

In the
Supreme Court of the United States

SE PROPERTY HOLDINGS, LLC,
as Successor by Merger to Vision Bank,

Petitioner,

v.

JERRY D. GADDY,

Respondent.

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

REPLY BRIEF OF PETITIONER

RICHARD M. GAAL
COUNSEL OF RECORD
MCDOWELL KNIGHT ROEDDER & SLEDGE, LLC
P.O. Box 350
MOBILE, AL 36601
(251) 432-5300
RGAAL@MCDOWELLKNIGHT.COM

RESTATEMENT OF CORPORATE DISCLOSURE STATEMENT

Petitioner SE Property Holdings, LLC is a wholly-owned subsidiary of its parent company Park National Corporation (NYSE MKT: PRK). To the Petitioner's knowledge, no publicly held company owns 10% or more of PRK stock.

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REPLY BRIEF OF PETITIONER

Petitioner SE Property Holdings, LLC, as successor by merger to Vision Bank (“SEPH”), hereby submits, pursuant to Rule 15(6) of the Rules of the Supreme Court of the United States, SEPH’s Reply Brief in support of its Petition for Writ of Certiorari (the “Petition”). Respondent Jerry D. Gaddy (“Gaddy”) misstates the record and ignores that SEPH consistently argued below that the Complaint as drafted sought to except from discharge Gaddy’s liability for the fraudulent transfers referenced in the Complaint. In further reply to Gaddy’s Respondent’s Brief, SEPH states as follows.



PETITIONER’S REPLY TO RESPONDENT’S RESPONSE TO THE STATEMENT OF THE CASE

In his opposition brief, Gaddy frames SEPH’s Complaint as seeking an exception to discharge only as to the Water’s Edge Judgment obtained by SEPH against Gaddy. *See, e.g.*, Respondent’s Brief (“Res.Br.”) at 3. Gaddy contends that two facts are “apparent” from SEPH’s Complaint. First, Gaddy argues that SEPH never pled in the Complaint that Gaddy was both transferor and transferee in the alleged fraudulent transfer. Res.Br.3-4. However, Gaddy ignores the factual allegations SEPH made in the Complaint. SEPH alleged that Gaddy continued to receive personal benefits from Gaddy Electric (such as the payment of personal expenses) and use of the property transferred.

Petitioner's Appendix ("Pet.App.") at App.62a-63a. Furthermore, SEPH asserted that Gaddy's conduct was subject to non-discharge under 11 U.S.C. § 523(a)(2)(A). Pet.App.70a. SEPH's reference to § 523(a)(2)(A) includes as an element that Gaddy obtained money and/or property through his fraud. SEPH alleged that Gaddy continued to receive distributions and benefits derived from the assets transferred. SEPH did not have to specifically use the words "transferor" and "transferee" to state a claim for an exception to discharge under Rule 7008 of the Federal Rules of Bankruptcy Procedure, which incorporates Rule 8 of the Federal Rules of Civil Procedure. *See Wood v. Moss*, 572 U.S. 744, 757-58 (2014) ("[C]omplaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.") (internal quotations omitted). SEPH alleged that Gaddy obtained benefits derived from the assets transferred and thus obtained money and property through his alleged fraudulent conduct. The fact that SEPH did not specifically use the words "transferor" and "transferee" does not mean that SEPH failed to allege that Gaddy stood on both sides of the transaction by continuing to receive personal distributions from Gaddy Electric post-transfer.

Second, Gaddy contends that SEPH in its Complaint only sought discharge of the Water's Edge Judgment guaranty debt and not separate liability based on Gaddy's fraudulent transfers. Res.Br.3-4. However, SEPH asserted below that its Complaint was broad enough to assert a claim for non-discharge based on liability to SEPH created from Gaddy's fraudulent transfers. *See* Pet.App.32a-33a. The Bankruptcy Court recognized SEPH's assertion that its Complaint

included a claim for non-discharge based on Gaddy's fraudulent transfer liability. While the Bankruptcy Court also rejected SEPH's alternative request for leave to amend, it did so because it rejected SEPH's argument that this fraudulent transfer liability was subject to non-discharge. *See Pet.App.32a-36a, 38a-39a.* Furthermore, Gaddy himself cites to SEPH's prayers for relief, which stated "SEPH seeks a declaration that any and all such scheduled debt, including, *but not limited to*, that amount set forth in the Judgment in the Water's Edge Litigation is in fact non-dischargeable to the extent of the Debtor's fraudulent . . . activity pursuant to 11 U.S.C. § 523(a)(2)(A)." Pet.App.72a (emphasis added). SEPH was not merely seeking to have Gaddy's guaranty liability held non-dischargeable.

