

No. 26-\_\_\_\_\_

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**MYER'S LAWN CARE SERVICES, INC.**

*Petitioner*

v.

**ROBERT L. PRYOR, TRUSTEE and RUSSELL FRAGALA**

*Respondents*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Can a party be precluded from bringing a claim, under a theory of nonparty preclusion, and thereby be denied its fundamental due process rights, when, as a matter of law, the application of the theory of nonparty preclusion was in error.

## INTRODUCTION

Prior to the instant case, it was well settled law in the United States Court of Appeals for the Second Circuit (Second Circuit) that when a court accepts a proof of claim (Claim) in a bankruptcy case, because it had not been contested, said acceptance was a final judgment subject to res judicata. *EDP Med. Computer Sys. v. United States*, 480 F.3d 621 (2006 2nd Cir.); see also *Siegel v. Fed. Home Loan Mortgage Corp.*, 143 F.3d 525, 528-31 (9th Cir. 1998) (finding that the allowance of a claim without objection under § 502(a), even in the absence of a separate order, is a final judgment giving rise to res judicata); see also *Tr. of Operating Eng'rs Local 325 Pension Fund v. Bourdow Contracting, Inc.*, 919 F.3d 368, 382-83 (6th Cir. 2019) (no circuit has found otherwise).

Thus, prior to the present case, in the Second Circuit, it was a fundamental due process principle that a court judgment, allowing an uncontested Claim, constituted a final judgment and is thus a predicate for res judicata. See *EDP*, 480 F.3d at 625. Contrary to its holding in *EDP*, the Second Circuit below held, in error, that the Respondent Trustee was not subject to the bankruptcy court's judgment accepting a Claim that had not been contested, because the Respondent was not a party in the dispute from which the judgment was issued.

In adopting the theory that a court's allowance of a claim, because it has not been contested, only applies to the parties of the procedure from which a court allowed the claim, the Second Circuit placed itself squarely in conflict with three other circuits, including itself. In so doing, the Second Circuit becomes the first circuit to adopt the subject theory. In light of the division among the circuits and the importance of the due process rights at stake, the petition for a writ of certiorari should be granted.

#### **PARTIES TO THE PROCEEDING**

Petitioner Myer's Lawn Care Services, Inc..

Respondents are Robert L. Pryor and Russell Fragala

In accordance with this Court's Rule 12.4, Petitioner is filing a "...single petition for a writ of certiorari" because the "judgments...sought to be reviewed" are from "the same court and involve identical or closely related questions." Sup. Ct. R. 12.4.

#### **CORPORATE DISCLOSURE STATEMENT**

A corporate disclosure statement is not required under Supreme Court Rules 14(b)(ii) and 29.6 because Petitioner is not owned by a parent corporation and no publically held company owns 10% or more of the corporations stock.

## **RELATED PROCEEDINGS**

### **United States Court of Appeals for the Second Circuit**

*Myer's Lawn Care Services, Inc. v. Robert L. Pryor* No. 24-2345-bk  
**AMENDED SUMMARY ORDER** entered October 8, 2025

*Myer's Lawn Care Services, Inc. v. Russell Fragala* No. 24-2343-bk.  
**SUMMARY ORDER** entered October 7, 2025

### **United States District Court Eastern District of New York**

*Myer's Lawn Care Services, Inc. v. Robert Pryor*, Case No. 2:23-cv-3346 (NJC)  
**OPINION AND ORDER** entered August 6, 2024

*Myer's Lawn Care Services, Inc. v. Russell Fragala*, Case No. 2:22-cv-5980  
(NJC). **MEMORANDUM AND ORDER** entered August 6, 2024

### **United States Bankruptcy Court Eastern District of New York**

*In. re: Russell Fragala aka Russell L. Fragala* Case No. 8-19-75714-reg  
**ORDER** entered April 26, 2023

*Myer's Lawn Care Services, Inc. v. Russell Fragala* Case No. 8-19-75714-reg  
Adv. Proc. No. 8-19-08150-reg. **JUDGMENT** entered September 22, 2022.

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## **OPINIONS BELOW**

The Amended Summary Order of the United States Court of Appeals for the Second Circuit as to Case No. 24-2345-bk, dated October 8, 2025, is unreported and is reproduced in Petitioner's Appendix (Pet. App.) at 1a. The Summary Order of the United States Court of Appeals for the Second Circuit as to Case No. 24-2343-bk, dated October 7, 2025, is unreported and is reproduced in Pet. App. 8a. The district court's Opinion and Order, dated August 6, 2024, is unreported and is reproduced in Pet. App. 14a. The district court's Memorandum and Order, dated August 6, 2024, is unreported and is reproduced in Pet. App. 56a. The Bankruptcy Court's Decision After Trial, dated September 22, 2022, is reported at 645 B.R. 488, and is reproduced in Pet. App. 60a. The Bankruptcy Court's Judgment, dated September 22, 2022, is unreported and is reproduced in Pet. App. 77a. The district court's Expungement Order, dated April 26, 2023, is unreported and is reproduced in Pet. App. 78a.

## **JURISDICTION**

The Summary Order of the court of appeals regarding No. 24-2343 was entered on October 7, 2025. Pet. App. 1a. Petitioner's petition for rehearing was denied on October 28, 2025. Pet App. 7a.

The Amended Summary Order of the court of appeals regarding No. 24-2345 was entered on October 8, 2025. Pet. App. 8a. Petitioner's petition for rehearing was denied on October 30, 2025. Pet App. 13a.

