

IN THE SUPREME COURT OF THE UNITED STATES

SHERRY ANN MCGANN, Petitioner,
v.
JEANNE Y. JAGOW, Chapter 7 Trustee,
Respondent.

Related Case Numbers:

- **U.S. Bankruptcy Court Case No.: 20-18118-TBM**
- **Bankruptcy Appellate Panel (BAP) Case Nos.: 24-12-CO, 24-04, 24-07**
- **Tenth Circuit Court of Appeals Case No.: 24-1314 & 24-1057**

Petitioner:
Sherry Ann McGann
1535 Grand Avenue
Grand Lake, CO 80447
(303) 507-7658
sherry@nalanimaui.com

EMERGENCY APPLICATION FOR STAY PENDING CERTIORARI

I. INTRODUCTION AND REQUEST FOR RELIEF

Filed Pursuant to:

- **28 U.S.C. § 1254(1) (Jurisdiction)**
- **28 U.S.C. § 1651(a) (All Writs Act)**

Petitioner, Sherry Ann McGann, respectfully submits this Emergency Application for Stay Pending Certiorari, seeking an immediate stay of the eviction scheduled for August 19, 2024. Petitioner is currently facing imminent eviction from her home due to ongoing bankruptcy proceedings, despite pending appeals and substantial federal questions involving trustee misconduct, violations of due process under the Fifth Amendment, and violations of the Americans with Disabilities Act (ADA).

The lower courts, including the Bankruptcy Appellate Panel (BAP), Bankruptcy Court, and the Tenth Circuit, have all denied stays, resulting in an immediate risk of irreparable harm. Petitioner respectfully requests that this Court grant an emergency stay to prevent this eviction while the Petition for a Writ of Certiorari is prepared and filed.

II. JURISDICTION

This Court has jurisdiction under **28 U.S.C. § 1254(1)**, which allows the Supreme Court to review cases from the courts of appeals. Petitioner also seeks relief under the **All Writs Act, 28 U.S.C. § 1651(a)**, which empowers this Court to issue writs necessary or appropriate in aid of its jurisdiction and to prevent irreparable harm.

The Tenth Circuit Court of Appeals dismissed Petitioner's appeal due to its interlocutory nature, leaving no further recourse in the lower courts. This dismissal, along with the ongoing denial of stays by the bankruptcy court and BAP, has left Petitioner in an untenable position where immediate relief from the Supreme Court is necessary to prevent irreparable harm.

III. BACKGROUND AND PROCEDURAL HISTORY

Petitioner has been engaged in ongoing bankruptcy proceedings where significant assets were mishandled by the Trustee, including the loss of valuable property in Maui, Hawaii. The Trustee's actions have consistently violated Petitioner's rights, resulting in severe financial and emotional distress.

Despite overwhelming evidence of trustee misconduct and the unjust retention of Petitioner in bankruptcy for nearly four years, all requests for a stay pending appeal have been denied by the bankruptcy court, BAP, and Tenth Circuit. Petitioner now faces eviction from her

home on August 19, 2024, without a proper resolution of the substantial federal questions at stake.

IV. LEGAL ARGUMENT

A. **Likelihood of Success on the Merits:** Petitioner’s case raises substantial federal questions involving due process violations, ADA violations, and trustee misconduct. The trustee’s actions, including the loss of significant assets and failure to account for estate property, demonstrate unclean hands and a clear violation of Petitioner’s rights. Under *Hilton v. Braunskill*, 481 U.S. 770 (1987), and *Nken v. Holder*, 556 U.S. 418 (2009), Petitioner meets the standard for a stay, as there is a reasonable probability that this Court will grant certiorari and that Petitioner will prevail.

B. **Reasonable Probability of Granting Certiorari:** The Supreme Court has a history of intervening when lower courts fail to uphold constitutional rights, as demonstrated in *Goldberg v. Kelly*, 397 U.S. 254 (1970). In *Goldberg*, the Court emphasized the fundamental requirement of due process, ensuring that individuals are afforded a fair hearing before being deprived of essential rights. Although *Goldberg* dealt with welfare benefits, the core due process principles it established—such as the right to be heard and the necessity of procedural safeguards—are directly applicable to Petitioner’s case. Here, the lower courts similarly disregarded substantial evidence and denied Petitioner a fair hearing, particularly regarding her right to shelter and the recognition of her ongoing medical conditions. The reasoning in *Goldberg* strongly supports Petitioner’s argument that the lower courts failed to protect her due process rights, making Supreme Court intervention necessary.

