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The Supreme Court's Not-So-Final Judgment: Fraudulent Transfer Actions in the Wake of *Stern v. Marshall*

By Jane VanLare and Thomas S. Kessler*

This article explores the relevant key jurisprudence on the issue of whether fraudulent transfers are Stern *claims, examining decisions of the U.S. Supreme Court and the lower courts, with a particular focus on the U.S. Courts of Appeals for the Second and Third Circuits.*

In its landmark 2011 decision *Stern v. Marshall*,[1] the U.S. Supreme Court held that bankruptcy judges' entry of final judgment on certain "core" bankruptcy claims, which is specifically authorized by the Bankruptcy Code, violates Article III of the U.S. Constitution because the adjudication entails bankruptcy judges, non Article III actors, exercising the Article III judicial power in adjudicating common law actions or actions involving private rights (so-called "*Stern* claims"). In the aftermath of the Supreme Court's decision, lower courts have struggled to delineate the contours of *Stern* claims. The proper treatment of fraudulent transfer claims has been at the forefront of this struggle. Fraudulent transfer actions are statutorily "core" proceedings under 28 U.S.C. § 157(b)(2)(H) and are a fundamental tool in the U.S. bankruptcy scheme, but are in some respects "hybrid" claims because they "find a home in a federal statute but surely implicate longstanding common law rights,"[2] and may be brought through either the federal law mechanism contained in § 548 of the Bankruptcy Code or by using § 544(b) to incorporate the applicable state law mechanism.[3] A fraudulent transfer action's hybrid nature makes it difficult to assess its relationship to the Article III power and the traditional bankruptcy power.

While the Supreme Court has yet to rule on the issue, lower courts across the country have been divided on whether fraudulent transfer claims are *Stern* claims. In grappling with applying *Stern* to this critically important claim common to bankruptcy proceedings, lower courts have taken different ap-

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1 564 U.S. 462 (2011).

2 *In re Renewable Energy Dev. Corp.*, 792 F.3d 1274, 1280 (10th Cir. 2015).

3 11 U.S.C. §§ 548, 544(b).

proaches in interpreting the various arguments and comments that appear in *Stern* and the Court's so-called "public rights" cases, which discuss an exception that allows non-Article III tribunals to resolve cases in matters "between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments," as opposed to matters involving a "private right," which implicate a party's jury rights and require final adjudication by an Article III judge.[4] This article explores the relevant key jurisprudence on the issue of whether fraudulent transfers are *Stern* claims, examining decisions of the Supreme Court and the lower courts, with a particular focus on the U.S. Courts of Appeals for the Second and Third Circuits.

SUPREME COURT JURISPRUDENCE

The Supreme Court's jurisprudence on *Stern* claims and the public rights doctrine "has something of 'a potluck quality' to it" and "[e]ven today, it's pretty hard to say what the upshot is."[5] The U.S. Court of Appeals for the Tenth Circuit, after reviewing this hodgepodge, summarized the state of the law as follows: "So whatever else you might say in the midst of this still very much ongoing battle over bankruptcy and public rights doctrine, you can say this much: cases properly in federal court but arising under state law and not necessarily resolvable in the claims allowance process trigger Article III's protections."[6] Additionally, *Stern* supplemented, or perhaps described an alternative view of, the "necessarily resolvable" test through its distinction between claims brought "to augment the bankruptcy estate" and "hierarchically ordered claims to a pro rata share of the bankruptcy res," reasoning that the former requires a decision by an Article III judge.[7] In reaching these endpoints, however, the Court has managed to offer ample arguments, observations and miscellaneous dicta to build colorable cases both for and against the conclusion that fraudulent transfers are *Stern* claims. As discussed below, lower courts have parsed and scrutinized these lines in service of their findings regarding *Stern*'s application to fraudulent transfer claims.

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[4] *Stern*, 564 U.S. at 489 (quoting *Crowell v. Benson*, 285 U.S. 22, 50–51 (1932)).

