Docket No. 24-6268 ORIGINAL

SUPREME COURT OF THE UNITED STATES

Ramon Moreno-Cuevas,
Petitioner,

v.

Town Sports International, LLC,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Ramon Moreno-Cuevas
Pro se Petitioner
97 Newton Street 2nd Fl.
Hartford, CT 06106
morenocramon@gmail.com
Ph and fax 203-343-8505

QUESTIONS PRESENTED

I. Does a litigant in a non-core bankruptcy case, who does not consent to a non-Art-III court trial and who asks, based on his Seventh Amendment rights, to lift the automatic stay and dismiss the case to continue the proceedings in the district court where it was originally filed, and who does not object to the bankruptcy Plan, lose his Seventh Amendment rights to a jury trial for not objecting to the Plan?

II. Based on the hidden assumption that bankruptcy courts can decide non-core cases, the DE Bankruptcy Court decided the present case, the DE District Court reviewed the case for "abuse of discretion," and the Panel for the Third Circuit Court of Appeals sanctioned both decisions with its affirmance. Does that ruling conflict with Article III of the Constitution, statute 157(c)(1), and Supreme Court's precedents?

III. Can a court apply wrongly its own precedents, those of its supervising courts, including the Supreme Court, by depriving a litigant of his property, his right to a jury trial, and enforce the law unequally against him without violating the Fifth and the Fourteenth Amendments?

IV. Respondents claimed that they sold "substantially all their assets" and implied that they discharged their debts with this litigant. By statute Respondents had to do both things in the context of an "adversary proceeding." Can Respondents sell "substantially all their assets," without asking by motion for an "adversary proceeding"?

TABLE OF CONTENTS

CONTENTS **Page**

TABLE OF CONTENTS FOR THE APPENDIX

Volume 1

Volume 2

Volume 3

Volume 4

Volume 5

TABLE OF AUTHORITIES

Cases **Page**

Statutes and Rules **Page**

LIST OF ALL PARTIES TO THE PROCEEDING

1. Town Sports International, LLC (TSI), the main party in the original case in CT and the party who declared bankruptcy with its branches. Those branches fill out two and a half pages. They have been placed in the Appendix at [SCA 183]ff. As only TSI declared bankruptcy, other parties in the original proceeding are in the CT District Court action and in paragraph (6) below.

LIST OF PROCEEDINGS IN STATE AND FEDERAL COURTS

2. This case has reached the Supreme Court twice. The first time was sent on January 5, 2023, but there is no docket number or related cases to report for that time, as the Clerk returned the documents for being jurisdictionally out of time.
3. The second time in the Third Circuit Court of Appeals: Docket No. 24-1020, In re: Town Sports International, LLC et al., Debtors, Ramon Moreno-Cuevas, Appellant; judgment was filed on August 28, 2024; Hons. Krause, Matey, and Chung, Circuit Judges wrote the per curiam Opinion. The first time in the Third Circuit Court of Appeals: Docket Number 21-2754, In re: Town Sports International, Ramon Moreno-Cuevas, Appellant, Town Sports International, Debtors; Hons. McKee, Schwartz, and Matey, Circuit Judges; the dates of entry of the judgments were October 12, 2022 and August 31, 2022. *See* Appx.

4. The second time in the Delaware District Court: Docket Number 1:23-cv-00472 (MN), Hon. Maryellen Noreika, District Judge; the caption for the proceeding is In re: Town Sports International, LLC et al., Ramon Moreno-Cuevas, Appellant, Town Sports International, Debtors; the date of entry of the judgments were December 21, 2023. First time in the Delaware District Court: Docket Number 1:21-cv-00458 (MN), Hon. Maryellen Noreika, District Judge; the caption for the proceeding is In re: Town Sports International, LLC et al., Ramon Moreno-Cuevas, Appellant, Town Sports International, Debtors; the dates of entry of the judgments were November 23, 2021 and August 30, 2021. *See* Appx. at [SCA 032]ff.

5. The second time in the DE Bankruptcy Court: Docket Number 20-12168 (CTG), Hon. Craig T. Goldblatt, Bankruptcy Judge; the caption of the proceeding is In re: Town Sports International, LLC, et al., Debtors, Ramon Moreno-Cuevas, Creditor; the date of entry of judgment was April 24, 2023. Previous times in the DE Bankruptcy Court: Docket Number 20-12168 (CSS), Hon. Christopher S. Sontchi, Chief Bankruptcy Judge; the caption of the proceeding is In re: Town Sports International, LLC, et al., Debtors, Ramon Moreno-Cuevas, Creditor, Town Sports International, Debtors; the dates of entry of judgments were March 1, 2022; February 15, 2022; January 12, 2022, and January 25, 2021, five times, including one skipped DE D. Courts.

6. Connecticut District Court: Docket Number 3:19-cv-01803 (KAD), Hon. Kari A. Dooley, District Judge; the caption of the proceeding is Ramon Moreno-Cuevas, *pro se* Plaintiff v. Town Sports International (TSI) DBA New York Sports Clubs (NYSC); Starwood Retail Partners; Laura Hoover, Director (NYSC); Robyn Rifkin, Property Manager Starwood; Timothy Carlson, Director Starwood; Brisvely Garcia, Gen. Manager NYSC; Tania Hussain, Fin. Manager NYSC; Jane Doe 1, 2, 3, 4; John Doe 1, 2, 3, 4, Defendants; no final judgment has been entered in this court. *See* Appx. at [SCA 001]ff.
7. CT Small Claims Court: Docket No. HFHCV185003328S, Hon. Edward G. McAnaney, Small Claims Court Magistrate; the caption of the proceeding is Superb Score, LLC v. New York Sports Clubs (NYSC) / (TSI), West Hartford; judgment's entry date was 6/20/2018. The small claims case is separate from this one, but the Defendants-Respondents insist in inserting the case here. *See* Appx. at [SCA 115]ff.
8. Hrtd. Housing Session: No Docket No.; applied for on 3/8/2018.

OPINIONS AND ORDERS ENTERED IN THE CASE

9. This second time in the Third Circuit Court of Appeals, the court entered its final opinion and order on August 28, 2024. The first time entered its mandate on a petition to rehear the case on October 12, 2022 denying the petition. The opinion denying the appeal was entered on August 31, 2022 and it was issued on August 1, 2022.

10. The second time in the Delaware District Court, the court issued its final opinion and order on December 21, 2023. The first time, the court issued its final opinion on denying a motion for rehearing on November 23, 2021, entered on the same date. "On August 26, 2021, the [DE District] Court issued a Memorandum Order (D.I. 22) dismissing the appeal.

