No. 20-1361

In the Supreme Court of the United States

Regina Berglass Heisler, individually and as the executrix
of the Succession of Frederick P. Heisler,

Petitioner,

v.

Girod LoanCo, LLC,

Respondent.

Rule 44 PETITION FOR REHEARING as to April 26 Denial of Certiorari

ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

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Admitted to the United States Supreme Court Bar on September 6, 1974

QUESTIONS PRESENTED

On January 18, 2021, the United States Bankruptcy Court for the Eastern District of Louisiana, at Docket 20-11509, lifted the Stay imposed by 11 U.S.C. § 362, (i) allowing Girod LoanCo, LLC ("Girod") to execute on two state actions commenced pre-bankruptcy, (ii) not yet concluded or perfected, but (iii) being enforced post-bankruptcy. The January 18, 2021 Order declares that:

> "...any filing by a party or ruling by a court in one of the civil actions will not violate the stay imposed by 11 U.S.C. § 362(a)..."

1. Is the January 18, 2021 Order by the bankruptcy court contrary to Justice SOTOMAYOR's concurring opinion in *City of Chicago v. Fulton*, 592 U.S. ___ (2021), decided January 14, 2021?

2. Do the actions by Girod and the January 18 Order constitute "...intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented..." so as to justify rehearing?

3. Does the case at bar fill the gap identified by Justice SOTOMAYOR at page 1 of the published concurring opinion in *City of Chicago v. Fulton*?

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ARGUMENT FAVORING REHEARING

Petitioner's Original Petition ("CERT Petition") could not reasonably raise *Chicago v. Fulton* issues because the actions by Girod and by the bankruptcy court had not ripened. Clearly, Petitioner's April 20, 2021 supplement to this High Court addressed Justice SOTOMAYOR observations about "...acts to perfect and enforce liens against property of the estate and acts to collect, assess, or recover a claim against the debtor..." when seizures are *commenced* pre-bankruptcy but not yet perfected or achieved when bankruptcy is filed. The following chronology establishes that *the* undecided issues identified by Justice SOTOMAYOR are extant in the case at bar, which is still in the process of "...intervening circumstances..." justifying rehearing without re-urging issues in the CERT Petition[1]:

> November 13, 2017: The FDIC, liquidator of First NBC Bank, sold a multimillion dollar package of debt to Girod which included $600,000 in Heisler debt bloated to $7.9 million, predicted by Girod to reach $15 million.
>
> July 19, 2018: Girod filed a state-court claim to the $2.1 million investment account left to Petitioner — still subject to a "status quo" order by the state court pending resolution of issues presented by the CERT Petition and elsewhere.
>
> June 30, 2019: Girod obtained a writ of seizure against all estate property, presently (but not conclusively) impacting (i) the ownership of 844 Baronne Street, set for sale to Girod in early May and (ii) the ownership of a shopping center deeded by the Sheriff to Girod REO in violation of 28 U.S.C. 1446(d).

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1 For perspective and context, key pleadings, motions and orders are essential to take this case to the level necessary to meet the issues Justice SOTOMAYOR identified in *Chicago v. Fulton*. Respectfully, there may never be a case that "...fills the gap..." as in the case at bar.

August 27, 2020: Petitioner filed a *pro se* Chapter 11, converted to Chapter 7 on September 28, 2020.

October 21, 2020: Girod filed a Proof of Claim ("POC-3") for $7,869,608.

November 20, 2020: Objection to POC-3 was filed with a request for an evidentiary hearing[2].

January 14, 2021: *Chicago vs. Fulton* was decided.

(*)[3] January 18, 2021: The bankruptcy court lifted the stay imposed by 11 U.S.C. § 362(a) specifically as to the foreclosure case and the concursus (interpleader) case, Rehearing Appendix A.

March 17, 2021: CERT Petition was filed, docketed March 26, 2021.

(*) March 17, 2021: The bankruptcy court entered an Order Striking Pleadings, Doc. 256, expressing an opinion that undersigned counsel should not file pleadings collaterally supporting Petitioner[4], Rehearing

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2 Notwithstanding (i) the multi-million dollar levels involved, (ii) the equitable nature of bankruptcy, (iii) the criminality that collapsed FNBC, (iv) the violation of FDIC policy against allowing bidders from "secrecy jurisdictions" and (v) ABA FORMAL OPINION 491, there has *never* been an evidentiary hearing Petitioner has oft-beseeched the court to hold.

3 (*) indicates Appendix submissions applicable to this Petition for Rehearing.

4 The Order had a constitutional chilling effect on the right to advocate: "This Court will not permit Klein to continue to file thinly veiled arguments on behalf of the Debtor, who he cannot legally or ethically represent. Accordingly, and as previously stated on the record, IT IS ORDERED that Mr. Klein shall not file pleadings or appear before this Court on behalf of the Debtor." In the final paragraph, the bankruptcy court warned that sanctions might follow pursuant to 11 U.S.C. § 105(a). This Court has held that threats of sanctions are the "...most lethal enemies of the First Amendment...", *Keyishian v. Board of Regents*, 385 U.S. 589 (1968). At *Wolff v. Selective Service Local Board 16*, 372 F.2d 817 (1967), the 2nd Circuit Court of Appeals, citing *NAACP v. Button*, 371 U.S. 360 (1964), said this:

Appendix B.

April 8, 2021: Petitioner filed a "claw-back" case involving the Kenner Shopping Center the Trustee declined to file, *Heisler v. Kean Miller, Girod LoanCo, Girod REO, et alia*, Eastern District of Louisiana Docket 21-724.

(*) April 16, 2021: Petitioner and Creditor-4 (Henry L. Klein, *pro se*) filed a Joint Motion for Certification Pursuant to 28 U.S.C. § 158(d)(2)(B) to the Fifth Circuit Court of Appeals, (Doc. 309), posing the question raised by Justice SOTOMAYOR, Rehearing Appendix C[5].

April 17, 2021: All tenants at 844 Baronne Street were evicted by order of the bankruptcy court[6].

April 20, 2021: Trustee changed all locks at 844 Baronne Street.

(*) April 21, 2021: Petitioner and Creditor-4 filed a joint Objection to Further Proceedings Without an Evidentiary Hearing as to the Validity of POC-3, (Doc. 321), Rehearing Appendix D, hearing not set as of May 3, 2021.

April 23, 2021: Petitioner's CERT Petition was considered at conference.

> "Since it is the mere threat of unconstitutional sanctions which precipitates the injury, *the courts must intervene at once to vindicate the threatened liberties.*"

5 *IF A CREDITOR COMMENCES AN ACTION PRE-BANKRUPTCY BUT IS NOT IN ACTUAL POSSESSION OF THE ASSET WHEN THE DEBTOR FILES FOR BANKRUPTCY PROTECTION, CAN THAT CREDITOR ENGAGE IN ANY "...ACT TO CREATE , PERFECT OR ENFORCE ANY LIEN AGAINST PROPERTY OF THE ESTATE..." AND "...ANY ACT TO COLLECT, ASSESS, OR RECOVER A CLAIM AGAINST THE DEBTOR THAT AROSE PRIOR TO BANKRUPTCY PROCEEDINGS?*

6 The Law Offices of Henry L. Klein; Julie Klein Interiors; Kavanagh & Rendiero, PLC; the Law Offices of Theodore Fish; New Orleans Legal, Inc.; and Attorney Peter Diiorio.

April 26, 2021: Denial published.

