No. 22-1229

In The
# Supreme Court of the United States

RONNIE D. WARD;
SHARON DENISE ALBRITTON WARD,

*Petitioners,*

v.

CROSS KEYS BANK;
CALDWELL BANK & TRUST COMPANY,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## BRIEF OF RESPONDENT CROSS KEYS BANK IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

1. Did the U.S. Fifth Circuit correctly hold that a bankruptcy court possesses "related to" subject matter jurisdiction under 28 U.S.C. § 1334 over a case removed from state court involving the Debtor in bankruptcy, its creditor, and guarantors, when (a) the bankruptcy schedules, to which neither the Debtor nor the Petitioners objected, and the proofs of claim filed, showed that there were assets of the bankruptcy estate and multiple creditors, and (b) when adjudication of the removed suit could conceivably affect the administration of the debtor's bankruptcy estate?

2. Did the U.S. Fifth Circuit correctly hold it was not clearly erroneous to find Petitioners had consented to the bankruptcy court's entry of a final judgment in the removed state court action when, among other things, the Petitioners failed to timely file, much less file at all, the statements that "shall" be filed under mandatory language of Fed. R. Bankruptcy Proc. 9027(e)(3) and 7012(b), in order to refuse to consent to the bankruptcy judge entering a final judgment?

3. Did the U.S. Fifth Circuit correctly hold there was no abuse of discretion in rejecting Petitioners' claims about a purported "bad faith" bankruptcy filing when (a) the "bad faith" issue was not part of the adversary proceeding but rather in the underlying bankruptcy case which is not encompassed in this Petition, and (b) when the Wards, while represented by counsel, failed to satisfy the procedural requirements to properly present these

**QUESTIONS PRESENTED** – Continued

arguments to the bankruptcy court, despite four separate orders advising them to correct various deficiencies?

4. May any of the Petitioners' "Questions Presented" that were not raised and briefed below be properly asserted here?

## RULE 29.6 STATEMENT

BSJ BANCSHARES, INC. is the sole owner and parent corporation of Respondent CROSS KEYS BANK. No publicly traded company owns more than 10% of the stock of BSJ BANCSHARES, INC.

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## INTRODUCTION

The Petition does not warrant this Court's review. There is no circuit split. There is no question of federal law that has not been but should be settled by this Court. *See* S. Ct. R. 10.

The Wards, the Petitioners, were guarantors of loans made to Karcredit, L.L.C. by Cross Keys Bank. A Louisiana state court suit was removed to federal court under 28 U.S.C. § 1452(a) after an involuntary bankruptcy proceeding was filed against Karcredit.

The bankruptcy court, the district court, and the U.S. Fifth Circuit all held that the removal was proper under 28 U.S.C. § 1334 "related to" jurisdiction because, among other things, there were claims in the removed state court suit by Karcredit and the Petitioners that were assets of the estate. Some of those assets exist because of unique provisions of Louisiana law. As the courts below explained, at the time of removal, it was conceivable that resolution of the claims in the state court suit could affect claims administration in the bankruptcy.

The bankruptcy court, the district court, and the U.S. Fifth Circuit all held that the Wards had consented to and not properly preserved their objection to the bankruptcy court's issuing a final judgment in the removed state court suit both by their failure to comply with the mandatory provisions of Fed. R. Bankruptcy Proc. 9027(e)(3) and 7012(b) and by their actions. The Wards' Petition, in essence, is asking this Court to overlook the mandatory language of these two

bankruptcy rules, even though the Wards at all times were not acting *pro se* and were represented by counsel.

The issue of an alleged "bad faith" filing of the involuntary bankruptcy is not properly before this Court, because this Petition arises not from Karcredit's bankruptcy case, but rather from the final judgment entered by the bankruptcy court in the removed case, an adversary proceeding.[1] That final judgment was affirmed by the district court[2] and by the U.S. Fifth Circuit,[3] which also denied rehearing and rehearing *en banc*.[4] Further, the lower courts held that the Wards forfeited these arguments by failing to raise the bad faith arguments in a procedurally adequate manner in the bankruptcy case, despite four separate orders of the bankruptcy court directing the Wards to correct various procedural deficiencies with their motion.[5]

The Wards' Petition contains mischaracterizations of the record and asserts arguments not raised below; these are pointed out in this opposition.

[1] ROA.4781-4785; Pet. App. 49a-53a.

