No. 21-1197

IN THE
Supreme Court of the United States

KK-PB FINANCIAL, LLC,
Petitioner,

v.

160 ROYAL PALM, LLC.
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner participated in a fraudulent transfer scheme whereby Petitioner obtained a mortgage lien on Respondent's property for no value. After the Bankruptcy Court avoided this fraudulent transfer, the property in question was sold to a good faith purchaser and the proceeds from the sale were distributed under a confirmed Chapter 11 plan to mostly foreign creditors. Petitioner cannot undo the sale of the property because a federal statute bars that relief. *See* 11 U.S.C. § 363(m). In turn, the proceeds from the sale to the foreign creditors cannot now be recovered, and any other source of potential recovery is likewise unavailable. Notably, Petitioner failed to obtain a stay of the plan in the District Court, and did not even seek a stay in the Court of Appeals. Properly framed, the questions presented are:

1. Should certiorari be granted where the court below faithfully applied this Court's precedents in determining that Petitioner's appeal of the Bankruptcy Court's order avoiding the fraudulent mortgage was moot because relief is unavailable?

2. Should certiorari be granted to review the "equitable mootness" doctrine, which courts of appeals have uniformly adopted and applied for decades, where Petitioner has no avenue for relief, sought to manufacture a claim through a fraudulent transfer scheme, and failed to meaningfully challenge the doctrine in the court below?

CORPORATE DISCLOSURE STATEMENT

Respondent, 160 Royal Palm, LLC, is not a publicly traded corporation; no publicly traded corporation owns its stock; prior to confirmation of its Chapter 11 bankruptcy plan (under which all equity interests were cancelled), 100% of the stock of 160 Royal Palm, LLC was owned by Palm House, LLC, a privately-owned corporation.

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PRELIMINARY STATEMENT

This matter arises out of the bankruptcy case of Respondent, 160 Royal Palm, LLC ("Respondent" or the "Debtor"). The Debtor filed for bankruptcy in August of 2018. Until recently, the Debtor owned a partially completed hotel project (the "Property" or "Hotel"), which has been sold to a third-party purchaser, LR Palm House LLC, a subsidiary of LR U.S. Hotels Holdings, LLC (collectively, "LR"). Glenn Straub ("Straub") is the former owner of the Debtor. Petitioner KK-PB, LLC ("Petitioner") is a private company also owned by Straub.

Petitioner contends that it holds a large claim against the Debtor. The Bankruptcy Court, however, entered an order (the "Avoidance Order") determining that Petitioner's claim arose from a fraudulent transfer scheme, and therefore reduced the claim to $0. [A0332].[1] After Petitioner failed to obtain a stay of the Avoidance Order, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Debtor's Chapter 11 plan (the "Plan"). [A1119]. Then, after Petitioner failed to obtain a stay of the Confirmation Order in the District Court (and did not even seek a stay in the Court of Appeals), the Debtor distributed virtually all of its property under the terms of the Plan in accordance with applicable law. The District Court subsequently dismissed Petitioner's appeal of the Confirmation Order as

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[1] Citations taking the form "[A___]" refer to entries in Appellant's Appendix in the court of appeals at Docket Nos. 20-12361 and 20-12368.

equitably moot because it was no longer possible to undo the Plan, or the distributions made under it, without grave inequity. [A1928]. Additionally, because it was also no longer possible to modify the Plan to divert funds to the payment of Petitioner's invalidated claim, the District Court dismissed Petitioner's appeal of the Avoidance Order as constitutionally moot. *Id.* The Court of Appeals for the Eleventh Circuit affirmed.

Conspicuously absent from the Petition is the real story of Petitioner's participation in a fraudulent transfer scheme giving rise to its invalidated mortgage claim, and likewise how the Debtor incurred much of its debt in the first place. In any event, certiorari should be denied for each of the following reasons. First, there is no conflict among the courts of appeals on the questions presented. Second, there is no conflict with this Court's precedents. Third, the questions presented do not involve matters of particular importance. Fourth, the decision below is correct. Fifth, there is no longer any effectual relief available to Petitioner. Sixth, this highly unusual and atypical case otherwise presents a poor vehicle for consideration of the questions presented for review.

BACKGROUND

In its petition, Petitioner ostensibly raises questions of constitutional and equitable mootness. What it really seeks, however, is to undo a long series of orders and transactions (that cannot now be undone) so that Petitioner might profit from its own participation in a fraudulent transfer scheme.

The circumstances surrounding Petitioner's fraudulent mortgage claim involve an even larger foreign investor scam. In sum, the former owner of the Property, Robert Matthews ("Matthews"), used the Property to defraud foreign nationals—promising green cards that never materialized in exchange for hefty investments that he and others then squandered.[2] After Matthews defaulted on his mortgage debt to a third-party lender in 2009, Straub caused the Debtor to purchase the Property at the ensuing foreclosure sale. Just a few years later, Straub agreed in 2013 to transfer the Property back to an entity controlled by Matthews, giving rise to Petitioner's claim in this matter.

This transaction, however, was classically fraudulent: Straub transferred his then-worthless equity interest in the Debtor to an entity controlled by Matthews, but Matthews paid nothing in exchange. Instead, *the Debtor* paid Straub approximately $6 million in cash (largely from funds obtained from the bilked foreign investors), and Petitioner received an approximately $27 million note secured by a mortgage lien on the Property. The Debtor thus went from owning the Property free and clear to owning the

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[2] Matthews was indicted and pleaded guilty to conspiracy, money laundering, and tax evasion in connection with his scheme to defraud foreign investors. *See* Plea Agreement, *United States v. Matthews*, No. 3:18-cr-00048-VAB (D. Conn. Apr. 25, 2019), ECF No. 100. He also consented to judgment against him in a civil action pursued by the SEC in the Southern District of Florida, agreeing that he defrauded foreign investors by inducing them to invest in the Hotel. *See SEC v. Palm House Hotel LLLP*, No. 9:18-cv-81038 (S.D. Fla.), ECF Nos. 54, 55, 56.

Property encumbered by Petitioner's $27 million mortgage claim, with nothing to show for having incurred the new debt. Conversely, Straub—whose equity interest in the Debtor was worthless at the time of the transaction owing to the Debtor's insolvency—sold his worthless interest for $6 million in cash, plus a nearly $27 million note issued by the Debtor to Petitioner, a company owned by Straub.