This Court has jurisdiction under 28 U.S.C. § 1254(1)

## **CONSTITUTIONAL PROVISION INVOLVED**

The Fifth Amendment to the United States Constitution states:

No person shall...be deprived of life, liberty, or property, without due process of law....

## **STATEMENT OF THE CASE**

### *Background Facts*

Petitioner Myer's Lawn Care Services Inc. (Petitioner or Myer's) is a landscaping and snow removal contractor located in Carroll County, Maryland and has been operating for over twenty years. **R. at 1024-35.**

This Petition arose from a dispute over subcontracts, dated November 3, 2016, between Debtor Fragala (Fragala) and Myer's, involving snow removal services Fragala contracted Myer's to provide for twenty two, mostly, Walmart stores all located in Maryland (Work Sites) during the winter months starting in November 2016 through March of 2017. BrightView Solutions, LLC (BrightView) had awarded a contract to Fragala to provide snow removal services to the Work Sites (BrightView Contract).

Then, Fragala subcontracted the duties under the BrightView Contract to Myer's, via twenty two separate subcontracts, dated November 3, 2016, one for each Work Site (Subcontracts). Copies of the Subcontracts were entered into evidence as **Ex. 2. R. 1191.**

Fragala agreed that he included the following clause in all of the Subcontracts referred to in this paper as the Liability Clause:

**Subcontractor [Myer's] shall perform and provide all necessary precautionary measures to adequately protect Work Site property and the work of other persons or entities performing on the Work Site from damage caused by Subcontractor's performance of the work required by this Subcontract Agreement. Subcontractor shall be liable for any loss or damage to work in place at the Work Site, or to any equipment and materials at the Work Site, caused by Subcontractor or Subcontractor's agents, employees, or guests. *Id.***

The Addendum to said contracts, dated November 10, 2016, Fragala agreed to pay a late fee of two percent (2%) per month on balances owing if invoices Myer's submitted were not paid within 25 days of submission. **R. at 970.**

Prior to the signing of the Subcontracts, pre-season inspections were conducted of the Work Sites on or before October 20, 2016. Fragala had assigned his employee, Mark Hornstein ("Mr. Hornstein"), as the account manager to monitor the performances of the BrightView Contract and the Subcontracts on Fragala's behalf. **R. at 1179.** The purpose of the preseason inspections was to document the conditions of the Work Sites before the snow season began. **R. at 1180.**

Fragala testified that Mr. Hornstein, representing Russ Fragala Landscape Corp. ("Landscape"), conducted the pre-season inspections with Mr. Jason Wise ("Mr. Wise"), an employee of BrightView. *Id.*

Fragala testified that someone from Plaintiff Myer's also accompanied them, *id.*, however Mr. Wise and Mr. Hornstein testified that nobody from Myer's accompanied them. **R. at 1201.**

Fragala alleged that, after the preseason inspections had been conducted, Mr.

Hornstein reported:

**“...he [Mr. Hornstein] said that they [Mr. Hornstein, Mr. Wise and, supposedly, someone from Myer’s] didn’t see any damage that we would require a report. We never received a report, so, as far as we were concerned, going into the snow season, there was no damage and any damage that there was after the season was to be fixed by Myers.”**

**R. at 1181 (emphasis added).**

However, the bankruptcy court noted that BrightView’s preseason inspections of the Work Sites produced photographs that documented the existence of 350 different damages that existed on the Work Sites before the snow season began. **R. at 1192.**

Fragala alleged that he had not received any reports regarding preseason inspections that documented preexisting damages. **R. at 1191-92.**

On May 23, 2022, the Honorable Robert E. Grossman presided over a bench trial conducted in the dispute discussed below. Myer’s attorney William Burke (Attorney Burke) read into the Record that Mr. Hornstein testified, during his deposition, that he was taking photographs of the preexisting damages with Mr. Wise, thirty to forty of them at each of the 22 Work Sites, and sending them to Fragala for a file of preexisting site visits. **R. at 1196-97.**

Fragala confirmed to the bankruptcy court that, his position was that, unless he had a report of preexisting damages from Myer’s, Myer’s would be liable for all damages present on the Work Sites after the snow season is over, even if he knew

Myer's did not cause the damages, because they existed before the snow season began. **R. at 1191.**

Mr. Myer has stated, via affidavits, that, when he signed the Subcontracts, that he reasonably relied on the plain meaning of the words of the Liability Clause that was included in every Subcontract, which stated that Myer's and its agents would be liable for damages it caused while performing its snow removal activity, which also meant it would not be liable for damages not caused by its snow removal activity. The Liability Clause induced him to execute the Subcontracts.

However, Mr. Myer states that, he had not been told that if he did not submit to Fragala reports identifying damages that existed on the Work Sites, before the snow season began, then Myer's would be liable for all of the damages that existed at the Work Sites after the snow season was over, even if the damages were not caused by its snow removal activity. Myer's stated that, if Fragala had conveyed that to him, in any way, then he would not have had Myer's enter into the Subcontracts.

