No. 20-6432

ORIGINAL

IN THE

Supreme Court of the United States

IN THE MATTER OF: DONALD H. GRODSKY, DEBTOR

JOHN L. HOWELL, ET AL., PETITIONERS

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

ELISE LAMARTINA, *Petitioner*
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NOVEMBER 2020

QUESTIONS PRESENTED

1.

May a bankruptcy court apply the *Barton* Doctrine to its *own* proceedings and exponentially expand its authority under *Barton v. Barbour*, 104 U.S. 126 (1881) to include, without limitation, the power, authority and jurisdiction to:

1. curtail, disrupt, or otherwise limit the jurisdiction of a state court to review, reverse, or modify its own state-court orders and judgments;
2. treat the *Barton* Doctrine as a procedural bar to suits against a U.S. trustee, his counsel, his co-defendants, and *any* defendant it wishes to shield from liability;
3. exercise special authority or jurisdiction over, and prohibit suit against, defendants who are *not* and were *never* "court-appointed" fiduciaries of any court;
4. prohibit suits against a U.S. trustee, his counsel, and his co-defendants in their individual capacities for *ultra vires* acts clearly exceeding the scope of a trustee's duties and/or for engaging in tortious and criminal misconduct during a 9-month to 3-year period *prior* to the operation of a bankruptcy case and *before* there was any estate to administer;
5. fashion "*Barton* injunctions" where *no* requisite for the issuance of a permanent injunction is satisfied and no evidence suggests an enjoined action would "impede, impair, or irreparably interfere with" the administration of a bankruptcy estate;
6. prohibit all courts of competent jurisdiction from adjudicating "non-core" claims over which bankruptcy courts lack jurisdiction, and/or "core-proceedings" in which a jury-trial is demanded, from being raised in a court of competent jurisdiction;
7. adjudicate "non-core" claims over which it lacks jurisdiction by dismissing them with prejudice and/or prohibit "core-proceedings" from being brought in the bankruptcy court; and
8. prohibit secured creditors from pursuing timely filed claims in a bankruptcy case?

2.

Are violations of 11 U.S.C. §362(a) void *ab initio* or are they merely "voidable" transgressions capable of "retroactive validation?" If inadvertent violations are merely "voidable,"

(1) Are intentional actions in knowing and willful violation of 11 U.S.C. §362(a) also capable of "retroactive rehabilitation" and/or other discretionary cures?

(2) If so, is the result the same where third-parties, with no standing or interest in a Chapter 7 case, commit these acts for the express purpose of defrauding creditors? And,

(3) What effect does "retroactive rehabilitation" have on 11 U.S.C. §362(k)? Are individuals injured by "retroactively rehabilitated" violations still entitled to recover actual and punitive damages? If not, what remedies or remedial measures are substituted for those available under 11 U.S.C. §362(k)?

PARTIES TO THIS PROCEEDING

Plaintiffs/Petitioners:	**John L. Howell**, *pro se* (“***John***”) **Elise LaMartina**, *pro se* (“***Elise***”)
Defendant/Respondent: *Adler's Counsel/Co-Defendants:*	**David V. Adler, U.S. Trustee** (“***Adler***”) 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* (“***Messina***”) **Fernand L. Laudumiey IV**, *pro se* (“***Laudumiey***”) **Glen R. Galbraith**, *pro se* (“***Galbraith***”) **Leslie S. Bolner**, *pro se* (“***Bolner***”)
Defendant/Respondent:	**Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis, & Eagan, LLC**(“***GAMB***”)
Its Counsel:	C. Peck Hayne Jr.
Defendant/Respondent: *Its Counsel:*	**Chaffe McCall, L.L.P.** (“***Chaffe McCall***”) David J. Messina, Fernand L. Laudumiey IV
Defendant/Respondent: *Its Counsel:*	**Seale & Ross, PLC** (“***Seale & Ross***”) Glen R. Galbraith, Leslie S. Bolner
Defendant/Respondent:	**Lake Villas Number 2 Homeowners Association, Inc.** *(“LV2”)*
Its Counsel:	Glen R. Galbraith, Lesli S. Bolner, Seal & Ross, PLC
Defendant/Respondent:	**Donald H. Grodsky**, *pro se* (“***Grodsky***”)
Defendant/Respondent: *Its Counsel:*	**Office of United States Trustee** (“***OUST***”) U.S. Attorney, Peter G. Strasser Assistant U.S. Attorney, Glenn K. Schreiber

RELATED PROCEEDINGS

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

- *Howell v. Adler et al.*, No. 20-30223, U.S. Court of Appeals for the Fifth Circuit. Judgment entered June 1, 2020.

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PETITION FOR WRIT OF CERTIORARI

Elise LaMartina respectfully petitions for a writ of certiorari to review a judgment of the 5th Circuit Court of Appeals. This Petition should be granted to review the extent to which federal courts may stray from accepted and usual judicial proceedings to shield favored Defendants (who they prefer not be embarrassed or sued) from liability.

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 LA. is reprinted in Appendix B at 4a. The order rendered by the U.S. Bankruptcy Court for the Eastern District of LA. is reprinted as Appendix C at 5a. The "*Barton* injunction" rendered by the U.S. Bankruptcy Court for the Eastern District of LA. is reprinted as Appendix D at 6a.

JURISDICTION

The 5th Circuit Court of Appeals entered final judgment on April 1, 2020. Timely filed petitions for panel rehearing and rehearing *en banc* were denied on June 9, 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, order denying discretionary review, or order denying a timely petition for rehearing"), this petition is timely filed and this Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The complete text of 11 U.S.C. §362 is reprinted, with applicable subsections highlighted, in Appendix G at 12a.