11. The second time in the DE Bankruptcy Court, the court entered its final Order for rehearing this case on April 24, 2023. A previous time, the Bankruptcy Court entered its opinion and order on March 1, 2022. Both the Respondents and the District Court in its Memo report a hearing on February 15, 2022. Another Order denying a Motion to Rehear the case was entered on January 12, 2022. The original Motion to Lift the Automatic Stay was denied and entered on January 25, 2021. Therefore, there were five hearings and five denials. The first of which was on January 25, 2021, entered the same day.

STATEMENT OF JURISDICTION

12. This second time in the Supreme Court of the United State, the Court has jurisdiction on this case pursuant to 28 U.S. Code § 1254, and because the Third Circuit Court of Appeals's Panel entered its final judgment on August 28, 2024, which is less than the 90 days allowed by the Court's Rules to petition for a writ of certiorari. The first time

the case was sent to the Supreme Court, the Court had jurisdiction pursuant to 28 U.S. Code § 1254. *See* Appx. at [SCA 205].

PROVISIONS INVOLVED IN THE CASE

13. Although all the provisions that have been previously invoked through the courts are in the Appendix, only those related to bankruptcy and jurisdiction have been quoted verbatim. The others only by title, as the Supreme Court Rules permit at this point. Section 14(f) of the Supreme Court's Rules and Guidance, that refers to provisions in the case, is interpreted in relation to encompassing the courts and agencies mentioned in Article III § 1 of the Constitution; 11 U.S. Code § 157(c)(1); 28 U.S. Code § 1254; Bankruptcy Rule 8005(c); 28 U. S. Code § 2107; 28 U.S. Code § 1961-1968; 15 U.S. Code § 45; 28 U.S. Code § 1332; 28 U.S. Code § 1367; 28 U.S. Code § 157(b); 28 U.S. Code § 1334(a) and (b) the Seventh Amendment to the Constitution; the Fifth and the Fourteenth Amendments to the U.S. Constitution; 11 U.S. Code § 362(a); 11 U.S. Code § 362(d); 11 U.S. Code § 1127(a); 11 U.S. Code § 1127(f); Bankruptcy Rules 1009, 2002, 3006, 3016, 3018, 3019, 3020, and 9014; 11 U.S. Code §§ 1121-1129 (The Plan); 11 U.S. Code § 1191; 11 U.S. Code § 1193; 28 U.S.C. § 158(a)(1); 28 U.S.C. § 158(d); 28 U.S. Code § 1291; Bankruptcy Rule 9015(b); 28 U.S. Code § 157(e); 11 U.S. Code §

1128(a) and (b) Bankruptcy Rule 3017(a); Fed. Rule Bkrtcy. Proc. 7001; 11 U. S. C. § 547(b); 11 U. S. C. § 363(f) 11 U. S. C. § 363(h).

STATEMENT OF THE CASE

14. The Petitioner, Ramon Moreno-Cuevas, needed teaching space for his standardized–test prep classes, and New York Sports Clubs was advertising space for rent. As Petitioner was a member of NYSC, it was convenient to rent space there. On February 15, 2018, Ramon Moreno-Cuevas and his company, Superb Score, LLC, signed a lease with Town Sports International, LLC DBA NYSC in West Hartford. *See* lease, insurance, and space advertisement in the Appx. at [SCA 107].

15. The President's Day weekend was convenient to move in, but classes would not start until March 1, 2018. After the Petitioner moved into the office, Town Sports International demanded a higher rent, which Petitioner refused. TSI manager, Brisvely Garcia, tried to justify the increase saying that Ramon Moreno-Cuevas supposedly had an "altercate" with a janitor. TSI does not control the janitors who work in the building. Then Garcia changed disputants in the "altercate" by saying that the "altercate" was with a security guard, which TSI does not control either.

16. Finally, TSI said that the increase was because the landlord, Starwood Retail Partners, did not know about the sublease with Ramon Moreno-Cuevas and wanted a higher share of the deal, which Petitioner had to pay. But Starwood, the landlord, had authorized producing a key for the Petitioner to move into the rented independent-entrance space, events that belies this assertion.

17. Seeing that Respondent TSI was not a responsible landlord, the Petitioner decided to move out, as TSI had suggested. To recuperate the lost money in moving in, moving out, and promoting the classes, the Petitioner's company filed a small claims suit, and would move on from the incident, renting elsewhere. *See* Small Claims Court's decision in the Appx. at [SCA 087]. Starwood is only the manager of the property, the real owner is the West Hartford Town.

18. However, TSI changed the lock of Petitioner's rented office with Petitioner's working tools inside, preventing Petitioner from moving out to teach elsewhere or to teach classes in the leased space. For this reason, Petitioner was forced to file a housing complaint in the Hartford's Housing Session, which required police action. The police refused to act, pretexting that the lease had been rescinded, and banned Petitioner from going to the building where the leased office was and from talking to TSI's employees. *See* Housing Session's filing in Appx. at [SCA 086].

19. Small claims courts have no authority to transfer property, but that court ruled that Petitioner should move out, or his property would be given to TSI. However, the court left in place the police ban from going to the building and from talking to TSI's employees. In the absence of his tools, Petitioner could not work. But with a police ban looming, could not pick up his tools either. As the small claims court is a court of limited jurisdiction, the Petitioner filed in the Connecticut District Court a suit with some 16 counts that the small claims court does not have jurisdiction to hear. The suit is still pending in the Connecticut District Court. Respondents filed for bankruptcy protection in Delaware when Petitioner asked the CT District Court for summary judgment, which Respondents have not answered after more than a year.

20. This case reached the Supreme Court appealing from decisions made by the DE Bankruptcy Court and its supervising courts, the DE District Court and the Third Circuit Court of Appeals. As the *Stern case* that this is, the bankruptcy court should not have made a final decision without having the parties' consent. The court did not have the Petitioner's consent for which it should have limited itself to sending a recommendation to the DE District Court. But, in violation of Petitioner's constitutional rights, adjudicated the case. *See* Petitioner's Amended Brief to the District Court and its Appendix.

21. Due to this decision, Petitioner was forced to file a notice of appeal that he sent on February 7, 2021. *See* Notice at [SCA 078]. However, the notice of appeal disappeared between Hartford's main post office and the DE District Court. Petitioner was directed to send a copy of the notice of appeal to the DE Bankruptcy Court, which was stamped on March 29, 2021. On appeal in the DE District Court, 65 days after the expiration of time by Bankruptcy Rule 8005(c), Respondents raised the point that the District Court did not have jurisdiction over the case because the notice of appeal had been filed late.

