No. 20-1672

In the Supreme Court of the United States

JOAN CAROL LIPIN,

Petitioner,

v.

WISEHART SPRINGS INN, INC., ARTHUR D. WISEHART, IN HIS INDIVIDUAL CAPACITY, AND IN HIS CAPACITY AS PRESIDENT AND "ALTER-EGO" OF WISEHART SPRINGS INN, INC., MARK APELMAN, DEBBIE GRIFFITH, IN HER OFFICIAL CAPACITY AS DELTA COUNTY ASSESSOR, REBECCA W. GEYER, ELLEN E. WISEHART, RICHARD HUNTER KREYCIK, AND ERIN M. JAMESON,

Respondents.

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

REPLY BRIEF OF PETITIONER

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WHY THIS PETITION IS WORTHY

The lower court reached a decision in *Lipin II*, on the basis of its decision in *Lipin I*, that conflicts with governing Supreme Court precedent, as discussed in the first and third Questions Presented (Pet.i), contrary to the Respondent's arguments. (Br.17-18).[1]

The vastly expanded approach of the Tenth Circuit to Rule 24(a)(2)'s "interest test" does not authorize it (1) to interpret or amend the unambiguous and express terms, conditions, and intent of the wholly integrated, and inextricably intertwined *irrevocable* Trust documents (Pet.8-12) or (2) to affirm the district court's interpretations or amendments thereto to enable the non-intervening party, the *irrevocable* Trust, to be the vector relied upon by the respondents to attack the judicial machinery and harm the integrity of the judicial process, Petitioner, and the husband of Petitioner, on the basis of attorney fabricated evidence to declare for the intended purpose (a) as purported "co-trustees," Arthur Dodson Wisehart and his father Arthur McKee Wisehart, and (b) the Colorado Paonia Properties as a purported "asset" of the *irrevocable*, terminated Trust. (App.111a).

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[1] "Pet." refers to the petition for writ of certiorari. "App." refers to the appendix to the petition. "Br." refers to the respondent Griffith's brief in opposition.

THIS CASE INVOLVES ISSUES OF GREAT IMPORTANCE THAT ARE RIPE FOR SUPREME COURT REVIEW

Respondent's "standard of review" (Br.6), also is incorrect because Petitioner commenced *Lipin II* under Fed. R. Civ. P. 60(d)(3) to reverse and vacate the judgment all respondents procured by fraud in *Lipin I* on the basis of fabricated attorney evidence manufactured outside the four-corners of the verified complaint in *Lipin I.* (Pet.i, Pet.6, Pet.16-18, App.11a).

Indisputably, (1) the non-party *irrevocable* Trust did not intervene in *Lipin I*; (2) the defendants filed their Answer and Affirmative Defenses without compulsory counterclaims; (3) each defendant admitted he/she, and Wisehart Springs Inn, Inc., was not the recorded owner of the Colorado Paonia Properties (40 acres) or the water rights thereunder; and (4) the lower court exercised judicial or quasi-judicial authority or abuse of discretion that is unauthorized by law, as shown by its own interpretations or amendments, and affirmance of the district court's interpretations or amendments to the unambiguous and express intent, terms, and conditions of the wholly integrated and inextricably intertwined *irrevocable* Trust Agreement and documents, in favor of Arthur Dodson Wisehart, a purported "income beneficiary" (App.137a), without standing under the aforesaid unambiguous and express intent, terms, and conditions of the *irrevocable* Trust documents (Pet.i, 8-18, App.44a, App.56a), who also was not a co-trustee party and did not intervene in that capacity in *Lipin I.*

Respondents' fraud on the courts is unconscionable. (Pet.i, 8-24, App.44a, App.56a)

Respondent's brief is an invalid attempt to rewrite the *irrevocable* Trust documents, and thereby concedes (Br. 17-18) *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (Apr. 22, 2021); *McGirt v. Oklahoma*, 140 S. Ct. 2452 (Jul, 2020); and *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018),7-18), and *Northern Assurance Co. v. Grand View Bldg. Assoc.*, 183 U.S. 308 (1902) are directly applicable to the issues raised in this petition for a writ of certiorari.

