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Supreme Court of Texas.  
Thomas Graber and Hopkins and Sutter, Petitioners,  
v.  
Richard L. Fuqua., Respondent.  
No. 05-0303.

January 2, 2006

Appearances:

Robert H. Mow Jr., Kirkpatrick & Lockhart Preston Gates Ellis LLP,  
Dallas, Texas, for petitioners.

Richard Lee Fuqua II (argued), Fuqua & Keim, LLP, Houston, TX, for  
respondent.

Before:

Don R. Willett, Wallace B. Jefferson, Nathan L. Hecht, Dale  
Wainwright, Scott A. Brister, David M. Medina, Paul W. Green, Phil  
Johnson, Harriet O'Neill

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COURT ATTENDANT: Excuse me please. Court is ready to hear argument  
in 05- 0303, Thomas Graber and Hopkins & Sutter versus Richard L.  
Fuqua.

COURT ATTENDANT: May it please the Court. Mr. Mow represent  
immunity of petitioners. Petitioners have reserved three minutes for  
rebuttal.

ORAL ARGUMENT OF ROBERT H. MOW JR. ON BEHALF OF THE PETITIONER

MR. MOW JR.: May it please the Court. The issue before the Court  
in this case is not only important but it is narrow. And the question  
is, "The Federal Bankruptcy Law preempt a State prosecution action for  
claim in laws from a creditors filing and prosecuted." A discharge of  
penalty action in the bankruptcy court with the strong that answer that  
question did he is, there is federal preemption in State of the  
prosecution claim under the circumstances. What a voluntary bankruptcy  
that is involved here? We believe the answer is yes, contrary to what  
the Thirteenth Court. The Court stored bound below based on the really  
mandamus authority that is out there in other jurisdiction saying there  
was a need of sudden preemption. A, a, an alternative statement of the,  
and this case malicious prosecution for proceedings that are handled in  
the bankruptcy court. The Ninth Circuit in particular as issue, three

opinion whose we have sided and will return it to the Court and updated. As information of the appellant reviewed panel in the Ninth Circuit in a case called "Miles" as so we furnished two days ago. And Miles was colloquial involuntary case and when another involuntary decision with for the most part no warning, no partake to take position as the Courts do involuntary cases. That involuntary cases like our State of malicious prosecution action filed by debtor after he had been successful against the characters discharge ability claim. Really, on third week of plan, the unanimous boys to the other Courts in the Ninth Circuit, on top of that is, there is conclusion because the federal bankruptcy code.

JUSTICE: How far does your argument go? You, you mention that the unsafe and tendency error questioning important but narrow I think you said?

MR. MOW JR.: Yes your Honor.

JUSTICE: Would you take the same position that a, for example fraud action would be printed, if it's concern conduct that was considered during the bankruptcy proceeding?

MR. MOW JR.: Your Honor, I don't think the Courts fully pledge that out but I will use the words of the Ninth Circuit and then there's a lead case and then referred to call image are in, in the Ninth Circuit. And it's coded in all the evidence in Six Circuit, Second Circuit and some other. And they use the term "arising" at the, the bankruptcy proceedings, and if not, then defy and a lot further on that. But I would, I would say it's a broad as if there is a bankruptcy proceeding as it wasn't this case. Just to set the facts, Mr. Fuqua file the voluntary bankruptcy in the Courts of it, a this credit were presented by my client's. Petitioners in this case filed at a none, does not action do not discharge their debts, layoffs what the pupil want he didn't bring any action in the bankruptcy in all those the bankruptcy proceeding that they called "the build the action." And instead he wait two years much take for power which is prosecution plan. So I would define that in that fraud whether or not it contains elements of fraud. It is in the bankruptcy court and there is a proceeding then the federal preemption applies.

JUSTICE: So you're-- let me-- put a little-- your little fire point on them, on the pencil? If it's an intrinsic fraud at, that you, that you, you take the same position on take it. What extrinsic fraud something that was, that assume not discoverable but it was fraud then involve the matters that came up in the bankruptcy proceeding. Would you take the same position?