STATEMENT OF THE CASE

In 2007, John and his grandmother, Jane, were the recorded owners of a note secured by a mortgage on Elise's condo.[1] Their note was managed and administered by Grodsky.

In 2008, Respondent LV2, a condo association, sued Elise and obtained a judgment in 2009. (*Lake Villas No. 2 Homeowners Assoc., Inc. v. LaMartina*, 2008-11342, "J," 22nd JDC St. Tammany Parish, La.). (The 5th Circuit (erroneously) found this judgment was rendered in 2014.)

In January 2013, LV2 and its collection attorneys, Galbraith and Bolner, found in the public records a first mortgage encumbering Elise's condo: John and Jane's mortgage.

In February 2013, these Respondents deposed Jane and discovered that this 75-year-old homemaker and her then minor grandson, John, were "easy targets." Finding it more lucrative to steal their mortgage note than foreclose on Elise's condo using LV2's inferior judicial-lien, Respondents devised a scheme in which LV2 would pay Grodsky $10,000.00 to claim he owned John and Jane's mortgage note and split its proceeds with them.

Grodsky, however, declared bankruptcy under Chapter 7 in 2009. If he now claimed to own John's note since 2007, he'd be exposed to liability for failing to disclose this asset in that case. So, Bolner enlisted the help of Respondents, Laudumiey, Messina, and Adler (trustee for Grodsky's closed 2009 bankruptcy case) to ensure Grodsky wouldn't experience any negative repercussions or prosecution if he claimed in 2013 to have owned John's mortgage note since 2007.[2]

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[1] Whether one suggests John and Jane owned the mortgage note outright or, alternatively, one suggests John retained a Purchase Money Security Interest, "*PMSI*," in the mortgage note (evidenced by the Promissory Note and Security Agreement executed by Grodsky and attached to John's proof-of-claim in this bankruptcy case), John owned a 100% undivided equitable interest in the mortgage note and its proceeds.

[2] To date, no such actions have been initiated against Grodsky despite the fact that ***if*** Trustee Adler truly believed Grodsky had any equity in John's mortgage note his failure to disclose this asset in 2009 would have constituted bankruptcy fraud in that case.

Thus, by June 2013, LV2, Grodsky, Seale & Ross, Galbraith, and Bolner's scheme expanded to include Respondents, Adler, Laudumiey, Messina, and GAMB. In August 2013, these Respondents suborned Grodsky's *first* perjured state-court testimony.

In September 2013, with no asset to administer and to trigger the 11 U.S.C. §362(a) stay that would thwart any state-court litigation against Grodsky, Respondents, Adler, GAMB, Messina, and Laudumiey, reopened Grodsky's 2009 bankruptcy case. (The 5th Circuit (erroneously) found, "Grodsky's closed 2009... case was then re-opened "to administer and distribute the proceeds of the mortgage note..."" This finding is clearly erroneous because in September 2013 there was no order acknowledging Grodsky's titled ownership of the mortgage note and, thus, no note for Adler to administer. There was no order regarding John's note until 2014. In fact, until John's appeal was dismissed on procedural grounds, there was no final order before 2016. (*Lake Villas No. 2 Homeowners Assoc., Inc. v. LaMartina*, 189 So.3d 1070 (Mem.) (La.2016).

In December 2013, with public records in the state-court proceeding evidencing that LV2 (a third-party wholly unrelated to Grodsky's bankruptcy case) ***knew*** Grodsky's bankruptcy case was reopened; ***knew*** John would be a secured estate claimant in Grodsky's newly reopened bankruptcy case; and ***knew*** the 11 U.S.C. §362(a) stay was in effect, in willful violation of that stay, LV2 raced to the courthouse to hold a summary proceeding, in its state-court suit against Elise, naming Grodsky and John as Defendants-in-Rule.

LV2 sought to have John's note and mortgage cancelled (elevating its judgment-lien to first position). LV2's action, initiated against both the debtor, Grodsky, and his creditor, John, was *not* intended to recover an estate asset but, rather, to deplete estate assets and eliminate John's claim as a secured creditor in Grodsky's estate).

Lacking grounds to cancel John's mortgage, LV2 then sought an interlocutory order declaring Grodsky to be the titled owner of John's note and superior mortgage to Grodsky (so that he and Adler could split the proceeds of John's note among the Respondents).

In January 2014, after engaging in a pattern of criminal and tortious misconduct summarized by the 5th circuit as, "*bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process*," Respondents fraudulently obtained a state-court order acknowledging Grodsky's titled ownership of John's note. John promptly filed his proof-of-claim in bankruptcy court.

In April 2014, John moved for suspensive appeal of the state-court's interlocutory order. While John's appeal was pending, in March 2015, Adler moved for a turnover order in the bankruptcy court directing John to surrender his property. In May 2015, refusing to address or consider the estate's lack of equity in the mortgage note or John's claim against the estate, the bankruptcy court granted a turnover order requiring John to surrender his note to Adler. John complied.

In December 2015, because his attorney failed to file appropriate pleadings in a timely fashion, John's state-court appeal was dismissed. In March 2016, Louisiana's Supreme Court, declined to review the dismissal of John's appeal on this procedural technicality. (*Lake Villas No. 2 Homeowners Assoc., Inc. v. LaMartina*, 189 So.3d 1070 (Mem) (La. 2016).

Thereafter, John petitioned the state-court to annul its fraudulently procured interlocutory order. This action was eventually dismissed in 2018 pursuant to the bankruptcy court's "*Barton* injunction" (see Appendix D) which prohibited John from raising any issue related to the mortgage note and, thus, prohibited the state-court from reviewing its own rulings and orders. (*Lake Villas No. 2 Homeowners Assoc., Inc. v LaMartina*, 2018-0699 (La. App. 1st Cir. 9/17/18).

