No._____

In the
Supreme Court of the United States

SHARON H. SMITH, ***PETITIONER***,

VS.

HSBC BANK USA,
HSBC BANK USA, N.A.,
HSBC BANK USA, NATIONAL ASSOCIATION
AS TRUSTEE FOR THE HOLDERS OF BCAP LLC TRUST 2006-AA2,
PATRICK J. BURKE, PRES./CEO OF HSBC BANK USA, N.A.,
BALCH & BINGHAM, LLP,
GEREMY GREGORY, AGENT FOR BALCH & BINGHAM LLP,
CHRISTOPHER ANULEWICZ, AGENT FOR BALCH & BINGHAM LLP
MCGUIRE WOODS, LLP,
PAUL A. ROGERS, AGENT FOR MCGUIRE WOODS, LLP,
THOMAS R. WALKER, AGENT FOR MCGUIRE WOODS, LLP,
JARROD S. MENDEL, AGENT FOR MCGUIRE WOODS, LLP,
RUBIN LUBLIN, LLC,
PETER LUBLIN, AGENT OF RUBIN LUBLIN, LLC,
BRET CHANESS, AGENT OF RUBIN LUBLIN, LLC,
RONNIE PERRY REALTY CO., INC. AND
JILL JERNIGAN, AGENT/BROKER FOR RONNIE PERRY REALTY CO., INC.,
M. DELORES MURPHY,
CHOATE AND COMPANY, P.C.,
ZACHARY HARRIS, *AND*
SAMUEL CHOATE, ***RESPONDENTS***.

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

MOTION TO DIRECT CLERK TO FILE OUT OF TIME A PETITION FOR WRIT OF CERTIORARI

SHARON H. SMITH
1055 Hatches Pond Lane, Apt.101
Morrisville, NC 27560
(912) 268-8117; smbsmith@comcast.com
Petitioner Pro Se

June 2, 2022

MOTION TO DIRECT CLERK TO FILE OUT OF TIME A PETITION FOR WRIT OF CERTIORARI

COMES NOW, Petitioner, Sharon H. Smith, "Smith", *pro se*, and respectfully submits, pursuant to Rule 21, Motion to direct the Clerk to file out of time her consolidated Petition for Writ of Certiorari due to the extraordinary circumstances set forth below. See Affidavit of Sharon H. Smith, attached hereto as **Exhibit 1**. The Eleventh Circuit Court of Appeals' decisions 20-11636, 20-11638, 20-11640, and 20-11641 were filed on March 18, 2021, **Add. A, Exhibits B.** Petitions for Rehearing were denied on January 3, 2022, **Add. A, Exhibits C**. Absent an extension of time, the Petitions for Writ of Certiorari were due on April 3, 2022. Believing the due date to be June 2, 2022, as explained below, Sharon Smith submitted on April 18, 2022 applications for extension of time, well in advance of the believed due date of June 2, 2022. *See* Applications for Extension of Time, **Addendum A.**

REASONS FOR GRANTING THE MOTION

Sharon Smith believed the due date to be 150 days from the January 3, 2011 filing of the Orders on Rehearing, because the U. S. Supreme Court had at that time posted a notice to that effect on its website home page. The notice also stated that the booklet format would resume. Taking the notice at face value, Sharon Smith submitted applications for extension of time well in advance of the 150 days.

The Applications for Extension of Time, **Add. A**, were returned with a letter from the Clerk dated April 21, 2022 advising that the Petitions were due on April 3, 2022. Smith now knows that the Order allowing 150 days had been rescinded prior to January 3, 2022. However, the notice was still posted on the home page of the U.S. Supreme Court after January 3, 2022, as stated above; therefore, Smith took the due date to be June 2, 2022, 150 days after the orders on rehearing.

Sharon Smith stated in her Applications for Extension of Time:

"Marvin B. Smith, III died September 5, 2021. Sharon Smith, age 70, has moved to a retirement apartment in Morrisville, NC. Sharon Smith, who has rheumatoid arthritis, has had several bouts of vertigo which have been debilitating, making it impossible for her to prepare the four Petitions for Writs of Certiorari in the present case and the three related cases. With the help of physical therapy, the vertigo issues have been greatly resolved. Furthermore, Sharon Smith cannot afford to hire an attorney. Extension of time would preserve Smith's right to petition this Court for certiorari. Appellants' Petition for Rehearing and Rehearing en Banc, **Exhibit A (excerpts)**, sets forth a reasonable probability that a Petition for Writ of Certiorari would be granted by this Court.

1. There is a conflict between circuits, which this Court should resolve.
2. The Smiths have been denied due process; there having been no hearings whatsoever in the Bankruptcy Court, District Court or Eleventh Circuit Court of Appeals; new evidence and court order, **Ex. A, Add. 3**, having been ignored. The District Court has ordered an expanded filing injunction against the Smiths, further restricting access to the Courts.
3. Alleging creditors had no Article III standing. Bankruptcy stay and discharge injunction were violated. Countrywide Home Loans Inc. was never a servicing agent for HSBC Bank USA, National Association as Trustee for the Holders of BCAP LLC Trust 2006-AA2, as documented by certified SEC filings, **Ex. A, Add. 2**, and therefore, not a real party in interest with Article III standing to have been granted relief of the bankruptcy stay; and the claim of Countrywide Home Loans, Inc. was denied in its entirety by order of the Bankruptcy Court, **Ex. A, Add. 3**, and therefore, the deed was rendered void upon discharge.
4. The Bankruptcy Court and District Court erroneously concluded that the Bankruptcy Court lacked subject-matter jurisdiction to enforce the automatic stay

and/or the discharge injunction against Creditors because the estate had ceased to exist; the subject property having become the debtors' property upon abandonment in 2012; the stay with regard to estate property, including the debtors' property and rights, having continued until the case is closed; and disallowance of Claim #10 , "in its entirety" having rendered the subject lien void under 11 U.S.C..§506(d); all debt associated therewith having been subsequently discharged; pressure having been applied by Respondents to repay the discharged debt. The Eleventh Circuit court erred by affirming the District Court's erroneous conclusions.

