No. 22-_____

In The
Supreme Court of the United States

SHMUEL ERDE,

Petitioner,

vs.

THEODOR BODNAR, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Petitioner, Pro Se

QUESTION PRESENTED

In denying Petitioner's claims, the Ninth Circuit Court of Appeals has divorced itself, jurisprudentially speaking, from the American court system by issuing orders which are in direct conflict with the Constitution, the Bankruptcy Code, the U.S. Supreme Court and the other federal Circuits. The most conflicted decision is manifested by the Court's failure to recognize that a judgment must be noticed to all parties, under the Due Process Clause of the 5th Amendment to the U.S. Constitution. Such failure voids the decision *ab initio*.

A void order may be vacated at any time. While the Imputation Rule excuses failure to notice all interested parties, it does not apply if the interests of the partner with knowledge are adverse to the partnership's interests.

The Ninth Circuit also ignored Respondents' violation of 11 U.S.C. § 521(a), which requires debtors to schedule all their assets in their bankruptcy Petition. Such unscheduled assets remain property of the estate forever, until they are administered by the Bankruptcy Court. 11 U.S.C. § 554(d).

The Ninth Circuit has so far departed from accepted judicial proceedings and is in such conflict with precedent that its rulings trigger the Supreme Court Rule 10(a), which provides that a petition for writ of certiorari will be granted when a U.S. court of appeals enters a decision in conflict with the Supreme Court or courts of appeals on the same important matter. Shouldn't such deviation from accepted judicial

QUESTION PRESENTED – Continued

proceedings require the Supreme Court to exercise its supervisory power?

Hence, this Petition for Writ of Certiorari.

PARTIES AND RELATED CASES

Appeal from Ninth Circuit COA
Case No. 21-60056, *Erde v. Irsfeld*

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PARTIES AND RELATED CASES – Continued

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8. Ninth Circuit COA Case No. 21-60056, *Erde v. Irsfeld*, judgment entered on March 17, 2023, App. 33-34, affirming App. 1-2.

8. Ninth Circuit BAP Case No. 21-1046, *In re Westwood Plaza North, a California General Partnership*, judgment entered Oct. 22, 2021, App. 3-12.

10. Los Angeles Bankruptcy Court Case No. 2:84-bk-10894-BR, *In re Westwood Plaza North, a California General Partnership*, judgment entered on October 2, 1984, App. 29-32, dismiss the Partnership Bankruptcy Petition, filed May 24, 1984, App. 35-43.

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STATUTES AND RULES

FRBP

FRCP

UNIFORM PARTNERSHIP ACT

OPINIONS BELOW

The Order Appealed From was issued by the Ninth Circuit Court of Appeals on March 17, 2023. (Pet. App. 33). The Order affirmed the Ninth Circuit's December 15, 2022 Order (Pet. App. 1-2), affirming the Ninth Circuit BAP order issued October 22, 2021 (Pet. App. 3-12).

The BAP order affirmed the Bankruptcy Court order denying Petitioner's Third Motion for Reconsideration (Pet. App. 13-16), and the Order Denying Petitioner's Motion to Dismiss a Void Order (Pet. App. 17-20), while ignoring the fact that the Order to Dismiss the Partnership Bankruptcy Petition (Pet. App. 29-32), dismissing the Petition (Pet. App. 35-43) was void *ab initio* for failure and refusal to notice these pleadings on Petitioner, an interested party by virtue of being one of the Partnership's two equal general partners, and its largest creditor.

These orders are in irreconcilable conflict with the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the U.S. Supreme Court and the other Circuits, as detailed below.

CERTIORARI JURISDICTION

The principal statutory basis for the Supreme Court's certiorari jurisdiction is 28 U.S.C. § 1254(1), giving the Court certiorari jurisdiction to review cases from federal courts of appeals. "We granted certiorari

to resolve a division among the Circuits on the question presented." *Highmark Inc. v. Allcare Health Management*, 572 U.S. 559 (2014).