[5] *In re Renewable Energy*, 792 F.3d at 1278 (internal citation omitted); *see also Stern*, 564 U.S. at 488 (admitting that the Court's "discussion of the public rights exception since [the Court's decision in *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (plurality opinion)] has not been entirely consistent").

[6] *In re Renewable Energy*, 792 F.3d at 1279.

[7] *Stern*, 564 U.S. at 492 (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 56 (1989)).

A Case for Finding That Fraudulent Transfer Claims Are *Stern* Claims

There are plenty of footholds in the Supreme Court's jurisprudence supporting the conclusion that fraudulent transfers are *Stern* claims. Although it is difficult to determine the takeaway of the Court's rulings on Article III's limitation on bankruptcy judges' authority to enter final judgments, substantive analysis of the Court's holdings lends support to the conclusion that some—and maybe all—fraudulent transfer actions are *Stern* claims. First, *Granfinanciera* held that fraudulent transfer actions brought by bankruptcy trustees "are quintessentially suits at common law that more nearly resemble state law contract claims brought by a bankrupt corporation to augment the bankruptcy estate than they do creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res" and "therefore appear matters of private rather than public right."[8]

Second, fraudulent transfer actions brought by the trustee against non-creditors who have not submitted claims against the estate are not "necessarily resolvable in the claims allowance process,"[9] because, if not for the trustee's action against the non-creditors, they would not be involved in the bankruptcy at all. Since such a trustee could only recover the property through the initiation of a legal action, and the "legal action need not necessarily have been resolved in the course of allowing or disallowing the claims against the . . . estate," such a fraudulent transfer action could thus be seen as a *Stern* claim requiring adjudication by an Article III court. This reasoning comports with the holdings of *Katchen*[10] and *Langenkamp*,[11] which held that preference actions could be adjudicated by a bankruptcy court where the defendant had filed a proof of claim in the bankruptcy.

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[8] *Granfinanciera*, 492 U.S. at 56. It is worth noting that *Granfinanciera* and the other public rights cases, *Katchen v. Landy*, 382 U.S. 323 (1966), and *Langenkamp v. Culp*, 498 U.S. 42 (1990) (*per curiam*), were in the context of the Seventh Amendment right to a jury trial, although *Granfinanciera* directly equated the scope of Seventh Amendment right to a jury trial with Article III's requirement that only Article III tribunals adjudicate certain claims. *Granfinanciera*, 492 U.S. at 52–54. In *Stern*, the Court deftly "relied directly (and without qualification) upon [these] Seventh Amendment jury trial decisions . . . as if they were binding precedent for purposes of the Article III decision . . . —systematically describing, paraphrasing, or recasting language, analysis, conclusions, and holdings from those decisions in Article III terms." Ralph Brubaker, *A "Summary" Statutory and Constitutional Theory of Bankruptcy Judges' Core Jurisdiction After* Stern v. Marshall, 86 Am. Bankr. L.J. 121, 151 (2012); *see also In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553, 563 (9th Cir. 2012).

[9] *In re Renewable Energy*, 792 F.3d at 1279.

[10] 382 U.S. 323 (1966).

[11] 498 U.S. 42 (1990) (per curiam).

Third, Chief Justice Roberts, the author of the *Stern* majority opinion, all but explicitly stated that fraudulent transfers are *Stern* claims in his dissent in *Wellness Int'l Network, Ltd. v. Sharif*.[12] Roberts stated that the Court had previously "implied" that fraudulent transfers are *Stern* claims and distinguished them from the creditor's claim in *Wellness*—that a trust was the debtor's alter ego used to conceal estate property—which Roberts determined was not a *Stern* claim.[13] Drawing on the distinction between augmentation of a debtor's estate and apportionment of res, Roberts reasoned that "[t]hrough a fraudulent conveyance, a dishonest debtor relinquishes possession of assets before filing for bankruptcy" but then reclaims them from third parties through suit, while by contrast, the assets at issue in an alter ego claim never truly leave the actual or constructive possession of the debtor.[14] Although Roberts's dissent lacks precedential value, this direct language from one of the principal architects of this confusing doctrine is evidence of its import.