MR. MOW JR.: Yeah. I would your Honor. I think the Court by using the term "bankruptcy proceeding" mean if there is the proceeding in bankruptcy because of what Congress did. And I will return to that emanative, establishing this complete, complex, comprehensive code then they, there is no if you will subject matter jurisdiction for State court also that matter federal district court. One of this decisions involve a, at stable to prosecution plan brought in the federal district court and the Ninth Circuit believe it was set no subject matter jurisdiction or it's federal of state. Once the bankruptcy Court has had a user term, a bankruptcy proceedings so a, a petitioner I don't unless this Court to go out beyond the, even, even if involuntary cases follow the rules is there. Are we saying the same material with a few exemptions and that's where involuntary petition is filed by creditor. The Court dismiss a proven, is not proper if fraud allegation of bad faith. And the Court say there "Well, it's for decision by the federal bankruptcy court, is whether the involuntary was sanctionable

not for state court at malicious prosecution." We're not asking the Court to go over there, she's allowed that's, that it's not the same thing. We're talking about the voluntary client and ...

JUSTICE: What even trouble understanding the rationale for the, for the word-- we've-- seems pretty settled. But you no, it doesn't seem to be that State courts totally bankruptcy because you can't bring me action in a federal court and it's one cases that ...

MR. MOW JR.: Yes your Honor.

JUSTICE: So well then is it you bring first to the extensive remedies, the bankruptcy could afford but they always section you cite or 11 U.S. Code 105 and Bankruptcy Rule 9011 and I can't tell what Section 105 means exactly but 9011 just allow sanctions which were different, a lot different from bankruptcies. -

MR. MOW JR.: That's correct.

JUSTICE: - So it seems to me that if, if this is correct, really there isn't much recourse from malicious prosecution in connection bankruptcy proceedings.

MR. MOW JR.: Well, there is distinctive between voluntary and the involuntary. that on involuntary point your correct, the main remedy not that there lots of other bankruptcy statute having something to do with it, file but one that gives any remedy, really is for the Bankruptcy Rule 9011. But it does give a meaning for remedy, it gives an encourage that you cannot just cover payment to the Court, it gives the eternity to the aggrieved party plus to rather put period to be liberal definition of cause in carries the result to the proceeding.

JUSTICE: That's still different from damages so use kind a wonder why would you shield bankruptcy proceedings from malicious prosecution?

MR. MOW JR.: My answer that is I, I don't know because I'm not Congress and I don't see any indication of life congress did it. But I think the courts are uniform in saying "this was congress' choice" and they didn't provide special or general damages suggest of the nature you requiring back in this concept they did a lot of some damages on the involuntary filing. And another point Court said, "Well, that's because I can do so much damage to the, the better, there's true handed involuntarily destruct the business to stop everything and I don't rely Congress didn't do that on this particular type of filing but it didn't."

JUSTICE: Is there a strict preclusion in the bankruptcy code and rules from after the determination of the allegedly frivolous action bringing in the bankruptcy court in malicious prosecution?

MR. MOW JR.: Are these one where you were saying is there an expressed preclusion?

JUSTICE: Is there a strict preclusion code, rules, case law?

MR. MOW JR.: If in case law, there is as ...

JUSTICE: Well, but this-- let me complete my question. Is there a strict preclusion after the legibly frivolous sanctions is, is concluded any bankruptcy proceeding to bringing to the bankruptcy judge, does malicious prosecution claim? I can't you tell the bankruptcy judge, your, you're making you can that this was frivolous this malicious prosecution, it's slandered me, it hurt me a lot of ways so that it goes beyond just the recovery for the frivolous pleadings, and frivolous allegations, rules, and statutes.

MR. MOW JR.: I, I, I think that's an extra point, is it equal chose not to do that here but ...

JUSTICE: I'm asking can, I'm asking can you?

MR. MOW JR.: I don't know. I, I, from given the reading of this Courts as to the exclusivity of what's in there and the time you didn't



put in there, you can't get it. You did the actually, in fact what-- were-- are need to do? I, I would be surprise that the Court would allow general damages when it doesn't say it in the federal rule of the bankruptcy code in bankruptcy. But the point here, and it is another point just to wide the Court for all the wrong was there's a few for chooses farm he file the bankruptcy. He's in the bankruptcy, he knows what the rules are and yet when that discharge ability action finished, he didn't provides for the bankruptcy court and say "I've never agreed by malicious filing, I'm entitled to any damages."