Since the commencement of its bankruptcy case, the Debtor, under new management, has labored to liquidate its assets (including the Property) and pay the claims of its legitimate creditors, mostly the defrauded foreign investors. At every turn, Petitioner has sought to thwart the Debtor's efforts so that Petitioner might profit from its own misdeeds. At this point, however, the Property has been sold to a good faith purchaser and the proceeds from the sale have been distributed under the Debtor's confirmed Chapter 11 Plan to the defrauded foreign creditors. Petitioner cannot undo the sale of the Property because a federal statute bars that relief. *See* 11 U.S.C. § 363(m). In turn, the proceeds from the sale to the foreign creditors cannot now be recovered, and any other source of potential recovery is likewise unavailable to Petitioner. Certiorari should be denied.

A. Ownership of the Property and the Scheme to Defraud Creditors.

The Property has a tortured history. [A0333]. Ownership had transferred more than once, and no prior owner had been able to develop the Hotel into a functioning facility. *Id.* Matthews acquired the

Property through a limited liability company, but lost it in foreclosure in 2009 after his company defaulted on a mortgage debt owed to a third-party lender. [SA1007–SA1008][3]. At the foreclosure sale, Straub caused the Debtor to acquire the Property for $10.2 million. *Id*. Straub owned and controlled the Debtor through August of 2013. [A0336]. During this period, Straub both owned the equity interest in the Debtor and controlled its operations. *Id*.

Dozens of foreign investors have alleged (and Matthews has now conceded) that Matthews and others used the Property to solicit investments as part of a fraudulent EB-5 visa scheme, garnering more than $500,000 each from various individuals in exchange for the promise of green cards that never materialized. Over seventy-six of these investors filed proofs of claim in the Debtor's bankruptcy case (the "EB-5 Investors"). [A0333].

In August of 2013, Straub agreed to sell his equity interest in the Debtor to Palm House, LLC ("Palm House"), an entity controlled by Matthews. [A0336; SA1038–SA1039]. Critically, Palm House did not pay Straub for this acquisition. Instead, *the Debtor* paid Straub $6,211,000 in cash and also issued a promissory note to Petitioner in the principal amount of $27,468,750 secured by a mortgage lien on the Property. [SA1325; A0336; Appendix Tab A at Doc 577]. Of the $6,211,000 cash payment, approximately

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[3] Citations taking the form "[SA___]" refer to entries in Appellee's Supplemental Appendix in the court of appeals at Docket Nos. 20-12361 and 20-12368.

$2.6 million is traceable to funds provided by the defrauded EB-5 Investors. [SA1565–SA1571; A0336]. After this transaction, the Debtor remained the title owner of the Property, [SA1590], and a mortgage in favor of Petitioner was recorded on March 28, 2014. [A0337; SA1337].

Significantly, the Debtor received no value in exchange for its issuance of the note and mortgage to Petitioner, both of which underlie Petitioner's claim. Rather, the Debtor simply went from owning the Property free and clear to owning the Property encumbered by Petitioner's $27 million secured claim, with nothing to show for having incurred $27 million in new secured debt—all at the expense of its legitimate unsecured creditors. Meanwhile, Straub pocketed over $6 million in cash; Petitioner acquired the note and mortgage; and Palm House acquired Straub's equity interest in the Debtor, which was then worthless because the Debtor's assets had a value of no more than $20 million at the time, whereas the Debtor owed tens of millions to its other creditors. Accordingly, when Petitioner requested that the Bankruptcy Court estimate its claim represented by the note and mortgage so that it could use its claim to acquire the Property through the bankruptcy credit bidding process, the Bankruptcy Court fixed the claim at $0 because it is based on a fraudulent transfer scheme under Florida law. [A0342–A0346].

At the time the mortgage was recorded in 2014, the Debtor had no receivables, lacked revenue-generating operations, and (apart from its fraudulent activities) was solely in the business of making improvements to the Property. [SA1320]. The Debtor also had

significant obligations to others that remained unpaid, including the claims of the EB-5 Investors. [SA1696; SA0045–SA620; SA1565; SA2044–SA2045; SA0766–SA0771; SA1082–SA1083]. The Debtor's unpaid creditors also included parties who provided goods and services toward the development of the Hotel, [SA0019–SA0021; SA0621–SA0765; SA1113–SA1114]; the Town of Palm Beach, which was owed $394,000 as of August 30, 2013, [SA1156, SA1162–SA1163]; and the Securities and Exchange Commission, which asserted claims based on the approximately $2.6 million traceable to funds provided to the Debtor by the EB-5 Investors, [SA0001–SA0018, SA0022–SA0024; SA1565–SA1571; SA2044–SA2045; SA0766–SA0771; SA1082].

After the fraudulent transaction closed, three payments were made to Petitioner. [A0343]. Approximately a year after the closing, on September 12, 2014, Petitioner initiated a foreclosure action against the Debtor in Florida state court. [A0333]. During the course of that action, the court appointed Cary Glickstein ("Glickstein") as the Property's receiver. [A0071–A0072; A0333]. The court subsequently authorized Glickstein to file a bankruptcy petition for the Debtor, supplanting the Debtor's management. [A0333].

B. The Debtor's Bankruptcy Case and Efforts to Sell the Property.

The Debtor commenced its Chapter 11 case on August 2, 2018 (the "Petition Date"). [A0001–A0070]. By operation of law, when a debtor files for bankruptcy, a bankruptcy estate is created, consisting

of all of the debtor's property. *See* 11 U.S.C. § 541. As of the Petition Date, the Property was the principal asset of the Debtor's estate.

Glickstein, in his capacity as court-appointed manager of the Debtor, thereafter engaged in an extensive effort to sell the Property as authorized by section 363 of the Bankruptcy Code. *See* 11 U.S.C. § 363(b). On October 1, 2018, the Debtor filed a motion to approve certain sale procedures centering on a $32 million "stalking horse" contract with RREF II Palm House LLC ("RREF").[4] [A0123–A0132]. RREF, as the "stalking horse" bidder, was willing to make a firm offer for the Property, subject to higher and better bids. *Id.* On October 16, 2018, the Bankruptcy Court entered a procedural order setting a bid deadline and scheduling an auction and sale hearing. [SA0849–SA0861].

