No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

HASSELL CONSTRUCTION CO., INC. BY AND THROUGH ITS SHAREHOLDER, ROYCE HASSELL, R. HASSELL & COMPANY, INC., AND R. HASSELL BUILDERS, INC.,
Petitioners
v.

HARRIS COUNTY IMPROVEMENT DISTRICT NO. 18, SPRINGWOODS REALTY COMPANY AND SPRINGWOODS REALTY, INC.,

Respondents

On Petition for Writ of Certiorari to the Supreme Court of Texas

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PETITION FOR WRIT OF CERTIORARI

SILVIA T. HASSELL
P. O. Box 3047
Bellaire, Texas 77401
(713) 725-0581
sehassell@aol.com
Counsel of Record for Petitioners

QUESTION PRESENTED

Whether state courts may retroactively refuse to apply 11 U.S.C. §362(a)(3) as plainly worded, as well as attendant equitable tolling principles, after the bankruptcy court opined that asserting control over certain state court litigation claims would appear to violate the automatic stay because the claims were arguable property of the bankruptcy estate.

PARTIES TO THE PROCEEDING

Petitioners are Hassell Construction Co., Inc. by and through its shareholder Royce Hassell; R. Hassell & Co., Inc. and R. Hassell Builders, Inc.

Respondents are Harris County Improvement District No. 18, Springwoods Realty Company, and Springwoods Realty, Inc.

RULE 29.6 DISCLOSURE STATEMENT

Hassell Construction Company, Inc. has no parent corporation and no publicly held company owns 10% or more of its stock. R. Hassell Holding Company, Inc. is the parent company of R. Hassell & Company, Inc. and R. Hassell Builders, Inc. No publicly held corporation owns 10% or more of the stock of R. Hassell Holding Company, Inc., R. Hassell & Company, Inc. or R. Hassell Builders, Inc.

STATEMENT OF RELATED PROCEEDINGS

This petition for writ of certiorari arises out of a lawsuit filed in the District Court of Harris County, Texas styled Case No. 2016-85276, *Hassell Construction Co., Inc., et al v. Springwoods Realty Company, et al* in the 333rd Judicial District Court of Harris County, Texas and two related state court cases:

- Case No. 2012-42981; *Hassell Construction Co., Inc. v. Springwoods Realty Company, et al,* In the 333rd Judicial District Court of Harris County, Texas (herein sometimes referred to as the "First Lawsuit");
- Case No. 2016-84811; *Hassell Construction Co., Inc. v. Springwoods Realty, Inc.;* in the 333rd Judicial District Court of Harris County, Texas (herein sometimes referred to as the "Third Lawsuit).

This case is also related to two cases from the United States Bankruptcy Court for the Southern District of Texas (Houston Division):

- Case No. 15-30781, *In re Hassell 2012 Joint Venture and Springwoods Joint Venture,* in the United States District Court for the Southern District of Texas, Houston Division.
- Case No. 15-30781, *In re Hassell 2012 Joint Venture,* in the United States District Court for the Southern District of Texas, Houston Division; Case No. 18-31189, *In re Hassell 2012 Joint Venture in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.*

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

U.S. FEDERAL CONSTITUTION

STATUTES, RULES, AND REGULATIONS

FEDERAL CASES

UNITED STATES SUPREME COURT

TABLE OF AUTHORITIES (CON'T.)

Page(s)

TABLE OF AUTHORITIES (CON'T.)

Page(s)

TABLE OF AUTHORITIES (CON'T.)

Page(s)

LEGISLATIVE MATERIALS

APPENDIX

PETITION FOR A WRIT OF CERTIORARI

Petitioners Hassell Construction Company, Inc. derivatively by and through its shareholder, Royce Hassell ("HCCI"), R. Hassell & Company, Inc. ("RHC") and R. Hassell Builders, Inc. ("RHB") formed a joint venture to bid and perform construction projects in Houston, Texas. One of the projects was a $14.6 million dollar contract to construct a portion of Springwoods Village Parkway and related water and sanitary sewer lines in Harris County, Texas (the Springwoods Project). The Project owners are Harris County Improvement District No. 18 (the "District") a Texas Local Government entity, and its developers including Springwoods Realty Company and Springwoods Realty, Inc. ("Springwoods").

