

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:)
) Civil Action No. 4:25-cv-02057 (LHR)
)
ROBERT WYN YOUNG) Judge Lee H. Rosenthal
)
Appellant.)

In Re:) Chapter 7
)
ALEXANDER E. JONES) Bankruptcy Case No. 22-33553 (CML)
)
Debtor.)

**APPELLANT’S RULE 60(B)(4) MOTION TO VACATE ORDER DENYING REQUEST
FOR CERTIFICATION OF DIRECT APPEAL, DOCKET 1164**

The undersigned Pro Se Attorney Intervenor/Interested Party~Appellant, **Robert Wyn Young** (“Appellant”, “Interested Party~Appellant”, or “the undersigned”), hereby moves the District Court, pursuant to **Fed. R. Civ. P. 60(B)(4)**, to **vacate** the Bankruptcy Court’s June 5, 2025, **Order Denying Request for Certification of Direct Appeal** (Docket 1164) on the grounds that, as of June 5, 2025, and under the plain terms of **Fed. R. Bankr. P. 8006(b)**, the Bankruptcy Court lacked subject matter jurisdiction to issue said **Order**, and it is thus properly deemed as **void**. The grounds for this **Rule 60(B)(4) Motion to Vacate Order** are more fully set forth below.

RELEVANT PROCEDURAL HISTORY

On March 19, 2025, the undersigned filed a **Motion for Leave to Intervene to Present Evidence of Fraudulent Judgment** in the above~captioned Chapter 7 bankruptcy, Case No. 22-33553 (CML). (Docket 1120) On April 8, 2025, the Connecticut Families creditors filed an **Opposition to Motion for Leave to Intervene by Robert Wyn Young** (Docket 1124) that failed

to comply with the pre-response conference requirements of **BLR 9013-1(g)(1)** and which argued only that the undersigned lacks standing to intervene. On April 11, 2025, the undersigned filed a **Motion to Strike Connecticut Families' Opposition to Motion for Leave to Intervene** (Docket 1126) and a **Reply in Support of Motion for Leave to Intervene to Present Evidence of Fraudulent Judgment** (Docket 1128) [in the event the Court denied the undersigned's **Motion to Strike** (Docket 1126), or if the Court otherwise considered any of the arguments asserted in the **Connecticut Families' Opposition** (Docket 1124)].

On April 22, 2025, the Bankruptcy Court issued an **Order Denying Motion for Leave to Intervene** (Docket 1129) on the basis of lack of standing, i.e., according to the Bankruptcy Court: "Young has no identifiable economic interest in this case." and "The concerns raised by Young are adequately represented by existing parties and permitting intervention risks causing undue delay in a case that has been pending since December 2022." (Docket 1129 at 2)

On May 4, 2025, the undersigned filed a timely **Notice of Appeal and Statement of Election** appealing the Bankruptcy Court's April 22, 2025, **Order Denying Motion for Leave to Intervene** (Docket 1129). (Docket 1135) (See, also, Bankruptcy Clerk's May 7, 2025, **Notice of Filing of an Appeal** by the undersigned and assigning same **Civil Action No. 4:25-cv-02057**, Docket 1138.) Along with the **Notice of Appeal**, the undersigned Interested Party~Appellant contemporaneously filed a **Motion for Leave to Appeal Order Denying Intervention to Present Evidence of Fraudulent Judgment**. (Docket 1135-2)

On May 6, 2025, the undersigned filed an electronic **Election to Appeal to Court of Appeals**. (Docket 1136) On May 14, 2025, the undersigned filed **Appellant's Designation of the Record and Statement of the Issue(s) on Appeal**. (Docket 1143)

On May 15, 2025, the undersigned filed **Appellant's Request for Certification Under 28 U.S.C. § 158(d)(2)(A)** to pursue a direct and immediate appeal to the Fifth Circuit Court of Appeals. (Docket 1144) No response in opposition to **Appellant's Request for Certification** was submitted within the allowable fourteen (14) day period under **Fed. R. Bankr. P. 8006(f)(3)(A)** expiring on May 29, 2025.