The performances of the parties to the Subcontracts went as expected until Myer's submitted the last invoices of the snow season that arose from the last storm of the season that occurred on March 3, 2017. **R. at 1202.** Invoices to respond to said storm totaled \$183,460.00, which Fragala paid minus \$58,460.00. **R. 1176.**

Fragala alleged that Plaintiff had caused damage to all of the 22 Work Sites as it performed its snow removal activity. In an email dated June 6, 2017, Mr. Hornstein advised Mr. Myer that he had conducted post season site inspections of

all of the Work Sites and that he would be sending him a comprised list of all of the stores detailing what needs to be corrected. **R. at 1202.**

However, unknown to Myer's at the time, on or about June 19, 2017, a BrightView employee, Mr. Jerry Bender (Mr. Bender), conducted very detailed post season inspections of the Work Sites and compared them to the preseason inspections that BrightView had conducted in October of 2016. Mr. Bender determined that, with one possible minor exception, no damage had been caused to the Work Sites attributable to recent snow removal activity. Further, Walmart managers or assistant managers at the Work Sites signed statements so concurring. **R. 666-84.**

An excerpt from Mr. Hornstein's deposition testimony was read into the record in which he stated that, on or before June 19, 2017, he was contacted by Mr. Bender who advised him that BrightView's post season inspections had been completed and no new damage had been found with the exception of one cart corral. **R. at 255-60.**

Mr. Bender testified that he conducted most of the post season inspections and the Walmart store managers signed off so concurring that no damages were attributable to recent snow removal activity. Then, on or about June 19, 2017, Mr. Bender called Mark Hornstein and advised that no damages, with one possible minor exception, were revealed attributable to Myer's and he sent him an email. *Id.*

At trial, Fragala alleged that Jason Wise called him and told him that all of the Work Sites had to be repaired and had extensive damage. **R. at 686.** And,

supposedly, Jason Wise did that after BrightView had completed all of the post season inspections and determined that no new damages were present and Walmart concurred.

However, Jason Wise stated, in his deposition, that no damage reports were reported after BrightView completed its post season inspections in the middle of June, which determined that no damages were found attributable to recent snow removal activity. And that he denied Fragala's claim that he called him and told him that every Walmart store had extensive damage "...it did not happen." **R. 689-93.**

Further, during discovery in the SCA, BrightView's Associate Counsel Patrick O'Reilly ("Attorney O'Reilly"), submitted a letter, dated May 24, 2018, stating that BrightView had not received any correspondence from Fragala or Walmart regarding alleged damages caused by snow and/or ice removal and all amounts owed to Fragala for said services were paid. **R. at 253-54.**

Fragala did not advise Myer's that BrightView had completed its postseason inspections and found no new damages and that Walmart concurred. So, Attorney Burke wrote Mr. Hornstein two letters, dated June 23 and July 7, 2017 requesting the comprised list. What Attorney Burke received in response was a letter from Landscape's attorney, Rompel S. Alam, Esquire (Attorney Alam), dated August 11, 2017 (August 11 Letter). **R. at 261-66.**

As stated above, unknown to Myer's at the time, Mr. Hornstein had been told, on June 19, 2017, by BrightView, that it had inspected the Work Sites and

found no damages attributable to Myer's snow removal activity, with possibly one minor exception, and that Walmart had signed statements so concurring. However, in the August 11 Letter, Attorney Alam stated that Myer's was in substantial breach of contract because Myer's had caused damages to the Work Sites and refused to repair them and the cost of the repairs may exceed the \$58,460.00 Myer's is owed. Attorney Alam also stated that Mr. Hornstein had advised Myer's that repairs of the Work Sites were required to be completed, on or before June 23, 2017, in order to receive the remainder of the payment. And that Fragala is using its own sources to repair the Work Sites, which Myer's is liable to pay. Also, Attorney Alam threatened, that Myer's is contractively forbidden to contact BrightView and, if it does, Fragala will sue Myer's for breach of contract and tortious interference. *Id.*

Attorney Alam also memorialized a conversation between her and Attorney Burke in which they discussed the fact that Landscape had not been registered in Maryland to conduct business in Maryland. So, Myer's will have to file its lawsuit against Russell Fragala personally regarding breach of contract. Attorney Alam threatened that, if Myer's sues Russell Fragala personally, Fragala will sue Attorney Burke for sanctions and attorney fees. *Id.*

As of September 17, 2017, Landscape had not registered in Maryland, so Myer's filed a Complaint personally suing Russ Fragala and Russ Fragala D/B/A Russ Fragala Landscape Corp. in the Circuit Court for Carroll County, Maryland (SCA). **R. at 753.**

Myer's learned later that, on October 27, 2017, Landscape did register with the Maryland State Department of Taxation and Assessments (SDAT) to conduct business in Maryland and it paid a fine for not registering before it had conducted business and after the SCA was initiated but before Fragala answered Myer's Complaint. **R. at 1003-06.** However, Russell Fragala choose not to advise Myer's of the filing.

On January 10, 2018, Russell Fragala choose to answer the SCA Complaint individually, when he could have filed a motion to dismiss the complaint under a corporate veil theory.

And, on January 10, 2018, Fragala choose to individually file a Counter-Complaint against Plaintiff Myer's, **R. at 230-32**, instead of doing so as Landscape, which he could have done given that Landscape had registered in Maryland, demanding \$109,665.00 in alleged damages.

Fragala confirmed his deposition testimony that he, allegedly, received pictures from BrightView saying that there were damages to all twenty-two of the Work Sites and BrightView withheld \$160,000.00 from him until he repaired all of the Work Sites. In the Counter Complaint, Fragala claims damages of \$109,000.00 as compensation for the five or six weeks that he had to pay for housing, food, gas, etc. to send a crew to Maryland to repair the twenty-two Work Sites. However, Fragala has not been able to produce any receipts for the housing, food or gas he alleges he spent to send his crew to Maryland. **R. 1199-1200.**

Judge Grossman asked Fragala where were any records that documented any expenses that Fragala contends that he incurred as he repaired the Work Sites.