Certiorari includes cases aiming to resolve a conflict of law when circuit courts ignore Supreme Court precedent and their decision is not merely erroneous but outlandishly so. *Mata v. Lynch*, 135 S.Ct. 2150, 2154 (2015).

As detailed below, the Ninth Circuit decision denying Petitioner's claims is in conflict with the Supreme Court and the other circuits regarding the issues stated in the Question Presented above.

CONSTITUTIONAL PROVISIONS INVOLVED

The basic constitutional provision dominating this case is the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

The Ninth Circuit denial of Erde's claims – that Respondents' refusal to notice him violated Constitutional due process – is in direct conflict with the Supreme Court's decision in *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950). *Mullane* provides that notice is an "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality [which is] reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane, Id.*, at

314. Other Supreme Court decisions concur with *Mullane*, highlighting the Ninth Circuit conflicting position with precedent.

STATUTORY PROVISION AND CANONS INVOLVED

The following statutes and Canons have been ignored by the Ninth Circuit in direct departure from established rules and statutes:

1. The Due Process Clause in the Fifth Amendment to the U.S. Constitution provides that an order or judgment must be noticed on all interested parties in a case. Failure and refusal to so notice all interested parties renders the judgment void *ab initio.*

2. A motion to vacate a void order may be filed at any time and there is no time limitation or laches to vacate a void order.

3. While the Imputation Rule provides an excuse for failure to notice all interested parties, "an exception to the imputation rule exists where an individual is acting adversely to the corporation. In that situation, the officer's knowledge and conduct are not imputed to the corporation."[1]

[1] The same rule applies to partnerships.

4. 28 U.S.C. § 1334 provides that federal district courts have "original and exclusive jurisdiction of all cases under title 11."

5. 11 U.S.C. § 521(a) requires a debtor to schedule all its assets in its bankruptcy petition. Assets which are not scheduled in the petition remain property of the bankruptcy estate forever, until they are administered by the Bankruptcy Court, as provided by 11 U.S.C. § 554(d).

6. FRCP 11 and FRBP 9011(b) require lawyers to employ only means which are consistent with the truth. Zealous advocacy does not include permission to lie to court.

7. De novo review provides that the reviewing court "do[es] not defer to the lower court's ruling but freely consider[s] the matter anew, as if no decision had been rendered below."

STATEMENT OF THE CASE

In 1984, Respondents filed Bankruptcy Petition on behalf of the Partnership (App. 35-43), and Order to Dismiss it (App. 29-32) without noticing Petitioner, even though he was one of the Partnership's two equal partners, and its largest creditor.

Eventually, Petitioner discovered the Petition and the Order to dismiss it. When Petitioner confronted Respondents, they admitted that they refused to notice Petitioner of the Petition and the Order to Dismiss it,

but falsely claimed that, as attorneys for the Partnership, they only had a duty to notice the partner who engaged them, but not Petitioner.

When Petitioner learned that attorneys for a partnership have a duty to inform **all** the partners, and that an order filed without notice is void *ab initio*, Respondents changed their story and claimed that Petitioner engaged them to represent the Partnership and to file the Petition and the Order to Dismiss it. That claim was entirely false, and in direct conflict with FRCP 11 and FRBP 9011(b).

Respondents also knowingly failed to schedule all the Debtor Partnership's assets in the Petition, in violation of 11 U.S.C. § 521(a), in order to keep the Partnership's assets they had stolen from the Partnership, which they concealed from the Bankruptcy Court and Bankruptcy Trustee.

The Ninth Circuit Court of Appeals denied Petitioner's claims and affirmed the rulings by the courts below, in clear conflict with the Constitution, the U.S. Supreme Court and the other circuits. This illegal and unconstitutional conduct introduced the need for the Supreme Court to intervene.

Hence, this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

A. The Order to Dismiss Is Void for Failure to Notice

The Ninth Circuit rulings ignore Respondents' knowing refusal to notice Petitioner of the Partnership's Bankruptcy Petition and the Order to Dismiss it. App. 33-34 and 1-2. These rulings are in conflict with the Due Process Clause of the U.S. Constitution, the U.S. Supreme Court, and the other circuits.

