

No. 23-818, Vide 23-721

IN THE
Supreme Court of the United States

SEAN DUNNE,

Petitioner,

v.

RICHARD M. COAN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF

OLIVERA MEDENICA
Counsel of Record
DUNNINGTON BARTHOLOW & MILLER LLP
230 Park Avenue, 21st Floor
New York, New York 10169
(212) 682-8811
omedenica@dunnington.com

Counsel for Petitioner

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330257



COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. It is an issue of profound national importance that a Bankruptcy Trustee seeks to recover property not in a Debtor's estate when such real property, located in a foreign nation (Ireland), was never owned by the Debtor as a matter of foreign (Irish) law. Under the Second Circuit's ruling, no property established in a trust by any United States citizen or any person who relocates to reside in the United States is safe from illegal seizure by a Bankruptcy Trustee.

2. It is an issue of profound national importance that a Trust created in Ireland in 2005 for the benefit of estate planning is ignored in 2015 in order to assert a fraudulent conveyance claim years after the statute of limitations period for such a claim has expired (*i.e.* a 2015 claim cannot look back to 2005 or 2006 to challenge trusts created at that time). Under the Second Circuit's ruling, any trust created at any point in time in the United States or worldwide is now exposed to seizure from a trustee in bankruptcy in the United States and the limitations period under the Bankruptcy Code and state law is illusory.

3. A District Court should not leave key questions of legal or beneficial ownership and trusteeship of real property in Ireland to a lay jury. Such questions of Irish law should be determined by the Court pursuant to Federal Rule of Civil Procedure 44.1.

4. It is an issue of profound national importance that the District Court and the Court of Appeals failed to apply the principle of comity to the Irish courts' determination that Sean Dunne did not own any portion of Walford

after July 2005 and similarly failed to apply the Act of State doctrine to the determination of the Irish Revenue Commissioners, Irish High Court, and Irish Court of Appeals that Dunne never owned Walford.

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INTRODUCTION

The Irish real property law at issue at trial was, in the words of the Court, “immensely complex” and “well beyond the ken of the average juror.” DA-5543 (154:3-4); Killilea-App.34a. The transfer that the Trustee sought to unwind was deemed, for the purposes of trial, to take place the day before the filing of the Bankruptcy petition on March 29, 2013. In fact, transfer of title to the Walford property did not occur until much later. Trustee’s counsel told the trial court that “the transfer of Walford is deemed under Section 548(d) of the Bankruptcy Code to have occurred immediately before Mr. Dunne’s petition date because that transfer was not perfected until the Yesreb deed was recorded in the Registry of Deeds in 2014.” DA-5190-5191. But in 2013 and 2014, Dunne did not own the property that was the subject of the supposed fraudulent transfer. The title transfer in 2014 was between the original owners (not Dunne) and an entity called Yesreb (not Dunne). The Irish Tax Authority, as well as the Irish High Court and Irish Court of Appeal, made it abundantly clear that Dunne had no interest whatsoever in Walford after July 23, 2005. Yet, notwithstanding the complexity of Irish real property law and the concept relevant at trial known as “resting on contract,” the District Court allowed the issue of “who owned Walford?” to be presented to a jury — even though this was not a fact question. This case presents significant legal issues that impact innumerable parties within and without the United States, and goes to the very heart of legal questions regarding real property ownership and taking of property. The Court should grant certiorari here.

ARGUMENT**A. Respondent Cannot Deny the Importance of Three Prior Foreign Court Decisions, on the Exact Same Facts, Pertaining to the Exact Same Property and the Same Parties, Directly Contradicting What the Court Below Has Found**

Respondent raises a straw man argument by claiming the issues before the court below are “of little importance to anyone except the parties.” Opposition at 28. Respondent fundamentally mischaracterizes Petitioner’s brief to minimize the importance of the issues before this Court. Petitioner raises a specific question of law that is of importance to every litigant in a court in the United States where legal title to foreign property has already been determined by a court in the country where the foreign property is located. The questions of law presented here are not, as the Trustee erroneously reframes them, merely of a “factual” nature and of limited importance. Instead, the questions presented by Dunne raise legitimate legal concerns that affect millions of people, including grantors and beneficiaries of foreign trusts, corporations, and trusts in and outside the United States. Respondent’s argument fails for the following reasons.

