptcy on April 10, 2010. She intentionally did not list either First Coastal Trust or the Eight Unit apartment complex as an asset in her Bankruptcy Schedules.

After her discharge on January 6, 2011, Doan as Trustee of First Coastal Trust, continuously owned and operated the Units for ten (10) years after her discharge, without disclosing the post discharge operations, rents and profits to her Bankruptcy Trustee or the Bankruptcy Court.

After the Discharge, Pardes who innocently filed his Complaint on July 20, 2010, without any prior knowledge of the Doan Bankruptcy, then resumed prosecution of its complaint, sought and obtained a Default Judgment against only First Coastal Trust, on November 14, 2011.

On October 19, 2017, Doan filed a Motion to Set aside the Default Judgment, on the grounds that it was null and void due to a violation of the Bankruptcy Automatic Stay; to which she was ultimately successful.

1. Whether or not a Dishonest Bankruptcy Debtor, who was and is still in the process of committing a post discharge Bankruptcy Fraud against both

QUESTIONS PRESENTED – Continued

the State and Bankruptcy Courts, has unclean hands and/or is estopped to seek any type of relief in either Court.

2. Whether or not a Complaint innocently filed in a State Court proceeding, without the Creditor's prior knowledge of a pending Bankruptcy Proceeding, is only stayed during the bankruptcy proceedings or is void ab initio.

3. Whether or not a Court can use the Post Discharge Injunction to invalidate a Complaint and/or Judgment, obtained after the discharge of a Debtor, as to assets intentionally not listed in the Bankruptcy schedules.

4. Whether or not the Automatic Stay attaches to intentionally and fraudulently omitted assets, otherwise belonging to a Dishonest Debtor.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below are FRED S. PARDES, A Professional Corporation, as the Petitioner; and SUSAN DOAN as Trustee of First Coastal Trust, as the Respondent.

First Coastal Trust, is a separate business Trust, which was not listed in the Doan Bankruptcy Schedules.

CORPORATE DISCLOSURE STATEMENT

Petitioner Fred S. Pardes, A Professional Corporation, is a privately owned corporation of which One Hundred Percent of the Corporate Stock is owned by Fred Pardes.

There is no parent or publicly held company owning 10% or more of the corporation's stock.

STATEMENT OF RELATED CASES

Fred S. Pardes, A Professional Corp.,
Plaintiff v. Susan Doan, et al Defendant
Orange County Superior Court
Case No. 30-2010-00391251
Judgment Vacated-April 2, 2018

Fred S. Pardes, A Professional Corporation,
Plaintiff and Appellant, v. Susan Doan,
Trustee of First Coastal Trust,
Defendant and Appellant
Court of Appeal Case No. G056170
Opinion Issued August 13, 2019

Fred S. Pardes, A Professional Corporation,
Plaintiff and Appellant, v. Susan Doan,
Trustee of First Coastal Trust,
Defendant and Appellant
Court of Appeal Case No. G056170
Petition for Rehearing denied August 29, 2019

Fred S. Pardes, A Professional Corporation,
Plaintiff and Appellant, v. Susan Doan,
Trustee of First Coastal Trust,
Defendant and Respondent
Supreme Court Case No. S258008
Petition for Review denied October 30, 2019

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS BELOW	iii
CORPORATE DISCLOSURE STATEMENT.....	iii
STATEMENT OF RELATED CASES	iv
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES	viii
OPINIONS BELOW.....	1
JURISDICTION	2
RELEVANT STATUTES.....	3
NECESSITY FOR GRANTING CERTIORARI	5
STATEMENT OF THE CASE.....	7
STATEMENT OF FACTS	9
REASONS FOR GRANTING CERTIORARI	16
1. This Court should grant review to settle an important and recurring question as to whether or not an intentionally “dishonest debtor” has “Unclean Hands” and/or is “Estopped” to assert the Automatic Stay as a defense to claims made against inten- tionally omitted assets of the Bankruptcy Estate.....	16

TABLE OF CONTENTS – Continued

	Page
2. This Court should grant review to settle an important and recurring question as to whether or not the innocent filing of a complaint, without prior knowledge of a pending bankruptcy, which is not prosecuted, during those proceedings is void ab initio.....	18
3. This Court should grant review to resolve the conflict between several states as to whether or not an innocently filed complaint, filed but not prosecuted during the Bankruptcy Proceedings, is stayed, to be prosecuted upon dismissal of the bankruptcy.....	22
4. This Court should grant review to settle an important and recurring question as to whether or not a dishonest debtor was estopped to assert the Automatic Stay and/or the Post Discharge Injunction, as a defense to any post discharge litigation, not otherwise resolved by virtue of the Discharge.....	24
5. The Court should grant Certiorari to settle an important question as to whether or not the Automatic Stay and/or the Post Discharge Injunction attaches to intentionally and fraudulently omitted assets from a Dishonest Debtor’s Schedules.....	26
CONCLUSION.....	27

