Supreme Court, U.S.
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No. 22-408

In the Supreme Court of the United States

ALICE GUAN,
Petitioner,

v.

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

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QUESTIONS PRESENTED

Eighty (80) Equity Security Holders each owning a house valued between $500,000-$850,000 control the HOA. After Justin Luna met with the 80 Equity Security Holders to convince them go bankrupt, 79 equity security holders voted to go ahead with it, and each equity security holder put forth $312.5 to pay Justin Luna to file case 6:20-bk-01346. App.13a-20a, App.100a-165a.

Alice filed case 6:20-ap-55 to request Judge Karen Jennemann, in this case or take action in case 6:20-bk-01346, to compel assets and property information (such as values of HOA common properties, all of the 79 houses and other assets and income of the 79 equity security holders) and to prevent 79 equity security holders from selling any assets or to take new debts without court's approval.

Judge Jennemann first confirmed Debtor's plan then dismissed case 6:20-ap-55 with prejudice. District court Judge Wendy Berger affirmed on a different ground by stating "A reviewing court may affirm on any ground" and she only reversed the basis for dismissal and directed Judge Jennemann use the basis of "fails to state a claim upon which relief can be granted." App.3a-10a. Alice appealed, which Eleventh Circuit dismissed for lack of jurisdiction by ruling district court's order is not a final order because "bankruptcy court will have to exercise "significant judicial activity" on remand." App.1a-2a. The questions presented are:

1. Whether district court's order dismissing case 6:20-ap-55 with prejudice is a final order that Eleventh Circuit must review.

2. Whether both district court's order and bankruptcy court's order denying with prejudice a motion to compel critical assets information and denying the protection of bankruptcy estate under case 6:20-bk-01346 are final orders that Eleventh Circuit must review.

3. Whether bankruptcy court's only activity in remand of merely replacing basis for dismissal with "fails to state a claim upon which relief can be granted" is "significant judicial activity" that could warrant the Eleventh Circuit to deny its jurisdiction of the appeal.

4. Whether 11th Circuit's using "significant judicial activity" test without specificity as to what those activities are in its process to determine if an order is final order or not is a permitted way to determine order's finality.

PARTIES TO THE PROCEEDINGS

Petitioner

ALICE GUAN

is a creditor in the bankruptcy case 6:20-bk-01346. She is also the plaintiff in the adversary proceeding 6:20-ap-55 which is an associated with case 6:20-bk-01346.

Respondent

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.

which owns common property in Seminole county with the following parcel ID (based on Seminole County (Florida) government record) that have values:

- 36-21-31-502-0C00-0000
- 36-21-31-502-0B00-0000
- 36-21-31-502-0D00-0000
- 36-21-31-502-0F00-0000
- 36-21-31-502-0E00-0000
- 36-21-31-502-0G00-0000
- 36-21-31-503-0D00-0000
- 36-21-31-504-0G00-0000

Ellingsworth Residential Community Association, Inc. is consisted of and is controlled by the 80 equity security holders whose names and 80 house addresses (at the time when bankruptcy case 6:20-bk-01346 was filed on March 3, 2020) are as shown on App.148a-164a. But, since March 3, 2020, 10 of the original 80 equity security holders have sold their houses to new

owners (who then became the equity security holders) (also based on Seminole County (Florida) Government records):

- Susan Overbaugh bought at $617,200 and sold the house for $680,000.
- Steven M Miller bought at $438,500 and sold the house for $499,500.
- Reinier A Kobus bought at $623,000 and sold the house for $899,000.
- Enio C Soares De Silva bought at $545,000 and sold the house for $735,000.
- Ming Liu bought at $436,100 and sold the house for $632,500.
- Steven E Ballou bought at $512,600 and sold the house for $650,000.
- Alice Guan bought at $651,300 and sold the house for $808,000.
- Janelle N Carrion and Yvette C Marrero bought at $618,100 and sold the house for $865,000.
- Joseph P Marino bought at $625,300 and sold the house for $797,500.
- Daniel C Finch bought at $565,000 and sold the house for $750,000.

The purchasers[1] bought the houses from the above previous Equity Security Holders and the purchasers themselves became the Equity Security Holders and

---

[1] Debtor did not report the Equity Security Holder name changes to the bankruptcy court.

their names are (Debtor did not report the Equity Security Holder name changes to the bankruptcy court):

- Hceikh Maali
- Michael Islas
- Adam Hockemeyer
- Brian Isaacs
- Amanda Kelly
- Nan Wang
- Karen Urbank Enhanced Life Estate
- Hernan Duque
- Thiruvengadathan Madhanagopal
- Justin Marsh

Respondent is the debtor in the bankruptcy case 6:20-bk-01346 and it is also the defendant in the adversary proceeding 6:20-ap-55 associated with case 6:20-bk-01346.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit

No. 22-11117

In Re: Ellingsworth Residential Community, *Debtor.* Alice Guan, *Plaintiff-Appellant,* v. Ellingsworth Residential Community Association, Inc., *Defendant-Appellee*

Final Judgment entered: July 26, 2022

United States District Court Middle District of Florida, Orlando Division

In Re: Ellingsworth Residential Community, *Debtor.* Association, Inc. Alice Guan, *Appellant* v. Ellingsworth Residential Community Association, Inc., *Appellee*