Gaddy additionally directs the Court to information related to the Chapter 7 Trustee's settlement of the Estate's fraudulent transfer claims in litigation initially filed by SEPH. Res.Br.4. SEPH does not contest that the Trustee became the real party in interest in that litigation and ultimately agreed to a settlement that SEPH has challenged. *See* Respondent's Appendix at 27a-61a. Gaddy implies that SEPH kept this information from the Court. *See* Res.Br.4. However, the settlement of the Estate's claims by the Trustee has no bearing on SEPH's claim seeking non-discharge of Gaddy's liability created by his fraudulent conduct. Recovery of assets for the Estate is a separate claim than one seeking an exception to discharge. SEPH is not seeking recovery of those fraudulently transferred assets, but rather seeks a judgment that the injury to it by Gaddy caused by his fraudulent transfers is non-dischargeable. The fact of the Trustee's eventual

settlement of Gaddy's Estate's claims for fraudulent transfer has no bearing on the issues presented by SEPH in this appeal.



PETITIONER'S REPLY TO RESPONDENT'S REASONS FOR DENYING THE PETITION

I. GADDY MISCHARACTERIZES THE ISSUES PRESENTED BY SEPH AND THERE IS A CIRCUIT SPLIT ON THE ISSUES PRESENTED.

In his Respondent's Brief, Gaddy warps the question presented, arguing that the question presented is “[w]hether this [C]ourt should expand the application of 11 U.S.C. § 523(a)(2)(A) to protect creditors when there is no relationship between the debt and the property, money, or credit that was fraudulently obtained.” Res.Br.i. As noted above, Gaddy has incorrectly asserted that SEPH only sought an exception to discharge of Gaddy's guaranty debt and the Judgment against him based on that guaranty. SEPH presents two questions to the Court regarding whether a debtor, such as Gaddy in this case, who owed an underlying debt to a creditor may have a subsequent liability created due to fraudulent transfers excepted from discharge where the debtor receives post-transfer benefits derived from that property. Petition at i. Gaddy's statement to the contrary twists the actual issues presented herein and asserted below by SEPH.

As noted in the petition, the Eleventh Circuit in this case and the Fifth Circuit in *Matter of Green*, 968 F.3d 516 (5th Cir. 2020) restricted § 523(a)(2)(A) unnecessarily. The Eleventh Circuit held that because

the fraudulent conduct did not produce the initial debt owed by Gaddy to SEPH, SEPH could not obtain a judgment that liability for fraudulent transfers is non-dischargeable. *See In re Gaddy*, 977 F.3d 1051, 1057-58 (11th Cir. 2020). However, the Eleventh Circuit ignored SEPH’s contention that Gaddy obtained assets via transfer.

In *Green*, SEPH alleged that the debtor directed an entity he owned and controlled to transfer assets subject to a charging order in favor of SEPH to himself via disguising distributions. 968 F.3d at 521. The Fifth Circuit held that “[e]ven assuming that Green engaged in a fraudulent scheme, SEPH has not produced any facts to suggest that Green *obtained* a debt from his alleged fraud.” *Id.* SEPH had argued that Green received money via distribution from an entity that he owned and controlled. The Fifth Circuit restricted § 523(a)(2)(A) because it found that Green did not obtain a debt even though SEPH sought liability based on fraudulent transfers in violation of the charging order and asserted that Green obtained money via disguised distribution. As Gaddy notes, the Fifth Circuit essentially rejected SEPH’s claim for non-discharge because Green already owed a debt to SEPH and did not “obtain” a debt via fraud.

The Ninth Circuit’s holding in *DZ Bank AG Deutsche Zentral-Genossenschaft Bank v. Meyer*, 869 F.3d 839 (9th Cir. 2017) is in conflict with the Fifth Circuit and Eleventh Circuit’s judgments. SEPH contends herein that § 523(a)(2)(A) allows SEPH to obtain a judgment of non-discharge to the extent Gaddy obtained money and/or property via his fraudulent transfers. In *Meyer*, the Ninth Circuit was faced with a question whether § 523(a)(2)(A) allows for non-

discharge to the extent of the value of the money or property obtained by the debtor through fraud. *Id.* at 843-44. The Ninth Circuit held that a debtor may obtain an exception to discharge based on fraudulent transfers where the creditor is damaged by losing the ability to execute on assets transferred. *Id.* (“The bankruptcy court should have granted relief for the full \$385,000 that DZ Bank would have recovered if it had been able to execute against Louis Meyer’s ownership interest in MI.”).