Fragala responded that he would have to look for them. **R. at 1203-04.**

During discovery in the SCA, Brightview produced its business records, some of which were admitted as **Ex. 7**, which documents that BrightView paid Fragala in full by May 10, 2027 and no deductions were made at any time, for any reason, from when the Subcontracts were executed, on November 6, 2016, to when the final payment was made on May 10, 2017.

When both sides had rested, the Judge Grossman stated that it is clear to the court that Mr. Myer's is owed money and there is no documentation that Fragala incurred expenses to offset what Myer's was owed. **R. at 803-04.** (Emphasis added.)

The undisputed evidence discussed above establishes beyond any reasonable doubt that Fragala's repeated testimony that BrightView withheld \$160,000.00 because of alleged damages he contends Walmart reported to his staff and that BrightView required him to repair, before it paid him in full, allegedly, a year later, is a complete fabrication!

As of September 17, 2018, the IRS had recorded \$196,418.96, plus interest, in Federal tax liens against Russ Fragala Landscape Corp.. **R. at 1008-12.**

#### *Debtor Fragala Files Chapter 7 Bankruptcy*

Much Discovery communications transpired between the parties in the SCA, including Myer's taking the deposition of BrightView, on August 14, 2019. Fragala filed personal bankruptcy on August 15, 2019. **R. at 10-82.** On September 13, 2019,

Debtor Fragala's attorney at the time, Richard Kanter, Esq. ("Attorney Kanter") contacted Attorney Burke, via email, and advised that the counter complaint Fragala had filed against Myer's was an asset in Fragala's personal bankruptcy estate. Respondent Pryor was copied. **R. at 987-91.**

Attorney Burke had telephone conversations with Respondent Pryor regarding documents, produced via discovery in the SCA that Respondent Pryor wanted to review concerning Fragala's personal lawsuit against Myer's. Attorney Burke advised Respondent Pryor that he would forward the documents requested. *Id.*

As discussed below, Myer's filed its proof of claim (Claim) on November 19, 2019 in the amount of \$92,366.80, **R. 1020-35**, which included Myer's SCA Pretrial Statement that detailed Fragala's fraudulent conduct from which the SCA arose. **R. at 1024-35.**

Attorney Burke continued to have a number of communications with Respondent Pryor and his staff regarding the subject matter of the Claim, after it was filed. Including, most importantly Respondent Pryor's instruction that Fragala could continue his, individual, SCA Counter Complaint against Myer's, but, if Myer's defends the Counter Complaint, it would violate the automatic stay that became effective when he filed personal bankruptcy. Myer's petitioned the SCA court to stay the case. Also, Respondent Trustee Pryor advised Attorney Burke that he was considering removing Fragala's Counter Complaint into federal court as an asset of Fragala's personal bankruptcy. These conversations are memorialized in

**Plaintiff's Motion to Stay the Instant Case**, which Myer's filed on September 28, 2019. **R. at 1059-62.**

Respondent Pryor did not choose to remove the Counter-Complaint into federal court. However, it is noteworthy that Respondent Pryor reviewed all of the discovery produced in the SCA and recognized that Fragala acted as an individual and not as a corporate entity and Respondent Pryor did not contest the Claim.

On October 4, 2019, Fragala filed a **Complaint For A Permanent Injunction**, whereby admitting that he is a personal debtor of Myer's and using that posture as standing to sue Myer's for alleged violations of the automatic stay by serving him SCA documents. **R. at 85-89.**

On October 7, 2019, the SCA court granted the stay Myer's requested, which stayed the SCA for Fragala, as an individual. **R. at 166.**

On October 15, 2019, Fragala, filed,

**Affirmation In Support of Debtor's Motion for an Order (1) Finding Myer's ...in Willful Violation of the Automatic Stay; and (2) Awarding the Debtor [Fragala] his Attorney Fees....And Such Other Damage...Including Punitive Damages, For the Stay Violation**

**R. at 93-152.**

In the document, Fragala also admitted that he was a debtor of Myer's and used that posture as standing to, individually, sue Myer's for alleged violation of the automatic stay. **R. at 93-103.**

On November 22, 2019, pursuant to 11U.S.C. § 523(a) (2) (A) and (a) (6), Myer's filed its **Complaint for Nondischargeability of Plaintiff's Claim** ("Complaint for Nondischargeability"). **R. at 286-305.**

When Fragala filed his Petition for Chapter 7 bankruptcy on August 15, 2019, **R. at 10-84**, he valued his home at \$613, 800.00. **R. at 17 and 19.**

However, on April 25, 2022, Fragala advised the bankruptcy court that he had received a contract to sell the subject property and requested, *inter alia*, that the bankruptcy court authorize Fragala to sell the property and retain the net proceeds of the sale as exemptible interest in the property. **R. at 324-424.**

The contract to sell the property reveals the sale price to be \$1,110,000.00. **R. at 411.** On April 27, 2022, the bankruptcy court ordered that Fragala's request to sell the property was denied. **R. at 425.**

On May 18, 2022, Pryor filed a letter stating that he rescinds the Trustee's Report of No Distribution he previously had filed on April 12, 2021. **R. at 584.**

As stated above, Myer's filed its Claim on November 19, 2019, **R. at 1020-35**, which included a copy of **Plaintiff's Pretrial Statement** that Myer's had filed in the SCA, on August 29, 2019. **Plaintiff's Pretrial Statement** is a twelve page document that explains, in explicit detail, that Fragala's conduct constitutes numerous acts of fraud that Fragala subjected Myer's to.