The respondent's brief also concedes each respondent in *Lipin II* committed fraud on the court in *Lipin I*, and also in *Lipin II*, for the intended purpose to attack the judicial machinery and cause harm to the integrity of the judicial process, to petitioner, and to the husband of petitioner (Br.16), *see also* (Pet.12, 14-15).

THE LOWER COURT'S DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF PROCEEDINGS CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER

No court has the authority to interpret, amend, or rewrite the unambiguous and express terms, conditions, and intent of a wholly integrated, inextricably intertwined revocable living (*inter vivos*) original "Trust Agreement," inclusive of the First Amendment thereto, the Confirmation of the First Amendment, and Second Amendment thereto that were accepted, signed, executed, confirmed, and ratified by the only two parties thereto, Dorothy and Arthur McKee Wisehart, and became *irrevocable* on November 28, 1993, when the Settlor died, and Sole Successor Trustee legal agency authority was conferred on Arthur M. Wisehart under the unambiguous and express terms thereunder. (Pet.i, 8-24)

Such exercise of judicial or quasi-judicial authority or abuse of discretion by the lower court that is unauthorized by law makes directly applicable the holdings in *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (Apr. 22, 2021); *McGirt v. Oklahoma*, 140 S. Ct. 2452 (Jul 2020); or *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), and *Northern Assurance Co. v. Grand View Bldg. Assoc.*, 183 U.S. 308 (1902). (Pet.i, Pet.17, Pet.18).

Accordingly, the lower court's exercise of judicial or quasi-judicial authority or abuse of discretion so far departs from the accepted and usual course of judicial proceedings that such departure by the lower

court calls for an exercise of this Court's supervisory power. (App.43a, App.55a).

Indisputably the Sole Successor Trustee of the *irrevocable* Trust, Arthur McKee Wisehart, was not a party in *Lipin I* or in *Lipin II*, and he did not intervene therein, either in his individual capacity, or in his capacity as the Sole Successor Trustee of the *irrevocable* Trust he terminated on May 12, 2015, in accordance with the legal agency authority conferred on him thereunder. (Pet.23).

Respondent concedes the non-party *irrevocable* Trust did not intervene in *Lipin* I, and admits that that respondent was not a party and also did not intervene in *Lipin I* (Br.10), like certain co-respondents.

In *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (citations omitted), this Court stated "our system" rests on the premise that the actual parties whose rights are disputed "know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Ibid.* (citation omitted).

Accordingly, each non-intervening party that was not a party in *Lipin I*, including respondent and several co-respondents in *Lipin II*, did not have a legal stake in the outcome in *Lipin I*.

Similarly, the Wisehart defendants in *Lipin I*, who purported to be "income beneficiaries" were non-intervening parties in *Lipin I*, and they did not have a legal stake in the outcome, or standing, in *Lipin I*. (Pet.8-12, Pet.17-18)

The lower court therefore up-ended Fed. R. Civ. P. Rule 24 and also this Court's precedent in *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (Apr. 22, 2021); *McGirt v. Oklahoma*, 140 S. Ct. 2452 (Jul, 2020); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), and *Northern Assurance Co. v. Grand View Bldg. Assoc.*, 183 U.S. 308 (1902), (Pet.i, Pet.17, Pet.18), (1) by affirming the district court's exercise of judicial authority or abuse of discretion that is unauthorized by law (App.5a, App.21a, App.110a, App.131a), and (2) by exercising its own judicial or quasi-judicial authority or abuse of discretion that is unauthorized by law to interpret or amend the unambiguous and express intent, terms, and conditions of the *irrevocable* Trust, that indisputably was not a family or testamentary trust. (Pet.8, App.5a, App.70a-74a, App. 75a-82a, App.122a fn 7, 8); *see also* App.43a, App.55a.

Some examples of the lower court's exercise of judicial or quasi-judicial authority that is unauthorized by law, concerning its own interpretations or amendments to the *irrevocable* Trust, appear at App.6a, App.122a fn7, 8.

