21-5213

Case No.

IN THE SUPREME COURT OF THE UNITED STATES

In re MAC TRUONG, Debtor,

ROSEMARY I. MERGENTHALER,
Appellant-Petitioner

-against-

R. KENNETH BARNARD, U.S. TRUSTEE,
Trustees-Appellees-Respondents

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

PETITION FOR A WRIT OF CERTIORARI

Rosemary Mergenthaler, Petitioner
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QUESTIONS PRESENTED

1. Did the United States Court of Appeals for the Third Circuit (USCA3 hereafter) criminally abuse and/or exceed its legal authority when the Court had willfully and calculatedly violated Appellant-Petitioner's constitutional right to due process and justice by knowingly making without any justifiation, for instance, the following false finding of fact that was obviously wrong to even a layperson: Petitioner's Appeal #21-1172 against Respondents-Appellees U.S. Trustee and R. Kenneth Barnard is identical in substance and on the merit to another entirely different Appeal #21-1171 before the Court to consolidate them and dismiss Petitioner's most meritorious Appeal for absolutely no ground at all, based on affirmative defenses, if any, that were only available in the latter appeal, to which Petitioner's was wrongfully consolidated.

2. Did the USCA3 criminally abuse and/or exceed its legal authority when the Court has willfully and calculatedly violated Petitioner's constitutional right to due process and justice by knowingly dismissing without reviewing at all the merits or reasoning of Petitioner's Appeal from the U.S. Bankruptcy Court for the District of New Jersey's Order that had dismissed Petitioner's Appeal without any discussion on the merits but for instead having made material typographical errors?

3. Did the USCA3 criminally abuse and/or exceed its legal authority when the Court has willfully and calculatedly violated Petitioner's constitutional right to due process and justice by knowingly dismissing without any rational explanation whatsoever an appeal from the U.S. District Court for the District of New Jersey that had **undisputedly** acted in concert with Appellees to convert and/or conceal the conversion of Petitioner's $2,793,000.16 by issuing false orders based on knowing misstatements of fact and/or law in violation of 18 USC 153, 155, 157 & 1961?

PARTIES TO THE PROCEEDING

There are no other parties than those named in the caption. Upon information and belief Appellee-Respondent R. Kenneth Barnard having filed a Final Report with the USBC-EDNY on 5/16/2019 has as such withdrawn from this proceeding as active Chapter 7 Trustee of Petitioner herein.

RULE 29.6 STATEMENT

Appellant-Petitioner Rosemary I. Mergenthaler is an individual, having no stocks for any private or publicly traded company to own 10% or more of her stocks.

OPINIONS BELOW

Most curiously, in this appellate proceeding, the USCA3 has handled this proceeding in a most coward and treacherous manner ever in the history of any decent court in America. The Court has avoided to review Appellant-Petitioner's elaborated motion for summary judgment by rejecting it on the alleged ground that it had exceeded the number of words (3,900) allowed for a motion to be submitted to the court, without granting Appellant-Movant-Petitioner herein an opportunity to shorten my motion to comply with the rule if such compliance with such rule was an absolute must. The Court kept my motion for 4 months without sending it back for compliance with the word count rule then just rejected my motion for leave to file an oversized motion for being overlength, with alternative relief unambiguously sought for such opportunity.

The Court thereafter consolidated my appeal with that of my adversary Mac Truong and dismissed both our appeals #21-1172 and 21-1171 based on allegedly

meritorious affirmative defenses of Appellees-Respondents against my adversary Appellant Mac Truong, which affirmative defenses, even if true against Mac Truong, have absolutely nothing to do with my causes of action against Appellees-Respondents herein.

Therefore, with due respect, however curious it may seem, the Court cheated Petitioner herein in such a coward and despicable way that, in the Order of the USCA3 being appealed to this USSC, there is no opinion at all explaining why the Court has dismissed Petitioner's Appeal.

JURISDICTION

(1) Basis of the USDC-DNJ's Subject-Matter Jurisdiction:

The USDC-DNJ has jurisdiction over Appellant Mac Truong's Bankruptcy Proceeding pursuant to 11 USC 8001(a) in that Appellant is a debtor having timely filed an appeal from final order(s) of the U.S. Bankruptcy Court for the District of New Jersey ["USBC-DNJ" hereafter] Case No. 16-19929-VFP.