TABLE OF CONTENTS – Continued

	Page
APPENDIX	
Court of Appeal of the State of California Fourth Appellate District, Opinion, Filed August 13, 2019	App. 1
Court of Appeal of the State of California Fourth Appellate District, Order Denying Rehearing, Filed August 29, 2019	App. 14
Superior Court of California, County of Orange, Minute Order, Filed April 2, 2018	App. 15
Supreme Court of California, Order Denying Pe- tition for Review, Filed October 30, 2019	App. 23

TABLE OF AUTHORITIES

	Page
CASES	
<i>Association of St. Croix Condominium Owners v. St. Croix Hotel Corp.</i> , 682 F.2d 446 (3d Cir. 1982)	25
<i>Barton-Malow Co. v. Gorman Co. of Ocala, Inc.</i> , (1989) 146 A.D.2d 859, 536 N.Y.S.2d 267	18
<i>Ellis v. Consolidated Diesel Elec. Corp.</i> , 894 F.2d 371 (10th Cir. 1990).....	25
<i>Equilon Enterprises v. Consumer Cause, Inc.</i> , (2002) 29 Cal.4th 53.....	23
<i>In re Mid-City Parking, Inc.</i> , (Bankr. N.D. Ill. 2005) 332 B.R. 798	20
<i>In re Schwartz</i> , (9th Cir.1992) 954 F.2d 569	22
<i>In re Shamblin</i> , (9th Cir.1989) 890 F.2d 123	22
<i>In re Smith Corset Shops, Inc.</i> , 696 F.2d 971 (1st Cir. 1982)	24
<i>Matthews v. Rosene</i> , 739 F.2d 249 (7th Cir. 1984).....	24
<i>Shaoxing County Huayue Import & Export v. Bhaumik</i> , (2011) 191 Cal. App.4th 1189	18
<i>Stephens v. County of Tulare</i> , (2006) 38 Cal.4th 793	23
STATUTES	
11 U.S.C. § 362(a)(3)	18
11 U.S.C. § 521	4, 6, 8

TABLE OF AUTHORITIES – Continued

	Page
11 U.S.C. § 524	4
28 U.S.C. §1257(a).....	3

OPINIONS BELOW

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS OR ADMINISTRATIVE AGENCIES.

Fred S. Pardes, A Professional Corp., Plaintiff v.
Susan Doan, et al Defendant Orange County
Superior Court Case No. 30-2010-00391251
Judgment Vacated-April 2, 2018
Unpublished Order – No Citation

Fred S. Pardes, A Professional Corporation, Plaintiff
and Appellant, v. Susan Doan, Trustee of First
Coastal Trust, Defendant and Appellant
Court of Appeal Case No. G056170
Opinion Issued August 13, 2019
Unpublished Opinion – No Citation

Fred S. Pardes, A Professional Corporation, Plaintiff
and Appellant, v. Susan Doan, Trustee of First
Coastal Trust, Defendant and Appellant
Court of Appeal Case No. G056170
Petition for Rehearing denied August 29, 2019
Summary Denial – No Opinion – No Citation

Fred S. Pardes, A Professional Corporation, Plaintiff
and Appellant, v. Susan Doan, Trustee of First
Coastal Trust, Defendant and Respondent
Supreme Court Case No. S258008
Petition for Review denied October 30, 2019
Summary Denial – No Opinion – No Citation



JURISDICTION

On October 30, 2019, the Supreme Court of the State of California’s denied Petitioner’s Petition for Review, of the California Court of Appeal, Fourth Appellate District, Division Three’s decision, “FRED S. PARDES, A Professional Corporation (Pardes) v. SUSAN DOAN AS TRUSTEE OF FIRST COASTAL TRUST (Doan)”, filed on August 13, 2019 (Opinion). A true and correct copy of the October 30, 2019 Supreme Court of the State of California’s denial of Pardes’ Petition for Review of the Opinion, is attached hereto as App. 23, and incorporated herein by this reference.

On August 29, 2019, the Court of Appeals denied Petitioner’s Petition for a Rehearing of its Opinion. A true and correct copy of the denial is attached hereto as App. 14, and is incorporated herein by this reference.

On August 13, 2019, the California Court of Appeal, Fourth Appellate District, Division Three issued its decision in this case, “FRED S. PARDES, A Professional Corporation (Pardes) v. SUSAN DOAN AS TRUSTEE OF FIRST COASTAL TRUST (Doan)”, filed on August 13, 2019 (Opinion). A true and correct copy of the August 13, 2019 Opinion, is attached hereto as App. 1, and incorporated herein by this reference.

