No. 26-194

IN THE

Supreme Court of the United States

MEI GUO AND HK INTERNATIONAL FUNDS INVESTMENTS (USA) LIMITED, LLC,

Petitioners,

v.

LUC A. DESPINS, CHAPTER 11 TRUSTEE,

Respondent.

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

REPLY BRIEF FOR THE PETITIONERS

STEPHEN M. KINDSETH
Counsel of Record
DANIEL A. BYRD
ZEISLER & ZEISLER, P.C.
10 Middle Street, 15th Floor
Bridgeport, CT 06604
(203) 368-4234
skindseth@zeislaw.com

Counsel for Petitioners

CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT i

TABLE OF CONTENTS..... ii

TABLE OF CITED AUTHORITIES iii

REPLY BRIEF FOR THE PETITIONERS 1

I. The Trustee Cannot Reconcile the Conflicting Decisions 2

II. The Trustee's Merits Defense Assumes the Authority in Dispute 5

III. This Case Is an Ideal Vehicle to Resolve the Conflict 7

CONCLUSION 11

TABLE OF CITED AUTHORITIES

Page

Cases

Baillie Lumber Co. v. Thompson,
391 F.3d 1315 (11th Cir. 2004) 2

Brennan v. Slone (In re Fisher),
296 F. App'x 494 (6th Cir. 2008) 4

Butner v. United States,
440 U.S. 48 (1979) 10

Caplin v. Marine Midland Grace Trust Co.,
406 U.S. 416 (1972) 4, 5, 6

Chase Manhattan Bank, N.A. v. Celotex Corp.,
56 F.3d 343 (2d Cir. 1995) 9

Dewsnup v. Timm,
502 U.S. 410 (1992) 7

Gordon v. Harman (In re Harman),
520 B.R. 906 (Bankr. N.D. Ga. 2014) 3

Harrington v. Purdue Pharma L.P.,
603 U.S. 204 (2024) 1

In re Ozark Restaurant Equipment Co.,
816 F.2d 1222 (8th Cir. 1987) 1, 3, 4, 9

In re Teknek, LLC,
563 F.3d 639 (7th Cir. 2009) 3

Cited Authorities

Page

In re Whittaker, Clark & Daniels, Inc.,
176 F.4th 241 (3d Cir. 2026). 3, 10, 11

Ingalls v. Gressett (In re Bradley),
326 F. App'x 838 (5th Cir. 2009) 4

Koch Refining v. Farmers Union Central Exchange, Inc.,
831 F.2d 1339 (7th Cir. 1987). 1, 3

Lewis v. Manufacturers National Bank,
364 U.S. 603 (1961). 5, 7

Long v. McGlon,
263 F. Supp. 96 (D.S.C. 1967) 5, 6

Manichaean Cap., LLC v. Exela Techs., Inc.,
251 A.3d 694 (Del. Ch. 2021). 8

Nemaizer v. Baker,
793 F.2d 58 (2d Cir. 1986) 9

Reid v. Wolf (In re Wolf),
644 B.R. 725 (N.D. Ill. 2022). 3

Stinson v. United States,
508 U.S. 36 (1993). 8

Stodd v. Goldberger,
73 Cal. App. 3d 827 (1977). 6

Cited Authorities

Page

United States v. Whiting Pools, Inc.,
462 U.S. 198 (1983) 9

Statutes and Other Authorities

11 U.S.C. § 110 (1972) 6

11 U.S.C. § 363 9

11 U.S.C. § 363(b)(1) 9

11 U.S.C. § 363(c)(1) 9

11 U.S.C. § 541(a) 1, 2, 3, 4, 8, 10, 11

11 U.S.C. § 541(a)(1) 3

11 U.S.C. § 542(a) 9

11 U.S.C. § 544 . . . . . .5, 9

11 U.S.C. § 544(a) 1, 2, 3, 4, 5, 6, 7, 10, 11

11 U.S.C. § 544(a)(1) 5

Jonathan M. Landers, *A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy*, 42 U. Chi. L. Rev. 589 (1975) 5