(2) Basis of the USCA3's Subject-Matter Jurisdiction:

The Order(s), being appealed, are inextricably intertwined and final decisions of the USDC-DNJ, under 28 U.S.C. 1291. [See, USDC-DNJ, #21-00074 DE #1 Filed 2/2/2021].

(3) Basis of this USSC's Subject-Matter Jurisdiction:

28 USCS § 1254 provides that cases in the U.S. Court of Appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. Debtor-Appellant herein appeals from the following inextricably intertwined orders of the USCA3:

(a) 5/13/2021 Doc #17 – USCA3 - **ORDER** consolidating the appeals as docketed at C.A. Nos. 21-1171 and 21-1172. USDC Dkt#2-20-cv-00074] [A:1]

(b) 10/05/2021 Doc #34-1-3 – 8/5/2021 **JUDGMENT** Affirming the Judgment of USDC-DNJ entered September 25, 2020. [USCA3 Dkt#21-1171 & 21-1172] [A: 2-4]

(c) 08/5/2021 Doc #34-2 - **OPINION**, Affirming the Judgment of USDC-DNJ entered September 25, 2020. [USCA3 Dkt#21-1171 & 21-1172] [A: 5-13]

(d) 09/25/2020 - **ORDER,** [USDC-DNJ - Dkt#20-00074 (KM)] Affirming 12/20/2019 Judgment of USBC-DNJ being appealed in A/P 16-01618. [A: 14-15]

(e) 02/22/2019 USCA3 Case #18-2430 – Doc #311325671030 – **ORDER**, Circuit Jd Ambro, Krause and Porter - Affirming the District Court 6/18/2018 Judgment. [A: 16-22]
(f) 9/16/2021 Doc #29 – USCA3 - **ORDER** Denying Petition for Rehearing at USCA3 Nos. 21-1172. USDC Dkt#2-20-cv-00074] [A: 23-24]

SUMMARY OF ARGUMENT

1. In appeal under Docket No. 21-1172 before the USCA3, Appellant-Petitioner Rosemary I. Mergenthaler herein sued Respondents-Appellees R. Kenneth Barnard and U.S. Trustee for having acted in concert since May 11, 2015, to unlawfully convert my Chapter 7 bankruptcy asset in the exact sum of $2,793,000.16 by having submitted to the United States Bankruptcy Court for the Eastern District of New York a Final Trustee's Report (FTR) dated May 16, 2019, that is fraudulent as a matter of law on its face. The USCA3 dismissed my appeal without any valid rational ground be that procedural or jurisdictional or substantive on the merits after having merely, but willfully, made knowing false finding of fact and/or of law that my appeal is similar or identical to Debtor-Plaintiff-Appellant Mac Truong's Appeal under docket No. 21-1171, and consolidated them. In the latter appellate proceeding, Appellant Mac Truong, having filed for bankruptcy under Chapter 7 in the USBC-DNJ on May 23, 2016, sued in August 2016 Petitioner Rosemary Mergenthaler herein and Respondents-Appellees R. Kenneth Barnard and U.S. Trustee, in the USBC-DNJ to recover 25% of a shared New York Property, 75% of which belonged to Petitioner herein. The USBC-DNJ dismissed Mac Truong's complaint allegedly based on the Rooker-Feldman doctrine in that Mac Truong's title to 25% of the Property was declared null and void by an August 6 2015 Order of the Supreme Court of New York, Suffolk

County. Mac Truong filed for appeal. On February 22, 2019, the USCA3 decided in favor of Mac Truong on this only disputed issue regarding whether Mac Truong's title to the Property was indeed annulled, and declared that the Rooker-Feldman doctrine did not apply since Mac Truong was not a party to the underlying proceeding in the NYSC. Mac Truong then returned to the USBC-DNJ to move for reconsideration of the Court's erroneous prior dismissal order under the theory that he had now obtained on appeal a favorable decision in a higher court. Petitioner Rosemary Mergenthaler herein, being a party to the proceeding from its onset also joined in Truong's motion for reconsideration and moved the Court to direct Appellees to turn over to Petitioner my $2,793,000.16, on the grounds of frauds, as a matter of fact and law, on the face of Barnard FTR.