Fourth, and more directly, *Stern*'s description of *Granfinanciera* is persuasive evidence that fraudulent transfers are *Stern* claims. The Court described *Granfinanciera* as holding that "Congress could not constitutionally assign resolution of the fraudulent conveyance action to a non Article III court."[15] It also stated that Vickie's tortious interference counterclaim, the "original" *Stern* claim, was similar to and should not be "treat[ed] . . . any differently from the fraudulent conveyance action in *Granfinanciera*."[16] Although these statements involve the particular fraudulent transfer action at issue in *Granfinanciera*, the Court gave no indication that they could not also apply to other fraudulent transfer actions or that the facts of *Granfinanciera* were unique.

A Case Against Finding That Fraudulent Transfer Claims Are *Stern* Claims

In keeping with the "potluck quality" of the jurisprudence in this area, there is much in the Court's opinions to argue that fraudulent transfer claims are not *Stern* claims.

First, unlike the claims at issue in *Stern*, fraudulent transfer actions are a fundamental tool in the U.S. bankruptcy scheme and belie any classification of

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[12] 135 S. Ct. 1932, 1950, 191 L. Ed. 2d 911 (2015) (Roberts, C.J., dissenting).

[13] *Wellness Int'l Network*, 135 S. Ct. at 1953–54.

[14] *Id.* at 1953.

[15] *Stern*, 564 U.S. at 492 n.7 (internal citation omitted).

[16] *Id.* at 499.

being purely private.[17] Indeed, despite what *Stern* repeatedly stated, there are important differences between fraudulent transfer actions and Vickie's private tortious interference counterclaim. Vickie's counterclaim was a personal, affirmative action that sought primarily to benefit her and augment her estate's res. By contrast, fraudulent transfer actions have a decidedly public aspect to them—they ensure that creditors can recover estate property for the purpose of orderly distribution among a debtor's stakeholders. This policing function "deters those seeking to defy priority norms" and shows that the "policy goals of bankruptcy and fraudulent transfer are deeply intertwined," as fraudulent transfer actions seek to prevent "the unjust diminution of the debtor's estate."[18] Further, fraudulent transfer actions are not "affirmative" in that they seek to recover property that was previously in possession of the debtor and should never have left the estate.

Moreover, despite Chief Justice Roberts's best efforts, it is difficult to draw a substantive distinction between the alter ego claim in *Wellness* (which Roberts stated was not a *Stern* claim) and a fraudulent transfer claim. Both claims aim to subvert a debtor's attempt to avoid subjecting the pertinent property to apportionment in the estate; whether the property is transferred to an alter ego or third party is not dispositive, particularly considering that the "third party" often holds the property at the request of the debtor with the intent to eventually return it. It is unclear whether Roberts views the "possession" retained in alter ego claims as dispositive when both alter ego claims and fraudulent transfer claims seek to accomplish the same objective in the bankruptcy context.

Second, fraudulent transfer claims are similar in many respects to preference actions, which the Court in *Katchen v. Landy*[19] and *Langenkamp v. Culp*[20] held could be adjudicated by a bankruptcy court where the trustee brought the actions against creditors who filed a proof of claim in the bankruptcy. Indeed, *Granfinanciera* noted that preference actions are "indistinguishable . . . in all relevant respects" from fraudulent transfer actions,[21] and preference actions are federal bankruptcy law mechanisms designed to protect the integrity of the

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[17] Some lower courts have made such a classification. *See In re Lyondell Chem. Co.*, 467 B.R. 712 (S.D.N.Y. 2012).

[18] Jonathan C. Lipson & Jennifer L. Vandermeuse, Stern, *Seriously: The Article I Judicial Power, Fraudulent Transfer, and Leveraged Buyouts*, 2013 Wis. L. Rev. 1161, 1218 (2013) (internal quotations omitted).

