No. 26-510

IN THE

SUPREME COURT OF THE UNITED STATES

6525 Belcrest Road, LLC,

Petitioner,

v.

Dewey, L.C.,

Respondent.

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

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioner 6525 Belcrest Road, LLC was the debtor in proceedings pending before the United States Bankruptcy Court for the Southern District of New York, the debtor-appellant on appeal before the United States District Court for the Southern District of New York, and the debtor-appellant on appeal before the United States Court of Appeals for the Second Circuit (the "Second Circuit").

Respondent Dewey, L.C. was the claimant-creditor in the bankruptcy court, the appellee in the district court, and the appellee in the Second Circuit.

Pursuant to Supreme Court Rule 29.6, Respondent states that it is a Maryland limited liability company, it has no parent corporation, and no publicly held corporation owns 10% or more of its membership interests.

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INTRODUCTION

The contract dispute at issue in this case presents no legitimate grounds for this Court's review of the Second Circuit's non-precedential summary order. The Court should deny the petition.

In the proceedings below before the bankruptcy court, the district court and the Second Circuit, each court correctly held that Respondent holds a claim against Petitioner pursuant to a lease governed by state law. Each court also correctly determined the "allowed" amount of Respondent's claim pursuant to federal bankruptcy law. After the submission of evidence and a full-day trial before the bankruptcy court, each court followed applicable and well-established legal precedent in reaching its decision.

The lower courts' rulings follow the legal analysis employed in every circuit to determine whether a creditor holds a claim against a debtor pursuant to a lease and, if so, the allowed amount of that claim. There is no "confusion" in the lower courts about these standards. The legal authorities on which Petitioner now relies only further support the lower courts' decisions, which rejected Petitioner's attempts to deny or reduce Respondent's valid claim.

There is no compelling reason for the Court to review this case, and the Court should deny the petition.

STATEMENT OF THE CASE

A. PETITIONER'S LEASE WITH RESPONDENT

Prior to Petitioner's voluntary commencement of a chapter 11 bankruptcy proceeding, Petitioner leased parking space from Respondent pursuant to a lease, [Pet. App. 3a], governed by Maryland law (the "Lease"). [Pet. 9, 27–28]. The Lease "was not scheduled to expire until June 30, 2045." [Pet. App. 80a].

Also prior to the chapter 11 bankruptcy case, Respondent assigned certain of its rights under the Lease to a third party, New Town Parking, LLC ("New Town"), but expressly retained the right to collect rent until August 30, 2022 (the "Revenue Transfer Date"), through an amendment to the assignment agreement between Respondent and New Town (the "Amended Assignment Agreement"). [Pet. 6; Pet. App. 3a].

B. PETITIONER'S BANKRUPTCY FILING

On May 19, 2021, fifteen months prior to the Revenue Transfer Date, Petitioner filed its chapter 11 bankruptcy petition (the "Petition Date"). [Pet. 7; Pet. App. 49a–50a]. On September 14, 2021, eleven months prior to the Revenue Transfer Date, Petitioner filed a motion with the bankruptcy court to reject the Lease and, thereby, accept the legal consequences of rejecting a lease in a bankruptcy case. [Pet. 7; Pet. App. 52a]. The bankruptcy court granted Petitioner's motion to reject the Lease on October 4, 2021, effective as of October 1, 2021—*i.e.*, more than ten months prior to the Revenue Transfer Date. [Pet. 7; Pet. App. 16a, 53a].

C. RESPONDENT'S CLAIM AGAINST PETITIONER

Following Petitioner's court-approved rejection of the Lease, Respondent filed an amended "proof of claim" with the bankruptcy court on November 2, 2021 (the "Proof of Claim"), which included amounts owed for "lease rejection damages." [Pet. 7–8]. Respondent calculated its damages "through the end of the lease term," but acknowledged that these damages were capped pursuant to 11 U.S.C. § 502(b)(6), such that its claim could not exceed "three years of base rent, real estate taxes and utilities" owed by Petitioner. [Pet. 8].

