

13-935 WELLNESS INTERNATIONAL NETWORK V. SHARIF

DECISION BELOW: 727 F.3d 751

LOWER COURT CASE NUMBER: 12-1349

QUESTION PRESENTED:

In *Stern v. Marshall*, 131 S. Ct. 2594, 2620 (2011), the Court held that "in one isolated respect" Congress exceeded the limitations of Article III of the Constitution when it established the current framework under which bankruptcy courts decide matters. *Stern* framed the operative constitutional question as "whether the action at issue stems from the bankruptcy itself," and concluded that because the debtor Stern's state-law-based counterclaim against a creditor, Marshall, was "in no way derived from or dependent upon bankruptcy law" and would "exist[] without regard to any bankruptcy proceeding" the bankruptcy court could not constitutionally enter a final order in that action. *Id.* at 2618.

Since *Stern*, the lower courts have demonstrated considerable confusion in determining when an action "stems from the bankruptcy itself." Here, the United States Court of Appeals for the Seventh Circuit held that bankruptcy courts lack the constitutional authority to decide, in an action against the debtor, whether property in the debtor's possession is property of the bankruptcy estate under 11 U.S.C. § 541 because that determination also required the resolution of state-law issues. Pet. App. 45a-51a. The Seventh Circuit also held that Article III did not permit a bankruptcy court to exercise the judicial power of the United States to determine an action against a debtor who had consented to the exercise of that power by voluntarily filing his petition in bankruptcy court. *Id.* at 31a--45a. The Seventh Circuit's decision reflects, and exacerbates, the considerable confusion in the lower courts over when "the action at issue stems from the bankruptcy itself" and whether a debtor, after filing his petition in the bankruptcy court, may then object to the bankruptcy court's rulings against him on Article III grounds. As a practical matter, the Seventh Circuit's decision represents a crippling reduction of the bankruptcy courts' authority both because property of the estate determinations are often the most fundamental issues in a bankruptcy case and because state-law issues permeate all aspects of bankruptcy cases. The questions presented therefore are:

1. Whether the presence of a subsidiary state property law issue in a 11 U.S.C. § 541 action brought against a debtor to determine whether property in the debtor's possession is property of the bankruptcy estate means that such action does not "stem[] from the bankruptcy itself" and therefore, that a bankruptcy court does not have the constitutional authority to enter a final order deciding that action.

2. Whether Article III permits the bankruptcy courts to exercise the judicial power of the United States over claims against a debtor where the debtor has consented to the exercise of such judicial power by voluntarily filing for bankruptcy relief.

In addition, this case also presents the two questions currently before the Court in *Executive Benefits Insurance Agency v. Arkison*, 133 S. Ct. 2880 (2013) (No. 12-1200). Because of the procedural posture of *Executive Benefits*-there the district court reviewed the

bankruptcy court's summary judgment order *de novo*-it is possible that the Court may conclude that no constitutional violation occurred and thus, not reach the issues on which *certiorari* was granted. In such event, this case presents the opportunity to address those questions, about which there is also a split among the circuits:

3. Whether Article III permits the exercise of the judicial power of the United States by the bankruptcy courts on the basis of litigant consent, and if so, whether implied consent based on a litigant's conduct is sufficient to satisfy Article III.

4. Whether bankruptcy courts have the statutory authority to submit proposed findings of fact and conclusions of law for *de novo* review by a district court in a "core" proceeding under 28 U.S.C. § 157(b).

LIMITED TO QUESTIONS 1 AND 3 PRESENTED BY THE PETITION.
CERT. GRANTED 7/1/2014