1. Supreme Court

"[A] judgment entered without notice or service is constitutionally infirm." *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84 (1988). Failure to give notice violates "the most rudimentary demands of due process of law." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965). See also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 110 (1969); *Mullane, Id.*

As early as 1772, the Supreme Court held that an order could not bind a party if he was never personally summoned nor had notice of the proceeding, as it would be contrary to first principles of justice. *Fisher v. Lane*, 3 Wils. 297 (1772); cited in *Pennoyer v. Neff*, 95 U.S. 714, 732 (1878).

A decree rendered by a court without jurisdiction is void. *Williams v. North Carolina*, 325 U.S. 226, 268 (1945).

In *Mullane*, the Supreme Court proclaimed that notice is an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality. The notice must be reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance. *Mullane, Id.*, at 314.

2. First Circuit

Sale set aside as fundamentally unfair due to lack of adequate notice. *MRR Traders, Inc. v. Cave Atlantique, Inc.*, 788 F.2d 816, 818 (1st Cir. 1986).

A court does not have discretion to deny a Rule 60(b)(4) motion if the challenged judgment is void for lack of personal jurisdiction. If the judgment is void, the court has no discretion but to set aside the judgment. *Sea-Land Service, Inc. v. Ceramica Europa II, Inc.*, 160 F.3d 849, 852 (1st Cir. 1998).

Rule 60(b)(4) applies when a judgment is premised on a violation of due process that deprives a party of notice or the opportunity to be heard. *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990).

3. Second Circuit

A judgment is void under Rule 60(b)(4) if the court that rendered it lacked jurisdiction of the subject

matter, or of the parties, or if it acted in a manner inconsistent with due process of law. If the underlying judgment is void for lack of jurisdiction, "it is a per se abuse of discretion for a district court to deny a movant's motion to vacate the judgment under Rule 60(b)(4)." *City of New York v. Mickalis Pawn Shop*, 645 F.3d 114, 138 (2d Cir. 2011).

4. Third Circuit

When a party is not afforded notice and a full and fair hearing, his due process rights are violated, and the subsequent order is invalid. *Khouzam v. Attorney General of US*, 549 F.3d 235, 257, 259 (3d Cir. 2008).

Sale set aside as fundamentally unfair due to lack of adequate notice. *In re Time Sales Finance Corp.*, 445 F.2d 385, 386-87 (3d Cir. 1971).

5. Fourth Circuit

Due process requires that a person not be deprived of his property without notice and opportunity for a hearing. *US v. Harvey*, 814 F.2d 905, 928 (4th Cir. 1987).

6. Fifth Circuit

In the absence of valid service of process, the proceedings against a party are void. *Aetna Business Credit v. Universal Decor & Interior Design, Inc.*, 635 F.2d 434, 435 (5th Cir. 1981).

If a court lacks jurisdiction over the parties because of insufficient service of process, the judgment is void and the district court must set it aside. *Recreational Properties v. Southwest Mortg.*, 804 F.2d 311, 314 (5th Cir. 1986).

7. Sixth Circuit

A court's notice of its intent to dismiss should be unmistakable (whether oral or written), and should specify a date by which the parties must respond to the court's motion, giving them reasonable time under the circumstances to do so. *Catz v. Chalker*, 142 F.3d 279, 286 (6th Cir. 1998).

8. Seventh Circuit

A judgment is void "if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *Matter of Edwards*, 962 F.2d 641, 644 (7th Cir. 1992).

9. Eighth Circuit

"No man shall be condemned in his person or property without notice and an opportunity to make his defense." "Notice to the defendant is essential to the jurisdiction of all courts." "[W]hen a judgment is brought collaterally before the court, it may be shown to be void on its face for want of notice to the person against whom it is entered." "No person is required to

answer in a suit on whom process has not been served or whose property has not been attached. In this case there was no personal notice." "The judgments therefore are nullities." "Service of process or notice is necessary to enable a court to exercise jurisdiction in a case; and if jurisdiction is taken in a case in which there has been no process or notice, the proceeding is a nullity. It is not only voidable but it is absolutely void." In short, when there is no personal notice, the judgments are nullities. *Hicklin v. Edwards*, 226 F.2d 410, 413 (8th Cir. 1955). [Internal citations omitted].