Disputes developed over defective plans prepared by the District's engineers. In accordance with the contract terms, after a failed meditation Petitioners filed suit in Harris County District Court naming the District and Springwoods.

In 2014, Petitioners were alarmed to learned that a Director of the District and his private law firm had undertaken to represent Hassell family members and HCCI owners in filing a multi-million-dollar arbitration case alleging it was Petitioners who were at fault for the losses on the Project and not the District which HCCI was suing. Following these events, Petitioners were ousted from the Plaintiffs' side of the lawsuit against the District.

On February 6, 2015, Petitioners' financial circumstances caused Petitioners to initiate an involuntary bankruptcy case against their own

partnership with HCCI. On February 6, 2015, the petition was filed and as a result the bankruptcy automatic stay went into effect.

The state courts were persuaded by the arguments of Respondents' that because the claims at issue are not "against the debtor" or brought by a debtor, tolling did not apply. The Texas reading of the statute differs material from that of this Court. In *City of Chicago v. Fulton,* 592 U.S. 154, 141 S. Ct. 585, 208 L.Ed.2d 384 (2021, this Court observed that:

> [T]he filing of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms—"stay," "act," and "exercise control"—is that § 362(a)(3) prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed.

Id. at 158.

This Court expressly addressed the fact that the common meaning of the word "stay," one of the operative words of the statute, contemplates suspending a "judicial alteration of the status quo.'" *Id.,* quoting *Nken v. Holder*, 556 U.S. 418, 429, 129 S. Ct. 1749, 173 L.Ed.2d 550 (2009).

The Court went on to identify the common understanding of the words as found in dictionaries which define an act as:

> "[s]omething done or performed ... ; a deed." Black's Law Dictionary 30 (11th

> ed. 2019); see also Webster's New International Dictionary 25 (2d ed. 1934) ("that which is done," "the exercise of power," "a deed"). To "exercise" in the sense relevant here means "to bring into play" or "make effective in action." Webster's Third New International Dictionary 795 (1993). And to "exercise" something like control is "to put in practice or carry out in action." Webster's New International Dictionary, at 892. The suggestion conveyed by the combination of these terms is that § 362(a)(3) halts any affirmative act that would alter the status quo as of the time of the filing of a bankruptcy petition.

City of Chicago. v. Fulton, 592 U.S. at 158.

Here, Petitioners were enjoined from acting to take control of the claims but with the understanding that the stay would preserve the status quo for their protection in the event the bankruptcy court chose not to appoint a receiver. The state courts' interpretation would eviscerate the protection and create traps for law abiding citizens. This Court's intervention is warranted, both to insure the statute is applied uniformly and to preserve the policy interests of bankruptcy law.

This case is a proper vehicle for review because the tolling would be outcome-determinative. The Springwoods Joint Venture automatic stay was in effect and pending for 452 days, and adding those days

to the accrual dates set out by the court would make the bulk of Petitioners' claims timely.

Finally, this case is an opportunity to foster a more uniform application of the subsection (a)(3) limitations as to parties who are not "the debtor". Although the phrase "against the debtor" appears eight times in §362(a), the phrase is not found in subsection (a)(3). Significantly, even though the bankruptcy court's Request for Abatement (Appendix I) during the bankruptcy case relied on subsection (a)(3) to request that the First Lawsuit be abated, the court of appeals never mentions that subsection in its lengthy Memorandum Opinion affirming the summary judgment.

This Court's plenary review is important to provide direction to courts on retroactive applications of the stay. Particularly since simply following the law will cause a party to lose their rights. Bankruptcies are on the increase according to statistics released by the Administrative Office of the U.S. Courts, published on July 25, 2924. Annual bankruptcy filings totaled 486,613 in the year ending June 2024, compared with 418,724 cases in the previous year. Business filings rose 40.3 percent, from 15,724 to 22,060 in the year ending June 30, 2024. "Bankruptcy Filings Rise 16.2 Percent," Administrative Office of the U.S. Courts, Bankruptcy Filings Statistics, https://www.uscourts.gov/contact-us mobile-search.

Petitioners respectfully seek a writ of certiorari to review the final judgment of the Texas Supreme Court.