(*) April 27, 2021: Bankruptcy court vacated order overruling dual objections to POC-3, but held the objection in abeyance "...pending the United States Supreme Court's disposition of the Petition for a Writ of Certiorari filed by Henry Klein, (Doc. 324), Rehearing Appendix E.

Although the bankruptcy court granted minimal relief on April 27, 2021, (i) the lift-stay order remains in effect, (ii) your *pro se* Petitioner has yet to have a hearing on matter requested and (iii) the ruling *contradicting* Justice SOTOMAYOR's observations remains "...the law of the case..." The gravamen of this Petition for Rehearing is based on the following:

> I write separately to emphasize that the Court has not decided whether and when §362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things 'any act to create, perfect or enforce any lien against property of the estate' and 'any act to collect, assess, or recover a claim against [a] debtor' that arose prior to bankruptcy proceedings, §§362(a)(4), (6).... Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to 'deliver' estate property to the trustee or debtor under §542(a). The City's conduct may very well violate one or both of these other provisions. The Court does not decide one way or the other (Internal citations omitted).

This case fills the gap identified in *Chicago v. Fulton*. The level of activity taking place as we write is substantial and the issue *sub judice* is developing at constitutionally-unacceptable levels and speed.

RELIEF REQUESTED

The Justices of the United States Supreme Court are independently capable of recognizing issues that would give Petitioner prompt succor. We simply try to help as best as we can. Unless this Court takes action, the assets of the debtor's estate are on their way to immediate liquidation *before* there is a ruling on the allowance or disallowance of POC-3, followed by a trip to the Cayman Islands. The damage is irreparable. 844 Baronne Street is empty but for a "...law library to die for..." abandoned in the purge[7]. The Act of Sale from the Trustee to Girod will take place soon after May 10 on a credit bid of $1.8 million with a $107,000 carve-out to the debtor's estate. The claim for the $2.1 million in state court with a $21,000 carve-out to the estate is moving apace, portending a *Rooker-Feldman* and Article III war.

Respectfully submitted,

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7 Appendix C, Supplemental Brief Distributed.

RULE 44(1) CERTIFICATE

I, Henry L. Klein, certify that the Petition for a Rehearing from the April 26, 2021 Order denying certiorari is limited to intervening circumstances not available or ripened when the Original Petition for Certiorari was filed. The intervening circumstances are substantial but were not capable of articulating at an earlier date. The "...controlling..." aspect is Justice SOTOMAYOR's concurrence on January 14, 2021, *contradicted* by the January 18, 2021 order that "...any filing by a party or ruling by a court in one of the civil actions will not violate the stay imposed by 11 U.S.C. 362(a)..." The Petition for Rehearing does not urge matters denied by the original Petition for Certiorari, but only provides facts necessary for perspective and context. The Petition is presented in good faith and not for delay.

Henry L. Klein, Supreme Court Bar 19946

Respectfully submitted,

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Admitted to the United States Supreme Court Bar on September 6, 1974

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	CASE NO.: 20-11509
REGINA BERGLASS HEISLER,	CHAPTER 7
Debtor	SECTION A

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

The *Motion to Lift Stay Pursuant to 11 U.S.C. § 362(d)(2)* **(P-135)** (the "Motion") filed by Girod LoanCo, LLC ("Girod") came for hearing on January 6, 2020 at 1:00 p.m.

APPEARANCES: As reflected in the record.

After considering the Motion, the *Designation of Contested Matter and Request for Expediting Responses to Admissions and Scheduling Deposition* (P-141) filed by Creditor Henry L. Klein ("Klein"), the record of this case including other documents filed by Klein, the applicable law, and the statements of counsel at the hearing, the Court grants the relief requested as follows:

IT IS ORDERED that the Motion is GRANTED as set forth herein;

IT IS FURTHER ORDERED that the stay imposed by 11 U.S.C. § 362(a) is hereby lifted as to the following civil actions pending in state court (jointly, the "Civil Actions"):

1. *Girod LoanCo, LLC v. Regina B. Heisler, Individually and as Succession Representative/Executrix of the Succession of Frederick P. Heisler*, No. 793-014 "D", 24th Judicial District Court for the Parish of Jefferson, State of Louisiana; and
2. *Charles Schwab & Co., Inc. v. Girod LoanCo, LLC and Regina B. Heisler*, 2018-4693 "N", Civil District Court for the Parish of Orleans, State of Louisiana.

IT IS FURTHER ORDERED that any filing by a party or ruling by a court in one of the Civil Actions will not violate the stay imposed by 11 U.S.C. § 362(a);

IT IS FURTHER ORDERED that only the Chapter 7 Trustee has authority to file any motions, briefs, exceptions, or other court filings in the Civil Action on behalf of the Debtor, Regina Berglass Heisler, in her individual capacity. Any court filing on behalf of the Debtor in her individual capacity must be made by the Chapter 7 Trustee; and

IT IS FURTHER ORDERED that the fourteen (14) day stay provision provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) shall not apply to this Order lifting the automatic stay.

IT IS FURTHER ORDERED that counsel for movant shall serve this order on the required parties who will not receive notice through the ECF system pursuant to the FRBP and the LBR's and file a certificate of service to that effect within three days.

New Orleans, Louisiana, January 18, 2021.

MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE REGINA HEISLER,		**BANKRUPTCY NO.: 20-11509**
DEBTOR.		**CHAPTER 7**
		SECTION "A"

ORDER STRIKING PLEADINGS

The Court has received the *Clarification of "Response to Orders" Sent to Trustee*, [ECF Doc. 251], the *Notice of Manifest Errors Exposed by the March 10 Transcript*, [ECF Doc. 254], and the *Corrected Notice of Manifest Errors Exposed by the March 10 Transcript*, [ECF Doc. 255], (together, the "Mid-March Filings"), each filed this week by Henry Klein. After considering these filings, the record as a whole, and the applicable legal authority, including the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the Louisiana Rules of Professional Conduct, and this Court's Local Rules, the Court finds as follows.

As this Court has repeatedly stated on the record, and Klein has himself acknowledged, Klein is not enrolled as Debtor's counsel in this bankruptcy case. Though Klein has and continues to represent the Debtor and her late husband's succession in state court proceedings, he cannot serve as her representative before this Court. Any attorney representing a debtor's estate must move for the Court's authority to do so under 11 U.S.C. § 327. Klein has not so moved and, further, would not be permitted to represent the Debtor even if he had, due to his direct and manifest conflict of interest. Klein is a creditor in this bankruptcy case who has filed a proof of claim asserting the Debtor owes him $800,000. *See* Proof of Claim 4. Under § 327, any attorney or other professional person employed by the estate must by a "disinterested person," which the

Code explicitly defines as, among other things, "not a creditor, an equity security holder, or an insider." 11 U.S.C. § 101(14). Klein is expressly disqualified under the Bankruptcy Code from representing the Debtor in these proceedings. *See also* LA. R. PROF'L. CONDUCT 1.7 ("[A] lawyer shall not represent a client if . . . there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.")

Though Klein has nominally filed all of his pleadings in this case on his own behalf as a creditor, many of those filings, including the Mid-March Filings, appear in substance to argue the Debtor's interests. Document 251, for instance, urges the Court to find in the Debtor's favor on her pending motion for reconsideration filed pro se, [ECF Docs. 235 and 239], and protests once again that the Debtor's requests to testify at an evidentiary hearing have not been granted. This Court will not permit Klein to continue to file thinly veiled arguments on behalf of the Debtor, who he cannot legally or ethically represent.

Accordingly, and as previously stated on the record, IT IS ORDERED that Mr. Klein shall not file pleadings or appear before this Court on behalf of the Debtor.

