No. 05-1171

In The Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for Camelot Medical Group, Inc., Profit Sharing Plan,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a bankruptcy court has subject matter jurisdiction to enter a money judgment when it concludes, in an adversary proceeding, that a debt which has been reduced to judgment in a state court is nondischargeable.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Norman F. Sokoloff, M.D., individually and as Trustee for Camelot Medical Group, Inc., Profit Sharing Plan, hereby opposes the Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.*

OPINIONS BELOW

Respondent adopts and incorporates by reference all opinions and orders below that are set forth in Appendices A-E to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

On November 18, 1988, Norman F. Sokoloff, M.D., individually and as trustee of Camelot Medical Group, Inc., Profit Sharing Plan, obtained a judgment against Robert Sasson in Santa Clara Superior Court on a cross-complaint for breach of a promissory note. The California Superior Court entered judgment against Sasson for $120,000, plus accrued interest and statutory costs.

Before Sokoloff could enforce the state court judgment, Sasson filed an ex parte motion for reconsideration and obtained a stay of enforcement pending determination

* On April 25, 2006, a Suggestion of Death and Substitution of Party was filed in this Court. Norman F. Sokoloff died on October 29, 2005. Accordingly, it was requested that his representative, Ilene Sokoloff, should be substituted as a party in this matter.

of the motion for reconsideration. The stay was granted subject to the condition that Sasson "not dissipate any assets except in the normal course of business." While the stay was in place and without informing the court of his actions, Sasson dissipated the majority of his assets through dissolution proceedings with his wife, purchase of a new property, creation of encumbrance on that property, and ultimately by payment to other creditors.

On March 3, 1989, the Santa Clara Superior Court denied Sasson's motion for reconsideration and entered a second judgment. An abstract of State Judgment II was recorded in Santa Clara County on April 3, 1989. By this time, however, Sasson had dissipated virtually all of his assets in violation of the state court's stay and State Judgment II was uncollectable.

On May 5, 1989, Sasson filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 301, 701-784, in the United States Bankruptcy Court for the Northern District of California. The judgment owed to Sokoloff was listed as entirely uncollectable because of Sasson's wrongful transfers of property while the state court stay was in effect. Sasson's bankruptcy schedule did not mention Sasson's recent transfer of assets.

Sokoloff filed an Adversary Proceeding to determine the nondischargeability of debt under 11 U.S.C. § 523(a)(6) and to deny the discharge under § 727(a)(2). Under 11 U.S.C. § 523(a)(6) of the Bankruptcy Code, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" shall not be dischargeable in bankruptcy. Under 11 U.S.C. § 727(a)(2), a debtor may not obtain a discharge if "the debtor, with intent to hinder, delay, or defraud a creditor . . . has

transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of the filing of the petition." 11 U.S.C. § 727(a)(2).

The bankruptcy court rejected the § 727(a)(2) claim, but found that Sasson's transfer of assets in violation of the state court stay constituted a willful and malicious injury under § 523(a)(6). The court entered a judgment for $148,142.46 plus costs and accruing interest. Sasson filed an appeal of this decision, but later dismissed it. Subsequently, both Sasson's bankruptcy and the adversary proceeding were closed by the bankruptcy court.

Sokoloff continued to pursue collection remedies in bankruptcy court. Sokoloff filed a notice of the judgment lien and recorded an abstract of judgment. Sokoloff then obtained a Writ of Execution to the United States Marshal and instructed the Marshal to levy on Sasson's wages. Sasson filed a claim of exemption, which the court granted in part.

In 2001, Sokoloff renewed the 1991 Judgment. The bankruptcy court issued an Abstract of Judgment for $239,160.42 on July 9, 2001, which was then recorded. Subsequently, the bankruptcy court granted Sasson's ex parte motion to reopen his Chapter 7 proceedings for sixty days. Sasson then filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to vacate the 1991 money judgment and to quash the 2001 abstract of judgment. In his motion, Sasson argued that the bankruptcy court lacked subject matter jurisdiction to enter a new federal money judgment and therefore the renewal of judgment and

abstract of judgment were void ab initio. The bankruptcy court denied the motion after a hearing.

Sasson filed a notice of appeal, which was referred to the Bankruptcy Appellate Panel. The Bankruptcy Appellate Panel affirmed the bankruptcy court's decision, holding that the bankruptcy court had jurisdiction both to enter the 1991 judgment of nondischargeability and to determine the amount of damages caused by Sasson's postjudgment conduct. Sasson appealed to the United States Court of Appeals for the Ninth Circuit, which affirmed the Bankruptcy Appellate Panel's decision.

