BANKRUPTCY LAW—WHETHER THE BANKRUPTCY COURT HAD THE STATUTORY AUTHORITY UNDER 28 U.S.C. § 157(b) TO ISSUE A FINAL JUDGMENT ON A TORTIOUS INTERFERENCE COUNTERCLAIM, AND WHETHER SUCH AUTHORITY IS CONSTITUTIONAl.

By Mira Hani Haykal*

Stern v. Marshall, 131 S. Ct. 2594 (U.S. 2011).

In June 2011, The United States Supreme Court held that although the Bankruptcy Court had the statutory authority to enter a final judgment on Vicky Lynn Marshall's tortious interference counterclaim, the court lacked constitutional authority.[1]

Vicki Lynn Marshall, publicly known as Anna Nicole Smith, married J. Howard Marshall nearly a year before his death. J. Howard Marshall was an oil executive and one of the richest men in Texas.[2] During their yearlong marriage, Vicki and J. Howard Marshall lived a lavish lifestyle; however, J. Howard Marshall never included Vicki Lynn in his will.[3] Vicki alleged that J. Howard intended to give her half of his estate.[4] After J. Howard's death, Vickie filed a petition for bankruptcy in the Central District of California.[5] Pierce Marshall then filed a complaint alleging that Vickie had defamed him by telling her lawyers to release to the press that Pierce was acting fraudulently in order to inherit all of his father's assets.[6] Vickie responded with a counterclaim for tortious interference, as she claimed that Pierce went against his father's wishes and wrongfully prevented J. Howard Marshall from giving her half of his estate.[7] Ultimately, the Court held that Bankruptcy judges are not the equivalent of Article III judges; thus, the Bankruptcy judge did not have the authority to enter final judgment on Vickie's claim.[8]

The Court took a plain text approach in holding that Vickie's tortious interference counterclaim against Pierce Marshall is a "core proceeding" under §157(b)(2)(C).[9] Congress gave United States district courts under 28 U.S.C. §1334(a), "original and exclusive jurisdiction of all cases under Title 11."[10] Bankruptcy courts may hear "all core proceedings arising under title 11 or arising in a case under title 11."[11] Section §157(b) provides a non-exhaustive list that includes 16 instances the Court recognizes as "core proceedings."[12] Specifically, §157(b)(2)(C) states that counterclaims "by the estate against persons filing claims against the

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*Mira Hani Haykal is a 2012 J.D. candidate at South Texas College of Law.

[1] Stern v. Marshall, 131 S. Ct. 2594, 2608 (2011).

[2] *Id.* at 2600

[3] *Id.* at 2601.

[4] *Id.*

[5] *Id.*.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 2620.

[9] 28 U.S.C. § 157(b)(2)(C) (2011).

[10] 28 U.S.C. §1334(a) (2011).

[11] 28 U.S.C. § 157(b)(1) (2011).

[12] *Id.* at § 157(b)(2).

estate" are core proceedings.[13] Thus, Vickie's tortious interference claim would fall directly under the statute. The Court cited and supported its suggestion in *Granfinanciera, S.A. v. Nordberg*, affirming that a proceeding's "core" status alone authorizes a bankruptcy judge to enter a final judgment.[14] The Court agreed with Vickie that the Bankruptcy Court was permitted to enter a final judgment on her counterclaim and rejected Pierce Marshall's theory that core proceedings fall under two classifications.[15]

Pierce argued that the language of §157(b)(1) provides for two classifications of core proceedings.[16] More specifically, Pierce alleged that because the statute speaks in terms of proceedings "arising in" and "arising under," Congress was specifically addressing a more narrow category of core proceedings. Pierce classified core matters that are neither "in" nor "under" a Title 11 case as "related to" a Title 11 case.[17] The Court quashed Pierce's argument explaining that Congress would have provided a framework for identifying "core" proceedings had it intended for multiple categories to exist.[18] Furthermore, Chief Justice Roberts stated that adopting Pierce's argument would be an "oxymoron," which "is not a typical feature of congressional drafting."[19] The only way in which Pierce could prevail would be for the Court to rewrite the statute, which would be a violation of separation of powers.[20]