Further, to the extent Klein files these or other pleadings on his own behalf, he must comply with this Court's Local Rules and its clearly stated procedures. Local Rule 9013 permits parties-in-interest to file (1) motions for relief and (2) timely objections or responses to other parties' motions. This Court has consistently established that parties must request and receive leave from the Court before filing reply briefs or supplemental briefing, and that unauthorized filings may be stricken from the record. *See* Local Rule 9013-1(E). Klein, like all other parties, may not file unsolicited supplemental briefs in support of his prior motions, unsanctioned reply briefs, or other repetitive filings re-urging matters either already decided or currently pending before the Court through previously filed motions.

Finally, any motion filed by Klein, as by any other party, must provide clear notice to the Court and other parties in interest what relief it seeks and what procedural mechanism permits such relief to be sought. *See* FED. R. BANKR. P. 9013 (requiring that every motion "shall state with particularity the grounds therefore, and shall set forth the relief or order sought"). Up to this point, this Court has endeavored when it can to interpret and evaluate Klein's often opaque filings as permissible motions under bankruptcy procedure, such as motions to reconsider certain rulings under Federal Rule of Civil Procedure 59, as made applicable under Federal Rule of Bankruptcy Procedure 9023. However, though pro se pleadings are entitled to liberal construction, *see Carlucci v. Chapa*, 884 F.3d 534, 538 (5th Cir. 2018) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)), Mr. Klein is a licensed attorney. This Court should not have to carefully scrutinize each of his filings to determine what if any relief he requests. Unclear and overbroad statements that a pleading has been "filed in the record as an objection to all aspects of the liquidation process" will not suffice. [ECF Doc. 251].

Accordingly, to the extent the Mid-March Filings raise arguments on behalf of the Debtor or seek to reargue Klein's already filed motions, those argument are not permitted and will not be considered. If Klein intended the Mid-March Filings to be motions for previously unrequested relief permitted under bankruptcy law, it is not clear from those documents. Therefore, IT IS FURTHER ORDERED that Documents 251, 254, and 255 are STRICKEN from the record.

IT IS FURTHER ORDERED that Klein shall comply with the Federal and Local Rules and procedures by clearly designating in any future motion the relief requested and the grounds for that requested relief. Further, any such motion shall be properly served under Local Rule 2002-1, and either set and noticed for hearing pursuant to Local Rule 9013-1(B) or comply with the requirements for *ex parte* motions listed in Local Rule 9013-1(D).

FURTHER, Klein is cautioned that violation of this Order may result in the imposition of sanctions under 11 U.S.C. § 105(a).

New Orleans, Louisiana, March 17, 2021.

MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCYCOURT

FOR THE EASTERN DISTRICT OF LOUISIANA

IN RE:	CASE NO. 20-11509
REGINA BERGLASS HEISLER	CHAPTER 7
Pro Se Debtor	SECTION A

MOTION FOR CERTIFICATION PURSUANT TO

28 U.S.C. § 158(d)(2)(B) TO THE FIFTH CIRCUIT COURT OF APPEALS

Henry L. Klein, *pro se* Creditor-4 ("Creditor Klein") and Regina Heisler, *pro se* Debtor ("Regina Heisler"), (collectively "Movers") respectfully move as follows:

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") amended Section 158 of Title 28 to give the courts of appeals under certain conditions jurisdiction to hear an appeal from a judgment or order of the bankruptcy court, bypassing district court or bankruptcy appellate panel intermediate review. Subpart (A) creates a certification procedure and vests in the courts of appeals, if they authorize the direct appeal, jurisdiction over the certified appeal. The certification sought here is to an *order* rendered April 14, 2021, allowing the Chapter 7 Trustee to sell 844 Baronne Street to Girod LoanCo ("the Order to Sell"). If the Order to Sell is certified and direct appeal is authorized, intermediate appeals are eliminated. Section 158(d)(2)(A) provides that the certification can be made at the request of any party to the judgment. This request is related to issues pending before the United States Supreme Court for the April 23, 2021 conference of the Justices and more specifically issues raised by Justice SOTOMAYOR's concurring opinion in *City of Chicago v. Fulton*, 592 U.S. ___(2021).

I. THE BASIS FOR CERTIFICATION

The basis for certification must come from the list at subsection (d)(2)(A)(i)-(iii):

> (1) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court, or involves a matter of public importance; (2) the judgment, order or decree involves a question of law requiring resolution of conflicting decisions; or (3) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

Subpart (B) amplifies the process. The bankruptcy court, district court, or bankruptcy appellate panel "shall" make the certification if it determines that at least one of the circumstances specified in Section 158(d)(2)(A)(i)-(iii) exists. Movers aver that sections (1) and (3) apply. In *Chicago v. Fulton*, Justice SOTOMAYOR specifically noted that there is a gap in Supreme Court precedent that this case fills: the "...Question we Pose..." is this:

> *IF A CREDITOR COMMENCES AN ACTION PRE-BANKRUPTCY BUT IS NOT IN ACTUAL POSSESSION OF THE ASSET WHEN THE DEBTOR FILES FOR BANKRUPTCY PROTECTION, CAN THAT CREDITOR ENGAGE IN ANY "...ACT TO CREATE, PERFECT OR ENFORCE ANY LIEN AGAINST PROPERTY OF THE ESTATE..." AND "...ANY ACT TO COLLECT, ASSESS, OR RECOVER A CLAIM AGAINST A DEBTOR THAT AROSE PRIOR TO BANKRUPTCY PROCEEDINGS[1]?*

Notwithstanding (i) the undecided argument that Regina Heisler was defrauded into signing the toxic paper Girod holds, (ii) received no consideration that Girod can prove, (iii) the lack of any evidentiary hearing on any substantive issue, the Question Posed is undisputed: the claim arose *before* bankruptcy was filed and neither 844 Baronne and the $2,1 million in the registry of the court were in possession of the trustee or the creditor when

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1 SOTOMAYOR, at page 1.

the April 14 Order to Sell was rendered. It is also undisputed that the use of § 542(a) by the Trustee is an adversary process that has not commenced in this case, despite multiple requests by movers, individually and together.

In concurring with Justice ALITO, Justice SOTOMAYOR articulated the issue thus:

> Section 362(a)(3) of the Bankruptcy Code provides that the filing of a bankruptcy petition "operates as a stay" of "any act . . . to exercise control over property of the [bankruptcy] estate." 11 U. S. C. §362(a)(3). I join the Court's opinion because I agree that, as used in §362(a)(3), the phrase "exercise control over" does not cover a creditor's passive retention of property lawfully seized prebankruptcy. Hence, when a creditor has taken possession of a debtor's property, §362(a)(3) does not require the creditor to return the property upon the filing of a bankruptcy petition. I write separately to emphasize that the Court has not decided whether and when §362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things, "any act to create, perfect,or enforce any lien against property of the estate" and "any act to collect, assess, or recover a claim against [a] debtor" that arose prior to bankruptcy proceedings. §§362(a)(4), (6); see, e.g., In re Kuehn, 563 F. 3d 289, 294 (CA7 2009) (holding that a university's refusal to provide a transcript to a student-debtor "was an act to collect a debt" that violated the automatic stay). Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to "deliver" estate property to the trustee or debtor under §542(a). The City's conduct may very well violate one or both of these other provisions. The Court does not decide one way or the other.... "The principal purpose of the Bankruptcy Code is to grant a ""fresh start"" "" to debtors. Marrama v. Citizens Bank of Mass., 549 U. S. 365, 367 (2007) (quoting Grogan v. Garner, 498 U. S. 279, 286 (1991)).

