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Breaking Down the Gate—Changes to the *Barton* "Gate Keeper" Role in the Eleventh Circuit

Most bankruptcy practitioners have heard of the *Barton* doctrine. They know that *Barton* makes it difficult to sue a bankruptcy trustee because the bankruptcy court acts as a "gate keeper" and must approve any lawsuit. By its nature, the *Barton* doctrine does not crop up often in day-to-day bankruptcy practice. Recent opinions by the United States Court of Appeals for the Eleventh Circuit may change this. These opinions tie the *Barton* doctrine tightly to its jurisdictional roots, holding that when bankruptcy jurisdiction over an estate ends, so does the applicability (and the protection) of the *Barton* doctrine.

Bankruptcy trustees and practitioners in the Eleventh Circuit have been forced by these recent decisions to refresh their acquaintance with *Barton*. They need to pay particular attention to lawsuits involving trustees filed after bankruptcy estates are closed. Bankruptcy attorneys and trustees in other circuits can anticipate new litigation strategies as the *Barton* doctrine evolves in bankruptcy courts everywhere.

This article reviews how the *Barton* doctrine arose and came to be applied in bankruptcy courts, the logical underpinnings of how it works, and the revisions (or clarifications) the Eleventh Circuit opinions have made to the doctrine. The article also notes a route that the Eleventh Circuit may have left itself to tweak its position on the issue.

How We Got Here—The Building of the *Barton* Gate

The beginnings of *Barton*—a train operated by a receiver derails, injuring a passenger

The *Barton* doctrine originated from the United States Supreme Court case of *Barton v. Barbour*. [1] The plaintiff, Ms. Frances H. Barton, was a passenger in a sleeping car on a railroad when, allegedly "by reason of a defective and insufficient rail upon the track," the car she was riding in derailed and tumbled down an embankment, injuring her in the process. [2] Mr. John S. Barbour had previously been appointed as receiver for the Washington City, Virginia Midland, and Great Southern Railroad Company by a Virginia state court, and was operating the railroad for the benefit of creditors at the time of the accident. [3]

Ms. Barton sued Mr. Barbour in the District of Columbia, seeking $5,000 for her injuries. [4] He responded that he could not be sued there because the plaintiff had not obtained leave from the Virginia state court that had appointed him receiver. [5] The District of Columbia court agreed and dismissed the case. [6] The plaintiff appealed to the United States Supreme Court, which affirmed, creating the *Barton* doctrine in the process. [7]

The plaintiff advanced three arguments in favor of her lawsuit, each of which the Supreme Court rejected. The Supreme Court noted that "[i]t is a general rule that before suit is brought against a receiver[,] leave of the court by which he was appointed must be obtained." [8] The plaintiff's first argument was that this rule only applies when a plaintiff seeks to recover property from a receiver that a court order had placed in the receiver's care. [9] The Supreme Court rejected that argument, concluding that any suit against a receiver necessarily involves an attempt to obtain receivership property. In fact, the Supreme Court believed that the main reason a person would sue a receiver is to obtain a position ahead of other creditors.

> The evident purpose of a suitor who brings his action against a receiver without leave is to obtain some advantage over the other claimants upon the assets in the receiver's hands. His judgment, if he recovered one, would be against the defendant in his capacity as receiver, and the execution would run against the property in his hands as such. [10]

To enforce the judgment, the plaintiff would need to levy against property already in the hands of another court—the one that had appointed the receiver. The Supreme Court explained it could not allow this outcome as it would undermine the power of the appointing court. [11]

Second, the plaintiff argued that in deciding to operate a business, a receiver must accept responsibility for any liabilities incurred in the process, along with the possibility of being sued outside the appointing court, just as any other similarly-situated business must. [12] The Supreme Court majority disagreed. If this were true, then the receiver would have to answer any suit brought against the business (*e.g.*, suits for unpaid wages), and the Supreme Court rejected that outcome. [13] The majority felt that the claims of a party injured in the running of a business are just like any other claims against the estate's assets. [14] The court administering the receivership should act as a gatekeeper, determining whether a claim has enough merit to proceed, whether in front of it or in another venue. [15] This prevents estate assets from being "wasted in the costs of unnecessary litigation." [16]

