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Executive Benefits Insurance Agency v. Arkison

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Article III of the Constitution provides that the judicial power of the United States shall be vested in the Supreme Court and such inferior courts that Congress may establish. U.S. Const. art. III, §1. It further provides that the judges "both of the supreme and inferior courts, shall hold their Offices during good Behavior" and shall receive compensation, "which shall not be diminished during their continuance in office." *Id.* As the Supreme Court explained in *Stern v. Marshall*, "Article III is an inseparable element of the constitutional system of checks and balances that both defines the power and protects the independence of the Judicial Branch." 131 S. Ct. 2594, 2608 (2011) (internal quotations omitted).

In *Stern*, the Supreme Court addressed the interplay between Article III and 28 U.S.C. §157(b), authorizing bankruptcy judges (who do not enjoy Article III's protections) to enter final judgments in certain "core" bankruptcy proceedings. Specifically, the Court addressed whether a bankruptcy judge may constitutionally enter a final judgment resolving the debtor's state law counterclaim against a creditor filing a proof of claim—a matter statutorily designated as "core" in § 157(b)(2)(C)—where the creditor objected to the judge's exercise of jurisdiction. The counterclaim at issue was a garden-variety state law tort action essentially unrelated to the proof of claim. The Court held that Article III of the Constitution precludes Congress from assigning such matters involving "private rights" to non-Article III bankruptcy judges for final adjudication. In sum, because the underlying tort claim at issue in *Stern* was a state law cause of action independent of the federal bankruptcy law, the bankruptcy court "lacked the constitutional authority to enter a final judgment." *Id.* at 2621.

Following *Stern*, the Supreme Court granted *certiorari* in *Executive Benefits Ins. Agency v. Arkison*, to address two questions left unresolved by its decision in *Stern*: (1) whether Article III of the Constitution permits bankruptcy judges to exercise the judicial power of the United States to finally decide a private-right controversy on the basis of litigant consent, and, if so, whether a litigant's conduct can constitute "implied" consent; and (2) whether a bankruptcy judge may submit proposed findings of fact and conclusions of law for *de novo* review in the district court in a "core" proceeding under 28 U.S.C. § 157(b). Answering the second question in the affirmative, the Court determined that, when a bankruptcy court is presented with a "*Stern* claim"—a claim a bankruptcy court may fully adjudicate under section 157(b)(1), but not under the Constitution—the bankruptcy court should follow the procedures for non-core claims in section 157(c)(1) and issue proposed findings of fact and conclusions of law that the district court may review *de novo*. *Id.* at 2168. Having reached the second question, the Court did not reach the first. More recently, the Court granted certiorari in *Wellness International Network v. Sharif*, no. 13-935 (2014), ostensibly to address the first question.

A. *Stern* and the Statutory Scheme

Generally, district courts have "original and exclusive jurisdiction of all cases under title 11," as well as all proceedings (1) arising under the Bankruptcy Code, (2) arising in a case under the Code, and (3) related to a case under the Code. 28 U.S.C. § 1334; *Stern*, 131 S. Ct. at 2603. Under section 157(a), district judges enjoy discretion to refer any or all bankruptcy cases and proceedings to the bankruptcy judges in their district. Bankruptcy judges are appointed to 14 year terms by the federal courts of appeals. *Id.*; 28 U.S.C. 152(a)(1). Every district court has provided for the automatic referral of cases and proceedings by standing order.

The scope of a bankruptcy judge's power depends on the type of proceeding involved. *Stern*, 131 S. Ct. at 2603. "Bankruptcy judges may hear and enter final judgments in 'all core proceedings arising under title 11, or arising in a case under title 11.'" *Id.* (quoting section 157(b)(1)). "'Core proceedings include, but are not limited to' 16 different types of matters, including 'counterclaims by [a debtor's] estate against persons filing claims against the estate.'" *Id.* (quoting section 157(b)(2)(c)).

When a bankruptcy judge determines that a referred proceeding is not a "core" proceeding, but is instead merely related to a case under title 11, the judge may, without the parties' consent, only "submit proposed findings of fact and conclusions of law to the district court." 11 U.S.C. § 157(c)(1). After *de novo* review of any matter to which a party objects, the district court may then enter final judgment in those cases. *Id.* at 2604.

