

No. 20-1076

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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SE PROPERTY HOLDINGS, LLC, as successor by merger to Vision Bank

Petitioner,

v.

Jerry D. Gaddy,

Respondent.

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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**PETITIONER'S RESPONSE TO MOTION FOR DAMAGES UNDER  
RULE 42.2 AND COUNTER-MOTION FOR DAMAGES UNDER RULE 42.2**

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May 3, 2021

**RESPONSE TO MOTION FOR DAMAGES  
AND COUNTER-MOTION FOR DAMAGES**

Petitioner SE Property Holdings, LLC, as successor by merger to Vision Bank (“SEPH”), hereby submits, pursuant to Rules 21.4 and 42.2. of the Rules of the Supreme Court of the United States, SEPH’s Response to Respondent Jerry D. Gaddy’s (“Gaddy”) “Motion for Damages under Rule 42.2” (the “Motion”) filed on April 27, 2021. In the Motion, Gaddy mischaracterizes SEPH’s positions in SEPH’s petition for writ of certiorari (the “Petition”) and narrows the scope of SEPH’s arguments to make a disingenuous argument that the Petition was “frivolous” under Rule 42.2. Gaddy also points to irrelevant issues in Gaddy’s bankruptcy case as somehow supporting an award of damages against SEPH. Gaddy’s Motion is itself frivolous, and SEPH requests the Court grant SEPH damages based on the frivolous Motion. In further opposition to the Motion and in support of its request for damages, SEPH states:

1. In the Motion, Gaddy asserts that there was no conflict among the Circuit Courts of Appeal “regarding the ruling below that 11 U.S.C. § 523(a)(2)(A) does not apply to a debtor-transferor who allegedly transferred assets to avoid the collection of a prior judgment because there was no property, money or credit that was *obtained by* fraudulent conduct.” (Motion, p. 1.) Gaddy then asserts that “there were no other grounds for certiorari review of the decision of the Eleventh Circuit Court of Appeals.” (*Id.*) However, Gaddy’s assertions misstate the Petition. SEPH asserted that Gaddy had obtained benefits through his fraud and presented questions to this Court regarding its allegations that Gaddy had been on both sides of the

transactions at issue. (*See, e.g.*, Petition, pp. i., 4-5.) Gaddy misstates the issues presented by SEPH. Furthermore, Gaddy's statement that "there were no other grounds for certiorari review" is false. SEPH petitioned for a writ of certiorari to seek, *inter alia*, the Court's clarification of an issue left open in *Husky International Electronics v. Ritz*, 136 S. Ct. 1581 (2016). (*See* Petition, pp. 14-16.) SEPH also sought review of the Eleventh Circuit's decision that a debtor who owes an underlying debt to a creditor seeking discharge cannot have that debt held non-dischargeable for fraudulent transfers, a distinct issue from the transferor-transferee issue. (*See* Petition, pp. 16-20.)

2. Gaddy also argues that the lack of a circuit split was clear because the Ninth Circuit in *DZ Bank AG Deutsche Zentral-Genossenschaft Bank v. Meyer*, 869 F.3d 839 (9th Cir. 2017) did not decide the issue resolved by the Eleventh Circuit in the case *sub judice*. (Motion, p. 3.) SEPH already addressed this contention in its Reply Brief. (*See* Reply, pp. 5-7.) In his Respondent's Brief, Gaddy unfairly characterized SEPH's appeal as seeking non-discharge solely for transferor liability, whereas SEPH in this case sought non-discharge for transferee liability under *Husky*. Gaddy argued that there was no circuit split based on a mischaracterization of the issues presented. In *Meyer*, the Ninth Circuit held that a transferor who stood on both sides of the transaction should have debt excepted from discharge for the full amount of the value of the asset transferred. 869 F.3d at 844. The Eleventh Circuit held that no such debt can be discharged whatsoever and rejected SEPH's argument regarding transferor-transferee liability. SEPH did not prevail on these arguments,

but they were certainly not frivolously made. SEPH contended that the Eleventh Circuit and Fifth Circuit misinterpreted *Husky*. Gaddy's contention that SEPH's appeal was frivolous because the Eleventh Circuit followed the precedent of this Court (*see* Motion at p. 4) should not persuade the Court. SEPH in good faith argued that the Eleventh Circuit *improperly* applied this Court's precedent.

