APPENDIX

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Appendix A
[CA6 ECF No. 7-1]
[Filed: Sep. 23, 2025]

NOT RECOMMENDED FOR PUBLICATION

No. 24-1957

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: DONALD C. DARNELL, Debtor.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN
EVANGELOS SOULIOTIS, Plaintiff-Appellant,	)	
v.	)	
DONALD C. DARNELL, Defendant-Appellee.	)	

ORDER

Before: GIBBONS, BUSH, and LARSEN, Circuit Judges.

Evangelos Souliotis, proceeding pro se, appeals from the district court's judgment affirming the bankruptcy court's denial of his motions for summary judgment and recusal and partial grant of Donald C. Darnell's motion for summary judgment. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we affirm the bankruptcy court's judgment.

Darnell was an attorney who represented Souliotis in a suit against Coating Holdings for unsatisfactory home repairs. Souliotis sued Darnell in state court for malpractice, professional negligence, and breach of fiduciary duty after Darnell entered into a settlement agreement on Souliotis's behalf but without his consent. A jury found for Souliotis and awarded him $37,900 in damages, but the trial court granted Darnell's motion for judgment notwithstanding the verdict as to the malpractice and professional negligence counts as barred by the statute of limitations. Darnell petitioned for Chapter 11 bankruptcy before Souliotis filed his notice of appeal in the malpractice suit, and the trial court stayed the proceedings without entering a final judgment. The bankruptcy court converted the Chapter 11 case to a Chapter 7 case.

Souliotis commenced a pro se adversary proceeding in the bankruptcy court, asserting that the judgment awarded him in the state court proceeding was nondischargeable under several bankruptcy provisions, including 11 U.S.C § 523(a)(2)(A), which applies to debts procured through fraud, and § 523(a)(6), which applies to debts resulting from "willful and malicious injury by the debtor." Darnell moved to dismiss the adversary proceeding, arguing that Souliotis's complaint was untimely and that it failed to allege sufficient facts to state a claim. Before the bankruptcy court ruled on the dismissal motion, Souliotis filed an amended complaint. Darnell again moved to dismiss. The bankruptcy court granted the motion as to all claims except the § 523(a)(6) claim. Souliotis then filed a second amended complaint, reasserting one claim under § 523(a)(2)(A) and one under § 523(a)(6).

Both parties moved for summary judgment. Souliotis then filed an emergency motion for recusal of the bankruptcy court for the "institutional appearance of partiality." The bankruptcy court denied the recusal motion. The bankruptcy court also denied Souliotis's motion for summary judgment but granted Darnell's motion on the § 523(a)(6) claim, finding that the evidence did not show that Darnell intended to cause Souliotis's injury. The bankruptcy court denied Darnell's motion for summary judgment on the § 523(a)(2)(A) claim, finding that genuine disputes of material fact existed as to three of the statutory elements. To avoid having to proceed to trial, Souliotis then moved to voluntarily dismiss the § 523(a)(2)(A) claim, and the bankruptcy court granted the motion. Souliotis timely appealed the bankruptcy court's orders denying recusal and granting summary judgment to Darnell on the § 523(a)(6) claim.

In his brief to the district court, Souliotis argued not only the recusal issue and the § 523(a)(6) claim, but also the § 523(a)(2)(A) claim. The district court affirmed the bankruptcy court's order granting summary judgment on the § 523(a)(6) claim and denying recusal and dismissed the appeal as to the § 523(a)(2)(A) claim.

In this timely appeal, Souliotis does not specifically ask us to reverse the bankruptcy court's grant of summary judgment or its denial of his recusal motion. Instead, he takes issue with two cases—one from this court and one from the Michigan Court of Appeals—that he views as violating the separation-of-powers principle and asks us to "reverse" those cases. He also asks us to recuse the entire Sixth Circuit from hearing this appeal. Although Souliotis does not directly challenge the bankruptcy court's orders, he does argue that it failed to fully consider the evidence, failed to hold Darnell accountable for his misconduct, and improperly limited his § 523(a)(2)(A) claim. Darnell did not file an appellate brief.

The two cases that Souliotis asks us to overrule, *Capital Dredge & Dock Corp. v. City of Detroit*, 800 F.2d 525 (6th Cir. 1986), and *Nelson v. Consumers Power Co.*, 497 N.W.2d 205 (Mich. Ct. App. 1993), relate to the apparent authority of an attorney to bind a client. These cases have no bearing on whether Darnell's debt to Souliotis is dischargeable in bankruptcy proceedings, and Souliotis may not use this adversary proceeding to relitigate his state claims against Darnell. *See Anderson v. Charter Twp. of Ypsilanti*, 266 F.3d 487, 492 (6th Cir. 2001) ("[L]ower federal courts do not have jurisdiction to review a case litigated and decided in state court . . . .").

Souliotis's request for this court to recuse itself is in substance a request for a change of venue. Compare 28 U.S.C. § 455(a) (discussing recusal as applying to a single judge and not an entire court), with 28 U.S.C. § 1404 (discussing motions for change of venue as applying to a court). Motions for change of venue are properly brought in the district courts and, generally, may not be brought in the circuit courts. *See* 28 U.S.C. § 1404 (providing for change of venue by district court only); *see also Barner v. Pilkington N. Am., Inc.*, 399 F.3d 745, 749 (6th Cir. 2005) (stating that the function of this court is "to review the case presented to the district court"). Even if a motion for change of venue could be brought in this court, Souliotis has failed to show why the interests of justice support a change of venue. Souliotis's argument that his case should be transferred to a circuit that is "not entrenched in [adverse] precedents" is unavailing.

Even if we construe Souliotis's request as a motion to recuse, he does not present any ground requiring recusal. Under 28 U.S.C. § 455(a), a judge must recuse himself from "any proceeding in which his impartiality might reasonably be questioned." The standard is an objective one, requiring recusal only when "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Burley v. Gagacki*, 834 F.3d 606, 615-16 (6th Cir. 2016) (quoting *United States v. Adams*, 722 F.3d 788, 837 (6th Cir. 2013)). Souliotis argues that the bankruptcy court and, by extension, this court have shown "systemic judicial bias" by repeatedly ruling in favor of members of the bar, but an adverse judicial ruling is "almost never" a valid basis requiring recusal. *Liteky v. United States*, 510 U.S. 540, 555 (1994). Moreover, Souliotis failed to demonstrate that any judge sitting on his case, from the bankruptcy court to this court, has a conflict of interest merely because the judge is a member of the same bar as Darnell. *See Garrett v. Ohio State Univ.*, 60 F.4th 359, 369 (6th Cir. 2023) (holding that recusal was not necessarily required when a judge was merely associated with an organization that appeared as a party before him). Consequently, the bankruptcy court did not err by denying Souliotis's motion for recusal; and Souliotis has failed to assert any ground requiring recusal of any judge on this court.

Finally, we turn to the bankruptcy court's summary-judgment decision. We review a decision of the bankruptcy court directly, independently of the district court's ruling. *In re Omegas Grp., Inc.*, 16 F.3d

1443, 1447 (6th Cir. 1994). We review de novo the bankruptcy court's grant of summary judgment. *In re Kennedy*, 249 F.3d 576, 579 (6th Cir. 2001). For a grant of summary judgment, the movant must first "show[] that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the movant makes that showing, the burden shifts to the non-movant to establish "specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (emphasis omitted) (quoting Fed. R. Civ. P. 56(e)).

Initially, we note that because Souliotis voluntarily moved to dismiss his § 523(a)(2)(A) claim, he may not appeal the bankruptcy court's findings and conclusions on that claim. *See Pettrey v. Enter. Title Agency, Inc.*, 584 F.3d 701, 703, 705 (6th Cir. 2009) (holding that claims that are "voluntarily relinquished" are moot and no longer within the jurisdiction of the court). Consequently, we will not address Souliotis's arguments related to this claim.

Under 11 U.S.C. § 523(a)(6), a debt is not dischargeable if it resulted from "willful and malicious injury by the debtor to another entity." An injury is "willful" if the debtor acted "with the intent to cause injury." *In re Kennedy*, 249 F.3d at 580. In other words, "[a] debtor willfully and maliciously injures a creditor if, acting without just cause or excuse, he knows or is substantially certain that his actions will cause injury." *In re Boland*, 946 F.3d 335, 338 (6th Cir. 2020); *see also In re Kennedy*, 249 F.3d at 580 (quoting *In re Markowitz*, 190 F.3d 455, 465 (6th Cir. 1999)). Even considering the evidence in the light most favorable to Souliotis, he has failed to demonstrate that Darnell approved the settlement agreement knowing or being "substantially certain" that Souliotis would suffer injury from it. Souliotis alleges that Darnell's misconduct caused him to expend significant resources to litigate against the enforcement of the settlement agreement. But he presented no evidence that Darnell intended to cause him to have to litigate against enforcement of the settlement agreement. Consequently, the bankruptcy court properly granted summary judgment to Darnell on this claim.

Accordingly, we **AFFIRM** the judgment of the bankruptcy court.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

Appendix B
[CA6 ECF No. 8]
[Filed: Sep. 23, 2025]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1957

In re: DONALD C. DARNELL,
Debtor.

EVANGELOS SOULIOTIS,
Plaintiff-Appellant,

v.

DONALD C. DARNELL,
Defendant-Appellee.

Before: GIBBONS, BUSH, and LARSEN,
Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Flint.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's judgment affirming the bankruptcy court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

Appendix C
[CA6 ECF No. 11-1]
[Filed: Nov. 19, 2025]

No. 24-1957

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: DONALD C. DARNELL, Debtor.	)	
EVANGELOS SOULIOTIS, Plaintiff-Appellant, v. DONALD C. DARNELL, Defendant-Appellee.	)	ORDER

Before: GIBBONS, BUSH, and LARSEN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

Appendix D
[E.D. Mich. ECF No. 17]
[Filed: Sep. 30, 2024]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: DONALD C. DARNELL,	Case No. 23-11467 Honorable Shalina D. Kumar
EVANGELOS SOULIOTIS, Appellant, v. DONALD C. DARNELL, Appellee.	

OPINION AND ORDER AFFIRMING BANKRUPTCY COURT'S ORDER DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT, GRANTING APPELLEE/ DEBTOR'S MOTION FOR SUMMARY JUDGMENT, AND DISMISSING APPEAL (ECF NO. 1)

Appellant Evangelos Souliotis ("Souliotis"), who initiated an adversary proceeding against Appellee/ Debtor Donald C. Darnell ("Darnell"), appeals from the U.S. Bankruptcy Court for the Eastern District of

Michigan's order denying Souliotis' motion for summary judgment and granting in part Darnell's motion for summary judgment. ECF No. 1.

This matter has been fully briefed. Based on the briefs and the record, the Court finds the matter sufficient for determination without a hearing. *See* E.D. Mich. LR 7.1(f); Fed. R. Bankr. P. 8012. For the reasons below, the Court affirms the bankruptcy court's decision denying Souliotis' motion for summary judgment and granting Darnell's motion for summary judgment relating to Souliotis' claim under 11 U.S.C. § 523(a)(6) and dismisses the appeal as it relates to Souliotis' claim under 11 U.S.C. § 523(a)(2)(A).

I. Factual and Procedural Background

A. Underlying Dispute

This matter arises from a soured attorney-client relationship. Darnell became the fourth attorney to represent Souliotis in a Washtenaw County Circuit Court action against installers and a manufacturer of spray polyurethane foam insulation in Souliotis' Ann Arbor residence. ECF No. 8, PageID.2428. Darnell immediately pursued settlement negotiations with the manufacturer-defendant, and the parties soon agreed to settle that claim for $7,500 in February 2017. ECF No. 4-2, PageID.2362. Various depositions, court appearances, and deadlines were postponed or adjourned based on the agreement to settle this claim. Souliotis authorized Darnell to tell the state court that a settlement had been reached with the manufacturer-defendant. *Id.* at PageID.2364.

Darnell and counsel for the manufacturer-defendant negotiated release terms for the settlement. Although the original proposed settlement called for a standard mutual release among the parties, after subsequent discussion between Darnell and manufacturer-defendant's counsel, Darnell agreed that Souliotis did not require a release from the manufacturer-defendant, who had no claims against Souliotis. ECF No. 4-2, PageID.2363-2364. After reviewing a draft settlement agreement and finding that it comported with the parties' verbal agreements, Darnell forwarded it to Souliotis for review and signature on March 10, 2017. *Id.*

The circulated draft settlement agreement contained only a unilateral release from Souliotis. Although Souliotis had not signed the settlement agreement, Darnell represented to opposing counsel that the agreement was acceptable and later authorized him to sign a stipulated order of dismissal for entry by the state court. *Id.* at PageID.2365. Souliotis refused to sign the settlement agreement, continuing to question and challenge some of the language in it. *Id.* Only on April 19, 2017, more than a month after Souliotis received the draft settlement agreement, after the stipulated dismissal had been entered, was the topic of the unilateral versus mutual release raised. *Id.* at PageID.2366. Darnell told Souliotis that he thought the mutual release was a mistake and that a unilateral release was appropriate for this case even though a mutual release would benefit Souliotis. *Id.* Shortly thereafter, Souliotis fired Darnell as his counsel and ultimately sued him in Washtenaw County Circuit Court for malpractice and breach of fiduciary duty. Souliotis secured a jury verdict against Darnell, but that verdict was not reduced to a final judgment before Darnell initiated these bankruptcy proceedings.

B. Adversary Proceeding in Bankruptcy Court

Souliotis brought this adversary proceeding to assert that Darnell's debt to him is not dischargeable under the Bankruptcy Code because the debt arose from a willful and malicious injury to Souliotis, *see* 11 U.S.C. § 523(a)(6), and/or because the debt arose from money obtained by Darnell from Souliotis through false representations, see 11 U.S.C. § 523(a)(2)(A). The parties filed cross-motions for summary judgment, both arguing that there was no genuine issue of material fact and that they were entitled to judgment in their favor. *See Souliotis v. Darnell (In Re Donald C. Darnell)*, No. 22-04103 (Bankr. E.D. Mich. Jun. 8, 2023).

The bankruptcy court agreed with the parties that there was no genuine issue of material fact and found that Darnell was entitled to judgment under § 523(a)(6) because he had not committed a "willful and malicious injury," as defined by the subsection. ECF No. 4-2, PageID.2375-2377. The bankruptcy court determined that Darnell made false representations to Souliotis by not informing him that Darnell authorized the dismissal of the case against the manufacturer-defendant until April 21, 2017. The court found that genuine issues of material fact existed as to whether Darnell intended to deceive Souliotis; if Souliotis justifiably relied upon Darnell's false representation between April 4 (when Darnell authorized the stipulated dismissal) and April 21, 2017 (when Darnell informed Souliotis he had done so); and whether Souliotis' reliance on the false representation was the proximate cause of his loss—money paid or charged after April 4 but before April 21, 2017. The court thus denied the motions for summary judgment as they pertained to the § 523(a)(2)(A) claim. ECF No. 4-2, PageID.2378-2383. After the court's ruling, Souliotis moved for, and the court granted dismissal of his remaining § 523(a)(2)(A) claim. *Id.* at PageID.2403-2413

II. Standard of Review

"The district court reviews the bankruptcy court's conclusions of law de novo and upholds its findings of fact unless they are clearly erroneous." *In re Made in Detroit*, 414 F.3d 576, 580 (6th Cir. 2005). A bankruptcy court's interpretation of a plan it has confirmed is entitled to "full deference," and its exercise of equitable powers to "breathe life" into the provisions of a plan is reviewed under an abuse of discretion standard. *In re Terex Corp.*, 984 F.2d 170, 172 (6th Cir. 1993); *Harper v. Oversight Comm. (In re Conco, Inc.)*, 855 F.3d 703, 711 (6th Cir. 2017) (stating that bankruptcy courts also have the power to interpret the orders that they have previously given).

"Abuse of discretion" is defined as a "definite and firm conviction that the [court below] committed a clear error of judgment. . . . [I]f reasonable persons could differ as to the issue, then there is no abuse of discretion." *Mayor & City Council v. W. Va. (In re Eagle-Picher Indus., Inc.)*, 285 F.3d 522, 529 (6th Cir. 2002). Under this standard, the trial court's decision "will be disturbed only if the [trial] court relied upon clearly erroneous findings of fact, improperly applied the governing law, or used an erroneous legal standard."' Elec. *Workers Pension Tr. Fund of Local Union # 58 v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th

Cir. 2003) (citing *Blue Cross & Blue Shield Mut. v. Blue Cross & Blue Shield Ass'n*, 110 F.3d 318, 322 (6th Cir.1997)).

III. Analysis

A. 11 U.S.C. § 523(a)(6) Claim

Souliotis argues that his operative complaint and motion for summary judgment presented a "triable willful and malicious injury by [Darnell] . . . that is non-dischargeable under § 523(a)(6)." ECF No. 8.

At the hearing on the cross-motions for summary judgment, the bankruptcy court held that to be non-dischargeable, an injury must be both willful and malicious. *In re Markowitz*, 190 F.3d 455, 463 (6th Cir. 1999). The bankruptcy court noted that willful means voluntary, intentional or deliberate, and that Markowitz requires the injury itself to be deliberate or intentional, not merely the act leading to the injury. ECF No. 4-2, PageID.2375. For a debtor to have injured a creditor willfully and maliciously, he must have acted without just cause or excuse in a way he knows or is substantially certain will cause injury. *Id.* at PageID.2373 (citing *In re Berge*, 953 F.3d 907, 915 (6th 2020)).

The bankruptcy court ruled that the jury award for breach of fiduciary duty did not establish a willful and malicious injury under the bankruptcy statute. *Id.* It further ruled that Souliotis could not establish facts to support a finding of a willful and malicious injury by way of an expert's affidavit, particularly when the affidavit only recited the standard for breach of fiduciary duty and not the one for willful and malicious injury under the bankruptcy statute. *Id.* at PageID. 2374-2375. The bankruptcy court determined that

Souliotis offered no other evidence that Darnell desired or was substantially certain that approving the settlement agreement as it was drafted and agreeing to dismiss the case would injure Souliotis. *Id.*

This Court finds no error in the bankruptcy court's conclusions. As the bankruptcy court stated, under the two-pronged approach explicitly adopted by the Sixth Circuit in Berge, for a debt arising from an injury to be non-dischargeable, the injury must be both willful and malicious. *See Berge*, 953 F.3d at 914-15. To act willfully, a debtor must have actual intent to cause injury. *Id.* at 915. The debtor must desire to inflict injury or believe that harm was substantially certain to result from his actions. *Id.* "Without a subjective intent to injure, there can be no willful injury under § 523(a)(6)." *Id.* at 920.

Souliotis argues on appeal that the jury award in his favor against Darnell in the state court action establishes a willful and malicious injury. But "[f]or issue preclusion to apply for purposes of satisfying § 523(a)(6), the issue in question must have been 'actually litigated and decided' in the earlier proceeding." *Id.* at 917 (quoting *Wolfe v. Perry*, 412 F.3d 707, 716 (6th Cir. 2005)). In *Berge*, the court determined that earlier proceedings finding that the debtor infringed the creditor's copyrights and violated the Tennessee Consumer Protection Act ("TCPA") did not conclusively establish the debtor's subjective intent to harm the creditor. *Id.* at 918.

> For preclusion to apply here, then, the parties must have actually litigated and decided in the earlier proceeding that [debtor] acted with subjective intent to harm [creditor], the

> same issue at play in" assessing the creditor's § 523(a)(6) claim . . . . Following its review of the underlying judgment, the bankruptcy court concluded that such evidence was absent from the earlier district court proceeding: There is no clear finding that [debtor] desired to cause the consequences of his act or believed that the injuries were substantially certain to result from it, nor are there factual allegations in the underlying complaint to that effect.

Id. at 917 (internal quotation omitted). The court determined that "[s]ubjective intent to injure, as required by § 523(a)(6), is not required to commit a knowing violation of the TCPA." Id. at 919. Similarly, the court found that willfulness in the context of a copyright infringement claim includes knowingly or recklessly copying another's work. "Where a finding of willful copyright infringement is based merely on reckless behavior, . . . the resulting statutory award would not fit within the § 523(a)(6) exemption." *Id.* at 921 (cleaned up).

The bankruptcy court held that "the relevant issue here—intent to defraud, and willful and malicious conduct—were not actually litigated and necessarily determined by the [s]tate [c]ourt." ECF No. 4-2, PageID.2373. The bankruptcy court noted that a breach of fiduciary duty standard, which was the standard at issue in the state court case against Darnell, does not encompass the subjective intent element critical to the willful and malicious standard under § 523(a)(6). *Id.* PageID.2375. For the same reason, the Court agrees that the jury award in favor of

Souliotis from the state court action does not establish a willful and malicious injury for purposes of non-dischargeability under § 523(a)(6).

Souliotis also argues that the bankruptcy court erred in refusing to consider the affidavit of his expert as evidence of Darnell's willfulness. The bankruptcy court disregarded the expert's affidavit, finding that Souliotis could not establish facts through an affidavit of an expert, and that, on the issue of willfulness, the affidavit was inadmissible hearsay and speculative. ECF No. 4-2, PageID.2374-2375. Because expert opinion as to intent, motive, or state of mind cannot assist a jury in determining such factual issues, it is inadmissible under Federal Rule of Evidence 702. *See Hunt v. Hadden*, 127 F. Supp. 3d 780, 788–89 (E.D. Mich. 2015), *aff'd*, 665 Fed. Appx. 435 (6th Cir. 2016); *Waite, Schneider, Bayless & Chesley Co., L.P.A. v. Davis*, 253 F. Supp. 3d 997, 1013 (S.D. Ohio 2015) (citing *CMI–Trading, Inc. v. Quantum Air, Inc.*, 98 F.3d 887, 890 (6th Cir.1996), *abrogated on other grounds by Morales v. American Honda Motor Co., Inc.*, 151 F.3d 500 (6th Cir.1998)). The bankruptcy court properly disregarded Souliotis' expert affidavit as evidence of Darnell's willfulness and maliciousness.