The substantial federal questions at stake, including the interpretation and application of ADA rights in bankruptcy proceedings, are critical issues that this Court is likely to find worthy of review. The inconsistent application of these laws by the lower courts further supports the need for Supreme Court intervention.

Despite overwhelming evidence that Petitioner's estate was of inconsequential value, she offered to pay creditors immediately in October 2023 and provided proof of funds. However, the trustee continues to hold Petitioner in bankruptcy with no requirement to show cause, raising serious questions about extortion and misuse of a dominant position in a voluntary bankruptcy.

C. Trustee Misconduct: Trustee misconduct is rarely reviewed by the courts, with less than 1% of such cases receiving proper scrutiny. Petitioner has documented four years of irrefutable proof of the trustee's misconduct, beginning with the 'civil conspiracy' involving claimants 13-16. These claimants fraudulently released \$1.6 million in deeds and liens, yet this misconduct has not been adequately addressed by the courts. The evidence presented by Petitioner should compel the Court to grant certiorari in the name of justice.

SOURCE: [*Department's Emphasis on Fraud by: The U.S. Trustee Program's Efforts to Prevent Bankruptcy Fraud and Abuse, Report No. 03-17, March 2003- Office of the Inspector General*]: "Bankruptcy fraud threatens the integrity of the bankruptcy system because the system depends on full disclosure by debtors, creditors, and professionals in order to resolve disputes and to distribute money and property. The protection and integrity of the bankruptcy system is dependent upon the UST Program identifying bankruptcy fraud and abuse and taking appropriate actions."

According to the Acting Director, the priorities of the Civil Enforcement Initiative require a concerted effort nationwide to use existing tools in a way that best accomplishes

tangible results and improvements for case administration. A priority of the Civil Enforcement Initiative is to “protect consumer debtors, creditors, and others who are victimized by those who mislead or misinform debtors, make false representations in connection with a bankruptcy case, or otherwise abuse the bankruptcy process”.

The report stated that in general, the UST Program concentrates its efforts on controls over trustees and their employees rather than over some of the higher risks for fraud. Again, as noted, through the deterrence of UST Program monitoring and the integrity of the trustees themselves, only 71 (**less than one percent**) of the 7,564 referrals made to law enforcement over the past 15 years related to trustees and their employees. The report stated, “*Without ignoring the possibility of trustee fraud, the UST Program needs to improve its own efforts to control fraud by debtors, creditors, and others.*”

The bankruptcy court has simply ignored the evidence and implications that *its* trustee has acted with unclean hands supporting the alarming facts detailed in the report. The trustee and her unauthorized counsel’s wrongdoings and manipulations using the law and the court as weapon for self-serving purposes.

D. Misapplication of Homestead Exemption: The trustee and the court further demonstrated bias by misapplying the homestead exemption. The property's value was manipulated from the originally established \$719,000 (as documented in Bankr ECF No. 261, pg. 6) to \$1 million, a value determined four years later at a manipulated second evidentiary hearing due to the unclean hands of the trustee and her unauthorized counsel. Despite this increase, the court applied an outdated homestead exemption of \$105,000 instead of the correct \$350,000. *In re Zibman*, 268 F.3d 298 (5th Cir. 2001), established that the homestead exemption

should be applied based on the value of the property at the time of valuation, not at the time of application. This misapplication of the law directly prejudiced Petitioner.

E. Misuse of Dominant Position and Estoppel: The trustee misused her dominant position by reneging on a critical settlement promise, as documented in Bankr. ECF No. 345 pg. 43 of 78 (or BAP24-07 DOC 321 Pg. 521, 4th paragraph). The trustee explicitly promised that Petitioner's home would not be sold if she allowed the settlement to proceed. Petitioner agreed, but the trustee reneged on this promise, forcing the sale of Petitioner's last remaining asset after already losing the \$4 million Maui property. This bad faith action violates the principles of estoppel and demonstrates the trustee's blatant disregard for her fiduciary duties.

The misuse of a dominant position and estoppel is further exemplified by the Ninth Circuit's decision in *The Mortgage Store, Inc.*, 773 F.3d 990, 992-995 (9th Cir. 2014). In that case, the court held that a party in a dominant position (such as a trustee) may not exploit that position to the detriment of others by making promises or representations that are later contradicted. The principles outlined in *The Mortgage Store, Inc.* support Petitioner's argument that the trustee should be estopped from reneging on her promises and forcing the sale of Petitioner's home.

