

No. 22-345

In The  
SUPREME COURT OF THE UNITED STATES

PAUL SILADI,

*Petitioner,*

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
AS TRUSTEE FOR WAMU MORTGAGE PASS-  
THROUGH CERTIFICATE SERIES 2005-AR-6

*Respondent,*

On Petition For Writ Of Certiorari  
To The Connecticut Supreme Court

**PETITION FOR REHEARING**

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## PETITION FOR REHEARING

Petitioner Paul Siladi respectfully petitions for rehearing of this Court's January 9, 2023 Order denying his petition for a writ of certiorari.

### REASONS FOR GRANTING REHEARING

Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." Shortly after Mr. Siladi filed his petition he became aware of this Court's recent decision *Taggart v. Lorenzen*, S. Ct. 1795 (2019). That decision constitutes an ".intervening circumstance of a substantial effect," because it provides an additional and independent justification for this Court's review of the diverse and conflicting decisions as to the legal standards for holding a creditor in civil contempt when the creditor attempts to collect a debt in violation of a bankruptcy discharge order.

Two bankruptcy provisions apply. The first 11 U.S.C. section 524(a)(2) says that a discharge order "operates as an injunction" against commencement or continuation of an action, the employment of process or an act, to collect, recover or offset a discharged debt. The second section 105(a) authorizes a court to "issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title." The United States Congress specifically declared that the discharge of the bankruptcy court "operates as an injunction" barring any creditor from collecting any debt that has been discharged under

Section 524(a)(2). Further in Section 105 Congress granted bankruptcy courts broad discretion to enter any order “necessary” or “appropriate” to enforce the Code’s provisions. If a creditor is aware of the bankruptcy and violates the discharge the creditor is liable under Section 105. See *IRS v. Murphy*, 892 F. 3d 29, 38-39, (1<sup>st</sup> C. 2007). Congress did not include in section 524 any textural grounds (hooks) for courts recognizing “good faith” or “fair grounds” defenses to discharge by creditors.

The intent of Congress is that a discharge secures the debtors fresh start and that benefit would be impaired irrespective of the creditor’s rationale for violating the law.

Judicial authority should be uniformly exercised pursuant to Congressional intent and statuary law. This has not been the case in lower federal and state courts where there have been numerous judicial interpretations of Congressional intent as it applies to the bankruptcy code, *Taggart* being a prime example of that dilemma.

This Court’s *Taggart* decision was a firm step in the right direction in clarifying the quagmire as to the intent of Congress in Section 524(a)(2) and Section 105 of the Code. In those sections Congress prohibited all attempts to collect discharged debts not setting any subjective standard allowing “fair or “good faith” defenses to the discharge. The discharge order is premised on the Code as detailed in Sections 524(a)(2) and 523. Judicial authority here is exercised by

pursuant to Congress's express authority under Section 105 and construed to "carry out" the precise legislative commands in the Code. See *Law v. Siegal*, 571 U.S. 415, 420-421, (2014). The Code is specific as to the discharge and sets substantive legal boundaries, either the discharge was violated or it was not, there is no room for construing "ambiguities" in the code.

Here, the question becomes who is going to bear the consequences of a discharge violation, the creditor (Respondent) who violated the discharge or debtor ((Petitioner) who is protected by the Code, precisely for his protection from the creditor, for a fresh start. The code is inflexible as to a court's discretion whenever a creditor has some explanation for actually violating the discharge law. Any violation imposes real costs financially and emotionally that someone must incur; there is no basis for shifting those costs to the innocent party.

Petitioner as part of his petition for writ of certiorari submitted a copy of U.S. Bankruptcy Court Form 18 which granted petitioner discharge under section 727 title 11 U.S.C. on January 25, 2012, Pet. 2-3.

Respondent initiated the subject foreclosure action on April 15, 2013. Fourteen months after the Chapter 7 bankruptcy was granted. Thus all of the remedies sought by the respondent are post discharge and in violation of section 524(a)(2) and section 105(a) of the bankruptcy code. A creditors attempt to collect a discharged debt is subject to sanctions and as this Court has concluded in *Taggart* determined by

objective standards of civil contempt as to whether the creditors conduct is lawful under the discharge order.

Respondent was listed on the petitioner's schedule of creditors filing with the bankruptcy court and in the course of the bankruptcy filed a motion for stay with the bankruptcy judge. On April 20, 2013 respondent initiated the subject foreclosure action, supporting his action with an affidavit from Select Portfolio Systems, Inc. (SPS), the affiant swore that the petitioner (debtor) owed \$491,000 the debt had been accelerated and the principle and interest owed by the petitioner were past due plus additional servicing and attorney's fees. The respondent's attorney neglected to tell the court that the petitioner's obligation on the subject note had been discharged fourteen months earlier on January 20, 2012. Nearly four years later, after extensive litigation regarding discovery issues the respondent motioned the superior court for strict foreclosure submitting more affidavits from SPS including an updated affidavit of debt which calculated the accumulated debt "owed by Paul Siladi" on November 6, 2017 as \$648,671. And on November 27, 2017 the law firm of Bendett & McHugh submitted to the Connecticut Superior Court a request for fee of \$6,950 if a judgement of strict foreclosure enters and \$7,200 if a judgment of foreclosure by sale enters. The superior court on December 18, 2017 entered a judgement of strict foreclosure totaling \$661,083.15, granted attorney fees of \$6,950 (as requested by

Bendett & McHugh), appraisal fees of \$600.00, title fees of \$225.00, and the debt as calculated by SPS of \$654,083.00. Litigation continued and on October 12, 2021 the superior court re-entered the judgment of strict foreclosure without itemizing the new alleged debt or other fees. It is clear from the evidence that these actions occurred after the granting of the Chapter 7 bankruptcy and therefore violate the discharge order per section 524(a)(2) of the Code. The respondent in total has claimed and the superior court has awarded nearly \$270,000 in post discharge fees.

#### CONCLUSION

Congress in section 524(a)(2) of the bankruptcy code was very clear as to the purpose of a chapter 7 bankruptcy discharge which is to secure the debtor a fresh start and that benefit is damaged irrespective of the creditors rationale for violating the law. Further, Congress in section 105(a) granted the bankruptcy court broad discretion to enter any order “necessary” or “appropriate” to enforce the Code’s provisions. This Court in *Taggart* bolstered the judicial understanding and interpretation of Congress’s intent.

This court in *Taggart* unanimously decided the circumstances under which a creditor can be held responsible (liable) for violation of a discharge order, and the court’s statutory ability to assess sanctions for violations of the Code. Petitioner’s case is very similar to *Taggart* in that respondent (creditor) has claimed and been awarded by the superior court, including as in the *Taggart* case, significant legal fees

nearly two years after the chapter 7 discharge order of the bankruptcy court.

For the foregoing reasons and those stated in the petition for writ of certiorari this Court should grant a rehearing.

Respectfully submitted,

  
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