IN THE

Supreme Court of the United States

PHH MORTGAGE CORPORATION,

Applicant,

v.

MARK ANTHONY GUTHRIE,

Respondent.

On Application for Extension of Time

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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RULE 29.6 STATEMENT

Applicant PHH Mortgage Corporation is a wholly-owned subsidiary of Ocwen Financial Corporation, a publicly-traded company. No other publicly held company owns 10% or more of applicant's stock.

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Pursuant to this Court's Rule 13.5, applicant PHH Mortgage Corporation (PHH) respectfully requests a 30-day extension of time, to and including January 17, 2024, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Fourth Circuit issued its opinion and entered judgment on August 18, 2023. A copy of the opinion is attached as Exhibit A. The court of appeals denied PHH's timely petition for rehearing on September 18, 2023. A copy of that order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

Absent an extension, a petition for a writ of certiorari would be due on December 18, 2023 (a Monday). This application is being filed more than 10 days in advance of that date.

1. PHH seeks review of a decision of a divided panel of the Fourth Circuit that creates a direct conflict among the courts of appeals on an important question of federal law: whether the Bankruptcy Code preempts state-law causes of action based on a creditor's efforts to collect debt that has been discharged in bankruptcy.

2. When debt is discharged in bankruptcy, the bankruptcy court typically issues a "discharge order," which "'operates as an injunction' that bars creditors from collecting any debt that has been discharged." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1800 (2019) (quoting 11 U.S.C. § 524(a)(2)). Because the discharge order is an injunction, it is enforceable through contempt of court. *See id.* at 1804 (holding that,

consistent with "the traditional principles that govern civil contempt," "[a] court may hold a creditor in civil contempt for violating a discharge order" in appropriate circumstances).

3. Given the uniquely federal character of bankruptcy proceedings and the detailed remedies provided in the Bankruptcy Code—including remedies for violation of the discharge injunction—courts have long held that state-law causes of action arising from efforts to collect a debt that has been discharged in bankruptcy are preempted by the Bankruptcy Code. In the decision below, the Fourth Circuit broke from that consensus. The court of appeals expressly confronted the preemption question: "does the Bankruptcy Code preempt state law causes of action for a creditor's improper collection efforts related to debt that has been discharged in bankruptcy?" Ex. A at 3. And unlike the other circuits that have addressed this and related questions, the panel majority answered in the negative: such "state law claims are not preempted." *Id.* at 19.

a. This case involves a mortgage on a home that was jointly owned by a married couple, who later divorced. Ex. A at 4. After their divorce, the ex-husband (respondent Mark Anthony Guthrie) declared bankruptcy and obtained a discharge of his debt for the mortgage, but his ex-wife did not declare bankruptcy and remained a joint owner on the home. *Id.* at 4-5. PHH had acquired an interest in the mortgage and, Guthrie contends, contacted Guthrie about the loan through telephone calls and mail even after being notified of the discharge injunction. *Id.* at 5-6. Guthrie sued PHH in state court, asserting (as relevant here) state-law claims for negligent

infliction of emotional distress, intentional infliction of emotional distress, and violation of the North Carolina Debt Collection Act. *Id.* at 7. After removal, the federal district court held that the state-law claims were all preempted by the Bankruptcy Code. *Id.*

b. A divided panel of the Fourth Circuit disagreed, reasoning that "Guthrie's state law claims—which require, in part, proof that PHH violated a discharge injunction issued under the Bankruptcy Code—do not create an obstacle to the goals of the Bankruptcy Code." Ex. A at 18. The court acknowledged that "Guthrie's state law claims provide greater remedies than those available under the Bankruptcy Code for the same conduct," which include contempt sanctions available in federal court. *Id.* at 15-16. But the court concluded that there is "no reason why the mere fact that state law claims provide broader remedies than federal law means the state claims are preempted." *Id.* at 17.

4. Judge Wynn dissented. He wrote that "state-law claims, to the extent they are premised on a violation of the automatic stay or discharge injunction issued by the bankruptcy court, are preempted by the Bankruptcy Code." Ex. A at 33. Judge Wynn emphasized "the comprehensive and particularly federal nature of bankruptcy law" and Congress's choice "to give the discharge order the force of an injunction, replete with the traditional contempt remedy"—a choice that "is highly instructive as to congressional intent on the available remedies for violations of the discharge order." *Id.* at 33, 36.