The Court likewise agrees with the bankruptcy court that there was otherwise no evidence in the record to establish that Darnell willfully—with a subjective intent to harm Souliotis—and maliciously injured Souliotis to render Darnell's debt to him non-dischargeable under § 523(a)(6). The Court thus AFFIRMS the bankruptcy court's decision granting summary judgment in favor of Darnell on the § 523(a)(6) claim.

B. 11 U.S.C. § 523(a)(2)(A) Claim

Souliotis also argues on appeal that he demonstrated undisputed non-dischargeable debt from false representation, false pretense, or actual fraud under § 523(a)(2)(A) and that the bankruptcy court erred in denying his motion for summary judgment on that claim and in limiting the period for which he could have justifiably relied on Darnell's false representation to that between April 4 and April 21, 2017. ECF No. 8; *see* ECF No. 4-2, PageID.2382. But Souliotis moved for and the bankruptcy court granted voluntary dismissal of this claim. ECF No. 3, PageID.31; *see also* ECF No. 4-2, PageID.2402-2413. The voluntary dismissal with prejudice extinguished Souliotis' § 523(a)(2)(A) claim and mooted any appealable issues related to the bankruptcy court's rulings on that claim with it. *See Pettrey v. Enterprise Title Agency, Inc.*, 584 F.3d 701, 703 (6th Cir. 2009) (voluntary dismissal extinguishes the live controversy necessary for a case not to be moot). Accordingly, the Court DISMISSES the appeal as to the § 523(a)(2)(A) claim.

IV. Conclusion

For the reasons above, the Court AFFIRMS the bankruptcy court's order granting summary judgment in favor of Darnell on the § 523(a)(6) claim and DISMISSES the appeal on the § 523(a)(2)(A) claim. The Court DENIES AS MOOT Souliotis' motion for oral argument, ECF No. 10, and motion for extension of time to file reply brief, ECF No. 12.

s/ Shalina D. Kumar
SHALINA D. KUMAR
United States
District Judge

Dated: September 30, 2024

Appendix E
[E.D. Mich. ECF No. 18]
[Filed: Sep. 30, 2024]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: DONALD C. DARNELL,	Case No. 23-11467 Honorable Shalina D. Kumar
EVANGELOS SOULIOTIS, Appellant, v. DONALD C. DARNELL, Appellee.	

CORRECTED OPINION AND ORDER AFFIRMING BANKRUPTCY COURT'S ORDERS DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND GRANTING APPELLEE/DEBTOR'S MOTION FOR SUMMARY JUDGMENT, DENYING APPELLANT'S EMERGENCY MOTION FOR RECUSAL, AND DISMISSING APPEAL (ECF NO. 1)

Appellant Evangelos Souliotis ("Souliotis"), who initiated an adversary proceeding against Appellee/ Debtor Donald C. Darnell ("Darnell"), appeals from the U.S. Bankruptcy Court for the Eastern District of Michigan's order denying Souliotis' motion for summary judgment and granting in part Darnell's motion for summary judgment and the denial of Souliotis' emergency motion for recusal. ECF No. 1.

This matter has been fully briefed. Based on the briefs and the record, the Court finds the matter sufficient for determination without a hearing. *See* E.D. Mich. LR 7.1(f); Fed. R. Bankr. P. 8012. For the reasons below, the Court affirms the bankruptcy court's decisions denying Souliotis' motion for summary judgment and granting Darnell's motion for summary judgment relating to Souliotis' claim under 11 U.S.C. § 523(a)(6) and denying Souliotis' emergency motion for recusal pursuant to 27 U.S.C. § 455. The Court dismisses the appeal as it relates to Souliotis' claim under 11 U.S.C. § 523(a)(2)(A).

I. Factual and Procedural Background

A. Underlying Dispute

This matter arises from a soured attorney-client relationship. Darnell became the fourth attorney to represent Souliotis in a Washtenaw County Circuit Court action against installers and a manufacturer of spray polyurethane foam insulation in Souliotis' Ann Arbor residence. ECF No. 8, PageID.2428. Darnell immediately pursued settlement negotiations with the manufacturer-defendant, and the parties soon agreed to settle that claim for $7,500 in February 2017. ECF No. 4-2, PageID.2362. Various depositions, court appearances, and deadlines were postponed or adjourned based on the agreement to settle this claim. Souliotis authorized Darnell to tell the state court that a settlement had been reached with the manufacturer-defendant. *Id.* at PageID.2364.

Darnell and counsel for the manufacturer-defendant negotiated release terms for the settlement. Although the original proposed settlement called for a standard mutual release among the parties, after subsequent discussion between Darnell and manufacturer-defendant's counsel, Darnell agreed that Souliotis did not require a release from the manufacturer-defendant, who had no claims against Souliotis. ECF No. 4-2, PageID.2363-2364. After reviewing a draft settlement agreement and finding that it comported with the parties' verbal agreements, Darnell forwarded it to Souliotis for review and signature on March 10, 2017. *Id.*

The circulated draft settlement agreement contained only a unilateral release from Souliotis. Although Souliotis had not signed the settlement agreement, Darnell represented to opposing counsel that the agreement was acceptable and later authorized him to sign a stipulated order of dismissal for entry by the state court. *Id.* at PageID.2365. Souliotis refused to sign the settlement agreement, continuing to question and challenge some of the language in it. *Id.* Only on April 19, 2017, more than a month after Souliotis received the draft settlement agreement, after the stipulated dismissal had been entered, was the topic of the unilateral versus mutual release raised. *Id.* at PageID.2366. Darnell told Souliotis that he thought the mutual release was a mistake and that a unilateral release was appropriate for this case even though a mutual release would benefit Souliotis. *Id.* Shortly thereafter, Souliotis fired Darnell as his counsel and ultimately sued him in Washtenaw County Circuit

Court for malpractice and breach of fiduciary duty. Souliotis secured a jury verdict against Darnell, but that verdict was not reduced to a final judgment before Darnell initiated these bankruptcy proceedings.

B. Adversary Proceeding in Bankruptcy Court

Souliotis brought this adversary proceeding to assert that Darnell's debt to him is not dischargeable under the Bankruptcy Code because the debt arose from a willful and malicious injury to Souliotis, *see* 11 U.S.C. § 523(a)(6), and/or because the debt arose from money obtained by Darnell from Souliotis through false representations, *see* 11 U.S.C. § 523(a)(2)(A). The parties filed cross-motions for summary judgment, both arguing that there was no genuine issue of material fact and that they were entitled to judgment in their favor. *See Souliotis v. Darnell (In Re Donald C. Darnell)*, No. 22-04103 (Bankr. E.D. Mich. Jun. 8, 2023).

The bankruptcy court agreed with the parties that there was no genuine issue of material fact and found that Darnell was entitled to judgment under § 523(a)(6) because he had not committed a "willful and malicious injury," as defined by the subsection. ECF No. 4-2, PageID.2375-2377. The bankruptcy court determined that Darnell made false representations to Souliotis by not informing him that Darnell authorized the dismissal of the case against the manufacturer-defendant until April 21, 2017. The court found that genuine issues of material fact existed as to whether Darnell intended to deceive Souliotis; if Souliotis justifiably relied upon Darnell's false representation between April 4 (when Darnell authorized the stipulated dismissal) and April 21, 2017 (when Darnell informed Souliotis he had done so); and whether Souliotis' reliance on the false representation was the proximate cause of his loss—money paid or charged after April 4 but before April 21, 2017. The court thus denied the motions for summary judgment as they pertained to the § 523(a)(2)(A) claim. ECF No. 4-2, PageID.2378-2383. After the court's ruling, Souliotis moved for, and the court granted dismissal of his remaining § 523(a)(2)(A) claim. *Id.* at PageID.2403-2413

C. Motion for Recusal

Souliotis moved for recusal of the bankruptcy court judge pursuant to 27 U.S.C. § 455. ECF No. 8. In that motion, Souliotis does not point to any specific actions taken by the bankruptcy court which would require recusal. ECF No. 4-2, PageID.1794. Instead, Souliotis voices his displeasure with the Sixth Circuit's decision *Capital Dredge and Dock v. City of Detroit*, 800 F.2d 525 (1986), and the Michigan Court of Appeals decision *Nelson v. Consumers Power Co.*, 497 N.W. 2d 205, 198 Mich. App. 82 (1993), regarding an attorney's apparent authority to settle a lawsuit on behalf of a client. Additionally, Souliotis asserts that there is an inherent conflict of interest within the Michigan State Bar Association between the legal profession and the public it is meant to serve. "The appearance of these decisions, in the circumstance of this case, created a genuine perception of institutional judicial conflict that must be disqualifying." ECF No. 8, PageID.2443. Souliotis goes on to question whether any "members of the Michigan bar, sitting as judges evaluating the hapless actions of a fellow member of the Michigan bar, can move forward, blinkered or blindered, by their contradictory role as members of the bar..." *Id.* The bankruptcy court denied Souliotis motion, concluding that he failed to cite to any ground requiring recusal and his "disagreement with the state of the law is not grounds for recusal..." ECF No. 4-2, PageID.1800.

II. Standard of Review

"The district court reviews the bankruptcy court's conclusions of law de novo and upholds its findings of fact unless they are clearly erroneous." *In re Made in Detroit*, 414 F.3d 576, 580 (6th Cir. 2005). A bankruptcy court's interpretation of a plan it has confirmed is entitled to "full deference," and its exercise of equitable powers to "breathe life" into the provisions of a plan is reviewed under an abuse of discretion standard. *In re Terex Corp.*, 984 F.2d 170, 172 (6th Cir. 1993); *Harper v. Oversight Comm. (In re Conco, Inc.)*, 855 F.3d 703, 711 (6th Cir. 2017) (stating that bankruptcy courts also have the power to interpret the orders that they have previously given).

"Abuse of discretion" is defined as a "definite and firm conviction that the [court below] committed a clear error of judgment. . . . [I]f reasonable persons could differ as to the issue, then there is no abuse of discretion." *Mayor & City Council v. W. Va. (In re Eagle-Picher Indus., Inc.)*, 285 F.3d 522, 529 (6th Cir. 2002). Under this standard, the trial court's decision "will be disturbed only if the [trial] court relied upon clearly erroneous findings of fact, improperly applied the governing law, or used an erroneous legal standard.'" *Elec. Workers Pension Tr. Fund of Local Union # 58 v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th

Cir. 2003) (citing *Blue Cross & Blue Shield Mut. v. Blue Cross & Blue Shield Ass'n*, 110 F.3d 318, 322 (6th Cir.1997)).

III. Analysis

A. 11 U.S.C. § 523(a)(6) Claim

Souliotis argues that his operative complaint and motion for summary judgment presented a "triable willful and malicious injury by [Darnell] . . . that is non-dischargeable under § 523(a)(6)." ECF No. 8.

At the hearing on the cross-motions for summary judgment, the bankruptcy court held that to be non-dischargeable, an injury must be both willful and malicious. *In re Markowitz*, 190 F.3d 455, 463 (6th Cir. 1999). The bankruptcy court noted that willful means voluntary, intentional or deliberate, and that Markowitz requires the injury itself to be deliberate or intentional, not merely the act leading to the injury. ECF No. 4-2, PageID.2375. For a debtor to have injured a creditor willfully and maliciously, he must have acted without just cause or excuse in a way he knows or is substantially certain will cause injury. *Id.* at PageID.2373 (citing *In re Berge*, 953 F.3d 907, 915 (6th 2020)).

The bankruptcy court ruled that the jury award for breach of fiduciary duty did not establish a willful and malicious injury under the bankruptcy statute. *Id.* It further ruled that Souliotis could not establish facts to support a finding of a willful and malicious injury by way of an expert's affidavit, particularly when the affidavit only recited the standard for breach of fiduciary duty and not the one for willful and malicious injury under the bankruptcy statute. *Id.* at PageID. 2374-2375. The bankruptcy court determined that

Souliotis offered no other evidence that Darnell desired or was substantially certain that approving the settlement agreement as it was drafted and agreeing to dismiss the case would injure Souliotis. *Id.*

This Court finds no error in the bankruptcy court's conclusions. As the bankruptcy court stated, under the two-pronged approach explicitly adopted by the Sixth Circuit in *Berge*, for a debt arising from an injury to be non-dischargeable, the injury must be both willful and malicious. *See Berge*, 953 F.3d at 914-15. To act willfully, a debtor must have actual intent to cause injury. *Id.* at 915. The debtor must desire to inflict injury or believe that harm was substantially certain to result from his actions. *Id.* "Without a subjective intent to injure, there can be no willful injury under § 523(a)(6)." *Id.* at 920.

Souliotis argues on appeal that the jury award in his favor against Darnell in the state court action establishes a willful and malicious injury. But "[f]or issue preclusion to apply for purposes of satisfying § 523(a)(6), the issue in question must have been 'actually litigated and decided' in the earlier proceeding." *Id.* at 917 (quoting *Wolfe v. Perry*, 412 F.3d 707, 716 (6th Cir. 2005)). In *Berge*, the court determined that earlier proceedings finding that the debtor infringed the creditor's copyrights and violated the Tennessee Consumer Protection Act ("TCPA") did not conclusively establish the debtor's subjective intent to harm the creditor. *Id.* at 918.

> For preclusion to apply here, then, the parties must have actually litigated and decided in the earlier proceeding that [debtor] acted with subjective intent to harm [creditor], the

> same issue at play in" assessing the creditor's § 523(a)(6) claim . . . . Following its review of the underlying judgment, the bankruptcy court concluded that such evidence was absent from the earlier district court proceeding: There is no clear finding that [debtor] desired to cause the consequences of his act or believed that the injuries were substantially certain to result from it, nor are there factual allegations in the underlying complaint to that effect.

Id. at 917 (internal quotation omitted). The court determined that "[s]ubjective intent to injure, as required by § 523(a)(6), is not required to commit a knowing violation of the TCPA." Id. at 919. Similarly, the court found that willfulness in the context of a copyright infringement claim includes knowingly or recklessly copying another's work. "Where a finding of willful copyright infringement is based merely on reckless behavior, . . . the resulting statutory award would not fit within the § 523(a)(6) exemption." *Id.* at 921 (cleaned up).

The bankruptcy court held that "the relevant issue here—intent to defraud, and willful and malicious conduct—were not actually litigated and necessarily determined by the [s]tate [c]ourt." ECF No. 4-2, PageID.2373. The bankruptcy court noted that a breach of fiduciary duty standard, which was the standard at issue in the state court case against Darnell, does not encompass the subjective intent element critical to the willful and malicious standard under § 523(a)(6). *Id.* PageID.2375. For the same reason, the Court agrees that the jury award in favor of

Souliotis from the state court action does not establish a willful and malicious injury for purposes of non-dischargeability under § 523(a)(6).

Souliotis also argues that the bankruptcy court erred in refusing to consider the affidavit of his expert as evidence of Darnell's willfulness. The bankruptcy court disregarded the expert's affidavit, finding that Souliotis could not establish facts through an affidavit of an expert, and that, on the issue of willfulness, the affidavit was inadmissible hearsay and speculative. ECF No. 4-2, PageID.2374-2375. Because expert opinion as to intent, motive, or state of mind cannot assist a jury in determining such factual issues, it is inadmissible under Federal Rule of Evidence 702. *See Hunt v. Hadden*, 127 F. Supp. 3d 780, 788–89 (E.D. Mich. 2015), *aff'd*, 665 Fed. Appx. 435 (6th Cir. 2016); *Waite, Schneider, Bayless & Chesley Co., L.P.A. v. Davis*, 253 F. Supp. 3d 997, 1013 (S.D. Ohio 2015) (citing *CMI–Trading, Inc. v. Quantum Air, Inc.*, 98 F.3d 887, 890 (6th Cir.1996), abrogated on other grounds by *Morales v. American Honda Motor Co., Inc.*, 151 F.3d 500 (6th Cir.1998)). The bankruptcy court properly disregarded Souliotis' expert affidavit as evidence of Darnell's willfulness and maliciousness.

The Court likewise agrees with the bankruptcy court that there was otherwise no evidence in the record to establish that Darnell willfully—with a subjective intent to harm Souliotis—and maliciously injured Souliotis to render Darnell's debt to him non-dischargeable under § 523(a)(6). The Court thus AFFIRMS the bankruptcy court's decision granting summary judgment in favor of Darnell on the § 523(a)(6) claim.

B. 11 U.S.C. § 523(a)(2)(A) Claim

Souliotis also argues on appeal that he demonstrated undisputed non-dischargeable debt from false representation, false pretense, or actual fraud under § 523(a)(2)(A) and that the bankruptcy court erred in denying his motion for summary judgment on that claim and in limiting the period for which he could have justifiably relied on Darnell's false representation to that between April 4 and April 21, 2017. ECF No. 8; *see* ECF No. 4-2, PageID.2382. But Souliotis moved for and the bankruptcy court granted voluntary dismissal of this claim. ECF No. 3, PageID.31; *see also* ECF No. 4-2, PageID.2402-2413. The voluntary dismissal with prejudice extinguished Souliotis' § 523(a)(2)(A) claim and mooted any appealable issues related to the bankruptcy court's rulings on that claim with it. *See Pettrey v. Enterprise Title Agency, Inc.*, 584 F.3d 701, 703 (6th Cir. 2009) (voluntary dismissal extinguishes the live controversy necessary for a case not to be moot). Accordingly, the Court **DISMISSES** the appeal as to the § 523(a)(2)(A) claim.

C. Recusal

"Federal judges are bound by the recusal standard in 28 U.S.C. § 455(a)." *Garrett v. Ohio State Univ.*, 60 F.4th 359, 368 (6th Cir. 2023). That section requires a judge to recuse herself "in any proceeding in which [her] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "[I]f a reasonable, objective person, knowing all the circumstances, would have questioned the judge's impartiality," then the judge must recuse. *Id.* at 369 (quotations and marks omitted). "The standard is an objective one; hence, the judge need not recuse [herself] based on the subjective view of a party no matter how strongly that view is held." Id. (quotations and marks omitted).

"[J]udicial rulings alone almost never constitute a valid basis for a bias or impartiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Although they may be proper grounds for appeal, they are not for recusal. *Id.* A judge's opinions formed based on facts introduced or events occurring during the proceedings do not ordinarily constitute a basis for a bias or partiality. *Id.* "Judicial remarks . . . that are critical or disapproving of . . . the parties, or their cases," only support a bias challenge "if they reveal an opinion that derives from an extrajudicial source" or "such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.*

The burden to justify disqualification is on the moving party. *Burley v. Gagacki*, 834 F.3d 606, 616 (6th Cir. 2016). Souliotis' allegations of bias within the State Bar of Michigan as a whole, along with his dissatisfaction with the law, do not satisfy that burden. Indeed, Souiliotis alleges nothing beyond the bankruptcy court's adverse rulings to support his request for recusal.

> An impartial judiciary—and the appearance of an impartial judiciary—is of the utmost importance. At the same time, needless recusals exact a significant toll; a change of umpire mid-contest may require a great deal of work to be redone and facilitate judge-shopping. So, there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.

Garrett, 60 F.4th at 371-72. The Court agrees that Souliotis did not meet his burden to justify recusal.

Accordingly, the Court **AFFIRMS** the bankruptcy court's denial of Souliotis' motion for recusal.

IV. Conclusion

For the reasons above, the Court **AFFIRMS** the bankruptcy court's orders granting summary judgment in favor of Darnell on the § 523(a)(6) claim and denying Souliotis' motion for recusal, and **DISMISSES** the appeal on the § 523(a)(2)(A) claim. The Court **DENIES AS MOOT** Souliotis' motion for oral argument, ECF No. 10, and motion for extension of time to file reply brief, ECF No. 12.

s/ Shalina D. Kumar
SHALINA D. KUMAR
United States
District Judge

Dated: September 30, 2024

Appendix F
[Filed: May 9, 2023]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: DONALD C. DARNELL, Debtor	Case No. 22-41803-mlo Chapter 7
EVANGELOS SOULIOTIS, Plaintiff, v. DONALD C. DARNELL, Defendant.	Case No. 22-04103-mlo Adversary Proceeding

TRANSCRIPT OF IN-PERSON SUMMARY JUDGMENT EVIDENTIARY PROCEEDINGS AND COURT'S RULING THEREON

BEFORE THE HONORABLE MARIA L. OXHOLM
UNITED STATES BANKRUPTCY JUDGE

TUESDAY, MAY 9, 2023
DETROIT, MICHIGAN

APPEARANCES:

For the Plaintiff:	Evangelos Souliotis, *pro se* 326 Thompson Street Ann Arbor, MI 48104 (734) 709-9162
For the Defendant:	Donald C. Darnell, *pro se* 8080 Grant Street Unit 1A Dexter, MI 48130 (734) 424-5200
Court Recorder:	Erica Adams-Williams Clerk's Office U.S. Bankruptcy Court 211 West Fort Street Detroit, MI 48226
Transcription Service:	Randel Raison APLST, Inc. 6307 Amie Lane Pearland, TX 77584 (713) 637-8864

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

(Time Noted: 10:08 a.m.)

THE COURT CLERK: Case 22-04103, Souliotis versus Darnell.

(Pause)

THE COURT: All right. Good morning. Thank you for your patience while we get through these technical issues.

Let's see here. I think that you're in the wrong tables, and I do want you to switch. The Plaintiff always sits closest to the witness box, so if you'll please start by changing spots.

(Pause)

THE COURT: All right. Your appearances for the record?

MR. DARNELL: Good morning, Your Honor. Don Darnell for myself.

MR. SOULIOTIS: Evan Souliotis for myself.

THE COURT: All right. Good morning.

(Pause)

THE COURT: Just let me know when you're ready, sir.

MR. SOULIOTIS: Okay.

(Pause)

MR. SOULIOTIS: All right, Your Honor.

THE COURT: Okay. All right. Let's start first -- well, actually we'll start with the summary judgment motion, as I had previously indicated in our last hearing.

So I have reviewed the briefs and the exhibits. So if you would like to highlight anything, this would be the time to do that.