22. Although Respondents were late to raise this point and the Supreme Court's rulings that the Bankruptcy Rules are not jurisdictional, the DE District Court adopted Debtor's view. The DE District Court skipped that the DE Bankruptcy Court had violated Article III § 1 of the Constitution by deciding a case for which it did not have constitutional or statutory authority, and for which Petitioner did not consent. Petitioner filed a sworn affidavit showing when he sent the notice of appeal. *See* Bankruptcy Rule 8005(c) and Bowles in Appx. at [SCA 214] and [SCA 173].

23. The Third Circuit Court of Appeals also adopted the view that that court did not have jurisdiction over the case, despite the fact that Petitioner showed that the case on which the DE District Court relied, Bowles v. Russell, rested on statute 28 U. S. Code § 2107, that itself forbids being invoked in bankruptcy cases. *See* 28 U. S. Code § 2107 in Appx. at [SCA 210]; compare to § 2107 at [SCA 209]. The straight truth is that the courts have taken this bankruptcy case on more than one occasion. The DE Bankruptcy Court heard it five times, the district court twice, and the court of appeals, twice. On all occasions those courts have ruled against Petitioner. But the last of the DE Bankruptcy Court's judgment was entered on March 1, 2022.

24. Even if Petitioner had not signed an affidavit and the Bankruptcy Court had jurisdiction to issue a final decision, because of the bankruptcy court's decision to take the case again, the Respondents' argument about jurisdiction became invalid: The Bankruptcy Court's several entries of judgment tolled the time for the appeal in the District Court, making a difference for the issue of jurisdiction in that court. The Connecticut District Court has jurisdiction pursuant to 28 U.S. Code § 1961-1968, 15 U. S. Code § 45, 28 U.S. Code § 1332, and 28 U.S. Code § 1367, as supplemental jurisdiction.

25. As the Defendants-Respondents declared bankruptcy in Delaware, that court has jurisdiction with respect to the Petitioner pursuant to 28 U.S. Code § 157(b)(1) and 28 U.S. Code § 1334(a) and (b). Although CT District Court and the DE Bankruptcy Court may be considered courts of first instance, depending on the stages of the proceedings, the first time the Petitioner presented this case to the Supreme Court was asking for a writ of certiorari to review the part of the case involving the bankruptcy court. That petition to the Supreme Court was based on the reviewing capacity of the Court, to review the Third Circuit Court of Appeals's decision on the bankruptcy case.

26. The DE Bankruptcy Court took the case again, ending on April 24, 2023, when again had a final decision in the case in conflict with the Supreme Court's decision in Stern v. Marshall, despite not having the constitutional or statutory authority to make that decision.

27. The DE District Court did not make a final decision in the case and did not review the case *de novo*, as the Supreme Court and the statutes command.

SUMMARY OF ARGUMENT

28. On December 17, 2020, the Petitioner filed a Motion to Dismiss this bankruptcy case because Respondents TSI had applied for bankruptcy protection despite enjoying a surplus from the situation affecting the whole country at that time and despite their finances being healthy.

29. Respondents countered that Petitioner did not object to the Plan and therefore he did not have a right to a jury trial. The DE Bankruptcy Court adopted this view and ruled in favor of Respondents.

30. Neither the Respondents nor the District Court said on what facts, rules, code, law, statute, constitutional amendment or Article of the Constitution they base their assumption that Petitioner did not object to the Plan or that there is a penalty for not objecting to the Plan, when neither the former nor the latter is true.

31. Petitioner respectfully asks from this High Court to issue a Writ of Certiorari because the Panel for the Third Circuit entered into the same funnel as the two previous courts by saying, "Moreno-Cuevas did not object to the confirmation of the Plan," to justify their *per curiam* Opinion. See page 3 of that Opinion.

32. By Art. III § 1 of the Constitution, by statute 157(c)(1), and by Supreme Court's precedents, a bankruptcy court cannot enter final judgment on a non-core proceeding without the written consent of the parties. By the same token, the district court of the district where the bankruptcy court sits should enter the final judgment in the bankruptcy case after its review *de novo* of a non-core bankruptcy case. But neither the DE Bankruptcy Court nor the District Court performed this way.

33. The Bankruptcy Court adjudged in violation of constitutional provisions and the District Court did not review the case *de novo*. By not reviewing these courts' decisions, the Panel for the Third Circuit conflicted with previous rulings of the Supreme Court.

34. The DE Bankruptcy and District Courts violated Petitioner's Fifth and Fourteenth Amendments by denying him the equal protection of the laws, misapplying laws, and conflicting with Supreme Court's precedents. The Panel for the Third Circuit Court of Appeals erred too, by sanctioning as legal those courts' rulings.

35. The DE Bankruptcy and District Courts claimed that Respondents sold "substantially all their assets" and implied that Respondents discharged their debt with the Petitioner. But to do so Respondents should have done it in the context of an "adversary proceeding." Respondents TSI have not applied for one in any of the courts.

ARGUMENT

36. As shown in the Docket Sheet, on December 17, 2020, the Petitioner filed in the DE Bankruptcy Court a Motion to Dismiss this bankruptcy case attending Petitioner's Seventh Amendment rights and because Respondents TSI had applied for bankruptcy protection despite enjoying a surplus from the situation affecting the whole country at that time and despite their finances being healthy. TSI CFO's Declaration in filing for bankruptcy, and Petitioner's Amended Brief to the Third Circuit in case No. 21-2754. On December 18, 2020, as shown in Doc. No. 828, the DE Bankruptcy Court had a hearing in which Respondents asked for and obtained the amendment of the Bankruptcy Plan the Bankruptcy Court had approved on 11/03/2020. *See* Doc. Nos. 560 and 561 at [SCA 115]ff and 11 U.S. Code § 1127(a), saying that once a plan is modified, it becomes the plan. By this statute, Petitioner objected to the Plan one day before the Plan was modified to be confirmed.

37. In his December 17, 2020 Motion, Petitioner asked the Bankruptcy Court to lift the automatic stay triggered by § 362(a) and allow a jury trial to continue the proceedings in the Connecticut District Court. Respondents countered in the last Motion, that Petitioner did not object to the Plan, as if an individual's Seventh Amendment rights

depended on objecting or not to the plan of a bankruptcy that complies with neither the Bankruptcy Code nor the Bankruptcy Rules.