RESPONDENT'S BRIEF IS DEVOID OF MERIT

Respondent's brief is an invalid attempt to rewrite the *irrevocable* Trust documents, and a thinly veiled attempt to submit a response on behalf of each co-respondent.

Further, respondent's brief also attempts to rely on the inapplicable non-mutuality collateral estoppel or issue preclusion defense on behalf of that respondent and her co-respondents. (Br.10-14)

Respondent's attempt fails under *Strong v. Laubach*, 153 Fed. Appx. 481 (10th Cir. 2005); *State ex rel. Oklahoma Bar Ass'n v. Giger*, 2004 OK 43, 93 P.3d 32, 38 (Okla. 2004 (footnotes omitted); *National Diversified Bus. Servs., Inc., v. Corp. Fin. Opportunities, Inc.*, 1997 OK 36, 946 P.2d 662, 666-67 (Okla. 1997), and it is inapposite to *Happy Elevator No. 2 v. Osage Constr. Co.*, 209 F.2d 459, 462 (10th Cir. 1954 [** 17] (citing *Morgan v. Whitehead*, 1946 OK 6, 196 Okla. 402, 165 P. 2d 338 (Okla. 1946).

Indisputably each respondent did not prove in *Lipin II* that the issues were actually litigated and determined in *Lipin I.*

See 18, Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE § 4420 (2d ed. 1987) (inadequate proof of issues litigated and determined in former action results in an "opaque judgment" and "fails to preclude re-litigation.").

The two issues and claims in *Lipin I* are common law trespass and ejectment.

Lipin II raises several issues and claims, including under the Racketeer Influenced and Corrupt Organizations Act ("RICO") (App.441) (Br.6, Br.11), as alleged in the amended verified complaint: *COUNT I* – Scheme to Infiltrate and Control the Area by Using Wisehart Springs Inn, Inc., to Facilitate the Enterprise; *COUNT II* – Scheme to Use the *Irrevocable* Dorothy R. Wisehart Trust, as a Cover to Conceal the Enterprise; *COUNT III* – Real Estate Scheme to Continue the Racketeering Enterprise by Using the *Irrevocable* Dorothy R. Wisehart Trust, and to Commit Civil Theft (App.71a); *COUNT IV* – Scheme of Defendant Arthur D. Wisehart to Operate and Manage the Racketeering Enterprise; *COUNT V* – Scheme to Conceal the Racketeering Activity of the "Dorothy R. Wisehart Trust" Prior to its Merger with Wisehart Springs Inn, Inc., by Defendant Arthur D. Wisehart; *COUNT VI* – Civil Rights Violations Action Under the Constitution of the United States (Violation of 42 United States Code Section 1983) (Pet.5-6, Pet.13-24, App.44a, App.76a, App.77a); and *COUNT VII* – Common Law Fraud and Deceit (App.13a, App.36a, 44a, App.50, App.56a, App.50a, App.65a, App.70-71a, App.75a).

The lower court's footnote at App.115, fn1, is without legal force or binding effect because the 2014 "Trust Affidavit" signed and recorded by Arthur Dodson Wisehart, "co-trustee" constitutes a forgery. "Void things are as no things." *Marden v. Dorthy*, 160 NY 39, 56 (1899).

Indisputably, it is an impossibility in law or fact to be "appointed" as "co-trustee" on the basis of the 2009 uncertified, unauthenticated, and fabricated, non-trust "Dorothy R. Wisehart Trust Appointment

Co-Trustee" document that is merely the "draft" work-product of attorney Mertens. (Pet.13-14)

Respondent's brief also is not credible because that respondent omits the defenses argued by that respondent in the lower court concerning petitioner's claim against that respondent under 42 U.S.C. § 1983 (Br.6, Br.17). Respondent relied on the inapplicable statutory qualified immunity defense under the Colorado Governmental Immunity Act ("CGIA"), which the lower court attempted to rewrite in favor of that respondent (App.76a), contrary to the Supremacy Clause, Article VI, *para.* 2, of the Constitution of the United States. (App.77a).

