

No. 11-1518

IN THE
Supreme Court of the United States

RANDY CURTIS BULLOCK,
Petitioner,

v.

BANKCHAMPAIGN, N.A.,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

REPLY BRIEF FOR PETITIONER

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September 28, 2012

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REPLY BRIEF FOR PETITIONER

There Was No Finding of a Violation of “An Express Limitation of the Trust Instrument.”

In opposition to the petition, respondent does not dispute or attempt to minimize the longstanding division among the circuits on the standard governing the determination of “defalcation” under § 523(a)(4) of the Bankruptcy Code. Instead, respondent argues that the split among the circuits would not matter to the outcome for petitioner. The stated premise for this argument is that petitioner acted in disregard of “express limitations on the authority of the trustee by the terms of the trust instrument.” Opp. 2. But this premise is incorrect. The Illinois trial court found a factual dispute to exist on whether the loans made by petitioner as trustee were in violation of an express limitation in the trust instrument. Respondent sought summary judgment on that issue, and the motion was denied because the trust instrument was unclear. Pet. App. 53a-54a. The Illinois court found a breach of fiduciary duty under Illinois law, but that finding was not based on a violation of the trust’s express terms. Pet. App. 54a-55a.

Respondent is also incorrect in arguing (Opp. 3) that the First Circuit’s standard, applied in *Rutanen ex rel. Quevillon v. Baylis (In re Baylis)*, 313 F.3d 9 (1st Cir. 2002), would not result in petitioner receiving his discharge. The “extreme recklessness” standard adopted by the First and Second Circuits would almost certainly have resulted in petitioner’s discharge being protected, given the judicial findings by the Illinois state court that he acted with no apparent

ill intent and that there was no loss of trust *res*. The Eleventh Circuit applied a more stringent standard and upheld the exception of the trust-related debt from petitioner's bankruptcy discharge. The Court should take this occasion to lift the fog among the circuits and set the proper standard.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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