No. 20-6429 ORIGINAL

IN THE

Supreme Court of the United States

IN THE MATTER OF: DONALD H. GRODSKY, DEBTOR

JOHN L. HOWELL, PETITIONER
v.
DAVID V. ADLER, ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

FILED ON BEHALF OF
JOHN HOWELL, *Petitioner*
5847 CATINA STREET
NEW ORLEANS, LOUISIANA 70124
(985) 807-6655

NOVEMBER 2020

QUESTION PRESENTED

Petitioner is a secured estate claimant in the Chapter 7 bankruptcy of Donald Grodsky. Pursuant to a Promissory Note and Security Agreement executed by the Debtor and attached to Petitioner's timely filed proof-of-claim, Petitioner retained a Purchase Money Security Interest ("PMSI"), and an undivided 100% equitable interest, in a mortgage note that was the estate's sole asset. In other words, the Debtor and/or his estate, had no, ***zero***, equity in the mortgage note that was in the Trustee's possession. Despite this fact, while Petitioner's secured claim was outstanding, and without satisfying the Promissory Note attached to his proof-of-claim, the Trustee liquidated the mortgage note and moved for an order authorizing him to embezzle proceeds that were security for the Promissory Note (and, thus, were rightfully Petitioner's property) by distributing them to himself and his attorneys as commissions and fees. Thereafter, with Petitioner's claim still in limbo, the Trustee certified that there were no secured creditors and closed Grodsky's bankruptcy proceeding. The question presented is:

May the lower court endorse (by dismissing an appeal as frivolous) a trustee's scheme to defraud secured estate creditors by:

(1) refusing to administer a Chapter 7 bankruptcy estate having only one asset for more than five (5) years;

(2) breaching his fiduciary duty to estate claimants by refusing to satisfy or object to their claims against the estate for more than seven (7) years;

(3) liquidating property that is security for creditors' secured claims and in which the estate has only a titled interest and no, ***zero***, equitable interest;

(4) embezzling money that rightfully belongs to secured estate claimants by fraudulently obtaining an order permitting him to abscond with proceeds of the security for their claims as commissions and fees;

(5) entering false evidence into the records of bankruptcy proceedings;

(6) falsely certifying that the estate has no secured creditors – while a timely filed secured claim remains unsatisfied and outstanding; and

(7) closing a bankruptcy case while secured claims remain in limbo?

PARTIES TO THIS PROCEEDING

Plaintiffs/Petitioners:	**John L. Howell**, *pro se*
Defendant/Respondent:	**David V. Adler, U.S. Trustee**
Adler's Counsel/Co-Defendants:	David J. Messina, Fernand L. Laudumiey IV, Chaffe McCall, L.L.P., Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis, & Eagan, LLC, Leslie S. Bolner, Glen R. Galbraith, Seale & Ross, PLC.
Defendants/Respondents:	**David J. Messina**, *pro se* **Fernand L. Laudumiey IV**, *pro se* **Glen R. Galbraith**, *pro se* **Leslie S. Bolner**, *pro se*
Defendant/Respondent:	**Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis, & Eagan, LLC**
Its Counsel:	C. Peck Hayne Jr.
Defendant/Respondent:	**Chaffe McCall, L.L.P.**
Its Counsel:	David J. Messina, Fernand L. Laudumiey IV
Defendant/Respondent:	**Seale & Ross, PLC**
Its Counsel:	Glen R. Galbraith, Leslie S. Bolner

RELATED PROCEEDINGS

- *Howell v. Adler et al.*, No. 19-30494, U.S. Court of Appeals for the Fifth Circuit. Judgment entered April 1, 2020.
- *Howell v. Adler et al.*, No. 20-30417, U.S. Court of Appeals for the Fifth Circuit. Judgment entered August 4, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioner John Howell respectfully petitions for a writ of certiorari to review a judgment of the U.S. Court of Appeals for the 5th Circuit that defies ordinary judicial procedure, the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, the Criminal Code, and even EOUST's Official Handbook for Chapter 7 Trustees. This clear-cut case of bankruptcy fraud, in which federal courts have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departures, merits an exercise of this Court's supervisory authority.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the 5th Circuit is reprinted in Appendix A at 1a. The decision of the U.S. District Court for the Eastern District of Louisiana is reprinted in Appendix B at 2a. The order rendered by the U.S. Bankruptcy Court for the Eastern District of Louisiana is reprinted as Appendix C at 9a.

JURISDICTION

The 5th Circuit Court of Appeals entered final judgment on June 1, 2020. In accordance with this Court's March 19, 2020 order (providing the "deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment..."), this Petition is timely filed on or before November 2020. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Complete text of the following statutes and rules is reprinted in Appendix K at 48a:

11 U.S.C. §502; §541; §554; §704;
18 U.S.C. §152; §153; §157; §645; §1503; §1519; §1621; §1623;
28 U.S.C. §1746
FRBP 3001; 3002; 3007
FRAP 38; **FRCP** 11

STATEMENT OF THE CASE

On January 31, 2014, Petitioner, John, timely filed his proof-of-claim, "Claim No. 6-1," in Debtor Donald Grodsky's Chapter 7 bankruptcy proceeding. Attached to Petitioner's proof-of-claim was John's original Promissory Note and Security Agreement ("***PNSA***") executed by Grodsky in 2007. (A copy of Claim No. 6-1, including John's PNSA, is attached as Appendix D at 11a.)

As evidenced by the PNSA, John retained a Purchase Money Security Interest ("***PMSI***") in the mortgage note that was the sole asset in Grodsky's bankruptcy estate. John's Promissory Note was secured by that mortgage note. As further evidenced by the PNSA, Grodsky and/or his estate had ***no, zero***, equity in the mortgage note.

Petitioner's original Promissory Note (secured by the mortgage note and attached to his proof-of-claim) has ***NOT*** been satisfied and John has ***never*** released or forgiven the maker, Grodsky, from his obligation under the Promissory Note. Thus, John's secured Claim No. 6-1, based on his original Promissory Note, remains outstanding in Grodsky's bankruptcy case and Grodsky and/or his estate owes John approximately $160,000.00 on the Promissory Note.

Demonstrating ***clearly erroneous*** findings, which can be attributable only to a complete disregard for the facts and evidence in this case and/or a purposeful endeavor to remain intentionally obtuse, (in a finding adopted by the 5th Circuit) the bankruptcy court opined,

> "[Petitioner] is not a secured creditor of the estate, as he asserts. If the state-court had awarded ownership of the note to him, then [Petitioner] would have been a secured creditor of his parents. His security would be the condominium. But, Grodsky is the owner of the note, not [Petitioner]. The proof-of-claim filed by [Petitioner] is based on the note. Because the state-court already ruled that he is not the owner of the note, his proof-of-claim is based on a note that he does not own." (See Reasons for Order, Bankr. Doc. No.74, *Howell v Adler*, No.18-1006 (Bankr. E.D.La. Apr. 12, 2019).)