In *Stern*, the Supreme Court held that Article III of the Constitution precludes Congress from assigning certain statutorily "core" bankruptcy proceedings involving private-right controversies to non-Article III bankruptcy judges for final adjudication. Because the tort claim at issue in *Stern* was fundamentally a state law claim and did not implicate a public right, it was only amenable to final determination and entry of judgment by an Article III judge, at least absent the parties' consent otherwise. In reaching that conclusion, the Court rejected the argument that bankruptcy judges are mere "adjuncts" of the district courts because they "exercise[] the essential attributes of the judicial power." *Id.* at 2619. Accordingly, without the parties' consent, only Article III judges can adjudicate certain core claims not involving public rights.

B. Background of Arkison

Arkison arises out of the bankruptcy proceedings of the Bellingham Insurance Agency, Inc. ("BIA"). Nicholas Paleveda, an attorney, was largely responsible for managing BIA's affairs. BIA was affiliated with Aegis Retirement Income Services, Inc. ("ARIS"), with which it kept joint accounting records.

In 2003—following a dispute between Paleveda and his partners concerning the distribution of certain insurance commissions—the partners instructed the relevant insurance carrier to deposit future commissions into an account not accessible by Paleveda. As a result of this falling out, Paleveda initiated arbitration against his former partners. He lost and was ordered to pay his former partner's attorneys' fees.

Before the arbitration award became final, Paleveda initiated a transfer of all of BIA's assets to a newly-created company called Executive Benefits Insurance Agency ("EBIA"). EBIA occupied BIA's headquarters, employed its staff, and engaged in its business. After discovering the transfer, the ex-partners commenced a state-court fraudulent conveyance action against Paleveda, BIA, ARIS, and others. Paleveda placed BIA in Chapter 7 bankruptcy, halting the lawsuit by way of the automatic stay. Paleveda then removed the action to federal bankruptcy court and filed an answer in the newly initiated adversary proceeding.

The commencement of the Chapter 7 proceeding triggered the appointment of Peter Arkison, Respondent, as trustee, and deprived Paleveda of further control over BIA. Arkison subsequently commenced his own fraudulent conveyance action on behalf of BIA's estate, pursuant to 11 U.S.C. § 548, against Paleveda, EBIA, ARIS, and others. As a result, an adversary proceeding was opened and EBIA answered, denying many of the allegations. Notably, EBIA denied that the fraudulent conveyance action was a "core" proceeding, meaning

that he contended that the proceeding was "non-core," and he asserted that EBIA was entitled to all the Article III and Seventh Amendment rights non-core proceedings entail. Consistent with that view, EBIA belatedly demanded a jury trial.

Pursuant to Bankruptcy Rule 7012, when a defendant denies in its answer that a proceeding is core, as EBIA did here, it is required to state in that same answer whether it consents to the bankruptcy court's entry of a final judgment, or if it prefers to exercise its right to insist that the bankruptcy court only issue proposed findings of fact and conclusions of law to be reviewed *de novo* by the district court. EBIA failed to state in its answer whether it consented to a final adjudication by the bankruptcy court, thus violating Rule 7012.

After Arkison unsuccessfully sought summary judgment against ARIS, EBIA brought a motion in the bankruptcy court to vacate that court's trial date, citing its jury demand, which would require trial in the district court. Arkison objected to the motion, highlighting EBIA's tardiness in bringing its demand. Rather than holding a hearing on the matter, the bankruptcy court vacated the trial date and transmitted the record to the district court, which docketed the matter as a motion to withdraw the reference from the bankruptcy court. The district court then ordered a status conference and instructed the parties to prepare a Joint Status Report to inform the court's decision with respect to the motion to withdraw the reference. All of the parties but Paleveda participated in a conference call. After the call, Arkison's counsel circulated the agreed-upon report, indicating that summary judgment proceedings would be litigated in the bankruptcy court. EBIA's counsel never signed the report before it was produced to the district court; on the other hand, EBIA made no objection at the time the report was circulated or after it was filed. The district court subsequently re-calendared the withdrawal motion for three months hence.

Arkison thereafter moved for summary judgment against EBIA in the bankruptcy court. The court found there were no genuine issues of material fact concerning whether EBIA was the alter-ego of BIA or whether the assets had been transferred to EBIA fraudulently. Consequently, it concluded that Arkison was entitled to judgment as a matter of law and entered summary judgment against EBIA.