JUSTICE: To why-- what if-- why would you do that, it's a post-petition? Post but the -

MR. MOW JR.: The bankruptcy -

JUSTICE: - that's where ...

MR. MOW JR.: - bankruptcy deals with pre-petition actions and, and, and this is a post petition conduct to some lecture.

JUSTICE: Why would you go back there?

MR. MOW JR.: Because your Honor, it is govern by the bankruptcy code and that is the place for him, the code they wants to relate. I think that is the point that the ...

JUSTICE: But I thought we just, we know, we just heard you sided but there, there is no specific code provision governing whether where the post-petition actions has to be brought?

MR. MOW JR.: Well, I think that, that, that, I thought I gave the answer on what I intended to say but didn't was. The Preemption Doctrine is going to require the debtors of bank to the bankruptcy court or at least the debtor cannot use the state court tort like malicious prosecution to get an answer. And that's why, we personally go back to the Bankruptcy Court and say and then under rule 9011, "I want my attorney's fees in all cause that incurred as a result to this."

JUSTICE: The, the Sherman act claim can only be brought in federal court, but that seem the indication that if you thought that was maliciously prosecuted, you couldn't bring state code action to, to argue that or pack and friendly or even a federal crack I suppose. I mean, I assume that if a, if you for charges to the U.S. attorney to turn the August made all the other requirements tort that you could see in a State Court for malicious prosecution even if it's federal crack. I just wonder what's special about the bankruptcy?

MR. MOW JR.: I think what's special is knows, it knows the incident to, you're not dealing with the code that he says, "Complete to where it's clear." The Congress intended and the language of the Courts to occupy a bill orto imply the preempt, any other causes of action arising up state law. You are dealing with that here and, and again those, the cases are referred case, say that pretty clear the NSR the, I could find the code here right at the Miles case can affirming NSR. The language, the Miles fort use was accuses December of law file. That, that have said, "There can be no state law malicious prosecution drives in our banklet versus filings code." They are completely preempted by the structure and purpose of the bankruptcy code. And I offer that is an answered just to say because it quite said, "it's a merit question so, so all over the others." And I don't know that gratification below the others except that they are not such a complete comprehensive code and, and to the one that further Miles agreed with the NSR decision saying there was complete preemption saying. We agreed that state malicious prosecution actions for band staking place within bankruptcy court proceedings or completely bar. So the other courts like I said, "There are few other Circuits and I believe it's

Pennsylvania, California and State system take the same rule and almost follows cycle MSR case."

JUSTICE: So in your brief, you, you claim, you, you're successful on preemption but you, you distinguish that from subject matter jurisdiction. Bankruptcies can only be brought bankruptcy court, right? Federal bankruptcy court.

MR. MOW JR.: Defiant of the petition, yes.

JUSTICE: And virtually anything that impact, the better State after the filing of the bankruptcy gets some subsume the net bankruptcy or otherwise state. Correct? To you have go to the bankruptcy court, if you can impact for bidders the state, if a lawsuit by co-malicious prosecution claims got to impact with debtor's estate. Why is it that matter of such a matter jurisdiction not just preemption?

MR. MOW JR.: I think it would be, but this goes the Federal Preemption Doctrine, I believe goes further because of course is saying no stable is a prosecution action can occur with kind a lot of regard of what happen in terms of result in the bankruptcy court if it rises out of the bankruptcy proceeding. I think they are saying is that rather than what you're saying. And in what sense you're making narrow, because there is concurrent jurisdiction with the state Court on a number of things and both the Court is tort and the prior to of the Court was court and if you feared on talk about concurrent jurisdiction. What can you save for it's private, you know, arise out of the bankruptcy in so called. we're not arguing has too confusing, first thing, congress pretest his case to say. For senator, the grand power in Article 1, if well, it was empowered to adopt the uniform system. You don't get uniform to allowed the States to have this common remedy arising at the bankruptcy proceedings. So congress in acts, if very comprehensive complete quote which covers a lot of crack. And certainly, if you go to that code and you have to proceed in the bankruptcy court, all the cases have look out of the set, this is federally preemptive. It, those are actions have to take those request for relief is in this case have to take place in the bankruptcy court.