But just keep in mind that I've already read all of it, and I am prepared to give you a decision.

So, Mr. Souliotis, would you like to highlight anything briefly for the Court?

MR. SOULIOTIS: Um.

THE COURT: You'll need to stand whenever you're addressing the Court. You can come to the podium, sir.

MR. SOULIOTIS: Oh, all right. May I read from what I wrote? It sort of keeps me on target here.

THE COURT: As I indicated to you, --

MR. SOULIOTIS: Pardon me?

THE COURT: As I indicated to you, your arguments should be brief. I've already read everything that you've provided to me, and I've read the arguments that you made, so I don't need for you to state the same thing that was in your brief.

MR. SOULIOTIS: All right.

THE COURT: So just highlight, if you want to, whatever you think is more important for the Court to know.

MR. SOULIOTIS: All right. I would like to, Your Honor. I'll need to just mark this up a little so that I can cut some out.

(Pause)

MR. SOULIOTIS: May I give an example from another case?

THE COURT: Sir, this is your time to indicate whatever you want to state. Other cases, though, unless it's authority for the Court, are really not relevant.

So let's stick to what's relevant, the facts of your case, the law that applies.

MR. SOULIOTIS: All right.

THE COURT: And so, I mean, you provided a brief to the Court. I've read it. I think that it probably covers the most important things that you wanted to state.

MR. SOULIOTIS: Well, there is a little more, Your Honor.

THE COURT: It's for summary judgment, so why should I grant summary judgment?

MR. SOULIOTIS: Yes. That's what I'm about to explain.

THE COURT: Go ahead.

MR. SOULIOTIS: Okay.

(Pause)

MR. SOULIOTIS: All right. So, as regards to the underlying case, and there was a lot in one of Mr. Darnell's briefs about the underlying case, res judicata bars any attempt to try to re-litigate what occurred in the lower case, or lower court case, and the jury verdict that arose from it.

THE COURT: That was not part of your summary judgment motion, right? That's not covered in your brief.

MR. SOULIOTIS: I don't know.

THE COURT: It's not.

MR. SOULIOTIS: Okay.

THE COURT: I can tell you. I've read it. It's not. And I don't think it applies anyways, but it's not in your brief.

MR. SOULIOTIS: All right. So is Your Honor saying we can re-litigate what happened in the lower court?

THE COURT: You know what? Mr. Souliotis, I'm prepared to hear whatever argument you want to make.

MR. SOULIOTIS: All right.

THE COURT: Go ahead.

MR. SOULIOTIS: Okay, thank you. So, at least from what I wrote, Mr. Darnell is no longer -- what he did is no longer in question, because we have a jury verdict and we've got res judicata that bars anything that came out of the State Court as was considered by the jury there.

What my motion for summary judgment shows is that Mr. Darnell took actions that were substantively certain to result in harm, and that he committed deliberate acts of false representation.

This is what's required for non-dischargeability, as per the Circuit Court cases *In Re Berge* and *In Re Markowitz.*

I was going to give an example, but I'll just suffice it to say that the facts are simple, and they are easily applied.

In this adversary proceeding, -- now, his actions in his own written legal advice to me, explained and advised that a mutual release was to my benefit. And in the same emailed writing, he misled me, and he hid that he had already given away my beneficial mutual release by saying that I might want to leave it in the contract.

The problem was I couldn't leave it in the contract, because my mutual release wasn't in Coating Holdings' March 29, 2017 settlement contract, which was a one-sided release to the benefit of Coating Holdings only.

As explained in my summary judgment motion, in a February 20, 2017, email to Ed Higgins, Coating Holdings' counsel, Mr. Darnell gave away this beneficial mutual release.

And I would like to stress that the date was February 20th, only 10 days after he began representation of our case.

Having advised that the mutual release benefited me, Mr. Darnell was then substantively certain to know that if he gave it away, he would cause me harm.

This is my adversary proceedings parallel to the simple case I was going to give an example of. And in this instance, the applicable case law would come from *In Re Markowitz*.

In Re Markowitz states: "The debtor must desire to cause the consequences of his act, or believe that the consequences are substantially certain to result from it." This is a quote from *In Re Markowitz*.

Mr. Darnell clearly knew the mutual release benefited me, because he advised me of this act. And he was substantively certain to know that in giving it away, he would harm me, for the same reason, because he knew he was giving away something he said had a benefit, aka, it had a value.

If that isn't convincing enough, then the fact that he knew to hide the giving away of the mutual release also attests to his knowledge of the harm he was causing, and caused, when he gave it away.

So, according to *In Re Markowitz*, with these simple facts, in parallel to the other case I was going to mention, we have non-dischargeability, because he knew.

And as I've been advised, mutual releases are easy to understand. Their value is easy to understand to the litigants. And you don't easily give it away and not know you're causing harm when you give it away without your client's consent.

Mr. Darnell won't admit that he clearly knew his harmful acts would damage me, which is why he concealed his actions.

But *In Re Berge* comes to the rescue here. *In Re Berge* says: "A debtor need not actually admit his intent. Intent may be inferred from the circumstances of the injury."

So just like in the simple case I was going to quote, with a few simple acts, we have an alignment of simple facts that show that my claim should be considered non-dischargeable because Mr. Darnell was substantively certain to know his acts would cause harm, even if he won't admit to it.

There are also my 523(a)(2)(A) claims, which tie into the concealed giving away of my mutual release on February 20, 2017. Again, this is February 20th.

On March 17, 2017, in his billing invoice to me, Mr. Darnell requested that I entrust a further $3,000.00 in retainer monies with him, without bothering to tell me that he had given away my mutual release, a release that I've already known I was entitled to.

So I entrusted a further $3,000.00 to him on or about the 27th of March, unaware that he had secretly given away my mutual release, without bothering to ask if it was okay with me.

So we've got the $3,000.00, but a full month before I paid the $3,000.00, Mr. Darnell gives away the mutual release and hides it from me.

And I didn't learn about it until Coating Holdings came chasing after me with a motion to enforce settlement. I had no idea that he had done this, because I had never seen those emails between them.

As this Court discovered during my hearing to compel Mr. Darnell's admissions, Mr. Darnell tried to hide from the Court his improper handling and misappropriation of my retainer monies by trying to conceal, and then lying about, his March 17th request for additional advance retainer funds.

In response to my admissions request number 40, which asked him to admit that the third page of his March 17 billing statement to him, it said: "Admit that in paragraph 18 of Defendant's request to admit to Plaintiff," that was the request he sent to me, "that the referenced billing invoice contained a third page, Defendant's Bates page 255, and that this page contained the following request: Please replenish client funds with $3,000.00."

Mr. Darnell answered: "Denied." He lied.

The Court considered, and then reversed this response, to "admitted." So just like with the -- I'm going back to that case.

At any rate, so we see from this he was substantively certain to know, as per In Re Markowitz, and, therefore, knew to conceal the damage he had done, and was continuing to do, first by giving away a release he advised that was to my benefit, secondly by clearly mishandling and misappropriating my advance retainer funds that I had entrusted to him.

This is particularly evidenced by his own admitted failure to issue a subsequent bill. So after March 17th, he admitted he didn't send me another bill for that $3,000.00 to tell me what he did with it.

Because he never issued the subsequent bill, he never explained how he used that $3,000.00 of entrusted money to him, funds that I gave him on March 27th.

So he has not explained what he has done with it. It's being held there in reserve. It's going to be used in the future, meaning used after other events that are occurring. So the appropriation of the retainer monies is further evidenced by his refusal to return any part of these entrusted funds.

And he was essentially required to do one of two things about this money:

Either he had to issue a bill, which he didn't do, or, failing that, return the advance payment if he don't want to give a bill. He didn't do either one.

Instead, he threatened to sue his client in an effort to claim his acts were client-approved, as evidenced by the client's continued payments. So if an attorney can get a client to keep paying bills, well, it's implied, of course, that the client is okay with everything.

Fortunately for the client in this instance, the client knew enough to ignore the threat.

In two other separate acts of false representation, Mr. Darnell falsely represented to have actual authority in order to:

Number one, accept Coating Holdings' final tweaks to the March 29, 2017, settlement contract; and Number two, to allow a stipulated dismissal of Coating Holdings from my lawsuit, a false representation which:

A, occurred after the March 27, 2017, check provision to Darnell, but, of course, would have been drawn down those monies later on because he needed to do something. And he was off in a one-week trial during all of the events that happened during that week, meaning he wasn't around to be drawing the funds or to do anything in the case; and then

2, he also conveyed said false representation to the 22nd Circuit Court in order to dismiss the case, with prejudice.

In a stipulation, you're indicating that both parties agree to do this. You are indicating that you have actual authority.

In an explanation of how this works, it might be a little convoluted to listen to, but it's just how it works.

Attorneys have the appearance of actual authority by default, due to the Nelson precedent. And they have assumed actual authority. The other side doesn't actually know they've got the authority. They are allowed to assume, unless they are told otherwise, that the party they are dealing with actually has authority. They just assume it.

So by being present and acting on behalf of the client, an attorney is representing actual authority. I'm here, I'm going to sign off, I've got authority. The other side is not going to bother to ask, because they are allowed to rely on the appearance of authority.

The counter-party is held blameless, regardless of what's going on. There could be double-dealing going on. The counter-party is held blameless because nobody catches double-dealing. I've seen lots of it. Nobody admits it.

So the counter-party is held blameless in the transaction where actual authority was lacking. And so long as they did not know there was not actual authority, they're okay.

The attorney acting without actual authority has no such convenient reliance. He cannot rely on any other authority except the principle's authority, and in my case that was myself and my mother.

So the attorney either does or doesn't have authority to do what they do. And that's where the false representation comes from, because that's what *Nelson* does.

And like it or not, it's just simply what it is. Because if it wasn't what it is, I wouldn't be here today, because I knew not to give him authority, I knew not to sign a contract that I had concerns over the language about, and I didn't know not to rely on the changes that have happened that I knew nothing about, that I couldn't see. They were invisible to me.

At any rate, I argue that an attorney appearing and representing to have actual authority through apparent authority, should be considered a violation of 523(a)(2)(A). And those are the reasons that I argue this.

Central to Mr. Darnell's unjustified defense, which is barred by res judicata, as the State Court jury already found his arguments meritless, is his effort to convince us that the emailed February 20, 2017, tentative agreement for $7,500.00 in standard mutual releases, was actually a full agreement, all eight pages of it, even before it was written. That's what he's arguing.

Before it was written, before Evan even knew what was in there, he is falsely claiming that I agreed to dismiss Coating Holdings. That's ridiculous. Nobody would be able to execute any contracts on those terms. You are tied in before you even know the language.

(Pause)

THE COURT: Okay. Is that all?

MR. SOULIOTIS: I'm almost done, but not quite. I'm very near, Your Honor.

THE COURT: Very what?

MR. SOULIOTIS: I'm very near to finish. I don't have much more.

His claims that his initial tentative engagement, lacking -- well -- Mr. Darnell has had many and varied things to say about a lot of people, all speculation, and all people who aren't here to speak for themselves, or people who won't speak because of attorney-client privilege. People who won't reveal privileged information. So it's easy to take pot shots at them.

And very little of what he has to say is actually related to his culpable state of mind. A culpable state of mind is a central element to the breach of fiduciary duty, and that's exactly what we had. A I know fiduciary duty. I was a fund manager, and I sacrificed my career not to breach my duty to my clients. So I know fiduciary duty.

If I were to follow Mr. Darnell's example of engaging in speculation and conjecture, I would look to uncover hidden fact, not spend self-serving fictional narratives that lack objective relevance to this case.

If this Court were to allow circumstantial evidence, I would point to Mr. Darnell's attempt to aggressive cajole his clients into indemnifying a chemical company over its failed product. If you see my grievance, page 1, paragraph 2, which was written six years ago, on April 5, 2017, it's time stamped, it's archived with the Attorney Grievance Commission, and it is not conveniently tailored to this current case. It's what it was then, it's what I knew then, and it's what it was going on then, without any knowledge that I would be here today.

I would tie that to the proven fact that Mr. Darnell improperly accepted a settlement contract that had me assume the unknown future risks of a chemical company's failed product.

And, again, I come from the industry that knows really well that risk has value, and risk is transactable, and you do not just assume risk, especially future unknown risk.

So if we're going to engage in speculation and conjecture, this trail of red flags might be a much more fruitful path to investigate.

But I think it's time to end this litigation, and not conduct investigations through the Courts.

My motion for summary judgment contains factual proof that Mr. Darnell knew his actions were substantively certain to cause harm, and that is why Mr. Darnell hid his actions, both those actions that constitute his 523(a)(2)(A) infractions, and his 523(a)(6) infractions.

Thank you, Your Honor.

THE COURT: All right. Mr. Darnell, let me indicate to you that the Court has reviewed all of these pleadings, exhibits, that were attached.

If you want to highlight something, go ahead. If not, and you just want to rely on your response brief, that's fine.

MR. DARNELL: Yes, I'll just rely upon it. Thank you, Your Honor.

THE COURT: All right. Very well.

(Pause)

THE COURT: Okay. So the Court now is ready to give a decision regarding the motion for summary judgment.

Preliminarily, the Court notes that Plaintiff never moved for summary judgment based on res judicata or collateral estoppel. It is not a basis for his motion.

Plaintiff now argues he that the Court is barred by *res judicata*.

First, res judicata is not applicable to these claims, as Washtenaw County Circuit Court did not consider these Bankruptcy Code claims in the State Court action.

A Circuit Court does not have jurisdiction to hear claims under the Bankruptcy Court.

As to collateral estoppel, which is issue preclusion, a State Court could determine issues that are relevant to the issues of claims brought under the Bankruptcy Code.

The Court at the last hearing explained to Plaintiff that it is not bound by the jury verdict in the State Court. The Court previously considered collateral estoppel doctrine arguments when it ruled on Defendant's motion to dismiss at ECF No. 38, where Defendant argued that Plaintiff's claims in Counts I, II, III, and V, are barred by the doctrines of res judicata and collateral estoppel.

But because the jury award was not reduced to a judgment, Defendant's motion was denied.

Furthermore, even if the jury award was reduced to a final judgment, the relevant issues here - intent to defraud, and willful and malicious conduct - were not actually litigated and necessarily determined by the State Court.

So this motion for summary judgment was brought by the Plaintiff on Count I, (§523(a)(2)(A)), and Count II, (§523(a)(6)). pursuant to Rule 56. And the motion is found at ECF number 152.

In his motion, Plaintiff argues that there is no genuine issue of material fact, and that he is entitled to a judgment on these counts.

Defendant responded and seeks summary judgment in his favor, requesting a dismissal of the adversary proceeding in its entirety, at ECF 181.

The Court has reviewed the evidence presented by the parties, and finds as follows, based on the communications and documents between the parties:

Regarding the relevant time line, it is as follows:

February 10, 2017, the Plaintiff and Defendant entered into a General Retainer Agreement providing for an initial retainer fee of $5,000.00. Once depleted, the agreement states that a $3,000.00 replenishment will be provided per installment. And that's at exhibit 2 to Exhibit 5A, paragraph 4.

February 16, 2017, Defendant sent an email to Edward Higgins, attorney for Coating Holdings, the defendant in the underlying case, confirming: "This will confirm that plaintiffs have agreed to settle the case against Holdings for the sum of $7,500.00, with standard mutual releases, and to further confirm that the deposition of my client for tomorrow is canceled. Thank you and I look forward to reviewing your draft of a settlement and mutual release document." This is at exhibit 3 to Exhibit 5A.

And on that same day, an email from Mr. Higgins to the Defendant: "Don: settlement for $7,500.00 is confirmed, but as just discussed, I can't cancel your client's dep as counsel for Midwest also noticed it. I of course, will not appear based on our settlement."

On February 20, 2017, there were numerous emails between Plaintiff and Defendant. Plaintiff, among other things, requested that the Defendant to reach out to Mr. Higgins to get an offer in writing by 2:00 p.m., also requesting that Coating Holdings not be present at the next day's hearing.

Plaintiff also indicated that he would appreciate an offer in the format which he would have received from Butzel.

Additionally on that day, emails between Defendant and Mr. Higgins. Mr. Higgins questioned whether there was a need for a mutual release. And this is a quote from that email on February 20, 2017: "I am unaware of any claims or potential claims my client would have against your clients, and I would contemplate that the stipulated order of dismissal would be with prejudice and without cost or attorney fees."

To which Defendant replies: "Not really. A release just to plaintiff's is fine."

On February 22, 2017, an email from Plaintiff to Defendant regarding court hearing that day to extend discovery, specifically asking Defendant: "To confirm, regarding the hearing to extend discovery today, you will tell the Judge that we have settled with Coating Holdings ONLY, and that we want to extend discovery deadline in order for you to have time to prepare evidence for our case against Bruemmer/Midwest." And that is an email from the Plaintiff to the Defendant, again indicating to tell the Judge they've settled with Coating Holdings only.

On March 9, 2017, Mr. Higgins sent Defendant a proposed release for review and approval.

On March 10, 2017, the Defendant sent Plaintiff an email with a proposed written release and settlement agreement, stating: "Evan, attaching the proposed release and settlement agreement with Coating Holdings. I have reviewed it and find it to be in meeting with our agreement. Be mindful in your review that it only releases Coating Holdings from issues relating to the 'installation' of the product, and nothing else. I will need a fully signed document to proceed."

On March 17, 2017, Defendant sent Plaintiff a first billing invoice and request to replenish client funds with $3,000.00.

On March 29, 2017, the Defendant sent Mr. Higgins an email: "Ed, the settlement agreement is acceptable, if I have not said so, and I will have it signed and sent over in the next two days."

The Defendant sent Plaintiff the document, as well: "Evan, forwarding you this email attaching both the settlement agreement and the stip to dismiss. I would like to send both back to Ed in the next two days so that they are not involved in case evaluation."

On March 31, 2017, Defendant sent Plaintiff another email stating: "Evan, I need you to address this settlement agreement and give me authority to dismiss Coating Holdings. This needs to be done today. I'm not doing anything else until this is resolved."

Plaintiff claims that he and Defendant met in-person on March 31, 2017, and that he expressed his objections to the settlement agreement.

On April 1, 2017, Plaintiff was not able to reach Defendant by phone. He sent two emails regarding the case evaluation summary and settlement agreement, wherein Plaintiff writes: "PLEASE DO NOT CONTINUE TO PRESSURE AS YOU HAVE ON THE COATING HOLDINGS AGREEMENT, as there is time for working out the settlement agreement language once we get the revisions of the Case Evaluation summary completed and submitted."

On April 3, 2017, Mr. Higgins wrote Defendant an email requesting permission to sign a dismissal stipulation.

On April 4, 2017, Defendant replied to Mr. Higgins: "Yes. Please enter it with the Court."

On April 5, 2017, Plaintiff filed a grievance against Defendant with the Michigan Grievance Commission.

On April 12, 2017, Plaintiff sent Defendant an email raising more questions about the settlement agreement.

On April 14, 2017, Defendant replies to Plaintiff stating: "Sorry, but that is a non-starter. I'm not going to embarrass myself in negotiating contract language in the negative."

On April 19, 2017, Defendant emails Plaintiff answering Plaintiff's question of what a mutual release is, stating, in full: "I think a mutual release is a mistake. It should be a one-sided release. You release them, that's it. You might want to leave it in, because a mutual release benefits you."

On April 20, 2017, Plaintiff emails Defendant asking:

(1) Please send me a copy of all written communications you sent to Higgins (or anyone else

representing Coating Holdings) from March 27, 2017, until now.

(2) Please send me a copy of all written communications Higgins (or anyone else representing Coating Holdings) from March 27, 2017.

(3) Please list all voice conversations (including time, date, and subject matter) that you have had with Higgins (or anyone else representing Coating Holdings) from March 27, 2017, until now.

(4) If there have been voicemails, please list any where information was conveyed either from you to Higgins (or anyone else at Coating Holdings) or from Higgins to you (or any one representing Coating Holdings). Please include time of voicemail, date of voicemail, and subject matter of voicemail."

And then on April 21, 2017, Defendant forwards email communications with Mr. Higgins from March 27, 2017, to April 21, 2017, providing:

(1) Attaching email to and from Higgins from March 27, 2017, to-date.

(2) Other than the case evaluation summary which has been provided, none exists.

(3) I do not believe that Ed Higgins and I have spoken on the phone since when we settled the case, but I could be wrong. In any event, unless a conversation is logged as a time entry in an invoice to you, I have no way of recalling a voice conversation.

(4) Again, unless I recorded a voicemail in an invoice as a time entry, I do not have a log of voice mails sent or received.

And then April 25, 2017, Plaintiff terminated Defendant.

So based on this evidence, the Court finds that:

From these communications, it is evident that both Plaintiff and Defendant were very diligent in trying to obtain a settlement with Coating Holdings, which would resolve part of a claim that would have been difficult and expensive to prove.

It appears that prior counsel representing Plaintiff started the negotiations with Coating Holdings for a sum of $7,500.00.

It is also clear that Plaintiff did not want to be deposed, nor did he want Coating Holdings present at the next court hearing regarding extending discovery.

In promptly dismissing Coating Holdings, Plaintiff sought to additionally achieve these objectives. Plaintiff was adamant about getting the settlement offer quickly in writing and in a particular format.

On February 20, 2017, Mr. Higgins and the Defendant discussed the mutual release, and determined that since counsel were unaware of any claims or potential claims that Coating Holdings would have against Plaintiff, there was no need for a mutual release.

There is no written communication indicating that Defendant had any communication at this time with the Plaintiff regarding the mutual release.

On February 22, 2017, Plaintiff emailed Defendant confirming that Defendant will: "Tell the Judge that we have settled with Coating Holdings ONLY" and ask for additional time to prepare discovery against Breummer/Midwest." This email suggests that Plaintiff agreed to settle.

On March 9, 2017, Mr. Higgins emailed the proposed release for review and approval. Defendant forwarded it to Plaintiff on March 10, 2017.

On March 17, 2017, Defendant sent the Plaintiff an invoice and request to replenish client account with $3,000.00.