10. Tenth Circuit

Good notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Because the court failed to acquire personal jurisdiction over the defendant, the judgment is void. *Texas Western Financial Corp. v. Edwards*, 797 F.2d 902, 905, 906 (10th Cir. 1986).

11. Eleventh Circuit

Having notice of the potential for proceedings **without notice** of their timing, location, adverse parties, nature, etc., is not sufficient to satisfy due process. *Stansell v. Revolutionary Armed Forces of Colombia*, 771 F.3d 713, 741 (11th Cir. 2014). [Emphasis added].

A judgment can be set aside for voidness where the movant was denied due process. This includes lack of personal jurisdiction and defective due process for failure to effect proper service. Such motion to set aside a judgment for voidness pursuant to FRCP 60(b)(4) is not subject to laches analysis. *Stansell*, *Id.*, at 736-37.

12. District of Columbia Circuit

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" "The core of due process is the right to notice and a meaningful opportunity to be heard." Due process mandates that "a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend." "[N]otice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner." *Al-Hela v. Biden*, No. 19-5079 (D.C. Cir. 2023). [Internal citations omitted].

13. Federal Circuit

Judgment was entered without notice to plaintiffs as required by law. As a result, the judgment is void. *Sioux Tribe of Indians v. US*, 862 F.2d 275, 278 (Fed. Cir. 1988).

As a general matter, there is "no doubt that at a minimum [due process] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the

nature of the case." *Beer v. US*, 671 F.3d 1299, 1305 (Fed. Cir. 2012); citing *Mullane, Id.*, at 313.

Interim Conclusion

When there is no personal notice, the judgments are void as nullities.

In conflict with this precedent, the Ninth Circuit departed from it and ignored the fact that the Order to Dismiss the Partnership Bankruptcy Petition, App. 29-32, was void for lack of notice to Petitioner, an interested party by virtue of being one of the Partnership's two equal general partners, and its largest creditor.

Unfortunately, the Ninth Circuit chose conflict over precedent. The Supreme Court has a significant interest in supervising the administration of the judicial system. See Supreme Court Rule 10(a). When a court below has "so far departed from the accepted and usual course of judicial proceedings . . . [it calls] for an exercise of this Court's supervisory power." The Supreme Court's interest in ensuring compliance with proper rules of judicial administration is particularly acute when those rules relate to the integrity of judicial processes." *Hollingsworth v. Perry*, 130 S.Ct. 705, 713 (2010).

B. A Void Order May Be Vacated at Any Time

1. Supreme Court

Rule 60(b)(4) applies when a judgment is premised on a jurisdictional error caused by violation of due

process that deprives a party of notice and the opportunity to be heard. *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376 (1940); *Stoll v. Gottlieb*, 305 U.S. 165, 171-172 (1938).

A void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final, because a void judgment is a legal nullity. *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367, 1377 (2010).

Rule 60(b)(4) provides an exception to finality which allows a party to seek relief from a final judgment, and request reopening of his case. The Rule authorizes the court to relieve a party from a final judgment if the judgment is void. *Gonzalez v. Crosby*, 545 U.S. 524, 528-29 (2005).

Rule 60(b) authorizes a court to set aside "a void judgment" without regard to the limitation of a year applicable to motions to set aside on other grounds. *Klapprott v. United States*, 335 U.S. 601, 609 (1949).

2. First Circuit

Rule 60(b)(4) motions cannot be denied on the procedural ground that they were not brought within a "reasonable time" as required by Rule 60(b), as this court has held that motions to set aside a judgment for lack of personal jurisdiction under Rule 60(b)(4) may be made at any time. *Sea-Land Service, Inc. v. Ceramica Europa II, Inc.*, 160 F.3d 849, 852 (1st Cir. 1998).