#### *Pertinent Procedures*

As stated, Fragala filed an individual petition for bankruptcy under Chapter 7 of the Bankruptcy Code on August 15, 2019, identified as Case No. 8-19-75714. Pet. App. 16a.

On November 19, 2019, Petitioner Myer's filed a proof of an unsecured claim in Fragala's Bankruptcy Action (the "Claim") in the amount of \$92,366.80. *Id.*

On November 25, 2019, Petitioner Myer's initiated a related adversary proceeding (Adv. Pro.) against Fragala, alleging that Myer's Claim against Fragala's estate was not dischargeable pursuant to both 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(6) that is identified as Adv. No. 19-08150. Pet. App. 17a, 18a.

After the Adv. Proc. was concluded the bankruptcy court issued its **Decision After Trial**, dated September 22, 2022, holding that Myer's had not met its burden to prove that the debt is not dischargeable and the debtor is shielded by a corporate veil, but accepted the Claim because it had not been contested and holding the acceptance of the Claim was a Final Judgment giving rise to res judicata pursuant to *Siegel*, 143 F.3d 525, 528-31. Pet. App. 60a. Then the bankruptcy court issued a **JUDGMENT** which adjudged that: (1) Plaintiff has an allowed claim in this bankruptcy case subject to offset by any distribution in *In re Russ Fragala Landscape Corp.*, Case No. 20-73335; (2) Myer's claim is not non-dischargeable under 11 U.S.C. § 523(a)(2)(A); and Myer's claim is not non-dischargeable under 11 U.S.C. § 523(a)(6). Pet. App. 77a. Petitioner timely appealed the bankruptcy court's holdings that the debt was dischargeable and the debtor was shielded by a corporate veil, to the district court that identified it as Case 2:22-cv-05980-NJC. ("First Appeal").

On February 2, 2023, some four months after the First Appeal was filed, Respondent Pryor, filed a motion to expunge Myer's Claim, under a corporate veil

theory, requesting that the Claim be expunged in its entirety. **R. at 963-68.**

Petitioner explained to the bankruptcy court and to Respondent, multiple times in papers and during hearings, that it could not defend Respondent's motion under corporate veil or fraud theories because Petitioner had appealed those findings to the district court, thus the bankruptcy court did not have concurrent jurisdiction with the district court on those matters. **R. at 1042.**

However, Petitioner correctly argued that Respondent's motion was untimely because it was filed four months after the judgment was issued and did not comply with FRCP 60(b). **R. at 974-78**

The bankruptcy court issued an Order granting Respondents motion to expunge the Claim in its entirety (Expungement Order), but did not express any legal foundation in support, or any facts presented by Respondent supporting the Order. Pet. App. 78a. Petitioner appealed the Expungement Order to the district court identified it as Case 2:23-cv-03346-NJC. ("Second Appeal").

When considering the Second Appeal, the district court determined, in error, that Respondent Pryor timely filed his objection to the Claim, because Respondent was not bound to the Judgment the bankruptcy court issued accepting the Claim, because he was a nonlitigant in the Adv. Proc., so he did not have to file a motion to reconsider the Judgment. The district court relied heavily on *Taylor v. Sturgell*, 553 U.S. 880, 893-96 (2008) in support of its holding. Pet. App. 32a-36a.

The *Taylor* Court held that there are six exceptions to the rule against nonparty preclusion. *Id.* Petitioner does not concede that it does not meet any of the

first five exceptions, but respectfully submits to this Honorable Court that it is clearly excepted from the rule against nonparty preclusion, in the present case, by the sixth exception that states:

Sixth, in certain circumstances a special statutory scheme may "expressly foreclos[e] successive litigation by nonlitigants . . . if the scheme is otherwise consistent with due process." *Martin*, 490 U.S., at 762, n. 2, (1989). Examples of such schemes include bankruptcy and probate proceedings, see *ibid.*, *Taylor*, 553 U.S. at 895.

The *Taylor* Court cited to *Martin v. Wilks*, 490 U.S. 755, 762, n. 2 (1989). The *Martin* Court held:

This rule is part of our "deep-rooted historic tradition that everyone should have his own day in court." 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4449, p. 417 (1981) (hereafter 18 Wright). A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings. 2

[n. 2] We have recognized an exception to the general rule when, in certain limited circumstances, a person, although not a party, has his interests adequately represented by someone with the same interests who is a party. See *Hansberry v. Lee*, 311 U.S. 32, 41-42 (1940) ("class" or "representative" suits); Fed. Rule Civ. Proc. 23 (same); *Montana v. United States*, 440 U.S. 147, 154-155 (1979) (control of litigation on behalf of one of the parties in the litigation). Additionally, where a special remedial scheme exists expressly foreclosing successive litigation by nonlitigants, as for example in bankruptcy or probate, legal proceedings may terminate preexisting rights if the scheme is otherwise consistent with due process. See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 529-530, n. 10 (1984) ("[P]roof of claim must be presented to the Bankruptcy Court . . . or be lost"); *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, (1988) (nonclaim statute terminating unsubmitted claims against the estate). *Id.*

As is stated above, in its **Decision After Trial**, the bankruptcy court accepted the Claim because it had not been contested and held that the acceptance

of the Claim was a Final Judgment giving rise to res judicata, pursuant to *Siegel*, 143 F.3d 525, 528-31. *Supra*. The bankruptcy court's ruling identified a special remedial scheme that the *Taylor* court held is a special statutory scheme that may expressly foreclose successive litigation by nonlitigants. *Taylor*, 553 U.S. at 898. Myer's cited to this particular bankruptcy court finding in its oppositions to Pryor's motion to expunge. **R. at 980.**

However, when the district court analyzed the application of the *Taylor* Court's Sixth exception to the rule against nonparty preclusion, it held it is not applicable in the present case stating: "Sixth, Myer's has identified no statutory scheme that forecloses successive objections by nonlitigants to the Adversary Proceeding. And I am aware of no such authority." Pet App. 35a.