JUSTICE: It's, I guess it's not too difficult to drawing circumstances where a lawsuits file. Sometimes after the bankruptcy is concluded, if that's the case, where the facts after the bankruptcy, it's well, but it, it impacts the debtor. In this case, the malicious prosecution action was filed a presume back to the bankruptcy was concluded but based on conduct during the bankruptcy, I think that's not an issue subject matter jurisdiction only preemption.

MR. MOW JR.: Well, the only thing I would question because it's not in the record and no evidence that the bankruptcy was concluded in this case. So otherwise, I'd, in this, what the question was other than that, dirty. In generally, yes there can be other State Court action, but it involves facts arising out of the eight bankruptcy proceeding in the bankruptcy court, leave the whole entered clear which we were argue for slicing to this Court not bonded that there is federal preemption. Thank you.

JUSTICE: Thank you counsel. The Court is now ready to hear argument from the respondent.

COURT ATTENDANT: May it please the Court. Mr. Richard Lee Fuqua will present argument for the respondent.

ORAL ARGUMENT OF RICHARD LEE FUQUA II ON BEHALF OF THE RESPONDENT

MR. FUQUA: May it please the Court. I'll take two part. In the corner of the States. And the, and the plaintiffs and the plaintiffs, Houston Texas, the practice for this Court on number vacations, we cannot practice 1973 far that I was locker, lock first for Judge Arthur Malver, be back for suggestion for Southern of the Texas. With regards your question to, Judge Jonhson?

JUSTICE: You're right.

JUSTICE: The plaintiff's code is design to deal the Texas power link snapshot. What assets, what liabilities, what lines, lights, facts existed on the date the bankruptcy petition is fact. To look at the bankruptcy code, that is the wellspring from which all jurisdiction runs in a bankruptcy case. It is exclusive jurisdiction as to the petition. The facts we have here, that amoulouscite until our document, we wanted the Court to the Third Circuit.

JUSTICE: What is the time arising out of the bankruptcy proceeding mean? What -

MR. FUQUA: Judge ...

JUSTICE: - it's pretty broad.

MR. FUQUA: Was very broad. In the issue, and that's why it's related to jurisdiction. I have a friend, it ambush in Court road [inaudible]. There's hard core, soft core, everything is core. That, that course cancel with bankruptcy judges aptitude whether arises out of the bankruptcy case or not. The answer to the, to your question correctly if it deals with the administration of the a State, in other words, the claims process. If it deals with who gives pay in the distributions still match? If it deals with what are the assets of the bankruptcy court State or that will issues. And announce cite you to look to bankruptcy rule procedure 6009, when it says, "Is the trusty or the debtor, to a suit in court or tribunal in the, in work to affect and protect their rights." It's not, you don't have to bring every lawsuit that you could possibly think of to the bankruptcy court. That's just not the scheme of the law.

JUSTICE: But you have to get permission of the bankruptcy court.

MR. FUQUA: Sir, no sir. On our bankruptcy rule subprocedure 6000 and nine, a debtor or trusty may suit any tribunal with, it does require the permission. What requires the permission is if I'm going to suit the debtor or the estate. I have to go to the bankruptcy judge and seek that judicial law search permission because that conflict the distribution of my estate.

JUSTICE: Yup. You that, was that you going to have to do with post-petition cause back of the debtor only pre-petition?

MR. FUQUA: Only pre-petition. Post-petition if I, you know let me tell you, give you some sights that we pointed out to the Bankruptcy Will 911. According to the United States Supreme Court is not sensitive, is merely a procedural if you, you did this wrong, your side should provide that plead. You side your name to a pleading in a property or without investigating the law. Just support your plead is procedural and significant base on fact.

JUSTICE: In a perjure, redress with this kind of thing?

MR. FUQUA: Just have to if, no does not.

JUSTICE: No?