On March 29, 2017, Defendant informed Mr. Higgins that he finds the settlement acceptable, that it will be signed and sent in the next few days. Defendant sent Plaintiff the settlement agreement and stip to dismiss.

Defendant sent another reminder on March 31.

Plaintiff refused to execute the agreement, wanting additional work on the terms.

On April 4, 2017, Defendant authorized Mr. Higgins to sign the dismissal stipulation and enter it with the Court.

Thus, on February 22, 2017, Plaintiff was satisfied with representing to the State Court that he settled the case with Coating Holdings.

As of March 10, 2017, Plaintiff had the settlement agreement and the one-sided release for his review and signature. There is no discussion between the parties regarding the one-sided release.

Plaintiff had the proposed agreement, and presumably read it on March 10, 2017, or thereafter.

Even though Plaintiff is not an attorney, it is clear that he is reading everything and actively involved in his case.

It was not until April 19, 2017, after Defendant authorized the dismissal, when Defendant counseled Plaintiff that: "I think mutual release is a mistake. It should be a one-sided release. You release them, that's it. You might want to leave it in, because a mutual release benefits you."

So, turning first to the Plaintiff's 523(a)(6) claim.

Section 523(a)(6) provides:

(a) A discharge under Section 727, 1141, 1192(a), 1228(a), 1228(b), or 1328(b) of this Title, does not discharge an individual debtor from any debt.

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

According to the Statute, an injury must be both willful and malicious. *See In Re Markowitz*, 190 F. 3d 455, 463 (6th Cir. 1999). In *In Re Markowitz*, the Sixth Circuit overruled the Perkins standard in light of the Supreme Court's opinion in *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998).

And the quote is from page 464 of *In Re Markowitz*: The Court held that "willful" means "voluntary," intentional," or "deliberate." As such, only acts done with the intent to cause injury, and not merely acts done intentionally, can cause willful and malicious injury.

The Court explained its holding by discussing the importance of context:

The word "willful" in (a)(6) modifies the word "injury," indicating that non-dischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.

Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injury."

Or, Congress might have selected an additional word or words, for example, "reckless" or "negligent," to modify "injury."

Moreover, as the Eighth Circuit observed, the (a)(6) formulation triggers in the lawyer's mind the category "intentional torts," as distinguished from negligent or reckless torts.

Intentional torts generally require that the actor intend the consequences of an act, not simply the act itself.

The Court's citation to the Restatement definition of intentional torts underscores the close relationship between the Restatement's definition of those torts and the definition of "willful and malicious injury."

The Restatement defines intentional torts as those motivated by a desire to inflict injury or those substantially certain to result in injury.

Although the Supreme Court identified a logical association between intentional torts and the requirements of 523(a)(6), it neither expressly adopted nor quoted that portion of the Restatement discussing "substantially certain" consequences.

Nonetheless, from the Court's language and analysis in Geiger, we now hold that unless "the actor desires to cause consequences of his act, or believes that the consequences are substantially certain to result from it," he has not committed a "willful and malicious injury" as defined under Section 523(a)(6).

See also In Re Kennedy, 249 F. 3d 576, at 583 (6th Cir. 2001).

Subsequently, the Sixth Circuit "explicitly adopt[ed]" the two-prong test that a "debtor willfully and maliciously injures a creditor if, acting without just cause or excuse, he knows or is substantially certain that his actions will cause injury." And this is from *In Re Berge*, 953 F. 3d 907, 915 (6th Cir. 2020).

"A debtor need not actually admit his intent; intent may be inferred from the circumstances of the injury." From the same case.

In his motion, Plaintiff focuses on findings by the jury in the Washtenaw County Circuit Court regarding his breach of fiduciary duty claim.

Elements for a breach of fiduciary duty claim are different from the elements for a misrepresentation claim.

Thus, a debt based on a breach of fiduciary duty by itself is insufficient to be non-dischargeable under 523(a)(2)(A) or (a)(6).

Furthermore, Plaintiff's public policy arguments do not establish a non-dischargeability claim under Section 523(a)(2)(A) or (a)(6).

In arguing that there is no genuine issue of material fact on his 523(a)(6) claim, Plaintiff mainly relies on the email communications between himself and Defendant, as well as Exhibit 5A, the Affidavit of David M. Black.

Mr. Black, a licensed attorney, was retained by "Plaintiff to give expert opinion and testimony on the issues of whether the established violation of the standard of care (negligence), proximate causation, and breach of fiduciary duty, were willful in the sense that Mr. Darnell knew that his actions would cause damage." And that is from paragraph 3.

In his affidavit, Mr. Black concludes that – and this is from exhibit 5A, "Defendant was negligent and breached his fiduciary duty and the standard of care in agreeing to the Settlement Agreement, and dismissing Coating Holdings with prejudice, without authority. Darnell knew he needed authority." And that's at paragraph 37.

"In my view, a lawyer agreeing to a proposed settlement agreement document, and dismissing a case with prejudice, without client consent, is such a serious and basic breach that the lawyer knew damages would result." That's from paragraph 39.

Mr. Black, in paragraph 24, provides that "Moreover, Darnell knew that not having a mutual release would damage his client since he wrote in an April 19, 2017, 'a mutual release benefits you.'"

Preliminarily, the Court must determine whether there is a willful and malicious injury. Plaintiff cannot establish facts through the affidavit of an expert. This affidavit is inadmissible hearsay.

Nonetheless, the expert simply recited a breach of fiduciary duty standard and did not address the willful and malicious standard under Section 523(a)(6). The expert's opinion on damages in his affidavit is speculative.

Importantly, it is improper for an attorney to agree to a settlement without the client's consent.

However, settling without client authority does not prove that the attorney acted willfully and maliciously in that he knew the settlement would result in an injury to Plaintiff. This is a determination that needs to be made based on the facts of the case and the terms of the settlement agreement.

An attorney could potentially negotiate settlement terms that are very favorable to the client, without the client's knowledge or consent.

Defendant requests summary judgment of this count in his favor and dismissal of this count.

Thus, in considering Defendant's request, the Court must view the evidence in light most favorable to the Plaintiff.

Here, in viewing evidence in light most favorable to Plaintiff, there is no evidence in the record to establish that Defendant willfully and maliciously injured Plaintiff.

Even if Defendant considered the terms of the settlement agreement favorable to Plaintiff (dismissal of a difficult and expensive claim, for an approved amount, and mutual release being of no issue), it was improper for the Defendant to settle without Plaintiff's consent to the terms.

However, the issue is whether Defendant knew that approving the settlement agreement would cause injury to Plaintiff.

Here, the injury is not being sued by Coating Holdings because of the omission of the mutual release. Coating Holdings did not have any counterclaims against the Plaintiff.

Plaintiff presented no evidence that there were claims filed against him related to the installation of the SPF insulation in his home, or that such claims were even likely.

Rather, the injury alleged is for legal fees and expenses the Plaintiff incurred in subsequently contesting the settlement agreement, an award of money for a lawsuit filed by the Plaintiff against the Defendant, and for money Defendant drew from Plaintiff's retainer account.

It is difficult to understand how the Defendant would have intended this injury. It is clear that the Defendant did not intend this injury.

Accordingly, the Court concludes that Plaintiff failed to establish his 523(a)(6) claim.

Turning to Plaintiff's 523(a)(2)(A) claim.

Section 523(a)(2)(A) provides:

(a) A discharge under section 727. 1141, 1192(1), 1228(a), 1228(b) or 1328(b) of this Title does not discharge an individual debtor from any debt.

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by --

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

Here, the Plaintiff relies on false representation.

For false representation under Section 523(a)(2)(A), a creditor must prove the following elements:

(1) the debtor obtained money through a material misrepresentation that, at the time, the debtor knew was false or made with gross recklessness as to its truth;

2) the debtor intended to deceive the creditor;

(3) the creditor justifiably relied on the false representation; and

(4) its reliance was the proximate cause of loss.

Further, exceptions to discharge are to be strictly construed against the creditor. And this is from *Rembert v. AT&T Universal Card Services, Inc. (In re Rembert)*, 141 F. 3d 277, 280-81 (6th Cir. 1998) (citing *Grogan v. Garner*, 498 U.S. 279, 291 (1991)).

The first element: The debtor obtained money through a material misrepresentation that, at the time, the debtor knew was false or made with gross recklessness as to its truth.

Here, Plaintiff identifies the money or property obtained by Defendant as "monies drawn from Plaintiff's account."

The Court finds that there is no genuine issue of material fact that Defendant obtained money from Plaintiff for services performed.

On March 17, 2017, Defendant sent an invoice to Plaintiff, and also requested Plaintiff to replenish client account with $3,000.00 pursuant to the parties' retainer agreement.

As to the $37,900.00 jury award, this award was not obtained by the Defendant. It was a jury verdict awarded to Plaintiff and against Defendant for breach of fiduciary duty claim.

As to the material misrepresentations, Plaintiff argues that Defendant made numerous false statements to Plaintiff and concealed the existence of his acceptance of the March 29th settlement document and dismissal of Coating Holdings.

Plaintiff makes this argument despite the fact that back on February 22, 2017, Plaintiff emails Defendant confirming that Defendant will inform the court that the parties have settled with Coating Holdings only.

Plaintiff cannot have it both ways.

Plaintiff does not identify which numerous false statements Defendant made. The last version of the settlement agreement with the one-sided release was emailed to Defendant on March 9th. Defendant forwarded it to Plaintiff on March 10th.

Again, on March 29th and 31st, the Defendant emails the document and stipulated dismissal to Plaintiff requesting Plaintiff's signature.

Thus, the Court finds that Defendant timely communicated the terms of the settlement and requested authorization to dismiss Coating Holdings.

On April 4th, Defendant authorized Higgins to sign the dismissal stipulation and enter it with the Court.

It is not until April 21, 2017, in response to an email from Plaintiff, that Defendant indicated that he hasn't had any communications with Higgins since they settled the case.

Accordingly, the Court finds that Defendant was silent and concealed that he authorized and dismissed Coating Holdings from April 4, 2017, to April 21, 2017.

So the first element is met by the Plaintiff.

Second, the debtor intended to deceive the creditor.

The Court finds that there is a genuine issue of material fact on whether Defendant intended to deceive Plaintiff.

Viewing the facts in light most favorable to Defendant, the Court finds the following:

That a reasonable jury could find that Plaintiff wanted to settle his claim against Coating Holdings.

Defendant timely communicated all the terms of the settlement agreement to Plaintiff and followed up three weeks later after not hearing any objections.

A reasonable jury could also find that Defendant was acting in Plaintiff's best interests.

Based on reviewing the case and evidence, Defendant could have believed that settling a difficult and expensive claim promptly for the approved amount was in Plaintiff's best interests even with no mutual release.

Thus, while generally a mutual release is a good idea, it is not necessary where there are no counterclaims or potential counterclaims against Plaintiff.

A reasonable jury could also find that whether or not Plaintiff settled the case with Coating Holdings, Defendant would be entitled to draw from the client account for services he rendered.

Accordingly, Defendant did not need to settle the case to draw the monies.

And finally, a reasonable jury could find that Plaintiff was not acting in good faith when he asked his attorney to represent to State Court that there was a settlement agreement with Coating Holdings that he later refused to execute.

And, further, by that representation, Plaintiff could be seen as depriving Coating Holdings of a deposition.

Here, Plaintiff claims that he relied on Defendant's statements that he required -- okay, so that's with regard to the second element, which the Court just concluded, and there is a question of fact with regard to that element.

The third element is the creditor justifiably relied on false representations.

Here, the Plaintiff claims that he relied on Defendant's statements that he required Plaintiff's signature and consent to proceed with the settlement. These statements were made on March 10th and March 31st.

The Court finds that Plaintiff established his reliance on these statements.

However, the problem is that these statements are true. Defendant needed Plaintiff's signature and consent.

At the time these statements are made, Plaintiff did not authorize Mr. Higgins to settle and dismiss Coating Holdings. This did not happen until -- or this happened on April 4th.

Thus, the Court finds a genuine issue of material fact as to whether the Plaintiff justifiably relied on Defendant's silence after April 4th.

And the final element is reliance was the proximate cause of the loss.

The Court finds that there is a genuine issue of material fact on the issue of whether Plaintiff's reliance of Defendant's silence after April 4th was the proximate cause of the loss. So the question being: Which services were rendered after April 4th that are associated with the claim against Coating Holdings in the settlement agreement.

Accordingly, in viewing the evidence in the light most favorable to Defendant, the Court finds that there is a genuine issue of material fact on the intent, reliance, and causation elements.

Likewise, in viewing the facts in light most favorable to Plaintiff, the Court finds that there is a genuine issue of material fact on the elements of intent, reliance, and causation.

Therefore, the Court denies Plaintiff's motion for summary judgment of Section 523(a)(2)(A) and (a)(6).

The Court grants Defendant's request for summary judgment of Section 523(a)(6).

And it is denied as to 523(a)(2).

(Time Noted: 11:13 a.m.)

* * * * *

CERTIFICATE

I, RANDEL RAISON, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my ability.

/s/ Randel Raison May 15, 2023

Randel Raison

Appendix G
[CA6 ECF No. 6]
[Filed: Feb 10, 2025]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 24-1957

In re: DONALD C. DARNELL
Debtor

EVANGELOS SOULIOTIS
Plaintiff – Appellant

v.

DONALD C. DARNELL
Defendant – Appellee

Eastern District Case: 4:23-cv-11467-EAS

Adversary Proceeding Case: 22-41803

Ch 7 Bankruptcy Case No. 22-04103

Appellant's Appeal Brief

I. Today is Yesterday's Future

Request:

"Argue against applying the legal precedent of apparent authority, as established by Nelson, to legal settlements"

Answer:

"Arguing against the application of the legal precedent of apparent authority, as established by the case of Nelson, to legal settlements can be framed around several key points: 1. **Clarity of Representation**: Legal settlements often require clear and explicit consent from the parties involved. Applying apparent authority can muddy the waters, leading to misunderstandings about who has the authority to bind a party to a settlement. This ambiguity can undermine the stability of agreements that are crucial for dispute resolution. 2. **Potential for Abuse**: Relying on apparent authority in settlements may allow individuals to exploit the principle, potentially leading to unauthorized agreements that a party did not intend to be bound by. This can create unfair situations where one party may find themselves bound to terms they never agreed to, simply because someone they interacted with appeared to have the authority to negotiate on their behalf. 3. **Inconsistency with Contract Law Principles**: Contract law generally emphasizes the need for clear and mutual assent. Apparent authority introduces a subjective element that can conflict with the objective nature of contract formation. Settlements are typically reached after thorough negotiation, and the introduction of apparent authority could distort the clear intent of the parties involved. 4. **Impact on Negotiation Dynamics**: If parties believe that apparent authority could be invoked, it may lead to hesitancy in negotiations. Parties might be less willing to engage openly for fear that an informal conversation could be misconstrued as a binding settlement agreement. This could stifle constructive dialogue and negotiation efforts. 5. **Judicial Efficiency and Precedent**: Courts aim to promote efficient resolution of disputes. By complicating the legal framework around settlements with the application of apparent authority, courts may inadvertently encourage more litigation over the validity of settlements, thus increasing caseloads and reducing efficiency. 6. **Lack of Legislative Intent**: In many jurisdictions, the legal framework surrounding settlements is designed to protect parties from unintentional obligations. Applying apparent authority without clear legislative support may stray from the original intent of settlement laws, which prioritize informed and voluntary agreement. By emphasizing these points, one can make a compelling case against the application of the apparent authority doctrine to legal settlements, advocating for clarity, fairness, and the integrity of the settlement process."

The request was made to ChatGPT.com on October 30, 2024 at approximately 10:45 am EST; the response took less than one minute.

ChatGPT, being trained on what are called large language models, is trained on a vast array of human data, both professional and layman – so it broadly reflects the typical legal mores and expectations of the American public.

The judicial rulings establishing the precedent of apparent authority for settlements ("law") are *Capital Dredge and Dock v. City of Detroit*, 800 F. 2d 525 (1986), a 6th Circuit decision (henceforth "*Capital Dredge*"); and in the state, *Nelson v Consumers Power* 497 NW 2d 205, 198 Mich. App. 82 (1993), (henceforth, "*Nelson*"). ***"Captial Dredge and Nelson" (or "the/these Rulings") improperly expanded apparent authority to include settlement contract execution, in violation of MRPC 1.2(a)***. Their net effect was to create a law that breaks-the-law, by granting power to attorneys, who lack actual authority, to force their clients into contracts they never agreed to. In other words, the rulings gave rise to the ***"non-consensual contract"***.

MRPC 1.2(a) says *"A lawyer shall abide by a client's decision whether to accept an offer of settlement*.

Nelson and Capital Dredge **undermine this rule, and violate the spirit of the rule (which is to allow clients the final say on accepting or rejecting an offer of settlement, and the terms of that settlement).**

The *Rulings* reasoning in expanding apparent authority to include settlement contracts was: *"[P]rudent litigants could not rely on opposing counsel's representation of authorization to settle. Fear of a later claim that counsel lacked authority to settle would require litigants to go behind counsel to the opposing party in order to verify authorization for every settlement offer." [Capital Dredge at 532].*

Why the *Capital Dredge* and *Nelson* judicial panels ("*Judicial Panels*") rejected a common practice of requiring proof of authority, in the form of a power-of-attorney, remains a mystery. But their dissatisfaction with that solution (which is standard practice in the fine 6th Circuit state of Tennessee[1]) has visited a world of hurt on hundreds, if not thousands, of unsuspecting litigants. **(ECF 185, 185-1, 185-2, 185-3,**

[1] In Tennessee the clear rule is "an attorney cannot [settle] substantial rights of a client" by agreeing to the dismissal of his or her claims "without the express authority of the client" *Austin Powder Co. v. Thompson, No. 03A01-9507-CV-00225, 1996 Tenn. App. LEXIS 102, 1996 WL 73815, at 5 (citing Davis v. Home Ins. Co., 127 Tenn. 330, 155 S.W. 131 (Tenn. 1912) Estate of Hughes v Adams,* ___SW3d___; 2021 Tenn. App. LEXIS 287 (Ct App, July 20, 2021)

186 case research; & **ECF 183, p.19-20** cases - impact).

In order to resolve what the *Judicial Panels* questionably perceived as a problem for attorneys, they did something truly terrible to millions of Americans – they stripped them of their signature control (authority) and gave it away to attorneys in the form of *apparent authority*. This means that by default, where the opposing litigant is concerned (frequently a deep-pocketed corporate, or private interest backed by a trade association), that the attorney on the other side of the table can be relied on to execute a contract, no proof of authorization required, just because a client hired a lawyer on a one-off basis to represent them. And if that lawyer improperly agrees to a contract without permission (*actual authority*), the *Judicial Panels* said: "*...the client's remedy is to sue his attorney...*", but the client is still stuck with contract terms they never agreed to.[2]

The solution the Judicial Panels came up with didn't work from the outset. Now, instead of litigants having to "*go behind counsel to the opposing party*" (or simply ask to see a power of attorney), litigants have an even more compelling need to go *behind their own counsel*, to tell the opposing party that their lawyer isn't authorized to contract (insulting their attorney in the process); or else risk being forced into a

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[2] "Thus, a third party who reaches a settlement agreement with an attorney employed to represent his client in regard to the settled claim is [***209] generally entitled to enforcement of the settlement agreement even if the attorney was acting contrary to the client's express instructions. In such a situation, the client's remedy is to sue his attorney..." *Nelson quoting Capital Dredge.*

non-consensual contract. Worse still, most clients have no idea they need to do this to protect themselves.

This new-normal is just swell if you're a deep pocketed so-and-so who might have a way to convince the opposition's attorney to throw their client under-the-bus – but for the average American this is a disaster, that violates a number of standing rules and precedents in order to strip Americans of their agency.

The Rulings did the opposite of providing "...liberty and justice for all."

***Capital Dredge and Nelson* ultimately turned justice on its head by punishing the victim, and protecting attorneys who break the law (MRPC 1.2(a)) - first by stripping clients of their control over their signature authority (and binding them to contracts they never agreed to), and then by prescribing unfairly burdensome pseudo-recourse which erects a severe barrier to justice due to its complexity, cost, and exhaustive nature.** Case in point - the state court case against Defendant (also "Darnell") was filed in April of 2019 and is painfully still running in bankruptcy related hearings today.

The *Rulings* shift burden, they don't actually solve the problem (of going behind attorneys), but they do problematically give rise to the *non-consensual contract.* The shifting of burdens to the client (from the attorney), along with the failure to flesh out the risks to all stakeholders inherent in these acts of judicial legislation, is indicative of systemic bias - the system favoring its own, in violation of standards requiring impartiality. (see footnote 3 below; also see **ECF 183** *Recusal*, particularly p. 12-19 – Conflicting Roles..., and p.26-27 - "*Argument*").

This shifting of burden, from attorneys to clients, is in violation of Cannon 1 of the ABA Model Code of Judicial Conduct related to requirements of judicial impartiality[3]. It is also in violation of the Model Rules of Professional Conduct: Preamble & Scope. Preamble: A Lawyer's Responsibilities paragraphs 10 and 12 (see beginning of Section III in this document for a quotation). The *Judicial Panels' Rulings* violated these rules because the *Judicial Panels*, as attorneys and fellow members of the bar, focused on solving a rather limited problem for the legal profession, and in doing so did major harm to millions of Americans by undermining their individual economic liberty. My "Brief in Support of Plaintiff's Emergency Motion for Recusal Pursuant to 28 U.S.C. §455 ("*Recusal*") examines these issues in detail, and contains research on other similar cases (ECF 183-186 "*Recusal*", incorporated hereby into this appeal brief). What is central in the Judiciary's decision to set precedent, is that the problem the judiciary seeks to resolve does not give rise to even worse problems, which I believe is a judicial standard.