First, this is a legal issue not a factual issue. Legal ownership of real property is a legal determination. *See, e.g., Butner v. United States*, 440 U.S. 48, 55 (1979) (property interests are created and defined by law). Moreover, this particular issue (*i.e.* ownership of foreign property located in a foreign country) is a legal issue governed by, in this case, Irish law because the property is located in Ireland — and three Irish courts have each

ruled that Dunne did not own (*i.e.* he had no legal title or interest in) Walford after 2005, or at the latest, October 2006. For a federal court to rule that somehow he owned Walford in 2013 certainly raises important issues “to the public as distinguished from” importance to the particular “parties” involved.. *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923); *see also* Chief Justice William H. Rehnquist, *The Supreme Court* 234 (2001) (“Another important factor is the perception of one or more justices that the lower-court decision may well be . . . of general importance beyond its effect on these particular litigants”). The implications, based upon principles of comity, is that foreign courts could do the same (as the court below has done) for property located in the United States — which is contrary to prior rulings of this Court. *See e.g., Hilton v. Guyot*, 159 U.S. 113 (1895) (“The sentence of a competent court, proceeding in rem, is conclusive with respect to the thing itself, and operates as an absolute change of the property”).

Respondent does not deny the importance of these issues; Respondent merely characterizes them as “factual.” The record speaks for itself — three prior decisions have already adjudicated the issues the Court below chose to ignore (together “the Irish Court Rulings”):

1. *Yesreb Holding Limited v. Revenue Commissioners* [Ref No. 90/16A] Tax Appeals Commission (Ir.), at DA-5596-5628; DA-56272;
2. *Yesreb Holdings Ltd. against Revenue Commissioners* [2020] 87 R (H. Ct.) (Ir.) at DA-5697-5729;

3. *Yesreb Holdings Limited v. Revenue Commissioners*, [2022] ICEA 127 [Appeal No. 2021/170], The Court of Appeal Civil (Ir.), at KA-768-802; KA-795.

The ruling below invites foreign courts to ignore the laws of the United States and case decisions of the United States courts with regard to real property located in the United States. The implications of this finding is of tremendous importance to future litigants and property owners

Second, this issue should never have gone to the jury. Instead of discussing Rule 41 of the Federal Rules of Procedure or the statute of limitations that should have barred the Trustee from assailing the bona fides of the Trust that held Walford, the Trustee minimizes the issue. But this is exactly why this Court should grant certiorari here. Where a Court ignores Irish law, fails to follow Rule 41, and fails further to correct its errors, the Court indeed has “ignored” Irish law. As stated in our opening brief, the three Irish Court rulings made short order of the legal issue: Dunne did not legally have any ownership interest in Walford after 2006. That legal reality cannot be vitiated by presenting a Connecticut jury with a confusing fact pattern and instructions that the Court itself admitted were complex and confusing. *See* DA-129-165. Because this was not a fact-based issue and should never have gone to a jury, this Court should grant certiorari here. To make matters worse, the jury was not asked on the Verdict Sheet to determine the validity of the Trust that held Walford — which determination would have asked that jury to make a finding of intent in 2005 and 2006 — well beyond the look-back period under the Bankruptcy Code.

See DA-5304-5305 (135:6-136:17); *see also* DA-166-176 (no interrogatory for Counts 1 and 2 regarding the Trust).

Third, these issues do impact thousands of parties (and thousands of trusts) inside and outside the United States. The Trustee again seeks to minimize the impact of the lower Courts' errors. The Trustee asserts, "[m]ore importantly, the only relief that the Trustee obtained with respect to the Walford transfer was a monetary recovery (not, as Dunne suggests, 'seizure' of the property) premised on Walford's value, and that recovery was obtained against Killilea, not Dunne." Opposition at 28. Again, the Trustee hides the ball — and simultaneously collapses a number of different legal issues into one.