In *Gaddy* and *Green*, the Eleventh and Fifth Circuits held that a creditor who holds an underlying debt cannot except from discharge the value of property obtained by a debtor in a fraudulent transfer scheme. Gaddy asserts that there is no conflict because the Ninth Circuit “did not decide whether a creditor could obtain relief under Section 523(a)(2)(A) if the Debtor fraudulently transferred assets to others to avoid the collection of a prior judgment.” Res.Br.7. There are two problems with Gaddy’s contention. First, the issue here involves SEPH’s allegations that Gaddy obtained money and/or property by fraud by continuing to receive distributions from Gaddy Electric and use of other property transferred. Gaddy attempts to confuse the issues by asserting that SEPH is seeking non-discharge related solely to transferor liability. Second, the Ninth Circuit in *Meyer* found that the full amount of the property transferred was the proper measure of damages *because* the injury suffered by the creditor was the loss of assets to satisfy the debt. 869 F.3d at 844. Gaddy highlights in his statement of facts that SEPH alleged that it was damaged in the same manner. Res.Br.1-2; *see* Pet.App.63a, 64a & 66a.

As SEPH alleged here, the debtors in *Meyer* owed an underlying debt and transferred assets out of the reach of the creditor, and the Ninth Circuit held that the proper amount of the non-dischargeable judgment was the value of the assets obtained via fraud. In the case *sub judice*, the Eleventh Circuit held that a debtor who owed an underlying debt could not have a judgment excepting fraudulent transfer debt in any amount even if the debtor obtained assets via fraud. There is a conflict between the Circuits.

II. GADDY'S ARGUMENT THAT THE ELEVENTH CIRCUIT'S JUDGMENT IS CONSISTENT WITH THIS COURT'S PRECEDENT RELIES ON A MISCHARACTERIZATION OF THE ISSUES PRESENTED BY SEPH.

Gaddy contends that the Eleventh Circuit's judgment that SEPH cannot except a debt from discharge to the extent of Gaddy's fraud properly applied this Court's decision in *Cohen v. de la Cruz*, 523 U.S. 213 (1998). However, Gaddy argues that the Eleventh Circuit was correct because "the debt owed by Jerry Gaddy to Vision Bank (SEPH) arose from his guaranty of the Water's Edge Loans, not from the alleged transfers of Jerry Gaddy's assets after the fact." Res.Br.8. Gaddy's argument here is based solely on Gaddy's improper mischaracterization of the issues presented and the Eleventh Circuit's holding. SEPH seeks non-discharge to the "extent of [Gaddy's] fraud" and alleges that Gaddy obtained money and property via his fraud. Pet.App.63a-64a, 70a. It is not merely seeking a judgment that Gaddy's guaranty liability is non-dischargeable. Therefore, SEPH's assertions regarding the conflict with *Cohen* is correct when considering the actual issues presented by SEPH in its Petition.

The Fifth Circuit in *Green* mistakenly applied the “obtained by” language to “debt” rather than to “money, property, services, or . . . credit” in § 523(a)(2)(A). *See Cohen*, 523 U.S. at 218 (“[T]o the extent obtained by’ modifies ‘money, property, services, or . . . credit’—not ‘any debt’—so that the exception encompasses ‘any debt . . . for money, property, services, or . . . credit, to the extent [that the money, property, services, or . . . credit is] obtained by’ fraud.”). Similarly, Gaddy’s assertion that the Eleventh Circuit properly denied SEPH’s appeal because the debt arose from Gaddy’s guaranty improperly narrows the scope of § 523(a)(2)(A) by focusing on how Gaddy “obtained” his initial “debt” to SEPH instead of focusing on SEPH’s allegation that Gaddy “obtained” “money [and] property” by committing “actual fraud” against SEPH. This Court in *Cohen* made clear that a § 523(a)(2)(A) claim is based on the debtor obtaining money or property through fraud. SEPH alleged sufficient facts to state a claim under § 523(a)(2)(A) and *Cohen*. Contrary to Gaddy’s argument, the Eleventh Circuit’s judgment is inconsistent with *Cohen*.

III. SEPH DOES NOT SEEK AN EXPANSION OF THIS COURT’S RULING IN *HUSKY* BUT RATHER CLARIFICATION OF AN ISSUE UNADDRESSED IN *HUSKY*.