5. Wrongful foreclosure and eviction were allowed by the bankruptcy court and state court in violation of the stays. Without standing, the court lacked jurisdiction. Lack of jurisdiction voids any action taken by the state court.

6. Marvin Smith lived his last years without a home, which was unconscionable in light of the evidence in the record which was repeatedly ignored by the courts.

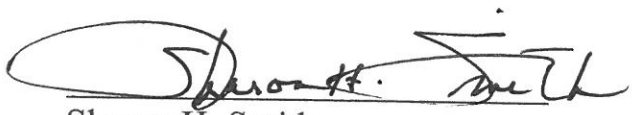
Therefore, extension of time to submit the Petition would mitigate the manifest injustice, especially under the present circumstances."

After April 21, 2022 Sharon Smith was diagnosed with breast cancer and had surgery on May 4, 2022. She took no narcotics after the surgery in order to be able to think clearly and continue to work on her Petition. None of these facts are given to evoke sympathy. However, they are important to show the Court, that despite these health issues, Sharon Smith has in good faith completed her consolidated Petition for Writ of Certiorari, attached herewith, within 60 days of the due date of April 3, 2022, with the hope that the Court will under these extraordinary circumstances allow her consolidated Petition to be filed out of time. Had she not sincerely believed the due date to be June 2, 2022, Sharon Smith would have filed an application for extension of time for 60 days to June 2, 2022, at least ten days prior to April 3, 2022. Even though she is a *pro se* litigant, the record shows that Sharon Smith is extremely conscientious and would *never* have

ignored an important due date. She always checks authority to confirm a due date, and had no reason to question the authority of the post on the U. S. Supreme Court website homepage.

WHEREFORE, for the extraordinary circumstances set forth, the consolidated Petition for Writ of Certiorari should be allowed to be filed out of time; and Sharon Smith prays unto this Honorable Court to direct the Clerk to file her Petition submitted herewith.

Respectfully submitted this 2nd day of June, 2022.



Sharon H. Smith
Pro Se Petitioner

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912-268-8117
smbsmith@comcast.net

CERTIFICATE OF SERVICE

I certify that I have this day served the parties below with a copy of this **Motion to Direct Clerk to File Out of Time a Petition for Writ of Certiorari:**

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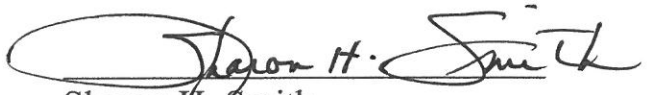
Attorney for HSBC Respondents & Agents

By email at the addresses as indicated above.

Respectfully submitted this 2nd day of June, 2022.



Sharon H. Smith
Petitioner *Pro se*

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(912) 268-8117
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AFFIDAVIT OF SHARON H. SMITH

I, Sharon H. Smith, being of legal age and being of no mental or legal incapacity, say from personal first-hand knowledge the following:

1. After receiving the Orders on Rehearing from the Eleventh Circuit dated January 3, 2022, I went to the U. S. Supreme Court website. At that time there was a post on the homepage of the website which stated, in effect, that petitions for writ of certiorari were due 150 days from the Order. The post also stated that the booklet format would resume.

2. I have rheumatoid arthritis and, in addition, had suffered several bouts of debilitating vertigo January through March, 2022 which caused extreme nausea, vomiting and dizziness, making impossible the preparation of the petitions for writ of certiorari.

3. In the latter part of March, 2022 and in April, 2022, I received physical therapy which has greatly alleviated the vertigo symptoms.

4. I submitted to the U. S. Supreme Court Applications for Extension of Time on April 18, 2022 believing the request to be well within the due date of June 2, 2022 (150 days from January 3, 2022).

5. On April 21, 2022 the U. S. Supreme Court Clerk returned the Applications as out of time.

6. On or about April 27, 2022, I was diagnosed with breast cancer as the result of a biopsy performed on April 25, 2022.

7. On May 4, 2022 I had breast surgery.

8. I have conscientiously prepared a consolidated Petition for Writ of Certiorari since May 5, 2022, in order to complete the consolidated Petition by June 2, 2022, 60 days from the actual due date of April 3, 2022.

I declare, to the best of my knowledge and belief, the information herein is true and correct.

Sharon H. Smith

This Affidavit has been reviewed by the undersigned, appears to be true and correct, and is hereby sworn to and subscribed under oath before me this 26th of May 2022 by Sharon H. Smith, who is known to me and has produced her driver's license as identification.

Alexis Garcia Piedra
NOTARY PUBLIC, State of North Carolina
My commission expires: March 17, 2027

Alexis Garcia Piedra
NOTARY PUBLIC
Wake County, NC
My Commission Expires March 17, 2027

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11636
Non-Argument Calendar

D.C. Docket No. 2:19-cv-00074-LGW,
Bkcy No. 2:07-bkc-20244-MJK

In re: SHARON H. SMITH,
MARVIN B. SMITH, III,

Debtors.

SHARON H. SMITH,
MARVIN B. SMITH, III,

Plaintiffs-Appellants,

versus

M. DELORES MURPHY,
CHOATE & COMPANY, P.C.,
ZACHARY B. HARRIS,
SAMUEL CHOATE,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(March 18, 2021)

Before JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

Marvin and Sharon Smith, proceeding pro se,[1] appeal the district court's order affirming the bankruptcy court's denial of the Smiths' motion to enforce a bankruptcy discharge injunction and to hold in contempt Delores Murphy and her lawyers. No reversible error has been shown; we affirm.

I. Background

This appeal arises out of extensive litigation stemming from the Smiths' bankruptcy proceedings and from property the Smiths owned on St. Simons Island,

[1] We construe liberally pro se pleadings. See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

Georgia (the "Property"). We will summarize the facts and procedural history only as necessary to provide context for our decision.[2]

The Property is located within a two-unit condominium building comprised of the Property (Unit B) and Unit A. Unit A is owned by Murphy. Both units are governed by the Enchantment by the Sea Condominium Owner's Association ("Association"). The owners of each unit are members of the Association and have voting rights.

