

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 BRIEF

Respectfully Submitted

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Wyly and Pam Dale Wyly

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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CERTIFICATE OF INTERESTED PERSONS

I certify only the parties to this lawsuit and appeal have an interest in the outcome
of this litigation:

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Respectfully Submitted

/s/ Keith Alexander Gross

Keith Alexander Gross

Attorney for Appellants Benson Scott

Wyly and Pam Dale Wyly

STATEMENT REGARDING ORAL ARGUMENT

Appellant request oral argument. Argument will assist the Court in deciding the issues.

The application of *Taggart v. Lorenzen*, [139 S.Ct. 1975, 1802 \(2019\)](#) requires a debtor to prove there is no fair ground of doubt as to whether the order barred the creditor's conduct. *Taggart*, [139 S.Ct. at 1799](#). This standard requires the court to first determine whether a creditor violated the discharge order. *In Re Roth*, [935 F. 3d at 1276](#). If the Court determines a violation occurred, the court then determines whether there was an objectively reasonable basis for the conclusion that the creditor's conduct might be lawful. *Taggart*, 139, S.Ct. at 1799.

The application of *Taggart* requires the debtor to prove there was no objectively reasonable basis for the conclusion that the creditor's conduct might be lawful. Oral argument was assist the court with identifying the objectively reasonable standard of conduct of the Appellants.

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JURISDICTIONAL STATEMENT

The United States District Court entered its final judgment on April 29, 2024. The Wylys timely filed their notice of appeal. The Fifth Circuit has jurisdiction over final judgments from the United States District Court pursuant to [28 U.S.C. § 1291](#).

STATEMENT OF ISSUES

- ISSUE NO. 1: Facts Legally Insufficient to Support Claim for Civil Contempt under *Taggart* where Discharge Order did not bar Wyly from Filing Declaratory Judgment Action in State Court
- ISSUE NO. 2: Rooker-Feldman Doctrine Barred Bankruptcy Court's Jurisdiction to Review and Reverse State Court Judgment.
- ISSUE NO. 3: Wylys had an Objectively Reasonable Basis for Believing Their Conduct was Lawful in the Absence of a Specific Injunction Barring Them from Litigating the Ownership in State Court Where First Amendment Provided a Right to Seek Redress in the Courts, State Court had Concurrent Jurisdiction to Interpret Discharge Orders, and State Law Required that Title to Property Must be Filed in the County where the Property Resides.
- ISSUE NO. 4: Eichor Failed to Show that Wylys Belief that he Purchased the Real Property was Objectively Unreasonable to Conclude that his Conduct was Lawful.

STATEMENT OF CASE

1. This is an appeal from a judgment of civil contempt affirmed by the district court. Eichor filed bankruptcy on November 17, 2020. [ROA 24-20238.752](#). On February 9, 2021 Eichor received a discharge order from the Bankruptcy Court. [ROA 24-20238.836](#). Appellants filed lawsuit against Debtor in Brazoria County, Texas to quiet title to real property and obtained a default judgment on August 21, 2021. [ROA 24-20238.836](#). Thereafter Eichor filed an adversary proceeding the Bankruptcy Court alleging Wylys' conduct violated the Discharge Order. [ROA 24-20238.283](#). After a trial on the merits, the Bankruptcy Court found in favor of the Debtor. [ROA 24-20238.22-23](#). On September 7, 2022, the Bankruptcy Court entered a Final Judgment. [24-20238.731](#). Wylys appealed from the bankruptcy court to the United States District Court. [ROA 24-20238.1177](#). On August 29, 2023 the United States District Court entered a final judgment affirming the bankruptcy court. [ROA 24-20238.979](#). On September 25, 2023, Wyly filed his motion for a re-hearing. [ROA 24-20238.1008](#). The District Court denied the motion. [ROA 24-20238.1008](#). Thereafter, Wylys filed their notice of appeal. [ROA 24-20238.1009-1010](#). The Wylys contend the Court erred holding them in civil contempt (1) where discharge order did not contain clear specific injunctive language; (2) trial court lacked jurisdiction

to review state court judgment; and (3) where the Wyly's had a First Amendment right to petition the court.

Facts

2. Beginning in 2015, the Wyly's and Eichor entered into a series of transactions involving the purchase and sale of the real property located at 4012 Beachwood Dr. Pearland, Texas 77584. The three agreements are titled "Sales Agreement", [ROA 24-20238.152](#). "Sales Agreement Two" [ROA 24-20238.156](#). and "Sales Agreement Three." [ROA 24-20238.159](#). In the first agreement the Wylys agreed to purchase the property for the sum of \$65,000.00. [ROA 24-20238.152](#). The agreement was signed by Eichor and notarized on June 25, 2015. The agreement contained a clause that stated "sellers expressly agree and declare that the above property shall not be used, or declared a homestead on or after July 1, 2016." [ROA 24-20238.152](#).

2. In May of 2016, Eichor and the Wylys entered into a similar agreement. The second sales agreement acknowledged the payment of \$50,000.00, plus an additional payment of \$15,000.00¹ would due and payable on September 1, 2016 for the purchase of the subject property.

¹ Bankruptcy Opinion did not recognize this additional clause.

ROA 24-20238.156. Like the first agreement, the Sales Agreement Number Two contained a clause that authorized Eichor to terminate the sale of the property for the payment of \$70,000.00, if the payment was made by September 1, 2016. Similarly, the agreement contained a clause that the Eichors would not declare or use the property as a homestead after July 1, 2016. Again, the agreement was signed and notarized by Eichor. **ROA 24-20238.156.**

3. On January 20, 2017, Eichor and the Wyly's entered into Sales Agreement Three. Sales Agreement Three specifically stated that the terms of Sales Agreement One were satisfied and that Sales Agreement Two were reformed and modified into Sales Agreement Three. **ROA 24-20238.159.** Sales Agreement Three stated that Wyly had advanced Eichor \$126,000.00 for the purchase of the property on April 20, 2017. Specially, the agreement stated:

“Sellers agree to sell and Buyers agree to purchase the following property: 4012 Beachwood Dr. Pearland, Texas 77584”..... “Sellers agree to sell and Buyer agree to purchase the above property on April 20, 2017 for the sum of \$126,000.00. Buyers agree, and have advanced Seller the total of \$126,000.00 for the exclusive and sole right to purchase the property on April 20,

2017”...Sellers agree and Buyers agree that Sellers shall have a contractual right to terminate this sales contract for the sum of \$126,000.00 due and payable to Benson Scott Wyly on April 20, 2017.” **ROA 24-20238.159.**

4. On June 5, 2019, The Pearland Independent School District, et al sued Eichor for unpaid taxes in Case No. 103126-T in the 239th District Court of Brazoria County, Texas. **ROA 24-20238.164.** On October 5, 2020, the Wyllys filed their Petition in Intervention to Quiet Title in the Brazoria County, Texas. **ROA 24-20238.170.** On November 17, 2020, Eichor filed bankruptcy under Chapter 7. **ROA 24-20238.752.** While the bankruptcy petition disclosed a lawsuit in Galveston County Texas Wyly for money damages, but it did not reference the sales transaction in Brazoria County. **ROA 24-20238.752.** On February 9, 2021 Eichor received a discharge order from the Bankruptcy Court. **ROA 24-20238.836.**

5. The discharge order contains the following relevant language:

- a. *It is ORDERED: A discharge under 11 U.S.C. § 727 is granted to: Johnnie G. Eichor.*
- b. *This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency or otherwise try to collect from the debtors personally on discharged debts.*
- c. *Most debts are covered by the discharge, but no all. Generally,*

a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

- d. *Some debts are not discharged, including debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case, some debts which the debtors did not properly list, debts covered by a valid reaffirmation agreements are not discharged. **ROA 24-20238.836.***

6. The Discharge Order then specifically states;

"this information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case."

ROA 24-20238.837.

7. Neither the bankruptcy petition, **ROA 24-20238.752.** nor the discharge order **ROA 24-20238.836.** referenced the sale of the real property located in Brazoria County, Texas. Eichor abandoned his cause of action regarding allegations that Wyly violated discharge order flowing from Galveston County lawsuit. **ROA 24-20238.286.** Four months after Eichor refused to file an answer, Benson Scott Wyly obtained a default judgment. **ROA 24-20238.195.** The 239th District Court in Brazoria County, Texas entered a final judgment on August 21, 2021. The Judgment stated in part:

*“The Court finds that Benson Scott Wyly and Johnnie G. Eichor entered into an agreement to purchase the property located at 4012 Beach Wood Dr. Pearland, Texas 77584.... The court finds that Intervenor (Wyly) purchased the property on January 20, 2017, and the Defendant Eichor retained the right to rescind the contract until April 20, 2017 conditioned upon the repayment of \$126,000.00. The Court finds that Eichor failed to comply with the agreement. It is the JUDGMENT of this Court that Benson Scott Wyly acquired all right, title and interest on the property as of April 20, 2017 and that Intervenor Johnnie G. Eichor was divested of all right, title and interest n the property that same day. **ROA 24-20238.195.***

8. After Wyly obtained the judgment, Eichor filed an adversary proceeding in the bankruptcy court on October 26, 2021. He proceeded to trial on his Second Amended Complaint. **ROA 24-20238.283.** Eichor alleged that Wyls’ conduct, filing a petition to quiet title in the state court, violated the Court’s Discharge Order under 11 U.S.C § 524 and 727. **ROA 24-20238.308.** On August 23, 2022 the Bankruptcy Court conducted an adversarial hearing. **ROA 24-20238.1030.** The Bankruptcy Court reviewed the agreements and characterized the agreements as a “loan” agreement. **ROA 24-20238.9.** Specifically, the court stated:

“The Wyls requested security for the loan and Mr. and Mrs. Eichor agreed to use the Property and a boat to secure the loan. Mr. Wyly requested that his attorney, Keith Gross prepare the

*documents for the loan, identifying the security. The parties agreed to two more loans in the same fashion, one for an additional \$50,000.00 with \$70,000.00 due after four months, and a final one that modified the second agreement for an additional sum of money that would result in an amount due and owing of \$126,000.00 on January 20, 2017. **ROA 24-20238.10.***

9. The Court interpreted the agreements in August of 2022, at the time of trial. After the Court defined the agreements as a “loan” **ROA 24-20238.16.** it considered the Wyly’s conduct an act to collect on a debt in violation of the Court’s discharge order. **ROA 24-20238.21.** Thus, the Court’s interpretation of the contract was applied retroactively to the Wyly’s conduct that occurred on August 21, 2021, at the time Wyly obtained the default judgment. Wylys contend the Court’s application of law to the facts was error under *Taggart*.

Eichor’s Bankruptcy Petition and Discharge Order:

10. Eichor listed only Benson Wyly as a creditor in the amount of \$224,208.00. **ROA 24-20238.781.** This amount was related to a separate lawsuit brought by Wyly against Eichor in Galveston County, Texas. The Bankruptcy Court acknowledged that Eichor listed Wyly in his bankruptcy

petition specifically relating to the Galveston County lawsuit. **ROA 24-20238.13**. Nowhere in Eichor's bankruptcy petition did Eichor identify Pam Dale Wyly or Benson Scott Wyly in relationship to the sales contracts. **ROA 24-20238.752** In fact, Eichor's petition specifically denied the existence of an executory contract. **ROA 24-20238.787**

Galveston Lawsuit and Brazoria County Lawsuit:

11. The Bankruptcy Court's Memorandum Opinion identified two separate lawsuits: one filed in Galveston County, Texas and the other filed in Brazoria County, Texas. **24-20238.702-729**. In Galveston, Wyly sued Eichor for breach of contract and sought damages in the amount of \$224,208.00. This amount was listed on Eichor's bankruptcy schedule. Eichor derived the dollar amount from Wyly Second Amended Petition filed in Galveston. **ROA 24-20238.13**. The Bankruptcy Court held this lawsuit was not the subject of the adversary hearing. **ROA 24-20238.13**

Wyllys Hired Attorney Following the Recommendation of Discharge Order:

12. Attorney, Keith Gross drafted the sales agreements with the goal of protecting the Wyly's interests relating to the property. **ROA 24-20238.1176**. Gross testified that that Sales Agreement Three had the effect

of the Wyly's purchasing the property for \$126,000.00 and that Wyly could compel the sale of the property. [ROA 24-20238.1176-1177.](#)

13. Gross testified the under Texas law that disputes regarding the ownership of real property must be brought in the county where the property is located and therefore he filed the petition to quiet title in Brazoria County, Texas. [ROA 24-20238.1177.](#) Gross testified the he did not seek money damages in the Brazoria County judgment because he understood that the bankruptcy court may have discharged the award of money damages. [ROA 24-20238.1178.](#)

14. Gross also testified that he filed a suggestion of bankruptcy in the Brazoria County District Court when he discovered that Eichor filed bankruptcy, and reframed from further action until the discharge order had been entered. [ROA 24-20238.1179.](#) Gross testified that he reviewed Eichor's bankruptcy petition and saw that it did not reference the sales' agreements. [ROA 24-20238.1189-1190.](#) Gross testified that he believed if Eichor did not own the subject property at the time he filed bankruptcy, his actions seeking declaratory relief would not interfere with the discharge order. [ROA 24-20238.190.](#) Ms. Wyly was not present at hearing on default judgment. [ROA 24-20238.1191.](#)

15. Gross testified that he knew Eichor and Wyly had a difference of opinion as to whether Eichor paid to terminate the purchase agreement. **ROA 24-20238.1191**. Gross indicated that he waited four months to pursue a default judgment hoping Eichor would defend the lawsuit. **ROA 24-20238.1191-1192**. The law required the lawsuit to quiet title to be brought in Brazoria County. Eichor filed his Bankruptcy in Harris County where the Bankruptcy Court was located. **ROA 24-20238.752**.

16. Gross testified at the hearing on the motion for default Wyly only sought declaratory relief, and requested the Court decide title to the property as of April 2017. **ROA 24-20238.1189**. The default judgment contained no award for money, just declaratory relief relating to the date of April 20, 2017. **ROA 24-20238.195**.

Violation of Discharge Order:

17. Bankruptcy Court held that Eichor listed the property as his homestead, that Wylys were unsecured creditors, they were aware of the bankruptcy petition and the discharge order. **ROA 24-20238.21**. The Bankruptcy Court held the Discharge Order explained that creditors may not make any attempt to collect a discharged debt from the debtor personally. **ROA 24-20238.21**. The Court found that the Wyly's attempt to quiet title in the state court was simply an "end run" around the discharge injunction.

ROA 24-20238.22-23.

18. The Bankruptcy Court held that Wylys' motion for default judgment violated the Court's discharge order and the default judgment was void.

ROA 24-20238.21. The Court held that Wyly's conduct seeking declaratory relief in the Brazoria County District Court, after the discharge order, constituted an action to collect a debt, and violated the Court's discharge order. **ROA 24-20238.22.** The Bankruptcy Court did not identify any specific language in its purported discharge order provided the Wylys notice of said injunction against their action to quiet title.

19. The Court found that Wyly's conduct constituted a willful violation of the discharge injunction and awarded actual damages, attorney's fees. The Court found actual damages in the amount of \$22,750.00, attorney fees of \$40,121.22, and voided the state court judgment, The Court declined to award punitive damages. **ROA 24-20238.23.**

Judgment of Contempt Error:

20. Wylys contend the Court erred in holding them in civil contempt where (1) the evidence was insufficient to find the Wylys violated any provision of the Discharge Order as the discharge order was vague; (2) under the *Rooker-Feldman* Doctrine the 239th District Court's judgment was

binding on the Bankruptcy Court where judgment did not modify the discharge order; and (4) Wyly's conduct seeking declaratory relief in the state court was not a contemptuous as a matter of law where: (a) the Wylys had a First Amendment right to petition the court to redress injuries; **ROA 24-20238.710**. (b) state courts have concurrent jurisdiction to interpret discharge orders; and (c) state law required actions to determine title to property be filed in the county where the property resides. **ROA 24-20238.706-709**.

21. In the absence of the application of *Rooker-Feldman*, the Wylys contend that there was an objectively reasonable basis to conclude that Wyly's conduct was lawful. The Bankruptcy's interpretation of the sales agreement was erroneous under *Taggart*. Instead of defining the sales agreement as a "loan", the Court should have considered (1) whether the Wyly's an objectively reasonable basis for Wyly to conclude that sales agreement was a purchase agreement; or (2) whether the Wyly's had an objectively reasonable basis to conclude that filing a lawsuit in Brazoria County to resolve title was lawful. Holding the Wyly's in contempt was error where the trial court failed to make a determination that the Wyly's conduct was not objectively reasonable at the time Benson Wyly obtained the Default Judgment.

SUMMARY OF ARGUMENT

- a. The Eichor Discharge Order did not contain clear and specific language to be enforceable by contempt on the issue of ownership of the disputed property. Consequently, the Wyly's filed suit in the state district court to quiet title the property because Discharge Order was unclear as to ownership. An in rem action in state court is not an action to collect a debt prohibited by the discharge order where state court lawsuit judgment only provided for declaratory relief and awarded no money damages.
- b. Under the Rooker-Feldman Doctrine, the state court findings were binding and deprived the bankruptcy court jurisdiction to overturn the judgment. Whether the Wyly's owned the subject property prior to Eichor filing bankruptcy court petition did not alter or modify the discharge order where the order did not address ownership of the property.
- c. The First Amendment provided the Wyly's the right to file suit and seek redress in the courts with impunity. State courts have concurrent jurisdiction with bankruptcy courts to interpret discharge orders. Because the Discharge Order did not resolve the issue of ownership to the property, there was fair ground of doubt that the Wyly's conduct seeking redress in the state court was protected under the First Amendment.

Argument and Analysis

22. In 2019, the United States Supreme Court set the standard for a creditor to be held liable for civil contempt for a violation of a discharge order. 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) citing *Taggart v. Lorenzen*, [139 S.Ct. 1975, 1802](#) (2019) A creditor who violates a discharge order may only be held in civil contempt if there is no fair ground of doubt as to whether the order barred the creditor’s conduct. *Taggart*, [139 S.Ct. at 1799](#). This standard requires the court to first determine whether a creditor violated the discharge order. *In Re Roth*, [935 F. 3d at 1276](#). If the Court determines a violation occurred, the court then determines whether there was an objectively reasonable basis for the conclusion that the creditor’s conduct might be lawful. *Taggart*, 139, S.Ct. at 1799.² Under this rigorous standard, “in order to find that sanctions are appropriate, courts have to hold that there is no objectively reasonable basis for concluding that the conduct might be lawful. *In Re Roth*, [935 F. 3d at 1278](#). The Plaintiff bears the burden of proving a discharge violation by clear and convincing evidence. *In re McLean* [794 F. 3d 1313, 1326](#) (11th Cir. 2015). Because there is no dispute regarding the facts, only the

² In Re Dewitt [644 B.R. 385, 399](#) (Bankr. W.D. Ohio, 2022) recognizing Taggart’s two step process before holding one in civil contempt.

application of law to facts, the Court of Appeals reviews the appeal de novo. *In re Energytec, Inc.* [739 F.3d 215, 218](#) (5th Cir. 2013).

Issue No. 1: Evidence is Legally Insufficient

23. This District Court in *Eichor*, held under *Taggart*, three elements must be proven for a court to hold a party in contempt: (1) the party violated a definite and specific order **requiring him to refrain from performing particular act**; (2) the party did so with knowledge of the court's order; and (3) there is no fair ground of doubt as to whether the order barred the party's conduct. *In Re Eichor*, [689 F. Supp. 438, 446](#) (S.D. Texas 2023). Accordingly, it was Eichor's burden to show a definite and specific provision in the Court's discharge order that enjoined the Wyllys from petitioning the state district court to determine ownership of the Brazoria property. Without identifying a specific clause, Eichor's claim is legally insufficient and such order is void for vagueness.

24. The void for vagueness doctrine reflects the fundamental principle that in order to comply with the requirements of due process, fair warning must be given of prohibited conduct. *United States v. Fontaine*, 697 S. 3d 221, 226 (3rd Cir. 2012). A definite and specific order is required before a person may be held in civil contempt. *In Re Eichor*, [689 F.Supp. at 446](#); *In Re Dewitt*, [644 B.R. 385,399](#) (S.D. Ohio 2022); *In Re Bennett* [298 F.3d](#)

1059, 1069 (9th Cir. 2002); *In Re Nilhan*, 622 B.R. 795, 805 (N.D. Georgia, 2020). In *Eichor* the Court held the order must provide the Wyllys' notice of what is required and what conduct is enjoined. . *In Re Eichor*, 689 F.Supp. at 446. This holding comports with the specificity requirements of an injunction order. The district court's order granting the injunction must state its terms specifically and describe in reasonable detail the conduct restrained or required. *Daniels Health Scis., LLC v. Vascular Health Scis., LLC* 710 F.3d 579, 586 (5th Cir. 2013). The Eichor's Discharge Order failed to provided notice that Wylly's conduct seeking declaratory relief in state court was barred. Thus, without evidence of a definite and specific order, Eichor's evidence is insufficient to sustain and holding of civil contempt. The argument that Wyllys conduct was an attempt to collect a debt is without merit where the the Brazoria County District Court Judgment granted only declaratory relief.

24. The Eichor Discharge Order granted a discharge under 11 U.S.C. § 727, not 11 U.S.C. § 524. ROA 24-20238.836. While § 524 contains injunctive language, § 727 does not include injunctive relief. The language contained in 11 U.S.C. § 727 provides:

- (a) The court **shall not grant** the debtor a discharge, unless;

- (1) The debtor is not an individual;
- (2) The debtor, with intent to hinder, delay, or defraud a creditor or an office of the estate charged with custody of property under this title has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed destroyed, mutilated, or concealed—
- (3) The debtor has concealed, destroyed.....
- (4) The debtor knowingly and fraudulently
- (5) The debtor has failed to explain...
- (6) The debtor has refused...
- (7) The debtor has committed any act...
- (8) The debtor has been granted ...
- (9) The debtor has been granted a discharge...
- (10) The court approves a written waiver...
- (11) After filing the petition....

(b) Except as provided in Section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title.....

26. The Bankruptcy Court did not grant the discharge pursuant to 11 U.S.C. § 524. The Discharge Order itself made no reference to suits for declaratory relief nor did it set aside the sales agreement. While the Discharge Order states, “this order means that no one may make any attempt

to collect on a debt from the debtors personally,” it does not bar Wyly from seeking a declaratory relief as to who owned the subject property prior to April 2017. Further, the Discharge Order is vague and created ambiguity by stating in part:

- (1) “Most debts are covered.”
- (2) Examples of debts that are not discharged are - some debts which the debtors did not properly list.
- (3) This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult with an attorney to determine the exact effect of the discharge in this case. **ROA 24-20238.837.**

27. In conclusion, the Discharge Order contained no definite, specific and unambiguous language that provided the Wyllys notice that filing a petition for declaratory judgment in state court is barred. In the absence of a specific provision, Eichor’s evidence was legally insufficient to sustain a finding of contempt.

Issue No. 2: Rooker-Feldman Doctrine Bars Reviw State Court Judgment;

28. The 239th Judicial District Court’s Judgment held that Eichor conveyed the Brazoria County real property to Benson Scott Wyly on April 20, 2017 and Eichor was divested of all right, title and interest in the

property. [ROA 24-20238.195](#). The Judgment solely concerned title and ownership of the real property prior to Eichor's filing his adversarial proceeding. The Bankruptcy Court's Discharge Order was silent on the matter. However, at Eichor's subsequent adversarial proceeding, the Bankruptcy Court set the sales transaction aside holding the transaction was the forced sale of a homestead. Thereafter, the Court voided the judgment. Under the *Rooker-Feldman* Doctrine, the Bankruptcy Court was barred from reviewing the state court judgment relating to ownership of the property.

29. The *Rooker-Feldman doctrine* outsts lower federal courts of subject-matter jurisdiction in (1) cases brought by state-court losers; (2) complaining of injuries caused by state-court judgments; and (3) rendered before the district court proceedings commenced; and (4) and inviting district court review and rejection of those judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, [544 US. 280, 284](#) (2005). Under the *Rooker-Feldman* doctrine, the inferior federal courts lack jurisdiction to exercise appellate review over state court decisions. *Erlewine, v. Erlewine*, [349 F.3d 205, 209](#) (5th Cir. 2003).

30. The doctrine is applicable whenever the state and federal proceedings would be inextricably intertwined. *Erlewine*, [349 F.3d at 209](#). The federal

full faith and credit statute requires us to give state court judgments the same preclusive effect that they would enjoy in the court of the rendering state. *Erlewine*, 349 F.3d at 210 citing 28 U.S.C. § 1738. Inferior courts do not have the power to modify or reverse state court judgments unless specifically authorized by Congress. *Truong v Bank of America*, 717 F. 3d 377, 382 (5th Cir 2013). In determining if a claim is ‘inextricably intertwined’ with a state court claim, the federal court must analyze whether the relief requested in the federal action would effectively reverse the state court decision or void its ruling. *In re Singleton*, 230 B.R. 533, 536-537 (1999). A claim must be found to be ‘inextricably intertwined’ with the state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. *In re Singleton*, 230 B.R. at 537. In the present case, the 239th District Court and Bankruptcy Court considered the parties rights and obligations to the real property in Brazoria County. Thus, the federal claim is inextricably intertwined with the state court decision, and the *Rooker-Feldman* doctrine applies.

31. The *Rooker-Feldman* doctrine complements the statutory jurisdictional scheme of the federal courts, including 28 USC § 1257, that limits federal review of state court proceedings to the United States Supreme Court. *In re Singleton*, 230 B.R.at 536 . Further, this doctrine applies even

where a state court judgment may be in error and is distinctive from preclusion principles because it is jurisdictional and cannot be waived. *In re Singleton*, 230 B.R.at 537. *Rooker-Feldman* has often been applied to preclude bankruptcy court review of state court decisions. *In re Singleton*, 230 B.R.at 537. ‘The Bankruptcy Code was not intended to give litigants a second chance to challenge a state court judgment nor did it intend for the Bankruptcy Court to serve as an appellate court’. *In re Singleton*, 230 B.R.at 537. However, while state court’s have the power to determine the dischargeability of a debt, an incorrect interpretation of the discharge order, that effectively modified the order is ineffective. *In Re McGhan*, 288 F.3d 1172 (9th Cir. 2002).

32. The 239th District Court determined ownership rights to real property on April 20, 2017, prior to the date Eichor filed bankruptcy. The declaration did not reduce or enlarge the dischargeability of Eichor’s debts. The judgment merely clarified ownership of property at a given time. The judgment was binding on the Bankruptcy Court and non-reviewable.

33. *Wyly / Eichor* is similar to facts in *In Re Gleason*. In *Gleason*, the bankruptcy court, during the course of an adversarial hearing, considered a state court judgment that decided title to real property where the discharge order was silent on the matter. *In Re Gleason*, 510 B.R. 114 (E.D. Kentucky

2014). The bankruptcy court held *Rooker-Feldman* barred the review of the state court judgment where judgment was limited to in rem proceeding. *In Re Gleason*, [510 B.R. at 116](#). In *Gleason*, real property was owned by a limited liability company. Under Ohio law, where a member of a limited liability company filed bankruptcy they forfeit their interest in the company. *VonLeman*, a member of the limited liability company petitioned the state court for declaratory relief. He sought a declaration that the debtor ceased to be a member of the limited liability company when the debtor filed bankruptcy. *VonLeman* prevailed in state court and debtor ceased to be an owner company and of the property. *In Re Gleason*, [510 B.R. at 118](#). Thereafter, the property was sold and debtor initiated an adversarial proceeding requesting the bankruptcy court hold *VonLeman* in contempt. The basis for the adversarial proceeding stemmed from ownership interest in the real property that was adjudicated by the state court subsequent to the discharge order. *In Re Gleason*, [510 B.R. at 118-119](#). The bankruptcy court held that “discharge, discharges debts, and enjoins creditor from attempting to collect debts, an enjoins creditors from attempting to collect debts as personal liabilities of discharged debtors. The discharge does not inoculate a debtor’s property against *in rem* actions.” *In Re Gleason*, [510 B.R. at 119](#). It is only the personal liability of the debtor that is extinguished by the

discharge; *in rem* actions remain intact. *In Re Gleason*, [510 B.R. at 119](#).

The Court found the *VonLehman's* action in state court was not an attempt to collect a debt; it sought an adjudication of Debtor's property rights pertaining to a state statute. *In Re Gleason*, [510 B.R. at 20](#)

34. The Bankruptcy Court held under *Rooker-Feldman* doctrine, the Court lacked jurisdiction. *In Re Gleason*, [510 B.R. at 121](#). The debtor argued that the state court judgment modified the discharge order, and therefore the matter was subject to the bankruptcy court's jurisdiction. *In Re Gleason*, [510 B.R. at 123](#). The bankruptcy court held the argument failed because § 524(a)(1) voids any judgment ... to the extent that such judgment is a determination of personal liability of the debtor with respect to any debt discharged. The court held § 524(a) (1) did not void judgments of property that had been abandoned to them upon discharge. *In Re Gleason*, [510 B.R. at 123](#).³ Likewise, § 524 (a)(1) does not apply to where Wyly sought declaratory relief as to the ownership of the real property prior to Eichor filing his bankruptcy petition.

35. In *Gleason*, the debtor forfeited his interest in the subject property pursuant to state statute when he filed bankruptcy. Similarly, Eichor lost his interest in the subject property on April, 20, 2017 when he failed to rescind

³ Abandoned meant loss of ownership pursuant to state statute.

the transaction. Both cases concerned the debtor's interest in property prior to the filing of bankruptcy pursuant to a state court judgment. The state court declaration neither enlarged nor diminished the Bankruptcy Court's Discharge Order. It merely determined what property was owned by the debtor at the time of filing bankruptcy. The *Rooker-Feldman* doctrine bars the Bankruptcy Court from reviewing a state court proceeding in rem to determine ownership in property prior to filing bankruptcy.

36. In conclusion, the Bankruptcy Court lacked jurisdiction to modify the state court judgment. Because the Wylys owned the subject property prior to Eichor filing bankruptcy, their actions were not an attempt to collect a debt.

ISSUE NO. 3: There is a fair ground of doubt as to whether the order barred the creditor's conduct, or there was an objectively reasonable basis for the conclusion that the creditor's conduct might be lawful.

37. The Bankruptcy Court held the Wyly's in contempt for seeking declaratory relief in the state court. The act of petitioning the state court for declaratory relief to determine the parties rights and responsibilities to real property cannot form the basis for a violation of discharge order where the right to petition the court is recognized by the First Amendment and where

state courts have concurrent jurisdiction to enter declaratory relief relating to discharge orders.

38. The First Amendment protects the rights of the people to petition the Government for a redress of grievances. *CSMN Investments, LLC, CSMN Investments, LLC, v. Cordillera Metropolitan District*, [956 F. 3d 1276, 1282](#) (10th Cir. 2020). The Supreme Court recognized this right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights, and ... explained that the right is implied by the very idea of a government, republican in form. *CSMN Investments, LLC*, [956 F. 3d at 1282](#). Immunity flows from this right, protecting those who seek to redress through the courts from liability for petitioning activities. *Id.* The right to petition extends to all departments of the Government and the right of access to courts is ...but one aspect of the right of petition. *CSMN Investments, LLC*, [956 F. 3d at 1282](#). The Supreme Court has repeatedly held that the Petition Clause of the First Amendment protects the right of individuals to appeal to the courts and other forums established by the government for resolution. *Borough of Duryea, Pa v. Guarnieri*, [564 U.S. 379, 387](#) (2011). The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government. *Johnson's Restaurants, Inc. v. NLRB*, [461 U.S. 731, 741](#) (1983). The Supreme Court held that a **court violates the First**

Amendment when it imposes civil liability on a litigant for filing a non-frivolous lawsuit even if the lawsuit is ultimately not successful. *BE & K Construction Co. v. NLRB*, [536 U.S. 516, 522](#) (2002).

39. Wyly's had paid consideration for the property and therefore had a good faith basis to believe they owned the property. Under Texas law parties are free to contract, except where the agreements are against public policy. *Phila. Indem. Insur. Co. v. White*, [190 S.W. 3d 468, 475](#) (Tex. 2016). In interpreting contracts, the court's primary duty is to ascertain and give effect to the intent of the parties, as that intent is expressed in the contract. *Gulf Ins. Co. v. Burns Motors, Inc.* [22 S.W. 3d 417 423](#) (Tex. 2000).

40. Upon payment of the purchase price, a party becomes vested with an equitable title in the land sufficient to enable him to maintain a cause of action for trespass to try title. *Brown v. Davila*, [807 S.W. 2d 12, 15](#) (Tex.App.—Corpus Christi, 1991). Under Texas law, legal title and equitable title to property are considered separately. *In Re Truman Nguyen*, [2001 WL 110903](#) (B.R. Northern District, Texas, 2011)(not cited for publican) citing *Flag-Redfern Oil Co v. Humble Exploration Co, Inc.* [744 S.W.2d 6, 8](#) (Tex. 1987). Thus, on April 20, 2017, when Plaintiff Eichor did not return the \$126,000.00 in full, the Wyllys acquired equitable title to the property. In *In Re Nguyen*, the Bankruptcy Court considered the issue

relating to equitable title to property and legal title to property in light of the trustee's ability to discharge or avoid the obligation. *In Re Truman Nguyen*, [2001 WL 110903](#) at 3. In *In Re Nguyen*, the Court found that equitable title had passed to a U.S. Bank and therefore the property could not have been apart of Debtor's bankruptcy estate under section 541(a)(1). *In Re Truman Nguyen*, [2001 WL 110903](#) at 4. In *Nguyen*, the court found that because U.S. Bank acquired Debtor's equitable interest in the subject property prior to the Debtor's filing of bankruptcy, the trustee could not have avoided the transfer under title [11 U.S.C. § 544](#). *In re Nguyen*, [2001 WL 110903](#) at 4.

41. The Bankruptcy Court held the agreement was a disguised loan. The Texas Finance Code defines the term "loan." "Loan" means an advance of money that is made to on behalf of an obligor, the principal amount of which the obligor **has an obligation** to pay the creditor. [Tex.Fin.Code § 301.002\(a\)\(10\)](#). Sales Agreement Three contained no obligation for Eichor to repay Wyly any sum of money. [ROA 24-20238.159](#). It merely provided Eichor an option to terminate the sale if he timely returned the money advanced. Based on the provisions in the agreement, Wyly had no cause of action to sue for money damages. Wyly's could only petition the court for specific performance and declaratory relief. [ROA 24-20238.159](#).

42. Undoubtedly there existed a dispute as to Eichor and Wyls' interest in the property in light of the parties' agreement and the discharge order. Both parties had the constitutional right to have their dispute resolved in the Courts. The Wyls merely sought redress in the state court because of venue provisions under state law.

43. Wyls' conduct seeking a declaration of rights to the subject property is authorized by both state and federal law. "With few exceptions state courts have current jurisdiction to determine the dischargeability of a debt." *In Re Stabler*, 418 B.R. 764, 770 (B.A.P. 8th Cir. 2009) While state court lacks jurisdiction to modify or to grant relief from a bankruptcy court's discharge injunction, they retain concurrent jurisdiction under 28 U.S.C. § 1334(b) to construe the discharge and determine whether a particular debt is or is not within the discharge. *Sunbeam Corp. v. Cortch*, 313 S.W.3d 114, 116 (Kentucky, 2010) citing *In re Pavelich*, 229 B.R. 777, 783 (B.A.P. 9th Cir. 1999). However, an incorrect interpretation that effectively modifies the discharge order is ineffective. *SunBeam Corp.*, 313 S.W. 3d at 116. 44.

44. Texas state law also recognizes that the issue of discharge may arise in state court. Discharge is an affirmative defense under Texas law. *Strata Resources v. State*, 264 S.W.3d 832, 843 (Tex.App.—Austin, 2008) citing Tex.R.Civ.P. 94. Wyls' petition for declaratory relief relating ownership

was required to be filed in Brazoria County, Texas. Texas Civil Practice and Remedies Code required that disputes regarding title to real property be brought in the county where the property is located. Tex.Civ.P.& Rem. Code § 15.011. *Daugherty v. Garrett*, [336 S.W.2d 642](#) (Tex.Civ.App. –San Antonio 1960). The Wylys merely exercised their right to have “some” court determine ownership of the property in light of the Court’s vague discharge order and Texas venue statutes. No order required the Wyly’s to have the Bankruptcy Court decide the issue. They should not be penalized for bringing their grievance in state court as opposed to bankruptcy court.

45. Petitioning the state court to clarify a party’s rights and duties under the law or a discharge order can not form the basis of a contempt action under *Taggart*. The very nature of a petition admits there is a disputed question to be resolved. It’s the duty of the civil courts to resolve disputes. State courts have concurrent jurisdiction with federal courts to interpret discharge orders. Thus, implicit in the state court jurisdiction to interpret discharge orders is a privilege to exercise that right with impunity. The Wyly’s cannot be held contempt for exercising a right that is clearly authorized by law. If petitioning the state court for declaratory relief constitutes a violation of a discharge order, then the state court should not have concurrent jurisdiction. The Bankruptcy Court’s finding is erroneous.

Even if the Wyly's would have filed a petition for declaratory relief in the Bankruptcy Court, they would have been subject to the same adverse judgment. That is not the state of the law. Because the act of petitioning the courts is protected by the First Amendment and the Discharge Order did not provide a procedure to resolve Wyly's dispute, there was a fair ground of doubt as to whether the filing a petition for declaratory judgment in state court violated the Bankruptcy Court's Discharge Order.

Issue No. 4: Court Erred Finding the Real Property was Eichor's Homestead.

46. The bankruptcy court voided the April 20, 2017 conveyance of the property on grounds that the conveyance to Wyly was illegal. It interpreted Sales Agreement Three as a loan, with the property being security for payment of a debt. To reach this conclusion, the Court found the real property was the homestead of Eichor and then held that Wyly could not compel the forced sale of a homestead. Based on the homestead finding, the Court determined that Wyly's actions were an attempt to collect a debt, in violation of the Court's discharge order. **ROA 932** The Wyly's contend that the agreement was a sales agreement with an optional right of rescission. Wyly's interpretation of the agreement was objectively reasonable given the language of the agreement and it was drafted by his

attorney. Because there was an objectively reasonable basis to conclude his conduct their lawful, the Court abused its discretion holding them in contempt under *Taggart*.

47. In interpreting contracts, the court's primary duty is to ascertain and give effect to the intent of the parties, as that intent is expressed in the contract. *Gulf Ins. Co. v. Burns Motors, Inc.* 22 S.W. 3d 417 423 (Tex. 2000). To achieve this objective, courts should examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. *Valence Operating Co. v. Dorsett*, 164 S.W.3d, 656, 662 (Tex. 2005). A party's subjective intent does not control the interpretation of the contract; what controls is the objective intent as expressed in the writing. *GTE Mobilnet of South Texas Ltd v. Telecell Cellular Inc.*, 955 S.W. 2d 286, 289 (Tex.App.—Houston [1st Dist.] 1997). Unambiguous contracts are construed as a matter of law. *Id.* A court may not add language to a contract under the guise of interpretation. *Am. Mfrs. Mut. Ins. Co. v. Shaefer*, 124 S.W. 3d 154, 162, (Tex. 2003).

48. In civil contempt proceedings, the Court's retroactive interpretation of a contract is insufficient to hold a party in contempt under *Taggart*. Under *Taggart*, where a party has an objectively reasonable basis to

conclude their conduct was lawful there can be no contempt. *Taggart*, 139, S.Ct. at 1799. It was Eichor’s burden to show that Wyly’s interpretation of the Sales Agreement Three was not objectively reasonable for him to conclude his conduct was lawful. Eichor did not prove Wyly’s interpretation was unreasonable, nor did he ask the court to do so. *In re McLean* [794 F. 3d at 1326](#) Wylys interpretation of Sales Agreement Three was objectively reasonable to conclude they owned the property. In support, the Wylys hired attorney Gross to draft the agreements and the Sales Agreement Three states:

1. *“Sales Agreement”*
2. *Sellers agree to sell and Buyer agree to purchase the property: 4012 Beach wood, Dr. Pearland, Texas.*
3. *Sellers agree to sell and Buyers agree to purchase the above property on April 17, 2017 for the sum of \$126,000.00.*
4. *Buyers agree, and have advanced Seller the total of \$126,000.00 for the exclusive and sole right to purchase the property on April 17, 2017.*
5. *Sellers and Buyers agree that this contract is subject to specific performance. **ROA 24-20238.986.***

49. The Bankruptcy Court defined the agreement as a loan. The Texas Finance Code defines the term “loan.” “Loan” means an advance of money

that is made to on behalf of an obligor, the principal amount of which the obligor **has an obligation** to pay the creditor. Tex.Fin.Code § 301.002(a)(10). Sales Agreement Three contained no obligation to repay Wyly any sum of money. It merely provided Eichor an option to terminate the sale if he timely returned the money advanced. Conversely, the sales agreement contained clear, definite, express language that the property was to be sold, subject to rescission. No evidence was offered to show that Wylys' interpretation was unreasonable. Nor did the trial court find that Wyly's interpretation was unreasonable.

50. The Bankruptcy Court interpreted Sales Agreement Three over four years after the parties executed the agreement and over a year after the Benson Wyly obtained a default judgment. In September of 2022 the Bankruptcy Court's memorandum opinion retroactively imposed its interpretation on the Wylys by holding the agreement was loan. Based on finding the agreement was a loan, the Court found that the Wylys attempted to collect a debt. ROA 919. This was error. Had the Bankruptcy Court determined that Sales Agreement Three was a "loan", **prior** to Wyly's obtaining a Default Judgment, the Wyly's would have had proper notice on the matter.

51. Objectively, it was reasonable for the Wyly's to conclude they owned

the property on April 20, 2017 and therefore the property was not part of the bankruptcy estate. Thus, under *Taggart*, the Wylys had an objectively reasonable basis for the conclusion that the creditor's conduct might be lawful. *Taggart*, 139, S.Ct. at 1799.

Conclusion

The Discharge Order did not enjoin Wyly from seeking declaratory relief in the state court as to his rights and duties to the Brazoria County property. A discharge order cannot be interpreted from enjoining a person from seeking declaratory relief in the state court, absent clear specific language where state courts have concurrent jurisdiction to interpret discharge orders. Because Eichor could not identify any provision in the Discharge Order that barred Wyly's conduct evidence was insufficient to sustain civil contempt judgment. Under the Rooker – Feldman Doctrine, the Bankruptcy Court lacked jurisdiction to review of the state court judgment where the state court judgment concerned in rem title to property, and not a personal debt. The First Amendment right of access to the Court is not barred by Discharge Order where both state and federal law recognized the state court's authority to interpret discharge orders. Lastly, it was Eichor's burden to prove, by clear and convincing evidence that the Wyly has no objectively reasonable basis to conclude their conduct was

lawful. Eichor failed to prove that (1) the sales agreement could not be objectively interpreted to be a sales contract, or (2) that his conduct filing a petition for declaratory judgment was not objectively reasonable. Accordingly, there was insufficient evidence to sustain judgment. Wyls pray that this Court reverse the decision of the district court, in whole or in part, and find (1) evidence was insufficient to sustain judgment, (2) Rooker-Feldman Doctrine barred federal court review of state court judgment; and (3) Wyly's First Amendment right of access to the Courts cannot form the basis of contempt action where state court action merely determines declaratory relief. Wyly's pray that this Court reverse the trial court and district court's final judgment render a judgment in favor is Appellants.

Respectfully Submitted

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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 18, 2024.

/s/ Keith Alexander Gross

Certificate of Compliance

I certify that Appellant's Brief contain 8654 words using Microsoft Word 14 point font in compliance with FRCP Rule 28.1(e)(2)(A)(i)

/s/ Keith Alexander Gross