<u>In violation of another legal precedent *Capital Dredge & Nelson*</u> assumes, or speculates, on the existence of actual authority to contractually bind a client, simply because a client is represented by an attorney. While applying

[3] Cannon 1 of the ABA Model Code of Judicial Conduct states "[I]t is a general rule that the appearance of partiality is as dangerous as the fact of it. *Potashnick v. Port City Construction Co.*, 609 F.2d 1101(5th Cir. 1980); United States v. McDonald, 576 F.2d 1350 (9th Cir), cert. Denied, 439 U.S. 830, 99S.Ct. 105, 58 L.Ed.2d 123 (1978)" United States v. Conforte, 624F. 2d 869 (1980).

apparent authority to the manager of a department store might make some sense (a full-time employee, who is the store's presented-authority to hundreds of customers on an ongoing daily basis, authorizing discounts etc...), this cannot be safely assumed of a client who has a one-off, or intermittent, relationship with an attorney. *"It is well-settled that a party cannot rely on speculation and conjecture to create a question of fact."* *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 723:909 NW2d 890 (2017). The *Capital Dredge* and *Nelson* rulings violate this legal precedent, as reaffirmed in *Meisner*, in that they rely on the unverified assumption that an attorney has *actual authority*. Based on case research I've had done by an attorney, there do not appear to be any cases related to one-off, or intermittent service relationships - so perhaps this can be the first such case.

To imagine that the average person, who rarely if ever finds themselves in court negotiating a settlement, would have given *actual authority* to an attorney to bind them to a contract, absent proof, could be found to defy rationality by a reasonable, objective person who might be a juror.

Yet in violation of *Meisner, Capital Dredge* and *Nelson* systemically did exactly what the aforementioned precedent says not to do, they allow speculation and conjecture to create fact out of thin-air, no requirement for proof of *actual authority*. Future courts then started to bind the victims of MRCP 1.2(a) violations to *non-consensual contracts*, in a gross aberration of justice.

<u>This prescription of recourse in *Captial Dredge* and *Nelson*, violates Constitutional separation-of-powers principles.</u>[4]

The recourse set by these *Rulings* is a direct abuse of both the Michigan and U.S. Constitution's mandate for the separation of powers. Courts are not legislatures, and they are not entitled to legislate. Even a personal constitutional violation may require legislative, not judicial, imposition of a remedy[5] and courts must remain wary of even confounding circumstances.[6] (See **Exhibit 1; ECF 14-1**, PageID2497-2499, for supplemental analysis).

The *Capitol Dredge and Nelson* judicial panels (or "*Judicial Panels*"), absent a legislature's resources for conducting the requisite legislative review process, failed to analyze the adverse impact of their rulings on all stakeholders, when they put forward and published their rulings as precedent (henceforth "*published as precedent*"). (**ECF 183** "*Recusal*", for a full argument with citations). As an affected citizen,

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[4] Whose precedent is supported by *Bowsher*, 478, U.S., at 730, 106 S.Ct. 3181; *Chadha*, 462 U.S., at 951, 103 S. Ct. 2764; and *Ziglar v. Abbasi*, 137S. Ct. 1843, 1848 (2017). – See **ECF 14-1**, PageID2497-2499, for analysis.

[5] *Ziglar v. Abbasi*, 582 US 120 (2017) ("The proper balance in situations like this, between deterring constitutional violations and freeing high officials to make the lawful decisions necessary to protect the Nation in times of great peril, is one for the Congress to undertake, not the Judiciary.")

[6] *TVA v Hill* 437 U.S. 153, 195 (1978) ("...in our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreeing what accords with "common sense and the public weal." Our Constitution vests such responsibilities in the political branches.")

whose control of their tangible and intangible property has been undermined by these rulings, I'm astonished that they were *published as precedential* when the decision to do so wasn't unanimous in either ruling.

Furthermore, how can anyone rely on the rule of law, when the courts selectively take away their signature control, and thereby threaten peoples' economic security?

Judge Neff, in *Nelson*, presciently warned that the publishing as precedent of *Nelson* would be "*...disturbing well-established precedent and...*" "*...unnecessarily inviting additional litigation*". *Nelson v Consumers Power Co*, 198 Mich App 82, 91; 497 NW2d 205 (1993) (J. Neff, Concurrence) Judge Wellford, in *Capital Dredge* dissented outright to the prevailing opinion in *Capital Dredge*. *Capital Dredge and Dock v. City of Detroit*, 800 F. 2d 525 (1986), (*534 Wellford, Dissenting).

These problems foreseen by Judge Neff have their solutions. In their concern that contracted parties might try to back out of agreements, the *Judicial Panels* should have, at the very least, ruled that attorneys violating MRPC 1.2(a) be accountable/liable to compensate the opposing litigant for resultant lost contract value, instead of forcing victimized clients into *non-consensual contracts*. Such a prescription of recourse would have avoided running afoul of the intent of MRPC 1.2(a),

To emphasize the obvious damage inherent in *non-consensual contracts*, what happens when a contract demands, lets say, that one of the parties assume unknown future risks (as in my case)? One side's litigation to enforce the non-consensual contract,

<u>compels the other party to mount a costly legal defense to prevent enforcement, lest it be bound to assume unknown future risks</u>. Worse, since the risk assumption was ascribed by one's own attorney, this might also dangerously invalidate insurance coverage[7]. It is telling that even if a litigant were to lose their lawsuit, they would still not be bound to such future risk assumption, or be bound to other terms they may find objectionable. **Defendant, as a licensed attorney, <u>knew all of this</u>**[8]. (**ECF 155**, p.

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[7] Defendant Darnell represented my mother, and myself, in the Michigan 22nd circuit court case No. 15-932-CP (Evangelos Souliotis et al v. Arthur Bruemmer et al, which included Coating Holdings as co-defendant). Darnell illegally agreed to Coating Holdings' prejudicial March 29, 2017 settlement document, ("March 29 contract") and agreed to dismiss it from the case with prejudice, largely ignoring our requests for contract language changes, and he concealed these acts. The March 29 contract introduced new never-agreed-to terms: asking us to assume unknown future risks associated with Coating Holdings failed chemical product; to waive our statutory rights under settlements; and silenced my speech and potential economic activity by forbidding me from using my product knowledge and accumulated experience to help others who might have similar claims (I work from time to time as a consultant). **ECF 155**, p.224-233

[8] If a settlement contract's terms have no value, which is essentially what Defendant (or "Darnell") claims to be the case with Coating Holdings March 29 contract, then it's very unlikely the opposing party would expend time and money trying to enforce the contract, if they're already dismissed with prejudice. In my case, Darnell's dismissal of Coating Holdings' with prejudice left me no leverage; meaning I couldn't collect the $7,500 given the disagreement over "standard mutual release" terms, unless I agreed to Coating Holdings' prejudicial March 29, contract. So I wrote off the $7,500 as a loss and moved on without suing Darnell (a Feb. 16, 2017 email established the intended settlement terms as "..$7,500 with standard mutual releases). (**ECF 155**,

224-233, Coating Holdings March 29, 2017 settlement document, henceforth "March 29, contract").

It is unjust to make victimized clients defend against a motion to enforce a *non-consensual contract*, then sue their attorney for damages, only to again face the misery of filing yet another lawsuit (adversary proceeding) in order to collect their jury-awards/"*re-course*" – when this judicially imposed suffering is in exchange for *Capital Dredge* and *Nelson* having compromised an individual's economic liberty by undermining the general public's valuable signature authority.

For this reason, an attorney who is found to have broken the law (MRPC 1.2(a)) in forcing his client into a *non-consensual contract* (coercion having failed)[9], **should not be able to escape compensating the**

p.213). Nineteen month's after being dismissed with prejudice, when my statute of limitations expired, Coating Holdings unexpectedly sacrificed the $7,500 gain, and came back to litigate in order force through the March 29 contract; because they knew the risk transference to be obtained through the March 29 document, given their chemical product's failure, was far more valuable than $7,500. The affidavit of our Stout Risius Ross damages expert, Rob Levine, explains the value of the risk transference. (**ECF 155**, p.150-187 Affidavit). Coating Holdings aforementioned litigation, is why Darnell was sued, and is the source of my $40,000 creditor's claim against Darnell. The bankruptcy court erred in excluding our damages expert during my motion hearing for summary judgment. (**ECF 218**, Transcript, ECF 153, SJ brief, incorporated herein).

[9] For examples, see: audio transcript of Darnell saying he could "*strong-arm*" me over the March 29 contract, and to "*just sign it*" (**ECF 155** p.279 lines 17-20, & p.281 lines 1-10); coercive emails & texts (**ECF 118-2**, p10, & **ECF 155** p.322-324); the Grievance (**ECF 118-3** p.18-33); the legal expert (**ECF 155**, 1-11, 12-149 – related exhibits - David Black Affidavit).

harm he caused by way of a bankruptcy filing. <u>This severe breach of the law should be non-dischargeable by default.</u> Otherwise, we risk making a mockery of attorney licensing requirements which are supposedly meant to protect clients, but which otherwise limit the supply of legal professionals, and artificially inflate the cost of legal services. The skyrocketing legal costs which result from the restricted supply of legal professionals, pose serious financial barriers to public access to our civil justice system, and adversely affect the outcomes of the litigants who do manage to scrape together some resources to fight for their rights in court. *Capital Dredge* and *Nelson* have allowed these costs to be weaponized against victims of client abuse (by shifting the burden of an attorney's illegally ascribed contract to client, and then making the client pay to deal with the problem), instead of making the MRPC 1.2(a) violating attorney compensate the opposing litigant, <u>or more simply, requiring proof of *actual authority*</u>.

As judge Neff of *Nelson* predicted, the *publishing as precedent* of these *Rulings* has led to hundreds of appellate cases, that relate in one way or another, to the betrayal of clients interests[10] (case research/impact study **ECF 185, 185-1, 185-2, 185-3, 186**), and **ECF 183** Recusal p19-20. outcome analysis, Monica Turner versus my case). Similar cases in the lower courts, and cases which are abandoned due to the

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[10] I obtained research of over 300 Michigan appellate (only) cases citing either or both Nelson or Kloian. More than 100 of these appeals were arguing about an attorney's apparent authority in connection with the settlement of a lawsuit. (**ECF 185, 185-1, 185-2, 185-3, 186**)

aforementioned barriers to recourse, likely number in the thousands.

Ironically, this legal aberration introduced by the *Rulings* has continued unchecked, because cases which successfully repel attempts to impose *apparent authority* (*non-consensual contracts*) tend not to proceed to the appeals level seeking to reverse or amend *Captial Dredge* and *Nelson*. But if a successful case has the misfortune of defending a jury award subject to bankruptcy discharge, *like my instant case*, then there is an opportunity for the court to amend or reverse these backwards *Rulings*.

I respectfully request that the present opportunity to reverse and/or amend these Rulings is taken advantage of.[11]

The *Capital Dredge* and *Nelson* judicial panels did not discuss the degree and type of impact in the real world that would result from publishing the *Rulings* as precedent. The panels limited themselves to the judicial-intellectual task of interpreting the defining language in other cases, and that apparently took their attention away from the type of analysis that happens in the legislative review process (who gets impacted? how? can the impact be moderated/made more fair?, who's going to walk into our legislative offices *exclaiming what have you done!*).

Arguably, one might question whether the judicial-legislative process which allowed the *Capital Dredge* and *Nelson* rulings to set precedent, is the Achilles-heel of the American democracy.

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[11] **ECF 185-186** – research intended to be used in the case of an appeal to the Michigan Supreme Court, but wasn't necessary because I prevailed at the circuit court level and was unchallenged).

What does *Capital Dredge* and *Nelson's* prescribed recourse look like out in the world?

The financial cost of my pursuing *Nelson's* judicially required path for obtaining restitution is roughly $100,000 in order to first win, and now collect, a roughly $40,000 jury award, and costs are still climbing. That price tag doesn't include the roughly $40,000 jury award which is meant to offset monetary damages (legal fees) generated by Defendants MRPC 1.2(a) violations.[12] Generally within the civil justice system, $40,000 is a relatively small sum of money to pursue given the cost of representation; but for many of us it's a ton of hard earned money.

The social cost, is the undermining of the public's faith in the fairness of our judicial system - **in a shocking circumstance where conflicts could have simply and elegantly been avoided** by requiring proof of actual authority - either direct litigant signing of a settlement contract, an open agreement to the full terms of the settlement in open court, or a litigant signed power of attorney; which is how settlement law is enforced in the 6th Circuit state of Tennessee - which stringently enforces an individual's signature rights. (legal citation in footnote 1).

ChatGPT aptly stated the serious risks to litigants inherent in applying apparent authority to settlement contracts, (and the widely held principles of right versus wrong, and punishing the perpetrator and not the victim). *Nelson* and *Capitol Dredge* turned justice on

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[12] This $40,000 should not be mistaken as a gain, it simply recoups damages – less the legal costs to recoup damages, which in many cases like mine, leaves you net negative at the end of the process. (see **ECF 183**, *Recusal*, p.19-20)

its head by punishing the victim-client, instead of the attorney who broke the law, and rewarded client-abuse, by creating *non-consensual contracts* in cases where collusion of some form may well exist (again ChatGPT understood this, under item **2, "Potential for Abuse".

Rather than making an attorney who broke the law (by acting under the *false pretense of having actual authority, in violation of MRCP 1.2(a)),* directly liable to compensate the opposing litigant, the attorney instead has a judicially-granted form of protection via the pseudo-recourse prescribed by *Capitol Dredge* and *Nelson.* The victim-client, having been systemically stripped of their signature control, is then judicially impeded by the requirement to file ever more financially damaging lawsuits, after having been forced into a *non-consensual contract*[13]. Unaddressed by

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[13] An act which binds victimized clients to non-consensual contracts that typically transfer risks/liabilities (i.e. by way of the assumption of unknown future risks), that can invalidate insurance coverage, waive statutory rights, and/or restrict the freedom to consult and/or assist others (a freedom of speech violation). (**ECF 155** p.150-186, Levine Affidavit on damages, emphasis on para. 6). Non-consensual contracts, as in my case, are dangerous to let stand; and therefore compel a costly legal defense to prevent their imposition. In such cases, the damage is known in advance of the MRPC 1.2(a) violation. No victimized client should be made to argue in bankruptcy court over the intent to cause harm inherent in an attorney's breaking the law in violating MRPC 1.2(a); or need to argue whether said attorney knew the obvious: that it is damaging (and wrong) to force people into contracts they (the client) believe could harm them, thereby compelling the client to defend against contract execution, in order to protect against threats real and/or perceived. This was the point that my malpractice expert witness was making, and

judicial panels subsequent to *Capital Dredge* and *Nelson* is the fact many victim-clients can't overcome these judicially erected cost/time barriers to justice, and others who do and succeed, can easily end up economically worse off for the effort of pursuing justice (my case is a real world example of this). (**ECF 183** *Recusal*, p.11-15).

Why shouldn't the observer question the motivations behind *Capitol Dredge* and *Nelson's* imposition of apparent authority, given the absence of a legislative review process? That the judicial majority in two seasoned judicial panels, presiding over the *Capitol Dredge* and *Nelson*, somehow dismissed the risks that apparent authority posed to average litigants, <u>and that the remedy their rulings prescribed diverged so profoundly from widely held social principals as relates to the administration of justice within our democracy, is astonishing and deeply unsettling.</u>

All said, why should anyone have faith in the impartiality of the civil courts within the federal circuit which created such a dehumanizing, disempowering, and disenfranchising legal abomination which robs people of their agency? Or trust the motivations of the civil courts within said circuit, given their rolein defending and perpetuating the existence of such a creation?[14]

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which the bankruptcy court erroneously refused to acknowledge (**ECF 155**, p.1-149 (specifically p.7-9).

[14] Cannon 1 of the ABA Model Code of Judicial Conduct states "[I]t is a general rule that the appearance of partiality is as dangerous as the fact of it. *Potashnick v. Port City Construction Co.*, 609 F.2d 1101(5th Cir. 1980); United States v. McDonald, 576 F.2d 1350 (9th Cir), cert. Denied, 439 U.S. 830, 99S.Ct. 105, 58

Equally disturbing is that Nelson and Capitol Dredge Gave Birth to the *Non-Consensual Contract.*

I respectfully request that this honorable court, whose individual views on the issue of *apparent authority* I have no knowledge of, Recuse themselves, so that this case can be heard by a circuit not entrenched in these precedents (for the reasons cited in this brief, and in my motion for recusal, **ECF 183**). And if not, that the Court reverse and/or amend *Capital Dredge* and *Nelson* and/or rule that violations of MRPC 1.2(a) are non-dischargeable in bankruptcy, and/or at least make the attorney that violates MRPC 1.2(a) liable to the opposing litigant (*and not force victimized clients into non-consensual contracts*) and that the Court grant the relief requested in my prayer for relief, in addition to any other relief it may deem just and appropriate.

II Operative Facts of This Case

This case, as it relates to Defendant, is straight-forward: by his own admissions and trial testimony[15], (**ECF 118-4**, p.2, para. 4 – Admissions - Defendant admits accepting March 29 contract). Defendant, an attorney, took the law into his own hands (broke the law in violating MRPC 1.2(a)); attempted to coerce me into accepting the March 29 contract; overrode my

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L.Ed.2d 123 (1978)" United States v. Conforte, 624F. 2d 869 (1980).

[15] "..Darnell agreed to the language in a proposed settlement agreement with the attorney for Coating Holdings in the underlying case, and agreed to dismiss the case pending against Coating Holdings..." (**ECF 168** bottom page 10, top Page 11 – Defendants bankruptcy court summary judgment brief).

requests for contract language changes; secretly accepted the March 29 document; and secretly dismissed Coating Holdings with prejudice. (**Exhibit 2**, emails & things, March 29, 2017 through April 5, 2017, chronologically lists: ECF 155, p.219; ECF 118-4, p.33; ECF 118-2, p10; ECF 155, p 279, lines 17-19; ECF 155, p 281; ECF 155, p.320; ECF 118-3, p.6; ECF 155 p 322-324; ECF 118-3, p. 5; ECF 118-3. p.8-9; ECF 181-3, p8; ECF 181-3, p8; ECF 118-3, pages 18-33, emphasis on Pages 18-20; ECF 118-3 p. 13). Also see **ECF 84**, joint 26(f) report, para.4); **ECF 155**, "Plaintiff's Brief in Support of Motion for Summary Judgment Pursuant to 11 U.S.C. §523(a)(2)(A) and § 523(a)(6) ("SJ Motion" – herby incorporated into the body of this brief).

All his arguments aside, Defendant could have filed with the court to withdraw from representation, but then he couldn't have forced through the March 29 contract. Or, if he really thought I was wrong to want contract language changes, he could have simply told Coating Holdings that I wasn't happy with the bulk of the contract language, that I wanted it simplified, and let them respond. That's what my April 1, 2017 1:19pm email, and April 3, 2017 email, were asking him to do – simplify the language[16]. (**ECF** 118-3,

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[16] In the end, the state court judge simplified the settlement language, by tossing out the 9 page March 29 contract, and writing a one sentence release based on the Feb. 16, 2017 emailed presumptive agreement: "for the sum of $7,500 with standard mutual releases.." (**ECF 155**, p.213): The judge's release read "2. The parties release one another from liability to one another for all claims that were, could have been, or should have been raised in the present litigation, arising out of the transactions and

p.6 & **ECF 118-3.** p.8-9 respectively; also **Exhibit 2** – emails & documents, for chronology).

Instead, both Coating Holdings, and Defendant Darnell, failed to disclose that they agreed to the sprawling March 29, 2017 contract via email on March 29, 2017; until Coating Holdings showed up 18 months later, on or about October 26, 2018, with a motion to enforce said contract in hand (including their illicit March 29 emailed agreement **ECF 155**, p.219-CH Motion Enforce). – but only after my statute of limitations had expired (related to the SPF product installation date). Until then, neither Darnell, nor Coating Holdings, claimed that the proposed March 29, 2017 contract was binding.

In a meeting with Defendant during the week of Monday April 10, 2017, *not having told me of the dismissal with prejudice,* Defendant Darnell actually tried to convince me that Coating Holdings would show up at our April 19 case evaluation, in a continued effort to get me to sign the March 29 document unchanged. He also continued his refusal to make substantive revisions to the March 29 contract, telling me to get another lawyer to do it; which I did about a week after the April 19, 2017 case evaluation hearing. In an effort to make the best of the existing language (given Darnell's continued refusal to modify it), I asked Darnell to modify it to say the release did not relate to any possible third party claims - a request compelled by Darnell's own continued refusal to request simplified release terms. Defendant falsely spins the request to be me requesting new release

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occurrences that are the subject of the complaint." **(ECF 155, p.110-111** - Order) terms. I never agreed to include possible third-party claims related to Coating Holdings failed chemical product, and the release, as it stood, necessitated such a clarification. (**ECF 155**, p.213, Feb. 16 email, presumptive terms). In an April 14, 2017 email Defendant restated his refusal to make substantive changes by saying "*Sorry, but that is a non-starter. I'm not going to embarrass myself in negotiating contract language in the negative.*" **ECF 118-3**, p.15; **Exhibit 2**) If one compares the Feb. 16, 2017 emailed presumptive settlement terms "for the sum of $7,500 with standard mutual releases.." to the sprawling 9 page March 29, 2017 contract, it is clear that it is Coating Holdings, and Defendant Darnell, that aimed to force through a slew of new settlement terms, not me. **ECF 155**, p.213 & ECF 155, p225-233 respectively; and Grievance **ECF 118-3, pages 18-33**, inclusive of it's exhibits, particularly **ECF** Pages 19-20 which relate to Defendant attempting to withhold the Feb. 16, 2017 email (which evidence of the presumptive settlement as only establishing $7,500 with standard mutual releases..").