No. 6:21-cv-279

Final Judgment entered March 22, 2022

United States Bankruptcy Court Middle District of Florida, Orlando Division

Alice Guan, *Plaintiff* v. Ellingsworth Residential Community, *Defendant*

Adversary No. 6:20-ap-00055

Final Order entered February 5, 2021

United States Bankruptcy Court Middle District of Florida, Orlando Division

In Re: Ellingsworth Residential Community, *Debtor.*

Bankruptcy Petition #: 6:20-bk-01346

Case Filed by the Debtor on March 3, 2020

Case still in process

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STATEMENT OF JURISDICTION

The Eleventh Circuit entered decision to deny petition for rehearing and rehearing En Banc on July 26, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTES

28 U.S.C. § 158

Section 158 of Title 28 of the United States Code provides, in relevant part:

> (a) The district courts of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders, and decrees; . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial

> district in which the bankruptcy judge is serving . . . (d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

28 U.S.C.A. § 1291

Section 1291 of Title 28 of the United States Code provides, in relevant part:

> The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States, . . .

INTRODUCTION

This case describes significant circuit split on the finality or the appealability of orders involving the resolution of a set of commonly filed motions or adversary proceedings associated with bankruptcy cases.

Debtor in a bankruptcy case must:

Fully disclose all information relevant to administration of bankruptcy case and it is not for debtor to decide what is and is not relevant. Bankr. Code, 11 U.S.C.A. § 727(a)(4). *In re Matus*, 303 B.R. 660 (Bankr. N.D. Ga. 2004). Also Debtor's estate must be strictly protected from erosion. In addition, any post-petition property acquired by the estate is included in the estate if it was created with or by property of the estate, acquired in the estate's normal course of business, or is otherwise traceable to, or arises out of, any prepetition interest included in the bankruptcy

estate. 11 U.S.C.A. § 541(a)(7). *In re Bardales*, 609 B.R. 260 (Bankr. D. Idaho 2019).

When Debtor has been exhibiting behavior to conceal information and to erode the estate at the onset and since the time when it filed the petition, Bankruptcy Court has the authority, duty, and responsibility to compel Debtor for information and to injunct Debtor to protect the estates. Creditor Alice has the right to have Debtor information made available to the creditor and to the court and to have the bankruptcy estate strictly protected.

But, both the bankruptcy court and the district court have failed to do so, infringing on Alice's such rights. Their orders of refusing to allow Alice to file motion to compel and their order of injunction or collateral order to prevent Alice from seeking her rights, their orders dismissing the adversary proceeding with prejudice constitute as final order for which Eleventh Circuit has the jurisdiction to review the merit of the appeal.

This order on appeal also has the same finality as an injunction order or collateral order.

Eleventh Circuit, by denying it jurisdiction, furthered the circuit splits.

Eleventh Circuit's ruling deepened the differences between Circuits on how to treat a district court order affirming a bankruptcy court order, or stealthy affirming a bankruptcy court order through the faking of a reverse or through a pretender reverse ruling.

Eleventh Circuit's ruling also added chaos to the existing case laws in various Circuits, when Eleventh Circuit introduced a test to determine the finality of

an order when it did not speak one word about that order or about what constitute in a remand from that order.

Specifically,

The Eleventh Circuit ignored both 28 U.S.C. § 158 and 28 U.S.C.A. § 1291 when it hurried to rid itself the jurisdiction of an appeal of District Court's order affirming Bankruptcy Court's order prohibiting the motion to compel when that motion is to compel property and assets information from the debtor and is to protect the bankruptcy estate from erosion.

The Eleventh Circuit also ignored both 28 U.S.C. § 158 and 28 U.S.C.A. § 1291 when it scurried to rid itself the jurisdiction of an appeal of District Court's order affirming Bankruptcy Court's order dismissing an adversary proceeding with prejudice when the District Court affirmed based on a basis that is different from the basis used in the Bankruptcy Court's order.

Eleventh Circuit's ruling of its lack of jurisdiction is based on its claim that bankruptcy court must exercise "significant judicial activity" on a remand when it gave no definition of what constitute a "significant judicial activity" and when it did not utter one word about what Judge Berger's order is or is not or what exactly is being remanded.

Finally, Eleventh Circuit's ruling did not make any discussion about the fact that Alice's request for relief in both the adversary proceeding and in her request for a motion to compel in the main bankruptcy case all involve significant increase in the asset of bankruptcy estate.

Meritage Homes Florida Inc. built a new home for Alice Guan in 2014. Later, 3 experts' reports showed construction defects caused flooding and drainage issues on Alice's property. After Meritage controlled HOA demanded Alice waive all her claims against Meritage and Alice did not agree to it, HOA filed a Complaint against Alice in state court. Alice filed a Counterclaim.

Eighty (80) homeowners took control of the HOA in 2017. 79 homeowners continued the Complaint case against Alice causing Alice to spend an additional $450K defending herself. 79 homeowners stated to the state court that whoever wins the Complaint case determinately win the Counterclaim case. In August 2019, 5th DCA ruled Alice won the Complaint case and directed HOA pay Alice her attorney's fees.