Gaddy further argues that SEPH seeks an expansion of this Court’s ruling in *Husky Internat’l Electronics, Inc. v. Ritz*, 136 S.Ct. 1581 (2016) and contends that SEPH seeks to have this Court remove the “obtained by” requirement of § 523(a)(2)(A). Res. Br.9-15. In his brief, Gaddy essentially argues that there cannot be an underlying debt owed to the creditor for that creditor to obtain a judgment for non-discharge based on subsequent fraudulent trans-

fers by that Debtor. *See* Res.Br.13-15. This is certainly what the Eleventh Circuit held, but there is no justification for such a restriction. The plain language of § 523(a)(2)(A) and this Court’s opinion in *Husky* allow an exception for discharge for any liability that is created when a debtor obtains money or property by way of fraudulent transfers. *See* 136 S.Ct. at 1586 (“The term ‘actual fraud’ in § 523(a)(2)(A) encompasses forms of fraud, like fraudulent conveyance schemes, that can be effected without a false representation.”). SEPH sought a judgment for non-discharge based on fraudulent transfer liability and alleged Gaddy obtained money and property via his fraud. Therefore, under *Husky* and *Cohen*, SEPH should be entitled to pursue its claims based on these allegations for the reasons stated in SEPH’s Petition.

Gaddy argues that SEPH seeks an improper expansion of *Husky*, but that is not the case. Instead, SEPH is seeking the Court to weigh in on an issue it explicitly left unaddressed in *Husky*. The Court noted that, “[i]t is of course true that the transferor does not obtain debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud—can obtain assets by his or her participation in the fraud.” *Id.* at 1589 (cleaned up; internal quotations and citations omitted). However, the Court qualified this statement by noting that, “Ritz’ situation may be unusual in this regard because Husky contends that Ritz was both the transferor and the transferee in his fraudulent conveyance scheme, having transferred Chrysalis assets to other companies he controlled. We take no position on that contention here and leave it to the Fifth Circuit to decide on remand whether the debt to Husky was

‘obtained by’ Ritz’ asset-transfer scheme.” *Id.* at 1589 n.3. SEPH has made similar allegations that Gaddy was both transferor and transferee, and the Eleventh Circuit and lower courts either ignored these contentions or held that such contentions were insufficient to state a claim under § 523(a)(2)(A). *See, e.g.*, Pet.App. 1a-17a, 37a.

SEPH seeks certiorari so that this Court can address this unanswered question left open by *Husky*. *Husky* only involved the issue of whether fraudulent transfers constitute “actual fraud” under § 523(a)(2)(A). *See* 136 S.Ct. at 1585 (“The Fifth Circuit held that a debt is ‘obtained by . . . actual fraud’ only if the debtor’s fraud involves a false representation to a creditor. That ruling deepened an existing split among the Circuits over whether ‘actual fraud’ requires a false representation or whether it encompasses other traditional forms of fraud that can be accomplished without a false representation, such as a fraudulent conveyance of property made to evade payment to creditors.”). SEPH does not seek an expansion of the Court’s ruling but instead petitions this Court to review whether allegations that a debtor fraudulently transferred assets and obtained benefits derived from the fraudulently transferred assets are sufficient to state a claim under § 523(a)(2)(A). This was an issue beyond the scope of this Court’s ruling in *Husky*, so it remanded for the lower courts to decide that issue. Notably, on remand the bankruptcy court held that the debtor did obtain funds, directly or indirectly, from the transfers and thus the “obtained by” element was satisfied. *See In re Ritz*, 567 B.R. 715, 764-65 (Bankr. S.D. Tex. 2017).



CONCLUSION

The arguments made by Gaddy in his Respondent's Brief require twisting SEPH's Complaint and asserting that SEPH merely sought to hold Gaddy's guaranty liability non-dischargeable. This was not the case, and the Bankruptcy Court considered SEPH's contentions that the fraudulent transfer liability was non-dischargeable but held that SEPH's allegations that Gaddy obtained benefits from the fraudulent transfers at issue were not sufficient to state a claim because of the "obtained by" requirement. SEPH asserts that the Eleventh Circuit and lower courts erred because SEPH's allegations were sufficient to state a claim that Gaddy's fraudulent transfer liability was a debt for money or property that was obtained by fraud. SEPH therefore respectfully requests the Court grant its Petition.

Respectfully submitted,

RICHARD M. GAAL

COUNSEL OF RECORD

MCDOWELL KNIGHT ROEDDER & SLEDGE, LLC

P.O. Box 350

MOBILE, AL 36601

(251) 432-5300

RGAAL@MCDOWELLKNIGHT.COM

COUNSEL FOR PETITIONER

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