38. Conveniently, Respondents and the DE District Court forgot the first Motion of December 17, 2020. Despite Petitioner showing before the DE District Court's *Memo* was written the physical impossibility of not objecting to the Plan and have the Bankruptcy Court rule on the "non-objection," the DE District Court persisted in saying that "Appellant did not object to the Plan or entry of the Confirmation Order," when in reality Bankruptcy Rules 1009, 2002, 3006, 3016, 3018, 3019, 3020, and 9014, as well as 11 U.S. Code §§ 1121-1129, (The Plan), and 1191, 1193 show that there is no penalty for not objecting to the Plan. Besides, neither the Respondents nor the District Court say on what facts, rules, codes, laws, statutes, constitutional amendments or Articles of the Constitution they base their assumption that there is a penalty for not objecting to the Plan or that Petitioner did not object to the Plan, when neither the former nor the latter is true.

39. In addition, if there is no penalty for disagreeing with the Plan, and none for agreeing with it, there cannot be a penalty for not objecting to it. *See* Bkrtcy. Rules 3006 and 3019(b), and 11 U.S. Code §§ 1127(a) and 1127(f). The Panel for the Third Circuit entered into the

same funnel by saying, "Moreno-Cuevas did not object to the confirmation of the Plan." *See* Per Curiam Opinion, p. 3.

40. The Supreme Court set a long time ago the guidance that to determine whether a Plaintiff's claim of a jury trial is available to him or to her, first the Court compares the statutory suit to 18th-century actions brought in the courts of England before the courts of law and equity were merged into a single court. Second, the Court examines the remedy sought and determines whether the remedy is legal or equitable in nature, quoting Tull v. United States, 481 U. S. 412, 417-418 (1987). "If, on balance, these two factors indicate that a party is entitled to a jury trial under the Seventh Amendment, we must decide whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as factfinder." Granfinanciera, SA v. Nordberg 492 US 33, 109 S. Ct. 2782, 106 L. Ed. 2d 26, (1989) at 42.

41. Given that the action brought against Respondents TSI was for fraud, the violation of the civil RICO provisions, the violation of the provisions of a contract with the Petitioner, and other twelve counts, Petitioner has the right to a jury trial in an Article-III court. These counts are legal in nature, the remedies sought are also legal, and Congress has not assigned their resolution to an equitable adjudicative body, the Petitioner has a right to a jury trial.

42. For those reasons, it is safe to say that although the Supreme Court has defined what should be the function of the bankruptcy court in a bankruptcy case, the DE Bankruptcy Court erred by ignoring Petitioner's Seventh Amendment rights to a jury trial in an Article-III court from the first hearing. After that happened, Respondents perjured about the date in which Petitioner first objected to the Plan or its amendments to say that the Plan was approved in good faith and not as a mechanism to keep control over the enterprise Respondents TSI are running. By repeating that in its *Memorandum*, the DE District Court erred. Moreover, the Panel for the Third Circuit Court of Appeals erred by not gathering the proper data and reviewing them *de novo*, although the Panel admits that the data and the case should be reviewed *de novo*. Not just with the superficial phrase: "We see no error here."

BY ART. III, § 1 OF THE CONSTITUTION, BANKRUPTCY COURTS CANNOT ENTER FINAL JUDGMENTS. THE BANKRUPTCY COURT IGNORED THIS LIMIT, AND THE DISTRICT COURT FAILED TO REVIEW THE CASE *DE NOVO*.

43. The Supreme Court cognized in Stern v. Marshall the constitutional behavior of the courts mentioned in the subtitle, by stating,

> To determine whether the Court of Appeals was correct in that regard [allowing the bankruptcy court to make a final adjudication] we must resolve two issues: (1) whether the Bankruptcy Court had the statutory authority under 28 U.S.C. § 157(b) to issue a final judgment [...]; and (2) if so, whether conferring that authority on the Bankruptcy Court is constitutional.

> Although the history of this litigation is complicated, its resolution ultimately turns on very basic principles. Article III, § 1, of the Constitution commands that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." That Article further provides that the judges of those courts shall hold their offices during good behavior, without diminution of salary. *Ibid.* Those requirements of Article III were not honored here. The Bankruptcy Court in this case exercised the judicial power of the United States by entering final judgment on a common law tort claim, even though the judges of such courts enjoy neither tenure during good behavior nor salary protection. We conclude that, although the Bankruptcy Court had the statutory authority to enter judgment on Vickie's counterclaim, it lacked the constitutional authority to do so.

44. Stern v. Marshall, 564 US 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011) at 2600-2601. First paragraph's square parentheses by the Petitioner. In the present case the Supreme Court could say the same thing and more about the final judgment of the Bankruptcy Court. The DE Bankruptcy Court neither had the statutory authority to enter final judgment in this case nor the constitutional authority to do so. Besides, Petitioner did not consent to a bench trial, as in its *Memo* the DE District Court conceded by stating that the trial was a "Bench Ruling," nor the Constitution allows them to do so. However, the Bankruptcy Court did enter a final judgment in the case. *See* the DE District Court's *Memo* at p. 16 and Art. III of the Constitution.

45. On page 6 of that *MEMORANDUM*, the DE District Court says that the "sole issue on appeal is whether the Bankruptcy Court abused its discretion in denying the Fourth Motion"... But "whether the

Bankruptcy Court abused its discretion" cannot be the "sole issue on appeal," because the DE District Court itself states in the paragraph previous to that one, under Jurisdiction and Standard of Review, that

> The Court has jurisdiction to hear appeals from all "final judgments, orders, and decrees" of the Bankruptcy Court pursuant to 28 U.S.C. § 158(a)(1). The Court reviews the Bankruptcy Court's legal determinations de novo and its factual determinations for clear error. *In re Wettach*, 811 F.3d 99, 104 (3d Cir. 2016). [...] The Bankruptcy Court's "decision to grant or deny relief from the automatic stay or, by analogy, the [p]lan [i]njunction, is reviewed for abuse of discretion." *In re In re Worldcom, Inc.*, 2006 WL 2255071. *2 (*citing In re Sonnax Indus.*, 907 F.2d 1280, 1286 (2d Cir. 1990)).

46. If under 28 U.S.C. § 158(a)(1) the DE District Court "reviews the Bankruptcy Court's legal determinations *de novo*, its factual determinations for clear error," its "decision to grant or deny relief from the automatic stay...for abuse of discretion," then, for at least two reasons, it cannot review all three kinds of issues for "abuse of discretion." (The DE District Court on page 6 of its Memo says: "The sole issue on appeal is whether the Bankruptcy Court abused its discretion in denying the Fourth Motion," making "abuse of discretion" the sole standard of review to be applied, although a district court never ever reviews a case coming from the bankruptcy court for "abuse of discretion."). The first of the reasons why this is an error is because there are issues of law and issues of fact that the district court should review under different standards of review and does not have discretion to review them with the same standard of review. The

second reason is that the DE District Court does not have authority to change the law.