In July 2019, Alice sought construction defect arbitration with Meritage which is defended by Dan Coultoff who works for Justin Luna's law firm. In December 2019, Justin Luna arranged a meeting with the eighty (80) homeowners to convince them go bankrupt by stating that if they can vote to bankrupt then they do not have to pay Alice anything. App. 13a-20a.

Seventy-nine homeowners voted to bankrupt. Justin Luna filed case 6:20-bk-01346 and listed the 80 homeowners as equity security holders but did not list any common properties or any of the 79 houses or any assets or income that are owned by the 79 equity holders.

Debtor proposed a reorganization plan and, in that plan, none of the common properties or the 79

houses or any assets or income that are owned by the 79 equity holders were presented.

Creditor Alice has the right to have debtor (as well as individuals controlling the debtor) make full disclosure and to have the bankruptcy estate fully protected from erosion. Alice filed an adversary proceeding (Case 6:20-ap-55) to request Judge Karen Jennemann compel information and injunct equity holders so they do not sell their assets outside of the bankruptcy court or take on new debt without court's knowledge or approval (law prohibits creditor uses creditor's own asset to pay herself as the creditor when she is part of the debtor, App.21a-78a), and Alice stated that Judge Jennemann can meet the same request by converting case 6:20-ap-55 into a Motion to Compel under the main bankruptcy case 6:20-bk-01346.

Judge Jennemann first confirmed Debtor's plan which did not include any of those assets or property and did not provide bankruptcy estate protection.

Then, Judge Jennemann dismissed case 6:20-ap-55 with prejudice. Judge Jennemann also refused to compel debtor information and refused to protect bankruptcy estates in the main bankruptcy case 6:20-bk-01346. Alice appealed.

District court Judge Wendy Berger concurred that Judge Jennemann's order is a final order for which Judge Berger has jurisdiction to review the appeal. App.5a-6a.

Firstly,

Judge Berger knew Alice, through case 6:20-ap-55, and in her appeal of Judge Jennemann's order

(App.21a-78a), sought to convert the case into a motion to compel in the main bankruptcy case 6:20-bk-01346 to compel debtor information and to protect bankruptcy estates. By not making any ruling to convert the case into a motion to compel in the main case 6:20-bk-01346, Judge Wendy Berger ordered to prohibit to compel debtor information and to prohibit to protect the bankruptcy estate. Judge Berger's such order is a final order ripe for Eleventh Circuit's review. Judge Berger's order is also an injunction order or collateral order prohibiting Alice from her rights as a creditor to have Debtor disclose information and to have estate protected. Thus, Judge Berger's order not converting case 6:20-ap-55 into a motion to compel in the main bankruptcy case 6:20-bk-01346 is a final order, and Eleventh Circuit has jurisdiction over the appeal of such final order.

Secondly,

Judge Berger focused on dismissing the adversary proceeding with prejudice and stated that: the two bases used by Judge Jennemann to dismiss the case with prejudice were incorrect, however, there is another basis which warrant the dismissal with prejudice. App.6a-8a.

To justify her dismissal of the case with prejudice decision, Judge Berger stated that "A reviewing court may affirm on any ground supported by the record even if it was not a basis for the underlying order. *See Park Nat'l Bank v. Univ. Ctr. Hotel, Inc.*, No. 1:06-cv-00077, 2007 WL 604936, at *7 (N.D. Fla. Feb. 22, 2007). Judge Berger stated so after she made deliberate reference to Debtor's arguments of "fails to state a claim upon which relief can be granted" that was contained in Debtor's appeal brief. App.8a-9a.

In the end, Judge Berger reversed Judge Jennemann's decision purely because she disagreed with Judge Jennemann's basis for ruling. 9a.

However, Judge Berger determined that the adversary proceeding need to be dismissed with prejudice with the basis of "fails to state a claim upon which relief can be granted." Therefore, Judge Berger's order is a final order. Eleventh Circuit has jurisdiction to review the appeal of Judge Berger's order. App.8a-9a.

Thirdly,

Judge Berger remanded and directed Judge Jennemann to use "fails to state a claim upon which relief can be granted" as the basis for dismissing the adversary proceeding. App.9a. It is as if Judge Berger is inviting Judge Jennemann to entertain Judge Berger's Judgement and ruling. It is interesting that Judge Berger on the one hand described in specific the basis of "fails to state a claim upon which relief can be granted" and with her support of a legal case that she determined this basis is adequate to dismiss the adversary proceeding with prejudice, then she turned around and stated due to the large amount of filings and appeals, she want the bankruptcy court to consider using Debtor's such basis from Debtor's brief to dismiss the case with prejudice. No matter how one read Judge Berger's order, it is clear that her order directs the dismissal of the adversary proceeding with prejudice based on "fails to state a claim upon which relief can be granted" and she asked Judge Jennemann look at Debtor's brief of this basis and adopt that basis, a simple task for a bankruptcy court to do. This simple task in no way can be categorized as "significant judicial activity" when the case law

Eleventh Circuit cited used "significant judicial activity".

Eleventh Circuit used a case, that legal case employed the use of words of "significant judicial activity" to describe the adjudication of factual development that that particular district court specifically outlined the specific tasks the bankruptcy court must do in regard to ALL issues appealed and indeed that bankruptcy court would have some level of activities deserving considerable discretion.