D. THE BANKRUPTCY COURT'S DECISION

On December 7, 2023, "after a full-day trial the bankruptcy court issued its decision allowing [Respondent's] claim at $2,428,675.83," which included "lease rejection damages at the statutory cap" pursuant to 11 U.S.C. § 502(b)(6), among other amounts due. [Pet. 10].

In its decision, the bankruptcy court rejected Petitioner's argument that the allowed claim should be awarded to New Town rather than Respondent—for two reasons in particular. First, as of the Petition Date, Respondent was the exclusive holder of a rent claim against Petitioner pursuant to the Lease and the Amended Assignment Agreement. [Pet. App. 66a–68a]. Second, "there is no dispute between New Town and [Respondent] on this contractual point. New Town . . . confirmed that [Respondent] owns the entire claim and that New Town has no interest in it." [Pet. App. 87a].

In addition to confirming that Respondent is the exclusive holder of the rent claim against Petitioner as a matter of Maryland law (*i.e.*, pursuant to the Lease and Amended Assignment Agreement, which are both governed by Maryland law), the bankruptcy court fully considered and calculated the amount of Respondent's claim.

The bankruptcy court's explicit calculation of the allowed claim appears on the last page of its decision. The allowed claim is comprised of the following components: (a) lease-rejection damages; (b) unpaid pre-bankruptcy rent; and (c) expenses owed to Respondent pursuant to an arbitration proceeding between the parties. [Pet. App. 92a].

Although Respondent's lease-rejection damages for the remaining term of the Lease exceeded $20 million,[1] the bankruptcy court correctly capped those damages at $2,602,119.73 pursuant to 11 U.S.C. § 502(b)(6). [Pet. App. 79a–82a, 92a]. The bankruptcy court also included $98,612.50 owed by Petitioner for unpaid pre-bankruptcy rent, [Pet. App. 79a, 92a], and $23,812.19 owed by Petitioner for arbitration expenses. [Pet. App. 90a, 92a].

From this total ($2,724,544.42), the bankruptcy court granted Petitioner an offset in the amount of $295,868.59 for "overpaid . . . taxes." [Pet. App. 90a–92a]. Thus, the bankruptcy court properly

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[1] In its Proof of Claim, Respondent demonstrated that its lease-rejection damages were $20,897,951.46, calculated as follows: (i) $16,617,500 of "base rent" through June 2045; (ii) $3,890,063.52 of "taxes remaining under the Lease"; and (iii) $390,387.94 of "utilit[y expenses] remaining under the Lease." [C.A. App. 1195].

determined that Respondent's allowed claim equaled $2,428,675.83, [Pet. App. 92a], and entered an order on December 7, 2023, which provides that the Proof of Claim submitted by Respondent "shall be allowed as a general unsecured claim in the amount of $2,428,675.83[.]" [Pet. App. 93a].

E. THE DISTRICT COURT'S REVIEW

On appeal, the district court affirmed the bankruptcy court's decision. [Pet. App. 23a, 26a–27a]. Regarding Respondent's ownership of the rent claim, the district court agreed that, pursuant to the Amended Assignment Agreement, Respondent was the exclusive holder of the rent claim against Petitioner. [Pet. App. 16a–17a]. The district court, like the bankruptcy court, observed that "[Respondent] and New Town—the actual parties to the Amended Assignment Agreement—are aligned in their understanding that, under the terms of the Amended Assignment Agreement, all claims for unpaid rent under the Lease . . . properly belong to [Respondent] and not to New Town." [Pet. App. 22a].

Regarding the amount of Respondent's claim, the district court rejected Petitioner's contention that Respondent was not entitled to lease-rejection damages, and held that "the bankruptcy court correctly followed" the provisions of 11 U.S.C. § 502(b)(6) by capping that component of Respondent's claim. [Pet. App. 21a–23a].

F. THE SECOND CIRCUIT'S REVIEW

On review of the district court's decision, the Second Circuit affirmed. [Pet. App. 8a]. The court of

appeals concluded that the Amended Assignment Agreement "gave [Respondent] the right to receive [Petitioner]'s payments for rent that accrued before the Revenue Transfer Date" and, because "[a]ll agree that the Revenue Transfer Date did not occur until after [Petitioner] became a Chapter 11 debtor," Respondent was "a creditor entitled to file a proof of claim." [Pet. App. 4a–5a].