11 U.S.C. § 362 was raised on App. 2, on the issue as to whether or not the Pardes Complaint was “Void Ab Initio” was raised on App. 5-8

Since this case involves a Decision by the Supreme Court of the State of California, and involves the interpretation and application of several Federal Statutes, this Court has jurisdiction under 28 U.S.C. § 1257(a), to determine this dispute.



RELEVANT STATUTES

The relevant statutes to this case are:

11 U.S.C. Section 362 (a) which states:

a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, **operates as a stay**, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 521, which states:

(a) The debtor shall (1) file –

(A) a list of creditors; and

(B) unless the court orders otherwise –

(I) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor's financial affairs

...

11 U.S.C. § 524, which states:

a) A discharge in a case under this title –

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; . . .



NECESSITY FOR GRANTING CERTIORARI

A grant of Certiorari concerning these Four (4) issues is necessary to settle important and recurring questions of Bankruptcy law; as well as to protect the integrity, values and sanctity of the Judicial System.

This is a case of First Impression for this Court, which would be of very substantial interest to the Business and Bankruptcy legal communities, as it involves the continuous Fraud and Omissions of a “Dishonest Bankruptcy Debtor”, who is seeking to use the Bankruptcy Protection Automatic Stay/Post Discharge Injunction laws designed to help the “Honest Debtor” obtain a fresh start, perpetrate and continue a ten year old Bankruptcy Fraud against the Bankruptcy Court,

her Bankruptcy Trustee, the State Courts and her unsecured creditors.

In addition, there is no published opinion anywhere which directly addresses the issue as to whether or not a Complaint filed by an innocent Creditor in a State Court proceeding, without prior knowledge of a pending Bankruptcy Proceeding, which was actually stayed and not prosecuted by the innocent Creditor during the Bankruptcy Proceedings, is merely stayed or is void ab initio? There is a division of legal authority in various states across the nation on this issue. Such a ruling would provide guidance not only to California Courts, but across the nation, on an not infrequent issue in the Bankruptcy arena.

As part of her fraudulent scheme, Doan cleverly filed her Motion to invalidate the Pardes judgment in State Court, rather than the Bankruptcy Court, knowing full well that she would suffer dire consequences if her Motion was filed in Bankruptcy Court, and her Fraud was exposed to the Bankruptcy Court.

Doan has never denied that she committed, and continues to commit Bankruptcy Fraud, by refusing to include in her Bankruptcy schedules and/or surrender her trust assets including a very valuable Eight Unit Apartment located in Long Beach (Property), to her Bankruptcy Trustee, in violation of her mandatory disclosure requirements under the Bankruptcy law. See 11 U.S.C. § 521.

Pardes requests this Court to consider the legal issue as to whether or not a “Dishonest Debtor” who

intentionally fails to include a very valuable piece of real property, worth over Two Million Dollars (\$2,000,000.00) in her Bankruptcy Schedules and fails to inform her Bankruptcy Trustee of the existence of this valuable piece of real estate, and continues to do so for almost ten years, has unclean hands and/or is estopped to assert the “Automatic Stay” as a defense to a complaint innocently filed in State Court, without prior notice of the existence of that bankruptcy proceeding, during the initial stages of her Bankruptcy proceeding.

The decision of the Court of Appeal in striking the Pardes Judgment (App. 1) as void ab initio and failing to punish Doan, acknowledged by the Court of Appeal to be a Dishonest debtor in Footnote 5 of its Opinion, for her ongoing Bankruptcy Fraud, undermines the integrity, values and sanctity of the Bankruptcy Court and its procedures, which were designed to help the Honest debtor; as well as those of the State Courts of California. By granting Certiorari, this Court has an opportunity to prevent such a Fraud from being completed by Doan, or any future Dishonest Debtors, without any repercussions for her fraud.



STATEMENT OF THE CASE

Pardes respectfully submits that this is a case of first impression, as Doan, a Dishonest Debtor in Bankruptcy, has committed and is now attempting to continue to commit a Ten (10) year Fraud in both the State

and Bankruptcy Courts, by intentionally failing to disclose very valuable assets in her Bankruptcy proceeding.

Without surrendering the Property to her Bankruptcy Trustee, which she was required to do under long standing Bankruptcy law, Doan is attempting to abuse the Automatic Stay and/or Post Discharge Injunction, to invalidate a lien against a separate Business Trust, which was never a part of her Bankruptcy Estate.