3. Seventh Circuit

When a court lacks jurisdiction, any adjudication by that court is "legal nullity" that may be vacated "at any time." Under Rule 60(b)(4), the "reasonable time" limitation in Rule 60(b) "must generally mean no time limit." *Pacurar v. Hernly*, 611 F.2d 179, 181 (7th Cir. 1979).

Under Rule 60(b)(4), a party may challenge a judgment as void for lack of personal jurisdiction at any time. *E360 Insight v. The Spamhaus Project*, 500 F.3d 594, 599 (7th Cir. 2007).

4. Eleventh Circuit

The principle of laches does not operate as a bar to a Rule 60(b)(4) motion, as "no court has denied relief under Rule 60(b)(4) because of delay." *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126, 1130 (11th Cir. 1994); citing *Crosby v. Bradstreet Co.*, 312 F.2d 483 (2d Cir. 1963), which vacated void judgment 30 years after entry; *cert. denied*, 373 U.S. 911 (1963). The 9th Cir. Concurred: see *In re Center Wholesale*, 759 F.2d 1440, 1447 (9th Cir. 1985), holding that "[A] void judgment cannot acquire validity because of laches."

C. An Exception to the Imputation Rule Exists When a Partner Acts Adversely Against the Partnership's Interests

Ordinarily the knowledge of an agent is imputed to the principal. See Uniform Partnership Act § (102).

Except that such knowledge is not imputed when the agent's acts are contrary to the interests of the principal. § 102(f).

1. Third Circuit

While the knowledge of an agent is ordinarily imputed to the principal, it is not imputed when the agent's acts are contrary to the interests of the principal. *In re Color Tile Inc.*, 475 F.3d 508, 513 (3d Cir. 2007).

2. Fourth Circuit

Legal fictions are based on presumptions about reality, and a fiction is given life so long as common experience supports its application. The general rule of imputing knowledge from agent to principal is such a fiction. The adverse interest exception recognizes that under certain circumstances the fiction must give way because the facts do not support it. Therefore, we decline the invitation to decide the issue before us in defiance of the facts if the legal fiction is not premised on reality.

Thus, while in most instances a principal is charged with his agent's knowledge, the adverse interest exception permits a principal to avoid imputation when the agent's interests are sufficiently adverse to the principal's interests. *Martin Marietta Corp. v. Gould, Inc.*, 70 F.3d 768, 771-72 (4th Cir. 1995).

3. Fifth Circuit

Courts will generally not impute a bank officer or director's knowledge to the bank if the officer or director acts with an interest adverse to the bank. *FDIC v. Lott*, 460 F.2d 82, 88 (5th Cir. 1972).

A principal is not affected by the knowledge of an agent in a transaction in which the agent secretly is acting adversely to the principal and entirely for his own purposes. *FDIC v. Shrader & York*, 991 F.2d 216, 223 (5th Cir. 1993).

There is an exception to imputation. And if the officer/director was acting adversely to the corporation and entirely for his own purpose, then the time limitations will be tolled. *Askanase v. Fatjo*, 130 F.3d 657, 666 (5th Cir. 1997).

4. Sixth Circuit

The knowledge and conduct of corporate officials acting within the scope of their duties are imputed to the corporation. However, when a corporate agent has totally abandoned his principal's interests and [acts] entirely for his own purpose, there is no imputation under the adverse interest exception to the general rule. *In re NM Holdings Co., LLC*, 622 F.3d 613, 619 (6th Cir. 2010).

5. Seventh Circuit

Section 12 of the Uniform Partnership Act provides that knowledge by a partner operates as

knowledge by the partnership, except in the case of fraud on the partnership committed by or with consent of that partner. The exception to the Imputation Rule exception in section 12 of the Uniform Partnership Act for frauds on the partnership when the partner with the knowledge committed the fraud against the partnership. *FDIC v. Braemoor Associates*, 686 F.2d 550, 556 (7th Cir. 1982).

