

St. John's University School of Law

## St. John's Law Scholarship Repository

---

Bankruptcy Research Library

Center for Bankruptcy Studies

---

2022

### **The Barton Doctrine's Applicability to Suits Against Bankruptcy Trustees When the Bankruptcy Court Lacks Jurisdiction Over the Matter**

Chelsea Frankel

Follow this and additional works at: [https://scholarship.law.stjohns.edu/bankruptcy\\_research\\_library](https://scholarship.law.stjohns.edu/bankruptcy_research_library)



Part of the [Bankruptcy Law Commons](#), and the [Supreme Court of the United States Commons](#)

---



The Barton Doctrine's Applicability to Suits Against Bankruptcy Trustees When the  
Bankruptcy Court Lacks Jurisdiction Over the Matter

Chelsea Frankel, J.D. Candidate 2022

Cite as: *The Barton Doctrine's Applicability to Suits Against Bankruptcy Trustees When the  
Bankruptcy Court Lacks Jurisdiction Over the Matter*, 14 ST. JOHN'S BANKR. RESEARCH LIBR.  
No. 5 (2022).

### Introduction

In *Barton v. Barbour*, the Supreme Court established the general rule that a lawsuit cannot be brought against a receiver for acts done within their authority without leave of the court that appointed such receiver.<sup>1</sup> The Court precluded a personal injury suit against a company's receiver without leave of the appointing court, finding that if the plaintiff were permitted to recover on his personal injury claim against the receiver, he would be recovering from the receivership property "without regard to the rights of other creditors or the orders of the court which is administering the trust property."<sup>2</sup> The Court explained the *Barton* holding in terms of exclusive subject matter jurisdiction: failure to obtain leave from the appointing court would result in "a usurpation of the powers and duties which belonged exclusively to another court . . . and it would [make] impossible . . . the duty of that court to distribute . . . assets to creditors equitably and according to their respective priorities."<sup>3</sup>

---

<sup>1</sup> 104 U.S. 126, 128 (1881).

<sup>2</sup> *Id.* at 128–29.

<sup>3</sup> *Id.* at 136.

Although *Barton* related to receiverships, and nothing in the United States Bankruptcy Code “states that someone wanting to sue a trustee in bankruptcy concerning actions taken by him in the course of his trusteeship must obtain the permission of the bankruptcy court,” an “unbroken line of cases . . . has imposed [the *Barton* doctrine in bankruptcy proceedings] . . . as a matter of federal common law.”<sup>4</sup> Like an equity receiver, “a trustee in bankruptcy is working in effect for the court that appointed or approved him, administering property that has come under the court’s control by virtue of the Bankruptcy Code.”<sup>5</sup>

The *Barton* doctrine is not absolute. Under a federal statutory exception, a person may sue “trustees, receivers or managers of any property, including debtors in possession [without leave of the appointing court] with respect to any of their acts or transactions in carrying on business connected with such property.”<sup>6</sup> Further, “the doctrine only protects the trustee for acts ‘done in the trustee’s official capacity and within the trustee’s authority as an officer of the court.’”<sup>7</sup>

Circuit courts, however, disagree on whether the *Barton* doctrine applies to officers of the court after the relevant proceedings have ended. Most courts consider policy in addition to a jurisdictional analysis, but the Eleventh Circuit addresses the matter strictly as a subject matter jurisdiction question.<sup>8</sup> This memorandum analyzes the issue and concludes that because the Supreme Court’s reasoning in *Barton* focused on exclusive *in rem* jurisdiction, courts should not

---

<sup>4</sup> *In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998); *see also, e.g.*, *Voss v. Conron Bros. Co.*, 59 F.2d 969, 970–71 (2d Cir. 1932); *In re Beck Industries*, 725 F.2d 880, 886–87 (2d Cir. 1984); *Allard v. Weitzman (In re DeLorean Motor Co.)*, 991 F.2d 1236, 1240 (6th Cir. 1993).

<sup>5</sup> *In re Linton*, 136 F. 3d at 545.

<sup>6</sup> 28 U.S.C. § 959(a) (2018); *see also In re DeLorean*, 991 F.2d at 1236 (explaining “carrying on business” requires an “operating trustee,” and not just acts related to administering and liquidating the estate).

<sup>7</sup> *In re Summit Metals, Inc.*, 477 B.R. 484, 495–96 (Bankr. D. Del. 2012) (quoting *In re DeLorean*, 991 F.2d 1236, 1240 (6th Cir. 1993)).

<sup>8</sup> *Compare In re Linton*, 136 F. 3d at 545 *with Tufts v. Hay*, 977 F.3d 1204, 1209 (11th Cir. 2020).

use policy justifications to apply the doctrine to preclude suits when a bankruptcy court lacks jurisdiction over the matter in question.