OPINIONS BELOW

The Order of the Texas Supreme Court in Case No. 23-0836 denying Petitioners' Motion for Rehearing is reported at *Hassell Constr. Co. v. Springwoods Realty Co.,* 23-0836 (Tex. May 03, 2024). (Appendix A.)

The Order of the Texas Supreme in Case No. 23-0836 denying Petion for review is reported at *Hassell Constr. Co. v. Springwoods Realty Co.,* 23-0836 (Tex. Feb. 23, 2024). (Appendix B.)

The Order of the Texas First Court of Appeal in Case No. 10-17-00822 denying en banc rehearing is reported at *Hassell Constr. Co. v. Springwoods Realty Co.,* 01-17-00822-CV (Tex. App.—Houston [1st Dist.] August 31, 2023. (Appendix C.)

The Order of the Texas First Court of Appeal in Case No. 10-17-00822 denying of panel rehearing is reported at *Hassell Constr. Co. v. Springwoods Realty Co.,* 01-17-00822-CV (Tex. App.—Houston [1st Dist.], August 31, 2023. (Appendix D.)

The Memorandum Opinion of the Texas First Court of Appeals in Case No. 01-17-00822 is reported at *Hassell Construction Co., Inc., derivatively by and through its shareholder, Royce Hassell, et al v. Springwoods Realty Company, et al,* No. 01-17-00822-CV, 2023 WL 2377488 (Tex. App. – Houston [1st Dist.] March 7, 2023, pet den). (Appendix E.)

The Order of the trial court dated September 28, 2017, denying Petitioners a new trial is not reported. (Appendix F.)

The Order of the trial court dated May 17, 2017, granting summary judgment on limitations against Petitioners is not reported. (Appendix G.)

BASIS FOR JURISDICTION

Petitioners seek review of the order dated February 23, 2024 by the Supreme Court of Texas in case No. 23-0836 for which a timely rehearing was denied on May 3, 2024. This Court has jurisdiction over the Texas Supreme Court's final order pursuant to 28 U.S.C. §1257(a).

STATUTORY PROVISION INVOLVED

11 U.S.C. Sec. § 362, the bankruptcy "Automatic Stay" provides at (a)(3) that "…a petition filed under section 301, 302, or 303 of this title. . . operates as a stay, applicable to all entities, of (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate . . ." (Appendix H.)

STATEMENT OF THE CASE

This case involves litigation claims which were abated after a bankruptcy petition was filed. In the case of the Springwoods Joint Venture bankruptcy the automatic stay was in existence from February 6, 2015, until May 3, of 2016. After the bankruptcy was terminated Petitioners filed this suit. Petitioners opposed the summary judgment on grounds which included that they had been effectively enjoined from filing suit especially after Judge Isgur determined that attempting to control the plaintiffs' side of litigation against the District or Springwoods would violate 11 U.S.C. § 362(a)(3).

The automatic stay is an injunction which is meant to be "self-executing. . . as an injunction issuing from the authority of the bankruptcy court..." *Gruntz*

v. County of L.A. 202 F.3d 1074, 1081 82 (9th Cir. 2000). Courts broadly view that the injunction is not just binding on parties subject to the injunction because it extends "also [to] nonparties who act with the enjoined party." *In re Correra*, 589 B.R. 76 (Bankr. N.D. Tex. 2018).

Petitioners filed the involuntary petition against the Hassell 2012 Joint Venture and the Springwoods Joint Venture. At the time of filing there was an ongoing dispute between owners of HCCI as to who owned the project and regarding who owned the proceeds and losses on the project. The bankruptcy petition was filed on February 6, 2015 in Case No. 15-39781; *In re Hassell 2012 Joint Venture and Springwoods Joint Venture,* in the United States District Court for the Southern District of Texas (Houston Division). The case was assigned to United States Bankruptcy Judge Marvin Isgur. Judge Isgur later bifurcated it into two separate cases.

Even if there was a dispute over whether the claims at issue were property of the estate, in the Fifth Circuit the fact that there may be a dispute about whether the claims were property of the estate is not a defense to an action for violation of the stay.