[19] 382 U.S. 323 (1966).

[20] 498 U.S. 42 (1990) (per curiam).

[21] *Granfinanciera*, 492 U.S. at 48.

estate distribution process.[22] Accordingly, there is a strong argument that, at the very least, fraudulent transfer actions where the transferee is a creditor who filed a proof of claim in the bankruptcy are not *Stern* claims and can be adjudicated by a bankruptcy court. As will be seen below, this is an analysis employed by many lower courts in their conception of *Stern*'s breadth.

Third, the Court in *Stern* made clear that its decision was "narrow," did "not change all that much" in terms of the division of labor between bankruptcy courts and district courts and only held that the Bankruptcy Act of 1984 ran afoul of Article III "in one isolated respect."[23] Given that a fraudulent transfer action is a "foundational concept in bankruptcy,"[24] classifying it as a *Stern* claim would appear to be inconsistent with *Stern*'s plain description of its own scope.

Fourth, unlike counterclaims which could lead a bankruptcy court to "resolve '[a]ll matters of fact and law in whatever domains of the law to which' the . . . counterclaims might lead,"[25] the adjudication of a fraudulent transfer action is far less likely to lead a bankruptcy court into far flung "domains of the law" because they only involve the direct application of §§ 548 or 544(b) and the determination of whether a transfer was in fact fraudulent.

Additionally, in *Exec. Benefits Ins. Agency v. Arkison*,[26] the Court was presented with a prime opportunity to hold that fraudulent transfer actions are *Stern* claims, but declined to do so. The alleged *Stern* claim at issue in *Arkison* was a fraudulent transfer action, but in denying that *Stern* created a "statutory gap" in § 157 and holding that any *Stern* claims may proceed as non-core claims under § 157(c), the Court merely "assume[d] without deciding" that the fraudulent transfer action at issue was a *Stern* claim.[27] If the Court were indeed confident that fraudulent transfer actions are *Stern* claims, it could have expressly stated as much without disturbing *Arkison*'s ultimate holding. The Court's apparent reticence may demonstrate that, at the very least, it views the question as worthy of deeper discussion.

Finally, it is important to note that starting with *Granfinanciera*, the Court has placed emphasis on whether the third-party transferee in fraudulent transfer

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[22] Indeed, some states' fraudulent transfer statutes include a claim for "insider preference." *See, e.g.*, Fla. Stat. § 726.106; 6 Del. C. § 1305; Tx. Bus. & Com. Code Ann. § 24.006.

[23] *Stern*, 564 U.S. at 503; *see also Wellness*, 135 S. Ct. at 1946–47.

[24] Lipson & Vandermeuse at 1218.

[25] *Stern*, 564 U.S. at 500 (quoting *N. Pipeline*, 458 U.S. at 91 (Rehnquist, J., concurring in judgment) (alteration in original)).

[26] 134 S. Ct. 2165, 189 L. Ed. 2d 83 (2014).

[27] *Id.* at 2174.

actions was a creditor who filed claims against the estate, because fraudulent transfer actions prosecuted against claimants would "arise[] as part of the process of allowance and disallowance of claims."[28] The Court had made a similar distinction with respect to preference actions in *Katchen*, noting that if the transferee creditor did not file a claim, the trustee could only recover the preference through a plenary action, whereas a transferee creditor who filed a claim would necessarily have its preference action decided by the bankruptcy court as a part of the claims allowance process.[29] As discussed below, there has been an increasingly codified trend of lower courts ruling that, where the transferees are non-creditors or did not file a claim, a fraudulent transfer claim is a *Stern* claim. Whether the Supreme Court would view a transferee's status as a non-creditor and its failure to file a claim would be dispositive in rendering a fraudulent transfer action a *Stern* claim remains to be seen.