The district court did not consider that the bankruptcy court had identified a statutory scheme that forecloses successive objections by nonlitigants when the bankruptcy court held, in the **Decision After Trial**, that its acceptance of the Claim was a Final Judgment subject to res judicata, pursuant to *Siegel*. Pet. App. 70a. In his motion to expunge, Respondent cited to the **Decision After Trial**, as his main factual support of his position that Fragala was shielded by a corporate veil. **R. at 963-68.** The district court identified the motion to expunge in its *Opinion and Order*. Pet. App. 21a.

The district court affirmed the bankruptcy court Expungement Order. Petitioner appealed the district court's affirmation of the Expungement Order to the Second Circuit that assigned it Case: 24-2345 (24-2345).

The district court dismissed the First Appeal as moot because the bankruptcy court had issued the Expungement Order, which the district court affirmed, “thus there is no dispute as to whether Myer’s Claim satisfies the exception to discharge for ‘false representation’ or for ‘willful and malicious injury’...” Pet. App. 58a, 59a. Petitioner appealed the district court dismissal of the First Appeal to the Second Court that assigned it as Case: 24-2343.

Petitioner’s briefs to the Second Circuit regarding Case 24-2345 recited, *inter alia*, the factual and procedural backgrounds above described. Including that, in the Second Circuit, the holdings of the *EDP* Court control the present case because the present case arose over the question of considering the bankruptcy court’s allowance of the Claim as a final judgment and a predicate for res judicata.

On October 8, 2025, the Second Circuit issued its **AMENDED SUMMARY ORDER**, regarding 24-2345. It affirmed the district court’s affirmation of the bankruptcy court’s Expungement Order, in which, *inter alia*, it stated that the holdings of the *EDP* Court that Petitioner relied on had been modified citing to *Esquire Trade & Fin., Inc. v. CBQ, Inc.*, 562 F.3d 516, 520-21 (2d Cir. 2009) (citing *EDP Medical* for general res judicata test as applied to bankruptcy proceedings before noting that *Taylor* applies insofar as *Taylor* modifies *EDP Medical*’s privity analysis). Pet. App.3a.

On October 17, 2025, Petitioner filed **PETITION FOR PANEL REHEARING**, respectfully submitting that the Second Circuit is mistaken when it states that

*EDP* and *Esquire* courts held that the general res judicata test applied in the instant case. Both cases do cite to the general res judicata test but the *Esquire* case is not about a bankruptcy matter and the *EDP* court described the general res judicata test to be used in bankruptcy matters, with the exception that it is not to be used regarding an order allowing an uncontested proof of claim.

The *EDP* Court explained:

Although we have not had occasion to decide whether a bankruptcy court order allowing an uncontested proof of claim is a "final judgment" for res judicata purposes, the Fifth Circuit has held that it is. See *Baudoin*, 981 F.2d at 742. Moreover, the Ninth Circuit has held that a bankruptcy court's allowance of an uncontested proof of claim, even without a separate order, is a final judgment for res judicata purposes. See *Siegel v. Fed. Home Loan Mortgage Corp.*, 143 F.3d 525, 528-31 (9th Cir. 1998) (citing *Baudoin* with approval). We now join these two circuits in holding that a bankruptcy court order allowing an uncontested proof of claim constitutes a "final judgment" and is thus a predicate for res judicata. *EDP*, 480 F.3d 621, 625 (emphasis added).

Thus, pursuant to the Sixth exception of the *Taylor* Court's res judicata test, in the Second Circuit, acceptance of an uncontested proof of claim, by a court, is a "final judgment" for res judicata purposes.

The *EDP* Court specifically adopted the same case the bankruptcy court cited to in support of its allowance of the Claim being, *Siegel*, 143 F.3 at 528-31, which holds:

A claim . . . , proof of which is filed under section 501 of this title [Title 11], is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a) (emphasis added). If there is an objection, the court must hold a hearing and then it "shall allow" the claim to the extent proper. 11 U.S.C. § 502(b) (emphasis added). Of course, if the court formally actually allows the claim, there can be little doubt about the ultimate res judicata effect of that

allowance. But it is equally clear that when a claim is "deemed allowed" it has the same effect.

...we see § 502(a) as a recognition of the fact that people can raise objections and litigate them, if they see something wrong with a claim, but if they do not, the claim will be treated in all respects as a claim allowed by the court itself. In short, the validity of the claim has been determined on the merits, and attacks upon it that "could have been asserted" cannot be raised in later proceedings. *In re INTL Nutronics*, 28 F.3d at 969.

*Siegel*, 143 F.3d 525, 530 (emphases added).

It is noteworthy that the *Siegel* Court explained that when the subject proof of claim was filed the trustee, as a party in interest, could have raised objections but did not and that the allowance or disallowance of a claim in bankruptcy is binding and conclusive on all parties or their privies, and being in the nature of a final judgment, furnishes a bases for a plea of res judicata. *Id.* 528-29.

Until the present case, no Circuit has disagreed with the *EDP* holding, as above described.

