20-396

No.

In the Supreme Court of the United States

Sheri Speer, PETITIONER *v.*

Seaport Capital Partners,

LLC, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI FROM THE SECOND CIRCUIT OF APPEALS

ORIGINAL

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

Involuntary bankruptcies are rare - as they should be. They are a last resort after all state remedies have been exhausted, and are not a tool to be used in order to solve two party disputes.

The questions presented are as follows:

A. Is the Second Circuit's decision in conflict with *In re: Matthew N. Murray* (Wilk Auslender LLP v Murray) 900 F.3d 53 (2d Cir. 2018), *Popular Auto, Inc. v. Reyes-Colon* (In re Reyes-Colon), Nos. 17-1971, 17-1972, 2019 WL 1785039 (1st Cir. April 24, 2019) and this Court's holdings in Law v. Siegel, 571 U.S. 415, 421(2014)?

B. Did the Bankruptcy Court violate the Colorado River and other Abstention Doctrines?

C. Did the Bankruptcy Court lack subject matter jurisdiction to grant the involuntary petition?

D. Did the Second Circuit condone a profound abuse of the involuntary bankruptcy process?

PARTIES TO THE PROCEEDING

The Petitioner is Sheri Speer, who is proceeding pro se.

Respondents are Seaport Capital Partners, LLC, United States Trustee Thomas Boscarino, Dr. Michael Teiger, SLS Heating, LLC and Clipper Realty Trust

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SEAPORT CAPITAL PARTNERS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES SECOND CIRCUIT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

Sheri Speer, pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court for the Second Circuit of Appeals dismissing her appeal of the District Court's judgment affirming the ruling of the Bankruptcy Court's denial of the motion to dismiss her involuntary bankruptcy case.

OPINIONS BELOW

The opinion of the Second Circuit of Appeals entered in docket number 20-255 on April 10, 2020, and reconsideration en banc was denied May 27, 2020 with the mandate issuing June 3, 2020. It dismissed on the grounds that the ruling under appeal was interlocutory, and overlooked its role in the supervision of the administration of justice.

JURISDICTION

The judgment of the Circuit Court entered April 10, 2020, and reconsideration en banc tolled the time in which to seek certiorari from this Court to begin June 3, 2020, making this petition timely. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, to review the Second Circuit of Appeals' decision dismissing the Petitioner's appeal.

STATUTORY PROVISIONS INVOLVED

This case involves, at its core, whether the requirements of 11 USC §303 were ever met in the first place, which requires three valid petitioning creditors in order to place a debtor in an involuntary bankruptcy. Facts discovered subsequent to the granting of the involuntary petition answer that question in the negative.

STATEMENT

This case is profoundly unusual in that the Respondent Seaport Capital Partners, LLC was allowed to concoct an involuntary bankruptcy to prevent counterclaims of the Petitioner against it from being heard in Connecticut Superior Court - and then obtain favorable, preferential treatment over that of other creditors. The result has defied all standard norms of comity between Federal and State Courts.

As the Petitioner later discovered, there were not three petitioning creditors with no bona fide disputes as to their debts. Seaport, though it has intervened (after paying for the case to be brought by SLS Heating, LLC, Clipper Realty Trust and Dr. Michael Teiger, was not allowed to prosecute (so there was no fourth creditor, as the Bankruptcy Court (Nevins, J) erroneously claimed. Dr. Michael Teiger's loan was ruled illegal and unenforceable, nunc pro tunc by the Hartford Superior Court. Clipper Realty Trust was found to not even be an existing entity under Connecticut Law at any time (per its Uniform Statutory Trust Act). This left SLS Heating, LLC as the sole remaining creditor, meaning the requirements of §303 were not met because the Debtor had more than twelve (12) creditors.

It has not been in dispute in the years the involuntary bankruptcy of Seaport's intentions to avoid state adjudication of its claims and it as the sole, only and primary participant in any of the bankruptcy proceedings, below.

REASONS FOR GRANTING THE PETITION

A.The Second Circuit's decision is in conflict with In re: Matthew N. Murray (Wilk Auslender LLP v Murray) 900 F.3d 53 (2d Cir. 2018), Popular Auto, Inc. v. Reyes-Colon (In re Reyes-Colon), Nos. 17-1971, 17-1972, 2019 WL 1785039 (1st Cir. April 24, 2019) and this Court's holdings in Law v. Siegel, 571 U.S. 415, 421(2014).

