No. 24-5772

In the

Supreme Court of the United States

STEPHEN SEWALK

Petitioner,

v.

VALPAK DIRECT MARKETING SYSTEMS, LLC,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Petitioners (pro se)

October 5, 2024

I.

Question Presented for Review

1. Did the U.S. Court of Appeals for the Eleventh Circuit sanction a violation of Petitioners' due process rights (as well as sanction violations of Bankruptcy Codes USC § 362(a), (b), (k), ERISA/ROBS, and the HOBBS Act), when it affirmed the trial court's refusal to hold a hearing on whether a settlement agreement was procured by extortion thereby allowing Plaintiff to take a retirement asset from the bankruptcy estate by coercion, paying no restitution, fees, or penalties?

II.

Required Disclosures

Corporate Disclosure Statement

Stephen Sewalk directly owns 2.5% of SMS Business Entities, Inc. and is the owner of SMS Business Entities 401(k) an organization structured under ERISA/ROBS that owns the remaining 97.5% of SMS Business Entities, Inc. Stephen Sewalk owned and operated the Valpak of Southern Colorado franchise through SMS Business Entities, Inc. prior to Valpak violating bankruptcy law and taking the asset illegally without proper compensation.

List of Proceedings

Other than the District Court and Court of Appeals judgments below, there are no other cases directly related to the case in this Court.

III.

Citation to Unreported Opinions

Sewalk, et al. v. Valpak Direct Marketing Systems, LLC, Docket No. 8:22-cv-00168-AAS (M.D. Fla., September 6, 2022)

Sewalk, et al. v. Valpak Direct Marketing Systems, LLC, Docket No. 8:22-cv-00168-AAS (M.D. Fla., November 9, 2022)

Sewalk, et al. v. Valpak Direct Marketing Systems, LLC, Docket No. 22-13819 (11th Cir., February 26, 2024)

IV.

Statement of Jurisdiction

The judgment of the U.S. Court of Appeals for the Eleventh Circuit from which Petitioners appeal was rendered on February 26, 2024. Pursuant to Supreme Court Rule 30.1, ninety days thereafter ended on Sunday, May 26, 2024. However, because the last day of the period fell on a Sunday, and because Monday, May 27, 2024, was Labor Day, the period for filing was extended to May 28, 2024. The documents were postmarked May 28, 2024.

On May 30, 2024, the court returned the documents requesting clarification providing 60 days to resubmit. A resubmittal was timely postmarked and received by the court on August 1, 2024. The pro se petitioner did not fully understand the instructions resulting in the documents being returned on August 7, 2024, with 60 days to resubmit. With a deadline of October 6, 2024 falling on Sunday, the period to refile was extended to October 7, 2024 and these documents are resubmitted by or before this date.

Accordingly, this Petition is timely.

This Court has jurisdiction to hear this Petition pursuant to 28 U.S.C. § 1254(1) because judgment in this case was rendered in the U.S. Court of Appeals for the Eleventh Circuit.

V.

Statutes Involved in This Case

(1) Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

F.S.A. § 836.05

(2) If a creditor "willfully" violates the automatic stay and this violation injures an individual, the law requires the creditor to pay the individual actual damages, including costs and attorney fees, and may be required to pay punitive damages to punish this violation of the Bankruptcy Code. See 11 U.S.C. § 362(k).

(3) The Hobbs Act, 18 U.S.C. § 1951, defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

VI.

Statement of the Case

On January 20, 2022, Petitioners commenced a lawsuit against the Respondent in the U.S. District Court for the Middle District of Florida to challenge a violation of a bankruptcy court automatic stay and for breach of a franchise agreement. Federal jurisdiction over Petitioners' claims is predicated upon 28 U.S.C. § 1332(a) because the parties are of diverse citizenship, and the amount in controversy exceeds $75,000. Additionally, federal jurisdiction over Petitioners' claim for violation of the automatic stay is supported by 28 U.S.C. § 1331 and 28 U.S.C. § 1334(b) and 11 U.S.C. § 362(k) (requiring creditor to pay actual damages, punitive damages for violating the bankruptcy code).

An obligatory mediation was held on July 12, 2022 with a private mediator. Petitioners and Respondent entered into a settlement agreement on that day through coercion. Petitioners later alleged the settlement agreement was procured by extortion on account of Respondent's threatening to report Petitioners for an alleged bankruptcy fraud concerning the valuation of Petitioner SMS' business unless Petitioners agreed to an unreasonably small settlement within less than one-hour. The crime of extortion across state lines constitutes a violation of the 18 U.S.C. § 1951, The Hobbs Act.

Petitioners filed a motion with the District Court to reopen the original case and to set aside the settlement agreement; however, without a hearing and without any evidence that Petitioners engaged in an alleged bankruptcy fraud, the District Court summarily denied Petitioners' request and subsequent motion for reconsideration.