Obviously, Petitioner's proof-of-claim is not based on a mortgage note made by his parents. John's proof-of-claim is **clearly** based on the Promissory Note **made by Grodsky**. As this Court can see, a cursory inspection of John's PNSA evidences he is not a secured creditor of his parents. John is a secured creditor of the Debtor, Grodsky. (See Appendix D at 13a-15a). The security for John's Promissory Note was the mortgage note in which Grodsky and/or his estate had a titled interest but ***zero, no***, equity.

No court (state or federal) ever awarded John's Promissory Note to Grodsky or his bankruptcy Trustee. John owns this Promissory Note and his ownership has ***never*** been in question. John's secured claim against the estate is based on this Promissory Note and is, clearly ***not*** "based on a note that he does not own."

Under 11 U.S.C.§704(a)(5), a trustee has a duty to either satisfy secured claims or file FRBP 3007 objections to them in the bankruptcy court. However, this Trustee did neither. Breaching his fiduciary duty to John as an estate claimant (and violating multiple, additional, provisions of the Bankruptcy Code), the Trustee ***refused*** to administer Grodsky's estate by satisfying John's secured claim and closing this simple Chapter 7 case.

In fact, as evidenced by the court's docket (see Bankr. #09-13383 Doc. 9/3/13 to 3/5/18), the Trustee failed to object to John's secured claim or administer this estate for **years**. Why? Because the Trustee had entered into an agreement with a third-party to split the proceeds of an inferior lien on the same property that secured the mortgage note (the estate's sole asset). The Trustee kept this Chapter 7 case (having only one asset to administer) open for **five (5) years** in an attempt to toll Louisiana's 5-year liberative prescription (common law statute of limitations) on the mortgage note.

Once the estate's sole asset prescribed, the Trustee could close this bankruptcy case as a "no-asset" case (thus, frustrating John's secured claim and, in fact, eliminating claims of all creditors). Thereafter, the third party's inferior lien would ascend to first position and it would split foreclosure proceeds with the Trustee, the Debtor, and the remaining Respondents. The Trustee's scheme was foiled when, just days before the mortgage note was due to expire, a concursus action was brought to evidence payment and interrupt its prescription. See *LaMartina v. Adler, et al.*, No. 18-01013 (Bankr. E.D. La. 2018).

Nonetheless, the Trustee never filed a FRBP 3007 objection to John's claim and, to date, by virtue of the automatic allowance of a claim not objected to (FRBP 3001(f) and 11 U.S.C. §502(a)), John's secured claim remains valid and outstanding as a matter of law. This Trustee has ***never*** offered ***any*** explanation for his failure to satisfy or object to John's claim and his refusal to administer and close this simple Chapter 7 case during that **five-year** period.

Undaunted by the failure of his "prescription scheme," the Trustee decided to simply ignore John's secured claim, liquidate the asset securing John's Promissory Note (the mortgage note in which the estate had ***no*** equity), and embezzle its proceeds (John's money) by distributing them to himself and his counsel as commissions and fees.

By November of 2019, with John's secured claim still outstanding, the Trustee executed this plan. He liquidated the mortgage note (by foreclosing on the real property securing it), collected the proceeds, and *still refused* to satisfy John's Promissory Note.

Again, as evidenced by the original PNSA, John had a PMSI in the mortgage note. The terms of John's Promissory Note purposefully mimic, identically, the terms of the mortgage note and the Security Agreement evidences that the mortgage note is the security for John's Promissory Note.

In other words, any amount owed to Grodsky under the mortgage note is owed ***by*** Grodsky to John under the Promissory Note. Under the state-court order, Grodsky may have had a titled interest, but he had ***no*** equitable interest in the mortgage note. Any proceeds generated from its liquidation are owed on John's Promissory Note, timely filed as Claim No. 6-1. These proceeds are ***not*** estate property. So, when the Trustee liquidated the mortgage note, he was well aware that he'd received **no** proceeds on behalf of the estate and funds in his possession belonged to John.

Nonetheless, on or about November 27, 2019 (still having failed to satisfy or object to Claim No. 6-1 which, again, to date, remains valid and owing), Respondents filed a Joint Application for Compensation seeking an order entitling them to split all of the funds in the Trustee's possession, including proceeds that secured John's Promissory Note. The Trustee set the hearing for December 16, 2019. (Bankr. Doc. No. 157 and 158).

John is a *pro se* party who is not notified of adverse filings via the bankruptcy court's ECF system. He was completely unaware of Respondents' motion until December 14, 2019 – after the deadline for filing objections.[1] There was **no** neglect John's part. His opposition was hastily drafted and filed the next business day, on December 16, 2019. (Bankr. Doc. No. 159).[2]

On December 18, 2019, holding that "no timely objections were filed" the bankruptcy court abused its discretion and, while John's Claim No. 6-1 was still outstanding, granted a Fee Order directing that proceeds of the mortgage note securing John's Promissory Note (again, *not* estate property) be distributed to Respondents in varying amounts. (See Appendix C).

[1] This is no coincidence. Respondents routinely avail themselves of the bankruptcy court's prohibition against allowing *pro se* litigants to access the court's ECF system. This was not the first time Respondents failed to provide John with adequate notice of their pleadings and other filings nor would it be the last.

[2] Because John received notice on a Saturday and *pro se* litigants are not permitted to file electronically, no opposition could be filed until the following Monday (December 16th).

Despite having not received lawful notice of Respondents' Application or the hearing, John was able to timely file notice of appeal of the Fee Order on December 30, 2019. (Bankr. Doc. No. 163).

In his appeal, Petitioner explained that secured Claim No. 6-1 is outstanding and was never satisfied; the Trustee is in possession of his money; and the Fee Order authorizes Respondents to compensate themselves with funds that *don't* belong to the estate. (D.Ct. No. 19-14801, Doc.#25).

On January 30, 2020, Respondents moved to dismiss John's appeal alleging it was frivolous because his secured claim was "baseless." Insisting the Trustee possessed a "cancelled" original PNSA, Respondents alleged Claim No. 6-1 was satisfied or invalid. Respondents further claimed John's PNSA aren't enforceable because "the obligee marked them both cancelled as of September 6, 2013." (D.Ct. No. 19-14801 Doc.#4).

Keenly aware that John's Claim No. 6-1 was still pending and that Respondents had fraudulently obtained a bankruptcy court order authorizing them to embezzle proceeds of his Promissory Note, on January 27, 2020 (immediately before filing their motion to dismiss), **unbeknownst** to John at the time, the Trustee entered **false** "**evidence**" (an allegedly "cancelled" original PNSA) into the record of the bankruptcy proceeding. (See Bankr. Doc. #168).

Because John's original Promissory Note was **not** satisfied and he had not released or forgiven the maker, Grodsky, from his obligation under the Promissory Note, John was completely **blind-sided** by the Respondents' false claims and alleged "evidence." John didn't know where or how the Trustee obtained this allegedly "cancelled" original PNSA. With no time to investigate, John could only assume that perhaps Respondents had fraudulently induced his (unrepresented and unwitting) father into canceling (without consideration) a duplicate original PNSA during his deposition in November 2013. Petitioner just didn't know and was terribly confused.