[2] *See* written reasons for decision of the United States District for the Western District of Louisiana at Pet. App. 18a-48a, and an accompanying judgment at ROA.6662.

[3] *See* the unpublished, per curiam opinion of the U.S. Fifth Circuit at Pet. App. 1a-12a.

[4] *See* the per curiam opinion of the U.S. Fifth Circuit denying petition for rehearing *en banc* at Pet. Supp. App. 144a.

[5] Pet. App. 10a-11a.

## STATEMENT OF THE CASE

### 1. The Louisiana state court suit.

This case arises from a typical loan transaction. The Debtor, Karcredit, L.L.C., borrowed over $3.5 million from Respondent Cross Keys Bank. The loan was secured by (i) the guarantees of the Petitioners Ronnie Ward (a principal of Karcredit[6]) and his wife, Sharon, and of other guarantors, and (ii) additional collateral.

When Karcredit defaulted, Cross Keys Bank started foreclosure on its collateral, in which it had perfected Louisiana security interests, and also filed suit in Louisiana state court against Karcredit and the guarantors, including the Wards.

In the state court suit, both the Wards and Karcredit filed tort claims against Cross Keys Bank and others[7] seeking monetary damages and a set-off against their obligations to the bank.

The state court permitted the bank to foreclose on its collateral and a sheriff's sale was held. Under Louisiana law, a borrower such as Karcredit must receive

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[6] Ronnie Ward describes himself in court pleadings as the "managing member of Karcredit," ROA.2274, a position confirmed by the Karcredit operating agreement § 3.1(a). ROA.1663. Ronnie Ward owns 75% interest in Karcredit, ROA.1691, and in open court, his counsel confirmed that he controls Karcredit. ROA.3351:15-25, 3352:1-5.

[7] ROA.2097-2099, 2169-2171, 2195-2200, 2274-2291, 2316.

pre-sale notice,[8] and Karcredit never denied receiving that notice.

Under Louisiana law, a security interest, such as the one that secured the bank's loan to Karcredit, cannot encumber inchoate claims such as future tort claims.[9] Thus, the Louisiana security interest, which was perfected on October 6, 2017, could not attach to the tort claims raised in June of 2019 by Karcredit in the state court suit, and the sheriff's sale of the bank's collateral did not impact Karcredit's tort claims.

**2. The involuntary bankruptcy proceeding against Karcredit and the removal of the state court suit.**

While the state court suit was pending, the bank filed an involuntary bankruptcy proceeding against Karcredit (which never raised an objection to the filing[10]) and then removed all claims in the state court case to federal court pursuant to 28 U.S.C. § 1452(a) and "related jurisdiction" under 28 U.S.C. § 1334. This became an adversary proceeding in bankruptcy court.

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[8] La. Code of Civil Procedure 2721; La. Rev. Stat. 13:3852; and *Central Properties v. Fairway Gardenhomes, LLC*, 16-1855, (La. 6/27/17), 225 So.3d 441, citing and relying on *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983).

[9] *Conerly Corp. v. Regions Bank*, 668 F. Supp. 2d 816, 823 (E.D. La. 2009).

[10] ROA.1428-1435, 1418-1419.

The Wards and the Debtor, Karcredit, were represented by the same counsel in the state court suit,[11] and the Wards were represented by that same counsel in both the bankruptcy and adversary proceeding.[12]

Although the Wards' counsel had received the notice of removal that specifically referenced the requirements of Fed. R. Bankruptcy Proc. 9027(e)(3) for timely objecting to a bankruptcy court's ability to enter a final order,[13] and although the Wards filed responsive pleadings in the adversary proceeding, the Wards never complied with the mandatory provisions of either Fed. R. Bankruptcy Proc. 7012(b)[14] or 9027(e)(3)[15]

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[11] ROA.2169-2171, 2274-2275 (showing filings in the state court suit on behalf of the Wards and Karcredit by attorney Mr. James. A. Rountree).

[12] ROA.1809 (a motion filed in the bankruptcy case on behalf of the Wards by attorney Mr. James A. Rountree); ROA.2567 (a motion filed in the adversary on behalf of the Wards by Mr. Rountree).

[13] ROA.2548-2550, 1988-2015.