In 2015, after receiving the mortgage note and reviewing both it and John's PMSI evidenced by the Promissory Note and Security Agreement attached to his proof-of-claim, Adler should have processed John's secured claim against the estate and abandoned the mortgage note for lack of sufficient equity to justify its administration.

Alternatively, if he felt John's secured claim should be denied, Adler had a duty to file an 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..."). Adler did *neither*.

Instead, Trustee Adler *refused* to administer the estate. Between 2013 and 2018, he kept this Chapter 7 case (having only <u>one</u> estate asset (the mortgage note) in which the estate had titled, but ***no*** equitable interest and a <u>single</u> secured estate claimant (John)) **open for <u>5 years</u>!** Why? Because Louisiana's liberative prescription (statute of limitations) on a mortgage note is 5 years.

Plotting to defraud John as a secured creditor (and, for that matter, to defraud all estate claimants), Trustee Adler "sat on" the mortgage note waiting for it to prescribe. Once expired, the estate's sole asset (the mortgage note securing the Promissory Note on which John's proof-of-claim is based) would be worthless and Adler could close Grodsky's bankruptcy as a "no asset" case. Thereafter, LV2's lien against the condo (the property which also secured the mortgage note) would ascend to first position and, as agreed, LV2 would split foreclosure proceeds with Adler and the other Respondents.

To thwart the Trustee's scheme to defraud estate creditors, in 2018 (mere days before the mortgage note was due to expire), Elise filed a concursus proceeding to evidence payment and interrupt prescription of the mortgage note. (*LaMartina v. Adler, et al.*, (*In re Grodsky*) 2:18-ap-01013 (Bankr. E.D. La. 2018).

With his plot foiled, the Trustee eventually liquidated the mortgage note and, while John's secured claim based on the Promissory Note was pending and still outstanding, embezzled its proceeds. Respondents split the entirety of the money in the Trustee's possession (John's money) as fees, commissions, etc... and closed Grodsky's bankruptcy case - because reopening this case was never about maximizing distributions or fiduciary duties to creditors. Reopening Grodsky's Chapter 7 case was a pretense for six unscrupulous lawyers to further their scheme to enrich themselves by stealing a mortgage note from an elderly lady and her grandson. (See John Howell's Petition for Writ of Certiorari in related 5th Circuit case #20-30417.)

From LV2's purposeful and intentional violations of 11 U.S.C. §362(a) (while, Trustee Adler simultaneously, threatened John with contempt actions for alleged violations of that very *same* stay if he pursued state-court litigation against Grodsky) **to** Trustee Adler's refusal to administer this bankruptcy case – for years – (hoping the estate's only asset would prescribe so he and his cohorts could split the proceeds of LV2's inferior lien), **to** ultimately embezzling money belonging to a secured creditor, the Respondents successfully committed bankruptcy fraud.

In response to Respondents' ongoing scheme to defraud them, Petitioners filed two suits. They were consolidated by the 5th Circuit on appeal and are the subject of this Petition.

The first is a "non-core" case in which Petitioners seek damages sustained as a result of the tortious and criminal misconduct in which Respondents engaged while defrauding them (which, despite its lack of jurisdiction, the bankruptcy court dismissed *with* prejudice). The second is a "core-proceeding" for actual and punitive damages under 11 U.S.C. §362 (k) for Respondents' knowing and willful violations of 11 U.S.C. §362(a) with the intent to defraud estate creditors (which the bankruptcy court, *sua sponte,* dismissed *with* prejudice for allegedly violating its "*Barton* injunction" rendered in the first suit).

REASONS FOR GRANTING THE WRIT

I.
The 5th Circuit sanctioned a bankruptcy court's exponential expansion of its own power, authority, and jurisdiction under the *Barton* Doctrine.

The *Barton* Doctrine

Stemming from the 19th century decision in *Barton v. Barbour*, 104 U.S. 126 (1881), the *Barton* doctrine is a common law doctrine barring suits against "court-appointed" trustees and other fiduciaries absent permission from the "appointing" court. This Court held that leave to sue a fiduciary must be received from "the court by which [a fiduciary] was appointed." *Id.* at 128.

The 2nd Circuit was the first appellate court to apply *Barton* to bankruptcy trustees. See *Vass v. Conron Bro. Co.*, 59 F.2d 969 (2d Cir. 1932). Six federal circuits have since held that *Barton* is valid and leave of the bankruptcy court is required before initiating suit against bankruptcy trustee for "acts done in the trustee's official capacity and within the trustee's authority as an officer of the court." See *e.g., DeLorean Motor Co., In re*, 991 F.2d 1236 (6th Cir. 1993). Several circuits expanded the *Barton* Doctrine to include "court-appointed" counsel employed by a trustee for "acts within the course and scope" of his duties. See *e.g., Lowenbraun v. Canary,* 453 F.3d 314, 321 (6th Cir. 2006).

This Court found that *Barton* is not a procedural bar, but merely a jurisdictional threshold, in filing suit against a trustee. *Barton* does not preclude lawsuits against trustees or "court-appointed" fiduciaries in a non-bankruptcy forum and it certainly does not preclude suits against defendants who are not "appointed" by a bankruptcy court. It simply imposes a jurisdictional step requiring the bankruptcy court, or "appointing" court, to determine *where* the suit may be brought, not *whether* a trustee or his counsel may be sued.

