

In the Supreme Court of the United States

AIRBNB, INC.,
Respondent-Plaintiff-Appellee

v.

MICHELLE L. MCGUIRK,
Petitioner-Movant-Appellant

v.

BILL DE BLASIO,
Respondent-Defendant-Appellee.

**ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, in his
official capacity, and The City of New York
Defendants**

*Motion to File Out-of-Time a Petition for Writ of Certiorari
to the U.S. Court of Appeals for the Second Circuit*

Case 17-1000cv

MOTION

Michelle L. McGuirk
Petitioner-Movant-Appellant, *Pro Se*
P.O. Box 369, New York, NY 10113-369
Phone: (646) 662-5241
Email: michelle_mcguirk@yahoo.com

Motion to File Out-of-Time a Petition for Writ of Certiorari in COA-2C: 17-1000cv

Affidavit, Exhibits, Office of the Clerk letter and Proof of Service support a Motion to File Out-of-Time a Petition for Writ of Certiorari to U.S. Court of Appeals, Second Circuit per Rule 30.2 in No. 17-1000cv "*Airbnb, Inc. v. Schneiderman, et.al.*" on paid appeal of District Court case 16-cv-8239. The Office's Feb. 13, 2018 letter alleged defects in Feb. 5th application seeking 30 days from Feb. 7th deadline, mailed within 90 days of COA-2C's Nov. 9, 2017 order denying to reconsider or review *en banc* dismissal. I timely resubmitted application seeking 60 days to Apr. 14, 2018 with a Petition per Rule 14.5. After filings were returned with Apr. 19 and June 20, 2018 letters, I resubmitted applications and corrected Petitions per Rule 33.1 within 60-days and Office's Aug. 29th letter directed me to cure alleged defects via motion.

Jurisdiction is proper after *pro se* intervenor was arbitrarily shut out-of-court by COA-2C's Aug. 9, 2017 Order averring no arguable basis in law or fact, deviating from Rules, Circuit cases and canons, and Nov. 9, 2017 Order denying to reconsider. It refused merits briefing on common issues of law and fact and if settlement is fair, reasonable, adequate and in public interest, doubling-down on District Court's Jan. 3, 2017 order refusing intervenor relief and denying to reconsider or renew Mar. 9th.

Subject matter involves housing rights in Americans with Disabilities Act (42 U.S.C. §12101, *et.seq*) and Supremacy Clause for millions with disease¹. Department of Justice refers to ADA§302(b)(2)(A)(i) to prohibit courts from applying criteria that tends to screen out people with disability from equally enjoying services. It merits seeking ADA reasonable accommodation if relief denied without prejudicing parties.

¹ *Bragdon v Abbott*, 524 U.S. 624, 118 S.Ct. 2196, 141 L.Ed 2d 540 (1998).

In *Tennessee v. Lane*, 541 U.S. 509,531 (2004) this Court held the ADA, Title II is valid exercise of Congress' enforcement power when court access is implicated:

"[t]he unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination." *Id.* At 531.

Original application mailed less than 10 days before deadline requires good cause and extraordinary circumstances, criteria met by legitimate basis of diagnosis and treatment of recurrence of disease, surgery and serious medical issues. Yet Rule 30.2 says application filings are measured to "the final filing date" for such criteria. Justices' authority is 60 days per Rule 13.5, leaving final filing date 150 days from Nov. 9th or July 7, 2018, so June 14th application and Petition are inarguably timely.

Administrative history incorporating prior filings by reference, strongly leans in favor to grant Motion to offset rejected valid filings or simply docket/grant prior compliant filings. SCOTUS must not grant or *be perceived* to favor ex-government staff yet refuse equal rights of persons with disease. Justice Kennedy was sent original, 1st and 2nd resubmitted applications before retiring in July 2018. Justice Ginsburg was sent 3rd resubmission Aug. 19th, not docketed or granted, while 15-638/15A-302 was granted and reply time permitted without any filed application (!). If frequent docketing games by unlicensed clerks evade rules to favor attorneys and denigrate *pro se* filings, it adds huge risk of eroding Court reliability and integrity, massive waves of judiciary-generated tears making *Niagara Falls look like a trickle*.

Dated: October 27, 2018

New York, New York

Respectfully Submitted,

Michelle L. McGuirk
Michelle L. McGuirk, Petitioner-Movant
P.O. Box 369 New York, NY 10113-369

No. 18A- _____

In the Supreme Court of the United States

AIRBNB, INC.,
Respondent-Plaintiff-Appellee

v.

MICHELLE L. MCGUIRK,
Petitioner-Movant-Applicant

v.