On March 13, 2020, the district court dismissed John's case suggesting,

> "despite [John's] assertion that he is the only secured claimant... based on a "Confessed Judgment Promissory Note" and Security Agreement..., these documents were cancelled on September 6, 2013." (D.Ct.19-14801 Doc.#17).

John appealed this decision to the 5th Circuit. On May 9, 2020, Respondents moved to dismiss and made additional false claims that John's appeal is frivolous because,

> "[t]he two documents on which he relies for his claim [the original PNSA filed with the bankruptcy clerk] were cancelled in 2013. Bankr. Rec.[*Doc 2-8*]." (*In re Grodsky*, No.20-30223, 5/9/20).

In support of their false claims (while still offering ***no*** evidence of any consideration given in return for this alleged "cancellation"), Respondents again proffered what they claimed was an original authentic PNSA allegedly "cancelled by John's father on September 6, 2013," cited as "Bankr. Rec. [*Doc2-8*]."

Of course, as the Trustee and the lower courts know (or should know), any legitimate objection to John's Claim No. 6-1 is not lawfully addressed in Respondents' motions to dismiss. However, because John's claim is both valid and enforceable, Respondents were ***deliberately*** attempting to circumvent a FRBP 3007 hearing (requiring thirty (30) days notice and forcing the Trustee to disclose and produce original evidence) by incorporating the falsified evidence into their motions - where it cannot be examined or challenged.

While drafting his opposition to their motion to dismiss on June 5, 2020, John noticed that the signature lines of his original PNSA and those on the allegedly "cancelled" PNSA entered into evidence by the Trustee were *identical.* The Trustee's allegedly "cancelled" PNSA was actually a photocopy of the original PNSA on file in the bankruptcy court. The "evidence" entered into the record by the Trustee and proffered by the Respondents in multiple pleadings was ***fake***!

Respondents were ***knowingly*** falsifying evidence in **every** court in which they'd appeared.

It turns out that what this Trustee alleged was an authentic, original, "cancelled" copy of John's PNSA is actually a **photo-copy of a discarded marked photo-copy** of the original PNSA on file with the bankruptcy clerk. Apparently, Respondents photocopied this marked photocopy while deposing John's father, Tim Howell, in November 2013.[3]

Make no mistake, Respondents deposed Tim for more than three (3) hours. During that deposition Tim testified *ad nauseam* that John provided the purchase-money for the mortgage note. There is ***no*** misunderstanding. Respondents are well aware that Grodsky and/or his estate's obligation under Petitioner's PNSA has not been satisfied.

[3] On or about September 6, 2013, Grodsky recorded an assignment of the mortgage note (security for John's Promissory Note) to John's LLC (see Appendix E). He also filed a Memo in Louisiana's 22nd JDC explaining that he had no equitable interest in the mortgage note (see Appendix F). In exchange, Grodsky wanted John's PNSA cancelled.

Believing settlement had been reached, in good faith, John's father, Tim Howell, prematurely marked a **photo-copy** of the PNSA "cancelled," but refused to tender that photo-copy, deliver the original PNSA to Grodsky, or cancel/destroy the original PNSA, until state-court proceedings concluded and/or Grodsky consented to a declaratory judgment in John's favor.

Two months later, in November 2013, Respondents subpoenaed Tim to attend a Rule 2004 examination and ordered him to bring all documents related to John's ownership and/or equitable interest in the mortgage note.

On November 15, 2013, Tim appeared, unrepresented, for his deposition. As directed, he brought a file containing all documentation including, without limit, the marked photo-copy of the original PNSA on file as Claim No. 6-1 with the bankruptcy clerk.

During his deposition, Tim testified that John owned the PNSA and a 100% equitable interest in the mortgage note or, alternatively, that John owned the mortgage note outright. Nonetheless, without Tim's knowledge or consent, Respondents photo-copied, and, obviously, retained, the marked photo-copy of John's PNSA.

In January 2014, when it was clear that settlement negotiations failed, John filed the original PNSA along with his proof-of-claim, Claim No. 6-1, with the bankruptcy clerk and the photo-copy of the PNSA marked by Tim was discarded.

Respondents are lawyers who, clearly, *know* they don't have a "cancelled" original PNSA. The Trustee ***deliberately*** proffered this false evidence, on the very day notice of appeal was filed, in an attempt to conceal the fact that the Respondents fraudulently obtained a court order authorizing them to abscond with proceeds of a Promissory Note belonging to a secured creditor.

Intending to corruptly influence proceedings in every lower court, Respondents ***knowingly*** proffered this photo-copy (of the marked photo-copy) in bankruptcy court, in district court, and, again, in the 5th Circuit Court of Appeals to support their false claims.

Further, the Trustee strategically proffered this fake "cancelled" PNSA just *days* before Respondents filed their motion to dismiss knowing that, as a *pro se* litigant having no access to the court's ECF system, John would not receive advance notice of its filing. This was *precisely* so John *would* be blind-sided and would *not* have time to investigate.

Respondents needed their false claims and falsified "evidence" to go unchallenged because the Trustee cannot produce an original "cancelled" note, evidence of any consideration given in exchange for this alleged "cancellation," or, for that matter, *any* credible evidence at all, at a FRBP 3007 hearing on an objection to John's claim.

Because John and the courts are entitled to examine *original* evidence on which the Trustee is basing his objection to Claim No. 6-1, John moved to expand the record. He sought an order requiring the Trustee to produce for immediate inspection the original, authentic, "cancelled" PNSA that he claims to have or face sanctions for knowing and willful falsification of evidence with the intent to defraud John and the courts.

John believed that his request was very reasonable under the circumstances: produce the "cancelled" PNSA or face sanctions.

Apparently, the 5th Circuit disagreed. It did *not* find the Trustee's falsification of evidence and/or Respondents' embezzlement of proceeds of a Promissory Note belonging to a secured creditor alarming or worthy of import. With no explanation, the 5th Circuit granted Respondents' motion to dismiss John's appeal as frivolous and sanctioned John for appealing a Fee Order authorizing Respondents to compensate themselves with his money. Further, it enjoined any future litigation against the Trustee for this fraudulent and criminal misconduct.

But, Petitioner's story doesn't end there...

On or about June 1, 2020, while this matter was pending in the 5th Circuit, John (quite accidentally) discovered that (on May 21, 2020) the bankruptcy court granted an *Order Approving the Trustee's Final Report and Account of Administration of Estate, Report of Receipts and Disbursements, Application for Compensation and Reimbursement of Expenses, and Proposed Distribution.* (See Appendix G). (Clerk, Erin Arnold, advised, for reasons unknown, John's copy of this order and other notices from the court were "mistakenly" mailed to the wrong address.)