[14] Fed. R. Bankruptcy Proc. 7012(b), emphasis supplied:

> (b) F.R.Civ.P. applies in adversary proceedings. A responsive pleading ***shall include*** a statement that the party *does or does not consent to entry of final orders or judgment by the bankruptcy court.*

[15] Fed. R. Bankruptcy Proc. 9027(e)(3), emphasis supplied:

> Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, ***it shall state that the party does or does not consent to entry of***

concerning their consent or refusal to consent to the bankruptcy judge rendering a final judgment in the proceeding.

### 3. The district court refused to withdraw the reference to the bankruptcy court and the bankruptcy court denied remand and abstention.

Holding that the Wards had waived their argument about improper removal by failing to raise that issue in their initial brief, the district court denied their request to withdraw the reference.[16]

The bankruptcy court denied the Wards' motions to remand the adversary proceeding[17] or abstain[18] and denied their motion for a new trial for reasons that included their failure to properly "meet the appropriate pleading standards";[19] to serve all parties with the

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***final orders or judgment by the bankruptcy judge.*** A statement required by this paragraph ***shall be signed*** pursuant to Rule 9011 and ***shall be filed*** not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph ***shall mail a copy*** to every other party to the removed claim or cause of action.

[16] District court 8/26/20 ruling and order, ROA.2619, 2613-2620.

[17] ROA.2592-2598.

[18] ROA.2567-2573.

[19] *See* ROA.2950, 2953, 2958.

motions to remand and abstain;[20] and to comply with court procedures concerning evidence presentation.[21]

At the hearing on the motions, the Wards' counsel conceded that the bankruptcy court, at minimum, had "related to" jurisdiction on claims between Cross Keys Bank and Karcredit and that it was "eminently conceivable" at the time the removal of the state court suit that the bankruptcy estate had causes of action to assert which could bring additional assets into the estate.[22]

The bankruptcy court found "related to" jurisdiction, holding that removal of the state court suit was proper. Its reasons included that there were six other creditors besides Cross Keys Bank,[23] and if the bank "collects from the guarantors, Mr. and Mrs. Ward, its proof of claim will be reduced and there will be a larger pot left to disburse to the six remaining creditors of the debtor."[24]

### 4. Karcredit fails to file schedules; Cross Keys Bank files schedules pursuant to court order.

The Wards' Petition (at p.4) is incomplete and inaccurate concerning how the bank came to file the bankruptcy schedules.

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[20] *Id.*

[21] ROA.2931-2932, 2942-2943.

[22] ROA.2937, 2934-2937.

[23] ROA.3363-3364.

[24] ROA.3363-3364.

Because Karcredit failed to timely file schedules and because Ronnie Ward, who controlled Karcredit, failed to submit schedules, the bankruptcy judge ordered Cross Keys Bank to file the schedules and other required information under Fed. R. Bankruptcy Proc. 1007(k).[25]

Pursuant to the bankruptcy court's order, the bank filed the schedules, listing among the estate's assets a claim against Ronnie Ward for over $142,700.00 because of his misappropriating and diverting funds from both Karcredit and Cross Keys Bank.[26] The schedules were created utilizing Karcredit's own records, which the bank had obtained[27] in pre-bankruptcy proceedings,[28] a fact that the Wards did not dispute.[29]

Contrary to the Petitioners' representations in their Petition,[30] the schedules Cross Keys Bank filed in the Karcredit bankruptcy case were sworn to and filed under penalty of perjury.[31]

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[25] ROA.1443-1444.

[26] ROA.1606, 1624.

[27] In the bankruptcy court, Cross Keys maintained that while it seized certain Karcredit records before the bankruptcy was filed, it also returned a copy of the Debtor's records to the Debtor before the bankruptcy, pursuant to an agreement, which should have allowed the Debtor to complete and file its own schedules. ROA.1633, 1640-1648, 1737:3-17.

[28] ROA.1737:3-17, 1742:8-11, 1743-1744, 1745-1746.

[29] ROA.1742, 1744, 2891.

[30] Pet. at 7, 8, and 9.

[31] ROA.1622, 1636.

Neither Karcredit nor the Wards objected to the schedules or to any proofs of claim.[32] Not only did the Wards' attorney concede he did not doubt the veracity of the schedules,[33] but he also used the contents of the schedules in his arguments for a new trial concerning the motion to abstain and motion to remand the state court suit.[34]

### 5. The Wards take affirmative action in the removed state court suit and judgment is entered against them.

The Wards took affirmative action invoking the bankruptcy court's jurisdiction in the removed suit, including seeking and receiving permission to file an amended answer attempting to reduce or eliminate their liability as guarantors,[35] opposing a motion to

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[32] Pursuant to Rule 3001(f) of the Federal Rules of Bankruptcy Procedure, a proof of claim constitutes *prima facie* evidence of the validity and amount of a claim.