At no time from April 10, 2010 until the filing of this Brief, has Doan properly scheduled two of her “alleged” Individual assets, the first a business trust known as “First Coastal Trust”, or the second, a Eight Unit apartment complex in Long Beach, CA, worth over Two Million Dollars (Property) to the jurisdiction of the Bankruptcy Court or the attention of her Bankruptcy Trustee. Since the Bankruptcy Automatic Stay (Stay) does not attach to fraudulently omitted assets, Doan can not claim the protection of the Automatic Stay or the Post Discharge Injunction as to any actions taken by Pardes against the First Coastal Trust only, and not against her individually, after her discharge on January 10, 2011.

The Bankruptcy Code requires that a Debtor disclose all of his or her assets at the commencement of the case. Doan has failed to do so. Her failure to timely and properly list these two assets is a violation of 11 U.S.C. § 521.

Doan is attempting to invalidate a 2011 State Court Judgment obtained by Pardes against a separate Business Trust, First Coast Trust only, which was intentionally omitted from her Bankruptcy schedules, by asserting that the Automatic Stay applies to the intentionally non-disclosed asset, and that the underlying complaint innocently filed by Pardes, without prior knowledge of the Doan individual Bankruptcy, without any subsequent prosecution, was Void Ab Initio.

Despite the fact that Pardes never prosecuted its action during the Bankruptcy proceedings, the Court of Appeal improperly struck down the Pardes Judgment, and dismissing its action, by ruling that the underlying innocently filed complaint was Void Ab Initio. Such a ruling is totally contrary to 11 U.S.C. § 362 which only requires that the Complaint/proceeding be stayed. Which it was. The State Court did not have the authority to vacate the Pardes Judgment nor dismiss the Complaint.



STATEMENT OF FACTS

On April 13, 2010, Susan Doan, in her Individual capacity and not as any Trustee, files her Individual Bankruptcy Petition, without including a Trust known as “First Coastal Trust” (Trust), or the Eight Unit Apartment Complex, located at 455 Rose Ave., Long Beach, CA (Property) owned by the Trust, as an Asset in her Bankruptcy Estate, which Pardes believes is worth more than Two Million Dollars. (CT 217-223).

This valuation was never contested by Doan in these proceedings.

Despite having multiple opportunities during the State and Appellate Court proceedings, to explain to why the Trust and Property were omitted from her Bankruptcy Schedules, Doan has failed to do. (CT197-209) (CT318-319) (CT336-341) (CT342-348) (CT349-350) (CT380-389) (CT390-395).

Doan, despite having the legal obligation to do so, did not list any of the Trade Names in which she had previously conducted business, as she was obligated to do. See the third section of her Petition (CT 91). At a minimum, Doan should have listed the Trust, but intentionally chose not to do so, to defraud her unsecured creditors.

Pardes did not receive the Original Notice of Doan's Individual Bankruptcy, because Doan failed to properly list the Pardes suite number 103, on the mailing list. (CT 95) (CT 202, l. 6-21).

On July 20, 2010, Pardes totally unaware of the Doan Bankruptcy, files its second lawsuit against two different defendants, Susan Doan and First Coastal Trust, as a separate business entity, seeking to recover unpaid legal fees (CT 165-177).

After July 20, 2010 and prior to August 23, 2010, Doan's Bankruptcy original incorrect mailing list was amended to include the Pardes Suite number "103". (CT), and Pardes first becomes aware of the Doan Bankruptcy. (CT 275) (CT 117).

On August 23, 2010, after Fred Pardes first becomes aware that Doan had filed an Individual Chapter Bankruptcy, Pardes then sends a letter to Doan's bankruptcy Attorney, Gregory Doan (relation unknown), informing him of the fact that his client omitted the "***Long Beach, multi-unit investment property***", from her bankruptcy schedules (CT 275).

Fred Pardes, an experienced Business Attorney, was aware of the Automatic Stay taking effect as to Susan Doan, the individual, does nothing further to prosecute the Complaint as to Doan, waiting to see if Doan does actually receive her discharge; whether or not the Chapter Seven is dismissed; and whether or not she will be amending her Bankruptcy Schedules to include the Trust and the Property.

On September 9, 2010, Pardes ***then files a Notice of Automatic Stay in the State Court*** (CT 31) as to his Complaint, even though it was Doan's legal obligation to do so. The filing of this Notice is significant, at it indicates that Pardes acknowledges the existence of the Automatic Stay, and his discontinuance of maintenance/prosecution of its suit, pending resolution of the Doan Bankruptcy.

On January 6, 2011, Susan Doan, receives her **INDIVIDUAL** Bankruptcy Discharge. (CT 115).

First Coastal Trust is not mentioned in the Discharge Notice; nor in any amended Bankruptcy Schedules.

Doan's Bankruptcy Attorney Gregory Doan, never responded to the Pardes inquiry about the omission of the "***Long Beach, multi-unit investment property***", from Doan's Bankruptcy Schedules.