Apparently, while Petitioner was preoccupied with this appeal of the Fee Order, the Trustee prepared and filed his Final Report **without providing <u>any</u> notice to John**.

In his Final Report, the Trustee certified that "any objections to the allowance of claims have been resolved." Regarding secured creditors, he further certified there were "***none.***" (Bankr. Doc.#175). (See Appendix H at 31a). As evidenced by the bankruptcy court docket, the clerk's claims registry, and even the appeal pending in the 5th Circuit, the Trustee's certifications, under penalty of perjury, are **objectively untrue.**

The unnoticed filing of the Trustee's Final Report is an *end-run* around John's appeal, a FRBP 3007 hearing on the validity of Claim No. 6-1, and having to defend the Trustee's false "evidence."

Respondents are (literally) banking the order approving the disbursement of John's funds will leave John no legal recourse against a Trustee entitled to "absolute immunity" for acts taken pursuant to a court order.

John was under the impression that filing notice of appeal is an event of jurisdictional significance - conferring jurisdiction on the appellate court and divesting the bankruptcy court of its control over those aspects of the case involved in the appeal. See *e.g., Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). So, he's perplexed by the bankruptcy court's order approving the disbursement of funds involved in this appeal and closing this bankruptcy case while it lacked jurisdiction. Nonetheless, on June 3, 2020, John timely filed a motion to reconsider and vacate the May 21, 2020 order in the bankruptcy court. (See Appendix I at 40a).

On or about June 10, 2020, John learned that his motion had **not** been entered into the record. Bankruptcy court clerk Kevin Lew advised that he "was told," through "word of mouth," that Judge Jerry Brown did not want John's motion filed and that he had directed the court clerks not to enter it into the record. After further inquiry, on June 12, 2020, Petitioner received an E-mail from the clerk (see Appendix J at 46a) advising that the clerk's office would not file this or any other motion related to John's secured claim because his filings violated the bankruptcy court's "*Barton* injunction." (For more on this "*Barton* injunction" please see the Petition for Writ of Certiorari filed by Elise LaMartina in related 5th Circuit case No. 19-30494.)

Finally, on June 29, 2020, after it was discovered that the Trustee had falsified evidence by filing the fake "cancelled" PNSA into the bankruptcy court's records, at the direction of Judge Brown, bankruptcy court clerk, L. Matrana, **destroyed** all evidence in the court's possession, including without limit John's original PNSA and the Trustee's falsified "cancelled" PNSA. (See Bankr. Doc. Entry on June 29, 2020).

REASONS FOR GRANTING THE WRIT

I.

The 5th Circuit's Dismissal of Petitioner's Appeal as Frivolous is an Abuse of Discretion.

Petitioner's appeal of the Fee Order authorizing Respondents to deplete all funds in the Trustee's possession, including proceeds of a Promissory Note timely filed with a secured creditor's proof-of-claim in the bankruptcy court, is taken in good faith.

"'Good faith' is demonstrated when a party seeks appellate review of any issue that is 'not frivolous.'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (quoting *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). An appeal is "not frivolous" when it "involves 'legal points arguable on their merits.'" *Id.* (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)). Conversely, an appeal is frivolous if it does not have an arguable basis in fact or law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Matter of Kite*, 710 F. App'x 628, 631 (5th Cir. 2018); *In re Foster*, 644 F. App'x 328, 331 (5th Cir. 2016) (dismissing appeal where it was "apparent" the appeal lacked merit.). Contrary to the 5th Circuit's opinion, objective facts, court records, and, in fact, the bankruptcy court's own docket and claims registry in this case show that John has demonstrated non-frivolous facts and issues arguable on their merits. Public records make it apparent that his appeal is not frivolous.

The simple truth is: Respondents fraudulently obtained a court order authorizing them to embezzle proceeds of an asset in which the estate has ***no*** equity while a creditor's valid claim secured by that asset remains unsatisfied and outstanding.

A court abuses its discretion where its ruling is based "on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990). See also *Wheeler v. Sims*, 951 F.2d 796, 802 (7th Cir.), *cert. denied*, 113 S.Ct. 320 (1994)

(abuse of discretion exists where a court's "decision is based on an erroneous conclusion of law or where the record contains no evidence on which [the court] rationally could have based that decision, or where the supposed facts found are clearly erroneous."). The public record contains no evidence on which the 5th Circuit could rationally base its decision and its ruling was, at best, based on clearly erroneous factual findings. Further, the 5th Circuit's ruling is based on a flawed view that the Bankruptcy Code is irrelevant and its provisions are inapplicable in this case.

John's Promissory Note doesn't evidence that he is the secured creditor of anyone but Grodsky. (See Appendix D). The lower court's finding that he is a secured creditor of *anyone* else (see above at pg.2-3) is ***clearly erroneous***.

The bankruptcy court's claims registry evidences that John's proof-of-claim was timely filed in accordance with FRBP 3001(a) (providing a proof of claim "shall conform substantially to the appropriate Official Form").

As also evidenced in the court's registry, John attached evidence of his perfected PMSI to his proof-of-claim pursuant to FRBP 3001(d) (providing a proof-of-claim "shall be accompanied by evidence that the security interest has been perfected").

Claim No. 6-1 was also filed in accordance with FRBP 3002 (providing a "secured creditor... must file a proof of claim or interest for the claim or interest to be allowed").

John's proof-of-claim constitutes *prima facia* evidence that Claim No. 6-1 is valid under FRBP 3001(f) (providing a proof of claim "executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim..."). Any party objecting to John's claim has the burden of introducing evidence sufficient to rebut this presumption of validity. *See generally* Collier on Bankruptcy ¶ 3001.09[2] (16th ed. 2019).

As evidenced in the bankruptcy court's docket, no one filed an objection to John's claim under FRBP 3007 (providing an "objection to the allowance of a claim and a notice of objection that substantially conforms to the... Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.").

Under 11 U.S.C. §502(a) (providing a claim or interest, proof of which is filed with the court, "is deemed allowed," unless a party in interest objects), John's claim is "deemed allowed" as a matter of law. See *e.g., Trustees of Operating Engineers Local 324 Pension Fund v. Bourdow Contracting Inc.*, 919 F.3d 368 (6th Cir. 2019). In addition, of course, under 11 U.S.C. §502(b) (providing "...if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim..."), the bankruptcy court, **not** the Trustee or his associates, is obligated to resolve any objection.

Under 11 U.S.C. §704(a)(5) (providing a "trustee shall... examine proofs of claims and object to the allowance of any claim that is improper") the Trustee had a duty to object to John's secured claim if he thought it was improper.