In 2007, the Smiths filed for bankruptcy seeking to discharge over $2 million in mortgage debt on the Property. On their bankruptcy petition, the Smiths listed Countrywide Home Loans ("Countrywide") as holding two secured claims against the Property.

In 2008, Countrywide -- as servicing agent for HSBC Bank USA, N.A. ("HSBC") -- moved for relief from the automatic stay under 11 U.S.C. § 362(a). The bankruptcy court denied the motion but entered a Consent Order modifying the automatic stay to allow the bankruptcy trustee to market the Property for sale. If the Property remained unsold on 4 May 2009, the automatic stay would terminate without further hearing or order; and foreclosure proceedings could

[2] A more thorough description of the underlying factual and procedural history is set forth in the district court's decisions in Smith v. HSBC Bank, N.A., 616 B.R. 438 (S.D. Ga. 2020), and in Smith v. Murphy, 616 B.R. 228 (S.D. Ga. 2020).

commence. In July 2009, the bankruptcy court denied the Smiths' motion to vacate the Consent Order and stated that foreclosure on the Property could proceed.

In April 2012, the bankruptcy trustee abandoned the bankruptcy estate's interest in the Property. HSBC foreclosed on the Property in May 2015. On 1 June 2016, the bankruptcy court entered an order discharging the Smiths' debt under Chapter 7. The Smiths were later evicted from the Property in August 2017.

Meanwhile, in March 2015, members of the Association elected Marvin Smith as president and elected Murphy as secretary/treasurer of the Association. In July 2015 -- after the foreclosure on the Property -- Murphy filed the Association's annual registration with the Georgia Secretary of State, naming herself as CEO.

In February 2017, Murphy -- on behalf of the Association -- filed a complaint in state court seeking to enjoin the Smiths and HSBC from preventing the Association from entering the Property to inspect and to make repairs. In an affidavit supporting her motion, Murphy purported to be the president of the Association and alleged that the Property had fallen into disrepair, was causing water damage to her unit, and that the Smiths had refused to cooperate with repair

efforts. In March 2017, the state court issued a temporary restraining order ("TRO").

In April 2017, the Smiths filed in state court a petition for a TRO against Murphy; Murphy counterclaimed for private nuisance based on the Smiths' failure to maintain the Property. Following a jury trial on the counterclaim, the state court entered final judgment in favor of Murphy and awarded damages of approximately $690,000.

In August 2017, the Smiths moved in the underlying bankruptcy action to enforce against Murphy the automatic stay under 11 U.S.C. § 362. The Smiths alleged that Murphy had violated the automatic stay by (1) filing documents with the Georgia Secretary of State declaring herself CEO/President of the Association; (2) seeking a TRO against the Smiths; and (3) by filing a counterclaim against the Smiths in state court.

The Smiths then filed an adversary proceeding against Murphy in October 2017 in which they reasserted the same purported automatic stay violations.

The bankruptcy court denied the Smiths' August 2017 stay motion in January 2018. The bankruptcy court later dismissed with prejudice the Smiths' adversary proceeding in June 2019.

In September 2018, the Smiths filed the motion at issue in this appeal: a motion titled "Emergency Motion for Enforcement of the Discharge Injunction and/or Automatic Stay and Motion for Contempt" ("Emergency Motion"). In their motion, the Smiths contended (for the third time) that Murphy and Murphy's lawyers violated the automatic stay by filing documents with the Georgia Secretary of State, seeking a TRO against the Smiths, and by filing a counterclaim against the Smiths. The Smiths also alleged that Murphy and her lawyers violated the bankruptcy court's discharge injunction under 11 U.S.C. § 524 by filing and prosecuting the private nuisance counterclaim.

The bankruptcy court denied the Emergency Motion, finding no violation of the automatic stay or the discharge injunction. The district court affirmed.

II. Discussion

We review de novo legal conclusions of both the bankruptcy court and the district court. See Finova Cap. Corp. v. Larson Pharmacy, Inc. (In re Optical Techs., Inc.), 425 F.3d 1294, 1299-1300 (11th Cir. 2005). We review for clear error the bankruptcy court's factual findings. See id. at 1300.

A. Automatic Stay

The Smiths first contend that Murphy and her lawyers violated the automatic stay in July 2015 by filing registration documents with the Georgia Secretary of State. By that time, however, the bankruptcy trustee had abandoned the Property; and HSBC had foreclosed on the Property. The Property was thus no longer "property of the estate" or "property of the debtor" subject to protection under the automatic stay. Nor were the Smiths -- although former owners of the Property -- still members of the Association.

The Smiths' other two asserted stay violations also lack merit. The automatic stay expired in June 2016, when the Smiths' Chapter 7 debt was discharged. Thus, no automatic stay was in effect (or could be violated) at the time of the complained-of acts in February 2017 and May 2017.

We see no error in the bankruptcy court's determination that neither Murphy nor her lawyers violated the automatic stay.

B. Discharge Injunction

A Chapter 7 discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). The purpose of the discharge injunction is "to insure that once a debt is discharged, the debtor will not be pressured in any way to repay it." See Green Point Credit, LLC v. McLean (In re McLean), 794 F.3d 1313, 1321 (11th Cir. 2015) (emphasis omitted). In determining whether a creditor has violated the discharge injunction we consider "whether the objective effect of the creditor's action is to pressure a debtor to repay a discharged debt, regardless of the legal entity against which the creditor files its claim." Id.

The record supports the bankruptcy court's determination that no violation of the discharge injunction occurred. Neither Murphy nor her lawyers were creditors of the Smiths. And nothing evidences that Murphy's counterclaim for private nuisance -- filed and prosecuted after the Smiths' Chapter 7 discharge -- was an attempt to recover on an already-discharged debt.

C. Constitutional Due Process

On appeal, the Smiths contend they were denied their Fifth Amendment due process rights when the bankruptcy court denied their Emergency Motion without a hearing. Contrary to the Smiths' assertion, nothing establishes that the party seeking a contempt order (as opposed to the party charged with contempt) is entitled to an evidentiary hearing. We also reject the Smiths' conclusory allegations about due process violations stemming from adverse rulings by the bankruptcy court and the district court in the Smiths' adversary proceeding against Murphy.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11636-JJ

In re: SHARON H. SMITH,
MARVIN B. SMITH, III,

Debtors.