The Second Circuit also held that "the bankruptcy court did not err in computing the amount of [Respondent]'s allowed claim" and "properly determined" the amount of Respondent's lease-rejection damages, including by capping those damages under 11 U.S.C. § 502(b)(6). [Pet. App. 5a–6a].

REASONS FOR DENYING THE PETITION

Petitioner has not presented any reason—compelling or otherwise—to grant a writ of certiorari to review the Second Circuit's non-precedential summary order.

This case concerns the fact-bound allowance of a bankruptcy claim, asserted by the exclusive holder of the claim, Respondent. As the three lower courts' decisions demonstrate, both individually and collectively, Petitioner's dispute turns on a question of contract interpretation.

Respondent was the holder of a claim against Petitioner pursuant to the Lease and Amended Assignment Agreement, both of which are governed by state law. In its Proof of Claim, Respondent explicitly identified each component of its claim and

the amounts owed. The bankruptcy court addressed each component and, without error, calculated the total amount of the allowed claim. Petitioner is asking this Court to grant a writ to correct perceived errors that did not occur and, regardless, have no implications beyond the two parties to this case.

I. THERE IS NO CONFLICT AMONG THE COURTS OF APPEALS

Petitioner admittedly "does not suggest that any court of appeals has decided a case on identical facts," and concedes that "[s]everal of the decisions" it invokes "are bankruptcy-court decisions" that do not "bear on the question" under Supreme Court Rule 10(a). [Pet. 29]. Nevertheless, Petitioner asserts the existence of a "methodological conflict," [Pet. 29], which is illusory.

First, the Fourth and Sixth Circuit rule Petitioner references—that a lessor's damages are computed under the lease and state law and then limited by 11 U.S.C. § 502(b)(6), *see In re Merry-Go-Round Enters., Inc.*, 180 F.3d 149, 161–62 (4th Cir. 1999); *In re Highland Superstores, Inc.*, 154 F.3d 573, 579 (6th Cir. 1998)—is precisely the sequence the lower courts followed.

The bankruptcy court expressly determined "the maximum amount of [an] allowed claim under section 502(b)(6)"; "whether . . . actual damages due to the rejection of the Ground Lease exceed the maximum allowable amount" under section 502(b)(6); and "whether [Respondent] properly may assert the entirety of the . . . rejection damages claim." [Pet. App. 80a]. The bankruptcy court recognized that the cap

"only applies if actual damages are higher than the capped amount." [Pet. App. 82a].

The result here is not the product of some different rule, analysis or approach. In its Proof of Claim, Respondent demonstrated that its lease-rejection damages were $20,897,951.46, *see supra* note 1, and each of the lower courts determined that Respondent's claim for lease-rejection damages must be capped pursuant to 11 U.S.C. § 502(b)(6). Moreover, Petitioner did not challenge Respondent's actual, pre-capped, lease-rejection damages. [Pet. App. 83a].

Second, none of the cases Petitioner cites address the question the courts below actually decided: whether the party that contractually retained the right to collect rent as of a debtor's bankruptcy filing may assert a claim for lease-rejection damages. For example, *Superior MRI Services, Inc. v. Alliance Healthcare Services, Inc.*, 778 F.3d 502 (5th Cir. 2015), is not a lease-rejection case, and the bankruptcy court and bankruptcy appellate panel decisions Petitioner cites—*In re Veal,* 450 B.R. 897 (B.A.P. 9th Cir. 2011); *In re Benyamin,* 596 B.R. 789 (Bankr. S.D.N.Y. 2019); *In re Minbatiwalla,* 424 B.R. 104 (Bankr. S.D.N.Y. 2010); *In re Lippold,* 457 B.R. 293 (Bankr. S.D.N.Y. 2011); *In re Mountainside Fitness Centers of Gilbert, LLC,* No. 10-23734, 2012 WL 13397377 (Bankr. D. Ariz. Mar. 7, 2012)—involve claimants who, unlike Respondent, could not show they held a claim against the debtor. The court in each of these cases applied the same uncontroversial principle the courts below applied: a claimant must demonstrate that it holds the right it asserts—here, pursuant to contracts governed by Maryland law.