Moreover, *Barton* is inapplicable where plaintiffs file suit ***in*** the very bankruptcy court that appointed the trustee (as in the instant case). See *e.g., LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.)*, 196 F.3d 1, 5 (1st Cir. 1999) (***Barton* has "no application to proceedings in the court that is overseeing administration of the estate"**); *Kashani v. Fulton*, 190 B.R. 875, 885 (9th Cir. BAP 1995); *CERx Pharmacy Partners, LP v. RPD Holdings, LLC*, 514 B.R. 473, 475–77 (Bankr. N.D. Tex. 2014; *S.E.C. v. Nutmeg Grp.*, 2012 WL 3307406, at *2 (N.D. Ill. Aug. 13, 2012) ("The *Barton* Doctrine does not bar the... petitioners' complaint since they... file(d) it in the appointing court."); *In re World Mktg. Chi.*, LLC, 584 B.R. 737 (Bankr. N.D. Ill. 2018).

Sanctioning the application of *Barton* to proceedings *in* the court overseeing an estate's administration, the 5th Circuit upheld the bankruptcy court's refusal to grant leave to sue its favored Defendants, or transfer Petitioner's "non-core" claims to a non-bankruptcy forum, and its adjudication of claims over which it lacked jurisdiction by dismissing Petitioners' suits *with* prejudice.

As outlined above, *Barton* is *not* a procedural bar to claims against a U.S. trustee. It simply requires leave of the bankruptcy court before initiating suit in a non-bankruptcy forum against a bankruptcy trustee and/or his "court-appointed" counsel for "acts done in the trustee's official capacity and within the trustee's authority as an officer of the court."

First, Petitioners' suits were proceeding ***in*** the very bankruptcy court that appointed the trustee. Thus, *Barton* had "no application to proceedings" in that court.

Second, "it is generally agreed that a bankruptcy trustee may be sued in his or her individual capacity for wrongful acts which exceed the scope of his or her authority - *i.e.*, a bankruptcy trustee may be personally liable for wrongful acts that are *ultra vires.*" See *e.g., Phoenician Mediterranean Villa, LLC v. Swope*, 545 B.R. 91, 105 (Bankr. W.D. Pa. 2015); *McKillen v. Wallace (In re Irish Bank Res. Corp.)* (D. Del. 2019).

Respondents were sued in their individual capacities for torts and crimes committed while defrauding your Petitioners. As their "non-core" complaint alleges, Petitioners sustained damages as a direct result of Respondents illegal misconduct. The 5th Circuit summarized Respondents' unlawful acts as *"bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process."* Such misconduct "exceeds the scope of a trustee's authority."

Certainly, *"bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process"* are ***not*** "acts done in the trustee's official capacity and within the trustee's authority as an officer of the court." Thus, if the *Barton* Doctrine is not wholly inapplicable to this case, refusal to grant "*Barton* leave," or transfer Petitioners' "non-core" complaint for damages sustained as a result of this unlawful behavior to a court of competent jurisdiction, is merely an abuse of discretion. Like any other defendant, the U.S. Trustee herein and his counsel, "court-appointed" or not, may, and should, be held personally liable for their *ultra vires* acts and intentional misconduct that caused your Petitioners' damages.

Third, as outlined in Petitioners' complaint, many of the Respondents' torts and crimes were committed during a 9-month period *before* this Chapter 7 bankruptcy case was operational and 3-years *before* there was any estate asset to administer. Despite an exhaustive search, Petitioners can find no authority suggesting that the *Barton* Doctrine applies to suits filed against trustees, their counsel, or their co-defendants for tortious and criminal misconduct committed in their individual capacities *prior* to the operation of a bankruptcy case or their subsequent "court-appointments" as fiduciaries of the bankruptcy court.

Fourth, several Respondents are not, and cannot be, "court-appointed" fiduciaries of the bankruptcy court. Thus, the bankruptcy court retained no particular or specific authority or jurisdiction over these Respondents under the *Barton* Doctrine and "*Barton* leave" is not required before filing suit. Nonetheless, this did not discourage the bankruptcy court from exercising its "*Barton* authority" over these Respondents as well. In addition to shielding these Respondents from liability by dismissing all claims, even pendant state claims, *with* prejudice, the bankruptcy court enjoined Petitioners from bringing any and all actions in any way related to the "nucleus of operative facts" in this case against them in any court of competent jurisdiction.

Treating *Barton* as a procedural bar to claims against the Trustee, his attorneys, and his "un-appointed" Co-Defendants, the bankruptcy court not only refused to grant leave to sue these Respondents in a non-bankruptcy forum, it refused to transfer Petitioners' "non-core" claims (over which it lacked jurisdiction) to a court of competent jurisdiction.

Because it had authority under *Barton* to refuse leave to sue its favored Defendants, the bankruptcy court reasoned that it likewise had the authority to dismiss Petitioners' "non-core" claims *with prejudice* (thereby adjudicating claims over which it, *admittedly*, lacked jurisdiction). Further, the bankruptcy court reasoned that since *Barton* provided a basis for adjudicating "non-core" claims by dismissing them *with prejudice*, it could also exercise its "*Barton* authority" to enjoin Petitioners from ever recovering damages from these Respondents, even those who were *never* "court-appointed" trustees and/or other fiduciaries of the bankruptcy court. To that end (and also to ensure no other *would-be* plaintiffs could seek to hold these Respondents liable for their tortious and criminal misconduct and to prohibit Louisiana's state-courts from reviewing or reversing the state-court interlocutory order fraudulently obtained by the Respondents), the bankruptcy court created its "*Barton* injunction."

Absent all requisites necessary for a permanent injunction to issue, the bankruptcy court created, and the 5th Circuit sanctioned, a "*Barton* Injunction."

Generally, four requisites must be satisfied before a court may grant injunctive relief.

> "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).