This Court's agreement or disagreement with our request should not preclude the certification. At the end of her concurring opinion, Justice SOTOMAYOR commented that "...Ultimately, however, any gap left by the Court's ruling today is best addressed by the rule drafters and policymakers, *not bankruptcy judges*."

The issue of the lifting of the stay and holding movers' objection to POC-3 in abeyance makes this case all the more unusual, if not *res nova*. If the Supreme Court enforces *Caperton* and *Henson*, that will still leave the clawing-back of the Kenner shopping center still to be done, which is why we filed 21-724 on behalf of the Succession. The Court's indulgence in our procedural ineptness should not be considered a sign of bad faith.

A proposed order is provided. Because the Justices will take this matter up in seven days, time is of the essence.

Respectfully Submitted,

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Regina Heisler
Regina Heisler, *pro se*

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
20-11509

REGINA BERGLASS HEISLER CHAPTER 7

OBJECTION TO FURTHER PROCEEDINGS WITHOUT AN EVIDENTIARY HEARING AS TO THE VALIDITY OF POC-3

Regina B. Heisler, Debtor *pro se* and Henry L. Klein, Creditor-4, ("Objectors") formally object to further proceedings without an evidentiary hearing on the validity, *vel non*, of POC-3. The Court has, on various occasions, announced that it will hold a hearing at a time the court is ready, but that time is not now. Respectfully, the liquidation of assets for the benefit of Girod LoanCo without a determination as to the validity of POC-3 is potentially a violation of the constitutional rights of both objectors. It will be impossible to reconstruct the *status quo ante* if it eventuates that POC-3 is invalid or unsecured. At a motion hearing held April 21, 2021, the Court approved "...the compromise of a controversy..." pending in Civil District Court for the Parish of Orleans by and between the Trustee and Girod for the paltry price of $21,000.

I. THE RIGHT OF LITIGIOUS REDEMPTION

The agreement to let Girod have $2.1 million in the registry of the Civil District Court means that Girod has bought the litigation for $21,000, as to which the debtor has the right to exercise litigious redemption pursuant to Louisiana Civil Code Article 2652. The demand has been made and will be raised in Civil District Court immediately. By any measure, the "controversy" that was "compromised" without Regina Heisler is a classic case to be decided pursuant to Louisiana Law by the Louisiana Courts and this Court may not

have jurisdiction to order the Civil District Court to do anything with the money in its custody[1]. Originally, an Interpleader was filed in Federal Court at Docket 18-2522 on diversity grounds until Girod claimed that it had a "Louisiana member" which spoiled diversity. Heisler objected because Girod is a "silo structured" entity which keeps its ownership secret, a matter that resulted in the dismissal by Judge Harold Baer in *Water Street v. Bank of Panama*, an issue that has been ignored in this case. *Before* the Interpleader was dismissed, Heisler called for the enforcement of the right of litigious redemption. *After* the case was re-filed in Civil District Court, Heisler called for the right of litigious redemption. Today, after the Memo to the Record was memorialized, Heisler called for the enforcement of the right of litigious redemption, Exhibit A.

II. THE SALE OF 844 BARONNE

Our objection to the sale of 844 Baronne is the same as before. However, it appears that the Court recognized the "...over-reach..." and will not approve the proposed order. From our perspective, it was clear that the proposed order was a request for "...an advisory opinion..." as to a release long ago confected. As with all orders approving liquidation of assets, Objectors urge the Court not to grant relief until evidence is adduced regarding POC-3 and the myriad of defenses that compel disallowance.

III. UNDISPUTED FACTS

Long ago, Objectors filed a Motion for Summary Judgment and have filed many pleadings that the Court has apparently not considered. But it is undisputed that Girod has no evidence that any Heisler entity received consideration for the notes it holds. *None*. It

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1 The jurisdictional issue will be MOOT if the United States Supreme Court grants GVR or if this Court holds an evidentiary hearing and concludes that Regina Heisler *never* received a dime of the criminal money ponzied from FNBC by the defendants in the criminal cases. It is inexplicable why the Court has failed to consider these travesties of justice.

is also undisputed that the notes Girod purchased were the "...fruits of a poisonous tree..." It is undisputed that Kean Miller's due diligence provided ample bases for the application of ABA FORMAL OPINION 491 against lawyers "...turning a blind eye..." to clients intending to engage in fraud or crime. This Court cannot ignore *USA v. Gibbs*, *USA v. Ryan*, *USA v. St. Angelo*.

Unaccustomed to the vicissitudes of bankruptcy procedure, we don't understand how or why the Court is delaying the vetting of the most important element in the case, POC-3. The Court's stern orders that Creditor-4 not file pleadings that appear to be helpful to the Debtor is perplexing. Your undersigned has often stated that he will *never* seek payment for anything post-petition. And if POC-3 stands, POC-4 will be *worthless*. The Court's harsh view that there is a conflict fails to consider that the Debtor has the exact same goal: to defeat Girod's claim. In balancing the equities, we *respectfully* submit that the *pro se* debtor's substantive rights are being unconstitutionally-extinguished.

Walking on egg-shells is no fun. The Court is asked to look at the Debtor's side of the case without giving Girod any further refuge from the truth: POC-3 must be disallowed.

Very respectfully submitted,

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Regina Klein

RK

Gmail Henry Klein <henryklein44@gmail.com>

Right of Litigious Redemption

1 message

Henry Klein <henryklein44@gmail.com> Wed, Apr 21, 2021 at 7:27 PM
To: "Frederick L. Bunol" <FBunol@derbeslaw.com>, "Wilbur J. Babin, Jr." <babin@derbeslaw.com>, Eric Lockridge <eric.lockridge@keanmiller.com>, "Bergeron, Christy (USTP)" <Christy.Bergeron@usdoj.gov>
Bcc: Dayna Heisler <dheisler4133@gmail.com>, Michael Bagneris <madlyn2@bellsouth.net>

The sale of the litigation by the Trustee to Girod for the sum of $21,000 is subject to the Right of Litigious Redemption.

Please confirm your willingness to accept $21,000 for the redemption of the litigious rights by noon tomorrow.

Henry

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	CASE NO.: 20-11509
REGINA BERGLASS HEISLER,	CHAPTER 7
Debtor	SECTION A

Order Granting *Motion To Vacate Oral Order on February 24, 2021* and Holding in Abeyance the *Objection to Claim No. 3 of Girod Loanco*

The Court held a hearing on March 24, 2021, on the *Motion To Vacate Oral Order on February 24, 2021*, filed by Creditor Henry L. Klein (the "Motion For Reconsideration"), [ECF Doc. 227], and the Opposition thereto filed by Girod Loanco, LLC, [ECF Doc. 257]. Appearances were as reflected in the record.

After considering the pleadings, the arguments of counsel and parties, the record of this case, the applicable law, and for the reasons orally assigned,

IT IS ORDERED that the Motion For Reconsideration is GRANTED, and the February 24, 2021 ruling at ECF Doc. 222 that overruled the *Objection to Claim No. 3 of Girod Loanco*, (the "Objection To POC-3"), [ECF Doc. 116], is VACATED.

IT IS FURTHER ORDERED that the Objection To POC-3 is HELD IN ABEYANCE pending the United States Supreme Court's disposition of the Petition for a Writ of Certiorari filed by Henry Klein. *See* [ECF Doc. 237].

New Orleans, Louisiana, April 27, 2021.

MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE

No. 20-1361

In the Supreme Court of the United States

Regina Berglass Heisler, individually and as the executrix
of the Succession of Frederick P. Heisler,

Petitioner,

v.

Girod LoanCo, LLC,

Respondent.

Rule 44 PETITION FOR REHEARING as to April 26 Denial of Certiorari

ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

Henry L. Klein (SCOTUS Bar 99146)
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Admitted to the United States Supreme Court Bar on September 6, 1974

QUESTIONS PRESENTED

On January 18, 2021, the United States Bankruptcy Court for the Eastern District of Louisiana, at Docket 20-11509, lifted the Stay imposed by 11 U.S.C. § 362, (i) allowing Girod LoanCo, LLC ("Girod") to execute on two state actions commenced pre-bankruptcy, (ii) not yet concluded or perfected, but (iii) being enforced post-bankruptcy. The January 18, 2021 Order declares that:

> "...any filing by a party or ruling by a court in one of the civil actions will not violate the stay imposed by 11 U.S.C. § 362(a)..."

1. Is the January 18, 2021 Order by the bankruptcy court contrary to Justice SOTOMAYOR's concurring opinion in *City of Chicago v. Fulton*, 592 U.S. ___ (2021), decided January 14, 2021?

2. Do the actions by Girod and the January 18 Order constitute "...intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented..." so as to justify rehearing?

3. Does the case at bar fill the gap identified by Justice SOTOMAYOR at page 1 of the published concurring opinion in *City of Chicago v. Fulton*?

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ARGUMENT FAVORING REHEARING

Petitioner's Original Petition ("CERT Petition") could not reasonably raise *Chicago v. Fulton* issues because the actions by Girod and by the bankruptcy court had not ripened. Clearly, Petitioner's April 20, 2021 supplement to this High Court addressed Justice SOTOMAYOR observations about "...acts to perfect and enforce liens against property of the estate and acts to collect, assess, or recover a claim against the debtor..." when seizures are *commenced* pre-bankruptcy but not yet perfected or achieved when bankruptcy is filed. The following chronology establishes that *the* undecided issues identified by Justice SOTOMAYOR are extant in the case at bar, which is still in the process of "...intervening circumstances..." justifying rehearing without re-urging issues in the CERT Petition[1]:

> November 13, 2017: The FDIC, liquidator of First NBC Bank, sold a multimillion dollar package of debt to Girod which included $600,000 in Heisler debt bloated to $7.9 million, predicted by Girod to reach $15 million.
>
> July 19, 2018: Girod filed a state-court claim to the $2.1 million investment account left to Petitioner — still subject to a "status quo" order by the state court pending resolution of issues presented by the CERT Petition and elsewhere.
>
> June 30, 2019: Girod obtained a writ of seizure against all estate property, presently (but not conclusively) impacting (i) the ownership of 844 Baronne Street, set for sale to Girod in early May and (ii) the ownership of a shopping center deeded by the Sheriff to Girod REO in violation of 28 U.S.C. 1446(d).

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1 For perspective and context, key pleadings, motions and orders are essential to take this case to the level necessary to meet the issues Justice SOTOMAYOR identified in *Chicago v. Fulton*. Respectfully, there may never be a case that "...fills the gap..." as in the case at bar.

August 27, 2020: Petitioner filed a *pro se* Chapter 11, converted to Chapter 7 on September 28, 2020.

October 21, 2020: Girod filed a Proof of Claim ("POC-3") for $7,869,608.

November 20, 2020: Objection to POC-3 was filed with a request for an evidentiary hearing[2].

January 14, 2021: *Chicago vs. Fulton* was decided.

(*)[3] January 18, 2021: The bankruptcy court lifted the stay imposed by 11 U.S.C. § 362(a) specifically as to the foreclosure case and the concursus (interpleader) case, Rehearing Appendix A.

March 17, 2021: CERT Petition was filed, docketed March 26, 2021.

(*) March 17, 2021: The bankruptcy court entered an Order Striking Pleadings, Doc. 256, expressing an opinion that undersigned counsel should not file pleadings collaterally supporting Petitioner[4], Rehearing

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2 Notwithstanding (i) the multi-million dollar levels involved, (ii) the equitable nature of bankruptcy, (iii) the criminality that collapsed FNBC, (iv) the violation of FDIC policy against allowing bidders from "secrecy jurisdictions" and (v) ABA FORMAL OPINION 491, there has *never* been an evidentiary hearing Petitioner has oft-beseeched the court to hold.

3 (*) indicates Appendix submissions applicable to this Petition for Rehearing.

4 The Order had a constitutional chilling effect on the right to advocate: "This Court will not permit Klein to continue to file thinly veiled arguments on behalf of the Debtor, who he cannot legally or ethically represent. Accordingly, and as previously stated on the record, IT IS ORDERED that Mr. Klein shall not file pleadings or appear before this Court on behalf of the Debtor." In the final paragraph, the bankruptcy court warned that sanctions might follow pursuant to 11 U.S.C. § 105(a). This Court has held that threats of sanctions are the "...most lethal enemies of the First Amendment...", *Keyishian v. Board of Regents*, 385 U.S. 589 (1968). At *Wolff v. Selective Service Local Board 16*, 372 F.2d 817 (1967), the 2nd Circuit Court of Appeals, citing *NAACP v. Button*, 371 U.S. 360 (1964), said this:

Appendix B.

April 8, 2021: Petitioner filed a "claw-back" case involving the Kenner Shopping Center the Trustee declined to file, *Heisler v. Kean Miller, Girod LoanCo, Girod REO, et alia*, Eastern District of Louisiana Docket 21-724.

(*) April 16, 2021: Petitioner and Creditor-4 (Henry L. Klein, *pro se*) filed a Joint Motion for Certification Pursuant to 28 U.S.C. § 158(d)(2)(B) to the Fifth Circuit Court of Appeals, (Doc. 309), posing the question raised by Justice SOTOMAYOR, Rehearing Appendix C[5].

April 17, 2021: All tenants at 844 Baronne Street were evicted by order of the bankruptcy court[6].

April 20, 2021: Trustee changed all locks at 844 Baronne Street.

(*) April 21, 2021: Petitioner and Creditor-4 filed a joint Objection to Further Proceedings Without an Evidentiary Hearing as to the Validity of POC-3, (Doc. 321), Rehearing Appendix D, hearing not set as of May 3, 2021.

April 23, 2021: Petitioner's CERT Petition was considered at conference.

> "Since it is the mere threat of unconstitutional sanctions which precipitates the injury, *the courts must intervene at once to vindicate the threatened liberties.*"

5 *IF A CREDITOR COMMENCES AN ACTION PRE-BANKRUPTCY BUT IS NOT IN ACTUAL POSSESSION OF THE ASSET WHEN THE DEBTOR FILES FOR BANKRUPTCY PROTECTION, CAN THAT CREDITOR ENGAGE IN ANY "...ACT TO CREATE , PERFECT OR ENFORCE ANY LIEN AGAINST PROPERTY OF THE ESTATE..." AND "...ANY ACT TO COLLECT, ASSESS, OR RECOVER A CLAIM AGAINST THE DEBTOR THAT AROSE PRIOR TO BANKRUPTCY PROCEEDINGS?*

6 The Law Offices of Henry L. Klein; Julie Klein Interiors; Kavanagh & Rendiero, PLC; the Law Offices of Theodore Fish; New Orleans Legal, Inc.; and Attorney Peter Diiorio.

April 26, 2021: Denial published.