But here in the Eleventh Circuit order, 3 panel judges did not say a word about any of the appealed issues, let alone to say anything about any sentences made in Judge Berger's order. None, there was no discussion. As stated in App.79a-99a, Eleventh Circuit could not say anything because if it did look into the appealed issues and look into Judge Berger's order, it will know that order is a final order, and it has the jurisdiction to review the appeal on merit.

Finally,

This Eleventh Circuit's employed test to determine an order's finality introduces randomness and arbitrary elements and can not be relied on to rule if an order is not a final order.

Therefore, Eleventh Circuit has jurisdiction on the appeal of Judge Berger's order.

Eleventh Circuit did not consider any of the above aspects of the finality of Judge Berger's order and it did not wait for briefs but ruled it lacks jurisdiction before any briefs could be filed.

Eleventh Circuit's determination added to the existing circuit splits and intensified the turmoil within

the existing laws among many Circuits. And very significantly, it created a test to determine finality of an order that can be applied randomly and arbitrarily without having any discussions of the order being appealed, which further caused Circuit split and caused further uncertainties.

Therefore, this Court should grant the review of this Petition so that this Court can provide guidance on:

Number 1.

If a District Court's order dismissing with prejudice an adversary proceeding seeking to compel debtor information and to protect bankruptcy estate is a final order.

Number 2.

If a District Court's order denying with prejudice a motion to compel critical assets information and denying the protection of bankruptcy estate under a main bankruptcy case is a final order.

Number 3.

How to determine what bankruptcy court's activity on remand is "significant judicial activity", regardless of if that determination has any bearing on the finality of an order.

Number 4.

If bankruptcy's "significant judicial activity" on remand can be used to determine an order is not a final order and if so what are the specificities must be met by the Circuits Court of Appeal in order for it to use this standard or test.

STATEMENT OF CASES

A. House Built by Meritage Homes Florida Inc for Alice Guan Is 18" Too Low and Property Has Inadequate Ground Slope for Storm Water Flow and It Contained Bad Fills Preventing Storm Water Percolation.

Meritage Homes Florida Inc. built a new home for Alice Guan in 2014. Later, 3 experts' reports showed:

> **Finding 1.** Alice's house was built 18" too low.
>
> **Finding 2.** Property ground slope is much less than the designed slope and it prohibits storm water from flowing out of the property.
>
> **Finding 3.** Top 2.5' fill Meritage hulled onto the natural woodland to build up the land by 2.5' to put the house on has very poor percolation rate which prevents storm water from draining into the ground.

Alice installed in-ground sump pumps and solid pipes and several networks of French drains to mitigate the flooding and draining problem and she replaced the dead plants and dead grass with Florida friendly plants that can survive on her property, and she replaced the bad fill with good clean soil that allow storm water to percolate into the ground.

Alice emailed Meritage and her HOA of those expert reports. Meritage controlled the HOA at the time.

B. HOA Demanded Alice Waive All Her Claims Against Meritage and After Alice Did Not Waive Such Claims HOA Sued Alice in State Court in 2016.

HOA demanded Alice return her landscape into the original condition and demanded mediation. During the mediation, HOA required Alice file a Florida 558 Construction defect claim against Meritage immediately. After Alice filed that claim, HOA demanded Alice sign a mediation settlement agreement (MSA) to waive all her claims against Meritage. After Alice did not sign that MSA, within 2 weeks, HOA sued Alice in 2016 in Seminole county state court demanding her landscape return into its original condition. Alice filed a counterclaim.

C. Meritage Turned the Control of the HOA to Eighty (80) Homeowners in 2017 and 79 Homeowners Continued the Lawsuit Against Alice Which Forced Alice to Spend an Additional $450K Defending Herself.

80 homeowners (who are the equity security holders of the HOA, their names and their 80 house addresses are listed in App.148a-164a) took the control of the HOA in 2017 and 79 of them continued the Complaint case against Alice and they stated to the state court that whoever wins the Complaint case will win the Counterclaim case. In 2019, 5th DCA ruled Alice won the Complaint case and directed HOA pay Alice her attorney's fees. Alice spent more than $500K defending herself in the Complaint case, so she can keep her solutions to the flooding and drainage defect to protect her house and her property from being under water.

HOA's state case against Alice (in Seminole County Court in Florida) was initiated by Carlos Arias who convinced Judges Frederic Schott and Debra Nelson that the HOA can do whatever the HOA wants to do to Alice. Carlos Arias' conduct resulted in his legal malpractice.

D. Justin Luna Law Firm Defending Meritage In the Construction Arbitration Case Approached 80 Homeowners to Convince Them to Vote to Bankrupt Themselves so Alice Does Not Get Paid Her Fees and Damages in the State Court Cases.

In 2019 Alice demanded arbitration for Meritage pay for the cost and expenses incurred in mitigating the defects and for Meritage to finally correct all the defects, Meritage is defended by Dan Coultoff who works for a firm whose partner is Justin Luna. App. 13a-20a.