C. The Town Settlement.

A critical impediment to the Property's sale were the various fines imposed by the Town of Palm Beach—exceeding $4 million—which were imposed as a result of the Property's neglected condition, including while managed by Straub. [A1998–A1999]. In order to overcome this impediment and proceed with a sale, the Debtor negotiated a settlement (the "Town Settlement"). *Id.* Under the Town Settlement, if the Property were sold to a "qualified buyer," the fines would be reduced to $250,000. *See id.*; [SA0772–

[4] A "stalking horse" contract is one subject to higher and better bids, and effectively sets the floor for subsequent bidding.

SA0811, SA0918–SA0919, SA1461–SA1488, SA1506–SA1507]. Notably, Petitioner, its affiliates, and Straub were not "qualified buyers," thereby scuttling the Town Settlement if they were to purchase the Property. [SA2246–SA2247; SA2393].

D. The Failed Settlement with Petitioner.

With the Town's claim conditionally settled, the Debtor was in a better position to sell the Property. But the sale process was interrupted by litigation between Petitioner, the Debtor, and other creditors. [SA1362–SA1440]. To resolve this litigation, the Debtor and Petitioner negotiated a settlement that included a private sale of the Property to Petitioner (the "Petitioner Settlement"), under which Petitioner would pay $5.125 million for the Property. *Id.*

During a February 8, 2019 hearing on the Petitioner Settlement, the EB-5 Investors, the SEC, and the United States Trustee all objected to the settlement, and the Bankruptcy Court denied approval. [SA1441–SA1448; SA1449–SA1460; SA1489–SA1505; SA1508–SA1523; SA1524–SA1535; SA1536–SA1549; SA1550]. Notably, as of the February 8 hearing, Petitioner had also failed to deliver the $5,125,000 payment required under the Petitioner Settlement, and thus was in default. [SA2296; SA2298–SA2299; SA2304].

E. Petitioner's Motion to Estimate Its Claim and the Debtor's Objection to Petitioner's Claim as Fraudulent.

After a debtor files for bankruptcy, creditors holding claims may file proofs of claim in order to receive distributions from the debtor's estate. *See* 11 U.S.C. § 501; Fed. R. Bankr. P. 3001, 3002. These claims are then subject to allowance or disallowance by the bankruptcy court. *See* 11 U.S.C. § 502. One ground for disallowance is if the creditor benefited from a fraudulent transfer. *See* 11 U.S.C. § 502(d). In this case, Petitioner filed an amended proof of claim asserting a $39,684,844.73 secured claim based on its note and mortgage arising from the 2013 transaction (the "Mortgage Claim"). [SA0920–SA0979].

Generally, the holder of a lien securing an allowed claim has the right to "credit bid" its claim in connection with any sale of its collateral under section 363 of the Bankruptcy Code. *See* 11 U.S.C. § 363(k).[5] As the statute expressly provides, however, the court may "for cause" deny credit bidding. *Id*. On October 5, 2018, the Debtor filed a "Motion to Limit Credit Bids with Respect to Sale of Substantially All of Its Assets," seeking to prevent Petitioner from using the Mortgage Claim to credit bid on the Property due to the disputed validity of that claim, which the Debtor asserted was subject to avoidance as a fraudulent transfer. [SA0812–SA0840].

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[5] The term "credit bid" refers to a procedure whereby a secured creditor may use its secured claim as currency in lieu of cash during a foreclose auction of its collateral.

On October 10, 2018, and in response to the Motion to Limit Credit Bids, Petitioner filed a "Motion to Estimate Claim for Purposes of Credit Bidding Pursuant to 11 U.S.C. §§ 502(c) and 363(k)," [SA0841–SA0848] (the "Estimation Motion"), requesting that the Bankruptcy Court estimate its secured claim in order to maintain its right to credit bid that claim at the auction of the Property, and further requested that the Bankruptcy Court grant such other relief as the court deemed proper. *Id.* Estimation proceedings are governed by section 502(c) of the Bankruptcy Code, which provides that "[t]here shall be estimated for purpose of allowance under this section . . . (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case." 11 U.S.C. § 502(c)(1). As the Bankruptcy Court observed, "[s]ection 502(c) permits the Court to estimate any claim for purposes of allowance where the liquidation of the claim would unduly delay the administration of the case." [A0333]. In this instance, Petitioner itself selected the estimation procedure. In doing so, however, Petitioner intentionally subjected itself to the estimation process,[6] together with the well-recognized possibility that determinations made during that process could be used to deny its Mortgage

[6] "[N]either the Code nor the Federal Rules of Bankruptcy Procedure provides any procedures or guidelines for estimation, and a bankruptcy court has wide discretion in accomplishing it." *In re Chemtura Corp.*, 448 B.R. 635, 648 (Bankr. S.D.N.Y. 2011). Similarly, "[f]or both procedure and analytical methodology, bankruptcy courts may use whatever method is best suited to the contingencies of the case." *Id.* at 649.

Claim altogether,[7] all without the formality of an adversary proceeding.[8]

The Debtor and various creditors, including certain EB-5 Investors, filed oppositions to Petitioner's Estimation Motion. [SA0862–SA0888; SA0889–SA0901; SA0902–SA0907; SA0908–SA0910]. In its opposition, the Debtor specifically asked the court to estimate Petitioner's claim at $0 without qualification. [SA0886]. The Debtor also objected to Petitioner's proof of claim, [SA0911–SA0913], as did certain EB-5 Investors, [SA0914–SA0917].

F. The Avoidance of Petitioner's Claim.

Trial of the issues joined in response to the Estimation Motion occurred on January 8 and 11, and February 15 and 19, 2019. The Debtor and dozens of EB-5 Investors, together with Petitioner, participated

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[7] It is generally recognized that, where a creditor makes a successful presentation, estimation under section 502(c) "generally should result in an allowed claim for all purposes in the bankruptcy case." 4 COLLIER ON BANKRUPTCY ¶ 502.04[3] (2019). By the same token, where the creditor is unsuccessful, disallowance of its claim may result. Because "'an order applying section 502(c) allows or disallows a claim for all purposes in the case, principles of finality might apply, in appropriate circumstances, for the same reasons those principles apply to other orders allowing or disallowing claims under section 502.'" [A0335 (quoting 4 COLLIER ON BANKRUPTCY ¶ 502.04 (2019))].

[8] *See, e.g.*, *In re John Q. Hammons Fall 2006, LLC*, No. 16–21142, 2017 WL 4638439, at *5 (Bankr. D. Kan. Oct. 13, 2017) ("The statutory estimation process under § 502(c) will not run afoul of [Federal Rule of Bankruptcy Procedure 7001 governing the commencement of adversary proceedings].").

fully in the litigation, which included the Debtor's motion to limit credit bidding and the Estimation Motion, together with all responses thereto. Petitioner did not object to the Bankruptcy Court's hearing of the fraudulent transfer claims during the evidentiary hearing. Instead, Petitioner permitted the claims to be litigated, and likewise presented its defense.