The plaintiff's last argument was that a court cannot be stripped of jurisdiction simply because a lawsuit names a receiver as a defendant because that could deny the plaintiff its constitutional right to a jury trial. [17] The Supreme Court replied that this argument "lose[s] sight of the fundamental principle that the right of trial by jury, considered as an absolute right, does not extend to cases of equity jurisdiction." [18] If a case is of the class that is heard before a court of equity (*i.e.*, the kind that can appoint a receiver), then there is no right to a jury trial. [19] Many types of lawsuits are relegated to courts of equity—trials over patent infringement, for example—and and these do not involve a jury yet do not run afoul of the Constitution. [20] Bankruptcy is the paradigm example in which courts of equity exercise complete dominion, even if issues of law can arise. [21] When that happens, an equity court such as a bankruptcy court can enlist the assistance of a court of law "to aid it in arriving at a right conclusion." [22] Thus, the majority did not see a constitutional problem in having a court of equity decide an issue that normally might be subject to a jury trial. [23]

The majority did note an exception to its rule, though—"[I]f one claims that the assignee has wrongfully taken possession of his property as property of the bankrupt, he is entitled to sue him in his private capacity as a wrong-doer in an action at law [*i.e.*, with a jury,] for its recovery." [24] Comparing the receiver to "an assignee in bankruptcy," the majority observed that if "by mistake or wrongfully, the receiver takes possession of property belonging to another, such person may bring suit therefor against him personally as a matter of right; for in such case the receiver would be acting *ultra vires*." [25] But when the receiver is acting within the scope of his or her authority, then the matter must be handled with the blessing of the appointing equity court. [26]

For these reasons, the Supreme Court affirmed the decision below.

Justice Miller dissented. He noted that railroads frequently found themselves in financial straits with operating receivers. [27] The majority opinion meant that all passengers who ride a railroad operated by a receiver must do so

"on the implied understanding that they abandon the right to have their complaints tried by jury or by the ordinary courts of justice, and can only obtain such relief as may be had at the hands of a master in chancery of the court which appointed him." [28] Justice Miller was troubled by this and found no precedent to support it. [29]

Congress steps in to address Justice Miller's concern

Six years later, in 1887, Congress addressed the issues raised in Justice Miller's dissent. [30] Codified as § 66 of the Judicial Code, the newly enacted law read:

> Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice. [31]

The law left to the court that appointed the receiver the ability to exert jurisdiction as it deemed appropriate to secure "the ends of justice." A corresponding § 65 was added that required receivers to operate estate property in accordance with applicable state laws. [32]

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Both §§ 65 and 66 were recodified in 1911, with § 65 becoming 28 U.S.C.A. § 124 and § 66 becoming 28 U.S.C.A. § 125. [33] In 1948, the sections were renumbered again, with § 125 becoming 28 U.S.C.A. § 959(a) and § 124 becoming 28 U.S.C.A. § 959(b). [34] This update tweaked § 959(a) so that it now referred to "trustees" and "debtors in possession" as well as receivers. [35] It also prohibited a court from using its equity jurisdiction to deprive a person of the right to a jury trial. [36] As recast, the statute now stated:

> Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury. [37]

The text of 29 U.S.C.A. § 959(a) remains the same today, though § 959(b) was tweaked slightly when the Bankruptcy Code was enacted in 1978. [38]

Courts apply *Barton* to bankruptcy cases

While Congress was busy working and re-working the statutory exception to *Barton*, courts were doing their best to understand *Barton* and to apply it in bankruptcy settings. Applying *Barton* to bankruptcy cases was a natural development since *Barton* itself compared receivers to "assignees in bankruptcy" (now trustees or debtors in possession). [39]

Vass v. Conron Bros. Co., [40] a 1932 decision by the United States Court of Appeals for the Second Circuit, was the first circuit case that clearly applied the *Barton* doctrine to bankruptcy trustees. Unless covered by the exception in § 125 (predecessor to § 959(a), discussed *infra*) "an action against a trustee in bankruptcy for transactions of his own, must be brought in the bankruptcy court, unless it gives leave to liquidate elsewhere; it concerns the distribution of the assets as much as a claim against the bankrupt, and is justiciable only as that is." [41]

Fast forward to today—all United States circuit courts of appeals other than the United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for the District of Columbia Circuit have held that the *Barton* doctrine applies in bankruptcy.[42] Indeed, a number of these opinions explicitly hold that the doctrine continues to apply even after a bankruptcy case is closed.[43] It is this last point that the recent Eleventh Circuit opinions call into question.

