

24-6840  
No. \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
FILED

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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LOLONYON Y. AKOUETE,

*Petitioner,*

v.

NATHANSON & GOLDBERG, P.C.; THE MO-  
BILESTREET TRUST; TOWN OF  
WESTBOROUGH; JONATHAN GOLDSMITH,  
Chapter 7 Trustee.

*Respondents.*

ON PETITION FOR A WRIT OF MANDAMUS  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF MANDAMUS

Lolonyon Y. Akouete, *pro se*  
800 RED MILLES RD WALLKILL, NY 12589  
(443) 447-3276 [info@smartinvestorsllc.com](mailto:info@smartinvestorsllc.com)

## QUESTIONS PRESENTED

1. Whether the First Circuit and the Bankruptcy Appellate Panel erred in dismissing Petitioner's appeal for lack of finality by narrowly interpreting the Forgay-Conrad and marginal finality doctrines, failing to recognize that the denial of an interim distribution inflicted irreparable harm, barred meaningful participation in the bankruptcy proceedings, and prevented Petitioner from attending to a family health emergency.

2. Whether the Bankruptcy Court's refusal to grant an interim distribution, despite sufficient estate funds exceeding \$1.29 million and an urgent financial and medical emergency, constitutes an abuse of discretion and violates the Fifth and Fourteenth Amendments' Due Process Clauses by depriving the Petitioner of property without just compensation or a meaningful opportunity to be heard, rendering judicial relief effectively unattainable, and contravening the Bankruptcy Code's requirement that cases be administered as expeditiously as possible.

3. Whether the trustee breached his fiduciary duty under 11 U.S.C. § 704(a)(1) and violated the statutory mandate under 11 U.S.C. § 502(b) by refusing to make an interim distribution despite sufficient estate funds and failing to evaluate creditor claims in a timely manner, thereby prioritizing other interests over the equitable treatment of all creditors.

4. Whether the Town of Westborough's use of bankruptcy proceedings to try to sell a property it foreclosed on for zero consideration to a favored party for \$2.5 million—despite an appraised value of \$4.9 million—rather than subjecting it to open-market bidding, violates federal due process, the principles of fair dealing under state and federal commercial law, and Massachusetts General Laws Chapter 30B procurement requirements, raising an unsettled and significant federal question in light of *Tyler v. Hennepin County*, 598 U.S. 631 (2023), requiring this Court's intervention.

5. Whether the Bankruptcy Court's order barring responses to the Petitioner's filings unless scheduled for a hearing with an objection deadline

effectively deprives the Petitioner of judicial review, undermines due process, and allows for the procedural dismissal of substantive motions—such as an expedited motion for summary judgment—without consideration, violating fundamental principles of fairness and access to justice.

6. Whether the Bankruptcy Court's failure to act on the Petitioner's motion for summary judgment, coupled with the deliberate obstruction by other parties, constitutes a denial of due process and access to judicial review, effectively preventing the Petitioner from obtaining a timely adjudication of his claims in violation of fundamental principles of fairness and procedural justice.

7. Whether this court should recognize a new doctrine allowing immediate appeal in cases where irreparable harm is occurring, but the delivery of property is not immediate due to pending claim allowance processes, particularly when a party is using protracted litigation to delay the allowance of claims and obstruct rightful relief.

## **PARTIES TO THE PROCEEDING**

Petitioner Lolonyon Akouete, a creditor of the bankruptcy estate of Westborough SPE LLC.

Respondents Nathanson & Goldberg, P.C., a petitioning creditor in the bankruptcy case;

The MobileStreet Trust, a petitioning creditor in the bankruptcy case;

Town of Westborough, a creditor asserting claims related to a tax foreclosure;

Jonathan Goldsmith, the Chapter 7 Trustee appointed to administer the estate.

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, Westborough SPE LLC, the debtor is a limited liability company formed under the laws of the State of Delaware. It has one member, Mignonette Investments Limited, a British Virgin Islands limited partnership. To the best of Petitioner's knowledge, no publicly held corporation owns 10% or more of Mignonette Investments Limited.