Third, in the principal Maryland authority on which Petitioner relies, *SVAP II Pasadena Crossroads LLC v. Fitness International LLC*, 306 A.3d 748 (Md. App. Ct. 2023), the intermediate-appellate court permitted a seller-assignor to recover rents allocated to it under the parties' proration clause. [Pet. 17]. That is consistent with the judgment below, not in conflict with it.

II. THE PETITION PRESENTS NO IMPORTANT, UNRESOLVED QUESTION OF FEDERAL LAW

Stripped of its framing, the petition's question is about how to interpret a contract between Respondent and New Town—*i.e.*, the Amended Assignment Agreement. Petitioner says so itself, asking whether Respondent was the holder of a claim against Petitioner "within the meaning of [the Amended Assignment A]greement." [Pet. 18–19]. The construction of a private agreement under state law is not a question of federal law at all, much less an important one warranting this Court's review.

In any event, the question Petitioner presents is unlikely to recur. It arises only when (i) a landlord assigns a lease but expressly retains the right to collect rent due under the lease, (ii) the lessee files for bankruptcy before the date on which the assignee is entitled to collect rent, and (iii) a non-party to the lease assignment disputes whether the assignor or assignee should recover on the claim. Here, the two contracting parties agree that, pursuant to the Amended Assignment Agreement, Respondent holds the claim—and New Town does not. [Pet. App. 22a, 87a–89a].

Petitioner's invocation of the "integrity of the claims-allowance process" finds no support in this record. The statutory cap under 11 U.S.C. § 502(b)(6) is designed to prevent landlords from receiving a windfall at the expense of other creditors. But Petitioner is a reorganized debtor that "will pay . . . the claim in full," [Pet. App. 76a], and the total claim was capped regardless of how it could be theoretically divided between Respondent and New Town. The only "windfall" at stake in this case is the one Petitioner seeks from this Court: the disallowance of a claim that Respondent and New Town agree is exclusively owed to Respondent. [Pet. App. 89a ("[Petitioner] has no right to re-write other parties' contracts in order to achieve a windfall for itself.")].

Additionally, Petitioner's recurring complaint about the existence of the Amended Assignment Agreement, and when the document was first presented to the bankruptcy court, is both immaterial and foreclosed by the uniform findings of all three courts below. As the district court stated, the bankruptcy court determined that: the timing of the disclosure "did not change the fact that [Respondent] properly held a lease rejection claim against [Petitioner]"; Petitioner "was not injured" by it; and Petitioner's own counsel "agreed at trial that the Court cannot deprive [Respondent] of a claim" on this basis. [Pet. App. 19a]. The Second Circuit also held that neither equitable estoppel nor unclean hands barred the claim. [Pet. App. 7a–8a]. This issue was addressed, and found immaterial to the result, at every level.

III. THE DECISION BELOW DOES NOT CONFLICT WITH THIS COURT'S PRECEDENTS

Petitioner's stated premise—that the lower courts used 11 U.S.C. § 101(5) to displace state law—mischaracterizes the courts' decisions. The bankruptcy court, the district court and the Second Circuit did exactly what *Butner v. United States*, 440 U.S. 48 (1979), and *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co.*, 549 U.S. 443 (2007), direct: each court identified the contract between Respondent and New Town and the applicable state-law rules of construction to determine what right to payment Respondent held. [Pet. App. 67a (concluding that Respondent owned the "rights to receive rent payments" under the Amended Assignment Agreement); Pet. App. 16a–17a (applying Maryland rules of contract interpretation); Pet. App. 5a (holding that Respondent had the "right to all future rent payments under the circumstances presented here")].

Section 101(5) entered the analysis only in respect of an undisputed federal question: whether, as of the Petition Date, Respondent's claim included unmatured future rent. Section 101(5) answers that question in the affirmative. *See* 11 U.S.C. § 101(5)(A) ("The term 'claim' means . . . right to payment, whether or not such right is . . . matured[or] unmatured[.]"). Applying a contract term ("accrued") to a claim whose federal character is undisputed does not create a federal rule of decision displacing state law, and does not implicate *Rodriguez v. FDIC*, 589 U.S. 132 (2020).