MR. FUQUA: No. And I have to tell you honestly, the Third Circuits on board. There, the Third Circuit in U.S. Express Lines to 281 F.3d 2002 opinion, says, "specifically, our review of extra case law persuade us." This is a page 23 of it, can you observe? Persuade us that the federal rules of some of the procedure, do not preempt the claims



for views of process and some more torts providing relief for misconduct in federal litigation. Therefore, victims of such misconduct make inappropriate circumstances. Rank C, to the cover damages under State causes of action, that's the third sheet. This circuit I believe this in, in accord effect in in, in right word in, In Re Paso Del Norte in our responsive pleadings, the Fifth circuit says, we have federal courts, our court torts bankruptcy courts or given a precise area of all fact. The court, may we call Neill Mertha on cases from a numbers of years ago where the Supreme Court declare the bankruptcy code on Constitution. And then we have to go to the whole process of having Article 3 judges surf our, when judges it defend take facts and wist the facts and then hear the cases to their torts to the Article 3 judges side the Court .

JUSTICE: In that language from that case you read, is your Express Lines saws that condition were appropriate but ...

MR. FUQUA: Yes.

JUSTICE: What is that?

MR. FUQUA: Yes, you have in my opinion. They, they, they decide were appropriate. In that instance, you got a state court cause of action based on conduct that is recent post-petition in other litigation as work, it were we are right here. We have, and with notice got to the facts, since our gathered facts, we are a law firm that prepare documents, leading or wrong. In actively themselves. My love of money it should be but the bottom line is, this conduct occurred post-petition.

JUSTICE: What there was a send back?

MR. FUQUA: The property you state Section 541, Bankruptcy Codes and Act, says that, "On the, have I told about power link snapshot, that's stated on the day the Bankruptcy Texas File? Property you state cannot see what was there, the act."

JUSTICE: What, appearing in lenght criminal malicious prosecution occur?

MR. FUQUA: Because if it's ...

JUSTICE: Why is it?

MR. FUQUA: May it please the Court. If the malicious prosecution had occurred file to the the filing as an asset, as property bankruptcy estate. And would be you sue, if you consider state courts, state court calls of action, bankruptcy will suits thousand the 6000 and nine so you could bring it, prosecuted proceed.

JUSTICE: A pre-petition when bankruptcy court and my self.

MR. FUQUA: Preclusion conduct sometimes gives it to the bankruptcy court through litigation ...

JUSTICE: But we're looking here stuff to goes on ask him -

MR. FUQUA: Should ...

JUSTICE: - Why is much case law against?

MR. FUQUA: Well, if I was an, if I live in California have three task fund. But the Third circuit ...

JUSTICE: Why, why did you think? I mean -

MR. FUQUA: Why?

JUSTICE: Yeah. I mean, you know, it's not, it's just incidental opinions to be made. They seem pretty solo.

MR. FUQUA: Well, I really don't know that in the justices who read. I, I'm not, I, I didn't know most of judges.

JUSTICE: I'm not talking psychologically.

MR. FUQUA: Well, there's a matter of law that affect the law. Are you sake they're wrong? Because they, they would imply it, say this is preempted, it's not preempted by statute. There's not a law written,

this one of those deals and this Court has previously written three senator client for the court. In the more the brantual case, a preemption should be very, you don't assume in fourth preemptions. That's it's got to be just a slack at Aquavilleraemons, a slack and officious, got to be obvious. But ...

JUSTICE: You, you could see that different states to different views west prosecution, it could back bankruptcy.

MR. FUQUA: Well, hard to give special damages and that, that don't happen very often it happen in this case. With regard to, let me tell you, cut in the judge not really see it. The Rule 11 evaluates, a Section 105 that counsel mentioned is the all this, is effectively all, all risk statute. It says, you know, court can enter an order to protect and preserves jurisdiction. That's the essence of all of that. The issue here is really an integrity issue as opposed to a tort issue. Your clients did a tort intentional and maliciously. They would say "May I have the Court stop the in name address that, you got to talk to congress." The fabric of law, the bankruptcy code applies the laws of this state, the matters relative to substance in cause of action arising in the state. Our common law is applied by the bankruptcy law. All bankruptcy does is to create a formalized structure. Is it a fraudulent transfer, is it a preference, is this an asset of the state, it should this be discharge, should, what, what are the relative rights under the federal statute. So what hangs from the corpuz, in the freez, what's there and what's not there. We adopt the federal courts' views to common law, the State of Texas, in all respects.