Justin Luna initiated a meeting with the 80 equity holders and convinced them that if they chose to go bankruptcy, then they do not have to pay Alice her fees or any damages in the Counterclaim and he has a way to create other creditors in addition to creditor Alice Guan to meet bankruptcy requirements. App.13a-20a.

E. Justin Luna Filed Case 6:20-bk-01346 But Did Not Report the Values of Common Properties and Did Not Report Any of the 80 Houses or Any Asset or Income of the 80 Equity Security Holders and He Severely Under Reported Yearly Assets.

State Complaint case was set for final trial to determine fees owed to Alice in April 2020, and Alice's Counterclaim was yet to set for trial by jury. Respond-

ent agreed that it owed fees to Alice for the Complaint case.

Then, in February 2020, 79 equity holders voted to go bankruptcy and each of the 80 homeowners contributed money to be paid to Justin Luna. Justin Luna filed bankruptcy case 6:20-bk-01346 but he did not list the values of any Debtor's common properties, he also did not list any of the 80 houses or any assets or income that are owned by the 80 equity security holders, etc. App.100a-165a. App.100a-165a also shows the immensely under reported assets, even when it is under reported, there was asset of more than $90K and that still is more than what the debtor owes to all creditors other than creditor Alice Guan, indicating Debtor self-created other creditors so it meets the requirements of filing a bankruptcy case not having just one creditor Alice.

Debtor also grossly under reported yearly assets as $4, $418. App.21a-60a.

F. Debtor's Plan of Reorganization Did Not Report Common Property Values or Any of the 79 Houses or Any Asset or Income of the 79 Equity Holders and Did Not Correct the Severely Under Reported Yearly Assets at Confirmation Hearing.

Debtor proposed a plan, which again did not list any common properties values and did not list any of the 79 houses or any assets or income that are owned by the 79 equity security holders, etc. 5 months into the bankruptcy, Debtor still refused to correct the grossly under reported yearly assets of $4, $418. App. 21a-60a.

Alice opposed the plan.

G. Proceedings Below

1. Alice Initiated Case 6:20-ap-55 to Seek Her Right to Have Debtor Disclose Asset Information and to Have Bankruptcy Estate Protected from Erosion.

Separately and independently, Alice filed an adversary proceeding in case 6:20-ap-55 in which Alice requested Judge Karen Jennemann in the bankruptcy court compel information and injunct any of the 79 equity holders liquidate any assets outside of the bankruptcy court or take on new debt without bk court's knowledge or approval, and Alice stated that Judge Jennemann can meet the same request by converting case 6:20-ap-55 into a motion to compel under the main bankruptcy case 6:20-bk-01346.

2. Judge Jennemann First Confirmed Debtor's Reorganization Plan Then She Dismissed Case 6:20-ap-55 with Prejudice.

Judge Jennemann confirmed Debtor's plan. Alice appealed (case 6:20-cv-1938) citing the plan and the confirmation order failed to meet each specific federal requirements.

Sometime later, Judge Jennemann dismissed case 6:20-ap-55 with prejudice. Judge Jennemann did not convert case 6:20-ap-55 into a motion to compel under the main bankruptcy case 6:20-bk-01346. Alice appealed. The appeal case is 6:21-cv-0279. Alice's initial brief and her reply brief are attached to this Petition in App.21a-60a, and App.61a-78a, respectively.

3. Judge Wendy Berger Ruled Not to Convert Case 6:20-ap-55 Into a Motion to Compel by the Sheer Fact that She Refused to Rule So and Her Order Ruling Was Silent on This Topic.

In Alice's appeal briefs, Alice sought Judge Berger reverse Judge Jennemann's order in such that to convert the case into a Motion to Compel in the main bankruptcy case 6:20-bk-01346. Judge Berger's order did not contain converting the case into a Motion to Compel in the main bankruptcy case 6:20-bk-01346.

4. Judge Berger Picked a Different Basis to Support Her Decision to Dismiss the Case with Prejudice.

First of all, Judge Wendy Berger modified Alice's arguments contained in her briefs. Judge Berger stated: case 6:20-ap-55 is the same as 6:20-cv-1938. Judge Berger then stated that nevertheless, even though she thought those 2 cases are parallel, that parallel can not be used as basis to dismiss the case with prejudice, thus she stated Judge Jennemann erred.

However, Judge Berger picked out a different basis from Debtor's brief to dismiss the adversary proceeding with prejudice.

5. Judge Berger Remanded the Case Directing Judge Jennemann Use Basis of "fails to state a claim upon which relief can be granted." by Lifting that Basis Out of Debtor's Brief.

The remand spoke to a simple action for Judge Jennemann to do: lift the "fails to state a claim upon

which relief can be granted" from Debtor's brief and use that basis instead.

6. Eleventh Circuit Ruled It Lacks Jurisdiction to Review the Appeal of Judge Berger's Order and It Denied Alice's Petition for Rehearing and Rehearing En Banc.

Alice appealed Judge Berger's order (App.3a-10a). Before the due date of the initial brief, Eleventh Circuit ruled it lacks jurisdiction to review the appeal. App.1a-2a.

Alice filed a petition for rehearing and rehearing En Banc in case 22-11117. It is attached here in App.79a-99a.

Eleventh Circuit denied Alice's Petition. App.11a-12a.