On May 21, 2025, the undersigned filed **Appellant's Rule 8007 Motion for Stay of Proceedings Pending Appeal**. (Docket 1153) No party filed any opposition to **Appellant's Rule 8007 Motion for Stay** prior to, and said **Motion** was **not** yet ripe for decision on, June 5, 2025.

On June 3, 2025, the Bankruptcy Court's thirty (30) day period of retention of jurisdiction under **Fed. R. Bankr. P. 8006**, following the effective date of the undersigned's appeal, i.e., May 4, 2025 (see Docket 1138), **expired**. On June 5, 2025, the Bankruptcy Court conducted a status conference/hearing and issued an **Order Denying Request for Certification of Direct Appeal and Denying Motion to Stay pending Appeal** "[f]or the reasons stated on the record at the June 5, 2025, hearing". (Docket 1164)

Appellant does **not** dispute that the Bankruptcy Court retained jurisdiction, as of June 5, 2025, to rule on the undersigned's **Rule 8007 Motion for Stay of Proceedings Pending Appeal** (Docket 1153). Appellant has filed an AO 435 order for a transcript of the June 5, 2025, status conference/hearing. (Docket 1175) Upon receipt of the transcript, Appellant will be supplementing the record with same, pursuant to **Fed. R. Bankr. P. 8009**, in order to identify the specific reasons for which the Bankruptcy Court denied **Appellant's Rule 8007 Motion for Stay** (Docket 1153). Such information is required by **Fed. R. Bankr. P. 8007(b)(2)(B)** for the **Fed. R. Bankr. P. 8007(b)** motion for stay of all proceedings in Case No. 22-33553 (CML) that Appellant intends to file in and with the District Court forthwith [reasonable and express notice of Appellant's intention

to file a **Fed. R. Bankr. P. 8007(b)** motion for stay of proceedings in and with the District Court being hereby given to all parties in accordance with **Fed. R. Bankr. P. 8007(b)(4)**].

But the specific, and even the general, reasons for which the Bankruptcy Court denied **Appellant’s Request for Certification Under 28 U.S.C. § 158(d)(2)(A)** (Docket 1144) on June 5, 2025, are **not** actually relevant because, under **Fed. R. Bankr. P. 8006(b)**, the Bankruptcy Court retained jurisdiction with respect to **Appellant’s Request for Certification** (Docket 1144) for only thirty (30) days following the May 4, 2025, effective date of **Appellant’s Notice of Appeal** (see Docket 1135 and 1138), i.e., until **June 3, 2025**.

Accordingly, because the Bankruptcy Court did not possess subject matter jurisdiction to rule on **Appellant’s Request for Certification Under 28 U.S.C. § 158(d)(2)(A)** (Docket 1144) as of June 5, 2025, the Bankruptcy Court’s June 5, 2025, **Order Denying Request for Certification of Direct Appeal** (Docket 1164) is void, as a matter of law, and it should be vacated.

THE BANKRUPTCY COURT’S ORDER DENYING REQUEST FOR CERTIFICATION OF DIRECT APPEAL (DOCKET 1164) IS VOID, AND IT SHOULD BE VACATED

1. The Bankruptcy Court lacked subject matter jurisdiction under Fed. R. Bankr. P. 8006 to rule on Appellant’s Request for Certification.

Fed. R. Bankr. P. 8006(b) states as follows:

The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the first notice of appeal concerning that matter becomes effective under Rule 8002. After that time, the matter is pending in the district court or BAP.