Pardes had the right to rely upon First Coastal Trust's omission from the Doan Bankruptcy, as an admission by Doan, that it was a separate business trust entity, not entitled to protection under the Automatic Stay and/or Post Discharge Injunction.

No State Court judicial proceedings take place against the individual Susan Doan by Pardes, during the time that he first became aware of her Bankruptcy, from August 23, 2010 until after the Discharge date; and those Pardes actions involved only First Coastal Trust. Doan, the individual, was not involved.

Upon receiving Notice that Doan received her individual discharge, and that she did not amend her Bankruptcy Schedules to include the Trust and the Property, Pardes then proceeds solely against the second Defendant in the complaint, "**First Coastal Trust**", which was and still is a separate and distinct business entity, known as a Business Trust, in the complaint.

In 2011, Pardes served Susan Doan, with notices of the various actions he was taking against First Coastal Trust, following her individual discharge in Bankruptcy. Doan took no action to stop Pardes' actions against First Coastal Trust during 2011.

Doan has never denied that she received notices of the Post Discharge legal proceedings against First Coastal Trust.

On November 14, 2011, Pardes obtains and Judgment is entered against First Coastal Trust only, ten months after Doan receives her individual discharge (Judgment) (CT 119).

At all subsequent times, Doan was fully aware of the Judgment taken against First Coastal Trust, and chose not to take any action against Pardes.

In 2013, Doan files a complaint with the State Bar complaining about the actions taken by Pardes. Doan never addressed any of the allegations in the February 19, 2013 Pardes reply (Fourteen Months after the Original Judgment) to the State Bar to her complaint. (CT 315-316).

The State Bar Complaint and the contents of Pardes reply, clearly show that Doan was aware of the November 14, 2011 Judgment against the Trust in 2013, and did nothing to overturn it, until such time that Pardes levied upon her property in 2017. Doan was acting as Trustee when she filed the complaint. The State Bar rejects the Doan Complaint and does not issue any disciplinary action against Fred Pardes.

It was undisputed during the entire appeal that:

1. Title to the Property was always held in the name of First Coastal Trust; a separate Business Trust, First Coastal Trust (Trust), which was not named or mentioned in any way in Doan's Bankruptcy

Schedules. This omission was contrary to two other Family Trusts, which were mentioned in her bankruptcy schedules.

2. That First Coastal Trust was never mentioned, directly or indirectly, in any of the Doan Bankruptcy Schedules; and

3. Doan never informed her Bankruptcy Trustee John Wolfe of the existence of either the Property or the First Coastal Trust. Such an omission would clearly indicate that the Trust is a separate business entity, not falling under Doan's Bankruptcy protection.

The *unexplained* omission of First Coastal Trust, *for almost ten years*, constitutes an admission by Doan, that this Trust is not an asset of hers, and cannot obtain the benefit of any Automatic Stay.

Doan's almost Seven year silence and lack of any action from 2011 to 2017, creates an Estoppel, which should have precluded Doan from obtaining any relief in the State Court action.

On October 19, 2017, more than six months after the first 2017 contact, Susan Doan, as Trustee for First Coastal Trust, files her Motion to Vacate the November 14, 2011 Judgment (Motion) in the State Court, rather than the Bankruptcy Court. (CT 39-53). She does not explain, why the two assets were omitted from her schedules.

On April 2, 2018, the Court issued its final ruling on the Motion, (App. 15) partially granting and

partially denying the Doan Motion, improperly vacating the Pardes bona fide Judgment, asserting that the post discharge actions taken by Pardes against the Trust only, violated the Automatic Stay, even though it was an intentionally omitted asset. (CT 411-414).

The lower Court granted Doan's Motion to Vacate the Pardes November 11, 2011 judgment ***against First Coastal Trust only***, but refused to dismiss the Pardes complaint as the Court believed it did not have the authority on the issue as to whether or not the Complaint was void ab initio.

The Court of Appeal affirmed the lower Court's ruling, with modification and instructions to dismiss the Pardes Complaint. A true and correct copy of the Court of Appeal's August 13, 2019 Ruling is attached hereto as App. 1.

On October 4, 2019, Doan's Bankruptcy case was re-opened and an Order was entered granting the United States Trustee's Motion for Order Reopening Chapter 7 case to administer assets and to appoint Chapter 7 trustee pursuant to 11 U.S.C. § 350(b) and waiving local bankruptcy rule ("LBR") 9021-1.

This new post appeal Bankruptcy activity does not render this Appeal Moot, as it does not address the Vacating of the Pardes Judgment, and dismissal of its complaint.