H. District Court's Order Is Final Order and Is an Injunction Order or Collateral Order.

Eleventh Circuit did not deny the fact that District Court did not rule to convert the adversary case into a motion to compel to obtain debtor information and to protect bankruptcy estate under the main bankruptcy case. Thus, Eleventh Circuit conceded that District Court did determine that motion to compel cannot be filed under the main bankruptcy case.

Seeking to obtain Debtor's property and asset information and seeking to protect bankruptcy estate is Alice's rights as a creditor, it is also court's duty. Both District court and bankruptcy court's orders prohibiting seeking to obtain such information and prohibiting seeking to protect such estate are all final orders. Those orders also act as an injunction or

collateral order to prohibit Alice from seeking her right.

Also, both District court and bankruptcy court's orders to dismiss the adversary proceeding with prejudice are final orders. Even though the basis the District Court's used to dismiss the adversary proceeding with prejudice is different from the basis used by the bankruptcy court, that does not affect the finality of District Court's decision, as District Court stated in its order that it is permitted by law to do so.

I. Eleventh Circuit's Determination Intensified an Embedded Circuit Split and It Used a Test to Determine Finality of an Order Without Any Foundation Thus Guidance from This Court Is Urgently Needed.

As stated later in this petition:

Several Circuit Courts of Appeal hold positions that resulted in circuit split, and this Eleventh Circuit's determination deepened that split and added to the uncertainty.

In addition, Eleventh Circuit's ruling has aggravated an embedded circuit split by presenting a test of using the level of effort of remand to determine the finality of the order from district court in a random and arbitrary way.

Thus, guidance from this Court is urgently needed.

J. Alice Is a Pro Se and Will Engage Attorney for Oral Argument In Front of SCOTUS.

Alice is a pro se and she understands the Only Legal Limitation to a Pro Se Is that the Pro Se Is Prohibited to Argue in Front of the SCOTUS thus

Alice Will Engage Lawyer to Argue if SCOTUS Grants this Writ of Certiorari.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The lower district court's order affirmed bankruptcy court's order to prohibit motion to compel in the main bankruptcy case, and such prohibition order is equivalent to an injunction order or collateral order.

The lower district court's order also affirmed bankruptcy court's order to dismiss the adversary proceeding with prejudice, although under a basis that is different from the basis used by the bankruptcy court.

Very importantly, those orders from both the lower district court and the bankruptcy court involve proceedings initiated by Alice that greatly impact the assets in the bankruptcy estate: instead of the about $90K assets the Debtor reported, the true assets is more than $13,000,000 plus $8,000,000, without counting the value of the common area, and without counting any other assets owned by the 80 Equity Security Holders (as seen in the earlier section of "PARTIES TO THE PROCEEDING", the average market equity per house is $170K which translate into $13,000,000 market equity for all 80 houses; average purchase price for the original equity security holder of their house is $500K, with 20% cash down payment at the time of purchase as an estimate, the total built-in equity from the original purchase is $8,000,000).

Crucially, Eleventh Circuit's adjudication of the appeal can advance the cases in lower court and can greatly save the judicial economy.

Regarding the finality of orders involving above issues or similar issues, there exist significant circuit splits as shown below. In addition, Eleventh Circuit used a test to determine the finality of district court's order based on the level of effort (which can be an arbitrary determination, and like Eleventh Circuit did: Eleventh Circuit applied this test WITHOUT any facts or analysis) bankruptcy court must exert upon the scope of a remand, which in itself caused more Circuit split and resulted in more confusion in the body of existing case laws among Circuits. Therefore, this Court should grant this petition.

If this petition is not granted, then any Circuits can deem lower courts' injunction orders or collateral order as a non-final order when those orders put injunction on a creditor from seeking debtor asset information and from seeking the protection of the bankruptcy estate in the main bankruptcy case[1], and

[1] In Petitioner's view, this petition is of a matter on the determination of the finality of an order from the district court and this Court's granting of a review of this Petition should not depend on other actions taken place in the lower court. However, in the lower court's proceedings, Judge Jennemann has confirmed the Debtor's reorganization plan and that confirmation order has been appealed and that appeal is now pending at the Eleventh Circuit. The sheer fact of Judge Jennemann's confirmation of Debtor's plan further aided in the determination that her order and Judge Berger's order denying motion to compel in the main bankruptcy case to be final orders ripe to be reviewed by the Eleventh Circuit. One note on the confirmed plan: because Debtor did not disclose any value of the common properties or any of the 80 houses, or any other assets or income of the 80 Equity Security Holders, after the plan was confirmed, there

the creditor has no remedy to appeal those injunction orders or collateral orders.

Further, if this petition is not granted, then any Circuits can deem lower court's orders dismissing an adversary proceeding with prejudice as a non-final order when those orders prohibit the credit from filing any adversary proceeding again to seek the very same relief, and the creditor has no remedy to appeal those orders.

Lastly, if this petition is not granted, then any Circuits can deem district court's orders as a non-final order when that order remanded any aspect of the original appeal or remanded a new aspect down to the bankruptcy court and regardless what level of effort bankruptcy court need to undertake[2] for the remand, Circuit can broadly say without any specificity that such effort is "significant" without any supporting facts or analysis, leaving the creditor having no remedy to appeal the district court's order.