Respondents failed to show any requisite element necessary for a permanent injunction to issue. *First*, clearly no Respondent suffered irreparable, or any, injury. In fact, they benefited from their scheme to defraud your Petitioners. Respondents just didn't want to be sued for the damages caused by their torts and crimes. *Second*, if Respondents had sustained any injury, remedies at law would have been adequate. *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 two *pro se* plaintiffs hardly outweighs the hardship experienced by Petitioners who were defrauded and can no longer afford legal representation and one whose entire life savings hangs in the balance. Finally, *fourth*, shielding Respondents (especially a U.S. Trustee positioned to repeat his unethical and illegal misconduct to defraud not only unsuspecting creditors but the courts themselves) from liability for constitutional violations, torts, and crimes committed while traversing state and federal courts to defraud your Petitioners hardly serves the public's interest.

Additionally, it is long-established that in bankruptcy cases injunctive relief is appropriate only upon a showing that the enjoined action would "impede, impair, or irreparably interfere with the administration of the estate." See *e.g., Baptist Medical Center of New York v Singh*, 80 BR. 637, 644 (Bankr. EDNY 1987); *Brehme v. Watson*, 67 F.2d 359 (9th Cir. 1933) (Absent interference with the administration of an estate or jurisdiction of the bankruptcy court or that the contemplated action would cause irreparable injury, the bankruptcy court erred in ordering its injunction.)

Grodsky's bankruptcy case is **closed**. Even if Petitioners wanted to interfere with the estate's administration, they couldn't! Their suit has no, ***zero***, effect on the administration of this closed estate or the bankruptcy court's jurisdiction. Further, as the estate's only secured creditor, John had no interest in "impeding, impairing, or irreparably interfering" with this estate while it was open. Pursuant to the Security Agreement, attached to John's proof of claim, John retained a purchase-money-security-interest ("*PMSI*") in the mortgage note (the estate's sole asset). As evidenced by that Agreement, Grodsky's estate had **no**, ***zero***, equity in the mortgage note.

The Trustee should have abandoned the mortgage note for lack of sufficient equity to justify its administration. He *didn't.* Instead, the Trustee wrongfully liquidated property in which the estate had no equity and distributed 100% of its proceeds to himself and his cohorts, as commissions and fees. This bankruptcy case was *never* about maximizing distributions to creditors or satisfying secured claims. This Chapter 7 case was merely a pretense for six unscrupulous attorneys to liquidate John's property and split proceeds of John's Promissory Note secured by the mortgage note. The Respondents successfully committed bankruptcy fraud. No creditor, John included, received anything. The Respondents made-off with $120,000.00 of John's money, and Grodsky's bankruptcy case was closed. (For more on this, see John's Petition for a Writ of Certiorari in related 5th Circuit case #20-30417.)

Because Respondents failed to satisfy any requisite for a permanent injunction and John had no interest in impeding, impairing, or interfering with estate administration, the bankruptcy court *waived* those requirements. If, under *Barton*, leave was required, and it had no intention of granting that leave, the bankruptcy court reasoned that it could create a "*Barton* injunction," allegedly pursuant to this same authority.

The bankruptcy court fashioned an unconstitutionally-broad "*Barton* injunction" that:

(1) prohibits Petitioners, and essentially anyone damaged by Respondents' misdeeds, from raising, in any court of competent jurisdiction, "non-core" claims, including pendant state claims, (over which the bankruptcy court admittedly lacks jurisdiction), and any issue related to the "nucleus of operative facts" in this case;

(2) prohibits Louisiana's state courts from reviewing, reversing, or modifying Louisiana state-court orders by enjoining all *would-be* plaintiffs from raising any issue related to the "nucleus of operative facts" in this case. (Upon the issuance of this injunction, Louisiana's 1st Circuit Court of Appeal was prohibited from reviewing the fraudulently obtained state-court interlocutory order at the root of this case and promptly dismissed John's appeal. *Lake Villas No. 2 Homeowners Assoc. v. LaMartina*, 2018-0699 (La. App. 1st Cir. 9/17/18));

(3) prohibits suit against Respondents over whom the bankruptcy court retained *no* special "*Barton* authority" or jurisdiction because they were simply *never* its "court-appointees" or fiduciaries;

(4) prohibits all *would-be* plaintiffs from bringing any "core-proceedings" in the bankruptcy court (the bankruptcy court dismissed Petitioner's core complaint for damages under 11 U.S.C. §362(k) with prejudice because it allegedly violated this "*Barton*" injunction); and

(5) prohibited John, a secured estate creditor in Grodsky's bankruptcy proceeding, from pursuing his timely filed claim against the estate. (For more on this, see John's Petition for a Writ of Certiorari in related 5th Circuit case #20-30417.)

Working on the assumption that this *Barton* creation is valid and enforceable, the 5th Circuit held that the *sua sponte* dismissal of Petitioners' "core-proceeding" (for damages to which they are entitled under 11 U.S.C. §362(k) resulting from Respondents' knowing and willful violations of 11 U.S.C. §362(a)) "was correct [because] the suit violated the permanent injunction barring [Petitioners] from relitigating the promissory note..."

By upholding the bankruptcy court's refusal to grant "*Barton* leave" to sue the Trustee, his counsel, and his "non-appointed" Co-Defendants for damages caused by misconduct and crimes that clearly exceeded the scope of the Trustee's authority; its refusal to transfer this case to a court of competent jurisdiction; its dismissal of Petitioners' case *with* prejudice; and, in the absence of all requisites for a permanent injunction, upholding its overly-broad and constitutionally suspect "*Barton* injunction" curtailing the jurisdiction of Louisiana's courts to review, reverse, or even modify their own fraudulently obtained state-court interlocutory orders, the 5th Circuit sanctioned the bankruptcy court's *exponential* expansion of its own powers, authority, and jurisdiction under *Barton* to protect Respondents who it adamantly wanted to shield from liability or embarrassment.