[33] Transcript of November 12, 2020 hearing, ROA.3352:25, 3353:1-4.

[34] Wards' counsel stated: "And that statement is borne out by the claims register and the Schedules that were filed in this case." ROA.3339:10-11.

[35] Wards' motion for leave to file an amended answer, along with the proposed amendment, ROA.2903-2912. The bankruptcy court granted this motion. *See* ROA.3215. The amended answer appears at ROA.3219-3222.

dismiss a person from the removed suit,[36] and participating in a consent judgment.[37]

In none of these documents did the Wards include a statement that they did or did not consent to entry of final orders or judgment by the bankruptcy court as required by Fed. R. Bankruptcy Proc. 7012(b).[38]

### 6. The "bad faith" filing was in the bankruptcy case, not in the adversary proceeding (the removed state court case).

The Wards' complaint about the alleged "bad faith" filing of the involuntary bankruptcy occurred in the bankruptcy case itself, via a motion to dismiss the bankruptcy, not in the adversary proceeding containing the removed state court case.

The Wards' motion in the main bankruptcy case (not the adversary proceeding) was dismissed with prejudice after they failed to respond to four separate orders of the bankruptcy court directing the Wards to

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[36] ROA.3079-3086. This motion was brought by Ronnie Ward and Car King; Sharon Ward is not listed as a mover on these pleadings. The bankruptcy court denied the motion. 11/9/2020 Order, ROA.3207-3208.

[37] ROA.3445-3447.

[38] ROA.2903-2912, 3215, 3219-3222. Under Fed. R. Bankruptcy Proc. 7012(b), responsive pleadings "shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court."

correct various procedural deficiencies with the motion.[39]

The only issue the U.S. Fifth Circuit dealt with below, and thus the only issue the Petition can properly raise, arise from rulings in the adversary proceeding.

**7. The judgments below.**

After the bankruptcy court entered the final judgment in the adversary proceeding,[40] the Wards appealed to the district court, which affirmed the bankruptcy court's ruling, holding that the numerous procedural deficiencies in the Wards' appeal[41] justified dismissal.[42]

The district court went further and held that dismissal of the appeal and affirmance of the bankruptcy court's ruling was justified on the merits for numerous reasons, among which were: (a) the "existing record and uncontested factual findings,"[43] including that the Wards had consented to the bankruptcy court issuing a final judgment;[44] (b) the bankruptcy schedules, to which the Wards did not object or challenge, established that Karcredit had multiple creditors and

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[39] ROA.1853-1854.

[40] Pet. App. at 49a-53a.

[41] Wards' appellants' brief to the District Court, ROA.5719-5748; Cross Keys Bank's appellee brief to the District Court, ROA.5752-5816.

[42] Pet. App. at 36a-37a.

[43] Pet. App. at 40a.

[44] Pet. App. at 43a-48a.

assets,[45] including Chapter 5 avoidance actions;[46] (c) not only did the Wards have "several opportunities to state that they did not consent to final orders or judgments,"[47] but they also "elected not to take advantage of those opportunities";[48] and (d) Ronnie Ward submitted a consent judgment in the adversary proceeding that did not "preserve any objection to jurisdiction"[49] while Sharon Ward, who was represented by the same counsel as Ronnie Ward, did not object to the entry of the consent judgment.[50]

The Fifth Circuit affirmed the rulings below and denied rehearing,[51] finding that the adversary proceeding (the removed Louisiana state court case) was "related to" the bankruptcy case, satisfying the jurisdictional requirements of 28 U.S.C. § 1334.

The Fifth Circuit rejected the Wards' argument that this was a bankruptcy estate with no assets, stating that "the estate is not empty. At the very least, the bankruptcy schedules confirm that the Karcredit estate contained a fraudulent-conveyance claim against Ronnie Ward at the time of removal."[52] The Fifth Circuit did not reach the additional state law issue Cross

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[45] Pet. App. at 40a.

[46] Pet. App. at 40a-42a.

[47] Pet. App. at 47a.

[48] Pet. App. at 47a.

[49] Pet. App. at 48a.

[50] Pet. App. at 48a.

[51] Pet. App. at 4a and Supp. App. 144a.

[52] Pet. App. at 6a-7a.