On February 26, 2024, the U.S. Court of Appeals for the Eleventh Circuit affirmed the trial court's orders, reasoning that substantive Florida law suggests a "justified threat of criminal prosecution does not constitute duress under Florida law and will not justify setting aside a settlement agreement." There has never been an evidentiary hearing in this case, so whether Respondent's alleged threat of criminal prosecution was "justified" has never been tried. It is alleged by Petitioners that Respondent committed a crime of extortion in violation of the Hobbs Act in furtherance of violating the automatic stay of bankruptcy to illegally retain a stolen asset.

VII.

Argument

POINT I

THE DISTRICT COURT VIOLATED PETITIONERS' RIGHT TO DUE PROCESS BY MAKING FACTUAL FINDINGS IN THE ABSENCE OF A HEARING, AND THE COURT OF APPEALS HAS SANCTIONED THE DEPRIVATION BY MAKING ITS OWN FACTUAL FINDINGS IN THE ABSENCE OF A HEARING THEREBY SANCTIONING THE CRIME OF EXTORTION IN VIOLATION OF THE HOBBS ACT AND WILLFUL VIOLATION OF THE AUTOMATIC STAY.

United States Supreme Court Rule 10 provides that a petition for writ of certiorari may be granted when a U.S. Court of Appeals has sanctioned a trial from departing so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Petitioners respectfully call upon this Court to restore their right to due process and permit Petitioners to present their case that the settlement agreement they entered was procured by extortion and should be set aside.

"[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Boddie v. Connecticut, 401 U.S. 371, 377 (1971) (emphasis added). Though a hearing on the merits is not always required to satisfy due process, "[w]hat the Constitution does require is 'an opportunity . . . granted at a meaningful time and in a meaningful manner,' . . . 'for (a) hearing appropriate to the nature of the case,' " Id. at 378 (internal citation omitted). No such opportunity has been provided because the District Court and the Court of Appeals have drawn their own factual findings in the absence of a hearing. Ignoring that Respondent had an incentive to deprive Respondent of their property by giving false statements shown by their willingness to commit the crime of extortion across State lines in furtherance of avoiding penalties and fees for violating the automatic stay.

The District Court relied largely upon an unreported Eleventh Circuit opinion, United States v. Contents of Bank of Am., 452 Fed. App'x 881, 882 (11th Cir. 2011), which itself interpreted Florida law as providing that threats of criminal prosecution do not rise to the level of extortion if the person being threatened actually committed a crime. (App'x, Tab 1 at p. 4) (App'x, Tab 2 at pp. 2-4). To-date there has been no evidentiary hearing in this case. Accordingly, it cannot have been determined one way or the other whether Petitioners committed a crime, and Petitioners deny they committed any crime. Thus, under the authorities cited by the District Court, it was improper to summarily deny Petitioners' requests to set aside the offending settlement agreement without further factual development.

The Court of Appeals instead opined that Florida case law "recognizes the general principal that a threat of lawful criminal prosecution will not constitute duress," slightly changing the analysis into an inquiry whether the person making the threat was subjectively justified in believing a crime had occurred (App'x, Tab 3 at p. 22). The Court of Appeals expressly finding that an evidentiary hearing was unnecessary, concluded that Respondent "justifiably believed that [Petitioner Sewalk] had 'knowingly and fraudulently' made false statements under oath." (App'x, Tab 3 at p. 18). The Court of Appeals further held that "it is likely that [Petitioner Sewalk] made false statements about the value of [Petitioner SMS]" and "no evidence suggests" that Respondent was aware of the circumstances explaining discrepancies between valuation numbers used by Petitioner Sewalk in his bankruptcy schedule and the present lawsuit.

Neither Petitioners nor Respondent have testified in open court in this case. The Court of Appeals concluding that certain events were "likely" and that there existed an

absence of evidence concerning Respondent's knowledge of certain circumstances is unadulterated speculation that deprives Petitioners of due process. Petitioners were not provided an opportunity to refute any of these factual assertions made by the Court of Appeals.

Moreover, the District Court and the Court of Appeals outright ignore the significance of the Florida statute broadly defining criminal extortion. F.S.A. § 836.05. And ignore the significance of violating the Hobbs Act, the automatic stay, and the crime of extortion. Petitioners argued that the threat in question amounted to extortion under Florida's extortion statute, which was sufficient to void the settlement agreement between the parties. The Court of Appeals agreed that Petitioners' argument "makes sense based upon the text of § 836.05," but essentially held that the statute did not supersede the court's interpretation of Florida case law. (App'x, Tab 3 at p. 19). This conclusion is offensive to the concept of separation of powers. Moreover, this is also a Federal issue as extortion across State lines is a violation of the Hobbs Act. The Florida legislature and U.S. Congress have defined what extortion is, and the Court of Appeals *sua sponte* narrowed that definition to Petitioners' detriment.

Petitioners respectfully pray that this Court grant their Petition for Writ of Certiorari to review the actions of the U.S. District Court for the Middle District of Florida and the U.S. Court of Appeals for the Eleventh Circuit and to prevent the deprivation of Petitioners' due process rights by exercising this Court's supervisory powers.

Respectfully submitted,

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