REASONS FOR GRANTING CERTIORARI

1. **This Court should grant review to settle an important and recurring question as to whether or not an intentionally “dishonest debtor” has “Unclean Hands” and/or is “Estopped” to assert the Automatic Stay as a defense to claims made against intentionally omitted assets of the Bankruptcy Estate.**

From April 10, 2010 until the present date, *nine (9) years*, Doan has continued to refuse to explain to either the State or Bankruptcy Court, despite numerous opportunities to do so, why she did not include the Trust or the Eight Unit Apartment Complex in her Bankruptcy schedules. This prolonged silence, and lack of any explanation, constitutes an express admission that the Trust and the Property were not one of her personal assets entitled to protection of the Bankruptcy laws.

This Nine year silence must be interpreted as a blatant intent to commit Bankruptcy Fraud, constituting “Unclean Hands” and/or an “Estoppel” to assert the Automatic Stay against any post discharge claims made against her intentionally omitted assets.

It is extremely important for the Business and Bankruptcy legal community to know, as to whether or not an Dishonest Debtor, still engaged in an ongoing Bankruptcy Fraud, has unclean hands and/or is estopped to assert the Automatic Stay in any manner to protect an undisclosed asset, hidden from the Debtor’s bankruptcy Trustee.

In light of Doan's total silence and omission, and lack of any action taken during 2011 to 2017, there was no reason that Pardes could not proceed against the separate entity, First Coastal Trust. Especially, since Doan continues to keep the Trust and the Property held in the name of the Trust, outside the Bankruptcy Court and away from her Bankruptcy Trustee.

So long as Doan continues to hide her eight unit apartment complex from her Bankruptcy Trustee and the Bankruptcy Court, it is inherently unfair for Doan to use the Bankruptcy laws to aid in the perpetration and continuation of her ongoing Bankruptcy Fraud. Such a result, runs totally counter to the intent of Congress in only protecting Honest Debtors. Clearly, Doan has unclean hands and/or is estopped to assert that the Automatic Stay, in any manner, as it pertains to these Two intentionally omitted and undisclosed assets.

All published cases involving an undisclosed bankruptcy asset, involve an honest and innocent violator who had a reasonable explanation for why the asset was not disclosed to the Bankruptcy Law. There is no published case law on an undisclosed bankruptcy asset involving an Dishonest Debtor who is trying to perpetrate an ongoing Bankruptcy Fraud in the Bankruptcy and State Courts.

A Supreme Court decision on this very important issue, will fill this void.

2. **This Court should grant review to settle an important and recurring question as to whether or not the innocent filing of a complaint, without prior knowledge of a pending bankruptcy, which is not prosecuted, during those proceedings is void ab initio.**

Section 362(a)(3), title 11 of the United States Code provides for an automatic stay of “***any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.***” Nowhere is there any power under the language of the statute to invalidate the mere innocent filing of the Complaint. See *Shaoxing County Huayue Import & Export v. Bhaumik* (2011) 191 Cal. App.4th 1189, 1196.

“Stay” is defined as 1- to remain in the same place; and/or 2- to remain in a specified state or position. Nowhere in 11 U.S.C. § 362, is there any language, which allows a Court to invalidate a Complaint, unknowingly filed, in which no further action was taken during the Bankruptcy proceeding. Especially, as to an intentionally omitted valuable asset hidden from the Bankruptcy Court by a Dishonest Debtor.

An action to foreclose on a mortgage commenced after mortgagors filed petition in bankruptcy was not void ab initio, ***but was merely dormant***, and thus the action was revived by bankruptcy court’s lift of automatic stay. Bankr. Code 11 U.S.C.A. § 362(a). See *Barton-Malow Co. v. Gorman Co. of Ocala, Inc.*, (1989) 146 A.D.2d 859, 536 N.Y.S.2d 267.

Dormant/suspension of an action is far more in line with the definition of “Stay”, which is a clear and unambiguous word, which must be taken at face value.

As Doan never included First Coastal Trust, a separate Business Trust, in her Bankruptcy filing, it was never effected by the Bankruptcy stay. That even if it was in some manner, Pardes’ innocently filed complaint was “*revived*” by the lifting of the Automatic Stay, which occurs by operation of law, upon the issuance of the discharge in Bankruptcy. Especially against First Coastal Trust and the Property, which were never listed in the Doan Bankruptcy Schedules.

Once Pardes became aware of the Doan Individual Bankruptcy, he did nothing further against Doan, the Individual. He even assumed Doan’s Bankruptcy obligation by filing a Notice of Stay in the State Court. Pardes never prosecuted any claims against Doan or the Trust, from the time he first became aware of the Doan Individual Bankruptcy until her discharge in January 6, 2020.