The issue squarely before the Court is whether a District Court sitting in Connecticut can disregard Irish Law and pending Irish cases on the very point of Irish real property law. Allowing the current judgment to stand is indeed a seizure and a "taking." In Ireland, Dunne never owned Walford, yet the District Court Judgment and Orders say otherwise — taking a property right of ownership from one person (not Dunne) and incorrectly putting that right in Dunne's hands. That should be impossible — but that is what is before this Court. The Trustee cannot wish it away — and the ramifications are staggering.

Further, the Trustee collapses, among other things, the following issues: (i) ignoring statute of limitations; (ii) ignoring Irish case ruling regarding the same property; (iii) two opposite legal findings in two different jurisdictions; (iv) a bankruptcy Trustee allowed to overreach with no repercussions; and (v) failure to give legal

significance to foreign trusts. This case explores why the United States Supreme Court should monitor this issue and provide a clear line for the thousands of other parties that this case impacts, including Trustees, and grantors and beneficiaries of Trusts inside and without the United States.

Finally, the questions arising from this matter create uncertainty that this Court can resolve here. It is important to note that this was an Irish property and an Irish Trust, but the manner in which this case went awry will impact Trusts based in the United States, as well as real property transactions. In short, the Court should create a bright line regarding Rule 41 and whether or not a trustee in bankruptcy can extend a limitations period in order to assign ownership of a property in another jurisdiction to a Debtor's estate. The Court should grant certiorari and instruct the Courts below on the limits of a bankruptcy trustee's powers, and the need for certainty regarding ownership of real property in the context of bankruptcy cases and beyond. The Court should rule Irish foreign law prevails as per the legal findings that are binding in Ireland and that must bind Respondent.

B. Dunne Joins in the Application of Gayle Killilea and Notes for the Court that the Decisions Below Conflict with This Court's Decisions and the Bankruptcy Code

This Court and the Bankruptcy Code require real property to be owned by the Debtor at the time the bankruptcy case is filed in order for that property to be the subject of an fraudulent conveyance action and deemed property of the estate (but for the transfer). The Trustee's backhanded treatment of Dunne's application misses this

point entirely. Specifically, under the Bankruptcy Code, Dunne would have had to own Walford, which he never did, in order for the Trustee to have pursued the claim of fraudulent conveyance. *See* 11 USC §§ 541; 548

Here, as discussed above, there is no doubt that under Irish law, Dunne could not have owned Walford in and around 2013, or four years before that date (March 2009 at the earliest).¹ There is no factual issue here — only the legal reality as stated by the Irish Court Rulings that Dunne held no legal interest in Walford as of July 23, 2005, or at the latest October 2006. The Second Circuit misapprehended this issue, treating it as a factual issue rather than a legal one. The Trustee makes the same error. Dunne did not own Walford as a matter of Irish law and, as such, it could not be part of his estate. Further, because no transfer occurred with regard to this property — and certainly not a transfer by Dunne who was a stranger to this property — within the four year period from 2013 back to 2009, the Trustee could not have pursued this property (or proceeds from its sale) under a fraudulent conveyance theory. *Begier v. I.R.S.*, 496 U.S. 53, 59 (1990); *In re Neri Bros. Constr. Corp.*, 593 B.R. 100, 143 (Bankr. D. Conn. 2018) (providing elements of a fraudulent conveyance claim). This Court should grant certiorari in order to clarify the errors of the Second Circuit (and the District Court) in this regard.

Dunne joins in the application of Killilea and the filings made on her behalf.

1. Section 548 of the Bankruptcy Code uses a two-year lookback period, but even under a longer four-year limitations period, there is still no question: Dunne did not own Walford.

CONCLUSION

Petitioner respectfully requests that the Court grant certiorari to review the decision of the Court of Appeals in this case and grant summary reversal (as requested by Killilea).

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Respectfully submitted,

OLIVERA MEDENICA

Counsel of Record

DUNNINGTON BARTHOLOW & MILLER LLP

230 Park Avenue, 21st Floor

New York, New York 10169

(212) 682-8811

omedenica@dunnington.com

Counsel for Petitioner