There are generally two kinds of fraudulent transfers. There are those that are subjectively fraudulent—transfers made with actual subjective intent to hinder, delay, or defraud creditors. *See, e.g.*, *In re Caremerica, Inc.*, No. 06-02913-8, 2009 WL 2253232, at *4 (Bankr. E.D.N.C. July 28, 2009) (citing 5 COLLIER ON BANKRUPTCY, 548.01 (15th ed. Rev.)). In addition, there are those that are constructively fraudulent—transfers deemed to be fraudulent as a matter of law if they meet certain objective criteria. *See id*. This case involves the second, constructive type. Both types, however, rest on the same fundamental principle: a debtor must be just to its creditors (here the EB-5 Investors and other creditors holding legitimate claims against the Debtor) before the debtor may be generous to its friends (here paying tens of millions of dollars to Straub and Petitioner for Palm House's acquisition of Straub's worthless equity stake in the Debtor). *See, e.g.*, *In re Kimmell*, 480 B.R. 876, 885 (Bankr. N.D. Ill. 2012) ("The philosophy behind the statutory provisions is that 'one should be just before being generous.'") (citing 5 COLLIER ON BANKRUPTCY, 548.01, 548–10 (16th ed. Rev.)).

As is relevant here, Florida law recognizes two kinds of constructively fraudulent transfers. First,

under Florida Statute § 726.105(1)(b), a transfer is constructively fraudulent if the debtor made the transfer without receiving reasonably equivalent value, and was engaged in a business for which its remaining assets were unreasonably small in relation to that business. Second, under Florida Statute § 726.106(1), a transfer is constructively fraudulent when made without sufficient consideration if the debtor was insolvent at that time of the transfer or became insolvent as a result of the transfer. The Bankruptcy Court determined that the note and mortgage meet the requirements of both sets of provisions.

For purposes of section 726.105, the court determined that, at the time of the transfers, the Debtor was engaged in, or was about to engage in, a business for which its remaining assets were unreasonably small in relation to its business, and that the Debtor intended to incur, or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due. [A0343]. Marcie Bour ("Bour"), a forensic accountant who served as a witness for the Debtor at trial, testified that, following the closing of the transaction with Petitioner, the Debtor did not have sufficient capital to pay its ongoing obligations and was not adequately capitalized. [SA1328]. Based on the evidence, the Bankruptcy Court concluded:

> [T]he [D]ebtor should reasonably have believed that it would be unable to pay KK-PB's note obligation, which was its largest ongoing payment obligation. The recording of KK-PB's mortgage

> only increased the [D]ebtor's financial stress by making it less likely the Debtor could obtain additional capital.

[A0343].

For purposes of section 726.106, the Bankruptcy Court found that the "Debtor was rendered insolvent by the note obligation to KK-PB entered into at the closing in August 2013, and the Debtor remained insolvent at the time the mortgage was recorded in March 2014." *Id.* In reaching its conclusion, the Bankruptcy Court relied on the testimony of Jeffrey Brown ("Brown"), an expert in valuation of hotel properties, as well as the testimony of Bour. The Bankruptcy Court concluded that, based on Brown's valuations and Bour's analysis, the Debtor was insolvent on August 31, 2013 (the date the note was issued) and March 28, 2014 (the date the mortgage was recorded). [A0344].

Finally, sections 726.105(1)(b) and 726.106(1) each require that the relevant transfer be made without the debtor receiving reasonably equivalent value. On this point, the Bankruptcy Court concluded: "The Debtor itself received nothing at all from the transaction. No value at all was received by the Debtor on account of the note or the mortgage." [A0342–A0343]. Because the note and mortgage constituted fraudulent transfers under sections 726.105 and 726.106 of the Florida Statutes, the Bankruptcy Court estimated Petitioner's claim at $0 for all purposes. [A0345–A0346].

G. The Debtor's Marketing and Sales Efforts.

Throughout the course of the bankruptcy proceedings, the Debtor diligently sought to market and sell the Property. After the Petitioner Settlement fell through, the Debtor signed a sales contract with LR (the "LR Contract"), pursuant to which LR offered $39.6 million to purchase the Property, which was $7 million more than RREF's stalking horse bid. [SA2103–SA2201]. The LR Contract, however, did not guarantee a sale to LR because RREF was permitted to submit an overbid, provided the bid was at least $40.6 million; and if RREF opted to submit a higher bid, then LR had the ability to submit its best and final offer. *Id.*

On February 26, 2019, the Debtor filed a motion seeking approval of a private sale to LR or RREF (the "Sale Motion"), which outlined the private sale procedures agreed upon in the LR Contract (the "Private Sale Procedures"). *Id.* After conducting a hearing on February 28, 2019, the Bankruptcy Court granted the Debtor's motion to approve the Private Sales Procedures (the "Sale Procedures Order"), and it scheduled a deadline for objections of March 5, 2019, and a sale hearing for March 8, 2019 (the "Sale Hearing"). [SA2202–SA2205; SA2206–SA2207].

Ultimately, RREF did not submit an overbid, so the Debtor pursued a sale of the Property to LR. None of the parties who objected to the Petitioner Settlement objected to a private sale to LR. Instead, Petitioner was the only party who timely filed a written objection (the "Objection"), but its Objection was filed solely on behalf of Petitioner (not any

affiliate) and referenced only its claim based on the note and mortgage that, by that time, had been disallowed as a fraudulent conveyance. [SA2208–SA2211]. Notably, Petitioner did not submit a bid for the Property in its Objection, or even indicate that it wished to bid on the Property.

H. The Sale Order.

On March 8, 2019, the Bankruptcy Court held the Sale Hearing. As the hearing began, Petitioner interrupted the presentation and asserted that its affiliate, Kids2, LLC, should be permitted to present an offer to purchase the Property. [SA2218–SA2220]. Up until that time, Petitioner had not discussed any such proposed offer with the Debtor. Further, no proposed sale contract of any kind was provided at the Sale Hearing, and even during the Sale Hearing, the terms of the oral offer remained equivocal. [A0386]. After weighing the testimony and other evidence introduced at the Sale Hearing, on March 8, 2019, the Bankruptcy Court approved the sale to LR and overruled Petitioner's objections. [SA2327–SA2357]. On March 12, 2019, the Bankruptcy Court entered its Sale Order granting the Sale Motion, and included its detailed findings and conclusions as an exhibit thereto. [A0368–A0391].