JUSTICE: There's a thick way everything you're talking about still related to pre-petition conduct, is it not?

MR. FUQUA: That, that's the essence suggested ...

JUSTICE: Did I pull-in post-petition conduct?

MR. FUQUA: Sir, no sir. You will find no Texas. No Texas.

JUSTICE: Let's assume that during the pendency of the bankruptcy the debtors defraud it out of million dollars. Does bankruptcy, what happen to the bankruptcy proceeding? Let's brought to the [inaudible] ...

MR. FUQUA: What's your asset? What's the asset?

JUSTICE: Pre-petition assets.

MR. FUQUA: Of using fraud it.

JUSTICE: Pre-petition asset.

JUSTICE: Answer the bankruptcy.

MR. FUQUA: Let me add this inheres to million dollar, two days after filing of the petition and that is.

JUSTICE: Bankruptcy code says, "For six months, if you inherent?"

MR. FUQUA: Okay. Does say someone gives, suppose petition asset, post-petition asset million dollar? We just defraud Dollars.

MR. FUQUA: Oh cheers and there's and there's a taste of more ...

JUSTICE: Any of sue of that in State Court?

MR. FUQUA: Yes. Let me take that ...

JUSTICE: Does he ever come, come the Federal Court?

MR. FUQUA: No sir. Not at all. Inside the, the, the, the sup, the, the-- appearing that case on, that's the trialteat he's out of the urban. Fell own durations of air, gives his trust on it, it, the trust one thinks. In a period of times, does not become property be safe.

JUSTICE: Bankruptcy Code, in fact does for samples which masses, relation assets back in to the state -

MR. FUQUA: Only -

JUSTICE: - the inherit-- the inheritance.

MR. FUQUA: - on six months. In error trial ...



JUSTICE: For example because address those match.

MR. FUQUA: Yes.

JUSTICE: Does it address this tight tort?

MR. FUQUA: No.

JUSTICE: And even if ...

MR. FUQUA: In fact, that's why I was reading to your not good in the Third Circuit. It specifically says, those State Law causes of action exist they have vitality. They are not preemptive, they are not miscirculate don't you take it away. This is wrong for conduct that ...

JUSTICE: After the value of bankruptcy?

MR. FUQUA: Intention law for conduct.

JUSTICE: Don't you think a malicious prosecution sue for what goes on in connection with bankruptcy proceedings, is for more luckily to affect the way those proceedings are conducted then a malicious prosecution action for terminate violation or allege of an actor, allege pen from federal crime or something else. It seems like you're, there's like a close, more close group or something that this is more likely to affect.

MR. FUQUA: I can't imagine the tie or group patent burg. Well, but that the sign of judge. We have cause the, the State we have causes of action for torts. And you know I have a footnote that will, that affect bring out point, saying he had to go to 341 menu, that's being conducted under 11 United States court Section 341, it says "Every debtor must attend." She got to discharge, we can't proceed for in fact here you're in bad trouble. But you don't show up. You got of the 341 meaning and a client shows up and pulled you. Severely creates harm, to you. fine reach out, if you take their theory of the law, that is a cause of action. It has no opportunity to recess. It says, "Not the law, can't be the law."

JUSTICE: Our technical manner, I think the law in the Federal Court, generally, is that you can request sanctions after the proceeding has ended, maybe then for period time after. Do you know what last term in the bankruptcy code of law?

MR. FUQUA: Bankruptcy rules of a procedure 9011 adopts federal so called, "Procedure rule 11." And that's, in fact the Supreme Court said that's a sanction to, for an act, not a course of conduct, not a tort. In fact, that's what the Third Circuit that, I were you, the tenth is an accord of third. Never way a Court with an eye. Or said, "Conversely the Ninth and the Third, the Tenth, and I think the Fifth are not important than I."