SHARON H. SMITH,
MARVIN B. SMITH, III,

Plaintiffs - Appellants

versus

M. DELORES MURPHY,
CHOATE & COMPANY, P.C.,
ZACHARY B. HARRIS,
SAMUEL CHOATE,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40).

ORD-46

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11638
Non-Argument Calendar

D.C. Docket No. 2:19-cv-00075-LGW,
Bkcy No. 2:07-bkc-20244-MJK

In re: MARVIN B. SMITH, III,
SHARON H. SMITH,

Debtors.

MARVIN B. SMITH, III,
SHARON H. SMITH,

Plaintiffs-Appellants,

versus

M. DELORES MURPHY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(March 18, 2021)

Before JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

Marvin and Sharon Smith, proceeding pro se,[1] appeal the district court's order affirming the bankruptcy court's dismissal of the Smiths' adversary complaint filed against Delores Murphy. No reversible error has been shown; we affirm. We also grant Murphy's motion for attorney's fees and double costs pursuant to Fed. R. App. P. 38.

I. Background

This appeal arises out of extensive litigation stemming from the Smiths' bankruptcy proceedings and from property the Smiths owned on St. Simons Island,

[1] We construe liberally pro se pleadings. See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

Georgia (the "Property"). We will summarize the facts and proceedings only as necessary to provide context for our decision.[2]

The Property is located within a two-unit condominium building comprised of the Property (Unit B) and Unit A. Unit A is owned by Murphy. Both units are governed by the Enchantment by the Sea Condominium Owner's Association ("Association"). The owners of each unit are members of the Association and have voting rights.

In 2007, the Smiths filed for bankruptcy seeking to discharge over $2 million in mortgage debt on the Property. On their bankruptcy petition, the Smiths listed Countrywide Home Loans ("Countrywide") as holding two secured claims against the Property.

In 2008, Countrywide -- as servicing agent for HSBC Bank USA, N.A. ("HSBC") -- moved for relief from the automatic stay under 11 U.S.C. § 362(a). The bankruptcy court denied the motion but entered a Consent Order modifying the automatic stay to allow the bankruptcy trustee to market the Property for sale. If the Property remained unsold as of 4 May 2009, the automatic stay would

[2] A more thorough description of the underlying factual and procedural history is set forth in the district court's decisions in Smith v. HSBC Bank, N.A., 616 B.R. 438 (S.D. Ga. 2020), and in Smith v. Murphy, 616 B.R. 228 (S.D. Ga. 2020).

terminate without further hearing or order; and foreclosure proceedings could commence.

In July 2009, the bankruptcy court denied the Smiths' motion to vacate the Consent Order and stated that foreclosure on the Property could proceed. The district court affirmed; and we dismissed as frivolous the Smiths' appeal.

In April 2012, the bankruptcy trustee abandoned the bankruptcy estate's interest in the Property. HSBC foreclosed on the Property in May 2015. On 1 June 2016, the bankruptcy court entered an order discharging the Smiths' debt under Chapter 7. The Smiths were later evicted from the Property in August 2017.

Meanwhile, in March 2015, members of the Association elected Marvin Smith as president and elected Murphy as secretary/treasurer of the Association. In July 2015 -- after HSBC foreclosed on the Property -- Murphy filed the Association's annual registration with the Georgia Secretary of State, naming herself as CEO.

In February 2017, Murphy -- on behalf of the Association -- filed a complaint in state court seeking to enjoin the Smiths and HSBC from preventing the Association from entering the Property to inspect and to make repairs. In an affidavit supporting her motion, Murphy purported to be the president of the Association and alleged that the Property had fallen into disrepair, was causing

water damage to her unit, and that the Smiths had refused to cooperate with repair efforts. In March 2017, the state court issued a temporary restraining order ("TRO").

In April 2017, the Smiths filed in state court a petition for a TRO against Murphy; Murphy counterclaimed for private nuisance based on the Smiths' failure to maintain the Property. Following a jury trial on the counterclaim, the state court entered final judgment in favor of Murphy and awarded damages of $690,000.

In August 2017, the Smiths moved in the underlying bankruptcy action to enforce against Murphy the automatic stay under 11 U.S.C. § 362. The Smiths alleged that Murphy had violated the automatic stay by (1) filing documents with the Georgia Secretary of State declaring herself CEO/President of the Association; (2) seeking a TRO against the Smiths; and (3) by filing a counterclaim against the Smiths in state court. The bankruptcy court denied the motion in January 2018.

In October 2017, the Smiths filed the adversary proceeding that is the subject of this appeal. The complaint asserted against Murphy non-bankruptcy claims for fraud, fraud upon the court, collusion with intent to defraud, theft, violation of Constitutional rights, and recklessness ("Counts I-VI"). The Smiths also alleged that Murphy violated the automatic stay based on the same three

complained-of acts identified in the Smiths' August 2017 stay motion ("Count VII").

The bankruptcy court dismissed with prejudice the Smiths' adversary proceeding against Murphy. The bankruptcy court first concluded that it lacked subject matter jurisdiction over Counts I-VI: claims that did not "arise under," "arise in," or "relate to" the Bankruptcy Code. The bankruptcy court next dismissed Count VII for failure to state a claim. The district court affirmed.

II. Discussion

We review de novo legal conclusions of both the bankruptcy court and the district court. See Finova Cap. Corp. v. Larson Pharmacy, Inc. (In re Optical Techs., Inc.), 425 F.3d 1294, 1299-1300 (11th Cir. 2005). We review for clear error the bankruptcy court's factual findings. See id. at 1300.

A. Dismissal of Counts I-VI

We review de novo questions of subject matter jurisdiction. See Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 408 (11th Cir. 1999).