REPLY BRIEF FOR THE PETITIONERS

The petition presents a longstanding circuit conflict over the scope of Bankruptcy Code § 544(a). Nearly forty years ago, the Eighth Circuit in *Ozark Restaurant* held that the provision did not authorize bankruptcy trustees and debtors in possession to prosecute claims belonging to creditors generally. Months later, the Seventh Circuit in *Koch Refining* stated the opposite. The decision below perpetuates that conflict. The Trustee's effort to reconcile the decisions conflates the bankruptcy estate's ownership under § 541(a) with the distinct question of federal statutory authority conferred upon trustees and debtors in possession pursuant to § 544(a). Br. in Opp. 3, 11–16.

The Trustee does not dispute the importance of that question. Like *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), this case concerns the Code's limits on authority over claims belonging to creditors rather than the debtor. Here, the question is whether § 544(a) authorizes the Trustee to assert control over creditor-owned state-law claims against third parties—and to prosecute, settle, or release them— because those claims are held generally by creditors.

The amicus shows what is at stake. Just three weeks after *Kwok*, the bankruptcy court relied on its holding to approve *Vanderbilt Minerals, LLC*'s settlement releasing creditors' alter ego and successor liability claims against its nondebtor affiliates. Amicus Br. 13–14. Those creditors included victims of asbestos-containing talc produced by Vanderbilt Minerals' predecessor, and both creditors and the United States Trustee objected. *Id.* at 2, 12–14. Preserving direct claims does not answer whether § 544(a)

authorizes control over the creditor-owned claims the settlement released. Br. in Opp. 21 n.8. Nor does the scope of that authority depend on how this Trustee exercises it. The same authority permits a debtor in possession to settle creditor-owned claims against its own affiliates. Br. in Opp. 22.

The Trustee treats "rights and powers" as self-evident authority to take over creditors' causes of action, despite decades of debate even predating the Code. But the statute ties those "rights and powers" to specified creditor statuses. It confers the rights arising from that status, not every claim a creditor with that status might possess. The strong-arm power's history and purpose reinforce that distinction.

This case squarely presents the disputed statutory question. The Second Circuit sustained the Trustee's authority under § 544(a) and left his alternative reliance on § 541(a) unresolved. The alternative theories face substantial obstacles, and some were never alleged below. They can be addressed on remand. This Court should grant the petition and resolve the conflict among the circuits.

I. The Trustee Cannot Reconcile the Conflicting Decisions.

The conflict the Trustee denies has been recognized by courts for decades. *See, e.g., Baillie Lumber Co. v. Thompson*, 391 F.3d 1315, 1319 n.4 (11th Cir. 2004). As recently as this year, the Third Circuit identified appellate decisions casting doubt on the same § 544(a) theory adopted below, while declining to resolve the issue because

§ 541(a) supplied an independent ground for decision. *In re Whittaker, Clark & Daniels, Inc.*, 176 F.4th 241, 253 n.5 (3d Cir. 2026). That judicially recognized disagreement rests on opposing constructions of the statute: the Eighth Circuit held that § 544(a) does not authorize a trustee to prosecute general creditor alter-ego claims; the Second Circuit held that § 544(a) does, relying on the Seventh Circuit's reasoning in *Koch Refining*. *Compare In re Ozark Restaurant Equipment Co.*, 816 F.2d 1222, 1228–30 (8th Cir. 1987), *with* Pet. App. 9a–14a (relying on *Koch Refining v. Farmers Union Central Exchange, Inc.*, 831 F.2d 1339, 1348–49 (7th Cir. 1987)). Lower courts have been similarly split. *Compare Gordon v. Harman (In re Harman)*, 520 B.R. 906, 910–12 (Bankr. N.D. Ga. 2014) (following *Ozark Restaurant*), *with Reid v. Wolf (In re Wolf)*, 644 B.R. 725, 743 (N.D. Ill. 2022) (citing *In re Teknek, LLC*, 563 F.3d 639, 646 (7th Cir. 2009), relying on *Koch Refining*).