Likewise, *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15, 20–21 (2000), has no application to this case. The lower courts, here, did not shift any burden. The bankruptcy court held a full trial, found that Petitioner never contested that actual losses exceeded the cap (which they did, as demonstrated by the Proof of Claim, *see supra* note 1), and declined to entertain an untimely post-trial damages theory because doing so would prejudice Respondent. [Pet. App. 83a–86a]. A party that does not dispute a factual issue at trial cannot claim in a certiorari petition that its opponent was relieved of the burden of proving it.

Petitioner's reliance on Federal Rule of Bankruptcy Procedure 3001(e)(1) also is misplaced. That rule governs who may file a proof of claim when a claim has been transferred. The lower courts held that Respondent retained the right to collect rent pursuant to the Amended Assignment Agreement. Accordingly, there was no "transfer" for the Rule to govern, and the Rule has no application to this case.

IV. THIS CASE IS NOT AN IDEAL VEHICLE FOR REVIEW OF SETTLED LEGAL PRINCIPLES APPLIED WITHOUT ERROR

For several reasons, this case is not one in which the Court should grant a writ of certiorari.

First, the Second Circuit held that Petitioner "waived" its argument concerning the amount of Respondent's allowed claim because it "never presented that argument at trial," and Petitioner "never disputed at trial that 'the lost revenues would exceed the maximum amount allowed by [11 U.S.C. §] 502(b)(6).'" [Pet. App. 5a–6a, n.1 (citing *In re Nortel*

Networks Corp. Sec. Litig., 539 F.3d 129, 132 (2d Cir. 2008))]. Petitioner's arguments depend on the very factual record Petitioner failed to make.

Second, the petition rests on theories and authorities never presented to the Second Circuit. This Court ordinarily does not decide questions that were neither pressed nor passed upon below. *See, e.g.*, *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this Court is "a court of review, not of first view"). The petition is built on *Butner*, *Travelers*, *Rodriguez*, and *Raleigh*, [Pet. 2–3, 13], yet Petitioner's briefs in the Second Circuit (and before the district court) cited none of them. The petition's Rule 3001(e)(1) standing theory, [Pet. 2, 4, 9, 23–26], also was not raised below, which is why "[n]o court below analyzed Rule 3001(e)(1)." [Pet. 26].

Third, the bankruptcy court stated that if New Town owned any part of Respondent's claim, it "would be inclined to permit New Town to file a claim" because Petitioner "has been on notice of the . . . claim at all times, and it would not be prejudicial to [Petitioner] to allow [it]." [Pet. App. 89a]. Petitioner's assertion that "[n]o alternative ground supports the judgment," [Pet. 35], overlooks this ruling entirely.

Fourth, the decision is a non-precedential summary order on non-recurring facts that a court of appeals has not previously confronted. [Pet. 29]. The Second Circuit's order "do[es] not have precedential effect." [Pet. App. 1a]. It binds no future panel and will not govern other cases. Petitioner's reliance on *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288 (2023), and *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023), is misplaced: each presented a clean,

recurring question of statutory meaning that had divided the lower courts. This case presents a dispute over a single, two-party contract, resolved on a record shaped in part by Petitioner's litigation strategies.

Fifth, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. That describes this petition. Petitioner does not dispute the governing principles that: state law and the parties' agreements define the right to payment; a claim includes unmatured rights; lease-rejection damages are capped by 11 U.S.C. § 502(b)(6); and a claimant must hold the right it asserts. The lower courts accepted each of these principles. Petitioner's disagreement is with how the courts have interpreted the provisions of the Amended Assignment Agreement. Three courts read the same contractual language the same way, consistent with the understanding of the actual parties to the contract, *i.e.*, Respondent and New Town. Petitioner, a stranger to that contract, offers a different reading that will not impact or change the amounts it owes pursuant to the Lease. A disagreement over the meaning of one sentence in a private agreement does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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