EBIA appealed the bankruptcy court's judgment to the district court. After reviewing the bankruptcy court's determinations *de novo*, the district court affirmed the bankruptcy court's grant of summary judgment. EBIA then appealed the district court's affirmance to the Ninth Circuit. After filing its brief, but before oral argument, EBIA for the first time objected to the proceedings in the bankruptcy court on the ground that Article III of the Constitution precluded the bankruptcy court's entry of final judgment against it on the fraudulent conveyance claim. The Ninth Circuit invited *amici curiae* briefing, and the United States (among others) participated. Ultimately, the Court of Appeals affirmed.

In rendering its decision, the Court of Appeals recognized that, although bankruptcy judges have statutory authority to enter final judgments in fraudulent conveyance proceedings, they lack the constitutional authority to do so because fraudulent conveyance actions, like state law tort actions, are properly matters of private right. Nonetheless, the court held that, in this case, EBIA's litigation conduct evidenced its acquiescence and obviated any Article III infirmity. The court additionally held that, in fraudulent conveyance cases where the defendant does not consent, bankruptcy judges may nonetheless enter proposed findings of fact and conclusions of law subject to *de novo* review in the district court.

C. The Parties' Arguments

1. EBIA's Argument

In its merits brief to the Supreme Court, EBIA argued that, as non-Article III judges, bankruptcy judges are constitutionally proscribed from entering final judgment on private-right claims in non-core proceedings, because entering final judgment is the "core function of the Judicial Branch." Pet. Br. at 13. EBIA argued that, while "bankruptcy judgments carry all the attendant risks of district court judgments, bankruptcy judges have none of the Constitution's structural protections." *Id.* at 23. To allow bankruptcy judges to enter final judgments on private rights, EBIA asserts, "would 'compromise the integrity of the system of separated powers and the role of the Judiciary in that system.'" *Id.* at 24 (quoting *Stern*, 131 S. Ct. at 2620).

Nor, EBIA asserted, can the consent of the parties cure the purported constitutional defect. *Id.* at 13. Where structural separation of powers issues are at stake, "notions of consent and waiver cannot be dispositive because the limitations serve institutional interests that the parties cannot be expected to protect." *Id.* at 26 (quoting *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 851 (1986)). Accordingly, EBIA argued, the "consent or waiver of litigants in an individual case is insufficient to confer on non-Article III bankruptcy courts authority to enter final judgments on private rights." *Id.* at 27.

EBIA argued in that alternative that consent could only cure the constitutional defect to the extent that Congress has made consent "a limiting feature of the statute permitting non-Article III adjudication." *Id.* at 13. EBIA conceded that the Court has "at times given some consideration to the role of consent within a statutory scheme in evaluating whether a statute's limited delegation of judicial authority violates the separation of powers in the first place." *Id.* at 28. EBIA attempted to distinguish delegations to bankruptcy judges from other delegations to

quasi-judicial authorities by emphasizing the presence or absence of consent, the scope of review of the adjudicative body, and the review that body's findings or determinations are subject to by Article III courts. *See id.* at 30-31. For example, the Magistrate Judge's Act, EBIA suggested, "is distinctive in that it makes consent an explicit, statutory limitation on the non-Article III judge's jurisdiction." *Id.* at 31 (citing 28 U.S.C. 636(c)(1)). A statutory consent requirement, EBIA argued, "ensures that litigants are made aware of the need to consent and their right to refuse it, and ensures that Congress has carefully considered the constitutional issues at stake." *Id.* at 13.

EBIA further asserted that "[e]ven if consent in an individual case were relevant to the question whether a non-Article II judge may enter final judgment of the United States, such consent would need to be knowing and voluntary." *Id.* at 38. EBIA contended that its "failure to assert an argument foreclosed by binding precedent" (that the bankruptcy court lacked authority to enter final judgment because an earlier Ninth Circuit decision had rejected such an argument) "could not confer on the bankruptcy judge constitutional authority that Article III otherwise forbids." *Id.*

EBIA also maintained—contrary to the Ninth Circuit's holding—that in core proceedings bankruptcy courts "lack[] statutory authority to issue proposed findings of fact and conclusions of law." *Id.* at 15. The power granted by section 157(b) to the bankruptcy courts to "hear and determine" core proceedings "does not include authority to propose non-final findings and conclusions" because the plain meaning of "determine" is to decide conclusively. *Id.* Nor, EBIA asserts, can construing section 157(b) to permit issuance of proposed findings and conclusions be reconciled with section 158. *Id.* Section 158 grants district courts appellate jurisdiction over bankruptcy court judgments, but provides them with "no authority to enter

judgments in the first instance in a case that has been referred to (and not withdrawn from) the bankruptcy court." *Id.* Thus, EBIA maintained, the task of "crafting a constitutional alternative to the existing partially unconstitutional framework"—wherein bankruptcy judges are not explicitly authorized to make non-final recommendations—"belongs to Congress, not the courts." *Id.* at 46.