Judge Wynn also observed that where, as here, "PHH's actions are only allegedly unlawful under state law *because of* the discharge," "to resolve such claims, a state court would necessarily have to wade into the underlying bankruptcy proceeding, including determining which debts were discharged." Ex. A at 37-38. Judge Wynn did not accept that "Congress—concerned as it was under the Code with centralizing a debtor's bankruptcy into a single, federal forum—would wish for state courts to adjudicate such matters." *Id.* at 38. Adjudication of such matters by a state court, he wrote, "would undoubtedly stand as an obstacle to what we have referred to as 'a principal purpose' of the Code: 'centralizing disputes over the debtor's assets and obligations in one forum.'" *Id.* at 37 (quoting *Moses v. CashCall, Inc.*, 781 F.3d 63, 72 (4th Cir. 2015) (brackets omitted)).

5. The decision below conflicts with decisions of other federal courts of appeals. In particular, the Sixth Circuit has held that the Bankruptcy Code preempts state-law claims by bankrupt debtors against a creditor that persuaded them to reaffirm that debt and make payments on it, including after discharge. *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 420, 425-426 (6th Cir. 2000). The court in *Pertuso* explained that such "state law claims presuppose a violation of the Bankruptcy Code," and that "[p]ermitting assertion of a host of state law causes of action to redress wrongs under the Bankruptcy Code would undermine the uniformity the Code endeavors to preserve and would stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 426 (quotation marks and brackets omitted).

Similarly, in addressing state-law claims alleging that creditors had "coerc[ed] naïve and inexperienced debtors into reaffirming debt that has been properly discharged in bankruptcy," the First Circuit held that the creditors' "state law claim for unjust enrichment for collecting debt under an improper reaffirmation agreement is preempted" by the Bankruptcy Code. *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 441, 447 (1st Cir. 2000). The court in *Bessette* reasoned that "the broad enforcement power under the Bankruptcy Code preempts virtually all alternative mechanisms for remedying violations of the Code," and noted broad agreement by other courts considering the same issue. *Id.* at 447.

The Seventh Circuit, too, has expressly adopted the holdings of the Sixth and First Circuits "that remedies against debt-affirmation agreements contended to violate the Bankruptcy Code are a matter exclusively of federal bankruptcy law." *Cox v. Zale Del., Inc.*, 239 F.3d 910, 913 (7th Cir. 2001). The court in *Cox* therefore concluded that the Bankruptcy Code preempted a "plaintiff's claim for unjust enrichment, which is based on state law." *Id.*

In addition to the direct conflict with the Sixth, First, and Seventh Circuits, the decision below is inconsistent with two other circuits' decisions, as Judge Wynn pointed out in dissent. *See* Ex. A at 34-35. The Ninth Circuit, for example, has broadly held that "the adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal," and that it is therefore "very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process."

MSR Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 914 (9th Cir. 1996). The Ninth Circuit explicitly observed that "[d]ebtors' petitions, creditors' claims, disputes over reorganization plans, *disputes over discharge*, and innumerable other proceedings, would all lend themselves to claims of malicious prosecution," which raises the prospect "of state courts, in effect, interfering with the whole complex, reticulated bankruptcy process itself." *Id.* at 914 (emphasis added). The court thus concluded that a state-law "malicious prosecution action" was "completely preempted by the structure and purpose of the Bankruptcy Code." *Id.* at 916. Approving of the Ninth Circuit's analysis, the Second Circuit has likewise held that the "Bankruptcy Code preempts any state law claims for a violation of the automatic stay." *E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank, Bennington*, 236 F.3d 117, 121 (2d Cir. 2001) (per curiam).

Given the significant circuit conflict, PHH's forthcoming petition for certiorari will present a substantial question worthy of this Court's review.

6. Applicant respectfully requests a 30-day extension of time to file its petition for a writ of certiorari from the Fourth Circuit's decision to and including January 17, 2024. Undersigned counsel from Goodwin Procter LLP were not involved in the case below and were retained after the denial of rehearing to assist with preparing a petition for writ of certiorari in this matter. An extension is therefore warranted to allow new counsel to familiarize themselves with the record and to prepare and file the petition. Moreover, PHH's counsel have been heavily engaged with other matters and have other commitments that make the preparation of a petition for a writ of

certiorari by the existing deadline impracticable. These commitments have included preparing for an argument in the Federal Circuit on December 4, 2023 (though the argument ultimately was mooted by settlement on December 2); responsibility for briefs due in both the Second and Federal Circuits on December 13 and in the Fourth Circuit on December 22; and family commitments related to the holiday season.

For the foregoing reasons, PHH respectfully requests that the time to file a petition for a writ of certiorari be extended to and including January 17, 2024.

Respectfully submitted.

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