2. The USBC-DNJ denied Truong's and Mergenthaler's joint motion for reconsideration on the alleged applicability of the Barton doctrine. Mac Truong again appealed to the USDC-DNJ. Upon reliable information and belief, Judge Esther Salas appeared willing to decide in favor of appellants Mac Truong and Rosemary Mergenthaler but against Appellees herein. However, only a few days prior to her honor's expected favorable decision could be issued, on July 19, 2019, an assassin being arranged by Appellees' judicial organized crime (JOC) unit, headed by then USCA2 Chief Judge Robert A. Katzmann, shot dead Daniel Anderl, Judge Salas's only beloved son, and seriously wounded her husband. Within 8 days, my case was transferred to Judge Kevin McNulty, who dismissed it with such haste and demonstrated unfamiliarity with the matter that his honor misspelled Defendants-Appellees R. Kenneth Barnard and U.S. Trustee to be "THE UNITED STATES OF AMERICA." The Court also

outrageously and erroneously deemed my appeal only as a motion for reconsideration of the USBC-DNJ's immaterial injunction order. [Apx Pages14-15]

3. Petitioner Rosemary Mergenthaler herein then exercised my constitutional right to due process under FRCvP 13(g) and (i). I filed my own appeal, i.e., totally separate and independent from Appellant Mac Truong's appeal, from Judge Kevin McNulty's erroneous order(s) to the USCA3.

4. Shortly thereafter, it appeared that the USCA3 had also, like Judge McNulty, ran absolutely out of any ground or correct reasoning to dismiss my appeal, or rather my causes of action under FRCvP 13(g) and 13(i) for an order of the Court to direct Barnard to turn over my estate asset of $2,793,000.16 to me.

5. As such, on May 13, 2021, the Court issued an illegal and unconstitutional order consolidating my appeal #21-1172 and that of Mac Truong's under docket No. 21-1171. I made a motion to the Court to vacate that egregiously unlawful May 13 2021 Order, [Apx Page 1], which was undisputedly a glaring sign of fraudulent activities that would certainly be committed by the Court to dismiss my appeal without any reason at all in egregious violation of my constitutional right to due process.

6. However, as cruelly and sadly expected, on August 5, 2021, the USCA3 issued its order affirming its unconstitutionally-intended May 13 2021 Order on literally a fine-print footnote that it believed that my appeal #21-1172 and that of Mac Truong #21-1171 were "similar," and dismissing my most meritorious appeal without at all discussing its very existence or merits. [Apx. Page 9 -Footprint 7]

7. I filed my Petition for Rehearing by the panel and/or the court *en banc*.

8. On or about September 27, 2021, my petition for rehearing by the panel and/or the court *en banc* was denied by **a separate order** of the Court without any opinion of the Court having even been issued [Dkt #32, Apx. Pages 23-24], except the consolidated one of August 5, 2021 [Apx Page 1].

9. However, with due respect, ironically, no opinion is the best opinion in favor of Petitioner's causes of action against Appellees herein. Indeed, throughout this appellate proceeding being continuously prosecuted from August 2016 in the USBC-DNJ to the present in the USCA3, Appellees herein have failed to dispute one single material fact and/or controlling legal authority on the merits to support any court decision that was issued in their favor. It is so because undeniably the Courts, including the USCA3, have been controlled by Appellees, or because all of them, to wit: both Appellees and the Judges of the USBC-DNJ or USDC-DNJ or the USCA3, belong to the same corrupted judicial unit that hopefully this Supreme Court of the United States of America is not part of.

STATEMENTS OF FACTS AND PROCEDURAL HISTORY

10. In substance, Petitioner Rosemary Ida Mergenthaler herein filed for Chapter 7 Bankruptcy on May 11, 2015, in the USBC-EDNY. (Case #15-72040, Robert E. Grossman, Judge, R. Kenneth Barnard, Trustee). I was and still am undisputedly as a matter of law right now owner of a total asset of exactly $2,973,000.16 in the custody of Trustee Barnard, appellee

herein. I had also only in total less than $50,000.00 in undisputed debts. The rest of all claims being filed by some purported creditors such as Appellee Dean Osekavage in the amount of up to $2,096,976.36 are literally fictitious and meritless, and cannot as a matter of law considered because I was denied a discharge by the USBC-EDNY Judge Grossman on August 12, 2016, and as a matter of law, all my assets should have been distributed under 11 USC 349 and/or non-bankruptcy laws.

11. On May 16, 2019 Trustee Barnard filed his FTR (Final Trustee's Report], according to which he acknowledged that he had, in my name as debtor Rosemary Mergenthaler, collected a total of $2,793,000.16 in asset, but had distributed allegedly according to bankruptcy law all the said assets to all parties, none of whom were owners of all or part of the said assets immediately prior to May 11, 2015, date of my filing for bankruptcy under Chapter 7 in the USBC-EDNY. The FTR also unambiguously showed that none of the assets were returned to me or to Appellant Mac Truong, the only two parties, who were and still are owners of all the assets in Barnard's custody immediately prior to filing date.