Keys Bank had briefed: that unique Louisiana law prohibits giving a security interest in a future tort claim, so that the 2017 security interest could not have encumbered or affected Karcredit's 2019 tort claims in the removed state court suit and thus a sheriff's sale of the security interest could not have stripped Karcredit of this asset.

The Fifth Circuit also held the lower court's holding was not clearly erroneous on the "deeply factbound analysis"[53] on whether the record supported the bankruptcy court's finding that the Wards had consented to the issuance of a final judgment by the bankruptcy judge in the adversary proceeding.

The Fifth Circuit noted that the alleged "bad faith" filing issue was not properly before it, having been forfeited by the Wards because that arose in the main bankruptcy case, not the adversary proceeding.

The Fifth Circuit also pointed out that the Wards had forfeited their arguments regarding the motion to dismiss the alleged "bad faith" filing of the bankruptcy case when they failed to comply with local rules and bankruptcy court orders to properly prosecute the motion in the bankruptcy court.[54] The Fifth Circuit explained that the "statutory provision that governs bad faith filing in Chapter 7 cases is permissive. *See* 11 U.S.C. § 707(a) ("The court *may* dismiss a case under

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[53] Pet. App. at 8a-9a.

[54] Pet. App. at 10a-11a.

this chapter only after notice and a hearing and only for cause" (emphasis added)) . . . and no permissive provision is jurisdictional."[55]

**8. Further corrections to misstatements of fact.**

In addition to the matters noted above, the following misstatements are set forth pursuant to S. Ct. R. 15:

- The Petition's aspersions concerning the purported lack of impartiality of the bankruptcy judge[56] are countered by the record, where the Wards' counsel expressly denied he was suggesting that the judge was acting in a biased manner,[57] and by the bankruptcy judge advising counsel he could file a motion to disqualify if he believed there were grounds for such relief,[58] an action that the Wards' counsel never took. Further, these issues were never presented to the Fifth Circuit, and thus cannot be raised here.[59]

- The Petition incorrectly alleges that, during the hearing on the motions to remand and abstain in the adversary proceeding, the bankruptcy court did not "want to consider

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[55] Pet. App. at 11a-12a.

[56] Pet. at 4, 12.

[57] ROA.3334:19-22.

[58] ROA.3335:2-4.

[59] *Neely v. Martin K Eby Const. Co*., 386 U.S. 317, 330 (1967); and *U.S. v. Lovasco*, 431 U.S. 783, 788 n.7 (1977).

evidence, at least from the Wards."[60] Not only did the bankruptcy court explain that the Wards' failure to comply with court procedures to present evidence at that hearing barred it from introducing evidence,[61] but also this issue has been waived because it was not presented to the Fifth Circuit.

- The Petition's allegations concerning a judgment against seven defendants who purportedly did not consent[62] not only was not raised below in the Fifth Circuit, but none of these parties filed an appeal with the district court or the Fifth Circuit.

- The Petition makes a number of additional allegations that were not raised before the Fifth Circuit and thus cannot be raised here. These include allegations concerning a bankruptcy court status conference,[63] a failure of the district court to reconsider withdrawal of the reference after schedules were filed,[64] the purported gap between the filing of the bankruptcy and the filing of the bankruptcy schedules by Cross Keys Bank pursuant to court order,[65] the claim that the Wards were unaware of the sheriff's sale,[66] and the alleged

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[60] Pet. at 6.

[61] ROA.2931:24-25,2932:1, 2942-2943:1-5.

[62] Pet. at 11-12 and n.9.

[63] Pet. at 4.

[64] Pet. at 5-6.

[65] Pet. at 14-15.

[66] Pet. at 7.

"stripping" of Ronnie Ward's counterclaim.[67] Not only is it improper to raise these issues here, but each statement is factually incorrect, as the record demonstrates.

- In the Petition, the Wards refer to the fraudulent-conveyance claim discussed by the Fifth Circuit as "some claim that a trustee could, *but did not*, assert." Pet. at 18 (emphasis supplied). This statement is factually incorrect. As shown on the public dockets, after oral argument before the Fifth Circuit, this precise claim was asserted by the Karcredit Chapter 7 trustee leading to a settlement that yielded a recovery for the estate.[68]



## REASONS FOR DENYING THE PETITION

The decision below presents no basis for review.

There is no split of authority among the courts of appeals on these matters. The Fifth Circuit's holding

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[67] Pet. at 12 and n.8.