The Trustee didn't raise any objection or schedule a FRBP 3007 hearing because objections to John's claim are baseless. If there was any credible evidence that John's claim was invalid or satisfied, the Trustee would have presented it at a hearing on his objection. As the bankruptcy court docket evidences, he's had nearly **seven (7) years** to do so and has not – simply because John's claim is valid. So, attempting to circumvent a FRBP 3007 hearing during which he'd actually have to produce authentic, original evidence to rebut the validity of John's secured claim, the Trustee falsified evidence. Then, Respondents proffered this false evidence in various pleadings in multiple courts, including their motion to dismiss filed in the 5th Circuit. (See below.) By dismissing this appeal as frivolous the 5th Circuit permitted and even rewarded:

1. Total Disregard for, and Failure to Perform a Trustee's Duties Under, 11 U.S.C §704 and Breach of a Trustee's Fiduciary Duties of Loyalty and Care.

The Trustee violated ***every*** subsection of 11 U.S.C. §704 applicable to this case.

Under 11 U.S.C §704(a)(1), the "trustee *shall* - collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." Of course, as evidenced by John's PNSA, while the state court determined that Grodsky may have had a titled interest in the mortgage note, he and/or his estate had ***no*** equitable interest in the mortgage note. Under 11 U.S.C. §541(d),

> "Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold."

John had a 100% undivided equitable interest in the mortgage note. Grodsky only retained legal title to service or administer the mortgage note. The mortgage note was property of the estate "only to the extent" of Grodsky's "legal title" in it, "but **not** to the extent of any equitable interest in" the mortgage note that Grodsky "does not hold."

Once the Trustee examined John's PNSA and the mortgage note and discovered that the estate had no equitable interest in the mortgage note, he should have abandoned it under 11 U.S.C. § 554 for lack of sufficient equity to justify its administration and closed the estate "as expeditiously as is compatible with the best interests of parties in interest." As evidenced by the bankruptcy court's docket, he didn't. Instead this Trustee kept this simple Chapter 7 case, having only one asset in which the estate had no, ***zero***, equity, open for more than **five (5) years** as he labored to defraud a secured creditor.

Even if this Court refuses to believe a trustee would engage in an illicit scheme with a third party to defraud estate claimants by keeping this case open long enough to toll prescription and extinguish the estate's only asset,[4] the fact remains that this Trustee failed and refused to administer this Chapter 7 case for **years**. As evidenced by the bankruptcy court's docket, this case was opened in **2013**. The Trustee "sat on" the mortgage note and failed to administer this estate until **2018** in violation of 11 U.S.C §704(a)(1) for **five years** (very coincidentally the same length of time to toll prescription and the year prescription was interrupted).

Under 11 U.S.C. §704(a)(2), the "trustee *shall* - be accountable for all property received." The Trustee received and had in his possession property in which the estate had only a titled interest and whose equity, under 11 U.S.C. §541(d), was not estate property. He mismanaged and liquidated that property to the detriment of a secured creditor and, in fact, all estate claimants.[5]

Under 11 U.S.C. §704(a)(5), the "trustee *shall* - examine proofs of claims and object to the allowance of any claim that is improper." As discussed above, this Trustee purposefully avoided filing a FRBP 3007 objection and setting the matter for hearing because he was all too aware that John's secured Claim No. 6-1 was valid. As the bankruptcy court docket evidences, this case was opened in 2013. As it further evidences, the Trustee has had **seven (7) years** to file an objection to Claim No. 6-1. The docket also shows that, to date, the Trustee failed and refused to do so.

[4] Without discovery, Petitioner does not know whether the Trustee's deal to split the proceeds of the inferior lien with the third party was reduced to writing. However, the Trustee's deal to split mortgage note proceeds with the third-party was codified in the Order Approving Compromise filed in the bankruptcy court. (See Bankr. Doc. #77).

[5] In 2014, John offered to pay the full amount of other creditors' claims (approximately $6,800. – a fraction of what John spent on attorneys – see Appendix H at 38a) if the Trustee simply returned the mortgage note in satisfaction of his Promissory Note. The Trustee refused... because, reopening Grodsky's bankruptcy was never about maximizing distributions or fiduciary duties to creditors. It was about Respondents stealing proceeds of a Promissory Note.

Under 11 U.S.C §704(a)(7), the "trustee *shall* – furnish such information concerning the estate and the estate's administration as is requested by a party in interest." The Trustee has repeatedly and consistently failed and refused to furnish information concerning Grodsky's estate or its administration by failing and refusing to -

- disclose his dealings with the third party (whose counsel he ultimately retained to liquidate the mortgage note);
- provide a transcript of Tim Howell's testimony about John's PNSA and John's 100% equitable interest in the mortgage note (eventually, the deponent obtained the transcript from the court reporter and forwarded it to Petitioner);
- provide Petitioner with a transcript of his *own* deposition; or
- **provide notice** of his pleadings, evidence, and other filings, including, without limit, his false "evidence" and his Final Report, filed into the record of these proceedings.

Under 11 U.S.C §704(a)(9), the "trustee *shall* - make a final report and file a final account of the administration of the estate with the court..." The Trustee did make and, without providing notice to John, file a final report. (Bankr.Doc.#175). However, in that report, the Trustee provided false certifications that "any objections to the allowance of claims have been resolved" and that there were no secured creditors. (See Appendix H). As evidenced by this appeal, the bankruptcy court's docket, and the clerk's claims registry, the Trustee's certifications, under penalty of perjury, are **objectively untrue.**

Of course, 11 U.S.C §704 is not exhaustive. "Beyond the statutory duties, bankruptcy trustees owe to the beneficiaries of the estate the usual common law trust duties..." *In re Markos Gurnee P'ship*, 182 B.R. 211, 219 (Bankr. N.D. Ill. 1995). "The trustee is a fiduciary charged with protecting the interests of all estate beneficiaries - namely, all classes of creditors, including those holding secured claims... The trustee should administer the estate so as to maximize the distribution to the beneficiaries." EOUST Handbook for Chapter 7 Trustees Ch.6, Sec. A (2020). Considering 11 U.S.C §704 is not a ceiling but a floor, the Trustee's violations of his statutory duties clearly evidence breach of his additional fiduciary duties of loyalty and care.

2. Falsification of Evidence and Fraud upon the Court.

By introducing a photo-copy of a destroyed marked photo-copy of John's PNSA into the record of these proceedings and knowingly making false claims in an attempt to pass this photo-copy off as an authentic, original, "cancelled" PNSA in every court in which they've appeared, the Trustee and his attorneys are ***knowingly*** violating 18 U.S.C. §1519,

> "Whoever knowingly... falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined..., imprisoned not more than 20 years, or both."

Respondents' ***knowing and willful*** falsification of evidence also constitutes obstruction of justice under 18 U.S.C.§1503,

> "Acts that distort the evidence to be presented or otherwise impede the administration of justice are violations of 18 U.S.C. §1503. The act of altering or fabricating documents used or to be used in a judicial proceeding fall within the obstruction of justice statute if the intent is to deceive the court." *U.S. v. Craft*, 105 F.3d 1123, 1128 (6th Cir. 1997).