REASON FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

THE SUPREME COURT SHOULD DENY THE PETITION FOR A WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS CORRECTLY FOUND THAT THE BANKRUPTCY COURT HAD JURISDICTION TO ENTER A MONEY JUDGMENT ON A DISPUTED STATE LAW CLAIM IN THE COURSE OF MAKING A DETERMINATION THAT THE CLAIM WAS NONDISCHARGEABLE.

The Petition for a Writ of Certiorari focuses on the issue of whether bankruptcy courts may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367. However, this case does not provide an appropriate vehicle for addressing this question because the bankruptcy court had jurisdiction, *independent of supplemental jurisdiction*, to render a monetary judgment in the course of making a determination that a debt was nondischargeable. This falls

within the bankruptcy court's jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

Indeed, before ever mentioning supplemental jurisdiction, the Court of Appeals explained that it was basing jurisdiction on the power of the bankruptcy court to issue judgments in cases properly before it. The Court of Appeals declared: "[T]he bankruptcy court clearly has the power under the Bankruptcy Code to determine whether a debt is nondischargeable, to 'determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof,' and to 'issue any order, process, or judgment that is necessary or appropriate in carrying out' the order of nondischargeability." *In re Sasson*, 424 F.3d 864, 868 (9th Cir. 2005).

The Court of Appeals stressed that the bankruptcy court's order fit within the scope of § 1334(b). The Court of Appeals explained: "A bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" *Id*. In addition, the Court of Appeals stressed that "[i]n addition, bankruptcy courts retain their traditional equitable powers under the Bankruptcy Code." *Id.* at 869.

Thus, without even needing to consider supplemental jurisdiction, the Court of Appeals was able to conclude: "Given the text and history of the Bankruptcy Code and the bankruptcy court's inherent equitable powers, it is clear . . . that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings." *Id.* at 870.

Therefore, this case does not provide an appropriate basis for this Court to consider whether bankruptcy courts

may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because the Court of Appeals found jurisdiction entirely apart from supplemental jurisdiction.

A. The Jurisdiction Of The Bankruptcy Court To Enter A Money Judgment In This Case Was Not Based On Supplemental Jurisdiction.

The key flaw in the Petition for Certiorari is its assumption that the bankruptcy court's jurisdiction was based on supplemental jurisdiction, rather than the bankruptcy court's jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases arising under title 11." 28 U.S.C. § 157(a). The Petition argues:

> "This dispute over the underlying nondischargeable debt does not fall within the 'arising under' or 'arising in' jurisdiction conferred by section 1334. Nor is it included within the 'related to jurisdiction', because such an action runs against the debtor personally, not against the estate. A judgment on such a debt can be enforced only against the debtor himself and those of his assets (such as post bankruptcy earnings) that fall outside the bankruptcy estate." Pet. at 14-15.

This argument is erroneous because Sokoloff had the same rights as any other creditor against Sasson's bankruptcy estate; the fact that Sokoloff's claim was nondischargeable gave him additional rights to look beyond Sasson's bankruptcy discharge to seek collection of his claim. To argue otherwise defies logic; why would a creditor that was defrauded, or the victim of an intentional tort, lose the right to participate in a distribution from the debtor's estate along with other creditors?

The case at bar arrived in the bankruptcy court in the form of an adversary complaint seeking to establish both the underlying claim and a determination that the claim was nondischargeable. The bankruptcy court unquestionably had subject matter jurisdiction over the nondischargeability question under 28 U.S.C. § 157(b)(2)(I), as a "core" matter. The bankruptcy court also had subject jurisdiction over the amount of the claim, under 11 U.S.C. § 157(b)(2)(B) and (O).

Therefore, this case did not require the Court of Appeals to consider, or provide an appropriate vehicle for this Court to decide, whether bankruptcy courts can exercise supplemental jurisdiction. Simply put, if the bankruptcy court here had "related to" jurisdiction to enter the money judgment, analysis of supplemental jurisdiction would not be necessary; any split in the Circuits on that issue would hence be irrelevant. The bankruptcy court did have "related to" jurisdiction because the anticipated outcome of the litigation in the Bankruptcy Court unquestionably altered the rights, obligations, and choices of action of the debtor. It established a claim against him and determined that claim would survive the bankruptcy discharge.