F. Civil Conspiracy and Estoppel: Petitioner has uncovered new evidence documented in Bankr ECF No. 339 and 343, regarding the 'global agreement' made by the trustee outside of Bankr ECF No. 93-1 Settlement Agreement. Specific language added on page 7 of Bankr ECF No. 93-1 allowed Petitioner to collect from claimants 13-16. [Bankr. ECF No. 93-1; BAP 24-04 App. pg.19 bottom of page] and the specific language the Debtor, through her attorney, demanded be added before agreeing to the settlement, in relation to the email from Mr. Miller

stating that the Appellant did not have to sell her house [Bankr. ECF No.345 pg.43, 4th paragraph; BAP24-04 App.616].

G. ADA Violations: Petitioner's ADA rights, as articulated in *Olmstead v. L.C.*, 527 U.S. 581 (1999), have been systematically violated by the lower courts, which failed to provide reasonable accommodations and exacerbated Petitioner's trauma. These violations of federal law strongly indicate that Petitioner is likely to succeed on the merits.

The legal principles at stake, combined with the clear violations of Petitioner's rights, demonstrate that there is a reasonable probability that this Court will grant certiorari and that Petitioner will prevail on the merits.

V. Irreparable Harm

Petitioner will suffer immediate and irreparable harm if the eviction proceeds, including:

- **Homelessness** as Petitioner will lose her primary residence.
- **Loss of her business** which is operated from her home.
- **Severe mental and physical health impacts** exacerbating Petitioner's existing conditions.
- **Inability to adequately prepare for ongoing legal proceedings** without a stable living environment.

These harms are significant and cannot be remedied after the fact, making a stay essential to protect Petitioner's rights.

VI. Balance of Equities

The harm to Petitioner far outweighs any potential harm to the Trustee or creditors:

A. Loss of Primary Residence: The eviction would render Petitioner homeless, which would not only strip her of her residence but also destroy the base of operations for her business,

causing severe financial and emotional distress. This harm is irreparable and would devastate Petitioner's ability to continue her legal fight, including the preparation of a Petition for a Writ of Certiorari.

B. Health Deterioration: Petitioner suffers from PTSD and other stress-related conditions, as documented in Bankr ECF No. 365. The trauma of eviction would exacerbate these conditions, leading to severe and potentially life-threatening consequences.

C. Impact on Business: The loss of Petitioner's home would lead to the collapse of her business, depriving her of her primary source of income and making it impossible for her to recover financially. This would have long-term consequences that far exceed the temporary inconvenience a stay might cause to the Trustee or creditors.

D. Legal Preparation Impairment: Being rendered homeless would severely impair Petitioner's ability to prepare and participate in ongoing legal proceedings, including the preparation of her Petition for a Writ of Certiorari, thereby further compounding the irreparable harm.

Conversely, the Trustee and creditors would suffer minimal or nonexistent harm if the stay is granted:

E. Settlement Offers Ignored: Petitioner has made repeated good faith offers to settle, which the Trustee has refused. The Trustee's refusal to engage in settlement demonstrates that any claimed harm is speculative and self-inflicted.

- **Minimal Delay Impact:** A stay pending resolution of the legal challenges would merely preserve the status quo. The Trustee and creditors have already delayed resolution through their actions, and a stay would not significantly alter their position.

F. Unjust Enrichment Prevention: The Trustee has already mismanaged estate assets, including the \$4 million Maui property. Granting the stay would prevent further unjust enrichment and protect Petitioner from additional harm due to the Trustee's misconduct. For these reasons, the balance of equities overwhelmingly favors granting the stay.

G. Public Interest: Granting the stay serves the public interest by ensuring that significant federal questions, including due process and ADA violations, are fully addressed. It also maintains the integrity of the bankruptcy system by preventing trustee misconduct from going unchecked, as highlighted in Mosser v. Darrow, 341 U.S. 267 (1951).

V. RELIEF SOUGHT

For the reasons stated, Petitioner respectfully requests that this Court grant an immediate stay of the eviction order and all related proceedings to maintain the status quo pending the resolution of the Petition for a Writ of Certiorari. The stay should remain in effect until the Supreme Court has had the opportunity to review the Petition and, if granted, until the Court issues a final decision on the merits.