[68] Assuming, arguendo, that this Petition was granted and the matter remanded for further review of the subject fraudulent-conveyance claim, this Court would find, contrary to the Wards' representations, such a claim was in fact brought and led to a recovery for the Karcredit bankruptcy estate. That action was filed in the bankruptcy court by the chapter 7 trustee for the Karcredit bankruptcy on August 4, 2022, and assigned adversary case number 22-03006. The motion to compromise and settle the claim for $8,500.00 was filed in the bankruptcy case, case number 20-30681, at docket number 87, on April 13, 2023, and the order approving the settlement was entered May 10, 2023, at docket number 89.

was based on the proper standard of review as well as proper statutory interpretation.

### 1. The Wards concede that the Fifth Circuit used the appropriate legal test to determine "related to" jurisdiction.

In their Petition and their pleadings in the Fifth Circuit, the Wards agreed that the proper standard to determine whether there was "related to" subject matter jurisdiction is set forth in *In Re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999),[69] which stated that a "proceeding is 'related to' a bankruptcy if the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." As *Bass* noted, the genesis of this standard was the Third Circuit's decision in *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984), which in turn was cited with approval by this Court in *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995).[70]

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[69] Pet. at 15-16, Wards' Fifth Circuit Appellants' Brief at 25.

[70] On pg. 21 and in footnote 17 of their Petition, the Wards erroneously rely on *Matter of FedPack Systems, Inc.*, 80 F.3d 207, 213-14 (7th Cir. 1996); and *Matter of Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987), for the proposition that the Seventh Circuit has adopted a standard for the "related to" jurisdictional analysis which differs from *Bass*. As explained in *Bush v. United States*, 939 F.3d 839, 846 (7th Cir. 2019), in fact, the Seventh Circuit agrees with *Bass*. *See Bush*, 939 F.3d at 846 (distinguishing *Xonics* and *FedPack*, describing the conceivable effect test of *Bass* as an *ex ante* versus *ex post* analysis, noting that "the nine circuits that have address that subject unanimously conclude that the *ex*

In the Fifth Circuit, the Wards also agreed that *Bass'* two-pronged test is the proper one.[71] That test is, for "jurisdiction to attach, the anticipated outcome of the action must both (1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate."[72]

In the Fifth Circuit, the Wards conceded that the first prong is met here.[73] Their sole argument on the second prong is that, when the Karcredit bankruptcy was filed, the entity allegedly had no assets because of the prior sheriff's sale of assets subject to a Louisiana security interest held by Cross Keys Bank.[74] This argument is erroneous as a matter of undisputed Louisiana state law as well as the information set forth in the undisputed bankruptcy schedules.

Louisiana, the only state that uses civil law and that did not adopt the common law,[75] has a unique and non-uniform version of article 9 of the Uniform Commercial Code. Louisiana's version does not permit

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*ante* perspective is the right one," and stating that the Seventh Circuit agrees with this analysis).

[71] Wards' Fifth Circuit Appellants' Brief at 25.

[72] *Bass*, 171 F.3d at 1022.

[73] Wards' Fifth Circuit Appellants' Brief at 28.

[74] Pet. at 18.

[75] *See Principal Health Care of Louisiana, Inc. v. Lewer Agency*, 38 F.3d 240, 245, n.6 (5th Cir. 1994): "Louisiana, being the only civil law jurisdiction among the fifty states, is unique in that its approach to solving most legal question."

encumbrance of inchoate assets, like future tort claims.[76] The bank's security interest was perfected in October of 2017. Therefore, as a matter of state law, the tort claims that Karcredit raised in June of 2019 in the state court suit could not have been subject to the bank's security interest and could not have been sold at the sheriff's sale. These claims continued intact and became assets of the Karcredit bankruptcy estate.

Moreover, under Chapter 5 of the Bankruptcy Code,[77] avoidance actions may be brought by the Debtor under both the Code and applicable non-bankruptcy law. The bankruptcy schedules disclose a more than $142,700.00 claim by Karcredit against Ronnie Ward and other entities for conversion of monies belonging to Karcredit.[78] Not only did neither Karcredit nor the Wards file a challenge to the schedules in either the adversary proceeding or in the bankruptcy

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[76] *See* L. David Cromwell, LOUISIANA SECURED TRANSACTIONS (Thomson Reuters), Section 5.95, entitled "Tort claims," stating (emphasis supplied) that, under Louisiana law, "a tort claim must be specifically described in a security agreement, and ***floating liens upon tort claims are not permitted***. La. R.S. 10:9-108(e), 10:9-204(b). This effectively means that ***a tort claim must be in existence at the time a security agreement is authenticated in order for a security interest to attach or to be perfected***. *See* La. R.S. 10:9-204, Louisiana Official Revision Comments – 2001; *Conerly Corp. v. Regions Bank*, 668 F. Supp. 2d 816, 826 (E.D. La. 2009).