All of above will have a prevalent influence and effect country-wide in cases dealing with the appeal of bankruptcy court orders and of the orders from the

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was no transfer or sale of any assets or property, there is no lien on any property, there has been no restrictions put on any assets or property.

[2] Judge Jennemann retired. Judge LVV took over the case and entered an order in September 2022 to vacate Judge Jennemann's order, an action outside the scope of the remand as directed by Judge Berger. In Petitioner's view, this petition is of a different matter and it is on the determination of the finality of an order from the district court, regardless of what Judge LVV did and what her new order means. Thus, granting the review of this petition should not be affected by the fact Judge LVV has recently entered an order.

district courts that rose from the bankruptcy court orders.

The far-reaching repercussions of the Eleventh Circuit's determination strongly favors this Court's granting of a review of this Petition.

I. THE CIRCUITS ARE PERMANENTLY SPLIT ON WHETHER A DISTRICT COURT'S ORDER AFFIRMING BANKRUPTCY COURT'S ORDER PROHIBITING A MOTION FOR RELIEF OR DISMISSING AN ADVERSARY PROCEEDING WITH PREJUDICE IS ALWAYS FINAL AND APPEALABLE.

Even though most courts generally realize that a district court's order affirming a bankruptcy court's order denying a motion for relief or an order dismissing an adversary proceeding with prejudice is final and appealable because the motion or the adversary proceeding initiates a "proceeding" that is terminated once the orders resolving the motion or the adversary proceeding are entered, however, on specific cases, Circuits still arrive at different finality conclusions based on various different and sometimes conflicting basis thus demonstrating a wide-spread circuit split. Only this Court's review can resolve the conflict.

A. Several Circuits Hold the Position that District Court's Order Affirming Bankruptcy Court's Order Prohibiting a Motion for Relief or Dismissing an Adversary Proceeding with Prejudice Is Always Final and Appealable.

Second, Fourth, Fifth, Eighth, Tenth, Eleventh Circuits have the holding that a district court's order affirming or reversing bankruptcy court's order

granting or denying motion to dismiss is final order. For Example:

- *Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1284–85 (2d Cir. 1990).
- *Grundy Nat'l Bank v. Tandem Mining Corp.*, 754 F.2d 1436, 1439 (4th Cir. *1985*).
- *In re Lieb*, 915 F.2d 180, 185 n. 3 (5th Cir. 1990).
- *Aetna Life Ins. Co. v. Leimer (In re Leimer)*, 724 F.2d 744, 745–46 (8th Cir. 1984).

Court of Appeals reviewed de novo district court order affirming bankruptcy court's decision as to scope of automatic stay, without giving any special weight to district court's determination. *Eddleman v. U.S. Dep't of Lab.*, 923 F.2d 782 (10th Cir. 1991), holding modified by *Temex Energy, Inc. v. Underwood, Wilson, Berry, Stein & Johnson*, 968 F.2d 1003 (10th Cir. 1992).

- *In re Dixie Broad.*, 871 F.2d 1023, 1028 (11th Cir. 1989).

Tenth Circuit also hold that any District court order that equates to a "collateral order" or an injunction order is also directly appealable. *See Eddleman.*

In addition:

- *In re Amatex Corp.,* 755 F.2d 1034, 1039-41 (3rd Cir. 1985) ruled on finality in an order denying a right to appoint a legal representative for claimants.

- *In re Comer,* 716 F.2d 168, 171-74 (3d Cir. 1983) ruled on finality in an order lifting the automatic stay.
- *Wheeling-Pittsburgh Steel Corp. v. McCune,* 836 F.2d 153, 157-58 (3d Cir. 1987) determined the finality of an order that stayed proceedings pending an action by a state court.
- *In re Christian,* 804 F.2d 46, 47-48 (3d Cir. 1986) ruled with finality of an order denying the creditors' motion to dismiss a Chapter 7 petition

B. Several Circuits Hold the Position that the Finality of District Court's Order Affirming Bankruptcy Court's Order Prohibiting a Motion for Relief or Dismissing an Adversary Proceeding with Prejudice Depends on Various Circumstances Such as the Nature of the Dispute or the Types of the Relief Sought or If Court of Appeal's Ruling Can Serve the Interest of Judicial Economy Etc.

Third Circuit rests its determination of the finality of District Court's order on 4 factors: "In determining whether district court's order, on appeal from bankruptcy court, is final and reviewable, Court of Appeals considers impact upon assets of the bankrupt estate, necessity for further fact finding on remand, preclusive effects of Court of Appeals' decision on merits of further litigation, and whether interest of judicial economy would be furthered; of these four factors, the most important is the impact on estate assets." 28 U.S.C.A. § 158(d). *Off. Comm. of Unsecured Creditors of Life Serv. Sys., Inc. v. Westmoreland Cnty. MH/MR,* 183 F.3d 273 (3d Cir. 1999).

Third Circuit further puts much more emphasis on if district court's order has impact on the assets of the bankruptcy estate and stated that order is a final order if there is such impact: "Even more important, the order has a significant impact on the assets of the bankruptcy estate" *F/S Airlease II, Inc. v. Simon*, 844 F.2d 99, 104 (3d Cir. 1988).