SECOND AND THIRD CIRCUIT RULINGS

Courts in both the U.S. Courts of Appeals for the Second and Third Circuit have come to markedly different conclusions regarding whether fraudulent transfer actions are *Stern* claims. While courts in the Second and Third Circuits initially grappled with *Stern*'s applicability to fraudulent transfer actions, many have settled on a reasonably administrable framework. However, some courts have taken a decidedly different view. As the cases below will explore, the uncertainty around the applicability of *Stern* to fraudulent transfer claims may remain until the Supreme Court definitively weighs in.

The General Approach: Absent a Proof of Claim, Fraudulent Transfer Claims Are *Stern* Claims

In the years following *Stern*, and after a period of intense analysis, many courts in the Second and Third Circuits have arrived at an administrable standard: a fraudulent transfer claim is a *Stern* claim unless the transferee has filed a proof of claim, in which case a bankruptcy judge can issue a final judgement. In making this finding, courts have grounded their determinations in both Supreme Court precedents and the text of the Bankruptcy Code. Below, we examine cases in the Second and Third Circuits that exemplify this approach.

For example, *Messer v. Magee (In re FKF 3, LLC)*[30] involved a Chapter 7 trustee who filed an adversary proceeding alleging, among the complaint's 20

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[28] *Granfinanciera*, 492 U.S. at 58 (internal quotations omitted).

[29] *Katchen*, 382 U.S. at 327–31.

[30] 2016 U.S. Dist. LEXIS 117258 (S.D.N.Y. Aug. 30, 2016).

counts, fraudulent transfer claims in respect of the debtor's fraudulent lending business. Shortly thereafter, the defendants moved to withdraw the reference to the bankruptcy court, partly on the basis that the bankruptcy court lacked authority to enter a final judgment on the fraudulent transfer claims. In response, the trustee argued that defendants' filing of a proof of claim eliminated any doubt as to whether the bankruptcy court could render a final judgment because the claims "triggered the claims allowance process in 11 USC § 502."[31]

The court began by characterizing the fraudulent transfer claims at issue as "based on federal bankruptcy law," and noted that § 502(d) "requires that any creditor claim *must be* disallowed if the entity filing the claim possesses property recoverable under, inter alia, § 542, or is the transferee of a transfer avoidable under, inter alia, §§ 544 or 548 (and recoverable under § 550)."[32] Given §502(d)'s mandate that covered claims *must* be disallowed, the court reasoned that in order to determine whether the transferees' claims fell within §502(d)'s scope, the court must first determine whether the transferees were the recipients of fraudulent transfers. As a result, the court found that the trustee's claims were necessarily "resolved in the claims allowance process."[33]

In arriving at this conclusion, the court recounted the Supreme Court's holdings in *Katchen*, *Granfinanciera* and *Langenkamp*, which the court found addressed and, in the cases of *Granfinanciera* and *Langenkamp*, reaffirmed the principle that "a creditor's filing of a proof of claim transforms certain of the trustee's otherwise legal claims related to the claim into equitable claims that a bankruptcy court could finally decide."[34] Turning to *Stern*, the court found that *Stern*'s holding was perfectly compatible with this principle, noting in particular that *Stern*'s majority specifically found that the outcomes in *Katchen* and *Langenkamp* were proper because "the action[s] at issue stem[med] from the bankruptcy itself or would necessarily be resolved in the claims allowance process."[35]

The approach in *Magee* is emblematic of the analysis that appears to have evolved in the last several years in the Second and Third Circuits: if a transferee files a proof of claim, a fraudulent transfer claim against that transferee can be finally adjudicated by a bankruptcy court. While *Magee* does not go so far as to

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[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.* (alternation in original) (internal quotations omitted).

say that in the absence of a proof of claim it would have found the fraudulent transfer claims at issue to be *Stern* claims, it did find that the bankruptcy court did not have authority to enter final judgment in a bevy of state statutory and common law claims because it could not, at the time of the opinion, determine whether the causes of action "would necessarily be resolved in the claims allowance process."[36] This, combined with the court's reliance on § 502, suggests that the court implicitly ascribed to the view that fraudulent transfer claims are *Stern* claims in the absence of a transferee's proof of claim.