Thus, *Barton* applies in all open bankruptcy cases (and has been extended to closed ones in several circuits), making the bankruptcy court a "gatekeeper" of sorts. If someone wants to sue a bankruptcy trustee, the appointing bankruptcy court can decide if the suit may proceed in another forum or if the case must proceed in the appointing court. Before another court may acquire jurisdiction over the trustee, it must receive the blessing of the bankruptcy court. The reasoning employed by the circuits in applying *Barton* in bankruptcy cases may help explain the Eleventh Circuit's recent thinking and may help practitioners in other circuits predict whether their circuits will be receptive to similar arguments.

The Underpinnings of the *Barton* Gatekeeper Function

The circuit courts that applied *Barton* to bankruptcy cases had two main reasons for doing so: preserving the bankruptcy court's jurisdiction over the bankruptcy estate and honoring the inherent power of the bankruptcy court to protect itself from interference. Though the *Barton* case itself emphasized preservation of the estate, both issues stem from the opinion.[44]

Not surprisingly, given the *Barton* majority's ardent defense of property of the estate, the earliest circuit decision applying *Barton* in a bankruptcy setting focused on jurisdiction over estate property. *Vass*, the Second Circuit opinion from 1932, treated suits against the trustee as if they were simply additional claims against the bankruptcy estate, just as *Barton* did.[45] The Sixth Circuit followed similar logic six decades later when it made *Barton* applicable in its bankruptcy courts.[46]

As additional circuit courts grappled with the issue, they considered not just protection of the bankruptcy estate but also the dignity of the bankruptcy court itself. This flowed from *Barton*, in which the majority had written that it was inappropriate for another court to act "without regard to the rights of other creditors or the orders of the court which is administering the trust property."[47] Also, since the *Barton* opinion was issued, the Supreme Court has recognized that a bankruptcy trustee is an officer of the bankruptcy court.[48] Thus, it is not surprising that circuit courts began treating the trustee with something closer to the respect due to a court officer.

The *Barton* doctrine evolved in the circuit courts to include that "the court that appointed the trustee has a strong interest in protecting him from unjustified personal liability for acts taken within the scope of his official duties."[49] This interest is inherent to the bankruptcy court and does not end when a bankruptcy case concludes. Thus, some courts expressly held that the *Barton* doctrine applied even after a case closed, because waiting until after a bankruptcy case was closed to sue the trustee did not lessen the offense against the bankruptcy court's inherent authority.[50]

The Eleventh Circuit Takes Barton Back to Its Roots?

The *Carter* Opinion Is the First to Apply *Barton* to Eleventh Circuit Bankruptcy Courts

In 2000, in *Carter v. Rodgers*, the Eleventh Circuit wrote, "[j]oining the other circuits that have considered this issue, we hold that a debtor must obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer for acts done in the actor's official capacity."[51] The *Carter* court quoted *Linton*, writing "An unbroken line of cases … has imposed [this] requirement as a matter of federal common law."[52] The Eleventh Circuit chose "dignity of the bankruptcy court" as the main rationale for applying *Barton*:

> In addition, the policy behind this leave of court requirement was well-stated by the Seventh Circuit:

> If [the trustee] is burdened with having to defend against suits by litigants disappointed by his actions on the court's behalf, his work for the court will be impeded. … Without the requirement [of leave], trusteeship will become a more irksome duty, and so it will be harder for courts to find competent people to appoint as trustees. Trustees will have to pay higher malpractice premiums, and this will make the administration of the bankruptcy laws more expensive. … Furthermore, requiring that leave to sue be sought enables bankruptcy judges to monitor the work of the trustees more effectively. [53]

The *Carter* court also applied *Barton* on jurisdictional grounds. [54] The bankruptcy court had jurisdiction over the suit in question because it was "related to" the bankruptcy; any recovery would affect administrative expenses in the case and thus change the amount of property that could be distributed to creditors. [55] It also was a suit against "the trustee and other court approved officers of his bankruptcy estate for alleged breaches of their bankruptcy-related duties," which could only occur within a bankruptcy case. [56]

Thus, application of the *Barton* doctrine began in the Eleventh Circuit in the usual way, bottomed on the reasoning that (1) the bankruptcy court had the ability to protect its trustees and (2) on jurisdictional grounds. So matters remained for 20 years, until *Tufts v. Hay* [57] was issued.