47. The DE District Court also erred because it reviewed this case as if it were governed by 28 U.S. Code § 1291, in which the court of appeals (not the district court) has no jurisdiction under 158(d) given that the district court (in proceedings like that) has withdrawn the case from the bankruptcy court attending to a party's motion, and has adjudged the case under 28 U.S. Code 157(d). In that situation the jurisdiction courts of appeals exercise is under 28 U.S. Code § 1291, not under 158(d), (as in the overwhelming majority of cases) in which the district court lets the bankruptcy court find the facts and recommend the laws to be applied, which should have occurred here. However, the DE Bankruptcy Court adjudged the case and issued final decisions from the very beginning, as if it could exercise "the judicial power of the United States" without consent of the parties to do so, and in violation of Stern v. Marshall.

48. The relationship between the standard of review and the issues to be reviewed is, as the set-theorists say, one-to-one, not all-to-all. That is, each issue should be reviewed by a particular standard of review, and that standard of review should not be applied to issues outside the designated category. The Third Circuit Court shows in several opinions that it has this aspect of the standard of review in the back of its mind.

In In re Mansaray-Ruffin, for example, the Third Circuit says that "[t]herefore, since the issues in this case are legal in nature, we review the decision of the Bankruptcy Court de novo." *Id* at 234. That is, if the issues to be reviewed were not "legal in nature," the standard of review would have been different. The Third Circuit Court of Appeals analyzes each issue according to its nature and its designated standard of review. It is for that reason that the DE District Court erred in not reviewing this case *de novo*. If courts could review cases as they wished, courts would be free to use standards of review at will.

49. In the present case, the Panel for the Third Circuit said that it would review the DE District Court *de novo*, as it should have, but it did not. The Panel did the same thing as the District Court: announced that it would review the case *de novo*, described what should be done, but when its turn came to review the case, the Panel just said: "We see no error here," in the analysis made by the District Court. The Panel failed to gather the facts and the laws to be applied to the Motion filed on December 17, 2020 and to the subsequent Motions. Therefore, the Panel committed two errors: One, saying that the DE District Court reviewed this case *de novo*, when the District Court itself says that it did not, (the Panel's own, non-inherited, error) and, two, by admitting that the case should be reviewed *de novo*, but did not review it *de novo* and only said "we see no error here."

50. Also in Executive Benefit Ins. Agency, the Supreme Court said,

> Put simply: If a matter is core, the statute empowers the bankruptcy judge to enter final judgment on the claim, subject to appellate review by the district court. If a matter is non-core, and the parties have not consented to final adjudication by the bankruptcy court, the bankruptcy judge must propose findings of fact and conclusions of law. Then, the district court must review the proceeding *de novo* and enter final judgment. (*Id* at 2172).

51. Executive Benefits Ins. Agency v. Arkison, 573 US 25, 134 S. Ct. 2165, 189 L. Ed. 2d 83 (2014). So, although the case adjudged since the first hearing was non-core, the DE Bankruptcy Court made a final adjudication, as if it were core. And although the Supreme Court has established that in non-core cases "the district court must review the proceeding *de novo* and enter final judgment," the DE District Court failed to review the case *de novo* and enter the final adjudication, as shown in both *Memos* of the first and last dates. On appeal, after January 25, 2021 and after December 21, 2023, the DE District Court did not review the case following the Supreme Court's guidance of reviewing it *de novo* neither entered final adjudication. *See* Executive Benefits Ins. Agency v. Arkison.

52. Moreover, in Stern v. Marshall, the Supreme Court makes it clear that,

> When a bankruptcy judge determines that a referred "proceeding ... is not a core proceeding but ... is otherwise related to a case under title 11," the judge may only "submit proposed findings of fact and conclusions of law to the district court." § 157(c)(1). It is the district

court that enters final judgment in such cases after reviewing *de novo* any matter to which a party objects.

53. Stern v. Marshall, 564 US 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011) at 2604. The two DE lower Courts and the Third Circuit Panel also conflict with the Supreme Court of the United States because they made decisions contrary to decisions made by the Supreme Court in Metropolitan Life Ins. Co. v. Glenn, 554 US 105, 128 S. Ct. 2343, 171 L. Ed. 2d 299 - Supreme Court, (2008); Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 US 424, 121 S. Ct. 1678, 149 L. Ed. 2d 674 - Supreme Court, (2001); Ornelas v. United States, 517 US 690, 116 S. Ct. 1657, 134 L. Ed. 2d 911 - Supreme Court, (1996); but Teva Pharmaceuticals USA v. Sandoz, Inc., 574 US 318, 135 S. Ct. 831, 190 L. Ed. 2d 719 - Supreme Court, (2015).

BY THE SEVENTH AMENDMENT, PETITIONER HAS A RIGHT TO A JURY TRIAL. THE DE BANKRUPTCY COURT ERRED BY IGNORING THIS RIGHT, AND RESPONDENTS TSI FAULTED BY HIDING THE DATE IN WHICH PETITIONER ASSERTED HIS RIGHT, AND PERJURED ABOUT ITS CONSEQUENCE.

54. The Seventh Amendment states that: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

55. Notwithstanding these provisions of the Seventh Amendment, a litigant may waive that right, if he or she, together with the opposing party, consent that the bankruptcy court may head a jury or a bench trial and resolve the case instead of the district court in which the case is pending or the district court in the district in which the bankruptcy has been filed. It may also happen that the parties may not consent to waive their rights to a trial by jury but engage in litigation in the bankruptcy court, as if in a core case, consenting by default to the bankruptcy court resolution. But none of these waivers occurred.

56. On the contrary, shortly after TSI's application for bankruptcy, this Petitioner stated that he does not consent to waive his right to a trial by jury. *See* Doc. No. 872 portrait at [SCA 145]. That the bankruptcy case should be dismissed because the main purpose of the bankruptcy filing was to run from TSI's responsibilities in the Connecticut pending action, and that the Reorganization TSI had applied for was geared to staying the proceedings, misusing § 362(a) as a pretext to continue keeping control of their enterprise by using unneeded Reorganization in the filing. *See* Bkrtcy. Application in the Appx. to the District Court.