Despite the Court's holding that §157(b)(2)(C) provides the Bankruptcy Court with authority to enter final judgment under Vickie Marshall's counterclaim, the Court held that Article III of the Constitution does not give such authority.[21] In forming its holding, the Supreme Court cited and supported its decision in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, in which bankruptcy judges serving under the Bankruptcy Act of 1978 were not found to have the constitutional authority to decide a state-law contract claim against an entity that was not part of the bankruptcy proceedings.[22] In *Northern Pipeline*, the court acknowledged that there were cases that involved "public rights" that Congress could constitutionally send to legislative courts. However, the "public rights" exception extended only to matters arising between individuals and the government that could only be decided by either the executive or legislative branches.[23]

In entering final judgment on Vickie Marshall's state claim, the Bankruptcy Court exercised the powers delegated to Article III courts in the absence of a "public right" exception.[24] The Court has applied the "public right" exception in limited situations.[25] Chief Justice Roberts labeled Article III courts as "experts" in handling Vickie's counterclaim.[26] Congress did not establish a specialized means for handling questions such as Vickie's.[27] What makes a right "public" as opposed to private is that the right is "integrally related to particular federal

[13] *Id.* at § 157(b)(2)(C).

[14] *Marshall,* 131 S.Ct. at 2604 (citing Granfinanciera v. Nordberg, 492 U.S. 33, 50 (U.S. 1989)).

[15] 131 S. Ct. at 2605.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 2608.

[22] *Id.* (citing N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 58 (U.S. 1982)).

[23] *Id.* (citing *N. Pipeline,* 458 U.S. at 67-68.

[24] *Marshall,* 131 S. Ct. at 2611.

[25] *Id.* at 2612-2614.

[26] *Id.* at 2615.

[27] *Id.*

government action."[28] The Court in *Granfinanciera* held that a fraudulent conveyance claim neither belongs to nor exists against the Federal Government; thus, Article III courts alone have the authority to enter final judgment.[29] Like in *Granfinanciera*, Vickie's tortious interference claim is not at the mercy of the other branches of government, nor is the claim one that historically could have been heard exclusively by another branch.[30] The claim lies exclusively with the state, and it is completely independent of Vickie's bankruptcy claim.[31] In Justice Scalia's concurrence, he reaffirms his concurrence in *Granfianciera* maintaining that, "a matter of public rights must at a minimum arise between the government and others."[32] Vickie's claim was not tied to a federal regulatory scheme, nor was it "completely dependent upon" adjudication of a claim established by federal law.[33] The tortious interference claim is governed by state common law and involves two private parties, so the matter is not one of "public right."[34]

In addition to rejecting Vickie's claim that the Bankruptcy Court had constitutional authority to hear her case under the "public right" exception, the Court also rejected her argument that bankruptcy courts under the Bankruptcy Act of 1984 were able to participate as adjuncts of Article III courts.[35] Chief Justice Roberts explained that just as a district court cannot be deemed an adjunct of the court of appeals, a bankruptcy court is not an adjunct of the district court.[36] Bankruptcy judges have the authority to enter final judgments, and their authority should be given credence.[37]

Lastly, the Court rejected Vickie's assertion that restrictions on the bankruptcy courts' ability to enter final judgments on compulsory counterclaims will cause great delay to the court system.[38] Chief Justice Roberts emphasized that an efficiency argument cannot prevail if it conflicts with the Constitution, and the Bankruptcy Court's final judgment directly violates Article III of the Constitution.[39]

After over fifteen years of feuding in the courts, Vickie Lynn Marshall, Pierce Marshall, and J. Howard Marshall have all passed away. However, the legacy of this lengthy court battle will forever be a reminder that the Constitution is the ultimate legal authority in the United States. Any law, principle, or policy that contradicts the supreme law of our land cannot stand. This case has weighed heavily upon the scales of the United States court system, as an estimated twenty percent of Delaware Bankruptcy decisions in the past three months have referred to the decision in this case.[40]

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[28] *Id.* at 2613.

[29] *Id.* at 2614 (citing *Granfinanciera,* 492 U.S. at 54-55).

[30] 131 S. Ct. at 2614.

[31] *Id.*

[32] *Id.* at 2620.

[33] *Id.* at 2614 (quoting Commodity Futures Trading Com. v. Schor, 478 U.S. 833, 856 (U.S. 1986)).

[34] *Id.*

[35] *Id.* at 2618-19.

[36] *Id.* at 2619.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] John L. Bird, *Stern v. Marshall: Effects on Delaware* (September 8, 2011), http://delawarebankruptcy.foxrothschild.com/2011/09/articles/opinions/stern-v-marshall-effects-on-delaware/.