The bankruptcy court has jurisdiction over three categories of proceedings: "those that 'arise under [T]itle 11,' those that 'arise in cases under [T]itle 11,' and those 'related to cases under [T]itle 11.'" See Cont'l Nat'l Bank v. Sanchez (In re Toledo), 170 F.3d 1340, 1344 (11th Cir. 1999) (citing 28 U.S.C. § 1334(b)). A claim "arises under" Title 11 if it invokes a substantive right created by the Bankruptcy Code. Id. at 1345. A claim arises in a case under Title 11 if it involves "matters that could arise only in bankruptcy." Id. A claim is sufficiently "related to" Title 11 for jurisdictional purposes when the outcome of the proceeding "could conceivably have an effect on the estate being administered in bankruptcy." See Wortley v. Bakst, 844 F.3d 1313, 1318-19, 1320 (11th Cir. 2017).

The bankruptcy court committed no error in dismissing -- for lack of subject matter jurisdiction -- the Smiths' non-bankruptcy claims for fraud, fraud upon the court, collusion with intent to defraud, theft, violation of Constitutional rights, and recklessness. These claims invoke no right created by the Bankruptcy Code and involve no matter unique to bankruptcy. Nor would the resolution of these claims have a conceivable effect on the bankruptcy estate. By the time the Smiths filed this adversary proceeding in October 2017, the Property was no longer part of the bankruptcy estate; and the bankruptcy estate had been already fully administered.

B. Dismissal of Count VII

We review de novo a dismissal for failure to state a claim, accepting all properly alleged facts as true and construing them in the light most favorable to the plaintiff. Estate of Jackson v. Schron (In re Fundamental Long Term Care, Inc.), 873 F.3d 1325, 1334-35 (11th Cir. 2017).

The purported stay violations alleged in Count VII occurred in July 2015, February 2017, and May 2017. That the automatic stay expired in June 2016 -- when the bankruptcy court entered an order discharging the Smiths' Chapter 7 debt -- is clear. Thus, no automatic stay was in effect or could be violated at the time of Murphy's complained-of acts in February 2017 and May 2017.

The Smiths first contend that Murphy violated the automatic stay in July 2015 by filing registration documents with the Georgia Secretary of State. By that time, however, the bankruptcy trustee had abandoned the Property and HSBC had foreclosed on the Property. The Property was thus no longer "property of the estate" or "property of the debtor" protected by the automatic stay. Nor were the Smiths -- as former owners of the Property -- still members of the Association.

Because the Smiths can state no plausible claim for violation of the automatic stay, the bankruptcy court dismissed properly Count VII.

C. Scheduling Order

The Smiths next contend that the bankruptcy court erred by failing to issue a scheduling order pursuant to Fed. R. Civ. P. 16(b)(2), and thus preventing unlawfully the Smiths from proceeding with discovery.

Courts "enjoy broad discretion in deciding how best to manage the cases before them." Chudasama v. Mazda Motor Corp., 123 F.3d 1353, 1366 (11th Cir. 1997). An abuse of discretion must be redressed, however, "[w]hen a litigant's rights are materially prejudiced by the district court's mismanagement of a case." Id. at 1367.

Even if we assume (without deciding) that the bankruptcy court erred by issuing no scheduling order, the Smiths have failed to show prejudice. When a scheduling order would have been due under Rule 16, the bankruptcy court had pending before it a motion for judgment on the pleadings filed by Murphy. In her motion, Murphy argued that the Smiths' adversary proceeding should be dismissed for lack of jurisdiction and for failure to state a claim.

We have cautioned lower courts to resolve facial challenges to the legal sufficiency of a claim -- like Murphy's motion for judgment on the pleadings in this case -- before permitting discovery. See id. at 1367-68. Allowing a case to proceed to discovery on a facially invalid claim "does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system." Id. at 1368.

In the light of the pending challenges to the facial validity of the Smiths' claims in this adversary proceeding and of the Smiths' history of protracted litigation raising similar arguments, it would have been reasonable (and no abuse of discretion) for the bankruptcy court to delay discovery until after a ruling on Murphy's dispositive motion. We also note that never did the Smiths object to the bankruptcy court's failure to issue a scheduling order or otherwise move the bankruptcy court to permit discovery. On this record, we see no reversible error.

D. Constitutional Due Process

On appeal, the Smiths contend they were denied their Fifth Amendment due process rights when the bankruptcy court dismissed their adversary proceeding

without a hearing, refused to allow discovery, and issued no scheduling order. For the reasons already discussed, we reject these conclusory arguments as without merit.

E. Rule 38 Motion for Attorney's Fees and Costs

"If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Fed. R. App. P. 38. A Rule 38 sanction is appropriate when an appellant raises "clearly frivolous claims in the face of established law and clear facts." Parker v. Am. Traffic Sols., Inc., 835 F.3d 1363, 1371 (11th Cir. 2016). A claim is frivolous if it is "utterly devoid of merit." Id. Generally speaking, we are reluctant to impose Rule 38 sanctions on pro se appellants; but we have found Rule 38 sanctions warranted in cases when a pro se appellant has been already warned that the suit is frivolous. See, e.g., United States v. Morse, 532 F.3d 1130, 1132-33 (11th Cir. 2008); Ricket v. United States, 773 F.2d 1214, 1216 (11th Cir. 1985).

We find the record in this case supports a Rule 38 award of attorney's fees and costs. In this appeal, the Smiths continue to assert arguments that have been already flatly rejected by the bankruptcy court, the district court, and by this Court.

One central argument underlying the Smiths' appeal is that the foreclosure proceedings on the Property were unlawful because (among other things) Countrywide was not the real party in interest with standing to seek relief from the automatic stay. We dismissed -- "as frivolous and entirely without merit" -- an earlier appeal in which the Smiths presented this same argument. See Smith v. Countrywide Home Loans, Inc. (In re Smith), No. 13-13808, 2013 U.S. App. LEXIS 26218 (11th Cir. Dec. 19, 2013) (unpublished). In that appeal, we also granted the appellee's motion for damages under Rule 38 in part because the Smiths had already been warned that their arguments were frivolous. See id.