Tufts Walks Back the *Carter* "Policy" Reasoning

Bad facts make for interesting rulings?

The *Tufts* case involved extraordinary facts. Mr. Hay and his law firm represented a debtor in a Chapter 11 case in the Bankruptcy Court for the Western District of North Carolina. [58] Mr. Tufts and his firm were representing the debtor in various cases in Florida when the bankruptcy case began. [59] Hay told Tufts that there was a court order approving Tufts's continued representation of the debtor. [60] Relying on those representations, Tufts "did extensive legal work" for the debtor. [61] There was no authorization for Tufts to do this work, however, and Hay apparently acknowledged to the bankruptcy court that he had given Tufts bad advice. [62] Because the work was done without authorization, the bankruptcy court ordered Tufts to disgorge the funds collected and held him in contempt when he failed to do so. [63] Tufts spent significant additional funds resolving this issue. [64] The underlying bankruptcy case itself was ultimately dismissed by consent order. [65]

After dismissal, Tufts sued Hay in district court without first seeking leave from the bankruptcy court. [66] The district court dismissed the suit on the basis of the *Barton* doctrine. [67] Tufts appealed.

Back to the future—*Barton* is tied to bankruptcy court jurisdiction

Tufts argued that, because the bankruptcy case had been dismissed, the bankruptcy court no longer had subject matter jurisdiction and thus he was "relieved of any obligation to seek leave from that court to bring this action." [68] All parties to the appeal conceded that the lawsuit could have no effect on the bankruptcy estate because the case had been dismissed. [69] With that concession, the Eleventh Circuit decided that *Barton* did not bar Tuft's lawsuit.

> [U]nder the "conceivable effects" test for section 1334(b), the Bankruptcy Court did not have jurisdiction to consider Tufts's action, and Tufts counsel were not required to obtain leave from that court before filing this action in the District Court. The *Barton* doctrine did not therefore deprive the District Court of subject matter jurisdiction over this case. We expressly note that our holding here creates no categorical rule that the *Barton* doctrine can never apply once a bankruptcy case

> ends. We address this case only, and here these parties agreed this action could have no conceivable effect on the bankruptcy estate. On this record, the Bankruptcy Court lacked jurisdiction, and the Barton doctrine does not apply. [70]

The *Tufts* opinion seems drafted to allow the suit by Tufts to proceed without removing the protections for bankruptcy court authority, perhaps because the court felt that Tufts had been abused enough by the bankruptcy process. Indeed, in addition to "expressly not[ing] that our holding here creates no categorical rule" against applying *Barton* after a bankruptcy case ends, the opinion added the following footnote that acknowledges that such a "categorical rule" likely would have unpleasant consequences:

> We are aware that some of our sister circuits apply the *Barton* doctrine after the bankruptcy case has ended. *See* *Muratore v. Darr*, 375 F.3d 140, 147 (1st Cir. 2004); *In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998). Indeed, we read these cases to identify important policy reasons for applying the *Barton* doctrine in that context. For example, the *Barton* doctrine "enables bankruptcy judges to monitor the work of the trustees more effectively" and, absent the *Barton* doctrine, "trusteeship will become a more irksome duty, and so it will be harder for courts to find competent people to appoint as trustees." *Linton*, 136 F.3d at 545. This Court has also recognized these concerns in other contexts. See *Lawrence*, 573 F.3d at 1269. We accept as meritorious these policy reasons calling for application of the Barton doctrine, and our decision today does not conflict with the views of our sister circuits in this regard. [71]

Thus, Tufts was permitted to sue Hay, notwithstanding his failure to follow the *Barton* protocol of first seeking leave, based purely on jurisdictional grounds.

Chua Widens the Gap in the Gate

The *Chua v. Ekonomou* [72] opinion took the opening that *Tufts* introduced into the *Barton* "gate" and pushed the gate open a bit further.