John's motion for sanctions is not frivolous and, in the past, this Court has agreed. Justice Black emphasized, a court's inherent power to protect itself and parties from bad faith, including falsification of evidence, is a crucial mechanism for protecting the integrity of the judicial process:

> "[T]ampering with the administration of justice... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safe-guard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.... The public welfare demands that agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944).

A court may use its inherent power to sanction parties who perpetrate "fraud on the court." See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 46 (1991).

Falsification of evidence in the midst of ongoing judicial proceedings, specifically directed at affecting those proceedings, constitutes "fraud upon the court."

Penalties a court may impose on a bad faith litigant who attempts to defile the sanctity of the judicial process are justifiably stiff and include sanctions of dismissal and default. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1119-20, 1122 (1st Cir. 1989). "When fabrication of evidence or similar fraud has been discovered and exposed, the consequences ought to be severe enough to inhibit repetition." *Breezevale Ltd. v. Dickinson*, 759 A.2d 627, 641 (D.C. 2000).

Federal Rules also contemplate sanctions for misrepresentations to the court.

> "If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee for sanctions for misrepresentations to the court." FRCP 11(b)(c).

Refusal to produce the alleged "cancelled" PNSA for inspection, despite ample notice and opportunity, is clear and convincing evidence of Respondents' fraud upon the court warranting:

1. **dismissal of Respondents' motion to dismiss and default in this appeal reversing the Fee Order.** See *Aoude v. Mobil Oil Corp.*,892 F.2d 1115 (1st Cir. 1989)(dismissal where plaintiff concocted a single document); *Synanon Found.,Inc. v. Bernstein*, 503 A.2d 1254, 1263 (D.C. 1986) (dismissal where plaintiff engaged in falsification "to deceive the court, and to improperly influence the court in its decision... with the ultimate aim of preventing the judicial process from operating in an impartial fashion"); *Pope v. Fed. Express Corp.*, 974 F.2d 982, 984 (8th Cir. 1992) (dismissal for litigant's reliance on single forged document);

2. **monetary sanctions.** As recognized in *Chambers,* once a party sets out on a course of bad faith, it taints the entire litigation and the court may vindicate itself with monetary sanctions against the bad faith litigator. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 56-57 (1991); See also *Synanon Found., Inc. v. Bernstein*, 517 A.2d 28, 43 (D.C. 1986) (once a party embarks on a "pattern of fraud," and "[r]egardless of the relevance of these [fraudulent] materials to the substantive legal issue in the case," this is enough to "completely taint [the party's] entire litigation strategy..."). A court may impose monetary sanctions - in the form of fines or punitive damages. *Jemison v. Nat'l Baptist*, 720 A.2d 275, 285 (D.C. 1998).

   Despite the fact that the lower courts are unwilling to entertain claims against these particular Respondents, this isn't the first time they've falsified evidence or broken the law. Given that they proffered this fake PNSA to obtain an order allowing them to split $118,000.00 that rightfully belongs to John, Respondents should be ordered to pay "just damages" in an amount equal to or greater than the $118,000.00 they intended to gain by proffering fake evidence in the first place. Only sanctions equal to or greater than this amount would protect the public and deter the Respondents' future misconduct; and

3. **issue preclusion**. Issue preclusion can be imposed as an exercise of inherent judicial power. *Monsanto Co. v. Ralph*, 382 F.2d 1374, 1382 (Fed. Cir. 2004). Respondents should be prohibited from raising this issue again and/or pursuing untrue claims that John's PNSA is "cancelled" or otherwise invalid in the future.

Respondents falsified evidence to influence the outcome of this case and abscond with proceeds of John's Promissory Note. If any legitimate objection to Claim No. 6-1 existed, the Trustee would have raised it during a FRBP 3007 hearing and wouldn't have violated 11 U.S.C.§704(5) – for years. Respondents want John's money and, to get it, they'll even falsify evidence. In fact, if the Trustee had any legitimate objection to John's claim, Respondents would have mentioned it in their motions to dismiss instead of lying about John's PNSA being invalid and proffering fake evidence to support their false claims.

John is entitled to examine *original* evidence on which the Trustee's objection to his secured claim is based. In fact, under FRBP 3007 and other provisions of the Bankruptcy Code, he's entitled to a hearing and opportunity to respond after thirty (30) days notice. John's motion to expand the record to include (and Trustee ordered to produce for immediate inspection) the original, authentic, "cancelled" PNSA that they claim to possess is not frivolous. When they cannot, stiff sanctions are warranted for their knowing and willful falsification of evidence with the intent to defraud John and the courts and John's prayer for such sanctions is meritorious.

3. Bankruptcy Fraud, Embezzlement, and Other Crimes.

Liquidating property in which Grodsky's estate had a titled, but **no** equitable interest, then fraudulently obtaining an order entitling Respondents to compensation depleting all funds in the Trustee's possession, did not occur overnight. Respondents devised this scheme to with the intent to defraud a secured creditor and, for purposes of concealing their scheme, filed falsified "evidence" into the record of this bankruptcy proceeding while making false claims in relation to their falsification in the bankruptcy court, the district court, and again in the 5th Circuit.

18 U.S.C. §157 provides:

"A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

1. files a petition under title 11;
2. files a document in a proceeding under title 11; or
3. makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both."

The essence of this statute is the existence of a fraud scheme or attempted fraud scheme and any use of the bankruptcy system to carry out that scheme. Any individual, including trustees and their attorneys, who undertakes a fraud scheme against anyone, including secured creditors, and then carries out or conceals the scheme by filing any documents, including falsified documents, in a bankruptcy case, violates this statute.

Respondents knowingly and fraudulently obtained a court order authorizing them to appropriate funds securing the timely filed claim of a secured estate creditor that were in the charge and custody of the Trustee of Grodsky's Estate. Under this statute, Respondents have intentionally committed bankruptcy fraud.

Further, 18 U.S.C. §153 provides,

"(a) Offense.—
A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) Person to Whom Section Applies.—
A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate."

As persons who had access to property by virtue of their participation in the administration of Grodsky's estate, the Trustee and his attorneys knowingly and fraudulently appropriated to their own use, or embezzled, property in which Grodsky's estate had a titled interest. Not only did Respondents defraud your Petitioner by embezzling money that rightfully belongs to a secured estate claimant, but they did so by fraudulently obtaining a court order permitting him to abscond with proceeds of his Promissory Note as commissions and fees.

Then to close this bankruptcy case while John's secured claim remained in limbo and this appeal was pending, the Trustee made false certifications, under penalty of perjury, claiming there were no secured creditors and "any objections to the allowance of claims have been resolved." The Trustee's **objectively untrue** declarations, made under 28 U.S.C. §1746 (and certified as true under penalty of perjury) are prosecutable as perjury, even though the law did not require the original declaration under penalty of perjury, to be sworn. *United States v. Gomez-Vigil*, 929 F.2d 254, 257 (6th Cir. 1991).

Further, not only are they prosecutable under the usual criminal perjury statutes (18 U.S.C.§§1621 and 1623), the Trustee's false certifications are also prosecutable under 18 U.S.C. §152(3) which provides,

> "A person who— knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11... shall be fined under this title, imprisoned not more than 5 years, or both."

