Wellness International Network, Ltd. v. Sharif, No. 13-935 (previously described in the July 1, 2014, Docket Report)

The Supreme Court held in *Stern v. Marshall*, 131 S. Ct. 2594, 2620 (2011), that bankruptcy courts "lack[] the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim" because such an act amounts to an exercise of the judicial power of the United States reserved to Article III courts. Thus, a "*Stern* claim" is "a claim designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter." *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165, 2170 (2014). Today, in *Wellness International Network, Ltd. v. Sharif*, the Supreme Court held that bankruptcy courts *do* have the authority to enter judgment on *Stern* claims that are before them by consent of the parties.

After obtaining $650,000 in sanctions against Sharif in a separate lawsuit, Wellness International Network ("WIN") filed an adversary proceeding in Sharif's Chapter 7 proceedings before the bankruptcy court, seeking both to prevent discharge of Sharif's debts and to obtain a declaratory judgment that a particular trust constituted Sharif's alter ego as a matter of state law. After Sharif failed to comply with its discovery orders, the bankruptcy court entered a default judgment in WIN's favor, which was affirmed by the district court. On appeal, the Seventh Circuit held in relevant part that the parties' consent could not confer authority on the bankruptcy court to issue a final judgment otherwise barred by *Stern*.

In an opinion by Justice Sotomayor, the Supreme Court reversed. The Court first explained that "[o]ur precedents make clear that litigants may validly consent to adjudication by bankruptcy courts." "The question here, then, is whether allowing bankruptcy courts to decide *Stern* claims by consent would 'impermissibly threate[n] the institutional integrity of the Judicial Branch.'" Based on its review of the statutory authority and institutional structure of bankruptcy courts, the Supreme Court concluded that allowing bankruptcy courts to adjudicate *Stern* claims with the consent of litigants "does not usurp the constitutional prerogatives of Article III courts." In particular, the Supreme Court noted that "[s]o long as [bankruptcy] judges are subject to control by the Article III courts, their work poses no threat to the separation of powers." *Stern* does not compel a different result, because that decision "turned on the fact that the litigant 'did not truly consent to' resolution of the claim against it in a non-Article III forum."

Finally, the Court held that a litigant's consent to adjudication by a bankruptcy court need not be express, but it does have to be knowing and voluntary. "[T]he key inquiry is whether 'the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case' before the non-Article III adjudicator." Accordingly, the Court remanded the case to the Seventh Circuit to decide "whether Sharif's actions evinced the requisite knowing and voluntary consent" and whether Sharif forfeited his *Stern* argument.

Chief Justice Roberts dissented, joined by Justice Scalia and joined in part by Justice Thomas. The Chief Justice argued that WIN's claim was not a *Stern* claim and that the Court therefore should not have reached the question whether bankruptcy courts may enter judgment on *Stern* claims when the litigants have consented. The Chief Justice further argued that private litigants cannot consent to have a bankruptcy court decide *Stern* claims because that would "impermissibly threaten the institutional integrity of the Judicial Branch" by permitting a non-Article III court to adjudicate an Article III claim. Justice Thomas also filed a separate dissenting opinion in which he criticized the majority opinion and the Chief Justice's dissent for not adequately considering a number of additional constitutional concerns.

Today's decision resolves an issue of practical significance in the administration of bankruptcy cases across the country—whether parties may consent to a bankruptcy court's entering of final judgments on *Stern* claims that were previously viewed as "core" or that otherwise lie at the heart of bankruptcy administration, such as fraudulent-transfer claims.

That issue having now been resolved, other issues will come to the fore that either predated or arise out of *Stern v. Marshall* and are likewise of critical importance to the day-to-day administration of bankruptcy cases. In fact, many such issues remain unresolved at the Supreme Court level and even at the level of many circuit courts, including: what constitutes implied consent to the bankruptcy court's entry of a final judgment on a *Stern* claim; the extent to which a proof of claim constitutes either implied consent or an independent basis for a bankruptcy court's ability to enter a final judgment on a *Stern* claim; and the extent to which there is a *Stern* claim when a case presents the question whether it is necessary to consider state or other nonbankruptcy laws in order to determine whether a particular asset constitutes property of the bankruptcy estate—in which case consent of the parties or some other recognized basis for bankruptcy-court jurisdiction would be needed before the bankruptcy court could enter a final judgment on that claim. This last issue was, in fact, one of the two on which the Supreme Court granted certiorari in *Wellness*—the case presented the question whether there was a *Stern* claim with respect to whether the property allegedly belonging to the trust actually belonged to Sharif and therefore to Sharif's bankruptcy estate—but the majority decided the case without reaching that question. These as-yet-unresolved issues will continue to be of some moment to bankruptcy practitioners.

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