Chua ran a solo medical practice in Georgia. [73] In 2005, a pre-med student moved into Chua's home with him. [74] Chua began prescribing medications to treat symptoms the student was displaying until, one day, Chua came home to find the student dead from an apparent drug overdose. [75] Chua asserted that a conspiracy arose to "pin the blame" for the student's death on him. [76] The conspiracy included a judge, a receiver appointed in a forfeiture action against him, the receiver's attorney, and others. [77] In a trial influenced by the actions of this alleged conspiracy, a jury found Chua guilty of felony murder and other offenses. [78] The conviction for all but one of the charges was upheld on appeal to the Georgia Supreme Court. [79]

Chua continued to fight his conviction and, in 2013, alleged that he had uncovered a damaging memo evidencing infirmities with his trial and conviction. [80] According to Chua's complaint, this revelation threatened the conspiracy with exposure, and because of that, he was able to reach a plea arrangement which reduced his sentence and resolved the issues against him. [81] In September of 2017, he was released from prison. [82] By this time, all of the actions against him, including the receivership action, had been resolved or otherwise concluded. [83]

Two years later, Chua sued various defendants in district court, including the receiver, his attorney and his attorneys' law firm. [84] The district court dismissed the claims against the receiver and related defendants for lack of subject matter under the *Barton* doctrine because Chua had not sought leave from the court that had appointed the receiver. [85] Chua appealed.

The Eleventh Circuit panel in *Chua* court noted that *Barton* had only been discussed a few times in the Eleventh Circuit. [86] It reminded readers that "[w]e recently held in *Tufts v. Hay* that 'the *Barton* doctrine has no application when jurisdiction over a matter no longer exists in the bankruptcy court.'" [87] Prior Eleventh Circuit discussions of "policy concerns" were dismissed as dicta. [88] Indeed, the *Chua* court noted that there was no need to base *Barton* on policy grounds "because court-appointed receivers enjoy judicial immunity for acts taken within the scope of their authority," citing *Property Management & Investments, Inc. v. Lewis*, [89] a 1985 Eleventh Circuit opinion. [90] Indeed, in *Property Management & Investments*, a lawsuit against a state-court-appointed receiver was dismissed on judicial immunity grounds and the dismissal was affirmed on appeal. [91] The *Chua* court concluded, "[r]eceivers do not need the *Barton* doctrine to provide an additional layer of protection for the performance of their duties" once the jurisdiction of the court that appointed the receiver comes to an end. [92]

In the end, the *Chua* court vacated the district court's dismissal of claims against the receiver and related defendants for lack of subject-matter jurisdiction due to *Barton* and remanded with instructions to dismiss the claims against these defendants based on judicial immunity. [93]

Chua clarified the *Tufts* holding and then extended it to receivers generally in the Eleventh Circuit. *Chua* replaces the protection receivers have under the *Barton* doctrine with that of judicial immunity, once the case in which the receiver is appointed concludes.

So What? You Still Can't Sue the Trustee, Right?

Judicial immunity is not quite the same as lack of jurisdiction

If suits against a receiver are subject to dismissal on the grounds of judicial immunity, has anything really changed?

Assuming that the rule of judicial immunity is applied to bankruptcy trustees—and there is no indication that it will not be—the main difference is that bankruptcy trustees must now answer lawsuits filed against them or potentially suffer default judgments. Recall that judicial immunity is an affirmative defense that can be waived, according to Eleventh Circuit case law:

> [J]udicial immunity is an affirmative defense and does not divest the court of subject matter jurisdiction. *Boyd v. Carroll*, 624 F.2d 730, 732-33 (5th Cir.1980). In *Boyd*, this court held that the failure to plead judicial immunity waived the affirmative defense and so the court would not address the issue, demonstrating that it is not subject matter jurisdiction. [94]

If a trustee fails to answer or move to dismiss a complaint, or answers it without properly raising judicial immunity, that defense may be waived. In comparison, a judgment entered without jurisdiction is void. [95] Thus, although the protection still seems strong, it is not as strong as it once was.

This is the change: before, a trustee might ignore a suit unless and until it became inconvenient; now, trustees in the Eleventh Circuit must deal with suits head on. Failure to do so (or mistakes in doing so) can result in adverse judgments and resulting costs, possibly severe. Perhaps the likelihood of losing on a motion to dismiss will continue to deter suits against trustees, or perhaps there will be a flood of such cases. Only time will tell.

A way to "close the gate," if it turns out that *Chua* significantly harms trustees

Suppose that the worst happens, and large numbers of cases are filed against trustees in the Eleventh Circuit. Is the only way to change *Chua* to wait until a similar case wends its way to the Eleventh Circuit and then ask for it to be heard *en banc*? Perhaps not.