## Discussion

### I. *Barton* and the Appointing Court’s Exclusive *In Rem* Jurisdiction

The Supreme Court’s *Barton* decision was expressly jurisdictional in nature; the precise issue addressed in the case was whether a state court had “jurisdiction to entertain a suit” against a receiver without leave of the court that appointed the receiver.<sup>9</sup> The Court’s decision aimed to prevent “a usurpation of the powers and duties which belonged exclusively to another court . . .” that would make it “impossible [for that court] to distribute . . . assets to creditors equitably and according to their respective priorities.”<sup>10</sup> Although courts disagree on whether the doctrine implicates additional concerns in the bankruptcy context, they agree that the *Barton* doctrine is premised on *in rem* subject matter jurisdiction.<sup>11</sup> Exclusive *in rem* jurisdiction is based on the principle that whoever “first takes possession of a *res* withdraws the property from the reach of the other.”<sup>12</sup> It is a rule of “‘necessity’ because multiple courts attempting to control the same property at the same time ‘would result in unseemly conflict.’”<sup>13</sup> But there is no such “necessity” when an unauthorized action is outside the scope of a bankruptcy court’s subject matter jurisdiction.<sup>14</sup>

In the bankruptcy context, the “powers and duties” of the appointing court are commenced upon the filing of a bankruptcy petition, which creates an estate including all the

---

<sup>9</sup> See 104 U.S. at 131.

<sup>10</sup> *Id.* at 128.

<sup>11</sup> See, e.g., *In re Crown Vantage*, 421 F.3d 963, 971 (9th Cir. 2005) (“Part of the rationale underlying *Barton* is that the court . . . has *in rem* subject matter jurisdiction over the [property]”); *In re WRT Energy Corp.*, 402 B.R. 717, 722 (Bankr. W.D. La. 2007) (“The [Supreme] Court based its holding on the appointing court’s exclusive *in rem* jurisdiction over the property administered by the receiver.”).

<sup>12</sup> *Toucey v. N.Y. Life Ind. Co.*, 314 U.S. 118, 134–35 (1941).

<sup>13</sup> *Chua v. Ekonomou*, 1 F.4th 948, 951 (11th Cir. 2021) (quoting *Toucey*, 314 U.S. at 135).

<sup>14</sup> See *Tufts*, 977 F.3d at 1209.

debtors' interest in property "wherever located and by whomever held."<sup>15</sup> The "requirement of a uniform application of bankruptcy law dictates that all legal proceedings *that affect the administration of the bankruptcy estate* be brought either in bankruptcy court or with leave of the bankruptcy court."<sup>16</sup>

Section 1334 of the Bankruptcy Code grants bankruptcy courts subject matter jurisdiction over "all civil proceedings . . . arising in or related to cases under" the Bankruptcy Code.<sup>17</sup> Accordingly, the Supreme Court's reasoning in *Barton* dictates that, when an unauthorized action would not impede on a bankruptcy court's jurisdiction under its circuit's applicable Section 1334 test,<sup>18</sup> courts should not apply the *Barton* doctrine to the matter in question because there are no "powers and duties" belonging to the appointing court that can be usurped by another court.<sup>19</sup>

## **II. *In re Linton* and Policy in *Barton* Determinations**

Most circuit courts doing a *Barton* analysis consider policy in addition to exclusive subject matter jurisdiction. In 1998, the Seventh Circuit became the first federal appellate court to decide whether the *Barton* doctrine applies after a bankruptcy case has been terminated.<sup>20</sup> In *Linton*, the Seventh Circuit held that the *Barton* doctrine barred a malicious prosecution suit against a bankruptcy trustee without leave of the bankruptcy court, even though the bankruptcy

---

<sup>15</sup> *In re Crown Vantage*, 421 F.3d at 971 (quoting 11 U.S.C. § 541(a) (2018)).

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> 28 U.S.C. § 1334(b) (2018).

<sup>18</sup> Some circuit courts analyze the "arising in or related to" question using the "conceivable effects" test, which asks whether the action "could conceivably have an effect on" the estate. *See, e.g., In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990). Other circuits look to whether there is a "close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter." *See, e.g., In re Resorts Intern, Inc.*, 372 F.3d 154, 167 (3d Cir. 2004).

<sup>19</sup> *See Tufts*, 977 F.3d at 1209 (quoting *Barton*, 104 U.S. at 136)).