Petitioner moved the Bankruptcy Court to stay the sale pending appeal, but the Bankruptcy Court denied the motion. [Appendix Tab A at Doc. 668]. Petitioner then sought appellate review of the stay denial, but both the District Court and the Eleventh Circuit denied Petitioner's requests for a stay. [A0392–A0415 (District Court); SA2426–SA2427 (Eleventh Circuit)].

On April 10, 2019, the District Court entered an order affirming the Bankruptcy Court's Sale Procedures Order and the Sale Order. [SA2428–SA2445]. On November 25, 2019, the Eleventh Circuit affirmed. [SA2449–SA2452]. On May 15, 2019, the Debtor's sale of the Property to LR closed, and LR recorded an unconditional Debtor-in-Possession Deed on May 16, 2019. [SA2446–SA2448]. The Property has thus irrevocably transferred to, and is now owned by, LR. And under section 363(m) of the Bankruptcy Code, this transfer cannot now be undone. *See* 11 U.S.C. § 363(m).

I. Substantial Consummation of the Plan.

The Debtor filed its Plan on December 26, 2019. [A0756–A0847]. As required under applicable provisions of the Bankruptcy Code, the Plan provided for the disposition of the Debtor's property and the payment of its legitimate debts. *See, e.g.*, 11 U.S.C. § 1123 (specifying the contents of a Chapter 11 plan). The Debtor's principal asset was the Property that was sold to LR. Under the terms of the Plan and applicable law, the Debtor was required to distribute the proceeds from this sale to its legitimate creditors, as set forth in its Plan. *See* 11 U.S.C. § 1141(a) (providing that the terms of a confirmed plan bind all parties, including the debtor).

Under section 1126, legitimate creditors who would be paid less than the full amount of their claims were entitled to vote on the Plan. *See* 11 U.S.C. § 1126. Notably, creditors in this case overwhelmingly voted to approve the Plan, with only Petitioner voting to reject it. Following a hearing, the

Bankruptcy Court entered its Confirmation Order approving the Plan as compliant with the requirements of the Bankruptcy Code. [A1119–A1149]; *see* 11 U.S.C. § 1129 (detailing the requirements for confirmation). On February 12, 2020, Petitioner appealed the Confirmation Order to the District Court—Petitioner's ninth appeal related to the bankruptcy case. [A1159–A1193]. On February 19, 2020, the District Court entered its order denying Petitioner's motion to stay the Confirmation Order. [A1435]. Thereafter, the Plan became effective. [SA2487–SA2492]. Petitioner did not seek a stay of the Confirmation Order in the Court of Appeals or this Court.

The Debtor has since substantially consummated its Plan by disbursing to its legitimate creditors a total of $36,256,516.24, representing nearly all of the Debtor's property. [SA2495–SA2517]; *see* 11 U.S.C. § 1101(2) (defining the concept of "substantial consummation"). This amount is in addition to the $100,000 owed to the Town of Palm Beach for zoning fines dating back nearly a decade (accrued under the watch of Straub, Petitioner's owner) and $44,363.65 to retire the Debtor's debtor-in-possession financing, which sums were disbursed directly from the proceeds of the sale of the Property. [SA2495–SA2517; SA2518–SA2522; SA2529–SA2554; SA2555–SA2556; SA2557–SA2575; SA2576–SA2579; SA2580–SA2583; Appendix Tab B at Doc 1776].

As a result, the Plan has been substantially consummated and effective judicial relief could not, and cannot, be granted, to the extent it might be

granted at all, without grave inequity to those who have relied on the Plan's effectiveness.

REASONS FOR DENYING THE PETITION

I. THE ELEVENTH CIRCUIT FAITHFULLY APPLIED THIS COURT'S PRECEDENTS.

A petition for writ of certiorari is to be granted only for a "compelling reason[]." Sup. Ct. R. 10. No such reason exists here. Examples of compelling reasons include where a lower court's opinion creates a circuit split, conflicts with existing Supreme Court precedent, or presents "an important question of federal law that has not been, but should be, settled by this Court . . . ." *Id.* Petitioner argues the lower court's dismissal of its appeal of the Avoidance Order as constitutionally moot conflicts with this Court's precedents. That claim is without merit.

The Eleventh Circuit held that its dismissal of the appeal of the Confirmation Order rendered the appeal of the Avoidance Order (the "Avoidance Appeal") constitutionally moot. Although Petitioner contends that the Eleventh Circuit ignored this Court's precedents in doing so, the lower court cited the principal case Petitioner relies upon and faithfully applied this Court's guidance on constitutional mootness. Because Petitioner points to no other compelling reason for granting the Petition on this issue, the Court should deny it.

"Article III of the United States Constitution limits the jurisdiction of federal courts to Cases and Controversies." *RES-GA Cobblestone, LLC v. Blake*

Constr. and Develop. LLC, 718 F.3d 1308, 1314 (11th Cir. 2013) (internal quotations omitted) (quoting *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1528 (2013)). Moreover, "[t]o qualify for adjudication in federal court, 'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *In re Di Giorgio*, 134 F.3d 971, 974 (9th Cir. 1998) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997)); *see RES-GA Cobblestone, LLC*, 718 F.3d at 1313 ("Federal courts operate under a continuing obligation to inquire into the existence of subject matter jurisdiction whenever it may be lacking."); *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1468 (11th Cir. 1997). Accordingly, "[w]henever an action loses its 'character as a present live controversy' during the course of litigation, federal courts are required to dismiss the action as moot." *Di Giorgio*, 134 F.3d at 974 (quoting *Allard v. DeLorean*, 884 F.2d 464, 466 (9th Cir. 1989)). For example, "if an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed." *Church of Scientology of Cal. v. U.S.*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)); *see Neidich v. Salas*, 783 F.3d 1215, 1216 (11th Cir. 2015) ("A case becomes moot when 'it is impossible for a court to grant any effectual relief whatever to the prevailing party.'") (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)); *Fla. Ass'n of Rehab. Facilities, Inc. v. Florida*, 225 F.3d 1208, 1216–17 (11th Cir. 2000) (holding that a case becomes moot "when the issues presented are no longer 'live' or the

parties lack a legally cognizable interest in the outcome.").