The Eleventh Circuit issued the *Hyde v. Irish* [96] decision almost exactly one year prior to *Chua*. *Hyde* involved a dispute in district court between two investors. [97] The primary issue was dismissed for lack of complete diversity and thus a lack of subject matter jurisdiction. [98] While that matter was being sorted out, the parties were also tussling over sanctions, which the district court ultimately denied. [99] The denial of sanctions was appealed, which led to the following question on appeal: if the district court lacked subject matter jurisdiction over the main matter, did it have inherent authority to decide the related question of sanctions? [100] In a short and simply-worded opinion, the Eleventh Circuit in *Hyde* answered "yes."

The *Hyde* court noted that "in the world of jurisdiction, there's an important distinction between the underlying case or controversy and certain 'collateral' matters," which are still quite important despite the label "collateral." [101]

> Many involve the power to enforce compliance with the rules and standards that keep the judiciary running smoothly. Without them, abuses of the judicial system would go unchecked, burdening courts and individuals alike with needless expense and delay. And that's not just a matter of procedure. Because justice delayed is justice denied, these powers ensure that justice is done. [102]

The *Hyde* court explained that there is a critical difference between deciding an underlying case (over which jurisdiction may not lie) and deciding matters inherent to the court's own functioning. [103] With respect to a question of sanctions, the Supreme Court itself has determined that " '[t]he interest in having rules of procedure obeyed' outlives the merits of a case." [104] For this reason, the Eleventh Circuit joined "all of our sister circuits" and "recognized jurisdiction in this context." [105]

In short, the *Hyde* court recognized that a court needs the ability to protect its functioning and enforce its rules of procedure. This need does not end when cases before the court end. If it should turn out that *Chua*'s curtailing of the *Barton* doctrine causes more harm than expected, the Eleventh Circuit might use similar reasoning to extend the inherent power of bankruptcy courts beyond the end of their cases to bar suits against trustees or craft other appropriate relief. True, the resulting doctrine may not be called "Barton" in the Eleventh Circuit, but the end result could well be the same.

Conclusion

For now, *Carter* still provides the same *Barton* doctrine protection for bankruptcy trustees in active cases that it always has. After a case closes, *Chua* means that bankruptcy trustees need to pay attention to any lawsuits filed against them and deal with them promptly. It may turn out that *Chua*'s cabining of *Barton* does not markedly change day-to-day life for bankruptcy practitioners, but if it should, then perhaps *Hyde* can be used to repair the *Barton* gate.

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Footnotes

1 *Barton v. Barbour*, 104 U.S. 126, 26 L. Ed. 672 (1881).

2 *Barton*, 104 U.S. at 127.

3 *Barton*, 104 U.S. at 126-127.

4 *Barton*, 104 U.S. at 127, 131.

5 *Barton*, 104 U.S. at 127.

6 *Barton*, 104 U.S. at 127-28.

7 *Barton*, 104 U.S. at 127-28.

8 *Barton*, 104 U.S. at 127-28.

9 *Barton*, 104 U.S. at 127-28.

10 *Barton*, 104 U.S. at 127-28.

11 *Barton*, 104 U.S. at 127-29.

12 *Barton*, 104 U.S. at 129-30.

13 *Barton*, 104 U.S. at 130.

14 *Barton*, 104 U.S. at 131.

15 *Barton*, 104 U.S. at 131.

16 *Barton*, 104 U.S. at 130.

17 *Barton*, 104 U.S. at 131, 133. This argument flows from the idea that only courts of equity appointed receivers, whereas jury trials were conducted in courts of law. Having a court of equity bar suits in courts of law thus arguably prevents a litigant from exercising its constitutional right to a trial by jury.

18 *Barton*, 104 U.S. at 133. Recall that the *Barton* majority had already concluded that any matter involving a receivership necessarily involved a claim against the receivership estate and thus was a matter for an equity court.

19 *Barton*, 104 U.S. at 133-34.

20 *Barton*, 104 U.S. at 133-34.

21 *Barton*, 104 U.S. at 134.

22 *Barton*, 104 U.S. at 134.

23 *Barton*, 104 U.S. at 134.

24 *Barton*, 104 U.S. at 134.

