

22-1182

No. 22-A410

Supreme Court, U.S.

FILED

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IN THE
Supreme Court of the United States

ROBERT L WALKER. et al,
Petitioners,
v.

K. DRAKE OZMENT, OZMENT LAW P.A., Kenneth
Drake Ozment., Barry S Mittelberg, Barry Steven
Mittelberg, BARRY S MITTELBERG P.A., et al
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Robert L. Walker
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Petitioners'

Date: 12th May 2023

QUESTIONS PRESENTED

Whether the 11th Circuit Court of Appeals Mandate infringe on the Fourteenth Amendment and imposes restrictions as to U.S. Code: *Title 11, SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE (§§ 1301 – 1308) and SUBCHAPTER II—THE PLAN (§§ 1321 – 1330)*, on the exercise of discretion when their opinions conflicting in nature have created premature judgments with judicial overreach as to not “safeguarding not only ongoing proceedings, but potential future proceedings,” Klay, 376 F.3d at 1099, as well as to “protect or effectuate” their prior orders and judgments in conflict with 11 U.S.C. §521 and US Bankruptcy Court of Florida Southern Division Local Rule 2090-1(D)(E), in err citing *Erickson v. Pardus, 551 U.S. 89, 94 (2007)*, *Neidich v. Salas 783 F.3d 1215, 1216 (11th Cir. 2015)* and *Chambers v. NASCO, Inc, 501 U.S. 32, 45 (1991)*

RULE 29.6 STATEMENT

Petitioners' Robert L Walker, has no parent companies or subsidiaries, and no public company owns 10% or more of its stock.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

United States Court of Appeals for the Eleventh
Circuit Docket No. 21-10207 *Robert L Walker, et al, v. BARRY
S MITTELBERG P.A., Barry S Mittelberg.,etal*

Date of Final Judgment: None and Mandated None

United States Court of Appeals for the Eleventh
Circuit Docket No. 21-10205 *Robert L Walker, et al, v. BARRY
S MITTELBERG P.A., Barry S Mittelberg.,etal*

Date of Final Judgment: October 25, 2022

United States Court of Appeals for the Eleventh
Circuit Docket No. 21-12114 *Robert L Walker, et al, v. K.
DRAKE OZMENT, OZMENT LAW P.A.,etal*

Date of Final Judgment: September 27, 2022

RELATED PROCEEDINGS CONTINUED

United States Court of Appeals for the Eleventh
Circuit Docket No. 21-13937 *Robert L Walker, et al, v.*

K. DRAKE OZMENT, OZMENT LAW P.A., et al

Date of Final Judgment: October 6, 2022

United States Court of Appeals for the Eleventh
Circuit Docket No. 22-10716-JJ *Robert L Walker, et al, v.*

BARRY S MITTELBERG P.A., Barry S Mittelberg., et al

Date of "Moot" Order: 2, 2022

United States District Court for the Southern
District of Florida Docket No. 9:20-cv-81366-WPD

*Robert L Walker, et al, v. BARRY S MITTELBERG P.A., Barry
S Mittelberg., et al*

Date of Final Judgment: January 15, 2021

v
RELATED PROCEEDINGS CONTINUED

United States District Court for the Southern
District of Florida Docket No. 9:21-cv-80537-AMC
*Robert L Walker, et al, v. K. DRAKE OZMENT, OZMENT LAW
P.A., et al*

Date of on Stay pending Judgment: June 24, 2021

United States District Court for the Southern
District of Florida Docket No. 9:21-cv-80568-AMC
*Robert L Walker, et al, v. K. DRAKE OZMENT, OZMENT LAW
P.A., et al*

Date of Judgment without prejudice: November 11, 2021

United States District Court for the Southern
District of Florida Docket No. 9:21-cv-80855-AMC
*Robert L Walker, et al, v. K. DRAKE OZMENT, OZMENT LAW
P.A., et al*

Date of Judgment without prejudice: February 4, 2021

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OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals appears in the Appendix (“App.”) at 1a-19a to this Petition, The order of the United States District Court for the Southern District of Florida, dated November 29, 2021, granting the Order Staying Case Pending Appeal and Administratively Closing Case, at [App.17a-19a].

STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals entered its opinion on December 2, 2022. [App.14a-15a], September 27, 2022. [App.1a-9a] and October 26, 2022. [App.9a-12]. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND JUDICIAL RULES INVOLVED

U.S. Const. amend. V The Due Process Clause of the Fifth Amendment to the United States Constitution provides in pertinent part as follows: No Person shall be . . . deprived of life, liberty, or property, without due process of law . . .

U.S. Const. amend. XIV § 1 The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides in pertinent part as follows: nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

Federal Rules of Civil Procedure 60(b)

Extraordinary Relief as to the exceptional circumstances, for extraordinary relief and remedy Pursuant to Rule 60(b)(6). Pursuant to Rule 60(b)(6)., while an extraordinary remedy may be invoked only upon a showing of exceptional

*circumstances, and that, absent such relief, an extreme and unexpected **hardship** will result. SEC v. N. Am. Clearing, Inc., 656 F. App'x 947, 949 (11th Cir. 2016) (citation omitted). Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316-17 (11th Cir. 2000)*

STATEMENT OF THE CASE

A. Proceedings in the District Court

On the 31st of January 2020 the Petitioner, filed a Petition for a Chapter 13 Bankruptcy Protection with the assistant of retained Counsel K. DRAKE OZMENT, OZMENT LAW P.A., Kenneth Drake Ozment. That petition was filed as to the Injuries that was sustained of a Catastrophic Workman's Compensation 3rd Party Incident, through the Scope of Employment Injuries. That incident that has now Become Malicious Injuries in Relations to Employers, Insurance Risk Carriers Companies Bad Faith State Matters that are allowed to be fully adjudicated through the State arena, then Removed to Federal Jurisdiction making all previously matters **Moot** while allowing the avoidance of Damages

that creates an infinite Litigation threshold that pushes and Injured United States Workers to Seek ERISA Benefits, Early Social Security Benefits, Petitions for Bankruptcy Protection. In turn, Governmental agencies are then allowed to seize the allocation of Wealth and Assets, while denying redress through due process and rewarding the protecting of the same parties that are the Authors of the Damages that are continuing in Nature.

Former Employer, The United Parcel Service Inc and their Insurance Carrier Liberty Mutual Insurance Company, Liberty Mutual Group and Liberty Mutual Holdings Along With Third(3rd) Party Corporation, Kone Elevator, Kone Inc., Kone Holdings Inc., and their Insurance Risk Carrier Liberty Mutual Insurance Company, Liberty Mutual Group and Liberty Mutual Holdings are the common nucleus of the litigation matters.

B. The Court of Appeals' Affirmance

The Court of Appeals for the Eleventh Circuit affirmed, finding in pertinent part, as follows: At least some of these are collateral matters. Former clients are

entitled to records from former counsel, for example, no matter how the suit for which they hired counsel plays out. The district court thus could, in theory, grant effectual relief on at least one of debtors' motions: it could order Ozment Law to turn over certain records. Debtors' appeal, therefore, isn't moot. [App.5a-6a].

STATEMENT OF FACTS

*In: Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) makes it perfectly that states.. “bankruptcy, gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt”, allowing the opportunity for a “Fresh Start”. The district court with abuse of discretion and judicial over reach and prematurely Issued Three(3) Conflicting Opinions in err on the 25th of October 2022, in an opinion reported at 2022 WL 4477259, at *1, the 6th of October 2022 in an opinion reported at 2022 5237915, at *1, and the 29th of September 2022 in an opinion reported In re Walker, No. 20-10507, in which those opinions conflicting in*

nature have created premature judgments with judicial overreach as to not “safeguarding not only ongoing proceedings, but potential future proceedings,” Klay, 376 F.3d at 1099, as well as to “protect or effectuate” their prior orders and judgments, Wesch v. Folsom, 6 F.3d 1465, 1470 (11th Cir. 1993); see United States v. N.Y. Tel. Co., 434 U.S. 159, 172, 98 S. Ct. 364, 372 (1977).