Applying this precedent, the court below properly dismissed the Avoidance Appeal because the court could not "grant[] effective relief." *Church of Scientology*, 506 U.S. at 12 (quoting *Mills*, 159 U.S. at 653). The dismissal of the appeal of the Confirmation Order as equitably moot left Petitioner with no avenue to overturn or modify the Plan because, absent a successful appeal of the Confirmation Order, the Plan is, by federal statute, binding on all parties, and as a matter of statutory law, payment contrary to the terms of the Plan is strictly prohibited by statute. *See* 11 U.S.C. §§ 1141(a), 1141(c); *see also* § 1144 (prohibiting revocation of confirmation after 180 days). Accordingly, once the lower court affirmed the Confirmation Order, even if the Avoidance Order were reversed, effective relief would be *impossible* because the terms of the Plan are properly binding on all parties and Petitioner cannot recover anything on its $40 million fraudulent claim.

The Eleventh Circuit agreed, citing this Court's recent statement in *Mission Product Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019), that "settled law" compels the conclusion that a case is moot when "'it is impossible for a court to grant any effectual relief whatever'" to a party "assuming it prevails." *Id.* (quoting *Chafin*, 568 U.S. at 172). While Petitioner argues the Eleventh Circuit ignored this precedent, the Eleventh Circuit expressly cited and applied that case, and its dismissal of the Avoidance Appeal perfectly aligns with this Court's cases on

constitutional mootness. *See, e.g.*, *Chafin*, 568 U.S. at 172; *Arizonans for Official English*, 520 U.S. at 67.

Petitioner's real complaint is that the lower court concluded that Petitioner had no avenue for relief under the confirmed Plan. Pet. at 17. To correct this purported error, Petitioner asks this Court to exercise its "supervisory power." *Id.* But as this Court's Rules acknowledge, a writ of certiorari is "rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. This is not such a rare case.

Petitioner contends that the lower courts could have granted relief by ordering the return of a $15.5 million attorneys' fee award and deeming Petitioner a Class 3 creditor under the Plan.

There are several problems with this argument. First and most obviously, Petitioner is not a Class 3 creditor under the Plan. Permitting Petitioner to collect on its fraudulent claim as a Class 3 creditor would fundamentally change the Plan's terms in violation of 11 U.S.C. §§ 1141(a) and 1141(c) and drastically reduce the amount recoverable by bona fide Class 3 creditors. *See In re Long Shot Drilling, Inc.*, 224 B.R. 473 (B.A.P. 10th Cir. 1998) (dismissing appeal as moot where including creditor in plan as unsecured creditor would have significantly impacted distributions to other creditors); *In re Milk Palace Dairy, LLC*, 327 B.R. 462 (B.A.P. 10th Cir. 2005) (dismissing appeal as moot where creditor sought to modify the bankruptcy court's credit bid determination). Moreover, the Class 3 creditors voted to confirm a Plan that did not include Petitioner's

fraudulent claim in the class, and it would be "unacceptable" to include Petitioner's multi-million-dollar fraudulent claim in Class 3 without allowing the Class 3 creditors an opportunity to vote on that revised plan—a remedy that simply is not available. *See In re Long Shot Drilling, Inc.*, 224 B.R. at 382 (noting that, had creditor been placed in a particular class when voting occurred, other creditors in that class may not have voted in favor of the plan).

The second problem with Petitioner's proposed avenue for relief—which illustrates why this case is an inappropriate vehicle to consider this issue—is that no funds are available to pay Petitioner. Undeterred by this reality, Petitioner argues that funds *may* become available if it prevails in its challenge to the $15.5 million fee awarded to Debtor's counsel. This claim fails for two independent reasons.

First, Petitioner claims that *if* it prevails in its challenge to the contingency fee award, those funds will flow into the estate and become available to it. But the case-or-controversy requirement demands "a real and substantial controversy . . . as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Provident Life & Accident Ins. Co. v. Transamerica-Occidental Life Ins. Co.*, 850 F.2d 1489, 1491 (11th Cir. 1988) (citing *Aetna v. Haworth*, 300 U.S. 227 (1937)). Petitioner's conjecture about what *might* happen in the future does not suffice to create a case or controversy. To the contrary, it is well established that courts must evaluate the Article III case-or-controversy requirement in the present stage of the litigation. *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477

(1990); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160–61 (2016) ("'If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.'") (citations omitted); *Flanigan's Enters., Inc. v. City of Sandy Springs*, 868 F.3d 1248, 1255 (11th Cir. 2017) ("this 'actual controversy must be extant at all stages of review . . .'") (citation omitted). And *presently*, there are no funds available under the Plan to provide relief to Petitioner on account of its Mortgage Claim and none in prospect.

Petitioner argues the appeal from the Avoidance Order presents a live case or controversy because the outcome of that appeal would impact pending proceedings in a different case involving other parties. Pet. at 17. This claim merits little attention, and Petitioner's single citation—to a Ninth Circuit decision from 1977—is telling. Petitioner cites no caselaw from this Court supporting its position that there exists a live case or controversy where certain findings in the Avoidance Order may have preclusive effect in a *separate* proceeding involving *non-parties* Straub and Palm Beach Polo, Inc. This Court's cases do not support Petitioner's last-ditch effort to obtain review in this Court.

Second, Petitioner misunderstands its supposed entitlement to the contingency fee. Even if the Avoidance Order were reversed, Petitioner could receive only an unsecured claim. As a result, the Debtor's attorneys would thus still have prevailed in eliminating a secured claim for the benefit of the bankruptcy estate, triggering their entitlement to the

contingency fee. There is thus no basis for setting aside the fee award, and Petitioner demonstrates none.

At the very least, in order for this Court to exercise jurisdiction, it would have to satisfy itself that some effective relief remains available to Petitioner. The prospect of having to conduct such a fact-bound exercise before reaching any of the questions presented renders this an exceptionally poor case for review.

II. THIS CASE IS NOT A PROPER VEHICLE FOR REVIEWING THE EQUITABLE MOOTNESS DOCTRINE.

In the proceedings below, Petitioner did not meaningfully challenge the validity of the equitable mootness doctrine *vel non*; it argued that the doctrine should not apply under the particular facts of this case. In a fact-bound determination, the court below disagreed. In any event, this case otherwise is not a proper vehicle for examining the doctrine.

