CAUSE NO. 24-20238

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

In the Matter of JOHNNIE G. EICHOR
Debtor

Benson Scott Wyly doing business as SW Equipment Company Incorporated; Pam Dale Wyly
Appellants
v.
Johnnie G. Eichor, Appellee

ON APPEAL FROM
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CIVIL ACTION NO. 4:22-CV-3274

APPELLANT'S REPLY BRIEF

Respectfully Submitted

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PARTIES

Judge: Honorable George C Hanks, Jr., United States District Court Southern District of Texas.

Bankruptcy Judge: Honorable Jeffrey Norman

Appellants:

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Argument and Analysis

Reply Issue No. 1: No Dispute as to the Sufficiency of Discharge Order

1. Wylys argued the Discharge Order was not clear and specific to put them on notice that their actions in state court were barred. *In re Eichor*, 689 F.Supp. 3d 438,446 (S.D. Texas, 2023). Additionally, the Wylys argued that there was a fair ground of doubt as to whether the order barred the party's conduct. Court's interpret the "no fair ground of doubt" clause to mean there was no objectively reasonable basis for concluding that the Wylys' conduct might be lawful. *Taggart v. Lorenzen*, 139 S.Ct. 1795 (2019). Even cursory review of the Discharge Order revealed it was vague, ambiguous and unenforceable.

2. The Bankruptcy Court's Discharge Order did not grant a discharge under 11 U.S.C. § 524. The Discharge Order stated a Eichor was granted a discharge under 11 U.S.C. § 727. **ROA 24-20238.836-837.** However, the District Court erroneously affirmed the Bankruptcy Court citing 11 U.S.C. § 524(a). *In re Eichor*, 689 F.Supp. 3d at 446. It is a discharge order under 11 U.S.C. § 524 provides a statutory injunction. *In re Sandburg Financial Corp*., 446 B.R. 793, 803 (S.D.- Corpus Christi, 2011) "Section 524 of the Bankruptcy Code provides that an order discharging a debt in a bankruptcy case operates as an injunction against the commencement or continuation of

an action, the employment of process, or an act, to collect recover or offset any such debt as a personal liability." *In re Sandburg Financial Corp*., 446 B.R. at 803. Title 11 U.S.C. § 727 relates to exceptions and the revocation of a discharge order. *In re Bevis*, 242 B.R. 805, 808 (D. New Hampshire, 1999).

3. The Bankruptcy Court solely relied on the phrase, "the discharge order that was entered explains that creditors may not make any attempt to collect a discharged debt form the debtor personally" as the basis for contempt. **ROA 24-20238.21.** Wyly argued the Discharge Order was insufficient to put them on notice that a lawsuit for declaratory relief was barred. (Pages 25-27). "An ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." *Scott v. Schedler*, 826 F. 3d 207, 211 (5th Cir. 2016). Due process is implicated to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible finding of a contempt citation on a decree too vague to be understood. *Scott.* 826 F. 3d at 212. Further, the Supreme Court has denounced broad injunctions that merely instruct the enjoined party not to violate a statute, so-called obey the law injunctions. *Int'l rectifier Corp. v. IXYS Corp*., 383 F.3d 1312, 1316 (Fed.Cir. 2004). Civil contempt in Texas is the process by which a court

exerts its judicial authority to compel obedience to some order of the Court. *In re Copock*, 277 S.W.3d 417, 418 (Tex. 2009). Command language is essential to create an order enforceable by contempt. *In re Copock*, 277 S.W.3d at 418.

4. Under Texas law, even the use of the word "injunction" without language that mandates compliance is insufficient to hold a party in contempt. *In re Copock*, 277 S.W.3d at 418. In *In re Copock*, a divorce decree granted a permanent injunction which provided:

> *The Court finds that a permanent injunction of the parties should be granted…*
>
> *The permanent injunction granted below shall be effective immediately and shall be binding on both parties…*
>
> *a. Communicating with the other party in person or in writing in vulgar, profane obscene, or indecent language or in a coarse of offensive manner. In re Copock*, 277 S.W.3d at 418.

5. The Texas Supreme Court found that in the absence of commanding language ordering the parties not to engage in the described conduct, the injunction was not enforceable by civil contempt. *In re Copock*, 277 S.W.3d at 418. The Eichor Discharge Order contained no command language required under Texas law. **ROA 24-20238.836-837.** The order is void of

language that enjoined Wyly from seeking declaratory relief as to the ownership of property. Thus, without a clear and specific order enjoining the Wylys from filing suit to quiet title, they had a reasonable basis to believe their conduct might be lawful. Eichor did not rebut that the Discharge Order lacked specificity.