JUSTICE: During the bankruptcy proceeding and after the action that you can tend, those a lack of public oppose for, concluded. Could you brought your malicious prosecution arguments, exertions or claim to the tension of bankruptcy did?

MR. FUQUA: You got to run to the intension to have no jurisdiction to your target. 1334, twenty-eight ...

JUSTICE: Well, well did, didn't that malicious prosecution as he claim affect your estate, took money out of your estate? Haven't to defend it, it ...

MR. FUQUA: No actually, didn't. I only tell you why.

JUSTICE: The lawyer is for free?

MR. FUQUA: Oh no. I had a lot but the, when, when you file, I bet the M.C. switching account, just what cause the file with it. The batch with low will lost their financial and ninth day accelerating year up. Bottom line what the courage is all my assets, I empty my pockets on the day I found bankruptcy. Maybe I said, "I have goes to my trusty for administration and then instruction." I have the pay, I'm not post-

petition argues. As a lawyer, all the surge I didn't, I didn't invade the bankruptcy estate off. There would be no chance, it's going to be increase or decrease by virtue of their comment.

JUSTICE: But you could evoke for sanctions -

MR. FUQUA: Under 9011.

JUSTICE: - at the conclusion of that preserves?

MR. FUQUA: I say, I could have got a sank well, I'm not sure to be. Because -

JUSTICE: Well, you got us look ...

MR. FUQUA: That's why judge. And maybe even for sometime after.

JUSTICE: I do not know-- Well, know to be extended. I'm not sure as you, I think you will note from the briefing. This cause of action didn't arise, remember juries, after I prevail because they view, they being the papergen sudden brake. So the Bankruptcy Court, I guess to that thirty days could probably hit entertain 9011 sanctions. But they would have lost jurisdiction of the case totally upon the file and that the appeal. Is that all case within the what, to the district and in the federal systematic from the district within the rule of circuit. And I just not wave my state of causes of action.

JUSTICE: Is there, is there requirement that you make an election on your state law cause of action? -

MR. FUQUA: No.

JUSTICE: - Why do you say you chose not to wave?

MR. FUQUA: I don't want to risk. Confident counsel opinion that say, that is you want shot. 9011 in that, that comes everything that it done.

JUSTICE: So you pass a racing?

MR. FUQUA: Yes.

JUSTICE: You didn't make a motion for sanctions because you concern that way?

MR. FUQUA: Yes sir.

JUSTICE: One element of a malicious prosecution actually, is to show what probable cause, proceed. And I suppose, that would ordinary. In many cases require an expiration in the such to do bankruptcy court.

MR. FUQUA: In this ...

JUSTICE: Whether, whether there was probable cause of the action has to know what the law was?

MR. FUQUA: But why that is even worst that a fact a problem here. They found the cause of action it didn't distribute any of the documents for years, years. That's just a few, I mean that if you want a timeline to change this file to 731 of 88. The trial of the fact, 23 cause of action goes forward May 13 in 1997. Three Mr. Graber's assistance are relationship with the, the United States attorney's office imbalance that there was an intervention by all those people in the trial of the case. I'm just trying to go, what cause is so I was about to oppose there with suddenly have been opposed. And there's no knows could, could use, could on a, on the way investigation please stay it. So I didn't see the documents that they really allege their claims was based in, until maybe I accept . And the truth of the fact that the, the law firm that prepare to take down documents for the FDRC. Creating a new seconds alone and assign another assets to the FDRC corporate is the same offer. They knew, they give it assign that cause of action against the league to the new law, to the new savings of law who filed an objection to discharge those who the-- it was assigned the FDRC corporate, a different legal entity as they point out of May, Texas have. So I couldn't even to found out and tell If I can be strong.

JUSTICE: How broad is the rule you are arguing for? What, what types of cases can you not bring after bankruptcy proceeding has concluded that related to conduct immediately that occurred during the bankruptcy? You can bring proclaims assume you would say?

MR. FUQUA: I say the entire scheme of common law, in fact, there's a cite, I don't think a cite it. Cause I, I came across it is dicted. 112 Bankruptcy reports 197 to Judge Litisia core from the Southern of Texas. And she, she sort a points out that conscious of action for things that happened after the bankruptcy petitions file, why didn't? They, it's like a divining at an absolute bright one, one judge. Everything before is doubt within the bankruptcy at state, everything after is not in the bankruptcy estates.