## STATEMENT OF RELATED PROCEEDINGS

Suffolk County Superior Court - Land Court  
(D. Mass.):

*Town of Westborough v. Westborough SPE*  
*LLC* Case No: 19 TL 000768 (Jul. 8, 2019)

Worcester Superior Court (Mass.):  
  
Ferris Development Group, LLC. v. Town of  
Westborough, Lax Media, LLC, and Lax Media MA,  
LLC Case No: 2285CV01281 (Nov. 22, 2022)

United States District Court (D. Mass.):  
  
*Westborough SPE LLC v. Town of*  
*Westborough* Case No: 1:23-CV-12017-MJJ (Aug.  
31, 2023)

United States Bankruptcy Court (D. Mass.)  
  
*Westborough SPE LLC,*  
  
Case No. 23-40709-CJP (Aug. 31, 2023)  
  
United States Bankruptcy Court (D. Mass.)  
  
*Town of Westborough v. Westborough SPE*  
*LLC, Adversary Proceeding* Case No. 24-04006-CJP  
(Jan. 17, 2024)

Bankruptcy Appellate Panel (1st Cir.)

*Lolonyon Y. Akouete v. Nathanson & Goldberg,  
P.C.; The MobileStreet Trust; Town of Westborough;  
Jonathan R. Goldsmith, Chapter 7 Trustee, Case  
No: MW 24-016 (Jan. 22, 2024)*

United States Court of Appeals (1st Cir.)

*Lolonyon Y. Akouete v. Nathanson & Goldberg,  
P.C.; The MobileStreet Trust; Town of Westborough;  
Jonathan R. Goldsmith, Chapter 7 Trustee, Case No:  
24-9004 (Jan. 22, 2024)*

United States Bankruptcy Court (D. Mass.)

*Lolonyon Akouete v. Jonathan Goldsmith, Ad-  
versary Proceeding Case No. 24-04017-CJP (Apr. 15,  
2024)*

United States Bankruptcy Court (D. Mass.)

*Jonathan R. Goldsmith, Chapter 7 Trustee of  
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## **OPINIONS BELOW**

The opinions of the United States Court of Appeals, the Bankruptcy Appellate Panel, the order on the Motion for Reconsideration in the Bankruptcy Appellate Panel, and the United States Bankruptcy Court are all unpublished.

## **JURISDICTION**

The court of appeals entered its judgment on December 13, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 and 28 U.S.C. § 1651(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. Fifth Amendment to the United States Constitution.
2. Fourteenth Amendment to the United States Constitution.
3. 28 U.S.C. § 1651(a) (All Writs Act).
4. 11 U.S.C. § 704(a)(1) (Duties of a Chapter 7 Trustee).
5. 11 U.S.C. § 502(b) (Allowance of Claims or Interests).

## **STATEMENT OF THE CASE**

### **A. Background and Foreclosure Dispute.**

Westborough SPE LLC, the debtor, owns the property located at 231 Turnpike Road, Westborough, Massachusetts. The Town of Westborough foreclosed on the property for non-payment of property taxes, acquiring title to the property for zero consideration. Petitioner Lolonyon Akouete, who later became manager of the debtor, filed a motion to vacate the foreclosure judgment, arguing that the foreclosure violated due process and deprived the debtor of substantial equity.

The Town of Westborough opposed the motion, forcing Petitioner to incur over \$140,000 in legal fees in an effort to restore the debtor's rights. In a separate maneuver, the Town colluded with the California State Controller's Office, instructing them to withhold the release of \$1.2 million in unclaimed debtor funds, ensuring that the debtor lacked the resources necessary to both pay the overdue taxes and challenge the foreclosure effectively.

### **B. The Bankruptcy Filing and the Trustee's Role.**

Amid ongoing litigation, a petitioning creditor in-

initiated an involuntary Chapter 7 bankruptcy against the debtor, which the Bankruptcy Court subsequently granted. As a result:

The Bankruptcy Court entered an order for relief, and a Chapter 7 Trustee was appointed.

The California State Controller released the \$1.2 million to the Trustee, who took control of the funds.

Instead of using these funds to satisfy creditor claims or reinstate the debtor's property rights, the Trustee and the Town of Westborough engaged in protracted settlement discussions, delaying the bankruptcy process and prejudicing creditors, including Petitioner. This year-long delay has financially harmed Petitioner, preventing him from accessing funds necessary to cover urgent personal and legal expenses.

C. Denial of Interim Distribution and Procedural Roadblocks.

Given the delays and financial hardship, Petitioner filed a motion for interim distribution, requesting access to a portion of the estate's funds. The Bankruptcy Court denied the motion, despite the es-

tate holding over \$1.29 million in available funds.