In fact, he never prosecuted claims against Doan, the Individual, during that time. It was only after the Doan Individual Bankruptcy Discharge was granted, did Pardes direct his efforts against just the unprotected Trust.

Pardes asserts, and neither Doan or the Court of Appeal have cited any cases, that support Doan’s contention, that the Automatic Stay applies to an intentionally omitted, undisclosed, and fraudulently hidden

Asset held in the name of a separate Business Trust, not listed in any of the Debtor's Bankruptcy Schedules.

While it is true that "Pardes is . . . unable to cite any legal authority to the effect that an unlisted asset in a bankruptcy schedule will in any way lessen the force of the Automatic Stay" (Page 7, Paragraph 2 of the Opinion), **Doan is unable to cite any cases that it does not**. A ruling by this Court, will give the proper guidance on this important issue.

In all the cases with unlisted assets, the Debtors were innocent and/or negligent, and gave reasonable non-blameworthy explanations why the property was not properly listed, and the Debtor either did or tried to bring the property back into the Bankruptcy Estate. In none of them, did the Debtor try to capitalize on the intentional omission, and continue to perpetrate a fraud against the Bankruptcy Estate, and intentionally injure her unsecured creditors.

Nowhere in the legislative history, as shown by the punishment provisions for intentionally omitting assets, did Congress intend to reward a Dishonest and Fraudulent Debtor such as Doan, over an innocent creditor such as Pardes.

Doan had a statutory duty and intentionally violated specific bankruptcy rules and regulations, resulting in criminal liability.

The Automatic Stay is a shield, and should not be used as a sword. 11 U.S.C.A. § 362. See *In re Mid-City Parking, Inc.* (Bankr. N.D. Ill. 2005) 332 B.R. 798. Doan

is trying to abuse the Automatic Stay designed and intended for the benefit of an Honest debtor, **to benefit only herself**, and not her unsecured Creditors. This Court should not let that happen.

The net effect of the Court of Appeal's Opinion is to allow Doan, a "Dishonest Debtor" with unclean hands, to benefit from her Bankruptcy Fraud, unfairly obtain a substantial economic windfall, and walk away from this case with Two Million dollars in her hands, and leaving all her unsecured creditors unpaid.

Protecting a "Dishonest Debtor" was not the intent of Congress in developing the Bankruptcy laws. Those laws were designed to help an "Honest Debtor", who complies with his/her Bankruptcy obligations of full disclosure of his/her assets, get a fresh start. Dishonest Debtors such as Susan Doan, should not be protected by any assertion of the automatic Stay, as to any of the assets fraudulently omitted from her Bankruptcy schedules.

Equity would dictate that so long as Doan continues to commit Bankruptcy Fraud, she would be unable to assert any protections arising under Bankruptcy Law, such as the Automatic Stay; or Discharge of a particular debt.

It is only fair and equitable, for this Court to find, that so long that Doan did not bring the Trust and the Property into the Bankruptcy Court's Jurisdiction, neither Doan nor First Coastal Trust can claim the protection of the Automatic Stay or the Post Discharge Injunction, in any manner.

To give the Business and Bankruptcy legal community proper guidance, this Court should specifically address the issues of whether or not the Automatic Stay applies to an intentionally omitted Asset; and/or whether or not an innocently filed complaint, is merely stayed or rendered Void Ab Initio.

3. This Court should grant review to resolve the conflict between several states as to whether or not an innocently filed complaint, filed but not prosecuted during the Bankruptcy Proceedings, is stayed, to be prosecuted upon dismissal of the bankruptcy

A petition in bankruptcy creates an automatic stay of *all subsequent judicial proceedings against the Debtor*. 11 U.S.C. § 362(a). Nowhere in that clear and unambiguous statute is there any language that grants a Court the power to declare void a Complaint, which has been innocently filed, but where no subsequent legal proceedings take place during the Bankruptcy proceedings. Especially, as to an innocent “violator” who filed his Complaint without knowledge of the Bankruptcy filing, and has acknowledged the existence of the automatic Stay.

It is only *subsequent legal proceedings* in violation of the automatic stay that are void. *In re Schwartz* (9th Cir.1992) 954 F.2d 569, 571; *In re Shamblin* (9th Cir.1989) 890 F.2d 123, 125.

Courts are required to give the words of statutes their plain meaning. A Court’s inquiry ends if the

words of a statute are clear and unambiguous; the plain meaning of the statute governs, and there is no need for judicial construction. A Court is required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. A Court may not, under the guise of statutory construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used. See *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 59; *People v. Johnson* (2002) 28 Cal.4th 240, 244; *Stephens v. County of Tulare* (2006) 38 Cal.4th 793, 801-802.

The Court of Appeal opinion improperly attempts to rewrite 11 U.S.C. 362, even though the statute is clear and unambiguous.