12. The foregoing distribution or rather unlawful dissipation or glaring conversion of my and Mac Truong's assets in violation of 18 USC 153, 155, 157 and 1961 can be proven by facts that are duly admitted by Trustee Barnard himself in his narrative in support of his FTR as follow.

(1) Debtor-Petitioner herein had willfully and adamantly refused to attend any of more than 50 scheduled 341 Creditor Meetings between May 11, 2016 and May 16, 2019, and as such, as a matter of law, Trustee Barnard should not have withdrawn his motion to dismiss my case, after he had discovered that I had literally millions to rob by making fake motions to fake courts. Indeed, my willful refusal to comply with 11 USC

341 should have resulted in my case being dismissed under 11 USC 707 and my assets distributed pursuant to 11 USC 349 and appropriate provisions of applicable non-bankruptcy laws.

(2) On August 12, 2016, upon Respondent-Appellee Barnard's own motion, Judge Grossman denied me a discharge and as such again my assets should have been distributed pursuant to 11 USC 349 and applicable non-bankruptcy laws, but not at all to a party who was not owner thereof immediately prior to my filing date.

13. Viewing the foregoing undisputed facts and rules of law, it was undisputed that Appellees Barnard and/or the U.S. Trustee have had the legal duty of turning over to me my assets being admittedly held in their custody since November 2016 according to their own FTR.

14. However, as seen in the USCA3 Orders being appealed to this Court [Apx Pages 1-24], the Court willfully acted in defiance of the Constitution and applicable laws of the United States of America and egregiously violated Appellant-Petitioner's constitution right to due process and concealed Appellees' felonies of grand larcenies, conversions of funds in violation of 18 USC 153, 155, 157 and 1961.

GROUNDS UPON WHICH THIS PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

The facts and circumstances of this case glaringly and undisputedly show on public court records that:

(a) The United States Court of Appeals for the Third Circuit has entered a decision in conflict with its prior decisions and those of other United States Court of Appeals on the same important issue in that the Court has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a U.S. District Court, as to call for an exercise of this USSC's supervisory power. *[To be right on the point, no other U.S. Courts of Appeals, except the Second Circuit under former Chief Judge Robert A. Katzmann, have demonstrated an open despicable practice of abusing legal authority of the Court by making willful egregious false findings of fact and/or controlling legal authorities to criminally violate Petitioner's constitutional right to due process as the USCA3 has done in this matter in this appeal. The corruption by the Court is total absolute and undeniable.]*

(b) The USCA3 has further entered a decision in this appeal in conflict with its prior decisions and those of other United States Court of Appeals on the same important issue in that the Court has decided an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court, or has decided an important federal question in a way that conflicts with relevant decisions of this USSC. Indeed, in this case, in order to conceal Appellees' undeniable felonies of grand larcenies and/or conversion of my $2,793,000.16 in violation of 18 USC 153 et al., the USCA3 has criminally and willfully consolidated Petitioner's appeal under Docket No. 21-1172, which is not only different from but also opposite to Petitioner's adversary Mac Truong's appeal under Docket No. 21-1171 in order to make Appellees' affirmative defenses against Appellant Mac Truong in Appeal #21-1171 available to dismiss my causes of actions against Appellees in Appeal #21-1172. For instance, even had it been true, the Barton doctrine was only an affirmative defense to cover up Appellee Barnard's felony of converting Mac Truong's $575,000.00 in violation of 18 USC 153 et al. in Appeal #21-1171, but not at all any affirmative defense to wash clean Appellees' conversion of Appellant-Petitioner Mergenthaler's $2,793,000.16 in Appeal #21-1172.

As such, in the interest of justice and for the sake of effectively defending any litigant's most fundamental constitutional right to due process, this Supreme Court of the

United States of America should absolutely intervene and control the USCA3's shameful despicable lawlessness to have abused its legal authority to literally cover up by orders being based on willful material misrepresentations of fact to cover up Appellees' conversion of Appellant's $2,793,000.16 in their custody in egregious violation of 18 USC 153, 155, 157 and 1961.