57. Moreover, Bankruptcy Rule 9015(b) explains what the requirements are for a trial under a bankruptcy judge, but that trial has not been requested, nor the necessary requisites have been complied with. Bankruptcy Rule 9015(b) states that,

> (b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. §157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

58. The District Court has not "specially designated [the bankruptcy judge] to conduct the jury trial" nor has this Petitioner filed any statement jointly with the Respondents or separately from them to consent to a trial under a bankruptcy judge, nor have the Respondents requested separately a trial under a bankruptcy judge. And the Petitioner did not consent to a bench trial under a bankruptcy judge, as the DE District Court recognizes took place at least twice. *See* the DE District Court's *Memoranda*. However, in the first hearing to assess the first objection, on January 25, 2021, the DE Bankruptcy Court ignored this Petitioner's Seventh Amendment rights to a jury trial, ignored the Supreme Court's abundant rulings on that issue, and ignored the Bankruptcy Code that states in Section 157(e) and Bankruptcy Rule 9015(b) how a bankruptcy court should make the decision if a trial applies.

59. Respondents TSI could not deny these facts. So they did what they always do: try to hoodwink the courts by hiding documents crucial to the correct assessment of the case, not as TSI wants it to be assessed.

The absence of those documents from the Respondents' Appendices to the DE District Court allowed TSI to make some false assertions.

60. For example, Bankruptcy Court Doc. No. 820 should appear together with Doc. No. 872 in Vol. III of the Appendix to the Respondents' Brief filed in the DE District Court because Doc. No. 872 is the amended version of Doc. No. 820, and Doc. No. 820 has a date 21-day earlier than its amended version, Doc. No. 872. Document No. 820 was docketed on December 17, 2020, and it was the first of Petitioner's objections to the bankruptcy, asking for its dismissal based on Petitioner's Seventh Amendment right. But TSI did not put it in any of their appendices, and Doc. No. 820 is nowhere to be found in Respondents' Appendices, but on the Bankruptcy Court Docket Sheet. *See* Appx. [SCA 138] and [SCA 145].

61. However, it is logically impossible not to have objected to the Plan (or to its amendment, which is the same) and to the bankruptcy filed, and have the DE Bankruptcy Court rule on the objection and the Petitioner be a litigant in that hearing, if that objection did not occur. *See Docket Sheet*, Docs. Nos. 902 and 921.

62. Also based on the absence of Doc. No. 820 from the Respondents' Appendix to the DE District Court, Respondents TSI asserted that the first objection to the Plan and the bankruptcy occurred on November 19, 2021, almost one year after the first objection was actually filed.

But this is also physically impossible, if, as the *Docket Sheet* shows in Documents 902 and 921, the first hearing to that objection to the Plan Amendment and the bankruptcy occurred on January 25, 2021, almost ten months before the filing. *See* Docket Sheet, Docs. Nos. 902 and 921 in Selected Docket Sheet Pages at [SCA-122] and [SCA-123].

63. In addition, on December 18, 2020, as per Doc. No. 825, the hearing was cancelled. But the DE District Court says in its *Memorandum of Decision* that,

> On December 18, 2020, after hearing testimony and upon review of the pleadings and the record of the chapter 11 cases, the Bankruptcy Court entered an order (A1082) ("the confirmation Order") confirming the Plan. Appellant did not object to the Plan or entry of the Confirmation Order.

64. The DE District Court, Case 1:23-cv-00472 (MN), Doc. No. 21, page 4. Filed on 12/21/23. The Respondents should explain to the Supreme Court how the matters scheduled on the Docket Sheet for that date were approved by the Bankruptcy Court without a hearing, when a hearing is required to approve at least Doc. No. 828, the Amended Chapter 11 Plan. *See* Docs. Nos. 825 and 828 at [SCA-122] in the Docket Sheet Selected Pages. *See* also Bkrtcy. Rule 3019(b), and 11 U.S. Code § 1127(f), as well as § 1128(a) and (b).

65. Besides that, they should also explain how the Bankruptcy Court approved the matter in contradiction to federal rules. Federal Rules of Bankruptcy Procedure, Rule 2002(a)(2) requires serving notification

at least 21 days before the hearing. The Respondents' move described above also violates Rule 3017(a) of bankruptcy, that requires serving notification at least 28 days before the hearing. As according to the Docket Sheet the hearing was cancelled, the approval of the Motion proposed in Doc. No. 160 is *void ab initio*, and as there is no other hearing for that purpose after 11/03/2020, the legality of the Plan is in doubt.

66. After all we have said about this issue, it is unnecessary to straighten out Respondents' false assertions to decide this case in Petitioner's favor (as Petitioner shows constitutional violations as well), but those false assertions, that jumped onto the DE District Court's *Memos*, show that the DE District Court erred by placing the DE Bankruptcy Court's decision on the objection, before that objection was filed, and because the District Court fumbled the date of Petitioner's objection to the bankruptcy, based on which that court made a false assessments of the case.

67. The Panel for the Third Circuit Court of Appeals, the DE District Court, and the DE Bankruptcy Court conflict with the Supreme Court because those courts made decisions contrary to the decisions made by the Supreme Court in Monterey v. Del Monte Dunes at Monterey, Ltd. 526 US 687, 119 S. Ct. 1624, 143 L. Ed. 2d 882 - Supreme Court (1999); Feltner v. Columbia Pictures Television, Inc., 523 US 340, 118

S. Ct. 1279, 140 L. Ed. 2d 438 - Supreme Court (1998); Teamsters v. Terry, 494 US 558, 110 S. Ct. 1339, 108 L. Ed. 2d 519 - Supreme Court, (1990); and, McDonald v. City of Chicago, Ill., 561 US 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 - Supreme Court, (2010).

THE DE COURTS VIOLATED PETITIONER'S FIFTH AND FOURTEENTH AMENDMENTS BY DENYING THE EQUAL PROTECTION OF THE LAWS, MISAPPLYING LAWS, AND CONFLICTING WITH SUPREME COURT'S PRECEDENTS.

68. Since the time when the Constitution of the United States adopted the Fifth and the Fourteenth Amendments as rights of every individual within its jurisdiction, the Supreme Court has cognized that all persons are entitled to the equal protection of the laws. In Yick Wo v. Hopkins, the Court saw that the violation of the equal protection of the laws was a violation of those individuals' rights. Yick Wo v. Hopkins is a case in which two of the precedents on which Hopkins relied were wrongly applied to a case that was unrelated to those precedents. The Court found that the precedents' principles were still good law, but determined that their application was wrong with respect to the case. Barbier v. Connolly, 113 U.S. 27, and Soon Hing v. Crowley, 113 U.S. 703 deal with an ordinance put in place by the city of San Francisco, California, at the end of the 1800's, prohibiting washing and ironing clothes commercially after 10:00 pm and before 6:00 am.