<sup>20</sup> *See In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998). ("We cannot find any federal appellate court rulings on whether leave is required in such a case. But we think that it is.")

case had closed eleven months earlier.<sup>21</sup> Because the case had been wound up, the malicious prosecution suit would not have implicated the *Barton* concerns about “a usurpation of the powers and duties which belonged exclusively to another court . . .” that would make it “impossible [for that court] to distribute . . . assets to creditors equitably and according to their respective priorities.”<sup>22</sup> But the Seventh Circuit applied the doctrine to the matter regardless, citing policy reasons.<sup>23</sup>

The Seventh Circuit determined that permitting suits against trustees without leave of the appointing court would lead to trusteeships becoming a more “irksome duty,” including through an increase in malpractice premiums.<sup>24</sup> Such “irksome[ness]” would make it “harder for courts to find competent people to appoint as trustees.”<sup>25</sup> And although the proceedings had concluded, the Seventh Circuit reasoned that requiring leave would assist the bankruptcy court’s ability to monitor the trustees because it would “help[] the judge decide whether to approve [the] trustee in a subsequent case.”<sup>26</sup> The Supreme Court, however, had already rejected those arguments when refusing to grant absolute immunity to appointed counsel in federal criminal cases.<sup>27</sup> In *Ferri*, the Court said the “most persuasive reason for creating such an immunity would be to make sure competent counsel remain willing to accept the work,” but ultimately decided that a solution to that problem is “most appropriately” resolved by a legislative body.<sup>28</sup>

The Seventh Circuit distinguished from the Supreme Court’s holding in *Ferri* by determining *Linton* implicated the “integrity of the bankruptcy jurisdiction” and its “secure

---

<sup>21</sup> *See id.* at 544–46.

<sup>22</sup> *Barton v. Barbour*, 104 U.S. at 136.

<sup>23</sup> *See Linton*, 136 F.3d at 545–46.

<sup>24</sup> *Id.* at 545.

<sup>25</sup> *Id.* at 545.

<sup>26</sup> *Id.*

<sup>27</sup> *Ferri v. Ackerman*, 444 U.S. 193, 204–05 (1979).

<sup>28</sup> *Id.*

constitutional pedigree” found in the U.S. Constitution.<sup>29</sup> The *Barton* doctrine, as interpreted by the Seventh Circuit, “responds to the concern that motivated the framers of the Constitution [to include Art. I, § 8, cl. 4]—concern that states might favor debtors, or creditors, unduly.”<sup>30</sup> And if non-bankruptcy courts were permitted to grant relief against trustees, those courts would have “the practical power to turn bankruptcy losers into bankruptcy winners, and vice versa.”<sup>31</sup>

#### **a. *Linton*’s Impact on *Barton* Analyses**

Several circuits have adopted *Linton*’s determination that *Barton* implicates policy considerations in addition to jurisdictional questions.<sup>32</sup> In *Satterfield*, the Tenth Circuit reasoned that finding the doctrine inapplicable after the end of proceedings would contravene the “important judicial goal” of ensuring “other courts do not intervene in the bankruptcy court’s administration of an estate without permission.”<sup>33</sup> The First Circuit also adopted *Linton* to dismiss a plaintiff debtor corporation’s suit against a bankruptcy trustee after the case was closed.<sup>34</sup> The *Muratore* court rejected the plaintiff’s argument that the *Barton* doctrine was premised solely on the concepts of *in rem* jurisdiction, and instead found that the *Barton* doctrine serves “additional purposes,” such as those outlined in *Linton*.<sup>35</sup>

#### **b. Eleventh Circuit’s Return to *Barton*’s Roots in Exclusive Jurisdiction**

---

<sup>29</sup> *Linton*, 136 F.3d at 546 (citing U.S. CONST. art. I, § 8, cl. 4 (authorizing Congress to enact “uniform Laws on the subject of Bankruptcies throughout the United States”)).

<sup>30</sup> *Id.* (citing Justice Joseph Story, *Commentaries on the Constitution of the United States* § 540, 386–87 (1833)).

<sup>31</sup> *Id.*

<sup>32</sup> *See, e.g.*, *Muratore v. Darr*, 375 F.3d 140, 147 (1st Cir. 2004) (“the doctrine serves additional purposes even after the bankruptcy case has been closed and the assets are no longer in the trustee’s hands”); *In re Crown Vantage*, 421 F.3d at 972 (approving of *Linton* and *Muratore* policy considerations); *Satterfield v. Malloy*, 700 F.3d 1231, 1237 (10th Cir. 2012) (“As the Seventh Circuit noted, the *Barton* doctrine continues to serve important purposes even after a bankruptcy is complete.”).

<sup>33</sup> 700 F.3d at 1237.

<sup>34</sup> *See Muratore*, 375 F.3d at 147.