While *Magee* engages in a more detailed analysis, many courts seem to be devoting far fewer pages to finding that fraudulent transfer claims are *Stern* claims unless the transferee has filed a proof of claim in the underlying bankruptcy. For example, in *Chorches for Estate of Scott Cable Commc'ns, Inc. v. U.S. Bank Nat'l Ass'n*,[37] the court dismissed an argument that the fraudulent transfer claims at issue were *Stern* claims by noting the existence of the transferee's proof of claim and finding that "consideration of the fraudulent conveyance issue is necessary to [the] resolution of the [t]rustee's objection to [the transferee's] claim. Therefore, entry of a final order in this matter will not run afoul of *Stern*."[38] Similarly, in *Development Specialists, Inc. v. Varanese*,[39] the court spends only a single sentence on *Stern* analysis, observing that "[a] claim for fraudulent transfer . . . implicates a "private" as opposed to "public" right and therefore, consistent with Article III of the United States Constitution, it appears that this Court cannot enter a final order or judgment with respect to the fraudulent transfer claim in the absence of [the transferee] filing a proof of claim in this Court."[40] In some ways, this underscores that many judges in the Second and Third Circuits believe that the question of fraudulent transfer claims are *Stern* claims has been settled.[41]

Uncertainty Remains: Some Courts Take a Different Approach

While many courts in the Second and Third Circuits have adopted a view of *Stern* that makes the filing of a proof of claim outcome determinative on the

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[36] *Id.* (alternation in original) (internal quotations omitted).

[37] 2014 Bankr. LEXIS 4405 (Bankr. D. Del. Oct. 15, 2014).

[38] *Id.*

[39] 2016 Bankr. LEXIS 4059 (Bankr. S.D.N.Y. Nov. 21, 2016).

[40] *Id.*

[41] *See, e.g.*, *In re Madison Bentley Assocs., LLC*, 474 B.R. 430, 438–39 (S.D.N.Y. 2012) ("Courts in this district have consistently held that, after *Stern,* bankruptcy courts lack authority to issue final judgments on fraudulent conveyance claims brought against a person who has not submitted a claim against the estate.").

issue of a bankruptcy court's ability to enter a final judgment on a fraudulent transfer claim, significant uncertainty remains.

For example, in *Feldman v. ABN AMRO Mortg. Grp., Inc.*,[42] a Chapter 7 trustee filed an adversary proceeding alleging fraudulent transfer claims against several banks and home lenders in connection with the debtor's mortgage fraud scheme. The trustee subsequently moved to withdraw the reference to the bankruptcy court, relevantly on the bases (i) that she had a right to a jury trial and (ii) that the bankruptcy court lacked authority to enter final judgment on the fraudulent transfer claims.

The court began with a discussion of *Granfinanciera*, noting that while the Supreme Court found a right to a jury trial in connection with a fraudulent transfer claim, it also held that when a transferee files a proof of claim, resolution of the fraudulent transfer claim implicates the claims allowance process and therefore subjects the parties to the equitable power of the court to enter a final judgment. Turning to *Stern,* the *Feldman* court observed that certain other courts had determined that *Stern's* holding should apply only when evaluating counterclaims covered by the specific statute at issue in that case, 28 U.S.C. § 157(b)(2)(C) ("counterclaims by the estate against persons filing claims against the estate").[43] The *Feldman* court disagreed, finding that "a broader view [of *Stern's* holding] best comports with [the Supreme Court's] reasoning," and that "by tying the counterclaims in *Stern* to the fraudulent transfer claims in *Granfinanciera,* the Court signaled that fraudulent transfer claims do not fall within the public rights exception and are thus beyond the authority of bankruptcy courts to adjudicate."[44] In arriving at this conclusion, the court pointed to the fact that in *Stern,* the Supreme Court determined that neither state law counterclaims nor fraudulent transfer claims fit within "the varied formulations of the public rights exception that allows claims to be adjudicated by a non Article III court."[45] Notably, aside from determining that fraudulent transfer claims were within *Stern's* ambit, the court did not elaborate on its "broader" view of *Stern.*

The court next addressed defendants' argument that the filing of a proof of claim by one defendant provided the court with the authority it needed under *Stern* to enter a final judgment on the fraudulent transfer claims. Defendants

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[42] 515 B.R. 443 (E.D. Pa. 2014).