JUSTICE: Some exemptions like inherited-- inheritancy mentions.

MR. FUQUA: But that's an statute film.

JUSTICE: Right. But it's still not a snapshot at found, found.

MR. FUQUA: Well, the, the better what you have we're still in snapshot just they inferred. Somewhat like they vested like another have to right. The will is already written just have active light.

JUSTICE: What else the search Clark say that you're going to point out?

MR. FUQUA: It was a case succeeding in. The name of the case is Moran V. Zachcinion. And what she says, "It, what happened is that a judgment was entered pre-bankruptcy and discharge entered a garnished of an action filed and home of the law refuse to fund at pay the debtor money you donored post petition." Because I still want there was a garnished for that, there. In the very last senate, Judge Mark says, "I find that the conduct that discharge, nobody's present to garnish them." They suggest Exxon being careful and contortive, however, if, if the debtors, if this conduct continues, the debtor has a state court all rise to proceed. In other words, post petition harm government State Court, all bankruptcy.

JUSTICE: Any further questions? Thank you counsel.

MR. FUQUA: Thank you, sir.

REBUTTAL ARGUMENT OF ROBERT H. MOW JR. ON BEHALF OF PETITIONER

MR. MOW JR.: May it please the Court. I don't believe that the entire argument occurred the word preemption, don't let the heard. The reason is that Mr. Fuqua now the Court is tort, any authority to support them on the point, the narrow point, here on today, which is, I submit Congress preempted State Law court actions for malicious prosecution containing broader land. Regional proceedings in the bankruptcy court, yes, their post petition. What's the opinion or sub player, I didn't hear any discussion about not just the need but the requirement. Under Article 1 for uniformity in the bankruptcy decision and how did you reconcile at with fifty different State explanations of what is a malicious prosecution abuse the process, do you have that idea or a grossly negligence isn't intentional discussion of that. And the case to say that's a really important criteria to the Congress headed mind that's what I've filed to establish a uniform system quote, "under law of the State."

JUSTICE: Mr. Fuqua says that, "The tenth, third and Fifth Circuit or none in forum with the Ninth Circuit."

MR. MOW JR.: I, I'm not sure with this circuit case your talking



about. There's not in my view as to the Third Circuit tenth case involve the question of what are the Federal Rules assume a procedure create a preemption of moral argument, that's not the state. They didn't involve their proceeding, the, the agreed as involve American case and did involve the proceeding that took place in bankruptcy. And, and one bank ...

JUSTICE: - circuit case he cited was In re Wood. Are you familiar with that case?

MR. MOW JR.: I'm not.

JUSTICE: We'll both read it.

MR. MOW JR.: Yeah, that you were right. Thank you.

JUSTICE: In five days, all the cases including the Petholania U.S. district court case which conduct this year say that Congress chose remedies. Well, none of those main article they chose remedy now on, on a suppress principle remedy dispute the file voluntarily, he chose not to use that remedy. We submit the law as clear in your, this Court but Texas in line with the majority cases hold that there is preemption under the bankruptcy act for State Law cause of action like malicious prosecution arising out of conduct for filings in a bankruptcy. Thank you very much for your time.

JUSTICE: Excuse me. Before you get up, one question. Counsel, hypothetically-- hypothetical at least to me, the-- he says a he's a debtor, and intervening his [inaudible]. Disagree or do you not?

MR. MOW JR.: Yes, let's know about, more about contest and then proceeding, this is in the hearing. And this end of hearing, and this engage in that, then I would say that would probably come under the definition of preemption as supplied by the torts by the attach not to push with here. And that's why I have said, I think the issue before the Court is narrow and we can make it broader, is that you where let goes. I like clear on point on issue. Thank you.

JUSTICE: Thank you. The cause is submitted all causes are submitted this morning in the martial manager of the Court.

COURT ATTENDANT: All rise. Oyez! Oyez! Oyez! Honorable, the Supreme Court has close to obstain yet.

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