[77] 11 U.S.C. §§ 501 et seq., including §§ 544 and 548.

[78] ROA.1606.

proceeding, but the Wards' counsel also stated he did not disagree with the schedules.[79]

This was far from an "assetless" bankruptcy. The Karcredit estate included not only the Karcredit tort claims in the state court lawsuit[80] but also Karcredit's conversion claim – a potential action under Chapter 5 of the Bankruptcy Code.[81]

Both prongs of the *Bass* test were indisputably met. There is no legal or factual merit to the Petition's claim that "related to" jurisdiction is lacking.

### 2. Parties may not avoid the mandatory provisions of the Federal Rules of Bankruptcy Procedure.

Fed. R. Bankruptcy Proc. 9027(e)(3) and 7012(b) are explicit and unequivocal.[82] A party seeking to prevent a bankruptcy court from issuing a final judgment "shall" make a timely filing. The Wards failed to comply with either rule.

This Court has held that when rules use the word "shall," this denotes a mandatory requirement. *See*, *e.g.*, *Griggs v. Provident Consumer Discount Co*., 459 U.S. 56 (1982) (Fed. Rule App. Proc. 4(a)(4) stating that

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[79] Transcript of November 12, 2020 hearing, ROA.3352:25, 3353:1-4; ROA.1600-1636 (the Karcredit bankruptcy schedules).

[80] ROA.1606, 2097-2099, 2274-2291, 2316.

[81] ROA.1606.

[82] The pertinent provisions of these Rules are quoted at footnotes 14 and 15, above.

a premature notice "shall have no effect" is mandatory and jurisdictional); *Maine Community Health Options v. United States*, ___ U.S. ___, 140 S.Ct. 1308, 1329 (2020), stating that the use of the word "shall" in a statute "is significant"; *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), stating that the word "shall" in a statute "normally creates an obligation impervious to judicial discretion."

At all times during the adversary proceeding, the Wards were represented by counsel. There is no basis to excuse their failure to comply with the mandatory requirements of Fed. R. Bankruptcy Proc. 9027(e)(3) and 7012(b). Their Petition should be denied.

### 3. The Wards' arguments about 11 U.S.C. § 509[83] were not briefed below and are also without merit.

11 U.S.C. § 509 deals with claims of co-debtors. This issue was not briefed below and cannot be considered here.

Moreover, there is nothing in § 509 that would eliminate the ability to remove a state court suit that involves a guarantor of a debtor.

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[83] Pet. at 19-22.

### 4. The Wards concede they failed to comply with the bankruptcy court orders requiring correction of procedural deficiencies concerning the motion on their bad faith argument.

The Wards concede they failed to comply with the Bankruptcy Court's orders regarding the procedural requirements for setting a hearing on their motion to dismiss the bankruptcy for an alleged bad faith filing.[84] They do not assert the Fifth Circuit applied incorrect legal standards in its decision on this point, much less that the application of those standards conflicts with the decision of any other court of appeals or raises any of the other compelling reasons for review.

Further, the motion to dismiss the involuntary bankruptcy filing was brought only in the main bankruptcy case, not in the adversary proceeding. Yet, the Fifth Circuit ruling on the adversary proceeding is the only one that can be the subject of this Petition; the issue has not been preserved for review.

### 5. The Wards do not deny that the "clearly erroneous" standard applies to review of factual findings concerning consent.

The Fifth Circuit held that both the district court and the bankruptcy court were not clearly erroneous in holding that the Wards had implicitly consented to the bankruptcy judge's issuance of a final judgment.[85]

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[84] Pet. at 24.

[85] Pet. App. at 7a-9a.

The Wards' Petition admits that the Fifth Circuit applied the correct rule of law.[86]

The record fully supports the bankruptcy court's and district court's rulings for the reasons set forth in those opinions.

## CONCLUSION

The Wards' petition for a writ of certiorari should be denied.

Respectfully submitted,

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[86] Pet. at 26.