The Trustee attempts to reconcile those holdings by conflating two distinct inquiries: whether the claim belongs to the debtor under state law and therefore enters the estate under § 541(a)(1), and whether § 544(a) independently authorizes the trustee to prosecute a creditor-owned claim. Br. in Opp. 11–16. *Ozark Restaurant* answered both. It held that Arkansas law assigned the alter-ego claim to creditors, not the debtor corporation, thereby foreclosing the § 541(a) route. 816 F.2d at 1225–26. It then separately rejected the trustee's asserted authority under § 544(a) to pursue that creditor-owned claim. *Id.* at 1226–30.

The Trustee's reliance on *Ozark Restaurant*'s description of the claim as "personal to the corporate creditors" addresses ownership, not the separate holding

under § 544(a). Br. in Opp. 11–12. That description distinguishes creditor-owned claims from debtor-owned claims, not general injuries from injuries unique to a particular creditor. Calling the claim here a "general" reverse veil-piercing claim therefore supplies no distinction: the Eighth Circuit expressly rejected § 544(a) authority to assert "general causes of action, such as the alter ego claim." *Ozark Restaurant*, 816 F.2d at 1228.

The Trustee's attempt to distinguish the unpublished decision in *Ingalls v. Gressett (In re Bradley)*, 326 F. App'x 838 (5th Cir. 2009), fails for the same reason. Br. in Opp. 13. *Bradley*'s discussion of Texas law addressed whether the claim was property of the bankruptcy estate under § 541(a). 326 F. App'x at 839. Its separate analysis of § 544(a) expressly agreed with *Ozark Restaurant* that the statute did not supersede the holding in *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972) that "a trustee lacks authority to assert a claim against a third party that does not comprise part of the bankruptcy estate." *Bradley*, 326 F. App'x at 839. The Trustee acknowledges that the Sixth Circuit in *Brennan v. Slone (In re Fisher)*, 296 F. App'x 494, 505 (6th Cir. 2008), held to the contrary. Br. in Opp. 13.

Calling *Ozark Restaurant* a relic of a "bygone era" does not reconcile its holding with the decision below. Br. in Opp. 15. It explains why the Trustee believes one side of the conflict is wrong—not why the conflict requires no resolution. The courts of appeals thus give opposite answers to the same question of federal statutory authority, and the decision below perpetuates a conflict that decades of litigation have failed to resolve. Only this Court can supply a uniform rule.

II. The Trustee's Merits Defense Assumes the Authority in Dispute.

The Trustee's merits defense rests on reading the "rights and powers" of a judicial lien creditor to encompass claims held generally by creditors against third parties. But the text specifies a creditor extending credit at the commencement of the case and obtaining a judicial lien "with respect to such credit." § 544(a)(1). A dictionary definition of "rights" does not answer which rights Congress conferred through that specified relationship. Br. in Opp. 17. The distinction is between rights arising from lien-creditor status and claims a creditor with that status might otherwise possess. The strong-arm power's history, pre-Code practice, *Caplin*, and the legislative history of § 544 support the former construction. Pet. 16–18.

The grant of creditor rights and powers predates the Code. The 1910 provision conferred "rights, remedies, and powers," language carried forward in the predecessors to § 544(a). *Lewis v. Manufacturers National Bank*, 364 U.S. 603, 605–07 (1961). Yet the Trustee identifies no pre-Code judicial decision construing that provision to authorize a trustee to prosecute general creditor-owned claims against third parties. Br. in Opp. 19. A commentator's proposed reading of that provision—offered "[d]espite" the admitted "lack of supporting legislative history"—does not establish a settled judicial practice that Congress carried forward. *See* Jonathan M. Landers, *A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy*, 42 U. Chi. L. Rev. 589, 615–16 & n.82 (1975).[1]

1. Landers's reliance on *Long v. McGlon*, 263 F. Supp. 96, 98 (D.S.C. 1967), does not establish a settled pre-Code practice.