(*) April 27, 2021: Bankruptcy court vacated order overruling dual objections to POC-3, but held the objection in abeyance "...pending the United States Supreme Court's disposition of the Petition for a Writ of Certiorari filed by Henry Klein, (Doc. 324), Rehearing Appendix E.

Although the bankruptcy court granted minimal relief on April 27, 2021, (i) the lift-stay order remains in effect, (ii) your *pro se* Petitioner has yet to have a hearing on matter requested and (iii) the ruling *contradicting* Justice SOTOMAYOR's observations remains "...the law of the case..." The gravamen of this Petition for Rehearing is based on the following:

> I write separately to emphasize that the Court has not decided whether and when §362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things 'any act to create, perfect or enforce any lien against property of the estate' and 'any act to collect, assess, or recover a claim against [a] debtor' that arose prior to bankruptcy proceedings, §§362(a)(4), (6).... Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to 'deliver' estate property to the trustee or debtor under §542(a). The City's conduct may very well violate one or both of these other provisions. The Court does not decide one way or the other (Internal citations omitted).

This case fills the gap identified in *Chicago v. Fulton*. The level of activity taking place as we write is substantial and the issue *sub judice* is developing at constitutionally-unacceptable levels and speed.

RELIEF REQUESTED

The Justices of the United States Supreme Court are independently capable of recognizing issues that would give Petitioner prompt succor. We simply try to help as best as we can. Unless this Court takes action, the assets of the debtor's estate are on their way to immediate liquidation *before* there is a ruling on the allowance or disallowance of POC-3, followed by a trip to the Cayman Islands. The damage is irreparable. 844 Baronne Street is empty but for a "...law library to die for..." abandoned in the purge[7]. The Act of Sale from the Trustee to Girod will take place soon after May 10 on a credit bid of $1.8 million with a $107,000 carve-out to the debtor's estate. The claim for the $2.1 million in state court with a $21,000 carve-out to the estate is moving apace, portending a *Rooker-Feldman* and Article III war.

Respectfully submitted,

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7 Appendix C, Supplemental Brief Distributed.

RULE 44(1) CERTIFICATE

I, Henry L. Klein, certify that the Petition for a Rehearing from the April 26, 2021 Order denying certiorari is limited to intervening circumstances not available or ripened when the Original Petition for Certiorari was filed. The intervening circumstances are substantial but were not capable of articulating at an earlier date. The "...controlling..." aspect is Justice SOTOMAYOR's concurrence on January 14, 2021, *contradicted* by the January 18, 2021 order that "...any filing by a party or ruling by a court in one of the civil actions will not violate the stay imposed by 11 U.S.C. 362(a)..." The Petition for Rehearing does not urge matters denied by the original Petition for Certiorari, but only provides facts necessary for perspective and context. The Petition is presented in good faith and not for delay.

Henry L. Klein, Supreme Court Bar 19946

Respectfully submitted,

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Admitted to the United States Supreme Court Bar on September 6, 1974

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	CASE NO.: 20-11509
REGINA BERGLASS HEISLER,	CHAPTER 7
Debtor	SECTION A

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

The *Motion to Lift Stay Pursuant to 11 U.S.C. § 362(d)(2)* (**P-135**) (the "Motion") filed by Girod LoanCo, LLC ("Girod") came for hearing on January 6, 2020 at 1:00 p.m.

APPEARANCES: As reflected in the record.

After considering the Motion, the *Designation of Contested Matter and Request for Expediting Responses to Admissions and Scheduling Deposition* (P-141) filed by Creditor Henry L. Klein ("Klein"), the record of this case including other documents filed by Klein, the applicable law, and the statements of counsel at the hearing, the Court grants the relief requested as follows:

IT IS ORDERED that the Motion is GRANTED as set forth herein;

IT IS FURTHER ORDERED that the stay imposed by 11 U.S.C. § 362(a) is hereby lifted as to the following civil actions pending in state court (jointly, the "Civil Actions"):

1. *Girod LoanCo, LLC v. Regina B. Heisler, Individually and as Succession Representative/Executrix of the Succession of Frederick P. Heisler*, No. 793-014 "D", 24th Judicial District Court for the Parish of Jefferson, State of Louisiana; and
2. *Charles Schwab & Co., Inc. v. Girod LoanCo, LLC and Regina B. Heisler*, 2018-4693 "N", Civil District Court for the Parish of Orleans, State of Louisiana.

IT IS FURTHER ORDERED that any filing by a party or ruling by a court in one of the Civil Actions will not violate the stay imposed by 11 U.S.C. § 362(a);

IT IS FURTHER ORDERED that only the Chapter 7 Trustee has authority to file any motions, briefs, exceptions, or other court filings in the Civil Action on behalf of the Debtor, Regina Berglass Heisler, in her individual capacity. Any court filing on behalf of the Debtor in her individual capacity must be made by the Chapter 7 Trustee; and

IT IS FURTHER ORDERED that the fourteen (14) day stay provision provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) shall not apply to this Order lifting the automatic stay.

IT IS FURTHER ORDERED that counsel for movant shall serve this order on the required parties who will not receive notice through the ECF system pursuant to the FRBP and the LBR's and file a certificate of service to that effect within three days.

New Orleans, Louisiana, January 18, 2021.

MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE REGINA HEISLER,		**BANKRUPTCY NO.: 20-11509**
DEBTOR.		**CHAPTER 7**
		SECTION "A"

ORDER STRIKING PLEADINGS

The Court has received the *Clarification of "Response to Orders" Sent to Trustee*, [ECF Doc. 251], the *Notice of Manifest Errors Exposed by the March 10 Transcript*, [ECF Doc. 254], and the *Corrected Notice of Manifest Errors Exposed by the March 10 Transcript*, [ECF Doc. 255], (together, the "Mid-March Filings"), each filed this week by Henry Klein. After considering these filings, the record as a whole, and the applicable legal authority, including the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the Louisiana Rules of Professional Conduct, and this Court's Local Rules, the Court finds as follows.

As this Court has repeatedly stated on the record, and Klein has himself acknowledged, Klein is not enrolled as Debtor's counsel in this bankruptcy case. Though Klein has and continues to represent the Debtor and her late husband's succession in state court proceedings, he cannot serve as her representative before this Court. Any attorney representing a debtor's estate must move for the Court's authority to do so under 11 U.S.C. § 327. Klein has not so moved and, further, would not be permitted to represent the Debtor even if he had, due to his direct and manifest conflict of interest. Klein is a creditor in this bankruptcy case who has filed a proof of claim asserting the Debtor owes him $800,000. *See* Proof of Claim 4. Under § 327, any attorney or other professional person employed by the estate must by a "disinterested person," which the

Code explicitly defines as, among other things, "not a creditor, an equity security holder, or an insider." 11 U.S.C. § 101(14). Klein is expressly disqualified under the Bankruptcy Code from representing the Debtor in these proceedings. *See also* LA. R. PROF'L. CONDUCT 1.7 ("[A] lawyer shall not represent a client if . . . there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.")

Though Klein has nominally filed all of his pleadings in this case on his own behalf as a creditor, many of those filings, including the Mid-March Filings, appear in substance to argue the Debtor's interests. Document 251, for instance, urges the Court to find in the Debtor's favor on her pending motion for reconsideration filed pro se, [ECF Docs. 235 and 239], and protests once again that the Debtor's requests to testify at an evidentiary hearing have not been granted. This Court will not permit Klein to continue to file thinly veiled arguments on behalf of the Debtor, who he cannot legally or ethically represent.