<sup>35</sup> *Id.*

The Eleventh Circuit’s approach to *Barton* questions deviates from other circuits, but it tracks most closely to the doctrine’s founding principles. The court has addressed the question in both the bankruptcy and receivership contexts, concluding in both cases that the doctrine does not apply when the appointing court no longer has jurisdiction over the matter.<sup>36</sup> In *Tufts v. Hay*, the Eleventh Circuit considered whether the doctrine should apply to a dismissed bankruptcy case when both parties agreed that the action in question would have “no conceivable effect” on the estate—which, in the Eleventh Circuit, is the applicable Section 1334 test.<sup>37</sup> The Eleventh Circuit did not create a “categorical rule that the *Barton* doctrine can never apply once a bankruptcy case ends,” but held that the doctrine is inapplicable when jurisdiction over a matter no longer exists in bankruptcy court under Section 1334.<sup>38</sup>

The Eleventh Circuit elaborated on its true-to-*Barton* approach in *Chua*, where it expressly addressed other circuit courts’ policy concerns: “The need to attract qualified individuals to serve as receivers and bankruptcy trustees might be a legitimate policy concern, but it has nothing to do with subject-matter jurisdiction.”<sup>39</sup> The *Chua* court declined to extend the doctrine to claims against a receiver and his counsel when “the receivership had already ended and [the plaintiff] had forfeited his claim to the seized assets.”<sup>40</sup> In reaching its decision, the Eleventh Circuit “disagree[d] with [its] sister circuits that the need to protect court-appointed receivers and bankruptcy trustees is relevant to the *Barton* doctrine.”<sup>41</sup> The circuit court opinions that consider policy “fail to grapple with the fact that the *Barton* doctrine is grounded in the exclusive nature of *in rem* jurisdiction.”<sup>42</sup>

---

<sup>36</sup> See *Tufts v. Hay*, 977 F.3d at 1209; *Chua v. Ekonomou*, 1 F.4th at 954.

<sup>37</sup> See 977 F.3d at 1209–10.

<sup>38</sup> *Id.* at 1210.

<sup>39</sup> See 1 F.4th at 954.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

Thus, the only question to be considered in a *Barton* analysis is whether the bankruptcy court has jurisdiction under Section 1334 of the Bankruptcy Code.<sup>43</sup> If the answer is yes, courts should apply the *Barton* doctrine because a non-bankruptcy court would be “usurp[ing] the powers and duties which belonged exclusively to [the bankruptcy court].”<sup>44</sup> If the answer is no, courts should not apply the *Barton* doctrine because there are no “powers and duties” to be usurped by a non-appointing court.<sup>45</sup>

Further, while even legitimate policy concerns have “nothing to do with subject-matter jurisdiction,” the *Linton* concerns echoed by other circuits are “unfounded because court-appointed receivers enjoy judicial immunity for acts taken within the scope of their authority.”<sup>46</sup> Because, like judicial immunity, the *Barton* doctrine applies only to acts taken within the scope of a court-appointed officers’ authority, there is no need for an “an additional layer of protection for the performance of their duties.”<sup>47</sup> Accordingly, courts should not use policy justifications to apply the doctrine to preclude suits when a bankruptcy court lacks jurisdiction over the matter in question.

## Conclusion

Although most circuit courts to consider whether the *Barton* doctrine applies at the conclusion of bankruptcy proceedings have extended its application based on policy concerns, the Supreme Court’s own *Barton* ruling was jurisdictional in nature. The *Barton* doctrine is

---

<sup>43</sup> See *Tufts*, 977 F.3d at 1210.

<sup>44</sup> *Barton*, 104 U.S. at 136.

<sup>45</sup> See *id.*

<sup>46</sup> *Chua*, 1 F.4th at 954–55 (holding *Barton* did not deprive district court of subject matter jurisdiction, but finding defendants entitled to judicial immunity) (citing *Prop. Mgmt. & Invs., Inc. v. Lewis*, 752 F.2d 599, 602 (11th Cir. 1985)); see also *Lonneker Farms v. Klobucher*, 804 F.2d 1096, 1097 (9th Cir. 1986) (“[A] trustee in bankruptcy or an official acting under the authority of a bankruptcy judge, is entitled to derived judicial immunity because [they are] performing an integral part of the judicial process.”); *In re McKenzie*, 716 F.3d 404, 413 (6th Cir. 2013) (“[A] bankruptcy trustee is ordinarily entitled to quasi-judicial (or derivative) immunity from suit . . . for actions taken in [their] official capacity.”).

<sup>47</sup> *Chua*, 1. F.4th at 954–55.

premised on *in rem* jurisdiction and, as noted by the Eleventh Circuit, subject matter jurisdiction is not related to policy concerns. Because it “flows from *Barton* itself” that “when the bankruptcy court lacks jurisdiction there are no “powers and duties” belonging to the appointing court that can be usurped by another court, courts should not apply the *Barton* doctrine when the appointing court no longer has jurisdiction over the matter.