REASONS FOR GRANTING THE PETITION

The Eleventh USCA Judges JORDAN, NEWSOM LOGOA, presiding over directly related claims briefing before the Court, made in passing related to current, and raised briefly with supporting arguments or authorities that are currently “still” pending Appellate review under the same panel JORDAN, MEWSOM, LOGOA. The Hon. Rodney Smith of the USDC of Florida Southern Division under Appellate Jurisdiction in addition to and Lower State of Florida Judge Daryl Eisenhower also have jurisdiction over the briefing of related matters that JORDAN, NEWSOM and LOGOA without jurisdiction,

opinioned on, causing abuse of discretion and judicial over reach conflicting with *Barton v. Barbour*, 104 U.S. 126, 127 (1881) *Doctrine*, *Carter v. Rodgers*, 220 F.3d 1249, 1252–53 (11th Cir. 2000) and *Seminole Tribe of Florida v. Florida*. 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996). “The Eleventh Circuit Court of Appeals panel JORDAN, NEWSOM and LOGOA” abused its discretion with erred by taking jurisdiction over State matters and matters tolling under Appellate Review under the jurisdiction of Three Jurisdictions and relying on *Neidich v. Salas*, 783 F.3d 1215, 1216 (11th Cir. 2015), *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) and *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014), Conflicting with *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934), *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993); and *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172, 98 S. Ct. 364, 372 (1977)

The Applicants cannot abandon any claim not briefed before this Court, made in passing, or raised briefly without supporting arguments or authority as the

matters are still under briefing with several arguments and authorities under State PRE-TRIAL and Florida USDC Appellate Review. The Courts Three Opinions cause conflict deeming issues not briefed on appeal as abandoned, violating the *Rooker-Feldman Doctrine* and 14th amendment of right to due process as matters are still before the Court, tolling with issues that are brief and still pending before the court in separate mattes in which the Applicants placed the court on notice in which after their Opinions have since then ruled on the Notice of related case stating “To the extent any of the various grievances and requests for relief that Walker and Peele raise on appeal are collateral matters, those arguments and requests for relief are outside the scope of this appeal”, relying on *In re Donovan*, 532 F.3d 1134, 1136 (11th Cir. 2008) and *Erickson v. Pardius*, 551 U.S. 89, 94 (2007). On the 10th of August 2022 prior to the Courts Opinion the issues before the court where denied a related cases consolidation as to jurisdiction of related issues.

The Eleventh USCA issued an unusual amount of jurisdictional questions and denied all jurisdiction, however soon thereafter the Applications matters were tolling under the jurisdiction of the State, set for Pre-Trial and after the United States of America removed the matters, rendered Three Opinions and a Denial for a Stay on the 7th of November 2022, as there will need to render an additional Two(2) more Opinions as the matters that were not abounded have been briefed and is pending briefing on the 14th of December 2022. The Applicants State Matters which are still pending and is awaiting Remand once the JORDAN, NEWSOM, and LOGOA render their decision after briefing. The Applicants PRE-TRIAL in related stated matters that has since been removed from State Court by party Respondents in a related matter that is currently tolling under appeal in the Eleventh Circuit with the same panel of JORDAN, NEWSOM, LOGOA that have rendered a Pre Mature opinion and Judgment as these matters have been on appeal for over seventeen months with significance delay that has successfully prejudice the

Applicants as the tolling issues which have been briefed on appeal and not abandoned as the matters are currently being heard by several jurisdiction, making the Court's order not only an abuse of discretion with judicial overreach, but a violation of the Equal Protection Clause and the 14th amendment of Due Process but not limited to.

I. THERE IS NO CONSTITUTIONAL BASIS TO EXERCISE OF PERSONAL DISCRETION JURISDICTION OVER U.S. Code: Title 11, SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE (§§ 1301 – 1308) and SUBCHAPTER II—THE PLAN (§§ 1321 – 1330) THAT IS INCONSISTENT WITH 11 U.S.C. §521 and US Bankruptcy Court of Florida Southern Division Local Rule 2090-1(D)(E),

The Petitioners were not given “as far in advance of trial, and as far in advance of any pretrial ‘critical stage,’ as necessary to guarantee effective assistance at trial. Inasmuch as the role of counsel at the preliminary hearing stage does not necessarily have the same effect upon the integrity of the factfinding process as the role of counsel at trial. When the Petitioner Plan was confirmed on the 14th of July 2020 invoke the 11 U.S.