[43] *Feldman,* 515 B.R. at 448.

[44] *Id.*

[45] *Id.* at 447 (quotations omitted).

pointed to the Third Circuit decision *In re New Century Trs. Holdings, Inc.*,[46] in which a plaintiff creditor claimed that she was fraudulently induced to extinguish her claims against a debtor's estate. The Third Circuit held that, because the underlying claims were "indisputably core proceedings within the jurisdiction of the [b]ankruptcy [c]ourt," the plaintiff's fraudulent inducement cause of action was "irreversibly intertwined" with the resolution of her underlying claims, and thus the bankruptcy court had the authority to enter final judgment.[47] The *Feldman* court was not persuaded by the defendants' attempt to analogize their single proof of claim to *New Century*. While the court observed that "it is generally true that when a creditor's proof of claim is met with a fraudulent transfer action by the debtor, the latter becomes part of the claims allowance process," it ultimately was "not prepared to find that a single, contingent proof of claim, filed by one of nearly two dozen defendants makes these adversary proceedings integral to the restructuring of the debtor creditor relationship through the bankruptcy court's jurisdiction."[48]

In many respects, *Feldman* tracks the analysis discussed above: it interpreted *Stern* broadly to encompass fraudulent transfer claims and endorsed the general rule that a bankruptcy court can enter final judgment on a fraudulent transfer claim brought against a transferee who files a proof of claim. However, *Feldman* adds important nuance to this otherwise binary rule. Under its formulation, a court may determine that a proof of claim is too attenuated from the facts and circumstances of the fraudulent transfer claim that it would not be necessarily resolved as a part of the claims allowance process. While this approach, which is followed by other courts in the Second and Third Circuits, may allow for more carefully tailored determinations by courts, it also removes a level of predictability for parties who find themselves involved in a fraudulent transfer action.[49]

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[46] 544 Fed. App'x 70 (3d Cir. 2013).

[47] *Feldman,* 515 B.R. at 449 (quoting *In re New Century*, 544 Fed. App'x at 73).

[48] *Id.* at 450 (citing *Langenkamp*, 498 U.S. at 44) (internal quotations omitted).

[49] *See e.g.*, *In re AgFeed USA*, LLC, 565 B.R. 556, 563 (D. Del. 2016) ("The Court agrees that the mere filing of a proof of claim is not necessarily dispositive of the issue of whether a defendants has waived its right to a jury trial and thereby submitted to the equitable jurisdiction of the Bankruptcy Court."); Adelphia Recovery Tr. v. FLP Grp., Inc., 2012 U.S. Dist. LEXIS 10804 (S.D.N.Y. Jan. 30, 2012) ("The fact that one defendant filed a proof of claim, however, does not necessarily mean that all fraudulent transfer claims will be resolved in ruling on the one proof of claim."); *In re* Coudert Bros. LLP, 2011 U.S. Dist. LEXIS 110425 (S.D.N.Y. Sept. 23, 2011) (determining fraudulent transfer claims at issue were *Stern* claims despite the transferee's proofs of claim on the basis that the fraudulent transfer claims "would not be completely disposed of in the process of ruling on the [transferee's] proof of claim").