In SIPC v. Bernard L. Madoff Investment Securities LLC, Adv. P. No. 08-01789 (SMB) (Bankr. S.D.N.Y. July 19, 2017)¹ (“*Order Withdrawing May 4, 2017, Memorandum Decision*

¹ The Madoff decision is attached herewith as an Exhibit in accordance with **LR7.1(B)**, and it is viewable at: https://www.govinfo.gov/content/pkg/USCOURTS-nysb-1_08-ap-01789/pdf/USCOURTS-nysb-1_08-ap-01789-31.pdf

Denying Request to Certify Judgment for Direct Appeal”), the Bankruptcy Court for the Southern District of New York withdrew its prior decision denying a request for certification under **Fed. R. Bankr. P. 8006** because “under the plain language of Rule 8006(b), this Court lost jurisdiction to decide the Certification Motion on April 14, 2017 (the 31st day after the Trustee’s Notice of Appeal). Consequently, the Opinion Denying Certification was issued in error, and is withdrawn.” Madoff, at 5~6.

The cited and attached Madoff decision is **on~point** with the issue presented herein, and it merits quoting at length from its discussion regarding a bankruptcy court’s loss of subject matter jurisdiction over a request for certification of a direct appeal following expiration of the thirty (30) day period prescribed by **Fed. R. Bankr. P. 8006(b)**:

Subsection (d) of the same Rule provides, “Only the court where the matter is pending, as provided in subdivision (b), may certify a direct review on request of parties or on its own motion.” FED. R. BANKR. P. 8006(d). Thus, if the motion for certification is filed within thirty days of the notice of appeal, it must be filed with the clerk of the Bankruptcy Court, and the Bankruptcy Court retains jurisdiction for the same thirty days to decide the request for certification. The Rule is designed to give “the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification for direct review is appropriate.” FED. R. BANKR. P. 8006 advisory committee notes (2014). After thirty days from the filing of the notice of appeal, the Bankruptcy Court loses jurisdiction, and the matter is deemed pending in the District Court. ... [*case citations omitted*]; see also 10 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 8006.07 at 8006-9 (16th ed. 2017) (“The sole remaining unresolved problem will occur when a request is made to the bankruptcy court before the 30 day period has run but that court has not ruled before the 30 days has expired. At that point, the matter is no longer pending in the bankruptcy court and it no longer has the power to make the certification.”).

Madoff, *supra*, at 4~5. The Bankruptcy Court for the Southern District of New York summarized its conclusions regarding subject matter jurisdiction under **Fed. R. Bankr. P. 8006(b)**, stating:

Rule 8006(b) states that the matter remains pending in the Bankruptcy Court for thirty days after the filing of the notice of appeal, and thereafter, is pending in the District Court. Rule 8006(b) does not say that the matter remains pending in the Bankruptcy Court after the thirty day period for certain purposes, such as to deny a certification motion. While Rule

8006(d) states that only the court where the matter is pending can certify the appeal, this does not imply that the thirty-day limit does not apply to a denial of certification.

Madoff, *supra*, at 6.

The undersigned's **Notice of Appeal** became effective under **Fed. R. Bankr. P. 8002** on May 4, 2025. (See Docket 1138.) Under **Fed. R. Bankr. P. 8006(b)**, the Bankruptcy Court's 30~day retention of subject matter jurisdiction to rule upon **Appellant's Request for Certification** (Docket 1144) expired on June 3, 2025. Accordingly, the Bankruptcy Court did not possess subject matter jurisdiction on June 5, 2025, to issue the **Order Denying Request for Certification of Direct Appeal** (Docket 1164).

2. The Order Denying Request for Certification of Direct Appeal (Docket 1164) is void, as a matter of law, and it should be vacated.

Fed. R. Civ. P. 60(B), regarding **Grounds for Relief from a Final Judgment, Order, or Proceeding** states, in pertinent part, that: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: ... (4) the judgment is void".

An order or judgment is **void** if the court that renders it lacks jurisdiction over the subject matter. Williams v. New Orleans Public Service, Inc., 728 F.2d 730 , 735 (5th Cir. 1984). Further, "subject-matter jurisdiction, because it involves **a court's power to hear a case**, can never be forfeited or waived." United States v. Cotton, 535 U.S. 625, 630 (2002). [Emphasis added.]