See also Directv, Inc. v. Imburgia, 136 S. Ct. 463 [*468] (2015).

Respondent's brief also omits, in lieu of her fabricated attorney "ownership" defense (Br.1, 2, fn 2), that that respondent, in the lower court, also relied on the inapplicable CGIA notice requirement defense (App.38a) which fails under *King v. United States*, 53 F. Supp. 2d 1056 (D. Colo. 1999), *rev'd on other grounds*, 301 F. 3d 1270 (10th Cir. 2002), *cert. denied*, 539 U.S. 926 (2002) (it is only where a plaintiff has stated a federal claim that a notice of claim provision may be struck down on supremacy because allowing a federal claim by state law would defeat the objective of the federal law). (Br.23, App.7a, App.44a, App.76a, App.77a).

Accordingly, the doctrine of non-mutual collateral estoppel defense (Br.101) is not available to the respondent or to each co-respondent party who was not a party and did not intervene in *Lipin I*, as acknowledged by the lower court, *see* App.33a:

> Accordingly, she [Petitioner] is likely barred by *res judicata* from relitigating the ownership issues at least against the Wisehart defendants who were also named as defendants in *Lipin v. Wisehart I*.
>
> At a minimum she [Petitioner] is barred by collateral estoppel from relitigating those issues against all the Wisehart defendants in the present case . . . ."

Respondent's reliance on *Austin v. Downs, Rachlin & Martin*, 270 Fed. Appx. 52, 54 (2d Cir. 2008) (unpublished); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), therefore also fails under *Hazel-Atlas Glass Co. v. Hartford-Empire*, 322 U.S. 238 (1944); *Bridge v. Phoenix Bond & Indem Co.*, 553 U.S. 639 (2008). (Pet.17-24)

Importantly, respondent's brief at Br.2, Br.2, fn2, intentionally omits that co-respondent attorney Apelman is the chief architect of the Global Ponzi scheme to defraud all targeted courts, including the lower court, on the basis of the void judgment procured by fraud in *Lipin I* on February 12, 2018.

Other targeted courts that are the victims of that respondent attorney's Global Ponzi to defraud include (1) the Ohio Common Pleas Court, Preble County, without justiciable or subject matter jurisdiction, commenced by "*Arthur Dodson Wisehart, in his capacity as co-trustee*" on July 6, 2015, without standing. On April 16, 2020, that court entered a non-final declaratory judgment, ghostwritten by respondent attorney Apelman, on the basis of the imported pinball void judgment in *Lipin I* filed on February 12, 2018; (2) on March 26, 2019, the Colorado Delta County district court, a court without

justiciable or subject matter jurisdiction, entered a default declaratory judgment in the non-justiciable controversy commenced on March 16, 2016, by "*Arthur Dodson Wisehart, aka Arthur D. Wisehart, co-trustee of the Dorothy R. Wisehart Trust*" on the basis of the imported void *Lipin I* judgment; (3) the lower court relied on the void pinball judgment in *Lipin I* , as shown in the judgment entered in *Arthur McKee Wisehart v. Arthur Dodson Wisehart, et al.*, Case No. 20-1198, as discussed in footnote 2, that presently is pending in the Tenth Circuit, Case No. 21-1148; and (4) the lower court in *Lipin II* on the basis of *Lipin I*.[2]

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[2] *Arthur McKee Wisehart v. Arthur Dodson Wisehart, et al.*, is presently, pending, in the Tenth Circuit, Case No. 21-1148. (Pet.86, App.46a), counsel of record is respondent attorney Apelman. The defendants in the First Federal Case commenced on April 20, 2015 (App.27a), responded "Admit." "The DRW Trust speaks for itself" in the Answer and Affirmative Defenses that attorney prepared, signed, and filed on February 21, 2018, without compulsory counterclaims.

Those defendants also relied therein on the void *Lipin I* judgment of February 12, 2018, to "Deny" numerous allegations of the complaint in *Arthur McKee Wisehart v. Arthur Dodson Wisehart, et al.*, on the basis of the judgment in *Lipin I*. Respondent attorney Apelman fabricated therein *Lipin I* commenced on March 22, 2016, to be the "First Federal Case."