Under the plain meaning of 11 U.S.C. 362, all that Pardes was required to do was “***Stay the Judicial Proceedings***”, and he did exactly that. He filed the Notice of Stay, and waited for the Discharge to issue.

The Court’s dismissal of the Pardes complaint is an erroneous application of long standing statutory construction, which improperly rewrites the law, and improperly gives the words an effect totally different from the plain and direct import of the terms used.

This Court should give appropriate guidance on the issue as to whether or not an innocently filed Complaint, without more, is void ab initio.

4. **This Court should grant review to settle an important and recurring question as to whether or not a dishonest debtor was estopped to assert the Automatic Stay and/or the Post Discharge Injunction, as a defense to any post discharge litigation, not otherwise resolved by virtue of the Discharge.**

Doan knew of the Pardes Judgment in 2011 and 2013, and chose to do nothing about it. (CT 119) (CT 315-316). It is only when Pardes levied on the Trust property in 2017, did she file her Motion to Vacate the Judgment.

The existing case law clearly indicates that Courts should apply equitable considerations at least where the Creditor was without actual knowledge of the Bankruptcy Petition and the Debtor's unreasonable behavior contributed to the creditor's plight. A case exactly on point is *In re Smith Corset Shops, Inc.* 696 F.2d 971, 976-977 (1st Cir. 1982) (Debtor not entitled to protection where Debtor remained "stealthily silent" while Creditor obtained a default judgment and execution for a state Court in violation of the Automatic Stay). That is exactly the same factual situation as in this case.

The case of *Matthews v. Rosene*, 739 F.2d 249, 251 (7th Cir. 1984) is very similar to the one before this Court, where the District Court held that "Laches" barred the Debtor's attempt to void a 33-month-old state Court judgment on the basis of the Automatic Stay. Here, we have almost a Seven year, Eighty (80+)

plus month delay, in attempting to assert her legal rights.

Doan knew about the 2011 Post Discharge State Court proceedings, when the automatic stay was no longer in effect, where she received several notices that Pardes was seeking Judgment only against First Coastal Trust. She knew in 2013 when she filed her complaint with the State Bar, which rejected her claim.

Doan chose to do nothing about the Judgment for almost seven years. Had she timely done so, Pardes will not be as prejudiced as he is now, eight years after the fact.

Doan must bear some responsibility for her unreasonable delay in asserting her rights under section 362(a). Doan has no excuse of any kind for her delay in asserting any rights in 2011 and again in 2013, when she was aware of Pardes' actions. To hold otherwise and permit the Automatic Stay provision to be used as a trump card played after an unfavorable result was reached in State Court, would be inconsistent with the underlying purpose of the Automatic Stay which is to give a Debtor, "a breathing spell from his creditors." *Ellis*, 894 F.2d at 373 (quoting *Association of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 449 (3d Cir. 1982)).

A "breathing spell" is just temporary relief of litigation, it does not entitle them to elimination of justified creditors' claims.

This Court should issue some guidance on the issue as to whether or not Doan, as a Dishonest Debtor, with her continuous Bankruptcy Fraud is estopped to assert the Automatic Stay in this case, and should have done so.

5. The Court should grant Certiorari to settle an important question as to whether or not the Automatic Stay and/or the Post Discharge Injunction attaches to intentionally and fraudulently omitted assets from a Dishonest Debtor's Schedules

A Dishonest Debtor should not be afforded the same protections of the Bankruptcy Law, that are designed to give the Honest Debtor a fresh start. By being dishonest, the Dishonest Debtor should be forced to forfeit the protections of the Automatic Stay and the Post Discharge Injunction.

Petitioner submits that there is no case law, actually on point as to the facts of this case. No other Debtor has had the audacity to refuse to explain, why she did not include a particular asset from her bankruptcy schedules.

A Dishonest Debtor voluntarily chooses to violate the law. To otherwise allow such a Dishonest Debtor, to belatedly assert such protections, to gain an advantage over an innocent Creditor, is inherently unconscionable.

As a further deterrent to Dishonest Debtors, who choose to abuse the Bankruptcy laws and commit Fraud, they should lose the right to assert the Automatic Stay and/or Post Discharge Injunction, in any subsequent proceedings.



CONCLUSION

Pardes respectfully requests that this Court grant review on these Four important issues of law presented in this Appeal.

Dated: January 24, 2020

Respectfully submitted,

FRED S. PARDES, ESQ.

LAW OFFICES OF FRED S. PARDES

A PROFESSIONAL CORPORATION

34145 Pacific Coast Highway,

Suite 520

Dana Point, CA 92629

Telephone (949) 443-3400

fred@fredpardes.com

Attorney for Petitioner