On the other end of the spectrum, some courts have determined that the filing of a proof of claim is not relevant to *Stern* analysis. *Silverman v. A-Z RX, LLC (In re Allou Distribs. Inc.)*[50] involved an adversary proceeding brought by a Chapter 7 trustee alleging, among many claims, fraudulent transfers to the defendants as part of an alleged fraud scheme to misrepresent the debtor's financial condition. In opposing a motion for summary judgment, the defendants cited *Stern* and argued that the court lacked jurisdiction to enter a final judgment on the fraudulent transfer claims.[51] The court began by recounting the facts and circumstances of *Stern*, noting that lower courts have disagreed as to whether fraudulent transfer claims fall within its ambit and concluding that "the distinction between core and non core proceedings is not dispositive of whether the bankruptcy court may enter final judgment."[52]

Turning to an analysis of *Stern*, the court found that the fraudulent transfer cases asserted by the trustee were within the "Court's power constitutionally to enter final judgment" and identified four reasons for its conclusion.[53] First, the court noted that while avoidance claims require an application of "applicable law," which the court conceded "by and large means applicable *state* law," the application of that law was specifically provided for by Congress when it enacted 11 U.S.C. § 544.[54] This, in the court's view, distinguished avoidance actions from the tortious interference claims in *Stern* because the latter were purely a creature of state law. Second, the court determined that the Supreme Court's holding in *N. Pipeline*, which it read to establish "only that Congress may not vest in a non Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordinary appellate review," should be construed narrowly so as not to prohibit a bankruptcy court from entering final judgment on a fraudulent transfer claim.[55] Third, the court similarly found that the Supreme Court's discussion of the Seventh Amendment right to a jury trial in *Granfinanciera* did not prevent entry of final judgment on a motion for summary judgment on a fraudulent transfer claim. Fourth, the court highlighted language in *Stern* that it determined supported a view that *Stern* should be limited to "a narrow set of

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[50] 2012 Bankr. LEXIS 5607 (Bankr. E.D.N.Y. Dec. 3, 2012).

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

circumstances which do not include fraudulent transfer claims."[56] In doing so, the court conceptualized *Stern* as only standing for the proposition that a bankruptcy court lacks constitutional authority to enter a final judgment "on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim."[57] Comparing Vickie's claims to those at issue in *Silverman*, the court found that "the [t]rustee's claims for the avoidance of fraudulent transfers are plainly outside the scope of such actions because they are neither counterclaims, nor based solely on state common law. Rather, they are claims that apply state law in a manner contemplated by [11 U.S.C. § 544(b)]."[58]

The court's analysis in *Silverman* represents perhaps the most narrow reading of *Stern*. Under this conception, *Stern* applies only to counterclaims that arise purely from state law and would not be resolved through the proof of claim process. In rejecting the argument that fraudulent transfer claims are "state law counterclaims," the court relied heavily on the fact that such claims are technically creatures of federal law under 11 U.S.C. § 544(b). This analysis conflicts with other courts' determination that § 544 is merely a codification of a preexisting state law cause of action.[59] Interestingly, the court in *Silverman* makes no mention at all of the proof of claim analysis that other courts in the district were, contemporaneously with *Silverman*, "consistently" using.[60] This highlights the continuing disagreement between courts, not only around the country but even within the same Circuit or district.

CONCLUSION

The Supreme Court's recent decision in *Wellness* held that bankruptcy courts may adjudicate *Stern* claims upon the parties' consent, which has great practical importance to the bankruptcy scheme. Nevertheless, it did little to more clearly define *Stern* claims as an initial matter. As the cases explored here make plain, until the Court or Congress decides to make a more definitive pronouncement on the contours of *Stern* claims, practitioners should expect to continue battling over them in bankruptcy and Article III courts across the country, with the status of fraudulent transfer actions being at the forefront of this struggle.

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[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *See, e.g.*, *In re Renewable Energy*, 792 F.3d at 1280 (noting that fraudulent transfer claims "find a home in a federal statute but surely implicate longstanding common law rights").

[60] *See, e.g.*, *In re Madison Bentley Assocs.*, 474 B.R. at 438–39.