2. Arkison's Argument

In its brief, Arkison traced the history of district court reliance on third-party bankruptcy adjudicators (referred to as commissioners or referees) from the first bankruptcy act, passed in 1800, through its numerous iterations to the present. Resp't's Br. at 9-12. Traditionally, Arkison explained, commissioners or referees oversaw "summary" matters, with abbreviated procedures. *Id.* at 11. Where a party demanded full legal process (for example, in so-called "plenary matters"), resort had to be made to state or Article III federal courts. *Id.* at 12. Generally, referees "had summary jurisdiction over property within the actual or constructive possession of the debtor." *Id.* Assets outside the debtor's possession generally could only be reached by plenary proceedings. *Id.* Nonetheless, Respondent observed, parties could "jointly consent to proceed before a referee in a summary proceeding, even with respect to an otherwise plenary matter." *Id.*

In 1978, Congress overhauled the bankruptcy system, abolishing the summary/plenary division and granting bankruptcy judges jurisdiction over all matters arising in a bankruptcy case, arising under the Bankruptcy Code, or related to a case. *Id.* at 13. Additionally, Congress provided for mandatory assignment of all bankruptcy cases to the new bankruptcy courts for full and final determination, largely freeing those courts from the district courts' oversight. *Id.*

After the Supreme Court struck down this nascent independent bankruptcy regime in *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), "Congress reverted to the historical reference-based model." *Id.* at 14. Article III judges were again empowered to use or ignore bankruptcy judges as they desired and to take cases back from those judges "mid-stream" for cause. *Id.* And consistent with the language in Justice Brennan's plurality opinion and Justice Rehnquist's concurrence characterizing the restructuring of debtor-creditor relations as lying at the "core" of the federal bankruptcy power, Congress curtailed bankruptcy judges' ability to enter final judgments with respect to matters that are non-core. *Id.*

Arkison also contended that EBIA waived its right to take its case to the district court, instead "tak[ing] its summary judgment chances in the bankruptcy court" and only after losing raising an Article III challenge on appeal. *Id.* Nor are structural Article III concerns present in this case, Arkison maintains, because "the bankruptcy court consensual adjudication system exists entirely within Article III, following longstanding judicial practice." *Id.* Indeed, "[b]ecause resort to bankruptcy judges is fully at the joint election of district judges and the parties in private-rights controversies, the political branches have no involvement whatsoever and hence there is no encroachment on the judiciary violating the separation of powers." *Id.* at 19. EBIA's argument concerning structural concerns is inapposite, Arkison argued, because "the subset of cases implicating structural separation of powers concerns comprises those involving the encroachment or aggrandizement of one branch at the expense of the others," which is not the case here. *Id.* at 37 (internal quotation marks and brackets omitted).

Furthermore, Arkison argued, consent to bankruptcy court adjudication "may be implied by conduct of the kind at issue here" just as consent can be implied in the analogous magistrate judge setting. *Id.* at 20. Indeed, the Court affirmed the permissibility of implied consent to final

judgments by federal magistrate judges in *Roell v. Winthrow*, 538 U.S. 580,585-86 (2003). And as Arkison noted, the "grant of authority to magistrate judges is even broader" than is the analogous grant of authority to bankruptcy judges. Resp't's Br. at 26. Additionally, Bankruptcy Rule 7012 provides the same protection as statutorily required consent because it requires responsive pleadings to "include a statement that the party does or does not consent to entry of final orders or judgments by a bankruptcy judge." *Id*. at 51 (quoting Rule 7012).

In this case, the court below held, and Arkison maintains, that EBIA consented to bankruptcy judge determination by failing to object to the Joint Status Report both at the time it was drafted and when it was filed. *Id.* at 60. In any event, Arkison maintained, "[b]ecause an Article III district court conducted a full de novo review of the summary judgment order and entered its own judgment, EBIA got all the Article III consideration to which it was entitled." *Id.* at 20.