Thus, the Fifth Circuit answered affirmatively the question of "whether the creditor violates the stay if, without permission of the bankruptcy court, he forecloses on an asset to which the debtor has only an arguable claim of right ...." *In re Chesnut*, 422 F.3d 298, 300 (5th Cir.2005). The Fifth Circuit upheld the bankruptcy court's reasoning in finding a violation of the automatic stay even though the character of the property was uncertain at the time:

> . . . because Debtor had an arguable interest in the Eastland County property, Templeton violated the automatic stay by not causing there to be a resolution in the bankruptcy court of whether the arguable interest was a real interest before foreclosing the lien on the property. The Fifth Circuit did not decide the issue of ownership of the property or whether the property was part of Debtor's bankruptcy estate, saying "[w]here seized property is arguable property, it is no answer for the creditor to defend the foreclosure by claiming that the property was not properly covered by the stay." Id. at 304.

In re Chesnut, 400 B.R. 74 (N.D. Tex. 2009).

The bankruptcy estate is made up of property wherever located and by whomever held including "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1).

Because the state court refused to abate the First Lawsuit after being notified of the automatic stay, Judge Isgur himself requested abatement additionally stating that otherwise the bankruptcy court "could enjoin the prosecution of that lawsuit and appoint a trustee to take control." (Appendix I).

Judge Isgur's request notes that the state court had declined to abate the lawsuit because 11 U.S.C. 362(a)(1) was not implicated—which is the same approach the Texas courts took in this case at

Respondent's urging. But after Judge Isgur pointed out that "continued exercise of control" over the Plaintiff's side of the case would violate the (a)(3) prohibition, the trial court capitulated and abated the lawsuit. A year later the trial court entered a May 25, 2016, order reinstating the case. (Appendix J). The automatic stay was in effect for 452 days beginning February 6, 2015

Once the second bankruptcy case terminated, RHC and RHB intervened in the First Lawsuit again but the intervention was stricken on grounds that they had waited too long. Four days later, on October 3, 2016, a gratuitous non-suit was filed purporting to non-suit the plaintiff's side of the case. And Petitioners refiled them in this case after their second intervention petition in the First Lawsuit was also stricken even though at the time Petitioners were the only parties representing the Plaintiff's side of the lawsuit. On December 12, 2016 the Petitioners re-filed the claims (the "Third Lawsuit"). The lawsuit was randomly assigned to another trial court but Respondents requested the suit go back to the 333rd Court. Petitioners argued that:

> The exact same lawsuit [which] was filed by all Plaintiffs on July 26, 2012, against defendants Springwoods and Harris County Improvement District No. 18 . . . On December 12, 2016, Plaintiffs filed this lawsuit in which they all seek to recover damages for increased costs they allegedly incurred in performing the construction contract. The Plaintiffs rely on the exact same facts, they assert the same causes of action, and they seek to

> recover the same damages that were previously sought in the First Lawsuit.

CR1704.

After the case was transferred, Respondents filed the summary judgment motion in this case affirmatively asserting that "[t]he statute of limitations was not tolled during the pendency of the First Lawsuit. . ." CR1715. On April 7, 2017, Petitioners asked the 333rd Court to abate this lawsuit while the Petitioners appealed the same court's striking of their intervention petition in the First Lawsuit. Abatement was denied and Petitioners timely filed their response after the trial court denied abatement. Petitioners' motion opposing the summary judgment filed on April 21, 2017, asserted that and presented evidence that:

> [A]ll of the Plaintiffs were barred from acting during the pendency of the bankruptcy action involving the 'Springwoods Joint Venture' which stayed the First Lawsuit from the date the petition was filed, February 6, 2015 until May 3, 2016, when it was dismissed. . . *CR714.*

Respondents argued in reply that Petitioners had not provided any evidence "that Hassell or R. Hassell were in bankruptcy or that any of the Defendants were in bankruptcy" or either "the Plaintiffs or Defendants have been in bankruptcy . . ." Also, Respondents argued Petitioners were somehow at fault with regard to limitations because they "never sought relief from [the bankruptcy court] to file the present claims so as to protect them from a potential

limitations argument if the present claims were decided not to be claims that belonged to the alleged Springwoods Joint Venture bankruptcy estate." CR782.

After the summary judgment hearing the trial Court granted motions by Petitioners and Respondents for leave to file additional briefing and post-hearing evidence on the issue of bankruptcy tolling. Notwithstanding the trial court's awareness of all events in the First Lawsuit with regard to these claims, the trial court failed to credit Petitioners with the days during which limitations tolled. Appendix G.

