

Marshall v. Picard (In re Bernard L. Madoff Investment Securities LLC)

Summarized by [Robert Yan](#), Farrell Fritz, PC 4 weeks 5 days ago
[2nd Circuit](#), [11 U.S.C. 550](#), [11 U.S.C. § 105](#), [11 U.S.C. § 541](#), [11 U.S.C. § 548](#), [Venue/Jurisdiction](#), [Fraudulent Transfers](#)

Judicial Circuit: 2nd Circuit

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Citation: Docket No. 12-1645 (2d Cir. Jan. 13, 2014)

Ruling: AFFIRMING the district court's order, which affirmed the bankruptcy court's approval of a settlement agreement and issuance of a permanent injunction that had the effect of enjoining the Appellants' state law tort actions, the Court of Appeals for the Second Circuit held that the bankruptcy court did not exceed its authority under the Bankruptcy Code and did not run afoul of Article III of the United States Constitution.

Procedural context: Consolidated appeals from an order of the United States District Court for the Southern District of New York (Koeltl, J.) which affirmed an order of the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) approving a settlement agreement entered into between the Trustee for the Bernard L. Madoff Investment Securities LLC ("BLMIS") estate and the estate of Jeffrey M. Picower and related defendants (collectively, "Picower Defendants") and the issuance of a permanent injunction barring the assertion of any claim duplicative or derivative of claims asserted by the Trustee for the BLMIS estate against the Picower Defendants. The Court affirmed without prejudice to the Appellants to seek leave to amend their respective complaints in the United States District Court for the Southern District of Florida.

Facts: On May 12, 2009, the Trustee commenced an adversary proceeding against the Picower Defendants, asserting claims for fraudulent transfers, avoidable preferences and turnover under the Bankruptcy Code and New York law ("New York Action"). The Appellants, Susanne Stone Marshall ("Marshall") and Adele Fox ("Fox"), each filed claims in the liquidation proceedings against the BLMIS estate. The Trustee allowed Marshall's claim for \$30,000, but denied two claims filed by Fox on the grounds that she was a "net winner" under the "net investment method" of calculation. While settlement discussions were ongoing in the New York Action, the Appellants filed complaints against the Picower Defendants in the United States District Court for the Southern District of Florida, asserting claims for conspiracy and conversion (collectively, "Florida Actions"). Marshall purported to represent the interests of BLMIS account holders who either had not filed SIPA claims with the Trustee or whose SIPA claims were disallowed in whole or in part. Fox purported to represent the interests of BLMIS customers who were considered "net winners" and not entitled to any compensation in the SIPA proceeding. On December 17, 2010, the Trustee and the Picower Defendants entered into a settlement agreement ("Settlement Agreement") to resolve the New York Action. As part of the settlement, the Trustee agreed to seek an order from the bankruptcy court for a permanent injunction barring any customer of BLMIS from asserting certain claims against the Picower Defendants arising from or related to the Madoff Ponzi scheme. On January 13, 2011, the bankruptcy court approved the Settlement Agreement and issued the permanent injunction. At the January 13 hearing, the bankruptcy court stated that the Florida Actions were among the claims enjoined by the permanent injunction. The district court affirmed the bankruptcy court's January 13 order, finding the Settlement Agreement fair and reasonable, and the issuance of the permanent injunction a proper exercise of authority under the Bankruptcy Code. The district court also agreed with the bankruptcy court that the Appellants' claims in the Florida Actions were duplicative or derivative of the claims asserted by the Trustee in the New York Action. On appeal, the Court considered whether the bankruptcy court's issuance of the permanent injunction against the Appellants' Florida Actions was a proper exercise of the bankruptcy court's jurisdiction over non-debtor third-parties. The Court concluded that it was. In reaching its conclusion, the Court found that the Appellants' allegations asserted in the Florida Actions echoed the allegations contained in the Trustee's complaint against the Picower Defendants. While the Court recognized that common facts may give rise to multiple claims, the Court concluded that this was not the case here. The Appellants merely "plead[ed] around" the permanent injunction against derivative claims and did not allege "particularized" injuries that were directly traceable to the Picower Defendants. The Court added that even though the claimed damages in the Florida Actions were not recoverable in an avoidance

action under the Bankruptcy Code, the claimed damages, which were also suffered by all BLMIS customers, were predicated upon secondary harms flowing from the Picower Defendants' fraudulent acts and were still derivative of the Trustee's claims against the Picower Defendants. The Court also considered whether the bankruptcy court ran afoul of Article III of the United States Constitution. Unlike the claims at issue in *Stern v. Marshall*, the Court concluded that the Appellants' claims were essentially disguised fraudulent transfer actions that belonged exclusively to the Trustee. In addition, the Court concluded that the Picower Defendants' filing of a proof of claim against the BLMIS estate allowed the bankruptcy court to exercise authority under the Bankruptcy Code to approve the Settlement Agreement and to permanently enjoin the Appellants' Florida Actions without offending Article III of the United States Constitution.

Judge(s): Cabranes, Raggi, and Carney (Circuit Judges)

Topics: Fraudulent Transfers

Topics: Venue/Jurisdiction

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