As the lengthy recitation of the proceedings below illustrates, this matter arises from a highly unusual and complex set of facts involving dozens of orders, myriad transactions, and numerous parties, many of whom are not presently before the Court but may be impacted by any adverse decision. In addition, Petitioner failed to seek a stay of the Confirmation Order in the Court of Appeals, thus leading to the disbursement of tens of millions in funds under the Plan. Petitioner has no valid explanation for its failure to seek a stay, as it is a serial appellant who

has managed to file no less than eight stay motions over the course of this bankruptcy matter and who has often filed appellate pleadings the *same day* it received an adverse ruling. Without a stay in place, the Debtor substantially consummated the Plan (as required by law), which involved, among other things, distributing more than $30 million to its legitimate creditors, mostly fraud victims located overseas. And, as just explained, any funds Petitioner believes it might receive through a successful challenge to the attorney fee award would not actually become available to it under the binding terms of the Plan (even assuming Petitioner had grounds for such a challenge, which it does not).

Similarly, this case is not a proper vehicle because Petitioner seeks an equitable remedy in a case marred by its own inequitable conduct. Petitioner acquired its claim in this case through a fraudulent transfer, with Straub and Matthews working together to cause the Debtor to receive nothing in exchange for Straub receiving $6.2 million in cash and Petitioner obtaining an approximately $27 million note secured by a mortgage lien on Debtor's Property. Moreover, Petitioner arranged this scheme after Matthews had used the Property to scam foreign investors—the Debtor's legitimate creditors—out of millions of dollars. Petitioner's unclean hands render this case an improper vehicle for re-considering the equitable mootness doctrine.

III. THERE IS NO CIRCUIT SPLIT OR UNSETTLED QUESTION WARRANTING THIS COURT'S REVIEW.

In addition, the Court should deny the Petition because the circuits are not split as to the validity and application of the equitable mootness doctrine and because this is not an unsettled question warranting this Court's review.

The equitable mootness doctrine dates back more than forty years. *See In re Roberts Farms, Inc.*, 652 F.2d 793 (9th Cir. 1981). The doctrine was adopted rapidly in the courts of appeals, becoming "widely recognized and accepted . . . ." *In re Continental Airlines*, 91 F.3d 553, 558–59 (3d Cir. 1996). Every Circuit with jurisdiction over bankruptcy appeals now recognizes the equitable mootness doctrine.[9]

Notwithstanding this decades-long acceptance of the equitable mootness doctrine, Petitioner contends that the courts of appeals vary in their application of the doctrine and disagree over the applicable

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[9] *See, e.g., In re Public Serv. Co. of N.H.,* 963 F.2d 469, 473 (1st Cir. 1992); *In re Chateaugay Corp.,* 988 F.2d 322, 325 (2d Cir. 1993); *Behrmann v. National Heritage Found., Inc.,* 663 F.3d 704, 713 (4th Cir. 2011); *In re Idearc, Inc.,* 662 F.3d 315, 318 (5th Cir. 2011); *In re American HomePatient, Inc.,* 420 F.3d 559, 563–64 (6th Cir. 2005); *In re UNR Indus., Inc.,* 20 F.3d 766, 769 (7th Cir. 1994); *In re President Casinos, Inc.,* 409 F. App'x 31, 31–32 (8th Cir. 2010) (per curiam); *In re Thorpe Insulation Co.,* 677 F.3d 869, 880 (9th Cir. 2012); *In re Paige,* 584 F.3d 1327, 1337–38 (10th Cir. 2009); *In re Lett,* 632 F.3d 1216, 1225–26 (11th Cir. 2011); *In re AOV Indus., Inc.,* 792 F.2d 1140, 1147–48 (D.C. Cir. 1986).

standard of review. What Petitioner fails to show is why those slight variations matter here: under the approach taken by *every* court of appeals, the outcome in this case would be the same. In any event, Petitioner's contentions lack merit, and this Court has recently and repeatedly denied certiorari in cases asserting the same argument. *See, e.g.*, *Hargreaves v. Nuverra Environmental Solutions*, 142 S. Ct. 337 (Oct. 12, 2021) (Mem.); *Tuttle v. Allied Nevada Gold Corp.*, 139 S. Ct. 481 (Nov. 13, 2018) (Mem.).

The circuit courts uniformly apply the equitable mootness doctrine. Petitioner attempts to latch onto slight variations among the circuits in their application of the doctrine, but it matters little that the circuits may present the doctrine with slight variations because each circuit's test addresses the same concern: whether "it [is] impractical or inequitable to unscramble the eggs" by altering the status quo following confirmation of a Chapter 11 plan. David S. Kupetz, *Equitable Mootness: Prudential Forbearance from Upsetting Successful Reorganizations or Highly Problematic Judge-Made Abstention Doctrine*, 25 NORTON J. BANKR. L. & PRAC. 245, 249 (2016). In other words, the tests applied by the circuit courts are "variations on the same theme . . . [and] consider factors [that] are interconnected and overlapping." *Id.* at 247 (last alteration in original).

Petitioner also contends that the circuit courts apply different standards of review for "equitable-mootness dismissal[s]." Pet. at 32. This Court recently rejected that exact claim as grounds for reviewing the equitable mootness doctrine. *See*

Petition for Writ of Certiorari at 15–16, *Tuttle v. Allied Nevada Gold Corp.*, 139 S. Ct. 481 (Nov. 13, 2018) (Mem.). And for good reason. Any disagreement is narrow, *see* Matthew D. Pechous, *Walking the Tight Rope and Not the Plank: A Proposed Standard for Second-Level Appellate Review of Equitable Mootness Determinations*, 28 EMORY BANKR. DEV. J. 547, 566–67 (2012) (eight circuits have not addressed the issue or have done so only in nonbinding unpublished opinions), and "the case law is sparse regarding the standard of review to be applied," *In re United Producers, Inc.*, 526 F.3d 942, 946 (6th Cir. 2008).