Petitioners respectfully request that this Petition be granted so that this Court can review the 5th Circuit's finding that a bankruptcy court's powers, authority, and jurisdiction under *Barton v. Barber* should be expanded to include, without limitation:

1. the power and authority to curtail, disrupt, or otherwise limit the jurisdiction of a state court to review, reverse, or modify its own orders and judgments;

2. the power and authority to apply *Barton* to its own proceedings and treat it as a procedural bar to suits against a U.S. trustee, his counsel, his non-appointed/non-governmental co-defendants, and *any* defendant it wishes to shield from liability;

3. the power and authority to exercise special jurisdiction over defendants who are not "court-appointed" fiduciaries of *any* court;

4. the power and authority to prohibit suit against a U.S. trustee, his counsel, and his co-defendants in their individual capacities for damages sustained as a result of *ultra vires* acts including constitutional violations, torts and crimes clearly exceeding the scope of a U.S. trustee's duties;

5. the power and authority to prohibit suit against a U.S. trustee, his counsel, and his co-defendants in their individual capacities for engaging in a pattern of tortious and criminal misconduct during a 9-month to 3-year period *prior* the operation of a bankruptcy case and *before* there was any estate asset to administer;

6. the power and authority to fashion "Barton injunctions" where no requisite element for the issuance of a permanent injunction is satisfied;

7. the power and authority to prohibit all courts of competent jurisdiction from adjudicating claims over which the bankruptcy court lacks jurisdiction;

8. the power and authority to prohibit "core-proceedings" in which a jury-trial is demanded from being heard in a court of competent jurisdiction;

9. the power and authority to adjudicate "non-core" claims over which it lacks jurisdiction by dismissing them with prejudice; and

10. the power or authority to prohibit secured estate claimants from pursuing their timely filed claims in a bankruptcy proceeding.

If a bankruptcy court does not possess such expansive jurisdiction and authority, Petitioners' case should be remanded to the district court for the jury-trial to which they are entitled.

II.

The 5th Circuit sanctioned "retroactive rehabilitation" of knowing and willful violations of 11 U.S.C. §362(a) by a third-party, with no legitimate interest and, thus, no standing to move for relief from stay under 11 U.S.C. §362(d), in this Chapter 7 Case.

The Automatic Stay in Bankruptcy and the Split of Authority Regarding the Consequences for Violating 11 U.S.C. §362(a).

Congress enacted 11 U.S.C. §362 which, under sub-part (a), causes an automatic stay, binding on all people and entities, to take effect immediately upon the filing of a bankruptcy petition. *Gilchrist v. General Elec. Capital Corp.*, 262 F. 3d 295, 303 (4th Cir. 2001). This automatic stay is "a bedrock policy upon which the [bankruptcy] Code is built and a fundamental protection of bankruptcy law." *In re Lampkin*, 116 B.R. 450, 453 (Bankr. D. Md. 1990). Sub-part (d) of 11 U.S.C. §362 affords bankruptcy courts the power to grant relief from this automatic stay. Only bankruptcy courts may grant relief on request of an interested party and after notice and hearing. Actions taken without first obtaining relief from stay, obviously, violate 11 U.S.C. §362(a). Sub-part (k) provides for actual and punitive damages for violations of the automatic stay in §362(a).

There is, however, a long-standing split of authority regarding the consequences of violating 11 U.S.C. §362(a). In the 1st, 2nd, 9th, and 10th circuits, actions taken in violation of 11 U.S.C. §362(a) are void *ab initio*. They are absolutely null and void. The 3rd, 5th, 6th, and 11th circuits, however, have decided that such transgressions and violations of law are merely "voidable" acts which are capable of discretionary cure and can be "retroactively validated." The 4th and 8th circuits have, thus far, avoided the issue.

Petitioners' "Core-Proceeding"

Petitioners filed a "core-proceeding" for damages to which they are entitled under 11 U.S.C. §362(k). Their complaint alleges that a third-party, Respondent LV2 a condo association having no, ***zero***, legitimate interest in this Chapter 7 case, acted in knowing and willful violation of 11 U.S.C. §362(a) for the express purpose of defrauding creditors.

As evidenced by the bankruptcy court's docket and public records, Grodsky's bankruptcy case was reopened in September 2013. As evidenced in the bankruptcy court's claims registry, John is a secured creditor in Grodsky's Chapter 7 case. As further evidenced by the bankruptcy court's records, LV2 is not a creditor and had no legitimate affiliation or connection to the debtor or any creditor in this case.

As evidenced in the state court's docket, court transcripts, and public records, in December 2013, LV2 *knew* Grodsky's bankruptcy case was reopened; *knew* John had a secured claim against Grodsky's estate; and *knew* the 11U.S.C.§362(a) stay was in effect.

However, Respondents also understood that Grodsky's false claims of ownership in John's mortgage note could not withstand the scrutiny of an ordinary proceeding for declaratory judgment in Louisiana's 24th JDC.

So, while Trustee Adler threatened John with contempt actions for filing suit against Grodsky in the 24th JDC, in December 2013, LV2 raced to the courthouse in knowing and willful violation of that very *same* stay and, with the intent to defraud John, it:

- filed a Motion to Cancel Mortgage naming John and Grodsky Defendants-in-rule;
- lied to the state-court about the operation of the automatic stay;
- held its summary proceeding in a court it knew lacked jurisdiction;
- drafted and presented the court with a "judgment" for signing;
- and, on January 27, 2014, caused the state-court, despite its lack of jurisdiction, to execute that "Judgment" (which was really an interlocutory order disguised as a judgment).