The Second, Fifth, Sixth and Ninth Circuits have each held that an uncontested proof of claim that is allowed pursuant to 11 U.S.C. § 502(a) is a final judgment on the merits for the purposes of res judicata. See *EDP Medical Comput. Sys., Inc. v. United States*, 480 F.3d 621, 627 (2d Cir. 2007); *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 530-31 (9th Cir. 1998); *Matter of Baudoin*, 981 F.2d 736, 742 (5th Cir. 1993). And the First Circuit has assumed as much. See *Giles World Mktg., Inc. v. Boekap Mfg., Inc.*, 787 F.2d 746, 747-48 (1st Cir. 1986). No circuit has held otherwise. *Trs. of Operating Eng'rs Local 324 Pension Fund v. Bourdow Contr., Inc.*, 919 F.3d 368, 381(2019 6th Circuit). (Emphasis added.)

Pursuant to the aforementioned reasons, Petitioner respectfully submits that the Second Circuit erred when it affirmed the district court's affirmation of the bankruptcy court's Expungement Order.

### *Erroneous Affirmation of First Appeal*

On October 7, 2025, the Second Circuit issued a Summary Order regarding Case: 24-2343, affirming the district court's dischargeability appeal, Case No. 24-2345, as moot, pursuant to, *inter alia*, *Fox v. Board of Trustees of the State Univ.*, 42 F.3d 135, 140, (2d Cir. 1994) ("When a case becomes moot, the federal courts lack subject matter jurisdiction over the action.") Pet. App. 8a.

On October 8, 2025, the Second Circuit issued its Amended Summary Order, in Case No. 24-2345, affirming the bankruptcy court's April 26, 2023 decision to expunge Appellant's Proof of Claim in its entirety. Pet. App. 1a.

On October 20, 2025, Petitioner filed its Appellant's Petition for Panel Rehearing in Case No. 24-2345 explaining that the Court had misinterpreted controlling Second Circuit Precedent such as *EDP*, 480 F.3d 621 and *Taylor*, 553 U.S. at 898. On October 30, 2025, the Second Circuit denied Appellant's petition for panel rehearing in Case No. 24-2345, with no explanation. Pet. App. 7a.

However, the Second Circuit's holding that Myer's appeal of the Expungement Order, is moot, in and of itself, because Myer's has today filed its Petition for Writ of Certiorari in Case Number 24-2345.

The Second Circuit holds that the mootness doctrine will not apply if the litigant's interest in the outcome continues to exist throughout the life of the lawsuit, including the pendency of the appeal. See *Fox*, 42 F.3d 140.

Thus, because Petitioner has filed a Petition for Writ of Certiorari, regarding the Second Appeal in Case No. 24-2345, the mootness doctrine does not apply.

## REASONS FOR GRANTING WRIT

### A. The Decisions below Are contrary To This Court's Precedent

When considering the Second Appeal, the district court determined that Respondent Pryor timely filed his objection to the Claim, because Respondent was not bound to the Judgment the bankruptcy court issued accepting the Claim, because he was a nonlitigant in the Adv. Proc., so he did not have to file a motion to reconsider the Judgment. The district court relied heavily on *Taylor v. Sturgell*, 553 U.S. 880, 893-96 (2008) in support of its holding. Pet. App. 32a-37a.

The *Taylor* Court held that there are six exceptions to the rule against nonparty preclusion. *Id.* Petitioner respectfully submits that it is clearly excepted from the rule against nonparty preclusion, in the present case, by the sixth exception that states:

"Sixth, in certain circumstances a special statutory scheme may "expressly foreclos[e] successive litigation by nonlitigants . . . if the scheme is otherwise consistent with due process. Examples of such schemes include bankruptcy and probate proceedings, see *Taylor*, 553 U.S. at 895 (internal citations omitted).

In its **Decision After Trial**, the bankruptcy court accepted the Claim because it had not been contested and held that the acceptance of the Claim was a Final Judgment giving rise to res judicata, pursuant to *Siegel*, 143 F.3d 525, 528-31. *Supra.* The bankruptcy court's ruling identified a special remedial scheme that the *Taylor* court held is a special statutory scheme that may expressly foreclose successive litigation by nonlitigants. *Taylor*, 553 U.S. at 898. Myer's cited to this

particular bankruptcy court finding in its oppositions to Pryor's motion to expunge.

**R. at 980.**

However, when the district court analyzed the application of the *Taylor* Court's Sixth exception to the rule against nonparty preclusion, it held it is not applicable in the present case stating: "Sixth, Myer's has identified no statutory scheme that forecloses successive objections by nonlitigents to the Adversary Proceeding. And I am aware of no such authority." Pet App. 35a.

The district court did not consider that the bankruptcy court had identified a statutory scheme that forecloses successive objections by nonlitigants when the bankruptcy court held, in the **Decision After Trial**, that its acceptance of the Claim was a Final Judgment subject to res judicata, pursuant to *Siegel. Subra*. In his motion to expunge, Respondent cited to the **Decision After Trial**, as his main factual support of his position that Fragala was shielded by a corporate veil. R. 963-68. The district court identified the motion to expunge in its *Opinion and Order*. Pet. App. 20a.

The district court affirmed the bankruptcy court Expungement Order. Petitioner appealed the district court's affirmation of the Expungement Order to the Second Circuit that assigned it Case: 24-2345 (24-2345).

The district court dismissed the First Appeal as moot because the bankruptcy court had issued the Expungement Order, which the district court affirmed, "thus there is no dispute as to whether Myer's Claim satisfies the exception to discharge for 'false representation' or for 'willful and malicious injury'..." Pet. App. 58a, 59a.

Petitioner appealed the district court dismissal of the First Appeal to the Second Court that assigned it as Case: 24-2343.