Petitioners appealed and included a section in their opening brief entitled "The Bankruptcy Tolled Limitations on All Claims" (pages 20-23). In response Respondents asserted that "[t]he Common Law Does Not Provide that Limitations is Tolled for a Debtor's or Non-Debtor's Causes of Action if a Bankruptcy is Later Dismissed . . ." Respondents suggested that Petitioner were trying to "create new law [because] Springwoods has not been able to locate a single case stating that limitations on a cause of action that was potentially subject to a bankruptcy stay is tolled or otherwise extended when the cause of action is later asserted after the bankruptcy is dismissed . . ." (*Springwoods Response Brief at pages 38-40).* Petitioners also raised the issue in supplemental briefing.

The court of appeals issued its Memorandum Opinion affirming the summary judgment which never references the constraints of 11 U.S.C. § 362(a)(3) and does not apply the plain language of the statute or principles of equitable tolling. (Appendix

A). Petitioners then filed motions for Panel Rehearing and En Banc Rehearing which raise the federal question. (Motion for Panel Rehearing at pages 13-14 and in their Motion for En Banc Reconsideration.)

At the Texas Supreme Court level in Case No. 23-0836, *Hassell Construction Co., Inc., et al v. Springwoods Realty Company, et al,* Petitioners raised the automatic stay tolling issue in their Petition for Review filed on December 15, 2023 and in their Petition for rehearing. The Texas Supreme Court issued its order denying review on February 23, 2024 and rehearing on May 3, 2024. (Appendix A).

REASONS FOR GRANTING THE WRIT

I. The Texas State Courts Disregarded 11 U.S.C. §362(a)(3) and Failed to Apply Its Protections

The Texas state courts' refusal to apply the plain meaning of 11 § 362(a)(3) here conflicts with the principle that "[t]he sole function of the court is to enforce [a plainly worded statute] according to its terms." *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 240, 109 S. Ct. 1026, 1030, 103 L. Ed. 2d 290 (1989).

The automatic stay is meant to preserve the status quo and not to give a litigant who is denied an access to state courts an unfair disadvantage in later litigation. The automatic stay and equitable tolling go hand in hand. In *Irwin v. Department of Veterans Affairs*, 498 U. S. 89, 95, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990) this Court observed that "[i]t is hornbook law that limitations periods are "customarily subject to `equitable tolling. . .'" *Id.,* citations omitted. Texas, interpreting 11 U.S.C. § 362(a)(3) in a manner which

drastically alters the status quo, *retroactively* leaves law abiding citizen with no effective way to redress their rights.

II. Texas State Courts Do Not Have the Option to Disregard Protective Federal Bankruptcy Laws and Related Equitable Principles.

A "state court may not deny a federal right, when the parties and controversy are properly before it . . ." *Howlett v. Rose,* 496 U.S. 356, 357, 110 S. Ct. 2430, 110 L.Ed.2d 332 (1990). The rule that state courts may not deny and invalidate federal rights exists pursuant to the U.S. Const., Art. VI, cl. 2 which provides that "the Judges in every State shall be bound" by "the Laws of the United States." *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 36 S. Ct. 463, 193 L.Ed.2d 365, (2015).

Under the Supremacy Clause state courts having concurrent duties to enforce federal law may not deny a litigant federal rights without a "valid excuse." *Douglas v. New York, N.H. & H.R. Co.,* 279 U.S. 377, 387-389, 49 S. Ct. 355, 356-357, 73 L. Ed. 747 (1929). Here there is no valid excuse for denying Petitioners the protections of the automatic stay.

III. Law Abiding Citizens Should Be Rewarded With Equity and Not Punished With Unfairness Because They Did Not Act in Violation of the Automatic Stay

Bankruptcy and state courts are courts of equity such that equity principles apply equally in both. *Pepper v. Litton,* 308 U. S. 295, 304, 60 S. Ct. 238, 84 L. Ed. 281 (1939); *United States v. Energy Resources*

Co., 495 U. S. 545, 110 S. Ct. 2139, 109 L. Ed. 2d 580 (1990).