There is no question that LV2 knowingly and willfully violated the stay under 11 U.S.C. §362(a). These are all intentional acts, documented in court records, willfully carried out by LV2 to defraud Petitioners by fraudulently obtaining an interlocutory order either canceling John's note and mortgage or, alternatively, having it awarded to Grodsky. [3]

LV2 purposefully and intentionally failed to obtain relief of stay because, (1) it had no standing to move for relief from stay in the bankruptcy court and (2) had any Respondent moved for relief from stay, John would have had time to move for relief of stay to pursue his ordinary suit for declaratory judgment in the 24th JDC as well. Instead, John had five (5) business days to prepare for the summary proceeding that would divest him of his property.

Relief from 11 U.S.C. §362(a) is governed by 11 U.S.C. §362(d) (providing, "on request of a *party in interest* and after notice and a hearing, the *court* shall grant relief from the stay...). To move for relief from the stay in a bankruptcy case one must be a "party in interest." LV2 is a third-party with no, *zero*, interest in this bankruptcy case. It had *no* standing to move for relief from stay because it is not a "party in interest." So, it knowingly violated the automatic stay.

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[3] For a detailed description of Respondents' 11 U.S.C. §362(a) violations see Appendix F at 9a.

Even if LV2 had been a "party in interest," as the bankruptcy court's docket evidences, ***no*** relief from stay was requested by LV2, or any Respondent, and, to date, ***no*** relief has been granted, not even *retroactively*. "Only the bankruptcy court with jurisdiction over a debtor's case has the authority to grant relief from the stay..." *Cathey v Johns-Manville Sales Corp.*, 711 F.2d. 60, 62-62 (6th Cir. 1983), 478 U.S. 1021, 92 L.Ed.2d 740 (1986); *In re Financial News Network, Inc.*, 158 B.R. 570 Dist. Ct. SDNY 1993; *Maritime Elec. Co. v United Jersey Bank*, 959 F.2d. 1194, 1204 (3rd Cir. 1991). Thus, every action taken by LV2 in this matter violated the 11 U.S.C. §362(a) stay.

Had Petitioners' case arisen in the jurisdiction of the 1st, 2nd, 9th, or 10th Circuits, the outcome would have been *entirely* different.

To Petitioners' *great* misfortune, their case originated in the 5th Circuit's jurisdiction. The 5th Circuit dismissed Petitioners' "core-proceeding" under 11 U.S.C. §362(k) on grounds that it "lacked underlying merit."[4] This is because, in the 5th Circuit, violations of 11 U.S.C. §362(a) are subject to discretionary cure and bankruptcy courts in Louisiana, Mississippi, and Texas have the authority to "retroactively validate" such transgressions and unlawful acts.

In so holding, the 5th Circuit found it is not an abuse of discretion for a bankruptcy court to "retroactively validate" knowing and willful violations of the Bankruptcy Code. The ruling also suggests that even when committed by third-parties, with no standing or interest in a bankruptcy case, for a nefarious purpose, violations of 11 U.S.C. §362(a) are capable of discretionary cure.

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[4] As previously mentioned, the 5th Circuit also held that Petitioners' "core-proceeding" violated the bankruptcy court's "*Barton* injunction," despite the fact that the bankruptcy court retained no special "*Barton* authority" over LV2. LV2 is a third-party (homeowners association) that violated 11 U.S.C. §362(a). It was *not* a "court-appointed" fiduciary of the bankruptcy court, had ***no*** standing to move for relief of stay, and, in fact, had no legitimate interest in this Chapter 7 bankruptcy case at all.

"Actions taken in violation of the automatic stay provided in 11 U.S.C. §362(a) are void *ab initio*." *In re Smith Corset Shops, Inc.*, 696 F.2d. 971 (1st Cir. 1982); *In re 48th Street Steakhouse, Inc.*, 835 F. 2d. 427 (2nd Cir. 1987), 485 U.S.1035 (1988); *In re Ward*, 837 F.2d. 124 (3rd Cir. 1988); *Smith v. First American Bank, N.A.*, 876 F.2d 524 (6th Cir. 1989); *In re Taylor*, 884 F.2d. 478 (9th Cir. 1989); *In re Miller*, 10 B.R. 778, 780 (Bankr. D.Md. 1981); *Dates v. Harbor Bank of Md.*, 107 Md. App. 362, 370 (1995); *Home Indem. Co. v. Killian*, 94 Md. App. 205, 218 (1992); *In re Shamblin*, 890 F.2d 123, 125 (9th Cir. 1989); *In re Stringer*,847 F.2d. 549, 551 (5th Cir. 1988); *In re Schwartz*, 954 F.2d. 569 (App. Ct. 9th Cir. 1992); *In re Williams*, 124 B.R. 311, 316-18 (Bankr. C.D. Cal. 1991); *In re Garcia*, 109 B.R. 335 (N.D. Ill. 1989).

Had Petitioners been fortunate enough to have been operating within the jurisdiction of the 1st, 2nd, 4th, 8th, 9th, or 10th Circuits, the fraudulently obtained state-court order at the heart of this case would have been void *ab initio* as a matter of law. In fact, had this case originated in those jurisdictions, Respondents' unlawful misconduct may have been deterred because their scheme to defraud your Petitioners, by summarily obtaining an interlocutory order awarding John's note to Grodsky, would have been fruitless.

Undoubtedly, the outcome of this case would have been ***entirely*** different in the 1st, 2nd, 9th, and 10th circuits because Respondents could not have used their fraudulently and illegally obtained state-court order as a basis for their motion for turnover. Further, the bankruptcy court's "*Barton* injunction," that prohibited Louisiana's courts from reviewing or reversing that fraudulently obtained state-court order, would have been moot.