AFFIDAVIT OF SHERRY ANN MCGANN IN SUPPORT OF EMERGENCY APPLICATION FOR STAY PENDING CERTIORARI

I, Sherry Ann McGann, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct to the best of my knowledge and belief:

1. Personal Background and Current Circumstances:

- I am the Petitioner in the above-captioned matter. I am facing imminent eviction from my home on August 19, 2024, which will result in homelessness, significant health deterioration, and the loss of my business. This situation has placed me under extreme duress and has severely impacted my physical and mental health.

2. Procedural History:

- The Bankruptcy Appellate Panel (BAP) is currently reviewing my appeal in Case No. 24-12-CO. The Tenth Circuit recently dismissed my appeal concerning the denial of a stay pending appeal due to its interlocutory nature, leaving the BAP as the only body capable of granting the necessary relief to prevent the imminent harm I face.

3. Irreparable Harm:

- I have provided overwhelming evidence that the harm I face is irreparable. The eviction will result in my becoming homeless, which will severely exacerbate my existing health issues. Additionally, the loss of my home will also result in the closure of my business, further compounding the financial and emotional distress I am enduring. The eviction will also render the ongoing appeals moot, depriving me of my right to seek redress and resolution through the appellate process.

4. Likelihood of Success on the Merits:

- I have presented substantial evidence of the Trustee's misconduct, including mismanagement of valuable estate assets, breach of fiduciary duty, and ADA violations. The Trustee's actions have caused significant harm to my estate, and I believe that I have a strong likelihood of success on the merits of my appeal.

5. Balance of Harms:

- The harm I will suffer if the stay is not granted far outweighs any potential harm to the Trustee or creditors. I have made several offers to settle all claims, demonstrating my good faith and willingness to resolve these matters. The Trustee's refusal to engage in these offers further supports the argument that the balance of harms favors granting the stay.

6. Public Interest:

- Granting the stay serves the public interest by ensuring that the legal process is fair and just. It also maintains the integrity of the bankruptcy system by preventing trustee misconduct from going unchecked. The public has a vested interest in ensuring that individuals like myself are not subjected to procedural and substantive injustices that could have far-reaching consequences.

7. Necessity for Immediate Relief:

- Given the urgency of the situation and the imminent harm I face, I respectfully request that the Supreme Court grant the Emergency Application for Stay Pending Certiorari to halt the eviction scheduled for August 19, 2024. This relief is necessary to prevent irreversible harm and to preserve the integrity of the appellate process.

8. Statement Regarding Notarization:

- I understand that this affidavit is made under penalty of perjury pursuant to 28 U.S.C. § 1746, and that notarization is not required for affidavits filed in federal proceedings. I declare under penalty of perjury that the foregoing is true and correct.

DATED: August 15, 2024

Respectfully submitted,

Sherry Ann McGann

/s/ Sherry Ann McGann
Appellant, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, a true and correct copy of the foregoing Emergency Application for Stay Pending Certiorari, including the Affidavit of Sherry Ann McGann in Support of the Application, was served via the Court's CM/ECF system and/or via email and first-class mail to the following:

Sherry Ann McGann

/s/ Sherry Ann McGann
Appellant, Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

SHERRY ANN MCGANN,
Petitioner,

v.

JEANNE Y. JAGOW, Chapter 7 Trustee,
Respondent.

COPIES OF FINAL ORDERS IN THE PETITIONER'S CASE WHO IS ASKING FOR
RELIEF

The Petitioner, Sherry Ann McGann, provides the Orders and documents associated with the Emergency Application for Stay Pending Certiorari as follows:

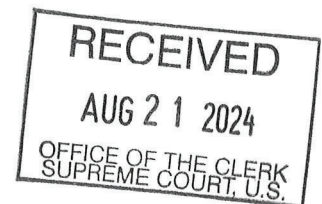
1. ADA VIOLATIONS

MOTION FOR ORDER REQUIRING THE DEBTOR TO TURNOVER PROP.

- ECF No. 297 & 298 in Bankruptcy Case No. 20-18118-TBM
- Dated: August 25, 2023 & August 28, 2023
- **Attached as Exhibit 1**- RE: ADA violation referred to in Emer. Motion for Stay pg. 7 - G.- trustee notifying new judge of medical alert service dog which daunted Petitioner to appear alone without service dog on October 17, 2023 hearing

2. CIVIL CONSPIRACY

- ECF No. 282 in Bankruptcy Case No. 20-18118-TBM – Trustee Objection to Debtors Motion to Convert
- Dated: July 18, 2023
- **Attached as Exhibit 2**
- See Bankr. ECF No. 339 & 343 - This is the where the new judge took over the case and the trustee and her unauthorized counsel misrepresented the facts of the past 2 ½ years. Petitioner attempted to convert as that was the plan with her prior counsel once the \$1.6m in fake deeds and liens were removed from the Grand Lake Property. Petitioner naively believed is she brought the evidence forth of the unclean hands of the trustee the court would intervene. The bankruptcy court has supported its trustee ignoring all evidence and offers of proof provided wrongfully holding the Petitioner against her will in a supposedly voluntary bankruptcy since March of 2022.



3. EMAIL dated April 26, 2022 from Mr. David Miller
 - ECF No. 345 in Bankruptcy Case No. 20-18118-TBM
 - Dated: November 21, 2023
 - **Attached as Exhibit 3** – Estoppel and Extortion evidence referred to in Emergency Motion for Stay
 1. Paragraph 4: “the house need not be sold” [if Petitioner dropped the Adversary hearing on Settlement Agreement 93-1 – PG 7 Add’l language added for Petitioner to agree and withdraw adversary proceedings].
 2. Same paragraph demanding \$380,000 in fees to allow me to settle directly and pay creditors.
 3. Fifth paragraph is Trustee claiming the claims register could not be corrected when Petitioner sought permission from the Retired Honorable Judge Brown who granted it and all claims were removed through Petitioners sole efforts

4. Letter from Kenny Dennis, Ma, LPC, NCC
 - Bankr. ECF No. 365 in Bankruptcy Case No. 20-18118-TBM
 - Dated: January 22, 2024
 - **Attached as Exhibit 4** – incident used against Petitioner to threaten and intimidate the Forced turnover for the second manipulated hearing on property value – ignoring Bankr. No. 261, pg.6 from 1st evidentiary hearing on property with retired Judge Brown on May 3, 2022.

5. ORDER DENYING MOTION TO DISMISS
 - ECF No. 371 – Bankruptcy Case No. 20-18118-TBM
 - Dated: January 31, 2024
 - **Attached as Exhibit 5** – 1st Denial for Motion to Dismiss]
 1. Bankr. ECF No.379, pg.30-37 – second attempt to show funds immediately available with Motion for Reconsideration filed February 6, 2024

6. ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO DISMISS
 - Bankr. ECF No.397 – Bankruptcy Case No. 20-1811-TBM
 - Dated: February 23, 2024
 - **Attached as Exhibit 6**

7. ORDER DENYING EMERGENCY MOTION TO STAY PENDING APPEAL
 - Bankr. ECF No. 399 – Bankruptcy Case No. 20-18118-TBM
 - Dated: February 26, 2024
 - **Attached as Exhibit 7**

8. ORDER DENYING REQUESTS MADE IN “[NOTICE TO DISTRICT COURT IN 24-CV-727]

- ECF No. 502 – Bankruptcy Case No. 20-18118-TBM
- Dated: [July 25, 2024
- **Attached as Exhibit 8**

9. ORDER DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL

- Bankr. ECF No. 510 – Bankruptcy Case No. 20-18118 – TBM]
- Dated: August 2, 2024
- **Attached as Exhibit 9**

10.. ORDER – DENYING AND DISMISSING APPEAL FOR JURISDICTION

- Bankr. ECF No.531 – Bankruptcy Case No. 20-18118 - Dated: August 14, 2024
- BAP Appeal No.24-12, ECF No.21] - Dated: August 14, 2024
- **Attached as Exhibit 10**

11. ORDER DENYING EMERGENCY MOTION FOR TEMPORARY INJUNCTION

- BAP 24-12 ECF No. 25
- Dated: August 16, 2024
- **Attached as Exhibit 11**

12. ORDER DENYING EMERGENCY MOTION FOR TEMPORARY INJUNCTION TO HALT EVICTION PENDING APPEAL

- Bankr. ECF No. 534
- Dated: August 16, 2024
- **Attached as Exhibit 12**

13. ORDER DENYING EMERGENCY MOTION FOR CLARIFICATION AND RECONSIDERATION ON ORDER DENYING TEMPORARY INJUNCTION

- Bankr. ECF No. 537
- Dated: August 19, 2024
- **Attached as Exhibit 13**