Only after Coating Holdings showed up with it's October 26-29, 2018 motion, trying to enforce its March 29 contract, and I had to spend tens of thousands of dollars to prevent its enforcement, did I sue Darnell. That's all this case involves – Darnell's illegal agreement to the March 29 contract (**ECF 118-4**, p.2, para. 4). I've proved all of this twice, in two separate state court cases. I expected it to be an easy case, because I kept out the other damages he caused in order to simplify the case. The state court judge saw through Defendant Darnell's deceits and replaced the March 29 contract with the following release: "The parties release one another from liability to one another for all claims that were, could have been, or should have been raised in the present litigation, arising out of the transactions and occurrences that are the subject of the complaint." **(ECF 155, p.110-111 - Order)**. The jury, not falling for Defendant's false narratives awarded me all costs in defending against Darnell's and Coatings Holdings attempts to bind me to the March 29 contract, plus a partial claw-back of legal fees paid to Defendant Darnell. **(ECF 118-3**, p.34-35 verdict). It should have been simple, yet here I am, closing 6 years of Nelson's "recourse" related litigation and counting. What Defendant did should not have been possible, were it not for *Captial Dredge* and *Nelson*, so here I am to say "I told you so" on behalf of Nelson's judge Neff, and hundreds, if not thousands, of victimized clients.. **(ECF 183**, *Recusal*). **Section I of this brief explains why something so simple and preventable has taken up nearly 8 years of my life (from Mar. 29, 2017), and cost more than the university educations of myself and my son combined.**

III. Primacy of the Separation-of Powers Challenge (Public Policy Argument)

Model Rules of Professional Conduct: Preamble & Scope

Preamble: A Lawyer's Responsibilities

"[10] **The legal profession is largely self-governing.** Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. **This**

connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts."

"[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. **The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.** Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. **Neglect of these responsibilities compromises the independence of the profession *and the public interest which it serves.*"**

By engaging in judicial legislation that created a loophole for an attorney to violate MRPC 1.2(a) and *force* the creation of a *non-consensual contract*, the *Nelson* and *Capitol Dredge* judicial panels threw the judiciary's hat into the political-legislative ring. That made a separation-of-powers argument (the essence of my past "public policy" arguments) the central argument at this level of appeal. Secondary are Defendant Darnell's abusive and illegal MRPC 1.2(a) violating actions which affected my mother and myself, and primary is the judicial-legislation which empowered said abuse and undermined the individual economic liberties of millions of Americans, and compelled me to appear as a creditor in bankruptcy court. To be accountable as to its mandate[17], when judicial

[17] The administration of justice, and the maintenance of the rule of law according to our nation's *democratic values* – **and**

precedent creates laws which takes away important individual rights, the court must seriously engage direct challenges to said law - at least if one believes that the institution that makes a law should be accountable for having enacted that law. And if said law is proven errant or *draconian,* so too be responsible for correcting errors embedded within that law.

Both the Bankruptcy Court and the District Court failed to understand that, where *apparent authority* for settlements doctrine ("law") is concerned, <u>that the relevant civil judiciary responsible for enactment of said law, is the accountable venue for challenges of the law</u> - not a legislature that had no part in making the law. Ironically, the Bankruptcy court had this to say regarding my challenge to *Capital Dredge and Nelson: "I do understand your public policy argument, Mr. Souliotis, but it is not relevant. That's why you would have to take that to your congressional representative*

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importantly, offering an *accessible and practical* venue for the civil resolution of disputes so that people don't start taking the law into their own hands. While my family heeded the rule of law and resorted to the courts, Defendant Darnell, a lawyer, did not. He agreed to Coating Holdings March 29, 2017 settlement document over my objections (ECF 118-4, p.2, para. 4 – Admissions - Defendant admits accepting March 29 contract) and without my knowledge or consent. He could have filed with the court to withdraw from representing my case – instead he took the law into his own hands in order to achieve his objective. All the while, as an attorney and member of the bar, he has been systemically protected, while my family have been routinely victimized by the systemically imposed barriers to justice which have rendered our jury award *less than worthless.* As the victims of client-abuse, we have been punished by *Capital Dredge* and *Nelson's* damaging prescription for recourse, in return from the courts stripping away the protection afforded us by <u>our signature authority.</u>

or to the state representative ***for a change to the law.***" (**ECF 278**, p. 4, lines 8-12), As it ultimately turned out, the most entrenched refusal to acknowledge accountability for Capital Dredge and Nelson's shortcomings, or to acknowledge my challenge to these *Rulings*, was the District Court: "*Indeed, Souliotis alleges nothing beyond the bankruptcy court's adverse rulings to support his request for recusal.*" **(ECF 18**, PageID.2546 - District Court Opinion). Apart from the evidence embodied in my person being compelled to address the District Court directly, I had presented arguments and evidence within my motion supporting *Recusal* from the 6th Circuit (**ECF 183-186)**; my "Plaintiff's Motion for Summary Judgment Pursuant to 11 U.S.C. §523(a)(2)(A and § 523(a)(6)) (**ECF 155** "*SJ Motion*"), including its many factual exhibits; my District Court, including it's exhibits (**ECF 14;** "Plaintiff/Appellant's Brief on Appeal" (**ECF 8,** henceforth "Appellant's Reply Brief", incorporated hereby); and my "Plaintiff's Second Amended Complaint Objecting to Dischargeability of Debt Pursuant to 11 U.S.C. §523", "*Second Amended Complaint*" **ECF 66-1** & **ECF 100**; all of which are incorporated into this brief). All of these pleadings are evidence of "*unnecessarily inviting [lots of] additional litigation*" as *Nelson's* judge Neff warned; and these are only a small share of the judicially imposed burdens (recourse) which victims of MRPC1.2(a) violations are ultimately made to bear.

Ultimately, both courts erroneously refused to engage the important separation-of-powers challenge.

The unusual powers granted to the Michigan Bar by the Michigan State Supreme back in 1935, in my personal experience, has led to a public facing attitude by certain of its members, that they are beyond reproach, (see Motion for Recusal, **ECF 183-186**). This has unfortunately led to more abuse than is appropriate among certain groupings of its members. When any profession, by virtue of its licensing requirements, begins to act as if it is beyond reproach, abuse tends follow.

IV - District Court Errors

When considering an appeal of a ruling that originates in bankruptcy court, *"'[w]e directly review the bankruptcy court's decision rather than the district court's review of the bankruptcy court's decision,' recognizing that we are 'in as good a position to review the bankruptcy court's decision as is the district court.'" Mediofactoring v. McDermott (In re Connolly N. Am., LLC)*, 802 F.3d 810, 814 (6th Cir. 2015) (quoting XL / Datacomp v. Wilson (In re Omegas Grp.), 16 F.3d 1443, 1447 (6th Cir. 1994)) (citation omitted).

Because an honorable court will be primarily focused on the appeal of the bankruptcy court's ruling, as indicated by the above ruling, I am limiting review of the district court's ruling to common factors between the two courts as they relate to my motion for recusal.

In the opening remarks of its Corrected Opinion (**ECF 18**, PageID.2534), the District Court shockingly personalized and trivialized my adversary proceeding in saying: "*This matter arises from a soured attorney-client relationship. Darnell became the fourth attorney to represent Souliotis...*" The readers' attention was then kept focused on these *sour grapes* as **the District Court moved on to count my past attorneys, while failing to ever mention the basis of**

my creditor's claim - that Defendant broke the law in violating MRPC 1.2(a), which of course led to my just state court jury award - the source of my creditor's claim. (**ECF 155, p.113-114** *jury award*).

An attorney breaking the law in violating MRPC 1.2(a) is NOT an issue of a "*soured attorney-client relationship*", it's an attorney breaking the law and causing serious damage to their client, as is firmly evidenced by my state court jury award (**ECF 155**, p.113-114), and clearly explained and documented in my bankruptcy court motion for summary judgment (**ECF 155** "*SJ Motion*"), and also evidenced by the factual basis of the case (**Exhibit 2**, emails & things, chronology).

<u>In my experience with both the Bankruptcy Court, and the District Court, it has become clear to me that neither court has any idea of what it's like to be victimized by your attorney</u> – the threats, the taunts, the lies, the need to have an attorney, and the fear of what is to come with the attorney you have, while having to stick with them until you find a replacement. (**ECF 118-3, pages 18-33,** *Grievance*). This has much to do with the origins of the Michigan Bar Association, and its privileged perch atop the judiciary – and is well described by the ABA (see beginning of Section III of this brief). As the judicial obliviousness I have experience is largely systemically derived, it became clear there was need for an impartial review, outside of a circuit that is decades entrenched in the precedents of *Capital Dredge and Nelson*. (see **ECF 183-186** *Recusal p.12-19*).

This is essentially a three monkeys equation – see no evil, hear no evil, speak no evil. This is very much what I experienced in the run up to the financial crisis as a financial professional – where few are willing to acknowledge serious systemic problems until its far too late, and then the whole house of cards collapses. When the financial world collapsed, we had the enduring great recession. In the case of America's judicial system, if this professional bias continues, what collapses is the American democracy.

To continue, how many attorneys it took to obtain the settlements in the lawsuit against Arthur Bruemmer and Coating Holdings bares no relevance to this case, besides the fact that if I hadn't kept changing attorneys until I found a non-rule-breaking and/or competent attorney, I would not have achieved my significant settlement payment from state court co-defendant Arthur Bruemmer.[18],[19] I would hope

[18] The first attorney to represent my case has since been permanently disbarred. The next attorney had limited to no litigation experience and took on the case to gain such experience, which ultimately led to my hiring a law firm to lead the case, which itself had 2 to 3 attorneys file an appearance (so we can add to the attorney count if it would please the District Court). When that law firm failed to appear to represent me in an important motion hearing initiated by opposing counsel (among other serious issues), or to timely inform me that the hearing had been scheduled and had already occurred (unexpectedly forcing me back from London to fire them), they were replaced by Defendant Darnell. Finally, there was the competent attorney who both defeated Coating Holdings' motion to enforce its prejudicial March 29, 2017 settlement document, and secured substantial compensation from co-defendant Arthur Breummer with a simple dismissal, *absent a release* (and absent costly release related disputes).

[19] An award I was later forced to spend defending against Coating Holdings' sleazy attempt to make me assume the risk of its failed chemical product, and its attempt to silence me, both in my in speech and in a consulting role, by forbidding me from

that every licensed attorney in the state of Michigan understands that I both have the right to as many attorneys as I choose, and that the number of attorneys I chose to have has no material bearing on the fact that my subject jury-award/creditor-claim emanated from Defendant Darnell's violations of the law. [20] **(ECF 155, p.113-114)**

Neither in it's opening statement, nor in its entire opinion, does the District Court mention that: a) Darnell violated MRPC 1.2(a), and **b) that Defendant violated the law by agreeing to Coating Holdings March 29, 2017 settlement document** (the specific act which precipitated my state claim and jury award against Defendant Darnell). There was no mention of Defendant's coercions (the tape where he said he could strong arm me in relation

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assisting others in similar cases. It's effort in this regard was made possible by Defendant Darnell's hidden March, 29, 2017 agreement with Coating Holdings. **That neither the bankruptcy court, nor the District Court, could see the damage caused by strong-arming clients into such non-consensual terms, nor recognize that Defendant Darnell, as a licensed attorney, must have known the damage inherent in forcing his clients to be bound by such terms, is troubling indeed (ECF 155 p.150-186 Levine Aff. – damages; & *id p.1-149, Black Aff – legal; ECF 155 p.279 lines 17-20, & p.281 lines 1-10 audio tape).***

[20] Darnell could have motioned to withdraw from the case, and not break the law by trying to clandestinely force me into a non-consensual contract. But had he done that, he would have lost his opportunity to secretly ascribe to Coating Holdings March 29, 2017 settlement document, and dismiss it from the case absent my knowledge or consent. Darnell admitted that he intended to bind me to the March 29 document). (**ECF 118-4**, p.2, para. 4 – state court Admissions); (**ECF 168** bottom page 10, top Page 11 – Defendant's bankruptcy court summary judgment brief).

to that document, to "just sign it", or Defendant's email threatening not to work on case evaluation related to Arthur Bruemmer) (**ECF** 118-2, p10; **ECF** 155 p52), nor my resulting grievance to the Michigan Attorney Grievance Commission (a response to Defendant's coercions) (**ECF** 118-3, pages 18-33, inclusive of it's exhibits; **ECF** 118-3 Pages 18-20). Not even the *specific* February 16, 2017 email establishing the intent to settle for "$7,500 with standard mutual releases." (**ECF 155**, p.213) - which laid bare Darnell's false narrative implying that by my allowing him to tell the state court of the presumptive settlement on February 22, 2017 (upon his advisement), that I had agreed to the new never-before-seen terms in the not yet drafted March 29 contract. Not the state court judge, nor my state court jury, fell for that absurd line of reasoning. (**ECF 155, p.110**-111 – Order tossing the March 29 contract and establishing the 1 sentence release); (**ECF 155, p.113-114** jury award) that. 9 document)[21]. The court cited none of these facts.

Not once did the District Court cite my need to defend against Coating Holdings motion seeking to enforce the March 29 settlement document as the source of my damages, the source of my jury award, and the subject of my adversary proceeding seeking to have an intentional violation of MRPC 1.2 (a) deemed non-dischargeable. Nor did it give any attention to the fact that Coating Holdings attempt to enforce the March 29, 2017 document was only made possible because

[21] Exhibit 2's listed emails show the history related to struggles over release language which began at the very beginning of Defendant's representing my mother and myself.

Defendant Darnell, operating under the false pretense that he had *actual authority*, agreed to the March 29 document. Nor did the court mention that this illegal act could only bind me to said document because of the *Capitol Dredge* and *Nelson* rulings having established apparent authority as law.

On a number of occasions, the District Court's opinion reads as if my for *Recusal* motion was barely read beyond its title - given that the District Court issued both its initial opinion on my appeal, and its corrected opinion, on the same day (its original opinion forgot to rule on my appeal of my Motion for Recusal)[22]. Yet it incorrectly said: "*...Souliotis does not point to any specific actions taken by the bankruptcy court which would require recusal.*" While I did specifically cite actions of the judge which were prejudicial to my case (**ECF183**, p15), that was besides the point. The District Court missed the *Recusal* motion's core focus on the systemic nature of the bias, and as a result became an example of systemic judicial bias: "***For the reasons stated in his Motion and Brief***, *Plaintiff respectfully prays for the Court to recuse Plaintiff's adversary proceeding from the 6th Circuit pursuant to 28*

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[22] Importantly, I cited the systemically prejudicial and detrimental nature of the *Nelson and Capitol Dredge rulings* upon millions of citizens within the federal 6th circuit – and given that I was challenging the 6th circuits perpetuation of apparent authority for settlements doctrine within a large area of the 6th circuit, I argued that the 6th circuit was an inappropriate venue for my appeal, because it could not possibly be viewed as impartial. None of this argument was acknowledged by the District Court. It missed that I am challenging Capitol Dredge and Nelson as having inappropriately having legislated the apparent authority doctrine as law within much of the 6th Circuit ant that I seek their reversal.

U.S.C. §455" **(ECF No. 18, Page ID.2537, "C. Motion for Recusal"; ECF 14,** "Appellant's Reply Brief", including it's exhibits, **ECF 14).**

Without acknowledging any of these things, the District Court Ruled: *"For the reasons above, the Court AFFIRMS the bankruptcy court's orders granting summary judgment in favor of Darnell on the § 523(a)(6) claim and denying Souliotis' motion for recusal, and DISMISSES the appeal on the § 523(a)(2)(A) claim. The Court DENIES AS MOOT Souliotis' motion for oral argument, ECF No. 10, and motion for extension of time to file reply brief, ECF No. 12."*

V - Bankruptcy Court Errors Being Appealed

a) Improper Limitation of Claims and Evidence; Judicial Error in Defining Scope of Hearings. The Bankruptcy Court ("Court", in this section), in its summary judgment ruling, **generally failed to acknowledge Defendant's March 29, 2017 illegal acceptance of Coating Holdings March 29, 2017 contract terms as the catalyst of my state court lawsuit against Defendant. (ECF 218).** Hastily dismissing the value of my mutual release (*see subsection "e" below*) the Court shifted focus away from the main source my damages (the acceptance of the March 29 settlement document – the source of roughly $33,000 of my $40,000 claim), and instead focused attention on Defendant's dismissal Coating Holdings with prejudice[23]. The Court use this shift in focus to

[23] If the dismissal with prejudice were to have precipitated my lawsuit against Defendant, I would have filed such a lawsuit in May 2017, when it had already been discovered that Defendant had dismissed Coating Holdings with prejudice. Considering the

issue an errant ruling which *excluded from trial everything but Defendant's concealments AFTER his April 4, 2017 dismissal of Coating Holdings.* The Court then said: "So the [only] question being: Which services were rendered after April 4th that are associated with the claim against Coating Holdings in the settlement agreement." **(ECF 218** SJ Transcript, p.39, lines 12-14).

So, out went the requisite costly experts (approx. $15,000) **(ECF 155 p.150-186; & id p.1-149)**; out went evidence of abuse and coercion (*i.e. audio transcript of Darnell saying he could "strong-arm" me over the March 29 contract, and to "just sign it"* ***(ECF 155 p.279 lines 17-20, & p.281 lines 1-10)****; coercive emails & texts (ECF 118-2, p10, & ECF 155 p.322-324); and the Grievance* ***(ECF 118-3 p.18-33; etc...)***; out went the concealed Feb. 20. 2017 give-away of my mutual release **(ECF 155, pages.215-216 – Coating Holdings motion)** (footnote 24, below; subsection "e", below); out went Defendant's March 29 concealed agreement to the March 29 document; out went other emails and documentary evidence **(Exhibit 2);** out went justice – and off to trial naked and arguing over the few hours, at best, that Defendant expended on Coating Holdings after the illicitly agreed April 4, 2017 dismissal (**ECF 155** p.224). **In this way the Court erred in dismissing my §523(a)(6) claims**, and in gutting my §523(a)(2)(A) claims. Once the dust settled, following the chaotic trial adjournment, I

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advisement of my new attorney, Matt Jane, it was determined that filing to reverse the inappropriate dismissal, simply to collect $7,500, was neither cost effective, nor worth diverting attention away from the case against co-defendant Arthur Bruemmer.

realized that the Court's action left me with the prospect of going to trial over, at best, $720; and the Court had stripped me of my experts and most important claims[24]. (footnote 8, supra). This compelled dismissal of the §523(a)(2)(A) *false representation* claim ONLY, and ONLY for concealment AFTER the date of April 4, 2017. I didn't want to commit scarce resources to funding a trial to recover roughly $500 to $720 in converted funds. I do, however, assert my right to appeal for *false representation* for dates PRIOR to April 5, 2017. I also assert my right to appeal my §523(a)(2)(A) claims of *false pretense and actual fraud*. These claims were improperly excluded from my Second Amended Complaint, Court direct Order, during a hearing on Jan. 12, 2023. **ECF 276** p.13, lines 13-17. (see "b" below) (**Exhibit 2**, lists all documents and things in sequence.).

b) Improper Limitation of Claims and Evidence related to §523(a)(2)(A) for *false pretense* and *actual*

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[24] In its summary judgment ruling, the Court failed to consider, or even mention, the affidavit of damages expert Rob Levine (which explained the damaging elements of Coating Holdings March 29 contract. **ECF 155** p.150-186, particularly para. "6"). **It also erred in failing to acknowledge that Defendant's concealment began on Feb. 20, 2017** (not April 5, 2017) with the hidden agreement to give-away my mutual release (**ECF 155**, pages.215-216) Defendant admitted this mutual release benefited me (**ECF118-3** p.17), yet the Court, ignoring that the underlying state lawsuit involved a failed chemical product, and ignoring my damages expert, denied by omission the possibility of unknown future claims, and other clear harms (see subsection "e" below). (**ECF 218** p.32, lines 7-14). Absent proper consideration, the Court arbitrarily dismissed my 523(a)(6) claim and speculatively declared "It is clear that Defendant did not intend this injury". **ECF 218**, p.33, lines 21-22.

fraud. **The Court erred in Ordered me to remove *false pretense* and *actual fraud* from my Second Amended Complaint** – the Court said: "*Accordingly, the Court grants the Plaintiff's motion to amend his complaint to add only a false misrepresentation claim under Section 523(a)(2)(A).*" (**ECF 276** Transcript, p.13, lines 13-17; **ECF 100**, complaint). If am not allowed to appeal this Order, I will be prevented from presenting these two important § 523(a)(2)(A) claims: *False pretense*, without limitation, relates to concealment of the mutual release give-away while I was led to believe that no release language had yet been agreed. (**ECF 155**, pages.215-216; **ECF 118-2**, p.3, "need" "signed document"; **ECF 118-2**, p.10 "give me authority"); *Actual fraud*, without limitation, relates to the misuse of my March 27, 2017 advance retainer funds (**ECF 155** p.202; **ECF 118-3**, p.2-4); and to Defendant's failure to issue a bill for said funds (**ECF 181** p.17, bottom - Defendant said "Second, the only invoice provided to Souliotis was dated March 17, 2017..."). These claims also relate to, without limitation, to the March 29 document's forced assumption of future risk, work/speech restrictions, and denial of my statutory rights. (footnote 28, below).

To restore my right to appeal said §523(a)(2)(A) claims of *false pretense* and *actual fraud*, **I respectfully ask that the Court's Jan. 12, 2023 instruction be reversed and that the Second Amended Complaint filed on Dec.7, 2022 be designated the operative complaint (ECF 66**, Exhibit A).[25]

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[25] At issue is the Court's statement regarding *false representation*, in relation to Defendant's setting the appearance (*false*

c) Improper Limitation of Claims and Evidence; Judicial Error in Defining Scope of Hearings. **The court erred in failing to acknowledge that Defendant's concealment began on Feb. 20, 2017 (not April 5, 2017)**, with Defendant's hidden agreement to give-away my mutual release. (**ECF 155**, pages.215-216). Based on this failure, the Court errantly limited consideration of my remaining § 523(a)(2)(A) claim of false representation to dates AFTER April 4, 2017, as opposed to dates after Feb. 20, 2017. It also removed from its arbitrarily limited time frame the very act which precipitated my lawsuit against Defendant – his MRPC 1.2(a) violating concealed agreement to the March 29 contract. (**ECF 118-4**, p.2, para. 4 – Defendant admits accepting March 29 contract). Defendant's emails of Mar. 10, 2017 and Mar. 31, 2017 aided his concealments (**ECF 118-2**, page 3; and **118-2**, p10), because he said he needed my authorization to act – so I had no idea that he had given away my mutual release on Feb. 20, 2017 and that he agreed to the March 29 contract on March 29,

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pretense) that he would not act absent *actual authority*. The Court said: "Here, the Plaintiff claims that he relied on Defendant's statements that he required Plaintiff's signature and consent to proceed with the settlement." "However, ***the problem is*** that these statements are true." (**ECF 218**, lines 17-24). While this may present ***a problem*** for a claim of false representation, it does fall within the definition of *false pretense* and *actual fraud*. The Court's Jan.12, 2022 ruling (**ECF 276**) lets Defendant off-the-hook for *false pretense/actual fraud*. *Actual fraud* also relates to Defendant's converting my March 27, 2017 advance retainer funds, both because he concealed actions which were adverse to my lawsuit against Coating Holdings (beginning on Feb. 20, 2017), and because he failed to ever issue the requisite bill evidencing how said funds were used.