Moreover, it should be noted that the record is devoid of any information on the Sasson's bankruptcy estate; it is unknown if the Trustee administered it, or even if there was a distribution to creditors. But regardless, the litigation was part of the claims resolution process, which is a core purpose of the bankruptcy court and which always effects the "handling and administration" of the estate.

At the very least, this case is not an appropriate vehicle for this Court to decide whether bankruptcy courts

may exercise supplemental jurisdiction because there is no indication from the Court of Appeal's decision that supplemental jurisdiction was in any way necessary for the bankruptcy court's jurisdiction and decision.

The cases relied on by Sasson in attempting to demonstrate a conflict among the Circuits are distinguishable because unlike this case they did not involve jurisdiction that was "related to" the claim before the bankruptcy court. For example, Sasson several times cites to *In re Walker*, 51 F.3d 562 (5th Cir. 1995), as conflicting with the Ninth Circuit's opinion in this case. Pet. at 5, 11, 20. But in fact, the *Walker* court spoke of the bankruptcy courts as having broad jurisdiction to hear claims relating to the bankruptcy matter, exactly the conclusion of the Ninth Circuit. The Fifth Circuit explained: "As several courts have commented, "[t]here are . . . strong . . . arguments to support the position that the 'relate to' and 'arising in' jurisdictional components of § 1334(b) already allow bankruptcy courts to hear, to the extent Congress intended, all supplemental claims that have a logical relationship to an underlying bankruptcy proceeding." 51 F.3d at 573 (citations omitted). At most, the Fifth Circuit's decision in *Walker* stands for the proposition that supplemental jurisdiction cannot be used as an independent basis for bankruptcy court jurisdiction; it does not however contravene the argument that supplemental jurisdiction can be used to effectuate a bankruptcy court's order in a matter that is "related to" a matter properly before it.

Similarly, Sasson points to *In re Bobroff*, 766 F.2d 797 (3rd Cir. 1985), to illustrate the conflict among the Circuits. Pet. at 5, 11. But in *Bobroff*, while the claim was in favor of the debtor, the Third Circuit found that the particular claim was not property of the debtor's bankruptcy estate,

and it therefore could not have any conceivable effect on the bankruptcy estate. It was therefore not "related" to a claim before the bankruptcy court under § 1334(b) and is thus completely different from this case.

Petitioner's reliance on *In re Kubly*, 818 F.3d 643 (7th Cir. 1987), to illustrate a conflict is likewise misplaced. Pet. at 5, 11, 16. In *Kubly*, the matter before the bankruptcy court had absolutely no bearing on either the debtor or the bankruptcy estate; it was a dispute between two non-debtor parties and thus was not "related to" the bankruptcy court's jurisdiction. As the Seventh Circuit explained: "The proceeds belong to the Construction Co., the Bank, or the Department; the Kublys (the Debtors) have not claimed them. The Department did not seek anything of the Kublys; its grievance was with the Construction Co. and the Bank. And the resolution of the Department's dispute with the Bank cannot affect either the Kublys or their other creditors." 818 F.2d at 645.

Simply put, the Ninth Circuit in this case found that the bankruptcy court had jurisdiction because Sokoloff's claim was "related to" Sasson's bankruptcy petition. None of the cases cited by the Petitioner reject jurisdiction in this circumstance and thus this case does not pose a conflict warranting the Court's resolution.

B. The Bankruptcy Court Had Jurisdiction To Enforce A Money Judgment In This Case Pursuant To Its Inherent Equitable Powers.

The Court of Appeals also concluded that the bankruptcy court had inherent powers to enforce the money judgment here. 424 F.3d at 870. This is clearly correct: Once the bankruptcy court entered the money judgment, it

had jurisdiction to enforce that order under the authority of any federal court to vindicate its authority and effectuate its decrees. *See Kokkonen v. Guardian Life Insurance Co. of America,* 511 U.S. 375, 379-80 (1994).

Indeed, if the Court were to accept Sasson's argument in this context, a bankruptcy court would be rendered virtually impotent. It would not have jurisdiction to enter orders to enforce its decrees, and would therefore be unable to remedy violations of the automatic stay, discharge injunction, or contempt.

The bankruptcy court unquestionably had authority to hear Sokoloff's claim against Sasson for the unpaid judgment. Once Sasson filed for bankruptcy, that was the only forum where Sokoloff could seek redress for his claim. After the bankruptcy court found in favor of Sokoloff, surely it had the authority to enforce that judgment as part of its inherent powers without ever needing to invoke supplemental jurisdiction.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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