Rebuttal Issue No. 2: Evidence was Insufficient under *Taggart* to Conclude Wyly's Knew Property was Eichor's Homestead.

6. Eichor Second Amended Complaint alleged the Wyly's violated the Discharge Order by filing suit in Brazoria County, Texas to collect a debt. No other conduct was implicated. **ROA 24-20238.288-296.** Eichor contended that seeking declaratory relief was tantamount to collecting a debt. **ROA 24-20238.288-296.** The Bankruptcy Court agreed. **ROA 24-20238.16.** As part of Eichor's theory, he requested the Court find that the subject property was his homestead. **ROA 24-20238.299.** At the conclusion of trial, the Court found the subject property Eichor's homestead. **ROA 24-20238.15.** Wyly argued that Court failed to properly apply the laws to the facts in a civil contempt proceeding. (Page 41). Eichor failed to rebut Wylys argument.

7. The burden was on Eichor to prove that the Wylys had no

objectively reasonable basis to concluded their conduct might be lawful. *In Re Kimball, Inc. v. TRG Venture, Two LLC*, 61 F.4th 529, 534 (7th Circuit, 2023). Thus, Eichor had the burden to show that it was not reasonable for the Wylys to believe the subject property was not his homestead when he obtained the judgment. While Eichor testified he believed the agreements were loans, **24-20238.300-304.** he failed to present testimony or argument, that negated the Wylys argument. (Page 41) Eichor failed to present argument that the Wylys had no objectively reasonable belief that the subject property was not his homestead at the time of the default judgment.

8. It is the application of "objectively reasonable basis" standard and "might be lawful" standard where the trial court abused its discretion. A court abuses its discretion when a ruling is grounded in a legal error or a clearly erroneous analysis of the evidence. *United States v. Larry*, 632 F.3d 933, 936 (5th Cir. 2011). Additionally, a court abuses its discretion when it fails to consider facts required by law. *Larry*, 632 F.3d at 936. The terms "objectively reasonable basis" and "might be lawful" have not been defined by statute or common law in relationship to a civil contempt proceeding. The term "reasonable" means fair, proper, just, moderate, suitable under the circumstances. *Black's Law Dictionary, Abridged Addition*. (1891-1991). The term "might" means "to be possible." *Lewiston Milling Co., v. Cardiff,*

266 F. 753, 758 (9th Cir. 1920). The terms are significantly broad in scope. Civil contempt is a severe remedy, so it follows that the burden to show contempt should be a high one. *In Re Roth*, 935 F. 3d 1270, 1277 (11 Cir. 2019).

9. The Bankruptcy Court found "each of the agreements *stated that the Property was not Eichor's homestead, and that the Property would not be sued as a homestead.*" **ROA 24-20238.11.** Thus, no evidence was offered to show why it was not objectively reasonable for the Wylys to conclude the property was not Eichor's homestead. This argument was not rebutted by Eichor or reconciled by the Bankruptcy Court.

Rebuttal Issue No. 3: Evidence was Insufficient under *Taggart* to Conclude Wyly's Knew Sale Agreements were Loan.

10. Based on the Court's homestead finding and the finding that the sales agreement was a loan, it found that Eichor was protected by the Texas Constitutions, Article XVI, § 50(a). **ROA 24-20238.19.** Again the trial court improperly applied the holding in *Taggart v. Lorenzen*, 139 S.Ct. at 1802. The trial court should have considered whether it was objectively reasonable for the Wyly's to conclude the subject agreements might be a

sale agreement.

11. The Court characterized the Wylys' sale agreements as a disguised loan. **ROA 24-20238.9.** The Court then define the term "loan" as an "advance of money made to or on behalf of an obligor, the principal amount of which the obligator has an obligation to pay the creditor. **ROA 24-20238.16.** Wyly argued that the sale agreements contained no obligation to repay the money advance, and that Wyly's remedy was specific performance under Sale Agreement Three. (Pages 36-38) Further, the Default Judgment contained only declaratory relief and did not award money damages. **ROA 24-20238.195.** Again the Court misapplied *Taggart v. Lorenzen*, 139 S.Ct. at 1802. The Court should have considered whether it was reasonable for Wyly to conclude the sale agreement, actual sale agreements, as opposed to a loan. At trial Eichor offered no proof that Wyly's interpretation of the sale agreements was objectively unreasonable and could not be lawful.