Your Petitioner is neither a criminal nor a bankruptcy attorney, but any layman can see that the Trustee and his attorneys have violated more laws than can be briefed in 30 pages or less. For instance, the Respondents' knowing and willful violation of 18 U.S.C. §153 may also be prosecutable under a broader statute, 18 U.S.C. §645, providing:

> "Whoever, being a United States marshal, clerk, receiver, referee, trustee, or other officer of a United States court, or any deputy, assistant, or employee of any such officer, retains or converts to his own use or to the use of another or after demand by the party entitled thereto, unlawfully retains any money coming into his hands by virtue of his official relation, position or employment, is guilty of embezzlement and shall, where the offense is not otherwise punishable by enactment of Congress, be fined under this title or not more than double the value of the money so embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both. It shall not be a defense that the accused person had any interest in such moneys or fund."

Nonetheless, the appeal of a Fee Order authorizing Respondents to embezzle proceeds of a Promissory Note belonging to a secured creditor and a motion for sanctions (requiring Respondents to pay "just damages" in an amount equal to or greater than the $118,000.00 they embezzled by proffering fake evidence) to protect the public and deter the Trustee and his attorneys' future misconduct is neither frivolous nor without merit.

II.

The 5th Circuit Sanctioned a Party Seeking Appellate Review in Good Faith.

The 5th Circuit levied FRAP 38 sanctions, including all costs of this appeal, against John for appealing a Fee Order that permits Respondents to embezzle his money and moving for a court order requiring the Respondents to produce the original "cancelled" PNSA that they claimed to have or be sanctioned. In fact, Petitioner requested that Respondents be ordered to present ***any*** evidence supporting the Trustee's objection to Claim No. 6-1 that should have been produced during a FRBP 3007 hearing in the bankruptcy court. If it exists (it doesn't or Respondents would have presented it instead of proffering false evidence and lying in their pleadings), Petitioner has a right to see that evidence.

All of the facts alleged in Petitioner's appeal and ***all*** of the Respondents' unlawful transgressions are a matter of public record. The facts in this case are not subjective. They are objectively true and certainly not frivolous.

Respondents clearly violated 11U.S.C.§704(5) and FRBP 3007 (as evidenced by the bankruptcy court's docket); mislead, confused, and embarrassed the bankruptcy court (as evidenced by its clearly erroneous findings of fact and the court's claims registry); and falsified evidence with the intent to improperly influence these proceedings and mislead every court in which they've appeared (as evidenced in the bankruptcy court's records, claims registry, and Respondents' own pleadings). Respondents knowingly and willfully did all of these things to steal money that does not belong to them. Stiff sanctions were, and are, warranted against these Respondents and it was not a frivolous endeavor to request them. In fact, no aspect of John's appeal is frivolous and no sanctions against Petitioner are warranted under FRAP 38. Under these circumstances, even if this Honorable Court prefers that Respondents' misdeeds be "swept under the rug," it should not condone adding insult to injury by upholding the 5th Circuit's FRAP 38 sanctions and should reverse any and all sanctions against John.

III.

The 5th Circuit Enjoined Petitioner from Initiating Any Judicial Proceedings Against Respondents Related to Their Fraud and Embezzlement.

The 5th Circuit enjoined Petitioner from bringing "any further litigation... related to this bankruptcy case." Meaning, if this Court does not grant this Petition, or summarily reverse the 5th Circuit's injunction before prescription tolls, Petitioner will have little legal recourse against these Respondents for damages caused by their embezzlement and other illegal misconduct.

Typically, four requisites must be satisfied before a court may grant injunctive relief. Respondents failed to show <u>any</u> requisite element necessary for the 5th Circuit to grant a permanent injunction.

> "According to well-established principles of equity, a [party] seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A [party] must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. See *Weinberger v. Romero-Barcelo*, 456 U. S. 305, 311-313 (1982); *Amoco Production Co. v. Gambell*, 480 U. S. 531, 542 (1987)." *Ebay Inc. v. Mercexchange*, L. L. C., 547 U.S. 388, 126 S. Ct. 1843, 164 L. Ed. 2d 625 (2006); *ITT Educ. Servs., Inc. v. Acre*, 533 F.3d 342, 347 (5th Cir. 2008); *Merritt Hawkins & Assocs., L.L.C. v. Gresham*, 861 F.3d 143 (5th Cir. 2017).

First, clearly no Respondent suffered irreparable, or <u>any</u>, injury. In fact, they benefited from their scheme to defraud John as a secured creditor by embezzling the proceeds of his Promissory Note. It's understandable that Respondents don't want to be sued for the damages caused by their torts and crimes. But, if they didn't want to be sued, they should have obeyed the law and satisfied John's secured claim.

Second, had Respondents sustained any injury, remedies at law would have been adequate. There is no irreparable injury at issue here. Not wanting to face liability for their misdeeds is not an injury of any kind.

Third, no equitable remedy was warranted given the balance of hardships so distinctly in Respondents' favor. Any hardship that six (6) unscrupulous lawyers (disbarred or not) and three (3) law firms, with countless associates at their disposal, may face defending themselves against charges of fraud brought by a *pro se* estate creditor who has barely managed to keep up with the endless barrage of procedural obstacles (most frivolous), legal wrangling, and convolution raised at every turn by a seemingly infinite stream of attorneys, including the Respondents themselves, hardly outweighs the hardship experienced by John who was defrauded not once, but *twice* by these Respondents and can no longer afford legal representation.

A good deal of real estate in Respondents' Motion to Dismiss filed in the 5th Circuit was devoted to fretting about how these lawyers only *made* $118,000.00 (in fees and commissions for administering a Chapter 7 case having a single, solitary, asset in which the estate had a titled, but no equitable, interest). Some perspective is in order.

Whether the 5th Circuit refused to believe or even consider the claims against these Respondents, while John's entire life savings hung in the balance, these attorneys mismanaged a $160,000.00 mortgage note and ***made*** $118,000.00. John *spent* tens of thousands of dollars attempting to get his property back - before going broke. Respondents stole his entire college fund. He is now in debt and burdened with student loans – all courtesy of a Trustee and his attorneys' voracious greed and unethical and illegal behavior.

John lost everything he owned and Respondents "***only***" **made** $118,000.00 from their scheme to defraud him – first as a true owner of the mortgage note, now as an estate creditor with a valid claim against Grodsky's estate.

As for creditors, for whom this Trustee and his lawyers shed crocodile tears in their Motion to Dismiss Pg.16, Ln.9-10), the Court should know:

In 2014, John offered to pay the <u>full</u> amount of all other creditors' claims (slightly under $10,000 – which was considerably less than the amount he was forced to expend on attorneys' fees) if the Trustee simply returned the mortgage note in satisfaction of his Promissory Note.