Third Circuit rests its determination of the finality of District Court's order based on that order affirmed bankruptcy court's order denying motion to compel asset or asset information: "To obtain the remaining funds, the City of Farrell filed a motion in the bankruptcy court . . . . . to compel the turnover of the funds. The bankruptcy court denied the motion" "The district court entered its order . . . affirming the bankruptcy court's order. The city has appealed to us from that order." "We have jurisdiction under 28 U.S.C. § 158(d) over the district court's final order affirming the bankruptcy court's order." *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994).

In re Brown, 803 F.2d 120 (3d Cir. 1986), Court denied order is final and appealable because both liability and damages have not been established.

In re American Colonial Broadcastinq Corp., 758 F.2d 794, 801 (1st Cir. 1985), the court ultimately determined the district court's order is not final based on the possibility of irreparable injury to losing parties if appellate review is delayed until the litigation is over.

In re Tidewater Group, Inc., 734 F.2d 794, 796–97 (11th Cir. 1984) and *Bennett v. Behring Corp.*, 629 F.2d 393, 395 (5th Cir. 1980) stated that order is final order when it (1) finally determine claims collateral

to and separable from the substance of other claims in the action; (2) cannot be reviewed along with the eventual final judgment because by then effective review will be precluded and rights conferred will be lost, and (3) are too important to be denied review because they present a serious and unsettled question of law.

Second, Sixth and Nineth Circuits hold the position that orders denying stay relief are final orders due to the fact the appealability of those orders aid the judicial economy. For example, *see In re Am. Mariner Indus.*, 734 F.2d at 429 (9th Cir. 1983). Also *see In re Sonnax*, 907 F.2d at 1283-84.

II. THE ELEVENTH CIRCUIT INTRODUCED A TEST AND IT'S DETERMINATION OF LACKING JURISDICTION BASED ON ITS SUCH TEST WITHOUT ANY DISCUSSION OF FACTS OR ANALYSIS CONTRIBUTES TO A MORE BEWILDERING AND INCONSISTENT BODY OF LOWER-COURT CASE LAWS.

As stated earlier, Eleventh Circuit used a test of "significant" activities of remand to determine if District Court's order is final, without giving any specificities of what that "significant" means within Judge Berger's order and without any discussion or analysis of Judge Berger's order or if the natures of remand activities should be considered in determining the finality of the order. This created additional misperceptions among lower court case laws. For example:

First Circuit rests its determination of the finality of District Court's order on if the remand consisted of ministerial activities: "When district court remands matter to bankruptcy court for significant further proceedings, there is no "final order," for purposes of

statute defining Court of Appeals' jurisdiction, and Court of Appeals lacks jurisdiction, although when remand leaves only ministerial proceedings, such as computation of amounts according to established formulae, the remand may be considered final, for appellate jurisdiction purposes. 28 U.S.C.A. § 158(d). *In re Gould & Eberhardt Gear Mach. Corp.*, 852 F.2d 26 (1st Cir. 1988).

A district court order is not a "final order" that may be appealed to the Court of Appeals, where that order reverses an order of the bankruptcy court and remands the case to the bankruptcy court for significant further proceedings. 28 U.S.C.A. § 158(d). *In re Caddo Par.-Villas S., Ltd.*, 174 F.3d 624 (5th Cir. 1999)

Third Circuit further ruled that District Court's order that resulted disposition of bankruptcy court's order is final order even if there is a remand for remedy determinations: "District court's appellate disposition of final order of bankruptcy court was itself "final," for purposes of appeal, though district court remanded for determination of remedies. 28 U.S.C.A. § 158(a)." *In re Porter*, 961 F.2d 1066 (3d Cir. 1992).

One critical question for this Petition is:

> When district court's order completely lacks the permission of a motion to compel in the main bankruptcy case and even if that order is not deemed as a final order or is not deemed as an order equivalent to an injunction order or a collateral order; and when Judge Berger's decision to use a different basis to dismiss with prejudice the adversary proceeding and even if that order is not deemed as a final order, then: after Judge Berger stated that a new basis should be used as the foundation to dismiss the adversary proceeding with prejudice and invited the Bankruptcy Court to do so, is that remand action a "significant" activity that warrant Eleventh Circuit to use the test of "significant " activity to rid its jurisdiction?

A second critical question for this Petition is:

> When Circuit Court blankly uses the word "significant" activity without any discussion or analysis of district court's order and without any discussion on what the activity of the remand involves, can the Circuit Court rid its jurisdiction in this complete void?

Guidance from this Court is needed to clarify those differences and to resolve these Circuits' conflict and split and to clear the confusions and to provide general holdings on methods to determine finality or appealability of common types of district court's orders resulted from the appeal of final bankruptcy court orders, and in specific, how the lower court's ruling can affect this Petitioner' rights permanently

in a negative way when Eleventh Circuit refuses its jurisdiction, and whether that refusal of jurisdiction should be reversed.

CONCLUSION

For reasons stated above, and because "finality" of orders that results in the deprivation of creditor's rights is a vital issue that is directly presented in this Petition and Eleventh Circuit's ruling will have prevalent consequences, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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