6. Eleventh Circuit

While the Imputation Rule provides an excuse for failure to notice all interested parties, "an exception to the imputation rule exists where an individual is acting adversely to the corporation. In that situation, the officer's knowledge and conduct are not imputed to the corporation." *Golden Door Jewelry Creations, Inc. v. Lloyds Underwriters Non-Marine Assoc.*, 117 F.3d 1328, 1338-39 (11th Cir. 1997).

While in normal circumstances, the knowledge of the corporation's directors is imputed to the corporation, "[a]n exception to the imputation rule exists where an individual is acting adversely to the corporation. In that situation, the officer's knowledge and conduct are not imputed to the corporation." The exception to the Imputation Rule's exception is if the corporation benefits from the director's misbehavior. *Beck v. Deloitte & Touche*, 144 F.3d 732, 736 (11th Cir. 1998).[2]

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[2] The same imputation rule applies to partnerships. See UPA § 102.

"[A]n exception to the imputation rule exists where an individual is acting adversely to the corporation. In that situation, [her] knowledge and conduct are not imputed to the corporation." *Chang v. JPMorgan Chase*, 841 F.3d 914, 924 (11th Cir. 2016).

Interim Conclusion

The exception to the Imputation Rule clearly applies here. Respondents acted in their own interests and against the Partnership's interests. As a direct and proximate result, Petitioner and the Partnership lost everything, while Respondents were unjustly enriched.

D. Unscheduled Assets

11 U.S.C. § 521(a) requires debtors to schedule all their assets in their bankruptcy petition. Assets which are not scheduled in the petition remain property of the bankruptcy estate forever, until they are administered by the Bankruptcy Court, as provided by 11 U.S.C. § 554(d).

1. Supreme Court

A bankrupt, by omitting to schedule and withholding from his trustee all knowledge of certain property cannot assert title to it on the ground that the trustee had never taken any action in respect to it. If the claim was of value, the creditors were entitled to it, and this bankrupt could not, by withholding knowledge of its existence, obtain release from his debts and still assert

title to the property. *First Nat. Bank of Jacksboro v. Lasater*, 196 U.S. 115, 119 (1905).

A trustee in bankruptcy is appointed and charged with distribution to specified recipients of the deposit required by the Bankruptcy Act. The agent, *qua* agent, has no reason or duty to know or to learn of unscheduled debts. *King v. United States*, 379 U.S. 329, 340 (1964) [J. White, Concurring].

2. First Circuit

The law is abundantly clear that the burden is on the debtors to list their assets or amend their schedules. For property to be abandoned by operation of law, pursuant to 11 U.S.C. § 554(c), the debtor must formally schedule the property pursuant to 11 U.S.C. § 521(1). It is not enough that the trustee learns of the property through other means; the property must be scheduled pursuant to Section 521(1). *Jeffrey v. Desmond*, 70 F.3d 183, 186 (1st Cir. 1995).

3. Second Circuit

When new assets are discovered after closing a bankruptcy case, the proper procedure is to apply to the bankruptcy court to reopen the case to administer the assets. Limitation applies only to actions to enforce causes existing at the time of bankruptcy. It does not apply to assets not disclosed at the time the bankruptcy petition was filed, and therefore there is no ground for finding of laches or abandonment of the

property. Appellants knew of the bankruptcy and that this asset was not scheduled. Even if there is no intentional or fraudulent concealment, the bankrupt can hardly plead the equitable defense of laches under those circumstances. *Tuffy v. Nichols*, 120 F.2d 906, 909 (2d Cir. 1941).

4. Third Circuit

It is imperative to note the importance of the Bankruptcy Code's disclosure requirements and that appellants signed the schedules under penalties of perjury. Furthermore, whether or not appellants' initial failure to schedule their assets was intentional, the glaring fact remains that appellants failed to list their state court action at any time during the bankruptcy proceedings. Thus, Appellants' "silence" is "deafening." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 416 (3d Cir. 1988).