69. That ordinance was simply a prohibition to work at night in that type of business after certain hours and before certain others, which the City can impose within the city limits. But it was violative of the Fifth and the Fourteenth Amendments to apply that ordinance to exclude Chinese nationals from having their businesses in wooden buildings, as it was applied in that case, using as a pretext the risk that the building could catch fire due to its construction, and using the ordinance as the supporting law for the ruling. Based on that wrong application of the ordinance, Yi Wo and other Chinese nationals were excluded from their businesses and imprisoned. At the time all the relevant courts in San Francisco agreed with the ruling, but the imprisoned people took the case to the Supreme Court and argued the violation of their Fifth and Fourteenth Amendments. The Court decided that such imprisonment was violative of their rights.

70. The Supreme Court stated in Yick Wo v. Hopkins, that:

> The Fourteenth Amendment to the Constitution [...] says: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by § 1977 of the Revised Statutes, that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment,

> pains, penalties, taxes, licenses, and exactions of every kind, and to no other." The questions we have to consider and decide in these cases, therefore, are to be treated as involving the rights of every citizen of the United States equally with those of the strangers and aliens who now invoke the jurisdiction of the court.

71. Yick Wo v. Hopkins 118 US 356, 6 S. Ct. 1064, 30 L. Ed. 220 S. Court (1886) at 369. Likewise, in the present case the due process clause was violated, the precedents were misapplied, and the bankruptcy court ignored the equal protection of the laws. Although Art. III § 1 of the Constitution commands that bankruptcy courts do not have the constitutional authority to issue a final ruling in non-core proceedings, except with consent, adducing the non-existing law that "if we take into account the Seventh Amendment, there wouldn't be bankruptcy courts," or something to that effect, the DE Bankruptcy Court issued a final ruling, without having the constitutional authority to do so. *See and Hear* Recording of the hearing of 1/25/2021, not included in the transcript. Furthermore, as this case is non-core, the Bankruptcy Court did not have the statutory authority, either, or the consent to do so. In addition, this Petitioner has been effectively deprived of his property without the due process of law.

72. Similarly to in Yick Wo, the precedents in this case were misapplied. Here, the bankruptcy court did not take into account Plaintiff's rights to a jury trial, as commanded by the Seventh Amendment, the Supreme Court, and the DE Bankruptcy Court itself. In contrast, the Bankruptcy

Court applied a doubtful law: The one described in the previous paragraph. Likewise, in this proceeding the DE District Court evaluated the case as if it were under 28 U.S. Code § 1291, as stated in paragraph (47), above, and did not review the case *de novo*, as the Supreme Court has stated. *See* paragraph (46) of this Petition.

73. The Panel for the Third Circuit Court of Appeals described the reasons to review the case *de novo*, but did not do so. Contrariwise the Panel used the phrase "we see no error here," to justify their per curiam Opinion. In a more recent case, Apprendi v. New Jersey, 530 US 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 - Supreme Court (2000), the Supreme Court ruled that

> The New Jersey procedure challenged in this case is an unacceptable departure from the jury tradition that is an indispensable part of our criminal justice system. Accordingly, the judgment of the Supreme Court of New Jersey is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

74. The New Jersey Supreme Court accepted as good and valid a proceeding violative of the Fourteenth Amendment rights of the accused because that court sanctioned the superior court final decision taken without a jury, although having a jury trial is one of the protections an accused has in a democratic society to prevent abuse of power.

75. The Panel for the Third Circuit Court of Appeals and the DE lower federal courts also conflicted with the Supreme Court in Kingsley v.

Hendrickson 576 US 389, 135 S. Ct. 2466, 192 L. Ed. 2d 416 - Supreme Court, (2015); in Cunningham v. California 549 US 270, 127 S. Ct. 856, 166 L. Ed. 2d 856 - Supreme Court, (2007); in Troxel v. Granville 530 US 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 - Supreme Court, (2000); in Batson v. Kentucky 476 US 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 - Supreme Court, (1986); but in City of Boerne v. Flores 521 US 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 - Supreme Court, 1997.

TO SELL "SUBSTANTIALLY ALL OF THEIR ASSETS" OR TO DISCHARGE A DEBT, RESPONDENTS HAD TO APPLY FOR AN ADVERSARY PROCEEDING. THEY CLAIM SOLD THEIR ASSETS BUT THEY DID NOT APPLY FOR THE PROCEEDING.

76. In analyzing the bankruptcy case of a student who applied for bankruptcy protection and his loan, the Supreme Court observed that,

> The Solicitor General notes that disputes in bankruptcy are generally classified as either "adversary proceedings," essentially full civil lawsuits carried out under the umbrella of the bankruptcy case, or "contested matters," an undefined catchall for other issues the parties dispute. See Fed. Rule Bkrtcy. Proc. 7001 (listing ten adversary proceedings); Rule 9014 (addressing "contested matter[s] not otherwise governed by these rules").

77. Bullard v. Blue Hills Bank 575 US 496, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (2015). And the Supreme Court put an example of adversary proceeding in Langenkamp:

> Approximately one year after the bankruptcy filing, the trustee instituted adversary proceedings under 11 U. S. C. § 547(b) to recover, as avoidable preferences, the payments which respondents had received immediately prior to the September 24 filing. A bench

> trial was held, and the Bankruptcy Court found that the money received by respondents did in fact constitute avoidable preferences.

78. Langenkamp v. Culp 498 US 42, 111 S. Ct. 330, 112 L. Ed. 2d 343 (1990). Besides, Federal Rules of Bankruptcy Procedure, Rule 7001, states that:

> An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:
>
> (3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;
>
> (6) a proceeding to determine the dischargeability of a debt;

79. Federal Rules of Bankruptcy Procedure, Rule 7001(3), state that in order to sell its assets, Respondents TSI must initiate an "adversary proceeding." As defined by the Supreme Court, "'adversary proceedings' [are] essentially full civil lawsuits carried out under the umbrella of the bankruptcy case.'" But the Respondents have not even requested one to the courts, therefore it cannot have legally sold "substantially all of its assets." Moreover, the Respondents treat the case as a "contested matter" to take advantage of its non-definition to try to deceive the lower courts, as they did, as shown in Doc. No. 160 of the bankruptcy proceedings where the Debtors-Respondents filed a Motion to sell most of its assets "under Section 363(f)" of the Bankruptcy Code, which the DE Bankruptcy Court approved. However, Section 363(f) states:

> **(f)**The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—
>
> **(1)**applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> **(2)**such entity consents;
>
> **(3)**such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> **(4)**such interest is in bona fide dispute; or
>
> **(5)**such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

80. In the first place, it is clear from its text that subsection 363(f) is the code underlying the sale of another entity's property, not the property of the estate. Therefore, the sale of almost all of their assets is *void ab initio* because TSI used the wrong provisions of the Bankruptcy Code to ask for the court permission to execute the sale. And the Court granted the sale, attending to these wrong provisions.