Finally, Arkison contended, "*Stern* creates no insoluble statutory gap" because bankruptcy judges may issue proposed findings of fact and conclusions of law if the parties do not consent to final judgment in the bankruptcy court. *Id.* at 21. "The apparent gap arises because [§ 157] focuses on proposed findings of fact and conclusions of law for *non-core* claims, but *Stern* claims are statutorily *core*, and core claims do not have an analogously explicit provision for such reports and recommendations." *Id.* at 63-4 (internal citation omitted). Understandably, Arkison posited, "almost all courts have done the only logical thing: treat *Stern* claims as though they were non-core, restricting bankruptcy judges in the absence of party consent to proposed findings of fact and conclusions of law." *Id.* at 64.

3. United States as Amicus Curiae Supporting Arkison

The United States filed an *amicus curiae* brief in support of Respondent-Arkison, arguing that, through its litigation strategy, EBIA had waived its right to have the claim against it decided by an Article III judge. Gov't Amicus Br. at 11. The United States agreed with Arkison that the Supreme "Court and the courts of appeals have recognized that litigant consent can authorize the entry of final judgment by a non-Article III judge." *Id.*

Consistent with the Ninth Circuit's holding and Arkison's argument in its merits brief, the United States submitted that EBIA could "consent to resolution of [its] claim by the bankruptcy court." *Id.* at 16. Indeed, the United States quoted approvingly Arkison's characterization of the paramount importance of consent in determining the permissibility of a non-Article III adjudication: "As respondent notes (Br. 34), every case in which this Court has found a violation of a litigant's right to an Article III decisionmaker has involved an objecting defendant forced to litigate its private rights involuntarily before a non-Article III judge." *Id.* at 18 (internal quotation marks omitted).

The United States, like Arkison, noted that EBIA's "approach is at odds with decisions holding that federal magistrate judges may, with the litigant's consent, enter final judgment in cases otherwise committed for resolution to an Article III court." *Id.* at 20. Indeed, the United States noted that EBIA's "argument against waiver impugns the constitutionality of the federal system's well-established use of magistrate judges." *Id.* at 22. Nor, the United States maintained, does the ability of bankruptcy judges to enter final judgments implicate structural separation of powers concerns. *Id.* at 23.

Even if EBIA had not consented to final determination by its conduct, the United States argued, it still "would not be entitled to relief from the judgment below" because EBIA's

disregard for the Rule requiring that it either consent or object in its answer to final determination by a bankruptcy judge and because it failed to comply with the district court's order concerning the joint status report. *Id.* at 26, 28. And because the district court "reviewed and sustained the bankruptcy court's summary-judgment ruling under a *de novo* standard, there is no reason to suppose that the district court would have reached a different conclusion if the bankruptcy court had submitted" proposed findings and conclusions instead of a final judgment. *Id.* at 28.

With respect to the ability of a bankruptcy judge to enter recommendations and conclusions in core proceedings, the United States again agreed with Arkison that the Bankruptcy Code may be permissibly read as allowing a bankruptcy judge to make proposed findings of fact and conclusions of law. *Id.* at 29. This result is necessary, the United States argued, because EBIA's approach "would create an anomalous statutory gap, preventing bankruptcy courts in matters like this one from exercising the statutory powers that apply to *either* core *or* non-core proceedings." *Id.* at 31. Such a "crabbed" reading, the United States suggested, is contrary both to principles of severability and "the great weight of lower-court decisions." *Id.* Moreover, such a reading is "in conflict with many local rules and orders that authorize bankruptcy judges" to do just that. *Id.*

D. The Supreme Court's Decision

The Court ultimately agreed with the respondent, Arkison, and in a 9-0 decision held that when the Constitution does not permit a bankruptcy court to enter final judgment on a "core" (i.e., a "*Stern* claim"), the relevant statute nevertheless permits a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed *de novo* by the district court. *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165, 2168 (2014). In this case, the

District Court conducted a *de novo* review and entered a separate judgment, which cured any potential error in the Bankruptcy Court's final judgment. *Id.* at 2174. Accordingly, the Court affirmed the Ninth Circuit's decision. *Id.*