11. In conclusion, the trial court abused its discretion finding the subject agree. An option to terminate clause in a contract is not tantamount to a loan. Wylys' only contractual remedy was specific performance. This argument was not rebutted. Accordingly, the bankruptcy court failed abused its discretion finding the Wylys had no objectively reasonable basis to

conclude the agreements were sale agreements.

Rebuttal Issue No. 4: No Rebuttal Dispute Concerning the Application of the Rooker-Feldman Doctrine.

12. The Bankruptcy Court broadly held Rooker-Feldman does not prevent the Court from reviewing statement court judgments. **ROA 24-20238.21.** The bankruptcy court erred applying the law. Wyly argued otherwise and contended Rooker-Feldman Doctrine barred the federal court's review of the default judgment in state court. Eichor failed to rebut Wyly's factual or legal argument.

13. The Bankruptcy Court cited *Burciaga v. Deutsche Bank National Trust Co.,* 871 F.3d 280 (5th Cir. 2017) for the proposition that federal courts could review state court judgments. **ROA 24-20238.21.** The Court's application of law was erroneous. *Burciaga* held that *Rooker-Feldman* prohibits federal court review of claims that are inextricably intertwined with a state court decision. *Burciaga,* 871 F.3d at 285. *Burciaga* held that Rooker-Feldman does not prohibit a plaintiff from presenting some independent claim, albeit that denies a legal conclusion that a state court has reached in case to which the Plaintiff was a party or void judgments.

Burciaga, 871 F.3d 285 (5th Cir. 2017).

14. Wyly argued that the facts in the state court judgment were inextricably intertwined with the bankruptcy case. (Pages 27-33) Eichor did not dispute the state court judgment was inextricably intertwined. Nor did the trial court distinguish hold to the contrary. Wyly also argued that seeking declaratory relief in the state court to determine title to property prior to the filing of bankruptcy did not enlarge or diminish the bankruptcy estate. (Pages 27-33). Thus, the record contains no evidence or dispute that the state court judgment did not modified the discharge order. Without some evidence that the state court judgment modified the bankruptcy Discharge Order, *Rooker-Feldman* doctrine applies. *In Re McGhan*, 288 F.3d 1172 (9th Cir. 2002).

15. In conclusion, there is no question that the state court judgment was inextricably intertwined with the Bankruptcy Court's judgment. Because the state court judgment decided ownership of the property prior to Eichor filing bankruptcy, this question of ownership did not reduce or enlarge Eichor's bankruptcy estate and therefore *Rooker-Feldman* was a jurisdictional bar for the federal court's review.

Rebuttal Issue No. 5: Eichor Fails to Rebut Wyly Argument that Filing Suit is Protected under the First Amendment.

16. The Bankruptcy Court held that Wyly could have filed suit in the Bankruptcy Court to determine whether an exception existed to the discharge. **ROA 24-20238.22.** The implication of the Court's ruling is that seeking declaratory relief in state court is contemptuous, while seeking the same relief in the Bankruptcy Court may be done with impunity. This holding violates the First Amendment. *CSMN Investments, LLC*, v. *Cordillera Metropolitan District*, 956 F. 3d 1276, 1282 (10th Cir. 2020). Wyly should not be punished because he sought declaratory relief in state court where Texas venue statutes required suit be brought in the county where the property is located. The Bankruptcy Court's ruling stifles the jurisdiction of the state courts. Eichor forwarded no dispute that state courts have concurrent jurisdiction to interpret discharge orders.

17. Wyly argued that the First Amendment and case law on point provided Wyly an objectively reasonable basis to believe he could bring his petition for declaratory relief in state court. (Pages 33-34). Neither the Court, nor Eichor forwarded any argument to the contrary. Eichor failed to offer any evidence or argument to the contrary.

Prayer

Wyly prays that this Court reverse the trial court and any other relief

whether general or equitable.

Respectfully Submitted

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Certificate of Compliance

I certify that Appellant's Brief contain 2687 words using

Microsoft Word 14 point font in compliance with FRCP Rule 28.1(e)(2)(A)(i)

/s/ *Keith Alexander Gross*

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on opposing counsel via the electronic filing systems and by email at: chuck@newtons.law.com on September 30, 2024.

/s/ Keith Alexander Gross