The Trustee refused... because, for the Respondents, reopening Grodsky's bankruptcy was NEVER about maximizing distributions or fiduciary duties to creditors. It was about using, or abusing, the bankruptcy system to carry out a scheme to defraud John. It was about obtaining the Fee Order complained of herein.

Finally, ***fourth***, shielding Respondents (especially a Trustee positioned to repeat his unethical and illegal misconduct to defraud not only unsuspecting secured creditors and other estate claimants, but the courts themselves) from liability for a clear breach of a trustee's statutory and other fiduciary duties as well as crimes, including, without limit, falsification of evidence, bankruptcy fraud, and embezzlement, successfully committed by Respondents clearly abusing the bankruptcy system, hardly serves the public's interest.

No grounds exist to deny Petitioner due process and/or prohibit him from suing this Trustee and his attorneys for *ultra vires* acts. The 5th Circuit's injunction should be reversed.

CONCLUSION

John's timely appeal is not frivolous. It has an arguable basis in fact and law because:

- Grodsky's estate had a titled, but ***no*** equitable interest in the mortgage note. ***No*** proceeds from its liquidation belonged to, or were received on behalf of, the estate (See PNSA attached to Claim No. 6-1 in the bankruptcy court's claims registry);

- John is a secured estate claimant who is "directly and adversely affected pecuniarily by" a Fee Order authorizing Respondents to abscond with $118,000.00 of the proceeds of his Promissory Note as commissions and fees in this simple Chapter 7 case. See *In re Coho Energy Inc.*, 395 F.3d 198, 203 (5th Cir. 2004);

- Violating every subsection of 11 U.S.C. §704(a), specifically sub-part (5), as well as FRBP 3007, the Trustee failed and/or refused to administer, satisfy, or object to John's Claim No. 6-1 for more than 7 years and, to date, it remains outstanding;

- Violating 18 U.S.C. §§1519 and 1503, Respondents knowingly proffered false evidence. See *U.S. v. Craft*, 105 F.3d 1123, 1128 (6th Cir. 1997);

- Violating 18 U.S.C. §157, Respondents committed bankruptcy fraud;

- Violating 18 U.S.C. §§153 and/or §645, Respondents embezzled property in which the estate had no equitable interest albeit under a fraudulently obtained a order;

- Violating 18 U.S.C.§§§1621, 1623, and 152(3), Respondents committed perjury.

- Respondents' Joint Application and resulting Fee Order seeking to deplete all funds held by the Trustee, including those that *belong to John* (Bankr. Doc. #161) amounts to "court-sanctioned embezzlement;"

The 5th Circuit abused its discretion by ignoring all objective evidence and public records including, without limit, the bankruptcy court's docket, its claims registry, and even judicial admissions and evidence in the Respondents own pleadings and filings. At best, its decision rested on clearly erroneous factual findings. (See *In re Woerner*, 783 F.3d 266 (5th Cir. 2015)).

But for the obfuscation and convolution generated by the Respondents (in the form of fabricated "facts," falsified "evidence," and bizarre, albeit successful, procedural wrangling) that has prevented all substantive claims from ever reaching a jury for more than seven (7) years, this case is very straight-forward. It is a simple Chapter 7 bankruptcy case.

Grodsky's estate had one asset in which it had only a titled interest. It had one secured claimant whose timely filed a proof-of-claim included a Promissory Note and Security Agreement evidencing that he owned an undivided 100% equitable interest in the estate's only asset. The Trustee should have tendered the mortgage note to John in satisfaction of his Promissory Note. He didn't.

Instead, the Trustee kept this simple case open for years, liquidated property in which the estate had ***no*** equity, and Respondents filed an application for compensation claiming they're entitled to over $150,000.00 in commissions and fees for administering this simple Chapter 7 estate with one asset in which the Debtor had no equity.

For whatever reason, the lower courts have engaged in absurd legal contortions to accommodate these particular Respondents, shield them from liability, and sweep this matter under the rug.[6] With all due respect, the courts themselves, have concocted all sorts of absurd

[6] Onlookers can't help but wonder if Adler's status as a bankruptcy trustee, Grodsky's status as a former bankruptcy (albeit disbarred) attorney and brother of the LSBA president, and the bankruptcy court's insistence that Petitioner would not be "permitted" to "embarrass" them, has more to do with the outcome of this case than the law.

reasons[7] why a jury should not be allowed to consider the substantive issues at trial and the law should not be upheld or obeyed (unless, of course, that law can be construed in Respondents' favor[8]). If all else fails, and Petitioner actually files suit demanding a jury trial for the damages caused by the Respondents' constitutional violations, torts, and crimes, the court can (and did) insinuate that he is a "vexatious litigant" who must be enjoined with a "*Barton* injunction." Then, if there's the slightest chance that the Respondents could be held liable for falsifying evidence, documents in the bankruptcy court's possession are conveniently "destroyed."

There is ***nothing*** frivolous about John's appeal of the Fee Order.[9] Dismissal of his appeal, sanctions levied against him, and any injunction prohibiting any and all legal recourse for damages sustained as a result of Respondents' misconduct must be reversed.

[7] Refusing to acknowledge John is a secured estate claimant with an unsatisfied Promissory Note, the lower court suggested he is a "disgruntled" plaintiff who does not "want to pay the judgments against" him. (Apart from the 5th Circuit's order regarding the cost of this appeal, there are NO judgments against John). They've also suggested John merely wants "to delay foreclosure on the condominium" in which he's living. (Neither John nor his mom was living in the condo, or even in the city where it is located, and the Trustee *already* foreclosed on the condo.) At other times, the lower court suggested John's mother had an ongoing feud with the homeowner's association since 2002 (the association filed suit against her in 2008 and obtained a money judgment in 2009). John is confused as to how a money judgment against someone's mom forms legal grounds for a Trustee to steal a mortgage note from the judgment debtor's family members or friends and/or refuse to administer a bankruptcy estate. Further, do the lower courts not realize that judgment creditors can foreclose on inferior liens without defrauding anyone?

[8] For instance, pretending John's motion to vacate judgment, expand the record to include evidence of the Respondents' falsification, and for sanctions wasn't filed pursuant to FRCP 60(b)(2) and/or (3) (providing for relief from a judgment procured before (2) "newly discovered evidence" that "could not have been discovered in time to move for a new trial" or by "fraud..., misrepresentation, or misconduct by an opposing party...") and within "a year after the entry of the judgment...," under FRCP 60(c)(1), the lower court found it was "untimely pursuant to [FRBP] 8022(a), which requires that any motion for rehearing by the district court be filed within fourteen days after entry of judgement on appeal." John's motion was filed within ten (10) days of his discovery that the Respondents had falsified evidence.

[9] Petitioner understands that this Court has neither the time nor inclination to "fact-check" this Petition. Cites to the bankruptcy court's docket, claims registry, pleadings and orders were included simply to illustrate that <u>every</u> claim Petitioner has made is *objectively* true and evidenced in the public record.

October 31, 2020

Respectfully Submitted,

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