1. Stern claims may be treated as non-core within the meaning of Section 157(c)(1).

The Court held that when a bankruptcy court is presented with a "*Stern* claim," the proper course is to submit proposed findings of fact and conclusions of law to the district court for *de novo* review and entry of judgment. *Arkison,* 134 S. Ct. at 2170. The petitioners argued that *Stern* claims create a statutory "gap," since bankruptcy judges are not explicitly authorized to issue proposed findings of fact and conclusions of law in a core proceeding. *Id.* at 2172. The Court disagreed and concluded that the plain text of the statute's severability provision closed any such statutory "gap." *Id.* at 2173. The severability provision instructs that where a "provision of the Act or [its] application ... is held invalid, the remainder of th[e] Act ... is not affected thereby." 98 Stat. 344, note following 28 U.S.C. § 151. When a court identifies a *Stern* claim, it has "held invalid" the "application" of § 157(b)—the "core" label and its attendant procedures—and the "remainder…not affected thereby" includes section 157(c), which governs non-core proceedings. *Id.* at 2173 (quoting 98 Stat. 344). Accordingly, where a *Stern* claim otherwise satisfies section 157(c)(1), the bankruptcy court should simply treat the claim as non-core and submit proposed findings of fact and conclusions of law to the district court for *de novo* review and entry of judgment. *Id.*

The Court concluded that this approach accords with the general approach to severability. The Court ordinarily gives effect to valid portions of a partially constitutional statute so long as it "remains fully operative as a law" and it is not "evident" from the statutory text and context that Congress would have preferred no statute at all. *Id.* at 2173 (internal citations omitted). Neither

concern was present in this case. *Id.* Further, the petitioners presented no evidence from the statute's text or historical context that made it "evident" that Congress would prefer to suspend *Stern* claims in limbo. *Id.* On the contrary, if the severability clause did not apply and district courts, rather than bankruptcy courts, were required to hear all *Stern* claims in the first instance, as EBIA contended, the division of responsibility set by Congress would be dramatically altered. *Id.* at 2173 n.8.

2. Section 157(c)(1)'s procedures apply to the fraudulent conveyance claims in this case.

After determining that *Stern* claims may proceed under the same procedural framework as non-core claims in section 157(c)(1), the Court next confronted the issue whether the fraudulent conveyance claims brought by the trustee were within the scope of section 157(c)(1)—"not…core" proceedings but "otherwise related to a case under title 11." The Court held that section 157(c)(1)'s procedures did apply in this case and stated that the "[fraudulent conveyance] claims fit comfortably within the category of claims governed by [the provision]" and therefore the bankruptcy court was permitted to follow the non-core procedure, i.e. submit proposed findings of fact and conclusions of law for the district court's review *de novo*. *Id* at 2174.

First, the Court assumed, without deciding, that the fraudulent conveyance claims were *Stern* claims, as held by the Ninth Circuit and undisputed by the parties. *Id.* The application of both the "core" label and the procedures in section 157(b) to the trustee's claims had therefore been "held invalid." *Id.* (quoting Note following section 151). Second, the fraudulent conveyance claims were "self-evidently related to a case under title 11" because the claim asserts that "property should have been part of the bankruptcy estate and therefore available for distribution to creditors pursuant to Title 11 and was improperly removed." *Id.* at 2174 (internal

citations omitted). Thus, the claims were properly within the scope of section 157(c)(1) and the courts were permitted to follow the provision's procedures.

3. The District Court's de novo review and entry of its own valid final judgment cured any potential error in the Bankruptcy Court's entry of judgment.

The Court concluded that because the District Court reviewed the case *de novo*, it is inconsequential that the Bankruptcy Court decided the case in the first place. EBIA contended that it was constitutionally entitled to review by an Article III court regardless of whether the parties consented to bankruptcy court adjudication and in the alternative, that even if such consent were constitutionally permissible, it did not in fact consent. *Id.* at 2174. The Court held that even if the bankruptcy court's entry of judgment was invalid, any error was cured because the District court "[i]n effect" provided "the same review" that EBIA claimed it was entitled to under Article III. *Id.*

The District Court in this case conducted a *de novo* review of the summary judgment claims from the Bankruptcy Court and, in accordance with its statutory authority over matters related to bankruptcy under section 1334(b), separately entered judgment in favor of the trustee. *Id.* Thus, although the claims did not proceed as non-core under section 151(c)(1), the review nonetheless cured any defect caused by the procedural posture of the case. *Id.*

Because the Court concluded that EBIA received the *de novo* review and entry of judgment to which it claimed it was constitutional entitled, the case did not require the Court to address the other question for which it granted certiorari: whether EBIA in fact consented to the Bankruptcy Court's adjudication of a *Stern* claim and whether Article III permits a bankruptcy court, with the consent of the parties, to enter final judgment on a *Stern* claim. *Id.* at 2169 n.4. The court explicitly reserved that question for another day. *Id.*