We have also already concluded in an earlier appeal that the automatic stay expired on 1 June 2016 when the Smiths' Chapter 7 case was discharged. See Smith v. HSBC Bank USA, N.A., 775 F. App'x 492, 495 (11th Cir. 2019) (unpublished). Nevertheless, the Smiths persist in arguing that the automatic stay never terminated and that conduct taken by Murphy -- conduct unrelated to the Bankruptcy Code or the bankruptcy estate and that occurred after 1 June 2016 -- violated the automatic stay.

The Smiths have been put on sufficient notice that the arguments raised in this appeal are frivolous and utterly without merit. Because the Smiths continue to pursue these frivolous arguments, Rule 38 sanctions are justified in this case. We GRANT Murphy's motion for attorney's fees and double costs. We remand to the district court for a determination of the amount of reasonable attorney's fees and costs to be awarded.

AFFIRMED and REMANDED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11638-JJ

In re: MARVIN B. SMITH, III,
SHARON H. SMITH,

Debtors.

MARVIN B. SMITH, III,
SHARON H. SMITH,

Plaintiffs - Appellants,

versus

M. DELORES MURPHY,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11640
Non-Argument Calendar

D.C. Docket No. 2:19-cv-00076-LGW,
Bkcy No. 2:19-bkc-20244-MJK

In re: MARVIN B. SMITH, III,
SHARON H. SMITH,

Debtors.

MARVIN B. SMITH, III,
SHARON H. SMITH,

Plaintiffs-Appellants,

versus

HSBC BANK USA,
HSBC BANK USA, N.A.,
HSBC BANK USA, NATIONAL ASSOCIATION,
as Trustee for the Holders of BCAP LLC Trust
2006-AA2, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(March 18, 2021)

Before JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

Marvin and Sharon Smith, proceeding pro se,[1] appeal the district court's order affirming the bankruptcy court's dismissal of the Smiths' adversary complaint filed against HSBC Bank USA, HSBC Bank USA, N.A., and HSBC Bank USA, National Association as Trustee for the Holders of BCAP LLC Trust 2006-AA2 (collectively, "HSBC"). No reversible error has been shown; we affirm.

[1] We construe liberally pro se pleadings. See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

I. Background

Briefly stated, the Smiths have sought -- for over a decade and in various courts -- to challenge the foreclosure proceedings on their home in St. Simons Island, Georgia (the "Property"). The adversary proceeding at issue in this appeal represents one of those challenges. Given the complicated and lengthy procedural history underlying this appeal, we will summarize the facts and proceedings only as necessary to provide context for our decision.[2]

In 2007, the Smiths filed for bankruptcy seeking to discharge over $2 million in mortgage debt on the Property ("Smith I"). On their bankruptcy petition, the Smiths listed Countrywide Home Loans ("Countrywide") as holding two secured claims against the Property.

In 2008, Countrywide -- as servicing agent for HSBC -- moved for relief from the automatic stay under 11 U.S.C. § 362(a). The bankruptcy court denied the motion but entered a Consent Order modifying the automatic stay to allow the bankruptcy trustee to market the Property for sale. If the Property remained unsold as of 4 May 2009, the automatic stay would terminate without further hearing or order and foreclosure proceedings could commence.

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[2] A more thorough description of the underlying factual and procedural history is set forth in the district court's decision in Smith v. HSBC Bank, N.A., 616 B.R. 438 (S.D. Ga. 2020).

In July 2009, the bankruptcy court denied the Smiths' motion to vacate the Consent Order and stated that foreclosure on the still-unsold Property could proceed. The district court affirmed; and we dismissed as frivolous the Smiths' appeal.

HSBC foreclosed on the Property in May 2015. On 1 June 2016, the bankruptcy court entered an order discharging the Smiths' debt under Chapter 7. The Smiths were evicted from the Property in August 2017.

In November 2017, the Smiths filed in the bankruptcy court an adversary complaint against HSBC. The Smiths asserted that HSBC's foreclosure and eviction proceedings violated the automatic stay. The Smiths also alleged claims for mortgage fraud and for elder abuse in violation of Georgia law.

The bankruptcy court dismissed with prejudice the Smiths' adversary proceeding. The bankruptcy court first concluded that it lacked subject matter jurisdiction over the Smiths' state law claims for mortgage fraud and elder abuse -- claims that did not "arise under," "arise in," or "relate to" the Bankruptcy Code. The bankruptcy court next concluded that the Smiths' claims about HSBC's purported violation of the automatic stay were barred by res judicata. The district court affirmed. This appeal followed.

II. Discussion

We review de novo legal conclusions of both the bankruptcy court and the district court. See Finova Cap. Corp. v. Larson Pharmacy, Inc. (In re Optical Techs., Inc.), 425 F.3d 1294, 1299-1300 (11th Cir. 2005). We review for clear error the bankruptcy court's factual findings. See id. at 1300.

A. Subject Matter Jurisdiction

We review de novo questions of subject matter jurisdiction. See Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 408 (11th Cir. 1999).

The bankruptcy court has jurisdiction over three categories of proceedings: "those that 'arise under [T]itle 11,' those that 'arise in cases under [T]itle 11,' and those 'related to cases under [T]itle 11.'" See Cont'l Nat'l Bank v. Sanchez (In re Toledo), 170 F.3d 1340, 1344 (11th Cir. 1999) (citing 28 U.S.C. § 1334(b)). A claim "arises under" Title 11 if it invokes a substantive right created by the Bankruptcy Code. Id. at 1345. A claim arises in a case under Title 11 if it involves "matters that could arise only in bankruptcy." Id. A claim is sufficiently "related to" Title 11 for jurisdictional purposes when the outcome of the

proceeding "could conceivably have an effect on the estate being administered in bankruptcy." See Wortley v. Bakst, 844 F.3d 1313, 1318-19, 1320 (11th Cir. 2017).

The bankruptcy court committed no error in dismissing -- for lack of subject matter jurisdiction -- the Smiths' mortgage fraud and elder abuse claims. These claims allege violations of Georgia law and invoke no right created by the Bankruptcy Code or a matter arising only in bankruptcy. Nor would the resolution of these claims have a conceivable effect on the bankruptcy estate. By the time the Smiths filed this adversary proceeding in November 2017, the Property had been abandoned and was no longer part of the bankruptcy estate; and the bankruptcy estate had been already fully administered.