As the Bankruptcy Court lacked subject matter jurisdiction, as of June 5, 2025, to rule on **Appellant's Request for Certification** (Docket 1144) (see **Section 1** above), the Bankruptcy Court's June 5, 2025, **Order Denying Request for Certification of Direct Appeal** (Docket 1164) is **void** as a matter of law, and it should be vacated in accordance with and pursuant to **Fed. R. Civ. P. 60(B)(4)**.

REQUEST FOR RELIEF

Pursuant to **Fed. R. Civ. P. 60(B)(4)**, Interested Party~Appellant hereby requests that the District Court **vacate** the Bankruptcy Court's June 5, 2025, **Order Denying Request for Certification of Direct Appeal** (Docket 1164) on that grounds that, as of June 5, 2025, the Bankruptcy Court lacked subject matter jurisdiction to issue said **Order**, and it is therefore properly deemed as **void**.

Concomitantly, Interested Party~Appellant further and respectfully submits that the undersigned's May 15, 2025, **Request for Certification Under 28 U.S.C. § 158(d)(2)(A)** (Docket 1144) is **well~founded**; it was **unopposed** within the allowable fourteen (14) day period under **Fed. R. Bankr. P. 8006(f)(3)(A)** expiring on May 29, 2025; and it should be **granted**.

CONCLUSION

WHEREFORE, for the Foregoing Reasons, Pro Se Attorney Intervenor/Interested Party~Appellant **Robert Wyn Young** respectfully submits that **Appellant's Rule 60(B)(4) Motion to Vacate Order Denying Request for Certification of Direct Appeal, Docket 1164** is **well~founded**, and it should be **granted**. In addition to other identified exhibits, the undersigned is attaching herewith **(1)** a copy of the Bankruptcy Court's June 5, 2025, **Order Denying Request for Certification of Direct Appeal and Denying Motion to Stay Pending Appeal** being challenged (Docket 1164), and **(2)** a proposed Order granting the relief herein requested, as required by **LR7.1(C)**.

Respectfully submitted,

Date: **06/11/25**

/s/ Robert Wyn Young _____
Robert Wyn Young
Attorney~in~Charge
(OH Bar #0064876)
[Pro Hac Vice Admission]
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***Pro Se Attorney Intervenor/
Interested Party~Appellant***

LR7.1(D) AVERMENT

Interested Party~Appellant **Robert Wyn Young** hereby avers that, pursuant to **LR7.1(D)**, the undersigned conferred with the respondent by issuing counsel for Debtor~Appellee **Alexander E. Jones** notification, via email sent on June 9, 2025, at 4:55 AM ET, of the undersigned's intention to file the instant **Rule 60(B)(4) Motion to Vacate**. [See 25_06_09_Email to Counsel for Jones re_LR7 Meet and Confer on RWY Rule 60(B)(4) Motion, attached as exhibit hereto.] Counsel for Debtor~Appellee **Alexander E. Jones** did **not** respond to the undersigned's request for a response/statement of **Jones'** position on the instant **Rule 60(B)(4) Motion to Vacate** within the requested twelve (12) hour period (i.e., by close of business, 5:00 PM ET) on June 9, 2025.

/s/ Robert Wyn Young _____
Robert Wyn Young

FRBP 8015(h) CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **Appellant's Rule 60(B)(4) Motion to Vacate** complies with the 5,200~word limitation under **FRBP 8013(f)(3)(A)**, excluding parts exempted under **FRBP 8015(g)** (307 words), and that such certification is based on a **2,202~word** calculation of said **Motion** by my word processing program.

/s/ Robert Wyn Young _____
Robert Wyn Young

CERTIFICATE OF SERVICE

I hereby certify that on **June 11, 2025**, I caused a copy of the foregoing **Appellant's Rule 60(B)(4) Motion to Vacate**, the **Exhibits** to same, including the attached **Order** being appealed (Docket 1164), and the attached **LR7.1(C) proposed Order** granting motion, to be served on all subscribed parties by the Electronic Case Filing System of the United States District Court for the Southern District of Texas.

/s/ Robert Wyn Young _____
Robert Wyn Young