25 *Barton*, 104 U.S. at 134.

26 *Barton*, 104 U.S. at 134.

27 *Barton*, 104 U.S. at 137-38.

28 *Barton*, 104 U.S. at 138.

29 *Barton*, 104 U.S. at 139-41.

30 Michael T. Driscoll, *The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters,* 25 No. 6 J. Bankr. L. & Prac. NL Art. 2 (2016).

31 Driscoll, *The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters,* 25 No. 6 J. Bankr. L. & Prac. NL Art. 2.

32 As it read in 1911, after being recoded as 28 U.S.C.A. § 124, the statute stated that a receiver must "manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." Act of Congress of March 3, 1911, ch. 231, § 65, 36 Stat. 1104.

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33 *See* Driscoll, *The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters,* 25 No. 6 J. Bankr. L. & Prac. NL Art. 2 (discussing recoding of § 66).

34 *See* Driscoll, *The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters,* 25 No. 6 J. Bankr. L. & Prac. NL Art. 2 (discussing recording of § 125).

35 Driscoll, *The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters,* 25 No. 6 J. Bankr. L. & Prac. NL Art. 2.

36 Driscoll, *The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters,* 25 No. 6 J. Bankr. L. & Prac. NL Art. 2.

37 Driscoll, *The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters,* 25 No. 6 J. Bankr. L. & Prac. NL Art. 2.

38 *In re VistaCare Grp., LLC*, 678 F.3d 218, 227 (3d Cir. 2012).

39 *Barton*, 104 U.S. at 134.

40 *Vass v. Conron Bros. Co.*, 59 F.2d 969 (2d Cir. 1932).

41 *Vass*, 59 F.2d at 971.

42 *Muratore v. Darr*, 375 F.3d 140 (1st Cir. 2004); *Lebovitz v. Scheffel* (*In re Lehal Realty Assocs.*), 101 F.3d 272 (2d Cir.1996); *In re VistaCare Group, LLC*, 678 F.3d 218 (3d Cir. 2012); *McDaniel v. Blust*, 668 F.3d 153 (4th Cir. 2012); *Villegas v. Schmidt*, 788 F.3d 156 (5th Cir. 2015); *In re Triple S Restaurants, Inc.*, 519 F.3d 575 (6th Cir. 2008); *In re Linton*, 136 F.3d 544 (7th Cir. 1998); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013); *Beck v. Fort James Corp.* (*In re Crown Vantage, Inc.*), 421 F.3d 963 (9th Cir. 2005); *Satterfield v. Malloy*, 700 F.3d 1231 (10th Cir. 2012); *Carter v. Rodgers*, 220 F.3d 1249 (11th Cir. 2000).

43 *Linton*, 136 F.3d at 545; *Muratore*, 375 F.3d at 147 (citing and quoting *Linton*); *Satterfield*, 700 F.3d at 1236-37; *see also* *Lehal Realty Assocs.*, 101 F.3d at 277-78 (noting the importance of protecting the trustee from suit generally, but also concluding that the suit in question could have a conceivable effect on the bankruptcy estate even after case was closed); *Villegas*, 788 F.3d at 157 (applying *Barton* doctrine where a bankruptcy case had been closed four years before the suit in question against the bankruptcy trustee was filed); *Crown Vantage*, 431 F.3d at 972 (citing *Linton* and *Muratore* with approval).

44 *Barton*, 104 U.S. at 127-29 (discussing protection of the power of the appointing court); *Barton*, 104 U.S. at 127-28, 130-31 (discussing preservation of the *res*).

45 *Vass*, 59 F.2d at 971.

46 *Allard v. Weitzman(In re DeLorean Motor Co.)*, 991 F.2d 1236, 1240 (6th Cir. 1993) (quoting *Barton* passage that suits against the trustee are just suits against the estate's property).

47 *Barton*, 104 U.S. at 129.

48 *King v. United States*, 379 U.S. 329, 337 n.7, 85 S. Ct. 427, 13 L. Ed. 2d 315 (1964).

49 *Lebovitz v. Scheffel* (*In re Lehal Realty Assocs.*), 101 F.3d 272 (2d Cir. 1996).

50 *Linton*, 136 F.3d at 545; *Muratore*, 375 F.3d at 147; *Satterfield*, 700 F.3d at 1236-37.