In balancing the equities the courts can note that Respondents fought hard to keep Petitioners out of the First Lawsuit so they could litigate the claims against a nominal adversary. But, having argued for so long that these are the same claims as in the first lawsuit, which was abated because of subsection (a)(3), their concessions should be counted against them.

Texas common law recognizes equitable tolling in the case of an injunction which is a legal impediment. *Petersen v. Tex. Comm. Bank—Austin, N.A.,* 844 S.W. 2d 291, 295 (Tex. App.—Austin, 1992, no writ); *Levinson Alcoser Associates, L.P. v. El Pistolon II, Ltd.,* 670 S.W. 3d 622, 630 (Tex. 2023). Primarily, "the stay protects the status quo by prohibiting certain acts affecting property of the debtor or the estate." *City of Chicago v. Fulton,* 592 U.S. 154,158 141 S. Ct. 585, 208 L. Ed. 384 (2021). It "serves the debtor's interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others." *Id.*

IV. Guidance is Needed Because the 11 U.S.C. 362(a)(3) Automatic Stay Should Be Applied Uniformly Nationwide

The plain language of 11 U.S.C. § 362(a) makes clear that, with regard to the automatic stay, "'the sole function of the courts' . . . is to enforce it according to its terms.' " *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S.1, 6 120 S. Ct. 142, 147 L. Ed. 2d 11 (2000) (quoting *U.S. v. Ron Pair Enters,*

Inc., 489 U.S. 235, 241 (1989)). Unlike court-ordered injunctions, the automatic stay is imposed by congressional mandate requiring no judicial act to become effective.

It is generally understood that the automatic stay is intended to benefit both debtors and creditors and acts to prevent conduct which unfairly adjusts the "status quo" to be in their favor.

In effect, the Respondents have asked the trial court to retroactively lift the automatic stay to allow limitations to run out. However, the state courts are without jurisdiction to grant retroactive relief from the automatic stay:

> The bankruptcy court has sole jurisdiction to annul, terminate, modify or place conditions upon an automatic stay. 11 U.S.C.A. § 362(d); *See Constitution Bank v. Tubbs*, 68 F.3d at 691 ("Relief from the stay can be granted only by the bankruptcy court having jurisdiction over a debtor's case."); . . .Therefore, although the bankruptcy court may grant retroactive relief from technical violations of the automatic stay, this Court lacks such authority.

Jutonus, LLC v. Fiano, C. A. WM-2022-0091 (R.I. Super. Nov 18, 2022).

The trial court's reluctance to stay the First Lawsuit during the bankruptcy and its recharacterizations of the claims as not having been property of the estate for purposes of invalidating equitable tolling is jurisdictionally unsound. The Texas courts' interpretation conflicts with the statute,

its history and intent and encourages "individual creditors to purs[ue] their own interests to the detriment of others." *City of Chicago v. Fulton, supra,* 592 U.S. at 158.

The legislative history of the automatic stay shows that it is meant to prevent entities from acting first to the detriment of others:

> Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally.

H.R. Rep. No. 95–595, at 340 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296–97).

The corollary though should be that those who do not act because of the stay should not be penalized. In that regard it is clear that the automatic stay is intended to protect non-debtors as well:

> The automatic stay also provides creditor protection. procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

Notes of the Committee on the Judiciary, H.R. Rep. No. 585, 95th Cong., 1st Sess. 340-341 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97. Such rights include contract rights including those of the

debtor. *Windstream Holdings, Inc. v. Charter Communications Operating, LLC,* 22-2891-bk (2nd Cir., June 24, 2024). In the case of joint venturers it would be difficult to parse out those contract rights if one joint venturer jumped in from of another during bankruptcy and left no contract rights to be adjudicated.

The earliest accrual date for four-year contract claims mentioned in the memorandum opinion is July 2, 2012. This suit was filed December 12, 2016. Applying tolling, this suit was timely to assert all four-year claims including breach of contract and fraud. The legal impediment was evidenced and the state court's failure to apply equitable tolling disregards the plain meaning of the statute from which, and which specifies how, the injunction arises.

CONCLUSION

The petition for a writ should be granted.

Respectfully submitted,

SILVIA T. HASSELL
P. O. Box 3047
Bellaire, Texas 77401
(713) 725-0581
sehassell@aol.com

Counsel of Record for Petitioners