Quite candidly, had Petitioners understood that they were operating in a "*voidable*" jurisdiction in which knowing and willful violations of 11 U.S.C.§362(a) could be "retroactively validated," they would have broken the law.

In hindsight, John should have raced to the courthouse in violation of the stay to pursue his ordinary suit for declaratory judgment in Louisiana's 24th JDC. Had he obtained a legitimate judgment in the 24th JDC before LV2 fraudulently obtained its interlocutory order in the 22nd JDC, Respondents would not have been in the position to defraud your Petitioners. Clearly, under these circumstances, it would have been better to break the law before the Respondents did.

Instead, while Respondents knowingly and willfully violated 11 U.S.C. §362(a), your naive and unwitting Petitioners foolishly obeyed the law. This was a *HUGE* mistake.

Petitioners were egregiously disadvantaged and denied due process ***precisely because John obeyed the law***. Had John violated the stay, his unlawful acts may have been "retroactively validated" and Petitioners would not be filing Petitions in this Court today. Had any unlawful acts not been "retroactively validated," Petitioners would have been in the *same* position they are in now - having not violated the law. In the 5th Circuit's jurisdiction, there is little downside to ignoring the Bankruptcy Code.

The "void v. voidable" distinction is not only one of national importance, it is of particular interest to *every* litigant or creditor operating in a bankruptcy court within the jurisdiction of the 3rd, 5th, 6th, and 11th Circuits. This is especially true if certiorari is denied because **parties and creditors in the 5th Circuit should be aware that if they obey 11 U.S.C. §362 as written, they do so at their own peril!** If a bad actor (whether it's a U.S. trustee or even a third-party with no legitimate interest or standing in a bankruptcy case) knowingly and willfully violates 11 U.S.C. §362(a), his actions *can* and, if this case is any indication, *will* be "retroactively validated."

Petitioners request that this Court review whether violations of 11 U.S.C. §362(a) are void *ab initio* or merely "voidable" transgressions subject to discretionary cure or "retroactive validation." If they are void *ab initio*, Petitioners' case must be remanded to district court for jury-trial.

Alternatively, if this Court declines to resolve this split of authority on the "void v. voidable" distinction, or determines that violations of the Bankruptcy Code are merely "voidable" acts subject to discretionary cure and capable of "retroactive rehabilitation," Petitioner requests that this Court determine whether "retroactive rehabilitation" is appropriate in cases, like the instant case, where violations are committed by a third-party with no standing to move for relief of stay and/or where a party is acting in "knowing and willful" violation of 11 U.S.C. §362(a). Further, this Court should review whether individuals injured by "knowing and willful" 11 U.S.C. §362(a) violations are entitled to recover 11 U.S.C. §362(k) damages even if Bankruptcy Code violations are "retroactively validated." If not, what relief is available or substituted for 11 U.S.C. §362(k)?

CONCLUSION

The 5th Circuit decision creates a rule that greatly expands the powers, authority, and jurisdiction of bankruptcy courts and significantly undermines the protections afforded by Congress to both debtors and creditors in the Bankruptcy Code.

The questions presented herein are of exceptional importance in the context of bankruptcy law as statutory limits on the jurisdiction of bankruptcy courts and the legislative intent in enacting 11 U.S.C. §362 appear to have been abandoned by the 5th Circuit. Consideration by this Court is necessary to secure and maintain the uniformity of decisions across the country.

It should be unsettling to this Court that, in certain jurisdictions, Petitioners who are mindful of, and obey, the law have no legal recourse against Respondents who knowingly, willfully, and purposefully violate that *same* law. It should be equally unsettling that, in certain jurisdictions, bankruptcy courts are not courts of limited jurisdiction but have virtually limitless power to protect *preferred* defendants who not only broke the law but abused the judicial system and defrauded both state and federal courts as well as creditors and true owners of property.

The 5th Circuit's ruling opens the door to chicanery. For devious collection attorneys and crafty bankruptcy lawyers, it is an invitation to abuse and violate bankruptcy laws, rules, and procedures to defraud unsuspecting creditors and property owners – as happened in this case. The lower court's decision creates precedent that groups of unscrupulous attorneys are above the law if, in fact, one of them is a U.S. trustee entitled to, what can only be referred to as, "*Barton* immunity." It seems to be open season on unsuspecting property owners and creditors who proceed on the assumption that bankruptcy courts are courts of limited jurisdiction, believe that U.S. trustees are reputable, and naively obey the law and provisions in the Bankruptcy Code.

As a practical matter, absent a ruling by this Honorable Court, this case should place all persons operating in the 5th Circuit's jurisdiction on notice that:

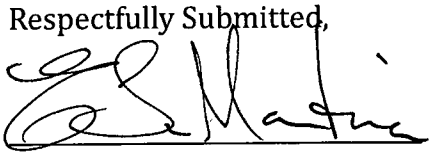
(1) "*Barton* immunity" is a reality. When dealing with a U.S. trustee, proceed on the assumption he may commit crimes, including, without limit, "bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process" with full *quasi*-judicial immunity; and

(2) Knowing and willful violations of 11 U.S.C. §362(a) are merely "voidable." If it behooves them to do so, parties, even disinterested third-parties, should *always* violate provisions of the Bankruptcy Code because it's better to seek forgiveness than permission. One can be terribly disadvantaged by obeying, while opposing parties, including U.S. trustees, break, the law.

INCORPORATION BY REFERENCE

Petitioner adopts and incorporates by reference the entirety of the contents, including without limitation, all Reasons for Granting the Writ, Questions Presented, and Appendices, of Petitioner John Howell's Petitions for Writ of Certiorari.

Respectfully Submitted,



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