81. In the second place, if the sale were allowed, just by Subsections 363(f)(1) and 363(f)(2), the Debtors-Respondents cannot sell their property, as they are on the hook for RICO and fraud, which forbid the sale by the applicable nonbankruptcy laws underlying civil RICO and underlying fraud. Besides that, the Petitioner has not consented to the sale, which is the entity who owns the property in this case.

82. In the third place, the subsection that applies to sell "substantially all of the assets of the debtor" is 363(h), as Bankruptcy Rule 7001(3), above, requests from the litigant. But subsection 363(h) states:

> **(h)**Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—
>
> **(1)**partition in kind of such property among the estate and such co-owners is impracticable;
>
> **(2)**sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;
>
> **(3)**the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
>
> **(4)**such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

83. The sale purportedly executed by the Respondents is void again because by the documents presented by the Respondent there is no co-owner in TSI case. There is a difference between having several owners to the company and having co-owners to the assets, or more than one company owning the assets. In the first case, the company can be partitioned by partitioning the shares, not the assets. Therefore, point (1) has no application in this case. Points (2) and (3) are not relevant in this case if point (1) is not. Therefore, the sale is legally impossible.

84. If the Respondent can demonstrate that selling the assets is legally possible, still the sale should not have been approved by the DE Bankruptcy Court, as it is (a) *void ab initio* because they used the wrong subsection of § 363 to execute the sale: Subsection § 363(f);

(b) it is also "avoidable" because the Respondents should have applied for an "adversary proceeding" to legally execute the sale, as Rule 7001(3) requires; (c) the sale is also "avoidable" because by using § 363(f), inadvertently or not, the Respondents are selling the property of this Petitioner, who is the only entity of whom they hold property. The Fifth and the Fourteenth Amendments state that nobody will be deprived of property without a trial at law (an adversary proceeding), but the lower courts approved that sale without Respondents complying with that requirement. Therefore, the sale is not possible, and the DE lower courts are again in violation of Petitioner's constitutional rights.

85. There is a last point to make in this part of the application for a Writ of Certiorari. The Court may reach the conclusion that if the Petitioner objected to the Plan, then Petitioner subjected himself to the allowance and disallowance of the equitable power of the bankruptcy court, converting this case from a non-core to a core proceeding by virtue of entering into the bankruptcy process. That gives the bankruptcy court the right to make a final decision by performance consent, for which the bankruptcy court would not be at fault. But, Petitioner objected to the bankruptcy and therefore to the Plan by claiming his Seventh Amendment rights, not directly and exclusively objecting to the Plan.

86. Claiming one's Seventh Amendment rights objects to the Plan because the Plan is part of the bankruptcy proceeding. The claiming of one's Seventh Amendment rights is overarching that proceeding without entering into it. Therefore, the Petitioner did not submit himself to the allowance and disallowance of the equitable power of the bankruptcy court.

87. Even if Respondent TSI sells their property, that does not discharge their debt with this Creditor-Petitioner, because Federal Rules of Bankruptcy Procedure, Rule 7001(6) states that to determine the dischargeability of a debt, they must do that through an adversary proceeding, and they have not apply for one, much less run the trial required.

88. The Panel for the Third Circuit Court of Appeals and the DE District and Bankruptcy Courts also conflict with the Supreme Court in Colorado v. Connelly 479 US 157, 107 S. Ct. 515, 93 L. Ed. 2d 473 - Supreme Court, (1986); in Dickerson v. United States 530 US 428, 120 S. Ct. 2326, 147 L. Ed. 2d 405 - Supreme Court, (2000); in Deck v. Missouri 544 US 622, 125 S. Ct. 2007, 161 L. Ed. 2d 953 - Supreme Court, (2005); in Christopher v. Harbury 536 US 403, 122 S. Ct. 2179, 153 L. Ed. 2d 413 - Supreme Court, 2002).

CONCLUSION

89. Therefore, because the Panel "departed from the accepted and usual course of judicial proceedings," by adhering to the violation of Article III of the Constitution by permitting a bankruptcy court to enter final decision and a district court skipping reviewing that decision *de novo*, the Petitioner calls for "the Court's supervisory powers," to solve this conflict between previous decisions of the Court and the Panel's decision in this case;

90. As the Panel ignored Petitioner's Seventh Amendment rights to a jury trial, and Respondents TSI faulted by hiding the date in which petitioner asserted this right, and perjured about its consequences, inducing the courts to rule in conflict with the Supreme Court, Petitioner calls for "the Court's supervisory powers," to solve the conflict between the Court's previous decisions and the Panel's;

91. Because the Panel for the Third Circuit Court of Appeals and the DE lower courts violated Petitioner's Fifth and Fourteenth Amendments rights by denying the "equal protection of the laws," as evidence by the violation of Petitioner's Seventh Amendment rights to a jury trial, Petitioner calls for "the Court's supervisory powers," to solve this conflict between the Court's previous decisions and the Panel's decision in this case;

92. Respondents TSI assert that they sold "substantially all of their assets" and imply that they discharged the debt with the Petitioner. But to do one or both of those things, they must resort to an "adversary proceeding" which they have to apply for in the courts. They have not applied for an "adversary proceeding" in any court, therefore they still have a debt with this Petitioner, and the sale is "avoidable" for being noncompliant with the statutes. This situation is also in conflict with the previous decisions of the Supreme Court. For that reason this Petitioner calls for "the Court's supervisory powers," to solve this conflict between the Court's previous decisions and the Panel's decision in this case;

93. Because the lower courts have ruled "in a way that conflicts with relevant decisions of [the Supreme] Court," the Petitioner asks for the Supreme Court first, to grant Certiorari attending this petition; second, to reopen the case closed by the DE District Court and then by the Bankruptcy Court; third, to reverse the Third Circuit Court of Appeals and the DE lower courts; and fourth, to lift the the automatic stay triggered by § 362(a) of the Bankruptcy Code to permit a trial in the Connecticut action, or, alternatively, to determine a remedy consistent with the rights, precedents, and laws exposed above.

Respectfully submitted,

/s/Ramon Moreno-Cuevas .
Ramon Moreno-Cuevas/09/17/2024

CERTIFICATION. I hereby certify that on or around Sept. 17, 2024, a copy of the Petitioner's application for writ of certiorari was sent to the lawyers representing the Respondents.

/s/ Ramon Moreno-Cuevas
Pro se Plaintiff
97 Newton Street 2nd Fl.
Hartford, CT 06106
morenocramon@gmail.com
Ph. and Fax 203-343-8505