Petitioner appealed the denial to the Bankruptcy Appellate Panel (BAP), which dismissed the appeal for lack of jurisdiction. Petitioner then appealed to the First Circuit, which also dismissed the case, refusing to exercise jurisdiction. The combined effect of these decisions left Petitioner without a legal remedy to address his urgent need for financial relief.

The Bankruptcy Court, recognizing the potential harm caused by the denial of interim distribution, ordered the Trustee to evaluate Petitioner's claim. However, instead of addressing the claim expeditiously, the Trustee opposed it and requested a 90-day discovery period. Petitioner, believing the delay to be unnecessary, completed his discovery in 30 days and filed a motion for summary judgment.

#### D. Ongoing Financial Hardship and Need for Relief

As a direct result of the Trustee's refusal to expedite the claims process, Petitioner has suffered irreparable harm, including:

The inability to meaningfully participate in the bankruptcy case due to severe financial constraints.

A family health emergency, as Petitioner's step-mother was diagnosed with ovarian cancer, requiring immediate financial resources for her care.

Further procedural obstacles preventing a resolution, as the Trustee and other parties continue to obstruct efforts to adjudicate Petitioner's claim promptly.

Given the procedural stagnation and the First Circuit's refusal to review the matter, Petitioner seeks a writ of mandamus compelling the lower courts to address these issues and grant the appropriate relief.

## **REASONS FOR GRANTING THE PETITION.**

### **I. The Court Should Grant Mandamus Relief to Compel a Ruling on Petitioner's Motion for Summary Judgment or, Order for Expedited Trial.**

Petitioner seeks a decision on his motion for summary judgment or, if there is a genuine dispute of material fact, an order to expedite trial. The Bankruptcy Court's refusal to act on this motion effectively denies Petitioner judicial review, violating fundamental due process and fair adjudication principles. Under 28 U.S.C. § 1651, a writ of mandamus is warranted because Petitioner satisfies all three criteria established in *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367 (2004).

#### **A. Petitioner Has No Other Adequate Means to Obtain Relief**

The first requirement for mandamus relief is that the petitioner must have "no other adequate means to attain the relief." *Cheney*, 542 U.S. at 380.

Here, Petitioner has exhausted all available

procedural mechanisms:

1. He properly filed a motion for summary judgment to resolve the case efficiently.
2. He fully participated in discovery, concluding it within 30 days, demonstrating his commitment to an expedited resolution.
3. The Bankruptcy Court has refused to rule on the motion, effectively stalling resolution while Petitioner continues to suffer significant financial harm.

The Bankruptcy Court's failure to either decide the motion or grant an expedited determination creates a deadlock that deprives Petitioner of access to relief. Unlike ordinary discretionary case management decisions, this refusal to act is functionally a denial of justice, as it blocks Petitioner from obtaining a timely adjudication of his rights. Without this Court's intervention, Petitioner has no other avenue to compel the lower court to fulfill its duty to decide the motion.

**B. Petitioner's Right to Relief is "Clear and Indisputable"**

The second requirement for mandamus relief is that Petitioner must demonstrate a “clear and indisputable” right to the relief requested. *Cheney*, 542 U.S. at 381.

Petitioner’s motion for summary judgment meets the legal standard for adjudication under Federal Rule of Civil Procedure 56, which applies in bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 7056. Under Rule 56, a court must grant summary judgment if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

- If no material facts are in dispute, the Bankruptcy Court is required to grant summary judgment.
- If there is a genuine dispute, the Bankruptcy Court must issue a case management order for expedited trial.

The denial of both options is legally indefensible. The lower court’s inaction contradicts well-established due process principles and runs afoul of this Court’s rulings emphasizing the need for timely

and fair case resolution. See, e.g., *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982) (“The Due Process Clause grants the aggrieved party the right to a meaningful opportunity to be heard at a meaningful time and in a meaningful manner.”).

Because Petitioner’s request merely asks the Bankruptcy Court to fulfill its duty—either deciding the motion or proceeding to trial—it presents a “clear and indisputable” right to relief under *Cheney*.

### **C. The Writ is Appropriate Under the Circumstances to Prevent Irreparable Harm**

The third requirement is that the Court, in its discretion, must determine that mandamus relief is appropriate under the circumstances. *Cheney*, 542 U.S. at 381.