Respondent's brief also fabricates, at Br.2, Br., fn 2, petitioner raised the same "ownership" issues in *Arthur McKee Wisehart v. Arthur Dodson Wisehart, et al.* Petitioner was not a party and did not intervene.

The default declaratory judgment entered on the basis of the void *Lipin I* judgment in the derivative Colorado Delta County non-justiciable controversy is non-final, and without legal force or binding effect. See *Lipin v. Wisehart, et al.*, 2017 U.S. Dist. LEXIS 29585 (D. Colo. Mar. 2, 2017) at [**6-8]

Directly applicable to respondent attorney Apelman's Global attorney Ponzi scheme to defraud all victimized courts (App.25a) are the holdings in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008); *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (SDNY 2014), *aff'd* 833 F3d 74 (2d Cir 2016), *cert denied*, 137 S. Ct 2268 (2017); *Matter of Donziger*, 163 A.D.3d 123 (N.Y. App. Div. 1st Dept, July 10, 2018); *Matter of Donziger*, 186 A.D.3d 27 (N.Y. App. Div. 1st Dept, August 13, 2020), leave to appeal *denied*, by *Matter of Steven R. Donziger*, 2021 N.Y. LEXIS 708 (N.Y. May 6, 2021). (Pet.23)

Petitioner's ability fully and fairly to prepare for and present her claims in *Lipin I* was thwarted by respondent attorneys Apelman and Geyer's carefully executed and planned Global Ponzi scheme to defraud all victimized courts, on the basis of attorney fabricated evidence manufactured by those attorneys, and by attorney Mertens, respondents Griffith, Arthur D. Wisehart, *in his individual capacity*, and in his capacity as President and "Alter-Ego" of Wisehart Springs, Inn, and each co-respondent acting in concert, and to attack the judicial machinery and cause harm to the integrity of the judicial process in *Lipin I*, and in *Lipin II*, to petitioner and to petitioner's husband, Arthur McKee Wisehart.

The COVID-19 compounded fraud to defraud all victimized courts on the basis of the void judgment in *Lipin I* by each respondent to beget other pinball void

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The non-final declaratory judgment, ghostwritten by respondent attorney Apelman on the basis of the void *Lipin I* judgment, entered in the derivative Ohio non-justiciable controversy, commenced on July 6, 2015, is pending, in the Ohio Court of Appeals Twelfth Appellate District, Case No. 2021 CA 010001.

judgments is unconscionable and contrary to respondent's brief. (Br.2, fn 2, Br.16).

Petitioner commenced *Lipin II*, as of right, under Fed. R. Civ. P. 60(d)(1) and (3) (Pet.i, 6, 7, App.11a), and the respondent's misstatements (Br.7-8, Br.15), make directly applicable *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) (Pet.21), because this is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence is believed possibly to have been guilty of perjury. Here . . . we find a deliberately planned and carefully executed scheme to defraud [a court]. 322 U.S. at 245. (Pet.12-20)

Respondent's brief concedes "the victim[s] of that fraud" includes the lower court. *Universal Oil Co. v. Root Refining Co.*, 328 U.S. 575, 580-81 (1946) (court has inherent power to investigate whether "fraud has been practiced upon it")

The issues raised in this petition for a writ of certiorari are worthy of great importance, and ripe for Supreme Court review, as set forth in the Questions Presented. (Pet.i)

CONCLUSION

For the reasons stated herein, and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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AUGUST 10, 2021

CERTIFICATE OF WORD COUNT

No. 20-1672

Joan Carol Lipin,

Petitioner,

v.

Wisehart Springs Inn, Inc., et al.,

Respondents.

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. That, as required by Supreme Court Rule 33.1(h), I certify that the JOAN CAROL LIPIN REPLY BRIEF OF PETITIONER contains 2974 words, including the parts of the brief that are required or exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Lucas DeDeus

August 10, 2021

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