Petitioner's briefs to the Second Circuit regarding Case 24-2345 recited, *inter alia*, the factual and procedural backgrounds above described. Including that, in the Second Circuit, the holdings of the *EDP* Court control the present case because the present case arose over the question of considering the bankruptcy court's allowance of the Claim as a final judgment and a predicate for res judicata.

On October 8, 2025, the Second Circuit issued its **AMENDED SUMMARY ORDER**, regarding 24-2345. It affirmed the district court's affirmation of the bankruptcy court's Expungement Order, in which, *inter alia*, it stated that the holdings of the *EDP* Court that Petitioner relied on had been modified citing to *Esquire*, 562 F.3d 516, 520-21 (citing *EDP Medical* for general res judicata test as applied to bankruptcy proceedings before noting that *Taylor* applies insofar as *Taylor* modifies *EDP Medical's* privity analysis). Pet. App. 3a.

On October 17, 2025, Petitioner filed **PETITION FOR PANEL REHEARING**, respectfully submitting that the Second Circuit is mistaken when it states that *EDP* and *Esquire* courts held that the general res judicata test applied in the instant case. Pet. App. 3a. Both cases do cite to the general res judicata test but the *Esquire* case is not about a bankruptcy matter and the *EDP* court described the general res judicata test to be used in bankruptcy matters, with the exception that it is not to be used regarding an order allowing an uncontested proof of claim. *EDP*, 480 F.3d 621, 625.

Thus, if the below holding of the Second Circuit stands, it will be the first circuit to hold that acceptance of an uncontested proof of claim is a final judgment, for res judicata purposes, only applies to the parties of the procedure from which the holding arose.

**B. If the below Decisions Stand, There will be a Division Among Federal Courts of Appeals Regarding Court's Acceptance of Plans Because they have not Been Contested**

The *EDP* Court held that "...a bankruptcy court order allowing an uncontested proof of claim is a "final judgment" and is thus a predicate for res judicata..." *EDP*, 480 F.3d 625.

The *EDP* Court specifically adopted the same case the bankruptcy court cited to in support of its allowance of the Claim being, *Siegel*, 143 F.3 at 528-31, which holds:

Freddie Mac filed two proofs of claim against Siegel in the bankruptcy proceeding. One related to the Windbell property and the other to the Dalton Place property. Siegel did not file objections to those proofs of claim. Nor did the bankruptcy trustee.

A claim . . . , proof of which is filed under section 501 of this title [Title 11], is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a) (emphasis added)... Of course, if the court formally actually allows the claim, there can be little doubt about the ultimate res judicata effect of that allowance. But it is equally clear that when a claim is "deemed allowed" it has the same effect.

...we see § 502(a) as a recognition of the fact that people can raise objections and litigate them, if they see something wrong with a claim, but if they do not, the claim will be treated in all respects as a claim allowed by the court itself. In short, the validity of the claim has been determined on the merits, and attacks upon it that "could have been asserted" cannot be raised in later proceedings. *Siegel*, 143 F.3d 525, 528-30 (internal citations omitted) (emphases added).

“...we read our prior holdings to establish that an order allowing a proof of claim is, likewise, a final judgment. *In re Baudoin*, 981 F.2d 736, 742.

As stated, if the below holding stands, the Second Circuit will become the first circuit to find that when a court allows a claim, because it has not been contested, the court's acceptance of the claim would only attach to the parties to the procedure from which the allowance arose. Thus, the allowance of the claim would not be a final judgment subject to *res judicata*, because any of the creditors that were not parties to said procedure could file a reconsideration of the court's allowing the claim, pursuant to FRBP Rule 3008, at any time in the future. The Second Circuit's holding is directly contrary to this Court's holding in *Taylor*, its own holding in *EDP*, the Ninth Circuit's holding in *Siegel* and the Sixth Circuit's holding in *Bourdou*.

The Second Circuit's holding below deprived Myer's of its fundamental due process rights of participating in the claim and its rights to appeal the lower courts' holdings.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Date: Date: January 26, 2026

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_Robert G. Fiore

**Robert G. Fiore**

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Counsel for Petitioner

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,  
TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS**

1. I certify that this **Petition for Writ for Certiorari** complies with the type-volume limitation of Supreme Court Rule 33 because: it contains 6589 words of text, excluding the parts of the brief exempted by Rule 33(d).

2. This Petition complies with the typeface requirements and because it has been prepared in proportionally spaced typeface using Microsoft Word 2013, in Century Schoolhouse, font size 12.

## CERTIFICATE OF SERVICE

The undersigned certifies that on January 27, 2026, a copy of Petitioner's **PETITION FOR WRIT OF CERTIORARI** and a copy **PETITIONER'S APPENDIX TO PETITION FOR WRIT OF CERTIORARI** was served by depositing same, enclosed in a properly addressed postage-paid envelope, in an official depository under the exclusive care and custody of the United States Postal service within the State of Maryland, upon; Mark E. Cohen, Esq., C/O Pryor & Mandelup, L.L.P., 675 Old Country Road, Westbury, New York 11590 and Russell Fragala, 28 Arbor Field Way, Lake Grove, NY 11755.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Robert G. Fiore

No. 26-\_\_\_\_\_

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
**MYER'S LAWN CARE SERVICES, INC.**

*Petitioner*

v.

**ROBERT L. PRYOR, TRUSTEE and RUSSELL FRAGALA**

*Respondents*

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

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**CERTIFICATE OF SERVICE TO  
PETITION FOR WRIT OF CERTIORARI**

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Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Robert G. Fiore

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