2017. (**ECF 155**, p.219) The Court's errant time-period restriction left me to conduct an entire trial over roughly $700 (most of Defendant's billings related to Coating Holdings pre-dated April 5, 2017).

d) Bias and Failure to Recognize the Violations at Issue - sanitization of the record. The Court, in its summary judgment ruling, **never stated that Defendant broke the law (MRPC 1.2(a)) in his acceptance of March 29 contract and later dismissal of Coating Holdings** **(ECF 218).** Rather the Court referred to the precedent of apparent authority as the "law" and binding. (**ECF 278**, p. 4, lines 8-12). The Court also understated Defendant's damaging and abusive actions – by failing to mention Defendant's acts of coercion and client abuse (**ECF 155**, Mar. 31 audio; **ECF 118-3** p.18-33 grievance; **ECF 11823 p.10** Mar 31 email *"not doing anything else"*; ECF 155 p.322-324 taunts). All the Court said was: *"Even if Defendant considered the terms of the settlement agreement favorable to Plaintiff (dismissal of a difficult and expensive claim, for an approved amount, and mutual release being of no issue), it was improper for the Defendant to settle without Plaintiff's consent to the terms."* – more a virtual slap on the hand, than any kind of recognition of a litigants worst nightmare, short of physical violence. **(ECF 278 p.4, lines 8-12)**. What the Court didn't question why Defendant failed to motion for withdrawal of representation. Or ask why Defendant took such risks in overriding my strenuous objections. Or, when it was obvious that there was a clear record of my objections, why would Defendant would risk doing such things – being as they were, both illegal and rather unusual (**ECF** 155, p.320; **ECF** 118-3, p.6;. **ECF** 155 p 322-324; **ECF** 118-3, p.5; **ECF 118-3.** p.8-9). Or, why did Defendant coerce and mistreat his client in order to force through Coating Holdings desperately desired contract? (subsection "a", above). **The Court's refusal to acknowledge to these issues epitomizes the prejudicial shortcomings of *Capitol Dredge and Nelson*, and how systemic judicial bias works against victimized clients (see ECF 183-186 Recusal).** Compare Defendant's preferential treatment to how the Court treated me over Darnell's informing the state court of the presumptive settlement: "*...a reasonable jury could find that Plaintiff was not acting in good faith when he asked his attorney to represent to State Court that there was a settlement agreement with Coating Holdings that he later refused to execute.*" **ECF 218**, p 38, lines 3-7)[26]. The state court judge had to find that Defendant acted in bad faith in order to toss out the March 29 contract and

[26] The Court refers to my Feb. 22, 2017 reply to Defendant's Feb. 20, email where Defendant informed me that he would tell the state court of the intended settlement. **My emailed response was cautioning Defendant to make clear there was NO intended settlement with co-defendant Arthur Bruemmer/ d.b.a. Midwest Insulation.** Further, the March 29 contract was not delivered to me in draft form until March 10, 2017. So in my Feb. 22, 2017 email, it was impossible for me to agree to that contract (which contained prejudicial never-agreed-to terms and conditions), as it didn't exist. (District Court appeal - **ECF 14** – "Appellant's Reply Brief": Ex 4, Feb. 20 email & Feb. 22 email; Ex 5 Feb. 16, 2017 email intended settle; Ex 6 Mar 10 email – initial draft of ill fated Mar 29, 2017 settlement document; Ex 7 reply to Darnell's depositions spin). Appellant's Reply Brief is hereby incorporated into this brief, to minimize restatements. Also see, Exhibit 2, list of documents and things.

replace it with a 1 sentence release (**ECF 155** p.110-111)[27]; and in the separate lawsuit against Defendant, the state court jury had to find Defendant acted in bad faith, in illegally agreeing to the March 29 contract, in order to grant my jury award (**ECF 118-3**, p.34-35). Here, the Bankruptcy Court simply rewrites history, in favor of Defendant.

e) Improper Limitation of Claims and Evidence; and Judicial, Error in Defining Scope of Summary Judgment - preventing witness testimony – compromised fairness of hearing. The Court said: "*In arguing that there is no genuine issue of material fact on his §523(a)(6) claim, Plaintiff mainly relies on the email communications between himself and Defendant, as well as exhibit 5A, The Affidavit of David M. Black.*" (ECF 218 SJ Trans) **The Court fails to mention my damages expert's affidavit (exhibit 5B), Robert Levine, from Stout Risius Ross, LLC.** (**ECF 155**, p.150-187). Levine's affidavit cited prejudicial, and damaging release language within the March 29 contract. Based on the Court's ignoring of the March 29 contract's release language (which the Court failed to examine – **ECF 218**), and the Court's exclusion of the damages expert's affidavit (which analyzed said release language – **ECF 155**, p.151, para.6), the Court ruled – "...there is no evidence in the record to establish that Defendant willfully and maliciously

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[27] **ECF 155** p. **110-111 State court judge writes release: "The parties release one another from liability to one another for all claims that were, could have been, or should have been raised in the present litigation, arising out of the transactions and occurrences that are the subject of the complaints."**

injured Plaintiff." (**ECF 218**, p.32, lines22-23) Such an interpretation can only be reached by ignoring the March 29 contract's release language; the damage expert's testimony regarding the common understanding of said language[28]; the damage expert's cited the value of my mutual release **(ECF 155, p.151, end of para. 6)**; the Girevance's time-capsule evidence of Defendants's coercions, and attempts to withhold from me the presumptive settlement language in his the Feb. 16, 2017 email (**ECF 118-3**, pages 18-33, Apr. 5, 2017 - Grievance); an audio transcript showing coercion (**ECF 276** Transcript); and email evidence of coercion. **(Exhibit 2, &** ***ECF 118-2, p10, & ECF 155 p.322-324)***.

The Court **erroneously dismissed the obvious damage of Defendant giving away my mutual release** (which defendant himself admitted had benefit - **ECF118-3** p.17) "*You might want to leave it in, because a mutual release benefits you*.". Erroneously

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[28] The March 29 contract demanded, without limitation, the following: **1)** that I "hereby completely release, acquit and forever discharge the RELEASEES of and from any and all past, present or **future claims...**" (**ECF 155**, p.226, para 2.1, lines 5-7) and release claims which "...CLAIMANTS do not know or suspect to exist, whether through ignorance, oversight, error, negligence, **incomplete medical or scientific knowledge...** and which, if known, would materially affect CLAIMANTS decision to enter into this Settlement Agreement." (**ECF 155**, p.227 para. 2.3); **2)** that "CLAIMANTS expressly waive any and all defenses, rights and benefits.... which may be derived from the provisions of applicable law which may otherwise limit the extent of the foregoing Release." (**ECF 155**, p228, para.2.4, lines 5-8); **3)** that "CLAIMANTS shall not...voluntarily aid in any action at law, proceeding in equity or any other legal proceeding against the RELEASEES..." (**ECF 155**, page 229, para. 2.6)

disregarding Darnell's admission, the Court said: *"Coating Holdings did not have any courterclaims against the Plaintiff. Plaintiff presented no evidence..." "...that such claims were even likely."* (**ECF 218**, p.33, lines 11-14). That Court's statement defies both fact and logic. The unknown future risks were there. Which, by definition, are unknowable until an event does or doesn't happen (maybe soon, maybe never) (footnote 28, supra). We purchase fire insurance, "just-in-case", yet few expect a house fire. Coating Holdings, "just-in-case", and at considerable cost, tried to force me to assume future risks associated to its failed chemical product. I, without limitation, "just-in-case", fought to repel assuming said future risk. Likewise, there are SPF mass torts out there, as pointed out by my improperly eliminated damages expert[29] (**ECF 155**, p.153-155 para. 7-15). **The Court erred in excluding, and failing to consider, both the March 29 contract language, and my damages expert's (from Stout Risius Ross) analysis of said contract's language related to future claims** (as well as other harmful contract language (footnote 28, supra). **"...expert testimony is admissible for the purpose of summary judgment"**, 6th Circuit, *Thacker v. Ethicon, Inc.* 47 F.4th 451, 467 (CA 6, 2022).

I have a background in the traded markets where risk is managed, assumed, and divested on a daily basis. I don't need a licensed attorney to tell me that if I

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[29] Another problem – giving away an agreed mutual release could compromise my insurance coverage in the event of a future counterclaim; just like voluntary risk assumption could outright compromise insurance coverage.

forced another person to assume the aforementioned risks and terms, that I WOULD BE damaging them. (footnote 28, supra). As a licensed attorney, Defendant MUST know this too. This is the point that both my malpractice and damages experts were making in their affidavits, **which the Court erred in excluding**.

The Court ignored MRPC 1.2a – and the implication that an attorney must know that a violation of this rule is by its nature damaging (ECF 155, p. 1-49, Black aff). To subject victims of MRPC 1.2(a) violations, who followed *Capital Dredge* and *Nelson's* prescription of recourse (and achieved jury awards) to chasing the remaining crumbs of their restitution (after legal and expert costs), violates the most basic societal norms of fairness. This should apply to all MRPC 1.2(a) violations, not just cases as extreme as mine (explained in Sections I and II, *supra*).

The Court concluded its flawed §523(a)(6) analysis with the highly speculative, and absolute, statement that "*It is clear that the Defendant did not intend this injury.* " (**ECF 218, p.33**, lines 21-22).

I respectfully assert that the evidence and witness exclusions, and denial of obvious facts on the part of the Court, warrant reversal of the Court's denial of my § 523(a)(6) claims, and granting of the relief sought in my Second Amended Complaint, and this appeal.

f) Bias and Failure to Recognize the Facts at Issue. **The Court prejudicially placed the summary judgment hearing right in front of trial (on the same day – 30 minutes apart)**, When the Court recognized its error during a April 13, 2017 scheduling conference, it nonetheless refused to correct it's error. (**ECF 277**, p.7 lines 18-25, p8 lines 1-9). I spent roughly $7,000 on having a motion for summary judgment written, in an effort to hopefully avoid otherwise spending a fortune at trial to protect my costly and hard-earned $40,000 jury award (a brutal journey on the road to recourse in itself). It became clear to me that this Court was accustomed to viewing the system as primary, and citizens who ended-up there as a mere consequence of the judicial systems existence. Lost in the systemic judicial structure, the Court exhibited a lack of recognition of the exceptional costs born by litigants when otherwise avoidable costs were forced upon them, as in this case. Given the obviousness of the scheduling problem, filing a repetitive motion for reconsideration was pointless. We were in a status conference, which appeared to be the time and place to address the issue – so I filed a motion for recusal from the 6th circuit. **(ECF 183-186)** Here, the recourse prescribed by *Capital Dredge* and *Nelson*, which shifted of burdens (contractual liabilities) from attorneys that broke the law (MRCP 1.2(a)) to victimized clients, was intertwined in with Courts own judicial viewpoint. That was the just of my systemic judicial bias argument in my motion for recusal. *Id.* <u>How can one publish as precedent, cases which lopsidedly benefit one's own peers at the bar, and claim to be impartial?</u> The Court, which I viewed as generally detail oriented, shocked me by taking the *Recusal* motion personally, in accusing me of "an improper delay tactic." (**ECF 253**, p.15, lines 9-10).

<u>The Court then refused to let me speak in my own defense against its accusations, nor did the Court seriously consider the systemic issues raised by the</u>

lengthy motion for recusal. (**ECF 253**, starts line 16 on p.16 –18). This dialogue continued on the day of the summary judgment hearing and trial, when I challenged the Court's scheduling as prejudicial to my case (and not in the interest of judicial economy) and the Court granted an adjournment. (**ECF 278**, p.7 line 16 to p.16, line 10).

For the aforementioned reasons, including the reasons cited in the other paragraphs of this Section (V), and throughout this brief (and in my motion for recusal - **ECF 183**), I request that this case be recused to a circuit not entrenched in these *Judicial Ruling's* precedents.

g) Judicial Error in Defining Scope of Trial – systemic bias. The Court erred in failing to recognize judicial accountability for the judiciary's own judicial legislation, when it said: "*I do understand your public policy argument, Mr. Souliotis, but it is not relevant. That's why you would have to take that to your congressional representative or to the state representative for a change to the law.*" (**ECF 278**, p. 4, lines 8-12). This "public policy argument" **is a separation of powers argument.**[30]

In the instance of *Capital Dredge* and *Nelson*, with all due respect, *the judiciary is the accountable legislator*; and I would hope that an appeals court will take advantage of a rare instance of a successful case,

[30] The recourse set by these *Rulings* is a direct abuse of both the Michigan and U.S. Constitution's mandate for the separation of powers. Courts are not legislatures, and they are not entitled to legislate. Even a personal constitutional violation may require legislative, not judicial, imposition of a remedy. (footnotes 4,5 & *supra*) See **Exhibit 1.**

rising up the appeal ladder, to challenge the *separation-of-powers* conflict inherent in this "law", and investigate Judge Neff's prescient warning against publishing *Nelson* as precedent - due to the risk of "*unnecessarily invite[ed] additional litigation.*" Nelson v Consumers Power Co, 198 Mich App 82, 91; 497 NW2d 205 (1993) (J. Neff, Concurrence). Failed cases aren't particularly useful in arguing for REVERSAL of *Capital Dredge and Nelson*, and the successful cases tend not to appeal.

Further, Congress would never try to pass a law that undermines crucial individual economic liberties, turns justice on its head by punishing the victim instead of the perpetrator, and robs people of their agency. This law was slipped under the radar and judicially-legislated into "law" (**ECF 278**, p. 4, line 12) within the largely unnoticed grey area of judicial precedent.

Concluding Statements

Today is yesterday's future that Judge Neff of Nelson warned of. It is therefore imperative to reevaluate, modify, and/or REVERSE *Capital Dredge* and *Nelson* so we avoid "*unnecessarily inviting additional litigation.*" *(Nelson, Neff concurrence).*

This nightmarish journey on *Capital Dredge* and *Nelson's* road to recourse had much less to do with money once it became clear that the Judicial Panels failed to consider the plight of victimized clients to the extreme that victims' jury awards would be allowed to enter unprotected into bankruptcy court (dischargeable unless proven not-so, and only after even more ridiculous litigation). At the bankruptcy level, Defendant's misconduct becomes secondary, and the judicial systems' failures become the primary issue. It's disgraceful that victimized clients are forced into bankruptcy court to collect the remaining crumbs of *Capital Dredge* and *Nelson's* prescribed justice, in exchange for being stripped of their signature authority and agency. So, in recognition of the many who sacrificed to preserve our freedoms, and in support of the argument that freedom is more valuable than money, any sum beyond $1.00 above whatever creditor disbursement I receive from the bankruptcy trustee, resulting from this adversary proceeding, I will give to a non-profit of my choosing, provided that won't invalidate my claim (in which case I'll keep the money).

To quote FTC chair Lena Kahn: *"And if in your day-to-day life you're treated like a serf in your economic relationships, what does that men for your civic capabilities - for your experience of democracy?"*

Prayer for Relief

I respectfully request that this honorable court *Recuse* themselves, so that this case can be heard by a circuit not entrenched in these precedents, pursuant to 28 U.S.C. §455. Absent that, I pray for the *Reversal* of the precedent set by *Capital Dredge and Nelson*; at least to the extent that, if an attorney attempts to bind their client to a *non-consensual contract* under the auspices of *apparent authority* (lacking *actual authority*), that the opposing litigant's recourse is to sue that attorney who violated MRPC 1.2(a) - not the creation of a *non-consensual contract* to be forced upon a the victim; and that said violations of MRPCC 1.2(a) be Ruled to be non-dischargeable. Finally, I respectfully ask to for the relief requested in my Second

Amended Complaint to be distributed as described in the above "Concluding Statement" of this brief.

Certificate of Word Count

Appellant certifies that "Appellant's Appeal Brief" contains a total of 12,671 words according to the word count function of the word processing software used to prepare this document.

February 10, 2025 In loving memory of Lola Souliotis

Respectfully Submitted,

/s/Evangelos Souliotis (Appellant)

Exhibit 1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 24-1957

In re: DONALD C. DARNELL
Debtor

EVANGELOS SOULIOTIS
Plaintiff – Appellant

v.

DONALD C. DARNELL
Defendant – Appellee

Eastern District Case: 4:23-cv-11467-EAS

Adversary Proceeding Case: 22-41803

Ch 7 Bankruptcy Case No. 22-04103

Exhibit 1

"The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty. Bowsher, 478 U.S., at 730, 106 S.Ct. 3181. *...They then divided the 'powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial.'* Chadha, 462 U.S., at 951, 103 S. Ct. 2764" *Seila Law LLC v. Consumer Fin. Protection Bureau*, 140 S. Ct. 2183, 2202 (2020). And, "*When a party seeks to assert an implied cause of action under the Constitution, separation-of-powers principles should be central to the analysis.*" *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1848 (2017).

In the present case Plaintiff does not, because he cannot, seek to assert an implied cause of action, yet Plaintiff has been directly harmed, in this very case, by an egregious constitutional violation of the

Separation of Powers visited upon him by the Bankruptcy Court and six appellate judges. The application of the Nelson and Capital Dredge decisions unconstitutionally usurped his intangible right to contract. This "evil" must be abated.

Evil? Yes, from his First Inaugural Address: President Lincoln, speaking to the infamous *Dred Scott* decision, recognized the constitutional idea of Separation of Powers that presented to the Congress and the People the ability to change that decision so that it would only then apply to the parties; and that it would not then be visited upon anyone else. The use of the Separation of Powers thereby being salutary compared to "*...**the evils of a different practice**.*" From *Plaut v. Spendthrift Farm, Inc.*, 514 US 211, 225 (1995)

"*When a party seeks to assert an implied cause of action under the Constitution, separation-of-powers principles should be central to the analysis.*" *Ziglar supra*1848. That Court, in addressing Bivens, was explicitly mindful of how the Separation of Powers limits its own abilities. In this present case six appellate judges in Michigan and the Sixth Circuit ignored this fundamental constitutional constraint and they created a legal fiction that has now taken away Plaintiff's right to contract and given it to his attorney, the Appellee, whenever the contract right involves a settlement agreement. Neither the Michigan Legislature nor the Congress gave these six judges the right to take away Plaintiff's intangible right to contract and certainly those legislative bodies had not and would not so take away citizens fundamental rights. The six judges arrogated that power unto themselves.

And in this case the Bankruptcy Court's comeback to Plaintiff's plight? "Tough luck, take it up with your congressman or legislator." Such a brazen answer reveals the institutional bias of not only protecting fellow bar members, but it also illustrates the *evil different practice* Lincoln had noted.

The U.S. Supreme Court has plainly focused on the Separation of Powers limit to judicial power. It recently said "*In 1871, Congress passed a statute that was later codified at Rev. Stat. § 1979, 42 U.S.C. § 1983. It entitles an injured person to money damages* ***if a state official violates his or her constitutional rights. Congress did not create an analogous statute for federal officials.*** *Indeed, in the 100 years leading up to Bivens, Congress did not provide a specific damages remedy for plaintiffs whose constitutional rights were violated by agents of the Federal Government. Ziglar* at 1854. And indeed, the Court further noted the "*In cases decided after Bivens, and after the statutory implied cause-of-action cases that Bivens itself relied upon, the Court adopted a far more cautious course before finding implied causes of action." Id. (emphasis added)* In the present case the Court would have little trouble seeing the actions of these six judges as an unconstitutional usurpation of legislative power.

Exhibit 2

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 24-1957

In re: DONALD C. DARNELL
Debtor

EVANGELOS SOULIOTIS
Plaintiff – Appellant

v.

DONALD C. DARNELL
Defendant – Appellee

Eastern District Case: 4:23-cv-11467-EAS

Adversary Proceeding Case: 22-41803

Ch 7 Bankruptcy Case No. 22-04103

Plaintiff's Chronological Listing of Emails and Other Relevant Documents

- **Feb 16, 2017** email from Defendant to Coating Holdings counsel Ed Higgins establishing presumptive settlement "*for the sum of $7,500 with standard mutual releases.*" (**ECF 155**, p.213).

- **Feb 16, 2017** email. (ECF 118-1, page 1 of 9) from me to Defendant asking "Can you forward me a copy of the e-mail you sent Higgins postponing tomorrow's deposition and offering alternate dates 23, Feb, 24 Feb, 6 Mar and 7 Mar 2017." Defendant spun the false narrative that I was terrified of being deposed, when in fact I had just returned from London on an emergency basis, to substitute counsel, and I sought to reschedule the deposition by a week or so. (**ECF 118-1, p.1,** or District Court **ECF 15-1, PageID.2515**).