Accordingly, and as previously stated on the record, IT IS ORDERED that Mr. Klein shall not file pleadings or appear before this Court on behalf of the Debtor.

Further, to the extent Klein files these or other pleadings on his own behalf, he must comply with this Court's Local Rules and its clearly stated procedures. Local Rule 9013 permits parties-in-interest to file (1) motions for relief and (2) timely objections or responses to other parties' motions. This Court has consistently established that parties must request and receive leave from the Court before filing reply briefs or supplemental briefing, and that unauthorized filings may be stricken from the record. *See* Local Rule 9013-1(E). Klein, like all other parties, may not file unsolicited supplemental briefs in support of his prior motions, unsanctioned reply briefs, or other repetitive filings re-urging matters either already decided or currently pending before the Court through previously filed motions.

Finally, any motion filed by Klein, as by any other party, must provide clear notice to the Court and other parties in interest what relief it seeks and what procedural mechanism permits such relief to be sought. *See* FED. R. BANKR. P. 9013 (requiring that every motion "shall state with particularity the grounds therefore, and shall set forth the relief or order sought"). Up to this point, this Court has endeavored when it can to interpret and evaluate Klein's often opaque filings as permissible motions under bankruptcy procedure, such as motions to reconsider certain rulings under Federal Rule of Civil Procedure 59, as made applicable under Federal Rule of Bankruptcy Procedure 9023. However, though pro se pleadings are entitled to liberal construction, *see Carlucci v. Chapa*, 884 F.3d 534, 538 (5th Cir. 2018) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)), Mr. Klein is a licensed attorney. This Court should not have to carefully scrutinize each of his filings to determine what if any relief he requests. Unclear and overbroad statements that a pleading has been "filed in the record as an objection to all aspects of the liquidation process" will not suffice. [ECF Doc. 251].

Accordingly, to the extent the Mid-March Filings raise arguments on behalf of the Debtor or seek to reargue Klein's already filed motions, those argument are not permitted and will not be considered. If Klein intended the Mid-March Filings to be motions for previously unrequested relief permitted under bankruptcy law, it is not clear from those documents. Therefore, IT IS FURTHER ORDERED that Documents 251, 254, and 255 are STRICKEN from the record.

IT IS FURTHER ORDERED that Klein shall comply with the Federal and Local Rules and procedures by clearly designating in any future motion the relief requested and the grounds for that requested relief. Further, any such motion shall be properly served under Local Rule 2002-1, and either set and noticed for hearing pursuant to Local Rule 9013-1(B) or comply with the requirements for *ex parte* motions listed in Local Rule 9013-1(D).

FURTHER, Klein is cautioned that violation of this Order may result in the imposition of sanctions under 11 U.S.C. § 105(a).

New Orleans, Louisiana, March 17, 2021.

MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCYCOURT

FOR THE EASTERN DISTRICT OF LOUISIANA

IN RE:	CASE NO. 20-11509
REGINA BERGLASS HEISLER	CHAPTER 7
Pro Se Debtor	SECTION A

MOTION FOR CERTIFICATION PURSUANT TO

28 U.S.C. § 158(d)(2)(B) TO THE FIFTH CIRCUIT COURT OF APPEALS

Henry L. Klein, *pro se* Creditor-4 ("Creditor Klein") and Regina Heisler, *pro se* Debtor ("Regina Heisler"), (collectively "Movers") respectfully move as follows:

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") amended Section 158 of Title 28 to give the courts of appeals under certain conditions jurisdiction to hear an appeal from a judgment or order of the bankruptcy court, bypassing district court or bankruptcy appellate panel intermediate review. Subpart (A) creates a certification procedure and vests in the courts of appeals, if they authorize the direct appeal, jurisdiction over the certified appeal. The certification sought here is to an *order* rendered April 14, 2021, allowing the Chapter 7 Trustee to sell 844 Baronne Street to Girod LoanCo ("the Order to Sell"). If the Order to Sell is certified and direct appeal is authorized, intermediate appeals are eliminated. Section 158(d)(2)(A) provides that the certification can be made at the request of any party to the judgment. This request is related to issues pending before the United States Supreme Court for the April 23, 2021 conference of the Justices and more specifically issues raised by Justice SOTOMAYOR's concurring opinion in *City of Chicago v. Fulton*, 592 U.S. ___(2021).

I. THE BASIS FOR CERTIFICATION

The basis for certification must come from the list at subsection (d)(2)(A)(i)-(iii):

> (1) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court, or involves a matter of public importance; (2) the judgment, order or decree involves a question of law requiring resolution of conflicting decisions; or (3) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

Subpart (B) amplifies the process. The bankruptcy court, district court, or bankruptcy appellate panel "shall" make the certification if it determines that at least one of the circumstances specified in Section 158(d)(2)(A)(i)-(iii) exists. Movers aver that sections (1) and (3) apply. In *Chicago v. Fulton*, Justice SOTOMAYOR specifically noted that there is a gap in Supreme Court precedent that this case fills: the "...Question we Pose..." is this:

> *IF A CREDITOR COMMENCES AN ACTION PRE-BANKRUPTCY BUT IS NOT IN ACTUAL POSSESSION OF THE ASSET WHEN THE DEBTOR FILES FOR BANKRUPTCY PROTECTION, CAN THAT CREDITOR ENGAGE IN ANY "...ACT TO CREATE, PERFECT OR ENFORCE ANY LIEN AGAINST PROPERTY OF THE ESTATE..." AND "...ANY ACT TO COLLECT, ASSESS, OR RECOVER A CLAIM AGAINST A DEBTOR THAT AROSE PRIOR TO BANKRUPTCY PROCEEDINGS[1]?*

Notwithstanding (i) the undecided argument that Regina Heisler was defrauded into signing the toxic paper Girod holds, (ii) received no consideration that Girod can prove, (iii) the lack of any evidentiary hearing on any substantive issue, the Question Posed is undisputed: the claim arose *before* bankruptcy was filed and neither 844 Baronne and the $2,1 million in the registry of the court were in possession of the trustee or the creditor when

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1 SOTOMAYOR, at page 1.

the April 14 Order to Sell was rendered. It is also undisputed that the use of § 542(a) by the Trustee is an adversary process that has not commenced in this case, despite multiple requests by movers, individually and together.

In concurring with Justice ALITO, Justice SOTOMAYOR articulated the issue thus:

> Section 362(a)(3) of the Bankruptcy Code provides that the filing of a bankruptcy petition "operates as a stay" of "any act . . . to exercise control over property of the [bankruptcy] estate." 11 U. S. C. §362(a)(3). I join the Court's opinion because I agree that, as used in §362(a)(3), the phrase "exercise control over" does not cover a creditor's passive retention of property lawfully seized prebankruptcy. Hence, when a creditor has taken possession of a debtor's property, §362(a)(3) does not require the creditor to return the property upon the filing of a bankruptcy petition. I write separately to emphasize that the Court has not decided whether and when §362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things, "any act to create, perfect,or enforce any lien against property of the estate" and "any act to collect, assess, or recover a claim against [a] debtor" that arose prior to bankruptcy proceedings. §§362(a)(4), (6); see, e.g., In re Kuehn, 563 F. 3d 289, 294 (CA7 2009) (holding that a university's refusal to provide a transcript to a student-debtor "was an act to collect a debt" that violated the automatic stay). Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to "deliver" estate property to the trustee or debtor under §542(a). The City's conduct may very well violate one or both of these other provisions. The Court does not decide one way or the other.... "The principal purpose of the Bankruptcy Code is to grant a '"fresh start" '" to debtors. Marrama v. Citizens Bank of Mass., 549 U. S. 365, 367 (2007) (quoting Grogan v. Garner, 498 U. S. 279, 286 (1991)).