51 *Carter*, 220 F.3d at 1252.

52 *Carter*, 220 F.3d at 1252 (quoting *Linton*, 136 F.3d at 545).

53 *Carter*, 220 F.3d at 1252-53 (quoting *Linton*, 136 F.3d at 545).

54 *Carter*, 220 F.3d at 1253-54.

55 *Carter*, 220 F.3d at 1253-54.

56 *Carter*, 220 F.3d at 1254.

57 *Tufts v. Hay,* 977 F.3d 1204 (11th Cir. 2020).

58 *Tufts*, 977 F.3d at 1207.

59 *Tufts*, 977 F.3d at 1207.

60 *Tufts*, 977 F.3d at 1207.

61 *Tufts*, 977 F.3d at 1207.

62 *Tufts*, 977 F.3d at 1207.

63 *Tufts*, 977 F.3d at 1207.

64 *Tufts*, 977 F.3d at 1207.

65 *Tufts*, 977 F.3d at 1207.

66 *Tufts*, 977 F.3d at 1207.

67 *Tufts*, 977 F.3d at 1208.

68 *Tufts*, 977 F.3d at 1208-09.

69 *Tufts*, 977 F.3d at 1209.

70 *Tufts*, 977 F.3d at 1210-11 (footnotes omitted).

71 *Tufts*, 977 F.3d at 1210 n.4.

72 *Chua v. Ekonomou,* 1 F.4th 948 (11th Cir. 2021).

73 *Chua*, 1 F.4th at 950.

74 *Chua*, 1 F.4th at 950.

75 *Chua*, 1 F.4th at 950.

76 *Chua*, 1 F.4th at 950.

77 *Chua*, 1 F.4th at 950.

78 *Chua*, 1 F.4th at 951.

79 *Chua*, 1 F.4th at 951.

80 *Chua*, 1 F.4th at 951.

81 *Chua*, 1 F.4th at 951.

82 *Chua*, 1 F.4th at 951.

83 *Chua*, 1 F.4th at 951.

84 *Chua*, 1 F.4th at 951.

85 *Chua*, 1 F.4th at 952.

86 *Chua*, 1 F.4th at 953.

87 *Chua*, 1 F.4th at 953 (quoting *Tufts*, 977 F.3d at 1209).

88 "Although our previous decisions discussing the *Barton* doctrine have credited this policy concern, they have done so only in dicta." *Chua*, 1 F.4th at 954 (citing *Tufts*, 977 F.3d at 1210 n.4; *Lawrence v. Goldberg*, 573 F.3d 1265, 1269 (11th Cir. 2009); *Carter*, 220 F.3d at 1252-53).

89 *Prop. Mgmt. & Invs., Inc. v. Lewis*, 752 F.2d 599 (11th Cir. 1985).

90 *Chua*, 1 F.4th at 954-55.

91 *Prop. Mgmt. & Invs.*, 752 F.2d at 602-04.

92 *Chua*, 1 F.4th at 955.

93 *Chua*, 1 F.4th at 957. The *Chua* court also affirmed dismissal of all remaining claims in the case.

94 *Mordkofsky v. Calabresi*, 159 F. App'x 938, 939 (11th Cir. 2005).

95 "Under Rule 60(b), the district court may vacate a final judgment where 'the judgment is void.' There is no question that a judgment is void if the court lacked subject-matter jurisdiction." *Araya-Solorzano v. Gov't of Republic of Nicaragua*, 562 F. App'x 901, 903 n.2 (11th Cir. 2014) (citing *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001)).

96 *Hyde v. Irish,* 962 F.3d 1306 (11th Cir. 2020).

97 Hyde, 962 F.3d at 1308.

98 *Hyde*, 962 F.3d at 1308.

99 *Hyde*, 962 F.3d at 1309.

100 *Hyde*, 962 F.3d at 1309.

101 *Hyde*, 962 F.3d at 1309.

102 *Hyde*, 962 F.3d at 1309 (citations and internal quotation marks omitted).

103 *Hyde*, 962 F.3d at 1309.

104 *Hyde*, 962 F.3d at 1309-10 (quoting *Willy v. Coastal Corp.*, 503 U.S. 131, 139, 112 S. Ct. 1076, 117 L. Ed. 2d 280 (1992)).

105 *Hyde*, 962 F.3d at 1310.

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