CONCLUSION

1. It is patently absurd and a wilful and egregious violation of Petitioner's constitutional right to due process that the USCA3 had wrongfully consolidated in the last minutes on May 13, 2021 [Apx Page 1] my Appeal #21-1172 with Appellant Mac Truong's absolutely different even opposite Appeal #21-1171, then dismissed my appeal without any rational ground at all except that Mac Truong's appeal was dismissible because he had failed to apply for prior leave to sue Respondent Barnard herein as allegedly required by the Barton doctrine, and that Truong's 60(b) Motion was untimely. Patently the foregoing purported affirmative defenses, if any, against Mac Truong had absolutely nothing to do, as a matter of law, with my appeal #21-1172 against respondents Barnard and/or the U.S. Trustee, both of whom had kept false business records to convert my assets in the admitted sum of $2,793,000.16, in Barnard's undisputed custody since November 2016, as clearly shown in black and white on Barnard's May 16 2019 TFR, being on file with the USBC-EDNY, Docket No. 15-72040, Robert E. Grossman, Judge, R. Kenneth Barnard, Chapter 7 Trustee.
2. By making my foregoing complaint and this Petition for a Writ of Certiorari to this Court, Petitioner herein has summonsed all my courage to stand up for my constitutional right of not being robbed with immunity of all my monies and having literally to live for a few years the miserable life of a homeless person, nor raped of all my dignity, nor literally extorted and blackmailed and falsely arrested in handcuffs together with my innocent husband, and severely humiliated in open court by the most despicable crooks and

criminals wearing apparently dignified black robes such as USBC-EDNY Judge Robert E. Grossman, USDC-EDNY Judge Joana Seybert, former USCA2 Chief Judge Robert A. Katzmann, and other members of their extended JOC unit including the U.S. Trustee, USBC-DNJ Judge Vincent F. Papalia, USDC-DNJ Judge Kevin McNulty, and USCA3 Circuit Judges Jordan, Krause and Phipps.

3. It is a fact that I am only a 5'4", 120 lbs 64-year-old woman without much legal knowledge. However, I am certainly a born American in the proudest and noblest meaning of the word. I am further one of the most unfortunate victims of JOC activities in this country at present. All I now wish is be allowed to stand tall in this highest Court of this proud land of freedom and justice to say loud and clear that it's time for not only one but all nine distinguished members of this Supreme Court of America to wake up from your ivory tour and clearly take a close look at what is really going on behind a façade of normality in the lower courts such as the United States Court of Appeals for the Second and Third Circuits, and realize that it is high time for these proven crooked criminals in black robes and their colleagues in their respective JOC unit to face justice and be serving real prison time for all the felonies that they and their JOC members have committed as clearly and undisputedly demonstrated on public court records, which they have falsely kept and/or issued under false pretenses in glaring violation of 11 USC 153, 155, 157 and 1961.

4. As a thorough review of all relevant court records would reveal, there is no way to rationally explain how my $2,793,000.16, which had been literally extorted from me by false arrests in handcuffs and threats of permanent incarceration, could be robbed from me and dissipated in the hands of absolutely no one that might have presented a legitimate claim against me or my estate.

5. It is indeed very sad for America that some judges are the ones who lie and cheat believing they could be protected by absolute judicial immunity, i.e., above the law, while they are plain criminals glaringly lying to assist members of their respective JOC units to convert billions of dollars of litigants relying on them for justice.

6. Even as a simple U.S. citizen, I know just by my common sense that, as a matter

of law, judges having knowledge of crimes but refusing to report them but instead wilfully covering them up with clever so-called technicalities, are themselves criminals having hidden criminal activities they have been sworn in to prosecute.

8. The foregoing sacred duty is not only for everyday judges but certainly and mostly so for every member of this highest court of this land of democracy, where proudly live the best, the free and the brave.

9. As such, now that this noble Supreme Court of the great United States of America has been presented with the most clear-cut opportunity to do justice to Americans, by eliminating the corrupted portion of the Second and/or Third most powerful Courts of America, I strongly hope that the Court would seize this opportunity and rise to the occasion to make America more just, stronger, kinder and prouder than ever before.

For all the reasons and authorities outlined hereinabove, Debtor-Appellant Rosemary Ida Mergenthaler respectfully petitions to this Court for an order granting my instant Petition for a Writ of Certiorari and/or directing appropriate solution viewing all the facts and correct applicable legal principles in the extremely serious matter of national proportion by issuing any remedy that this Court deem reasonable and appropriate to do justice not only for the undersigned but for all victimized people of Judicial Organized Crime in the United States of America.

Dated: October 15, 2021

X _____

Rosemary Mergenthaler, Petitioner-Appellant Pro se