5. Sixth Circuit

When reviewing an order of a bankruptcy court on appeal from a decision of a district court, we review the bankruptcy court's order directly and give no deference to the district court's decision. We review the bankruptcy court's findings of fact under the clearly erroneous standard, asking only whether we are left with a definite and firm conviction that a mistake has been committed. We review conclusions of law made by the bankruptcy court de novo. *In re Hamilton*, 540 F.3d 367, 371 (6th Cir. 2008).

The trustee in bankruptcy, with approval of the bankruptcy court, may elect to abandon assets of the bankrupt. Following abandonment title revests in the bankrupt. However, this doctrine has no application to unscheduled assets of which the trustee was ignorant and had no opportunity to make an election. When new assets are discovered following the close of a bankruptcy case, the proper procedure is to apply to the bankruptcy court to reopen the case pursuant to Bankruptcy Rule 515, for administration of the assets. This procedure should have been employed by Scharmer if he desired to acquire title to the unscheduled assets of his bankrupt corporation. The bankruptcy court could then have exercised its discretion as to whether to reopen or decline to reopen the case. If the case is reopened the bankruptcy court would then have an opportunity to appraise the unscheduled assets and decide whether they should be administered or abandoned. But this procedure was not followed. *Scharmer v. Carrollton Mfg. Co.*, 525 F.2d 95, 98-99 (6th Cir. 1975); citing *Lasater, Id.*

6. Seventh Circuit

The Bankruptcy Court has the authority to reopen a bankruptcy estate to administer unscheduled assets. The court's authority, or jurisdiction, is found in Bankruptcy Act as amended in 1938, Title 11 U.S.C. § 11(a)(8), which provides that a court of the United States (as a court of bankruptcy) is vested with original jurisdiction in proceedings to "reopen estates for cause shown." No limitation is placed upon the time to

do so. A trustee may abandon scheduled, but not unscheduled, property, as it is not discernible how the trustee can abandon property which he never found and which ownership the bankrupt stoutly denied. *In re Thomas*, 204 F.2d 788, 790-91, 793 (7th Cir. 1953).

7. Eighth Circuit

For property to be abandoned by operation of law, pursuant to section 554(c), the debtor must formally schedule the property. It is not enough that the trustee learns of the property through other means; the property must be scheduled pursuant to section 521(1). It is clear that a potential claim was never scheduled. Therefore, the claim could not be abandoned by operation of law. *Vreugdenhill v. Navistar Intern. Transp. Corp.*, 950 F.2d 524, 526 (8th Cir. 1991).

A plaintiff has a duty to disclose a lawsuit as an asset. Failure to reflect the lawsuit in the bankruptcy case is breach of duty resulting in inconsistent positions under oath, and the court can infer the requisite intent to make a mockery of the judicial system. *Slater v. US Steel Corp.*, 820 F.3d 1193, 1199 (11th Cir. 2016).

Interim Conclusion

It is essential to emphasize the Bankruptcy Code's disclosure requirements and that Respondents signed the Bankruptcy Petition under penalties of perjury.

CONCLUSION

A Petition for Writ of Certiorari will be granted when a United States Court of Appeals has entered a decision in conflict with the U.S. Supreme Court or circuit courts of appeals on the same important matter. Such deviation from the accepted course of judicial proceedings requires the Supreme Court to exercise its supervisory power.

As detailed above, the Ninth Circuit Court of Appeals has jurisdictionally divorced itself from the American judicial system by abandoning the historical precedents defining notice as an elementary and fundamental requirement of due process, while requiring that the notice apprises all interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane, Id.*, at 314.

Respondents have knowingly and intentionally refused to notice Petitioner of the Partnership Bankruptcy Case and the Order to Dismiss it, as a result of which the Order is void *ab initio*, pursuant to FRCP 60(b)(4), which permits a motion to vacate a void order at any time.

Based on the foregoing points and authorities, establishing the irreconcilable conflict between the Ninth Circuit and the entire American judicial system, Petitioner Shmuel Erde, representing himself in pro

se, respectfully requests the U.S. Supreme Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,

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