This Court's agreement or disagreement with our request should not preclude the certification. At the end of her concurring opinion, Justice SOTOMAYOR commented that "...Ultimately, however, any gap left by the Court's ruling today is best addressed by the rule drafters and policymakers, *not bankruptcy judges*."

The issue of the lifting of the stay and holding movers' objection to POC-3 in abeyance makes this case all the more unusual, if not *res nova*. If the Supreme Court enforces *Caperton* and *Henson*, that will still leave the clawing-back of the Kenner shopping center still to be done, which is why we filed 21-724 on behalf of the Succession. The Court's indulgence in our procedural ineptness should not be considered a sign of bad faith.

A proposed order is provided. Because the Justices will take this matter up in seven days, time is of the essence.

Respectfully Submitted,

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Regina Heisler
Regina Heisler, *pro se*

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
20-11509

REGINA BERGLASS HEISLER CHAPTER 7

OBJECTION TO FURTHER PROCEEDINGS WITHOUT AN EVIDENTIARY HEARING AS TO THE VALIDITY OF POC-3

Regina B. Heisler, Debtor *pro se* and Henry L. Klein, Creditor-4, ("Objectors") formally object to further proceedings without an evidentiary hearing on the validity, *vel non*, of POC-3. The Court has, on various occasions, announced that it will hold a hearing at a time the court is ready, but that time is not now. Respectfully, the liquidation of assets for the benefit of Girod LoanCo without a determination as to the validity of POC-3 is potentially a violation of the constitutional rights of both objectors. It will be impossible to reconstruct the *status quo ante* if it eventuates that POC-3 is invalid or unsecured. At a motion hearing held April 21, 2021, the Court approved "...the compromise of a controversy..." pending in Civil District Court for the Parish of Orleans by and between the Trustee and Girod for the paltry price of $21,000.

I. THE RIGHT OF LITIGIOUS REDEMPTION

The agreement to let Girod have $2.1 million in the registry of the Civil District Court means that Girod has bought the litigation for $21,000, as to which the debtor has the right to exercise litigious redemption pursuant to Louisiana Civil Code Article 2652. The demand has been made and will be raised in Civil District Court immediately. By any measure, the "controversy" that was "compromised" without Regina Heisler is a classic case to be decided pursuant to Louisiana Law by the Louisiana Courts and this Court may not

have jurisdiction to order the Civil District Court to do anything with the money in its custody[1]. Originally, an Interpleader was filed in Federal Court at Docket 18-2522 on diversity grounds until Girod claimed that it had a "Louisiana member" which spoiled diversity. Heisler objected because Girod is a "silo structured" entity which keeps its ownership secret, a matter that resulted in the dismissal by Judge Harold Baer in *Water Street v. Bank of Panama*, an issue that has been ignored in this case. *Before* the Interpleader was dismissed, Heisler called for the enforcement of the right of litigious redemption. *After* the case was re-filed in Civil District Court, Heisler called for the right of litigious redemption. Today, after the Memo to the Record was memorialized, Heisler called for the enforcement of the right of litigious redemption, Exhibit A.

II. THE SALE OF 844 BARONNE

Our objection to the sale of 844 Baronne is the same as before. However, it appears that the Court recognized the "...over-reach..." and will not approve the proposed order. From our perspective, it was clear that the proposed order was a request for "...an advisory opinion..." as to a release long ago confected. As with all orders approving liquidation of assets, Objectors urge the Court not to grant relief until evidence is adduced regarding POC-3 and the myriad of defenses that compel disallowance.

III. UNDISPUTED FACTS

Long ago, Objectors filed a Motion for Summary Judgment and have filed many pleadings that the Court has apparently not considered. But it is undisputed that Girod has no evidence that any Heisler entity received consideration for the notes it holds. *None*. It

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1 The jurisdictional issue will be MOOT if the United States Supreme Court grants GVR or if this Court holds an evidentiary hearing and concludes that Regina Heisler *never* received a dime of the criminal money ponzied from FNBC by the defendants in the criminal cases. It is inexplicable why the Court has failed to consider these travesties of justice.

is also undisputed that the notes Girod purchased were the "...fruits of a poisonous tree..." It is undisputed that Kean Miller's due diligence provided ample bases for the application of ABA FORMAL OPINION 491 against lawyers "...turning a blind eye..." to clients intending to engage in fraud or crime. This Court cannot ignore *USA v. Gibbs*, *USA v. Ryan*, *USA v. St. Angelo*.

Unaccustomed to the vicissitudes of bankruptcy procedure, we don't understand how or why the Court is delaying the vetting of the most important element in the case, POC-3. The Court's stern orders that Creditor-4 not file pleadings that appear to be helpful to the Debtor is perplexing. Your undersigned has often stated that he will *never* seek payment for anything post-petition. And if POC-3 stands, POC-4 will be *worthless*. The Court's harsh view that there is a conflict fails to consider that the Debtor has the exact same goal: to defeat Girod's claim. In balancing the equities, we *respectfully* submit that the *pro se* debtor's substantive rights are being unconstitutionally-extinguished.

Walking on egg-shells is no fun. The Court is asked to look at the Debtor's side of the case without giving Girod any further refuge from the truth: POC-3 must be disallowed.

Very respectfully submitted,

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Regina Klein

RLK

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Right of Litigious Redemption

1 message

Henry Klein <henryklein44@gmail.com> Wed, Apr 21, 2021 at 7:27 PM
To: "Frederick L. Bunol" <FBunol@derbeslaw.com>, "Wilbur J. Babin, Jr." <babin@derbeslaw.com>, Eric Lockridge <eric.lockridge@keanmiller.com>, "Bergeron, Christy (USTP)" <Christy.Bergeron@usdoj.gov>
Bcc: Dayna Heisler <dheisler4133@gmail.com>, Michael Bagneris <madlyn2@bellsouth.net>

The sale of the litigation by the Trustee to Girod for the sum of $21,000 is subject to the Right of Litigious Redemption.

Please confirm your willingness to accept $21,000 for the redemption of the litigious rights by noon tomorrow.

Henry

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	CASE NO.: 20-11509
REGINA BERGLASS HEISLER,	CHAPTER 7
Debtor	SECTION A

Order Granting *Motion To Vacate Oral Order on February 24, 2021* and Holding in Abeyance the *Objection to Claim No. 3 of Girod Loanco*

The Court held a hearing on March 24, 2021, on the *Motion To Vacate Oral Order on February 24, 2021*, filed by Creditor Henry L. Klein (the "Motion For Reconsideration"), [ECF Doc. 227], and the Opposition thereto filed by Girod Loanco, LLC, [ECF Doc. 257]. Appearances were as reflected in the record.

After considering the pleadings, the arguments of counsel and parties, the record of this case, the applicable law, and for the reasons orally assigned,

IT IS ORDERED that the Motion For Reconsideration is GRANTED, and the February 24, 2021 ruling at ECF Doc. 222 that overruled the *Objection to Claim No. 3 of Girod Loanco*, (the "Objection To POC-3"), [ECF Doc. 116], is VACATED.

IT IS FURTHER ORDERED that the Objection To POC-3 is HELD IN ABEYANCE pending the United States Supreme Court's disposition of the Petition for a Writ of Certiorari filed by Henry Klein. *See* [ECF Doc. 237].

New Orleans, Louisiana, April 27, 2021.

MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE