Supreme Court, U.S.
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In The Supreme Court of the United States

ANTHONY GOULD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Ninth Circuit affirmed a decision of its Bankruptcy Appellate Panel, holding there was no requirement to object to a Debtor's claim of exempt property within 30 days by a creditor asserting a right of setoff, because there was no value to the claimed amount. This is a ripe corollary case to this court's recent decision in *Schwab v. Reilly*, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (2010) impacting the important Debtor's right to exempt property. Because of the different approaches taken by the Fifth and Second Circuits; the three-way split in the lower court decisions and a need for uniform application of the Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 180 (1992), two questions are presented:

1. Whether a Debtor's allowed exemption pursuant to 11 U.S.C. §522 is superior to and trumps a creditor's setoff rights under 11 U.S.C. §553 absent timely objection to the claimed exemption.

2. Whether a creditor's setoff request pursuant to 11 U.S.C. §553 is moot when mutuality of debt is absent.

LIST OF PARTIES

The name of the Petitioner is:
Anthony Gould

The name of the Respondent is:
United States of America

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Anthony Gould, petitions the Court for a Writ of Certiorari to review a final judgment of the United States Court of Appeals for the Ninth Circuit, (entered June 22, 2010) affirming the Bankruptcy Appellate Panel of the Ninth Circuit's reversal of the bankruptcy court's decision denying relief from stay to setoff funds duly exempted by Debtor.

OPINIONS BELOW

The opinion of the U.S. Bankruptcy Court for the Northern District of California, dated June 12, 2008, is officially reported as *In re Gould,* 389 B.R. 105 (Bankr. N.D. Cal. 2008) and is reproduced at Appendix ("App.") 40-97. The opinion of the Bankruptcy Appellate Panel of the U.S. Court of Appeals for the Ninth Circuit, dated February 11, 2009 is officially reported as *United States v. Gould* (*In re Gould*), 401 B.R. 415 (B.A.P. 9th Cir. 2009) and is reproduced at App. 6-39. The opinion of the U.S. Court of Appeals for the Ninth Circuit (O'Scannlain, Trott & Paez, J.J.) is officially reported as *Gould v. United States,* 603 F. 3d 1100 (9th Cir. 2010) and is reproduced at App. 1-4. The denial of rehearing en banc of the United States Court of Appeals for the Ninth Circuit is reported and is included at App. 98.

STATEMENT OF JURISDICTION

The judgment of the U.S. Court of Appeals for the Ninth Circuit sought to be reviewed was entered on April 30, 2010. The Order Denying Rehearing en banc was entered on June 22, 2010. The petition is timely under 28 U.S.C. §2102(c) and Supreme Court Rules 13.1 and 13.3 because it is being filed within 90 days after the denial of a timely petition for rehearing. The Court has jurisdiction to review the judgment of the U.S. Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III Section 2 of the United States Constitution

The judicial power shall extend to all cases . . . (and) . . . to controversies . . .

11 U.S.C. §522(l) The Debtor shall file a list of property that the Debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed on such list is exempt.

11 U.S.C. §553(a) Except as otherwise provided in this section and Sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the Debtor that arose before the commencement of the

case under this title against a claim of such creditor against the Debtor that arose before the commencement of the case . . .

11 U.S.C. §362 . . . a petition filed under .this title operates as a stay, applicable to all entities, of –

(7) the setoff of any debt owing to the Debtor that arose before the commencement of the case under this title against any claim of the Debtor . . .

26 U.S.C. §6402(a) In the case of an overpayment, the Secretary within the applicable time period, may credit the amount of such overpayment, including any interest thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment, and shall . . . refund any balance to such person.

STATEMENT OF THE CASE

Petitioner, Anthony S. Gould was the Debtor in a Chapter 13 bankruptcy proceeding, filed on January 20, 2005. The United States (Internal Revenue Service) objected to confirmation of Debtor's plan because of Debtor's failure to file tax returns for years 1999-2004. Debtor filed the returns and on May 26, 2005 filed Amended Schedules B & C, exempting refunds in the total amount of $11,047. It was later agreed that the amount was incorrect and based upon an Amended return for one year the actual amount exempted was $6,852.

On October 5, 2005, the Debtor's Amended Plan was confirmed. The IRS filed a Motion For Relief From Stay on October 25, 2005 to setoff pre-petition tax liabilities against the Debtor's post-petition refunds. Debtor opposed the Motion on the basis that the claimed refund was duly exempted by the Amended Schedule C filed with the Court on May 26, 2005 to which there was no opposition within the thirty-day deadline. On July 10, 2006, the IRS amended its proof of claim, the first claim to provide for a secured claim "pursuant to right of setoff".

The Bankruptcy Court denied the Motion For Relief to setoff and ordered the exempted funds in the amount of $6,852 to be turned over to the Debtor.

The Bankruptcy Court concluded that the IRS's failure to object to Debtor's exemption triggered consequences of this Court's decision in *Taylor v. Freeland & Kronz,* 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 180 (1992) which held that a party is barred from contesting the validity of an exemption after the thirty-day deadline to object set forth in Rule 4003 expires, regardless of whether the Debtor had a colorable statutory basis for claiming it. The Bankruptcy Court held that once claimed exempt, they no longer were subject to setoff. Accordingly, the Motion For Relief From Stay was denied. As an alternative reason for denying the IRS's motion, the court exercised its equitable discretion to disallow the IRS's setoff rights.

The IRS filed a Motion to stay the order pending appeal but the Motion was denied at the hearing as

moot when it became apparent the funds had already been returned to the Debtor. The return of funds occurred before the IRS filed its Notice of Appeal to the Bankruptcy Appellate Panel.

Upon appeal, the decision was reversed and remanded by the Bankruptcy Appellate Panel of the Ninth Circuit, (Jury, Markell & Dunn, J.J.). The Bankruptcy Appellate Panel's decision held that although the funds were turned over to Debtor by the IRS, the setoff request pursuant to 11 U.S.C. §553 was not moot although mutuality of debt was now absent. The B.A.P. held the IRS's setoff rights were preserved under §553 and that no cause existed for relief from stay. The bankruptcy court's alternate holding denying setoff on equitable grounds was reversed for abuse of discretion for disregarding the distinct terms under which the IRS can exercise setoff. The B.A.P. questioned whether the exemption held any weight when a federal statute, the IRC §6402 controls the IRS's setoff rights. The B.A.P. also stated that the federal statute does not recognize state exemptions and stated that the Supremacy Clause would prevent state exemption laws from defeating federal setoff rights.

The Court of Appeals for the Ninth Circuit (O'Scannlain, Trott & Paez, J.J.), summarily adopted the decision of the Bankruptcy Appellate Panel. Debtor's subsequent request for rehearing en banc was denied.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit opinion headily impacts the delicate balance of rights of Debtors and creditors as contemplated by the Bankruptcy Code and the case represents an important ripe companion case to this Court's recent decision in *Schwab v. Reilly,* 130 S. Ct. 2652, 177 L. Ed. 2d 234 (2010). The decision also mars the uniform application of this Court's decision in *Taylor v. Freeland & Kronz,* 503 U.S. 638 (1992) since it may be deemed to excuse all creditors with a right to setoff from objecting to Debtors claimed exemptions.

By this decision the dollar amount specified to be exempted by Debtor was deemed to be zero, absent any notice or objection to the claimed exemption by the very party who was uniquely positioned to contest the valuation of the funds sought to be exempted. Since all setoff claims of creditors may impact a contingent claim exempted by a Debtor, the preservation of the requirement to timely object to a claimed exemption is an issue of importance.

The IRS Motion was for relief from stay to setoff funds. It must be noted that setoff is permissive rather than mandatory and the decision ultimately rests within the discretion of the Court. *In re Cascade Roads, Inc.,* 34 F. 3d 756, 763 (9th Cir. 1994). Likewise, relief from stay is granted at the discretion of the court on a case by case basis upon a balancing of the equities. See *Christensen v. Tucson Estates, Inc.* 912 F. 2d 1162 (9th Cir. 1990).

As a further preliminary matter, it is well established that unliquidated claims for tax refunds for pre-petition taxable years are included within the property of the estate. *Kokoska v. Belford,* 417 U.S. 642, 648, 94 S. Ct. 2431, 2435, 41 L. Ed. 2d 374 (1974); *Mueller v. Commissioner,* 496 F. 2d 899, 903 (5th Cir. 1974); *In re Barowsky,* 946 F. 2d 1516 (10th Cir. 1991). It is therefore recognized that the funds belong to the Debtor. Debtor exempted this property under C.C.P. §703.140(b)(5), which closely mirrors Bankruptcy Code §522(d)(5). No objection was made to the exemption within the 30 day deadline provided in Bankruptcy Rule 4003(b). As this Court has stated, "an exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor". *Owen v. Owen,* 500 U.S. 305, 308, 111 S. Ct. 1833, 114 L. Ed. 2d 350 (1991).

I. Review is warranted to determine the preferred approach between the Second Circuit Court of Appeals decision favored by the bankruptcy judge (*In re Chateaugay*) and the Circuit case from the Fifth Circuit (*In re Luongo*) adopted by the Bankruptcy Appellate Panel (B.A.P.) whose decision was affirmed.

The B.A.P. decision affirmed by the Ninth Circuit adopted the IRS argument that there was no requirement to object to the Debtor's exemptions since there was nothing remaining for the Debtor to exempt after the IRS performed its "accounting

procedure" under 28 U.S.C. §6402(a) and determined that no refund existed to exempt. The B.A.P. held the contingent claim was property of the estate with a value at zero; relying primarily on the Fifth Circuit decision in *Internal Revenue Service v. Luongo* (*In re Luongo*), 259 F. 3d 323 (5th Cir. 2001) and citing the Seventh Circuit in *Pettibone Corp. v. United States,* 34 F. 3d 536 (7th Cir. 1994) and the Ninth Circuit decision in *Carolco Television, Inc. v. Nat'l Broad. Co.* (*In re De Laurentiis Entertainment Group, Inc.*), 963 F. 2d 1269 (9th Cir. 1992) in support.

The B.A.P. cited *De Laurentiis* for the proposition that since its origins in Roman law and common law, setoffs in bankruptcy have been generally favored (App. 20) and following its statement that the language of §553 which read "this title does not affect the right of a creditor to offset a mutual debt" meant that "notwithstanding any other provision of the Bankruptcy Code", this should be so, since to hold otherwise would nullify §553 and ignore its plain language. (App. 29).

The Second Circuit in *Aetna Casualty and Surety Co. v. LTV Steel Co., Inc.* (*In re Chateaugay Corp.*), 94 F. 3d 772 (2nd Cir. 1996), however unequivocally held that the "netting" of an overpayment to extinguish an "underpayment" is itself classic setoff within the meaning of the Bankruptcy Code, subject to the provisions of §362 and §553. The *Chateaugay* court held:

"By arguing the accounting procedure under §6402(a) is something other than an ordinary right of setoff, the government in essence asks us to find that the bankruptcy laws do not apply to the IRS. This we cannot do. For the Supreme Court has quite clearly held that '[n]othing in the Bankruptcy Code or the legislative history indicates that Congress intended a special exception for the tax collector.' *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 209, 103 S. Ct. 2309, 2316, 76 L. Ed. 2d 515 (1983); see also *United States ex rel. IRS v. Norton,* 717 F. 2d 767, 772 (3d Cir. 1983)" *Chateaugay,* 94 F. 3d at 780-81. The Court therefore held that there was a common law right to offset LTV Steel's black lung liabilities against the company's tax refund and that that right was prior to any right of the IRS to offset post-petition tax liabilities against pre-petition overpayments.

The B.A.P. decision, affirmed by the Ninth Circuit followed *Internal Revenue Service v. Luongo* (*In re Luongo*), 259 F. 3d 323 (5th Cir. 2001) and relied heavily on the distinction between an "overpayment" from a "refund". In *Luongo,* the Court noted

> Section 6402(a) grants the IRS discretion whether to offset a Debtor's unpaid tax liability or to refund the overpayment to the taxpayer. Because the prior unpaid tax liability exceeded the amount of the overpayment, the Debtor was not entitled to a refund and the tax refund did not become property of the estate. Absent an interest in the estate to the refund, it could not properly be exempted by the Debtor under §522.

Id. at 335.

With this analysis however, as the bankruptcy court reasoned, there would accordingly be no property the Debtor had for the IRS to setoff (no mutuality of debt), and the claim for setoff would fail. Nothing to exempt, nothing to setoff.

In addition, the *Luongo* facts were crucially different and guidance is required to avoid further misapplication of the case. In *Luongo,* the IRS setoff the pre-petition tax liability against the pre-petition tax refund *before* the Debtor reopened her bankruptcy case and amended her schedules to claim the tax refund as exempt. The Fifth Circuit held that because the IRS had elected to set off the tax liability, there was no longer a balance to be refunded to the Debtor. Since the setoff occurred *prior* to the claim of exemption, *Taylor* was not controlling. The Fifth Circuit decision specifically states that it did not reach the exemption issue decided below – that is whether Section 522(c) prevents a creditor from exercising its rights of setoff preserved in §553". *Luongo,* 259 F. 3d at 328. Therefore it is inaccurate to cite the decision to stand for the proposition that because of the netting allowed by IRC §6402(a), the IRS's setoff claim under §553 trumps an exemption asserted by the Debtor, without opposition, under §522.

II. Review is warranted to resolve the three-way split among lower court decisions determining the issue as to whether IRS setoff rights trump a Debtor's right to exempt tax refunds.

Among the lower courts, there is a three-way split of authority on the issue. The first line of cases, considered the majority view at least until 2001 holds setoff cannot be made against assets exempted under §522 to protect Debtor's fresh start. *In re Sharp,* 286 B.R. 627, 629 (Bankr. E.D. Ky. 2002); *In re Pace,* 257 B.R. 918, 920 (Bankr. W.D. Mo. 2000); *In re Jones,* 230 B.R. 875, 880 (M.D. Ala. 1999); *In re Alexander,* 225 B.R. 145, 149 (Bankr. W.D. Ky. 1998); *In re Monteith,* 23 B.R. 601 (Bankr. N.D. Ohio 1982); *In re Tubbs,* No. 99-33506-PB7, 2000 WL 1203508, at *1 (Bankr. S.D. Cal. 2000). See also, *In re Tarbuck,* 318 B.R. 78 (Bankr. W.D. PA. 2004); *In re Killen,* 249 B.R. 585 (Bankr. D. Conn. 2000) and *In re Haffner,* 12 B.R. 371 (Bankr. M.D. Tenn. 1981).

The second line of cases holds that setoff rights always prevail over an exemption under §522 relying on those courts' reading of various sections of the Bankruptcy Code. *Internal Revenue Service v. White,* 365 B.R. 457 (M.D. Pa. 2007); *United States v. Luongo,* 255 B.R. 424 (N.D. Tex. 2000), *aff'd on different grounds,* 259 F. 3d 323 (5th Cir. 2001); *In re Martinez,* 258 B.R. 364 (Bankr. W.D. Tex. 2000); *In re Glenn,* 2000 WL 33364195 (Bankr. W.D. Wis. 2000); *Posey v. IRS,* 156 B.R. 910 (W.D. N.Y. 1993); *In re Eggemeyer,* 75 B.R. 20 (Bankr. S.D. Ill. 1987).

See also, *In re Junio,* 2002 WL 32001412 (E.D. N.Y. 2002); *In re Bourne,* 262 B.R. 745 (Bankr. E.D. Tenn. 2001); *In re Wiegand,* 199 B.R. 639 (W.D. Mich. 1996).

The third line of cases, followed by the Ninth Circuit here, holds that a Debtor's estate has no interest in any tax "overpayment" – and therefore, the Debtor cannot claim any amount as exempt – until the IRS has determined that a refund is owing after "netting" the tax liabilities pursuant to IRC §6402(a). *Pettibone v. United States,* 34 F. 3d 536 (7th Cir. 1994); *IRS v. Luongo (In re Luongo*), 259 F. 3d 323 (5th Cir. 2001); *United States v. Midway Indus. Contractors, Inc.* (*In re Midway Indus. Contractors, Inc.*),178 B.R. 734 (N.D. Ill, 1995); *Lyle v. Santa Clara Co. Dept. of Child Support* (*In re Lyle*), 324 B.R. 128 (Bankr. N.D. Cal. 2005); *Security Pac. Nat'l Bank v. U.S.* (*In re Siebert Trailers*), 132 B.R. 37 (Bankr. E.D. Cal. 1991); *In re Baucom,* 339 B.R. 504 (Bankr. W.D. Mo. 2006); *Beaucage v. IRS,* 342 B.R. 408 (D. Mass. 2006); *In re Jones,* 359 B.R. 837 (Bankr. M.D. Ga. 2006); *In re Shortt,* 277 B.R. 683 (Bankr. N.D. Tex. 2002); *In re Pigott,* 330 B.R. 797 (Bankr. S.D. Ala. 2005).

Most recently, in *Miller v. U.S.*, 422 B.R. 168 (W.D. Wis. 2010) the Debtor appears to have listed the item exempted an "overpayment" but the court found setoff rights nevertheless prevailed.

Review is warranted to determine the best approach reconciling all legal concepts involved. The approach adopted by the bankruptcy court gives

meaning to both §§522 and 553 and recognizes that all contingent, unliquidated assets are property of the estate, that funds overpaid to the IRS do belong to the Debtor, that Debtor has an asset to exempt which absent timely objection to the claimed exemption, makes setoff, which is permissive and not mandatory, unavailable. The approach also ensures that an exception is not carved out for the IRS from compliance with §522(l) and Federal Rule of Bankruptcy Procedure 4003(b).

Review is essential to preserve every Debtor's primal right to his exempt property. The funds ceased to be property of the estate when the Debtor exempted them, without opposition by the IRS. To allow the decision to stand in effect permits the dollar amount statutorily available for exemption by Debtor to be reduced to zero by a creditor absent any notice to the Debtor. The act of listing property as exempt must bear value. The requirement for timely objection to the claimed exemption must not be waived for IRS or other creditors with setoff rights. To waive this requirement costs the Debtor his fresh start. Recently, this court in *Schwab v. Reilly, supra,* certainly upheld the Debtor's right to the stated value on her schedules and did not contemplate not allowing Debtor to retain at least the exempted amount of $10,718 of her equipment or proceeds from sale of same.

Upon determination of the preferred approach, the bankruptcy court's alternate holding denying relief from stay to setoff on equitable grounds may

also not have been an abuse of discretion stemming from an erroneous application of the law.

III. Review is warranted because the issue as to whether exemption claims trump setoff claims absent timely objection remains unresolved by the change in the law for cases filed after October 17, 2005 by the addition of Bankruptcy Code §362(b)(26) which merely provides that the setoff by the IRS of a pre-petition tax refund is not stayed.

Section 362(b)(26) was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 199 Stat. 23 §418 (Apr. 20, 2005). While this provision eliminates the need for the IRS to bring a Motion For Relief From Stay, to exercise its rights under 6402(a), it does *not* resolve the issue of whether the IRS may setoff against tax refunds when the Debtor has exempted such funds under §522, absent timely objection. This remains a very live issue.

Furthermore, no additional legislative change or amendment was made in the Act to clarify this issue. It must be noted that this case at bar, was filed before the provision was effective, and thus the IRS was required to obtain relief from stay which is always at the discretion of the court.

It is quite telling, however, that the provision was added. Its need and enactment boldly spells and

underlines the plausible error of the Ninth Circuit's approach prayed for review.

Also of note is that there was no change to §522(l) and Bankruptcy Rule 4003(b) for cases filed after October 17, 2005.

IV. Review is warranted because of conflict between the Ninth Circuit decision and the Bankruptcy Appellate Panel's decision in the Eighth Circuit regarding mootness of the request for setoff once the IRS released the disputed funds to Debtor.

Exercise of judicial power depends on the existence of a case or controversy pursuant to Article III of the Constitution. *De Funis v. Odegard,* 416 U.S. 312, 316 94 S. Ct. 1704, 40 L. Ed. 2d 164 (1974). Subsequent to the entry of the bankruptcy court's Order denying relief from stay and before the Notice of Appeal to the B.A.P. was filed by the IRS, the IRS gave the Debtor the $6,852 at issue.

Setoff requires mutuality of debt and is designed to avoid "the absurdity of making A pay B when B owes A". *Citizen's Bank of Md. v. Strumpf,* 516 U.S. 16, 18 (1995), quoting *Studley v. Boylston National Bank,* 229 U.S. 523, 528 (1913). Therefore at issue, is whether the release of funds was a fatal misstep barring relief. The Ninth Circuit held it did not. However, the decision is in conflict with an Eighth Circuit B.A.P. decision, *Internal Revenue Service v.*

Ealy (In re Ealy), 396 B.R. 20 (B.A.P. 8th Cir. 2008) which is directly on point.

In *Ealy,* the IRS moved for relief from stay to permit offset of the Debtor's tax overpayment and economic stimulus payment under the Economic Stimulus Act of 2008 against his post-petition tax liability. The bankruptcy court denied the IRS's Motion, concluding the IRS was adequately protected by the Debtor's confirmed plan, which provided for periodic payments in full of the Debtor's post-petition tax liability. The IRS appealed and sought a stay of the order pending appeal from the bankruptcy court. The bankruptcy court denied its request. The IRS paid the overpayment and stimulus payment to the Debtor. The IRS appealed the bankruptcy court's order denying relief from stay. The Eighth Circuit correctly concluded that the IRS no longer had a right of setoff because the mutuality aspect of §553 had been lost because of the IRS's payment to the Debtor. Therefore the court held that even if it did reverse the bankruptcy court, it was impossible to grant meaningful relief, since the IRS had only sought relief from stay to effectuate setoff rights.

The Ninth Circuit rejected the mootness argument in *Ealy*, declaring it nonbinding and contrary to the more expansive Ninth Circuit rule regarding mootness. It especially found that the appeal is not moot because (1) the appellate court had power to fashion effective relief by ordering the Debtor to return the money; (2) Debtor was a party to the appeal; (3) because the taxpayer's present inability to

make restitution for an erroneously paid refund, nor mistake by the IRS issuing the erroneous refund, excused the taxpayer's legal obligation to repay the refund; and (4) there was no requirement for the appellate court to return the parties to the *status quo ante*. (App. 14-19).

Returning to the "netting" argument discussed above, this approach is also at the cost of mutuality of debt, because if the claim is valued at zero, there is accordingly nothing to setoff.

Petitioner also challenges the Ninth Circuit's denial of the application to dismiss the appeal for lack of jurisdiction based upon equitable mootness which was offered to the Ninth Circuit. By the time the B.A.P. decision was made, the Debtor had completed his payments due under the confirmed Chapter 13 plan; immediate restitution may not have been possible by the Debtor to the IRS and since the IRS failed to object to the claimed exemptions, took quite some time to file their Motion and secured proof of claim, the equities favor the Debtor and his fresh start. "Ultimately, the decision whether to unscramble the eggs turns on what is practical and equitable." *Baker & Drake, Inc. v. Public Ser. Comm'n (In re Baker & Drake, Inc.)*, 35 F. 3d 1348, 1352 (9th Cir. 1994).

Here, in the totality of circumstances, the case should have been legally and equitably moot, especially because "setoff is a solely defensive posture, it cannot be used in an aggressive manner to deprive a Debtor of the fresh start contemplated by the Code.

Pieri v. Lysenko (In re Pieri), 86 B.R. 208 at 213 (citations omitted) (B.A.P. 9th Cir. 1988).

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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