Generally, these well reasoned decisions stand for the long standing policy that bankruptcy courts do not exist to decide two-party disputes, they are not collections agencies and they are not to be used to interfere with State Proceedings. There is no real factual dispute that In Re Speer 14-21007 was commenced according to Seaport's plan, with its funds and for its own interests primarily and foremost at the direct expense of the other creditors - one of whom did not actually exist as a legal entity. As was on the record for the Second Circuit's consideration, the Petitioner arrived at a stipulated judgment with one of Seaport's co-conspirators, wherein he admitted to his role and the improper purpose of the involuntary bankruptcy (see Appendix F). As the case was in *In Re Reyes-Colon*, such conspiracies must be outed and undone, even if that just result takes many years occur (as it took 14 years, more than double the time *In Re Speer* has been pending). While the Second Circuit adopted the reasoning similar to there that involuntary bankruptcies were not the proper vehicle to resolve two-party disputes (and that state courts were), it departed from that reasoning in In Re Matthew Murray by dismissing the Petitioner's appeal and avoiding the issue.

It cannot be said the Bankruptcy Court was acting within the limits of its powers, as this Court specifically forbids a it from doing as it held in *Law v Seigel.* Specifically, it denied the Petitioner any real ability to challenge its lack of subject matter jurisdiction due to a sanctions order entered against her. The very process by which that jurisdiction was invoked was through improper purpose and abuse of the Bankruptcy Code. Rather than address the wrong that had occurred, the Bankruptcy Court simply misconstruction the original decision entering involuntary relief, ignored the orders from the Hartford Superior Court deeming the debt claimed by Dr. Teiger as not in default and further ignoring the fact that Clipper Realty Trust did not actually exist as a matter of law because it had not appointed an agent or registered with the Secretary of State in order to do legally do so. The record transmitted upon granting of this petition will make these facts very apparent and clearly not in dispute.

B. The Bankruptcy Court Profoundly Violated the Colorado River and other Abstention Doctrines

At the time of the involuntary petition, Seaport Capital Partners, LLC was a counterclaim defendant in nine actions styled Seaport Capital Partners, LLC v Speer KNL-CV-12-6012072 through -080. Trial was set to commence May 22, 2014, after Seaport abandoned the settlement it had agreed to in open court on April 3, 2014 (transcript in lower court record).

The end result was an improperly negotiated settlement of all those claims with the United States Trustee, and had the Petitioner prevailed in Superior Court on those, the common facts would have also denied Seaport foreclosures of the properties it was seeking. The scheduled trial never happened as a result. Seaport did not like the way the state court forum was going for it, so it changed to the bankruptcy forum.

Colorado River and its progeny required six considerations to be taken into account by the Bankruptcy Court and those reviewing its decisions: (1) the assumption of jurisdiction by either court over any res or property; (2) the inconvenience of the federal forum; (3) the avoidance of piecemeal litigation; (4) the order in which jurisdiction was obtained; (5) whether state or federal law supplies the rule of decision; and (6) whether the state court proceeding will adequately protect the rights of the party seeking to invoke federal jurisdiction. All six of those factors favored abstention, and the third factor only resulted in piecemeal litigation by Seaport in the federal forum, which it then repeated and multiplied again in the State Forum.

As a result, the Bankruptcy Court's dodging of the §303 lack of prerequisites for the initial exercise of its jurisdiction led to forum shopping and piecemeal litigation - the exact result Colorado River and its progeny were designed to prevent. The disputes between the Petitioner and the Respondent were unmistakably parallel and required abstention.

C. The Bankruptcy Court lacked subject matter jurisdiction to grant the involuntary petition

As to this, there is no question. Seaport was not actually allowed to prosecute, so it was not a petitioning creditor for the purposes of entering involuntary relief. Clipper Realty Trust simply did not exist. Dr. Teiger's debt was ruled not in default by Hartford Superior Court in an action styled Commissioner of Banking v Stuart Cohen. That leaves SLS Heating, LLC as the sole creditor. Holding with this Court's opinion in *Law v Siegel*, that defect could not be cured. The Bankruptcy Court simply had no power or authority to proceed a step further.

D. The Second Circuit condoned a profound abuse of the involuntary bankruptcy process

Finally, what the Second Circuit did amounted to a profoundly dangerous public policy result - the officially sanctioned use of involuntary bankruptcy proceedings to resolve two party disputes without requiring anyone to exhaust state court remedies or settle issues of state law in state court - where they belong. The decision to dismiss the appeal and not remedy the abstention and lack of subject matter jurisdiction defects in the bankruptcy itself undid all of the sound public policy objectives established, as referenced herein.

CONCLUSION

The Second Circuit's decision and its conflict with decisions of this Court, its own decision and those in the First Circuit (and undoubtedly others) require this Court to take the necessary step of granting certiorari on the questions presented herein.

/s/ Sheri Speer Dated this 25th day of June, 2020

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