Code § 1327 - Effect of confirmation, which gave the provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

Subsection (a) binds the debtor and each creditor to the provisions of a confirmed plan, whether or not the claim of the creditor is provided for by the plan and whether or not the creditor has accepted, rejected, or objected to the plan. Unless the plan itself or the order confirming the plan otherwise provides, confirmation is deemed to vest all property of the estate in the debtor, free and clear of any claim or interest of any creditor provided for by the plan as 11 U.S. Code § 1301 - Stay of action against codebtor (a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—(1) such individual became

liable on or secured such debt in the ordinary course of such individual's business; or (2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title. Under the terms of the agreement with the codebtor who is not in bankruptcy, the creditor has a right to collect all payments to the extent they are not made by the debtor at the time they are due. To the extent to which a chapter 13 plan does not propose to pay a creditor his claims, the creditor may obtain relief from the court from the automatic stay and collect such claims from the codebtor, that was not the case the Petitioners were both under those protections such as the ones that afforded the Barry Steven Mittelberg who was in bankruptcy at the time of Retainment under Case *Barry S Mittelberg P.A (16-22322, (2016) (S.D.Fla.2016)*.

US Bankruptcy Court of Florida Southern Division Local Rule 2090-1(D) stated Attendance at Hearings Required for Debtor's Counsel, K. DRAKE OZMENT, OZMENT LAW P.A.,etal who made an appearance on behalf of a debtor must attend all hearings scheduled in the debtor's case that the debtor is required to attend under

any provision of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or order of the court, unless the court has granted a motion to withdraw pursuant to Local Rule 2091-1. In addition, *K. DRAKE OZMENT, OZMENT LAW P.A., et al* must be familiar with the facts and schedules and have met and conferred with the client prior to appearing as to being familiar with the client and the file, and may not use appearance counsel for any hearing unless (a) the client consents in advance to the use of the appearance attorney, (b) the client does not incur any additional expense associated with the use of an appearance attorney, (c) the appearance attorney complies with all applicable rules regarding disclosure of any fee sharing arrangements, and (d) appearance counsel is familiar with the debtor's schedules and statement of financial affairs and is otherwise familiar with the facts of the case. Even after, *K. DRAKE OZMENT, OZMENT LAW P.A., et al did adhere to US Bankruptcy Court of Florida Southern Division Local Rule 2090-1(E), by not* advising the debtor of, and assist the debtor in complying with, all duties of a debtor under 11 U.S.C. §521under the

petitioner matters shows the constant ineffective of counsel as to statements of The Former **USDC Chief Judge Paul G. Hyman, Jr.**, stated. ...“**You’re committing malpractice with your clients. If one of them come in here, I’m going to tell them to sue you. And I will put on the record, you are committing malpractice with your clients**”, in proceeding *Brown v. Merrill., et al.*, (9:2016-cv-81916)(S.D. Fla 2016).

CONCLUSION

When The Petitioner’s Filed their Notices of Appeals created an event of jurisdictional significance that confers jurisdiction on the appellate court and divests the trial court of its control over the aspects of the case involved in the appeals. See *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam). An Appeal from an order does not deprive the bankruptcy court of jurisdiction over all aspects of the case. *In re Strawberry Square Assocs.*, 152 B.R. 699 (Bankr. E.D.N.Y. 1993). The Eleventh USCA Judges JORDAN, NEWSOM LOGOA, grossly overreached as to them “only” retaining jurisdiction when (1) the matters were **“not”** related

to the issues involved in the appeal; (2) the order appealed was “not appealable” or frivolous; and (3) the court's action would “aid” in the appeal not were the mandated not “safeguarded not only to ongoing proceedings, but potential future proceedings,” Klay, 376 F.3d at 1099, as well as to “protect or effectuate” their prior orders and judgments, Wesch v. Folsom, 6 F.3d 1465, 1470 (11th Cir. 1993); and United States v. N.Y. Tel. Co., 434 U.S. 159, 172, 98 S. Ct. 364, 372 (1977). This Court should grant the petition, vacate mandate as premature, and or at minimum narrow, the mandate entered by the court of appeals, reverse the affirmed.

Dated: 22nd of April, 2023

Respectfully submitted,
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