Here, mandamus is appropriate because:

1. The Bankruptcy Court’s inaction is causing irreparable harm—Petitioner has been unable to access funds needed for urgent medical and financial obligations, including caring for his stepmother with ovarian cancer.

2. The delay prejudices Petitioner's ability to participate in the case, as he lacks the financial resources to continue litigation while the Trustee and other parties delay resolution.
3. No valid justification exists for the Bankruptcy Court's refusal to rule—the motion has been pending for an unreasonable period, and Petitioner has complied with all procedural requirements.
4. Mandamus relief would not interfere with the lower court's discretion—it simply compels the Bankruptcy Court to exercise its discretion by either ruling on summary judgment or proceeding to trial.

This Court has previously granted mandamus relief where lower courts have engaged in unreasonable delays, effectively denying parties access to judicial review. See, e.g., *Ex parte United States*, 287 U.S. 241, 248 (1932) (mandamus appropriate where lower court's actions "thwart the proper administration of justice").

Given the clear pattern of procedural obstruc-

tion, mandamus relief is not only appropriate but necessary to prevent further harm and ensure a fair adjudication.

## **II. The Town of Westborough's Attempt to use of Bankruptcy Proceedings to Sell the Debtor Property Below Market Value Raises an Important Federal Question**

This case presents an unsettled and significant federal question regarding the abuse of bankruptcy proceedings to circumvent constitutional property protections. The Town of Westborough foreclosed on the debtor's property for zero consideration and is now attempting to sell it for \$2.5 million to a favored party, despite an independent appraisal valuing it at \$4.9 million. Rather than subjecting the property to open-market bidding, the Town's actions evade competitive procurement requirements under Massachusetts General Laws Chapter 30B and violate principles of fair dealing in state and federal commercial law.

In *Tyler v. Hennepin County*, 598 U.S. 631 (2023), this Court made clear that government reten-

tion of surplus equity in tax foreclosures violates the Fifth Amendment. Yet, the Town's protracted litigation strategy effectively denies property owners access to the protections recognized in *Tyler*, requiring years of litigation to reclaim their equity. If left unchecked, this approach will provide municipalities with a roadmap to circumvent constitutional safeguards by shifting unlawful takings into bankruptcy proceedings, thereby laundering unconstitutional foreclosures under the guise of creditor settlements.

**III. The First Circuit and the Bankruptcy Appellate Panel Misapplied the Forgay-Conrad and Marginal Finality Doctrines, Effectively Denying Review of a Critical Due Process Violation.**

The First Circuit and the Bankruptcy Appellate Panel (BAP) erred in dismissing Petitioner's appeal for lack of finality, despite the fact that the denial of interim distribution inflicted irreparable harm and barred meaningful participation in the bankruptcy process.

Under *Forgay v. Conrad*, 47 U.S. 201 (1848)

and the marginal finality doctrine, under *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148 (1964) an appeal should be permitted when a lower court ruling causes irreparable injury by depriving a party of critical property rights. Here, the Bankruptcy Court's refusal to grant an interim distribution effectively denied Petitioner access to estate funds that could have been used to cover pressing medical and financial needs, forcing him into economic hardship that prevented meaningful litigation. The First Circuit's narrow interpretation of finality conflicts with other circuits that have recognized extraordinary circumstances warranting immediate appellate review. In *re Saco Local Development Corp.*, 711 F.2d 441 (1st Cir. 1983)

This Court should intervene to resolve the conflict among lower courts regarding the proper application of the *Forgay-Conrad* doctrine in bankruptcy proceedings where denial of interim relief results in substantial and irreversible harm.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court **issue a writ of mandamus** directing:

1. The First Circuit to reconsider its dismissal of Petitioner's appeal under a proper application of the **Forgay-Conrad doctrine**.
2. The Bankruptcy Court to **immediately rule** on Petitioner's pending Motion for Summary Judgment.
3. The Bankruptcy Court to **distribute estate funds** to Petitioner given the availability of more than **\$1.29 million** in estate assets and his **urgent financial and medical needs**.
4. The Bankruptcy Court to **cease procedural obstructions** that prevent Petitioner from obtaining judicial review of his claims.

March 5, 2025

Respectfully submitted,

**Lolonyon Y. Akouete, pro se**  
800 Red Milles Rd  
Wallkill, NY 12589  
(443) 447-3276  
[info@smartinvestorsllc.com](mailto:info@smartinvestorsllc.com)