Like the panel below, the Trustee distinguishes *Caplin* as involving particularized claims of debenture holders. Br. in Opp. 19. But this Court did not rest its statutory analysis on a distinction between personal and general creditor claims. Rather, it found no authority for a trustee to "assume the responsibility of suing third parties on behalf of debenture holders," including in former 11 U.S.C. § 110, which contained § 544(a)'s predecessor. *Caplin*, 406 U.S. at 428. That reasoning turns on the absence of statutory authority, not on whether creditors' claims are characterized as general.

The Trustee reads "rights" in § 544(a) to encompass causes of action a hypothetical judicial lien creditor could bring under state law. Br. in Opp. 17–20. That reading has no textual stopping point. Trustees lack authority to assert individual creditors' claims for harms personal to them, yet § 544(a) neither expressly includes "general" claims nor excludes "personal" ones.

The Trustee derives that distinction instead from the creditor's "hypothetical" status. Br. in Opp. 20. But the hypothetical statuses serve the strong-arm power's

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Stodd v. Goldberger, 73 Cal. App. 3d 827, 833–36 (1977), surveyed and distinguished every decision the trustee cited, including *Long*, which involved injury to the corporation and discussed broader § 70(c) authority only in *dicta*. Relying on contrary authority and § 70(c)'s amendments and legislative history, *Stodd* held that the expanded powers concerned marshaling estate assets, not prosecuting creditor-owned claims against third parties in which the debtor had no interest. *Id.* at 834–36. The trustee sought liability for all corporate debts, not one creditor's particular injury. *Id.* at 832. That rejection of the asserted authority refutes any settled pre-Code practice.

established purpose: to enable trustees to defeat or subordinate unperfected security interests, unrecorded or secret liens, and other undisclosed interests ineffective against a lien creditor. *See Lewis*, 364 U.S. at 605–607; *see also* Pet. 17. That property-focused purpose explains Congress's choice of statuses; it supplies no distinction between general and personal claims and no representative authority over creditor-owned claims.

This Court has cautioned against reading vague Code language to work a major change in pre-Code practice without some discussion of that change in the legislative history. *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992). Congress considered—and declined to enact—just such a change. Proposed § 544(c), recommended by the Commission on the Bankruptcy Laws of the United States and passed by the House, would have expressly granted representative authority over creditor-owned causes of action. The Trustee concedes that § 544(c) would have included both general claims held by creditors as a class and specific claims held by individual creditors. Br. in Opp. 19. The former grant would have been unnecessary if § 544(a) already conferred that authority. Congress omitted § 544(c) from the enacted Code.

The Trustee's merits defense thus confirms the need for review. The circuits disagree over whether Congress conferred this consequential authority, and the opposition offers no basis to leave that disagreement unresolved.

III. This Case Is an Ideal Vehicle to Resolve the Conflict.

The Second Circuit sustained the Trustee's authority under § 544(a) and reserved his alternative reliance

on § 541(a). Pet. App. 9a n.3. Petitioners challenge that statutory holding, not the underlying alter-ego findings. This Court can therefore resolve the question presented, vacate the judgment if Petitioners prevail, and leave any remaining grounds for recovery to the lower courts. That is the ordinary course of appellate review. Possible alternative grounds on remand neither prevent review of the question presented nor themselves establish an independent basis for affirmance. *See Stinson v. United States*, 508 U.S. 36, 47–48 (1993). Here, moreover, each alternative faces substantial obstacles.

Section 541(a) supplies no settled alternative ground for affirmance. The bankruptcy court held that the debtor, and therefore the Trustee, could not assert an "insider" reverse veil-piercing claim under Delaware law. Pet. App. 102a. The district court invoked § 541(a) without analysis. Pet. App. 33a–34a. The Delaware Court of Chancery's decision in *Manichaean Cap., LLC v. Exela Techs., Inc.*, recognized "outsider" reverse veil-piercing but did not endorse "insider" reverse veil-piercing. 251 A.3d 694, 710, 714 (Del. Ch. 2021). The Trustee's theory thus raises a distinct question of Delaware law that the Second Circuit expressly reserved. Pet. App. 9a n.3, 10a–11a n.4.