B. Res Judicata

"Res judicata, or claim preclusion, bars relitigation of matters that were litigated or could have been litigated in an earlier suit." Manning v. City of Auburn, 953 F.2d 1355, 1358 (11th Cir. 1992). A claim is barred by the judgment in a prior case when four elements are met: "(1) there is a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the

parties, or those in privity with them, are identical in both suits; and (4) the same cause of action is involved in both cases." Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235, 1238 (11th Cir. 1999). "Res judicata applies not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same operative nucleus of fact." Manning, 953 F.2d at 1358-59 (quotations omitted).

The bankruptcy court determined properly that the Smiths' claim -- that HSBC's foreclosure activities violated the automatic stay -- was barred by res judicata. This claim is one that the Smiths have pursued repeatedly (and unsuccessfully) in various courts over several years.

In 2015, the Smiths filed a civil action challenging the foreclosure proceedings on their home ("Smith II"). The Smiths moved the bankruptcy court to stay a writ of possession granted to HSBC which the Smiths said violated the bankruptcy court's automatic stay. In a 9 August 2017 order, the district court denied the motion on the merits, concluding that HSBC had been granted relief from the automatic stay.

The Smiths filed a materially similar motion to stay HSBC's writ of possession in Smith I. On 5 December 2017, the bankruptcy court denied that motion as barred by res judicata based on the district court's 9 August 2017 order

in Smith II. We affirmed both the district court's 9 August 2017 order and the bankruptcy court's 5 December 2017 order on appeal. See Smith v. HSBC Bank USA, N.A., 775 F. App'x 492 (11th Cir. 2019) (unpublished).

In this adversary proceeding, the Smiths reiterate the same arguments raised in Smith I and in Smith II. In the light of the procedural history underlying this appeal, that the Smiths' automatic-stay claim is barred by res judicata is clear.

C. Default Judgment

We next address the Smiths' contention that they were entitled to a default judgment because HSBC failed to file timely a responsive pleading to the Smiths' adversary proceeding.

We review the denial of a motion for a default judgment under an abuse-of-discretion standard. Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309, 1316 (11th Cir. 2002). We have said that "[d]efault is to be used sparingly." Id. Given the wide range of lesser sanctions available, the "drastic remedy" of entry of judgment by default is appropriate "only in extreme situations." Id. at 1316-17.

The district court determined that a default judgment was inappropriate in this case given that HSBC was (at most) one day late in filing its motion to dismiss and that the Smiths' claims were dismissed properly as barred by res judicata and for lack of subject matter jurisdiction. The district court refused "to endorse this 'gotcha' style of litigating whereby the Smiths seek to prevail on a technicality after they were unable to prevail on the merits of this frivolous and duplicative litigation."

We accept that this case presents no "extreme situation" that would justify the "drastic remedy" of default judgment. Given our "strong preference that cases be heard on the merits" and given that the Smiths' claims were facially invalid, neither the bankruptcy court nor the district court abused its discretion in denying the Smiths' motions for a default judgment. See Wahl v. McIver, 773 F.2d 1169, 1174 (11th Cir. 1985) (concluding that no exceptional circumstances justified the entry of a default judgment where -- despite an unexplained delay -- most defendants answered the complaint shortly after the deadline, plaintiff suffered no prejudice because of the delay, and most of plaintiff's claims were facially invalid).

D. Constitutional Due Process

On appeal, the Smiths also contend that adverse rulings by the bankruptcy court and the district court denied the Smiths their due process right to object to the real party in interest and to seek enforcement of the automatic stay. We reject these conclusory arguments. Plaintiffs have been given ample notice and opportunities to be heard -- in the bankruptcy court, the district court, and in this Court -- throughout the course of this litigation. That Plaintiffs are dissatisfied with the outcome of the proceedings establishes no constitutional violation.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11640-JJ

In re: MARVIN B. SMITH, III,
SHARON H. SMITH,

Debtors.

MARVIN B. SMITH, III,
SHARON H. SMITH,

Plaintiffs - Appellants,

versus

HSBC BANK USA,
HSBC BANK USA, N.A.,
HSBC BANK USA, NATIONAL ASSOCIATION,
as Trustee for the Holders of BCAP LLC Trust
2006-AA2, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40).

ORD-46

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11641
Non-Argument Calendar

D.C. Docket No. 2:19-cv-00073-LGW
Bkcy. No. 2:19-bkc-20244-AJK

In re: MARVIN B. SMITH, III,
SHARON H. SMITH,

Debtors.

MARVIN B. SMITH, III,
SHARON H. SMITH,

Plaintiffs-Appellants,

HSBC BANK USA,
HSBC BANK USA, N.A.,
HSBC BANK USA, NATIONAL ASSOCIATION,
as Trustee for the Holders of BCAP LLC Trust
2006-AA2,
PATRICK J. BURKE,
Pres./CEO of HSBC Bank USA, N.A.,

GEREMY GREGORY,
Agent for Balch & Bingham LLP, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(March 18, 2021)

Before JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

Marvin and Sharon Smith, proceeding pro se,[1] appeal the district court's order affirming the bankruptcy court's order denying the Smiths' motion to enforce a bankruptcy discharge injunction and to hold in contempt certain parties involved in the foreclosure proceedings on the Smiths' home. The Smiths sought a contempt order against (1) HSBC Bank USA, HSBC Bank USA, N.A., and HSBC Bank USA, National Association as Trustee for the Holders of BCAP LLC Trust 2006-AA2 (collectively "HSBC"); (2) an HSBC corporate officer; and (3) several

[1] We construe liberally pro se pleadings. See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

lawyers, law firms, a realtor, and a realty company. No reversible error has been shown; we affirm.

I. Background

Briefly stated, the Smiths seek to challenge the foreclosure and dispossessory proceedings on their home in St. Simons Island, Georgia (the "Property"). Given the complicated and lengthy procedural history underlying this appeal, we will summarize the facts and proceedings only as necessary to provide context for our decision.[2]

In 2007, the Smiths filed for bankruptcy seeking to discharge over $ 2 million in mortgage debt on the Property. On their bankruptcy petition, the Smiths listed Countrywide Home Loans ("Countrywide") as holding two secured claims against the Property.