- **Feb 17-20, 2017** emails evidenced that Darnell withheld the Feb 16, 2017 email, resisting a series of my emailed requests for something in writing evidencing the key terms of the presumptive settlement – the Feb. 16 email's language that stated "*for the sum of $7,500 with standard mutual releases…*" and nothing beyond that. On Feb. 17, 2017 6:58pm – I requested: "*You mentioned that they sent us a written offer, like [redacted] sent them our original offer. Can you do me a favor and e-mail me a copy of this.*" I didn't know what exactly Darnell and Higgins had said to each other, and I was unwilling to rely on oral representations. (**ECF 118-3**, p.19 and p.24 - Grievance see April 5, 2017 Grievance listing below)

Darnell only provided the Feb. 16, 2017 settlement confirmation email after I requested that he send an Offer of Judgment to Coating Holdings, given the apparent absence of written base terms for a presumptive settlement. My request created an either-or situation – send me the Feb. 16 email or issue the Offer of Judgment. [1] **(see footnote 1 for dialogue)**. I thought he'd send me an initial agreement

[1] Feb 17, 2017 10:10am – I ask "If Plunkett/Coating Holdings has not forwarded their offer to us yet, please ask them to..". Feb 20, 2017 11:28am – Darnell says: "There is no written offer from CH.". Feb. 20, 2017, 11:36am email to Darnell. I said: "There should be at least an e-mail from him confirming his offer at the very least,..". When this was ignored, I sent my Feb. 20, 2017 2:34 pm email saying: "…If there is no offer in writing from Plunkett/Coating Holdings, technically, there is no agreement." And instructing: "If you don't think you can get them to confirm their offer in the next hour and a half, please send the Offer of Judgment as indicated in my email…" (ECF 118-3, p.19-20, emails email numbered 1-6 in the body of the complaint, with emails as exhibits; also ECF 155, pages 129 to 144 full Grievance).

confirmation email dated that same day, Feb. 20; instead Darnell had withheld this email from me for days. Considering that Darnell was just as insistent as Coating Holdings that the Coating Holdings March 29, 2017 settlement document's terms remain largely unchanged, one can see the advantage to that objective if I was denied the Feb. 16, 2017 evidencing the base terms of the presumptive settlement, which simply called for *"...$7,500 with standard mutual releases..."*

Darnell has falsely accused me of intending to back out of the presumptive settlement, simply because I called it just that - an intended settlement. I point out that Coating Holdings' own March 29, 2017 settlement document ("March 29, document" or "March 29, contract") states: ***"...CLAIMANTS and RELEASEES desire to enter into a Settlement Agreement...".*** (**ECF 155**, p225, para. B.) Until the state court judge tossed out the March 29 contract, and issued its ruling on settlement language (based on the Feb. 16, 2017 presumptive settlement email), there was only a presumption, a.k.a. desire, a.k.a. intent, for settlement – meaning there was no agreed interpretation of the meaning of *"standard mutual releases"*[2]

- **Feb. 20, 2017** 11:24am email between Darnell and Higgins. – Darnell says to Coating Holdings counsel Ed Higgins: *"Not really. A release just to plaintiffs is*

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[2] The state court ruled: *"The parties release one another from liability to one another for all claims that were, could have been, or should have been raised in the present litigation, arising out of the transactions and occurrences that are the subject of the complaints."* **155, p.110-111 – court order**

fine." – Here, Darnell **gave away my mutual release** in the middle of my series of emails where I was attempting to extract written confirmation of the intended settlement. This email was concealed from me by both Darnell and Coating Holdings for nearly two years, until on or about Oct 26, 2018, when Coating Holdings mailed its motion to enforce the March 29 contract. **The concealment of the Feb. 20, 2017 email was Darnell's first act of concealment, not April 4, 2017 as erroneously stated by the Bankruptcy Court. (ECF 155**, pages.215-216 CH motion). The bankruptcy court erroneously ignored the concealed give-away of the mutual release and erroneously stripped out all fees paid to Defendant between the dates of Feb 20, 2017 and April 4, in my §523a2(a) complaint (related to co-Defendant Coating Holdings).

- **Feb. 20. 2017** 11:27am email. **Darnell tells me: "*...EH [Higgins] won't be there on Wed., and I will represent to the Court that we have settled with that party.*" (ECF 118-1**, p6). Darnell used my response to this Feb. 20 email (in my responding Feb.22 email below), to mischaracterize events and to imply that my response to him on that early date, and the fact that we had a presumptive settlement, somehow allowed him to accept the sprawling 9 page March 29 contract, (which didn't exist yet), and to dismiss Coating Holdings (despite his later March 31, 2017 email where he acknowledged that he lacked authority) [3] Coating Holdings own March 29, 2017

[3] "Evan – I need you to address this settlement agreement and give me authority to dismiss coating holdings. This need to be

document made clear that, until it was signed, there was only a presumptive settlement: "...*CLAIMANTS AND RELEASEES desire to enter into a Settlement Agreement...*" **ECF 155**, p.225, "Recitals" (B)).

- **Feb 22, 2017** 7:34am email: in response to Darnell's telling me "...*EH [Higgins] won't be there on Wed., and I will represent to the Court that we have settled with that party.*", I replied: "*To confirm, regarding the Hearing to extend discovery today: you will tell the Judge that we have settled with Coating Holdings ONLY, and that we want to extend the discovery deadline..*" (**ECF 181**-2 p.1) Because Darnell had informed me that he was going to tell the court that we intended to settle in the upcoming Feb. 22, 2017 hearing, I requested that he also tell the court that we were settling with Coating Holdings ONLY, so as not to inadvertently imply that we were planning to settle with co-defendant Arthur Bruemmer as well.

In Darnell's response to my motion for summary judgment, he omitted any mention of his Feb. 20 email telling me that he intended to inform the court of our presumptive settlement.[4] He then used this deceitful slight-of-hand to argue, using flawed logic, that we somehow finalized the settled of the case on February 22, when he wrote: "Souliotis again confirms in an email on February 22, 2017 that Plaintiffs have settled with Coating Holdings..." (**ECF 181**, page 5)

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done today. I'm not doing anything else until this is resolved". **(ECF 118-2, p10 of 10)**

[4] "Coating Holdings March 27 document: ...*CLAIMANTS and RELEASEES desire to enter into a Settlement Agreement...*". (**ECF 155**, p225, para. B).

A licensed attorney *must* know better. The state court judge didn't fall for these antics (in refusing to enforce the March 29, Settlement document) (**ECF 155, p.110-111 – court order**). Even the state court jury knew better. (**ECF 118-3, pages 34-35 – jury verdict**)

On Feb. 22, 2017, the only settlement related *writing* that existed (which I had to pry from Defendant's hands) was the February 16, 2017 "...$7,500 with standard mutual releases..." The embryonic March 9 Coating Holdings release language was not delivered to Darnell until March 9, 2017, and the version Darnell *illegally* agreed to was not ready until March 29, 2017. On March 31, 2017 Defendant sent me an email asking for "**authority**" to dismiss Coating Holdings (**ECF 118-2**, p.10) (footnote 3, *supra*). I didn't give it. But that email shows that Darnell very well knows that on Feb. 22, 2017 that a "*standard mutual*" *release* had yet to be written – and that my lawsuit against Darnell is about the March 29, 2017 document's release language, not about Darnell letting the state court know that we where working on that release language, by informing it of the intended settlement (footnote 4, *supra*). All this nonsense was to distract the bankruptcy court from focusing on the obvious, Defendant threw my mother and I under the bus and broke the law (MRPC 1.2(a)) by forcing through a risk laden, speech silencing, non-consensual contract that strips its victims of their statutory protections.

- **Mar. 8, 2017 and Mar. 17, 2017** - my emails regarding the remaining March 8 to March 31, 2017 discovery period. Despite requests for assistance, Defendant Darnell did not help with getting experts or expert reports arranged, and he was obstructive in his delay in getting expert retainer agreements prepared, so that our experts could commence their reports. My **Mar. 8, 2017 email**, marked "Urgent" stated: "*Our experts need to have their agreements in place so that they can commence their work. We don't want to get any closer to the deadline than this and not have all this work begin.*" Also: "*Please can we meet tomorrow or Friday to review the case in preparation for our taking of Midwest's [Bruemmer & co's] deposition.*" (**ECF 118-2**, p8) It was a brutally busy sleep deprived period. By March 17, the situation was critical. My **Mar. 17, 2017** email stated: "*The engineer sent you a copy of his retainer agreement about a month ago, and getting an amended and signed version back to him is not a significant time issue, so I don't understand why this is taking so long. I am getting complaints, because of the failure to provide retainer agreements so that the experts feel assured of being compensated for their work.*" (in reference to our engineering expert, along with our chemist, spray foam expert, and rental value appraiser. (**ECF 118-2**, p.4-5)

Staying on track with co-defendant Bruemmer was of the utmost priority. <u>I wasn't asked again to about the retainer agreement until March 29</u>, the first time being March 10. Absent being asked, I had no time to haggle over Coating Holding proposed document language until the March 31, 2017 discovery cut off date.

- **<u>Mar 10, 2017 email</u>**. Defendant said: "*Evan – Attaching the proposed release and settlement agreement with Coating Holdings.*" "*<u>I will need a fully signed document to proceed</u>*". (**ECF 118-2**, page 3) Here, it is evidenced that Defendant knows he lacks actual authority – proving false his misrepresentations intended to give the false impression (but not quite saying) that he had *actual authority* to agree to the March 29 contract based on his informing the court of the presumptive settlement back on Feb. 22. (which was based on nothing more than the Feb. 16 email confirming the presumptive settlement "for the sum of $7,500 with standard mutual releases.."). **(ECF 155,** p.213).

- **Mar 29, 2017 11:02am** email: Darnell secretly accepts Coating Holdings March 29, 2017 settlement document, and breaks the law (MRPC 1.2(a)) in doing so. He says: *"Ed – The settlement agreement is acceptable, if I have not already indicated so, and I will have it signed and sent over in the next two days."* Coating Holdings used this email as evidence in its motion to enforce the March 29, 2017 by arguing under apparent authority – which is triggered my lawsuit against Darnell. (ECF 155, p.219- CH Motion Enforce).

- **Mar. 29, 2017 5:54 pm email** from Darnell to me containing the proposed March 29 settlement document. The same two and one-half weeks Coating Holdings took to present us with a proposed document, Since I had no mention of the document since March 10, 2017, and I was overburdened dealing with experts and discovery, I had not prioritized this as needing to be dealt with earlier. I didn't meet with Darnell regarding this until 2 days later when I had all expert reports in hand, just barely meeting deadline (March 31, 2017). (ECF 118-4, p.33). paragraph?

- **March 29, 2017** Coating Holding Settlement Document **ECF 155, p. 224-233**

- **Mar. 31, 2017 1:28pm**. Darnell says: "*Evan – I need you to address this settlement agreement and give me authority to dismiss coating holdings. This needs to be done today. I'm not doing anything else until this is resolved*." "*Anything else*" related to work on the case evaluation summary in advance of case evaluation against co-defendant Arthur Bruemmer. This is also where Darnell's second round of coercions began. The first being when he attempted to coerce me into indemnifying Coating Holdings. (**ECF 118-2**, p10; **ECF 155** p52)

- **Mar 31, 2017 audio recorded meeting**, at Darnell's office in the afternoon, following Darnell's repeated threats not to work on Case Evaluation for codefendant Arthur Bruemmer, I told Darnell "*Well, I don't know that you can strong me – arm me into that.*" [the March 29, 2017 contract]. *He replied "Yeah, I can; sure, I can."* (**ECF 155**, p 279, lines 17-19). Later in the conversation I said "*I told you that some of the language in there is a bit difficult to decipher.*" "*And I'm uncomfortable with it*." To which he replied "*and I'm telling you it's a fair and balanced release and **just sign it***." (**ECF 155**, p 281, lines 1-6). Because Darnell had largely obstructed and delayed discovery efforts, and because he had previously attempted to coerce me into indemnifying Coating Holdings (on Feb. 16, 2017 – see Grievance, **ECF 118-3, pages 18-33**), I wanted as much evidence as possible of his attempts to coerce me into the March 29 contract, so I audio recorded our meeting. The bankruptcy court made no mention of this important piece of evidence, which was presented at state court trial testimony and to which one of my affidavits relates. (Ex relevant affidavit, Ex Sum Judgment).

- **Mar. 31, 2017 5:48pm** – my email to Darnell indicates two things: 1) (I'd been snowed under, and sleep deprived, racing to get experts and their reports lined up ahead of the March 31 was the discovery cut off date; and 2) Concerned that Darnell might try to falsely claim that he had my verbal authorization to finalize the settlement according to the terms of the March 29 contract. I began creating a written record of my desire to have the March 29 settlement document language modified, given Darnell's threats, so that he couldn't claim that I had verbally authorized him to finalize the settlement. (**ECF** 155, p.320)

Importantly, Darnell falsely claims that, in his actions, he was trying to avoid my needing costly experts. Yet, these experts had already produced their reports – reports which were my strength in settlement negotiations with Arthur Bruemmer, and that yielded a substantial settlement for my mother and myself.

- **April 1, 2017 1:19pm** email: requesting changes to the Mar 29 contract by way of asking Coating Holdings *"to simplify the language of the agreement…"*. I continued to create a written record of my objection to the March 29, 2017 settlement document. (**ECF** 118-3, p.6). The email also asked to meet as arranged the night before, so I could deliver the final rough draft of the case evaluation summary. Darnell refused and continued to taunt me, in a subsequent SMS text.

- **April 1, 2017 3:45 pm**. Text message from Darnell refusing to meet as promised to receive the updated case evaluation materials. He wrote: *"Don't need to meet. You want to file the CE summary late, so it can* *wait. And you have not moved forward on coating holdings documents."* – continuing to tie completion of the case evaluation summary to my signing the prejudicial March 29 document. (**ECF** 155 p 322-324); (**ECF 155**, p.282, lines 11-20 – meeting transcript)

- **April 1, 2017 5:11pm** Where I say *"I do not see where it [March 29 contract] says that the case against Bruemmer d.b.a. Midwest is not affected in any way by the CH agreement,* ***and you did not address my comment on wanting clearer language****"*. Making clear that the March 29, document still needed work. I continued, in response to his aforementioned SMS text message, *"PLEASE DO NOT CONTINUE TO PRESSURE AS YOU HAVE ON THE COATING HOLDINGS AGREEMENT..."* **ECF** 118-3, p. **5)**

- **April 3, 2017** email. - (**ECF 118-3.** p.8-9) My email regards changes to the proposed March 29 contract. The email critically asks "*Could you please explain: 1) the meaning of "mutual release*".

Because Darnell was refusing to address the simplification of the document language, in an effort to work with the existing language, I said: "*Coating Holdings is not to have any form of indemnification whatsoever from us against third parties claiming to have in any way been damaged by the SPF installed in our home.*" Darnell has repeatedly spun the false claim that this request (which his own refusal to modify the release language triggered), was me introducing new terms to the settlement, when in fact, it was both Darnell and Coating Holdings trying to force through new never agreed to terms.

My timely instructions to Darnell (March 31, April 1, and April 3) made it really risky for him to go through with the dismissal, but he was so intent in memorializing his acceptance of Coating Holdings March 29 contract, by dismissing it with prejudice, that he did it anyway – in spite of the risk.[5] What my mother and I have suffered as a direct result of the *Capital Dredge* and *Nelson* rulings, along with the research presented on hundreds of others adversely affected by these Rulings at the appellate level (with far more in the lower courts), should serve as a warning this precedent should come to an end, following the lead of Tennessee in requiring proof of actual authority.

- **April 3**, 2017 from Higgins requesting permission to dismiss. Higgins: "*Do I have your permission to sign your name to the proposed stip and order of dismissl...*" **(ECF 181-3, p8)**

- **April 4**, 2017 reply email from Darnell, agreeing to illegal dismissal in violation of MRPC 1.2(a) "*Yes, Please enter it with the court.*" **(ECF 181-3, p8)**

- **April 5, 2017 Grievance**, to the Michigan Attorney Grievance Commission, a time-stamped document which acted as a historical time-capsule of what I saw as issues threatening my case on April 5, 2017. (**ECF 118-3, pages 18-33**, inclusive of it's exhibits). ECF 118-3 Pages 19-20 relate to Defendant withholding the Feb. 16, 2017 email (which evidences the presumptive settlement as only establishing *"...$7,500*

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[5] A licensed attorney must recognize that a dismissal with prejudice would make it difficult for me to claim my $7,500 damages unless I agreed to Coating Holdings terms.

with standard mutual releases..." as the basis of the intended settlement. It was important to have this evidence of what the base terms of the intended settlement were, because Darnell, my own attorney, had tried to coerce me into indemnifying Coating Holdings earlier that afternoon (Feb 16, 2017). The Grievance makes clear that, on April 5, 2017, I had no knowledge that *Nelson* and *Capitol Dredge* had enacted law enabling attorneys force clients into binding *non-consensual contracts* - in violation of MRPC 1.2(a). As the Grievance made clear, I didn't believe that the civil justice systemic could force me into a contract against my will; a contract that contained many new terms I had never agreed to. I simply wanted the Grievance Commission to intervene to get Darnell back to work on the case evaluation for Arthur Bruemmer, to make the contract changes I wanted to the proffered March 29 contract, and to stop his abuse. The Grievance Commission time-stamped and scanned my submission, but declined to intervene, stating that it doesn't intervene in active cases *(id)*, To my knowledge, Defendant Darnell was never informed by the commission of my Grievance, which he apparently only learned of when we subpoenaed him to appear at the Dec. 5, 2018 Coating Holdings motion hearing.

- **April 5, 2017** Stipulation of dismissal and order of dismissal with prejudice of Coating Holdings. ECF 118-3 p. 13

- **April 12, 2017** – Trying to get around Darnell's failure to request that Coating Holdings simplify the Mar. 29, 2017 document language, I reiterate my April 3 request that the Mar. 29 document "*...is not to have any form of indemnification from us against any third* *parties claiming to have in any way been damaged by the SPF installed in our home."* I also asked: "*Could you please tell me: 1) Did you contact Higgins last week as I requested?" And yet again I asked "2) What is the meaning of mutual release."* Trying to work through Darnell's intransigence on these issues, I asked: "*For question 1, could you please send me a copy of your communication to Higgins last week, regarding my requests, and and a copy of his reply as well."* As is evidenced in his April 14, 2017 emailed reply, he continued to conceal his acceptance of the March 29 contract and his dismissal with prejudice of Coating Holdings with prejudice, and continued to withhold the requested emails. (**ECF 118-3** p. 13)

- **April 14, 2017** Darnell continues to ignore my requests by saying nothing more than "*Sorry, but that is a non-starter. I'm not going to embarrass myself in negotiating contract language in the negative.* (**ECF** 118-3, p.15)

- **April 15, 2017** Not wanting to be brushed off yet again, I reiterate my request for communications with Higgins and for an explanation of "*...the meaning of "mutual release in the context of a settlement agreement?"* **ECF** 118-3. p.16.

- **19 April, 2017** 1:23pm Following that morning's case evaluation hearing, with Darnell now stalling for over two weeks, I again take up the issue of my so far ignored requests, and again ask for copies of communications with Higgins, and asking "*...the meaning of "mutual release..."* (**ECF 118-3** p.16)

- **19 April, 2017 5:32** email (ECF118-3 p.17). Darnell makes obvious his acts of concealment which began with his **Feb. 20, 2017** secret give-away of my mutual release (**ECF 155**, pages.215-216), when he says "*I think mutual release is a mistake. It should be a one sided release. You release them – that's it.* ***You might want to leave it in, because a mutual release benefits you***" What he doesn't bother to tell me is that he secretly agreed to give my release away way back on Feb. 20, 2017. *id.*

- **April 20, 2017 email**. I am again forced to ask for copies of correspondence between Darnell and Higgins. **ECF 118-4, p.45**

- **April 21, 2017, Friday - email.** Darnell finally sends requested emails. ECF 118-4, p.46.

- **April 25 - Tuesday, 2017 email** I remove Darnell as counsel for my mother and myself. ECF 118-4, p.47

- **May 12, 2017** Our new attorney, Matt Jane, sends our counter offered release language to Coating Holdings counsel, Ed Higgins, which is rejected on June 5, 2017. Suspiciously, even at this late date, neither Coating Holdings nor Darnell had claimed that the March 29 settlement agreement had already been agreed to on March 29, 2017, was binding. **ECF** 155, pages 265-276.

- **October 26-29, 2018** (on or about) Coating Holdings apparently mails it's motion seeking to enforce the March 29, 2017 settlement document to the Washtenaw County 22nd Circuit Court. **ECF** pages 204-276.

- **Feb 8, 2019 state court judges ruling** reject's Coating Holdings attempt to bind me to it's March 29, 2017 settlement document, and instead replaces the release language with a one sentence release based on the Feb. 16, 2017 email (which Darnell attempted to withhold from me – footnote 1, *supra*; ECF 118-3, p.19-20, emails email numbered 1-6 in the body of the complaint). The state court wrote the following release: "The parties release one another from liability to one another for all claims that were, could have been, or should have been raised in the present litigation, arising out of the transactions and occurrences that are the subject of the complaints." (**155**, p.110-111 – court order)

These are all long established facts. Darnell's effort to bind me to the non-consensual March 29, 2017 settlement document, which paralleled Coating Holdings wishes and desires throughout his representation of our case, as well as Coating Holdings efforts to bind me to this contract, both failed.

- **December 9, 2021 jury award** against Darnell, awarding my mother and myself all legal fees paid to third party attorneys and a claw-back of good portion of legal fees that we had paid to Defandant. (**ECF 118-3**, pages 34-35)

- **<u>October 12, 2021</u>** Levine Affidavit – damages expert

- **<u>February 23, 2023</u>** Black Affidavits – legal malpractice expert

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 24-1957	
In re: DONALD C. DARNELL Debtor	Eastern District Case: 4:23-cv-11467-EAS
---------------------------	Adversary Proceeding Case: 22-41803
EVANGELOS SOULIOTIS *Plaintiff – Appellant*	Ch 7 Bankruptcy Case No. 22-04103
v.	
DONALD C. DARNELL *Defendant – Appellee*	

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Appellant's "Appellant's Appeal Brief", and this Certificate of Service, were served by U.S. Mail on February 10, 2025 to the address indicated below.

Respectfully submitted,

/s/Evangelos Souliotis, in pro per

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