The beneficial ownership theories likewise do not insulate the judgment from review. The second counterclaim, at issue here, sought through alter ego to recover both the Lady May and the $37 million pledged to secure its return. Petitioners timely returned the vessel.

The first counterclaim, based on collateral estoppel, concerned only the Lady May—not the $37 million. The Second Circuit treated that issue as moot after affirming

the broader alter ego judgment reaching both assets. Pet. App. 8a–9a n.2. That narrower theory cannot sustain the full judgment under review.

The remaining pleaded theories face a separate obstacle: to secure appellate finality, the Trustee withdrew the third, fourth, and fifth counterclaims "with prejudice." Pet. App. 7a–8a. That disposition bars relitigation of those claims. *Chase Manhattan Bank, N.A. v. Celotex Corp.*, 56 F.3d 343, 345 (2d Cir. 1995). Preclusion also extends to "all relevant issues which could have been but were not raised and litigated in the suit." *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986). The withdrawn third counterclaim asserted beneficial ownership of HK USA's membership interest. Pet. App. 94a. Direct beneficial ownership claims against the Lady May and the $37 million could also have been alleged and may likewise be precluded.

The Trustee's appeal to § 544's supposed "heartland" fares no better. Br. in Opp. 22–23. *Ozark Restaurant* expressly distinguished avoidance of a debtor's transfers from alter-ego liability, which "imputes the obligations of one party to another regardless of any 'transfers.'" 816 F.2d at 1229. The availability of an avoidance remedy does not establish authority to prosecute the distinct alter-ego claim on which the judgment rests. Moreover, the Trustee withdrew with prejudice his fraudulent transfer claims asserted in the fourth counterclaim. Pet. App. 7a–8a, 95a.

Code § 542(a) does not provide an alternative path. Turnover requires a basis for concluding that the disputed property is property the Trustee may use under § 363. *See* 11 U.S.C. §§ 363(b)(1), (c)(1), 542(a). *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 210–11 (1983), permitted

turnover of property seized before bankruptcy because the seizure had not transferred the debtor's ownership. Absent a controlling federal interest, state law ordinarily defines property interests. *Butner v. United States*, 440 U.S. 48, 55 (1979). Here, the court of appeals sustained the Trustee's entitlement through the alter-ego theory authorized under § 544(a). Pet. App. 9a–15a. The Trustee's capacity to sue as the estate's representative does not establish the estate's ownership of the property he seeks. *See* Amicus Br. 21 n.7. Calling the relief "turnover" supplies no independent basis for ownership and does not insulate the underlying statutory ruling from review.

The amicus agrees that this case cleanly presents the question and "is an entirely suitable vehicle," but suggests either granting review or holding the petition for *Whittaker*. Amicus Br. at 19–21. The proposed hold rests on the premise that *Whittaker* may resolve both cases. *Id*. at 20. But the Third Circuit in *Whittaker* confronted a successor liability claim under § 541(a) and left § 544(a) unresolved. 176 F.4th at 253 n.5. The Second Circuit here confronted an alter ego claim, decided § 544(a) and left § 541(a) unresolved. Pet. App. 9a n.3. This Court ordinarily leaves alternative grounds unaddressed by the court of appeals for remand. The amicus identifies no reason to depart from that course here.

A ruling in *Whittaker* that § 541(a) turns on the debtor's ability to bring the claim under state law would not answer the question presented here. *See* Amicus Br. 20–21. The Trustee himself explains that a decision in *Whittaker* rejecting estate ownership under § 541(a) would leave his asserted authority under § 544(a) intact. Br. in Opp. 24–25 n.9. The parties thus agree that resolving the

§ 541(a) question would not resolve the § 544(a) question presented here. This case presents the § 544(a) question *Whittaker* reserved, and the judgment below expressly rests on that disputed authority. The longstanding conflict, its substantial consequences, and the opportunity to resolve it directly warrant review here.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Stephen M. Kindseth
Counsel of Record
Daniel A. Byrd
Zeisler & Zeisler, P.C.
10 Middle Street, 15th Floor
Bridgeport, CT 06604
(203) 368-4234
skindseth@zeislaw.com

Counsel for Petitioners

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