In 2008, Countrywide -- as servicing agent for HSBC -- moved for relief from the automatic stay under 11 U.S.C. § 362(a). The bankruptcy court denied the motion but entered a Consent Order modifying the automatic stay to allow the bankruptcy trustee to market the Property for sale. If the Property remained unsold

[2] A more thorough description of the underlying factual and procedural history is set forth in the district court's decision. See Smith v. HSBC Bank, N.A., 616 B.R. 438 (S.D. Ga. 2020).

as of 4 May 2009, the automatic stay would terminate without further hearing or order and foreclosure proceedings could commence.

In July 2009, the bankruptcy court denied the Smiths' motion to vacate the Consent Order and stated that foreclosure on the Property could proceed. The district court affirmed; we dismissed the Smiths' appeal as frivolous.

In April 2012, the bankruptcy trustee abandoned the bankruptcy estate's interest in the Property. In January 2013, the bankruptcy trustee objected to a proof of claim filed earlier by Countrywide ("Claim No. 10") on grounds that the mortgage loan on the Property was "secured by property either abandoned or not administered by the Trustee and, therefore, [Countrywide] should look to its collateral for satisfaction of the debt." The bankruptcy court sustained the objection and disallowed Claim No. 10.

HSBC foreclosed on the Property in May 2015. On 1 June 2016, the bankruptcy court entered an order discharging the Smiths' debt under Chapter 7. The Smiths were evicted from the Property in August 2017.

In August 2018, the Smiths filed the motion at issue in this appeal: a motion titled "Emergency Motion to Enforce Discharge Injunction and Motion for Issuance of an Order to Respondents to Show Cause why they should not be Held in Contempt" ("Contempt Motion"). The Smiths contended that -- by enforcing

the lien and foreclosing on the Property -- HSBC and the lawyers, law firms, and realtors involved in the foreclosure proceedings violated the bankruptcy court's discharge injunction under 11 U.S.C. § 524 and the bankruptcy court's order disallowing Claim No. 10.

The bankruptcy court denied the Contempt Motion. The bankruptcy court concluded that the Chapter 7 discharge had no effect on the lien on the Property and, thus, the foreclosure proceedings "had nothing to do with the Smiths or their discharge." The bankruptcy court also found no violation of the order disallowing Claim No. 10. The district court affirmed.

II. Discussion[3]

We review de novo legal conclusions of both the bankruptcy court and the district court. See Finova Cap. Corp. v. Larson Pharmacy, Inc. (In re Optical Techs., Inc.), 425 F.3d 1294, 1299-1300 (11th Cir. 2005). We review for clear error the bankruptcy court's factual findings. See id. at 1300.

[3] In their appellate brief, the Smiths reiterate arguments they have raised in other related civil actions about HSBC's alleged violations of the automatic stay. Because these arguments were not raised below in connection with the Smiths' Contempt Motion, the arguments are not properly before us in this appeal.

A. Discharge Injunction

A Chapter 7 discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). The Supreme Court has said that -- while a Chapter 7 discharge extinguishes the personal liability of the debtor -- it does not extinguish a creditor's right to foreclose on a valid mortgage on the debtor's property. See Johnson v. Home State Bank, 501 U.S. 78, 83 (1991). Instead, "a creditor's right to foreclose on the mortgage survives or passes through the bankruptcy." Id.

Under the Bankruptcy Code, the Smiths' Chapter 7 discharge had no impact on the validity or enforceability of HSBC's lien against the Property. HSBC thus retained the right to foreclose. The bankruptcy court concluded correctly that the complained-of acts taken by HSBC and others to foreclose, evict, or to sell the Property constituted no violation of the Smiths' Chapter 7 discharge injunction.

B. Disallowance of Claim No. 10

The bankruptcy court also concluded correctly that the validity of HSBC's lien against the Property was unaffected by the disallowance of Claim No. 10. The record demonstrates that the bankruptcy trustee sought to disallow Claim No. 10 because the trustee had earlier abandoned the Property and the Property was thus no longer part of the bankruptcy estate. Never did the bankruptcy trustee challenge the validity or enforceability of the lien on the Property. To the contrary, the bankruptcy trustee said expressly that HSBC "should look to its collateral for satisfaction of the debt." By sustaining the trustee's objection and disallowing Claim No. 10, the bankruptcy court disallowed only HSBC's claim to an interest in the bankruptcy estate. The bankruptcy court made no merits determination about the validity or enforceability of HSBC's lien on the Property.

We reject the Smiths' contention that the disallowance of a claim under the circumstances presented in this case operates to void automatically an otherwise valid lien under 11 U.S.C. § 506(d). We cannot conclude that the bankruptcy court erred in finding no violation of the disallowance order.

C. Constitutional Due Process

On appeal, the Smiths contend they were denied their due process rights when the bankruptcy court ruled on their Contempt Motion without an evidentiary hearing. This argument is without merit. Generally speaking, due process rights are attributed to the party against whom contempt sanctions are sought. See Mercer v. Mitchell, 908 F.2d 763, 766-67 (11th Cir. 1990). We have found no binding precedent requiring these same due process protections for the party seeking the issuance of a contempt order.

The Smiths also contend that adverse rulings by the bankruptcy court and the district court denied the Smiths their due process right to object to the real party in interest. We reject these conclusory arguments. That Plaintiffs are dissatisfied with the outcome of the proceedings establishes no constitutional violation.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11641-JJ

In re: MARVIN B. SMITH, III,
SHARON H. SMITH,

Debtors.

MARVIN B. SMITH, III,
SHARON H. SMITH,

Plaintiffs - Appellants,

HSBC BANK USA,
HSBC BANK USA, N.A.,
HSBC BANK USA, NATIONAL ASSOCIATION,
as Trustee for the Holders of BCAP LLC Trust
2006-AA2,
PATRICK J. BURKE,
Pres./CEO of HSBC Bank USA, N.A.,
GEREMY GREGORY,
Agent for Balch & Bingham LLP, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

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