3. Gaddy additionally argues in the Motion that SEPH filed the Petition for improper purposes. (*See* Motion, pp. 1-4.) Gaddy discusses the procedural history of the case and SEPH's prior unsuccessful appeals. (*Id.* at pp. 1-2.) Gaddy implies that it was frivolous for SEPH to bring the Petition because it made a "similar argument that had been rejected four (4) times previously." (*Id.* at p. 2.) SEPH respectfully asserts that its lack of success on similar arguments in the Bankruptcy Court, District Court, and Eleventh Circuit cannot possibly be grounds for finding that the appeal was frivolous under Rule 42.2. Any party in a bankruptcy case who is unsuccessful in arguing a legal issue asserted in a bankruptcy court will have been unsuccessful at many stages before the case is before this Court. Furthermore, a party should not be asserting new grounds for relief in this Court that it did not assert at any stage below. *See Walters v. City of St. Louis, Mo.*, 347 U.S. 231, 233 (1954) ("Of course, we will not undertake to review what the court below did not decide."). Under Gaddy's argument, any petition for a writ of certiorari that is denied would be frivolous.

4. Gaddy further asserts that SEPH failed to explain to the Court that Gaddy's Estate's fraudulent transfer claims had been settled by the Trustee in the

underlying bankruptcy case. (*See* Motion, p. 3.) However, as SEPH noted in its Reply Brief (*see* Reply Brief, pp. 3-4), the settlement of the Estate's claims by the Trustee had no bearing on SEPH's claim seeking non-discharge of Gaddy's liability created by his fraudulent conduct. Claims seeking recovery of assets for the Estate under the Trustee's strong-arm powers are separate and distinct from claims asserting an exception to discharge. SEPH did not in the Petition or in the underlying adversary proceeding seek recovery of those fraudulently transferred assets. Instead, SEPH sought 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 had no bearing on the issues presented by SEPH in the Petition. Because the fact that the Trustee settled the fraudulent transfer claims held by the Estate was irrelevant to the issues in the Petition, SEPH did not need to notify this Court regarding tangential and irrelevant matters. Any supposed "failure" by SEPH to notify the Court of an irrelevant matter cannot justify an award of damages against SEPH.

5. Gaddy baselessly asserts that SEPH filed the Petition for the purpose of forcing a bankrupt debtor to defend against a frivolous claim. (Motion, p. 4.) SEPH agrees with Gaddy that there is a paucity of case law interpreting the definition of "frivolous" under Rule 42.2. However, SEPH's appeal was not frivolous under Gaddy's definition from *Anders v. California*, 386 U.S. 738, 744 (1967) that an appeal is frivolous when "[none] of the legal points [are] arguable on their merits." SEPH's contentions were arguable on their merits and based on this Court's ruling in *Husky*.

6. On the other hand, Gaddy's Motion was frivolous and contains numerous misstatements of fact made in bad faith. As noted above, Gaddy blatantly misrepresented the nature of SEPH's questions presented. Gaddy also argues that any petitioner who fails to obtain a writ of certiorari must have done so frivolously because it made the same arguments below and lost. This is an absurd argument. Gaddy points to irrelevant record evidence to somehow suggest SEPH's appeal was frivolous. This is also absurd. Given that Gaddy's Motion depends on misstatements of the record below, irrelevant facts, and mischaracterizations of SEPH's arguments in the Petition, SEPH respectfully asserts that the Motion was filed frivolously. Rule 42.2 applies not just to petitions for a writ of certiorari but also to "an application for other relief," which includes the Motion. Therefore, SEPH requests that the Court enter an order that the Motion was frivolous and award SEPH damages for having to respond to a frivolous application for relief.

Dated: May 3, 2021

Respectfully submitted,

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