Given this uniformity of decisions among the circuit courts, it comes as no surprise that this Court has rejected every single request for it to consider the validity of the equitable mootness doctrine.[10] The

[10] *See* Petition at 16 n.6, *Tuttle*, 139 S. Ct. 481 (Nov. 13, 2018) (Mem.) (citing *Ochadleus v. City of Detroit,* 137 S. Ct. 1584 (2017) (Mem.); *Beeman v. BGI Creditor's Liquidating Tr.,* 136 S. Ct. 155 (2015) (Mem.); *Mitrano v. Tyler,* 134 S. Ct. 2679 (2014) (Mem.); *Mitrano v. JPMorgan Chase Bank, N.A.,* 571 U.S. 983 (2013); *Spencer Ad Hoc Equity Comm. v. Idearc, Inc.,* 565 U.S. 1203 (2012); *Prime Healthcare Servs. L.A., LLC v. Brotman Med. Ctr., Inc.,* 565 U.S. 1156 (2012); *Parker v. Motors Liquidation Co.,* 565 U.S. 1113 (2012); *Ad Hoc Comm. of Kenton Cty. Bondholders v. Delta Air Lines, Inc.,* 558 U.S. 1007 (2009); *Ivaldy v. Loral Space & Commc'ns Ltd.,* 555 U.S. 1126 (2009); *Official Comm. of Unsecured Creditors v. Adelphia Commc'ns Corp.,* 552 U.S. 941 (2007); *Hayes v. Genesis Health Ventures, Inc.,* 550 U.S. 935 (2007); *Hayes v. Genesis Health Ventures, Inc.,* 545 U.S. 1129 (2005); *Armstrong v. Segal,* 543 U.S. 1050 (2005); *U.S. Rest. Props., Inc. v. Convenience USA, Inc.,* 541 U.S. 1044 (2004); *Nationwide Mut. Ins. Co. v. Berryman Prods., Inc.,* 528 U.S. 1158 (2000); *Shelton v. Rosbottom,* 528 U.S. 869 (1999); *Bank of N.Y. v. Continental Airlines, Inc.,* 519 U.S. 1057 (1997); *Manges v.*

Court should add this case to its growing list of denials, especially because the issue in this case arises atypically and the circumstances are particularly arcane.

IV. EQUITABLE MOOTNESS IS CONSISTENT WITH THIS COURT'S DECISIONS AND FUNDAMENTAL PRINCIPLES OF BANKRUPTCY LAW.

Petitioner also contends that the equitable mootness doctrine contradicts this Court's precedents and a party's ability to appeal bankruptcy decisions to Article III courts. Again, this Court has recently considered and denied review on the basis of similar arguments.

The Petition alludes to this Court's questioning of "prudential" doctrines and argues that equitable mootness is inconsistent with this Court's precedent and Article III courts' power to review bankruptcy court decisions. This Court's skepticism of "prudential" doctrines has no relevance here because the equitable mootness doctrine does not compel appellate courts to decline to exercise their jurisdiction or impose prudential requirements as if they were conditions to standing. *See Mata v. Lynch*,

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Seattle-First Nat'l Bank, 513 U.S. 1152 (1995); UNARCO *Bloomington Factory Workers v. UNR Indus., Inc.,* 513 U.S. 999 (1994); *Hamilton Taft & Co. v. Federal Express Corp.,* 509 U.S. 905 (1993); *Miami Ctr. Ltd. P'ship v. Bank of N.Y.,* 488 U.S. 823 (1988)).

576 U.S. 143, 149 (2015); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014).

Petitioner also points to this Court's admonition that "a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (citation omitted). But the very holding in the case that *Sprint* quotes—this Court's decision in *Colorado River*—actually stands for the proposition that there are some instances in which abstention (*i.e.*, declining to exercise jurisdiction) is warranted. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 819–21 (1976). In any event, that maxim is inapplicable because the Eleventh Circuit did not shirk its obligation to exercise jurisdiction over Petitioner's appeal. Rather, it exercised its jurisdiction and properly rejected Petitioner's appeal after concluding it could not provide any relief under the Plan once the lower court rejected Petitioner's appeal of the Confirmation Order following substantial consummation of the Plan. That decision is consistent with this Court's cases. *See, e.g.*, *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 717 (1996) (it is a "long . . . established" principle "that a federal court has the authority to decline to exercise its jurisdiction when it 'is asked to employ its historic powers as a court of equity'") (citation omitted).

Application of the equitable mootness doctrine in cases like this is likewise consistent with the basic tenets of bankruptcy proceedings. "[B]ankruptcy courts . . . are courts of equity and appl[y] the principles and rules of equity jurisprudence." *Young v. United States*, 535 U.S. 43, 50 (2002) (second

alteration in original) (citation and internal quotation marks omitted). Achieving equity is a fundamental aspect of bankruptcy proceedings, and courts adopted the equitable mootness doctrine to further principles of finality and predictability. To that end, Judge Easterbrook has explained:

> In common with other court of appeals, we have recognized that a plan of reorganization, once implemented, should be disturbed only for compelling reasons . . . . Several provisions of the Bankruptcy Code of 1978 provide that courts should keep their hands off consummated transactions. . . . And it is the reliance interests engendered by the plan, coupled with the difficulty of reversing the critical transactions, that counsels against attempts to unwind things on appeal. Every incremental risk of revision on appeal puts a cloud over the plan of reorganization, and derivatively over the assets of the reorganized firm. People pay less for assets that may be snatched back or otherwise affected by subsequent events. Self-protection through the adjustment of prices may affect the viability of the reorganization, and in any event may distort the allocation of assets away from the persons who can make the most valuable uses of them and toward persons who are less sensitive to the costs of *ex post* changes of plans. By protecting the interests of

> persons who acquire assets in reliance on a plan of reorganization, a court increases the price the estate can realize *ex ante*, and thus produces benefits for creditors in the aggregate. Many common law doctrines, such as the rule that a holder in due course takes free of certain defects in its predecessor's rights, reflect the importance of this effect. We do likewise in preserving plans of reorganization unless a powerful reason demands alteration.

In re UNR Indus., Inc., 20 F.3d 766, 769–70 (7th Cir. 1994). In other words, the equitable mootness doctrine is aimed at furthering Congress' intent "that courts should keep their hands off consummated transactions," *In re Tribune Media Co.*, 799 F.3d 272, 287 (3d Cir. 2015) (Ambro, J., concurring) (quotation marks and citation omitted), and the doctrine "is . . . merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties," *In re Envirodyne Indus., Inc.*, 29 F.3d 301, 304 (7th Cir. 1994) (Posner, J.).

The equitable mootness doctrine aligns perfectly with basic principles of bankruptcy proceedings and furthers Congress' intent to preserve finality and predictability in those proceedings. *See Young*, 535 U.S. at 50; *Quackenbush*, 517 U.S. at 717. Accordingly, this Court should reject Petitioner's invitation to reconsider the equitable mootness doctrine, and the Petition should be denied.

CONCLUSION

For the foregoing reasons, certiorari should be denied.

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