BILL DE BLASIO,
Respondent-Defendant-Appellee.

**ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, in his
official capacity, and The City of New York
Defendants**

***Motion to File Out-of-Time a Petition for Writ of Certiorari
to the U.S. Court of Appeals for the Second Circuit***

Case 17-1000cv

AFFIDAVIT IN SUPPORT

Michelle L. McGuirk
Petitioner-Movant-Applicant, *Pro Se*
P.O. Box 369, New York, NY 10113-369
Phone: (646) 662-5241
Email: michelle_mcguirk@yahoo.com

STATE OF NEW YORK, COUNTY OF NEW YORK ss:

I, Michelle L. McGuirk, duly sworn, declare under penalty of perjury per 28 U.S.C. §1746 the following is true or to the best of my knowledge on information and belief:

1. Oct. 21, 2016 case 16-cv-8239 "*Airbnb, Inc. v. Schneiderman, Attorney General of N.Y., et.al*" saw Hon. Katherine Forrest, District Judge, deny intervenor Fed.R.Civ.Pr.24(b)(1)(B) relief Jan. 3, 2017 on common question of law and fact with no review if City settlement is fair, reasonable, adequate or in public interest and deny motion to reconsider, renew intervenor request and compel disclosure Mar. 9th.

2. U.S. Court of Appeals, Second Circuit's ("COA-2C") Nov. 9, 2017 Order denied reconsideration or *en banc* review (Exh.1) of Aug. 9th Order dismissing case No. 17-1000 on appeal (Exh.2), without briefing on the merits after granting time to file Appellant's brief July 5, 2017. It stated appeal "lacks an arguable basis in law or fact", identical to District Court Orders, inferring initial case lacked merit and/or was not ripe to review. Motions to recall mandate or certify questions per R.19 on attorney duties were denied Mar. 26, 2018, ensuring this Court's jurisdiction.

3. R.13.5 says applications are 'not favored' yet often granted to attorneys as in cases: a) 16-1011, Fed. Circuit; b) 17-1198, CA. Court of Appeals; c) 17-1295, M.D., N. Carolina; d) 17-1438, S.Ct. Texas; d) 17-1625, COA-9C; e) 18-12, COA-9C; f) 18-18, COA-4C; g) 18-42, COA-3C; h) 18-84, COA-6C; i) 18A-126, COA-11C; j) 18-225, COA-9C; k) 18-280, COA-2C; l) 18-355, COA-11C; and m) 18-500 Sup.Ct. Okla.

4. SCOTUS Office's Feb. 13, 2018 letter (Exh.3) verified receipt of timely application mailed Feb. 5, 2018 to extend time to file Petition by 30 days, naming it "*McGuirk v. Airbnb, Inc., et.al.*" yet falsely claims R.13.5 non-compliance (Dkt#63).

5. The Office's April 19, 2018 letter (Exh.4) admits receipt of Petition and April 14th mailing within 60 days yet omits form per R.33.1. It falsely says: i) relates to COA-2C No. 16-2542; ii) improper timing to issuance of mandate; iii) omits ¶4 application; and iv) ignores resubmission to extend 60 days to Apr. 14 (Dkt#69).

6. The Office's June 20, 2018 letter (Exh.5) verifies corrected Petition mailed June 14th within 60 days per R.14.5 and original Feb. 7, 2018 deadline, yet falsely alleges no power to review and improper timing. It omits ¶4 application, ¶5 resubmission and 2nd resubmission for 60 days, returning fee-payer check (Dkt#70).

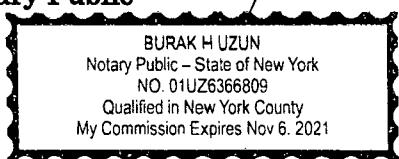
7. The Office's Aug. 29, 2018 letter says Petition received but not mailed within 60 days, falsely claiming no power to review as untimely, ignoring original and three resubmitted applications to extend time. It gives right to cure alleged defects by motion to file out-of-time (Exh.6), within 60 days or by Oct 28 per R.14.5.

8. Application to extend time mailed within 90 days of Nov. 9, 2017 Order was ignored, yet R.13.5 allows up to 60 days on good cause. In Guide for Prospective Indigent Petitioners for Writs of Certiorari §13.3: "filing in [SCOTUS] means actual receipt of documents by the Clerk; or their deposit in the U.S. mail with first-class postage prepaid on or before the final date allowed for filing" affirms my timeliness.

9. Motion to file Petition out-of-time 60-days to Oct. 28, 2018 from Aug. 29 per R.30.2 is urged to offset staff errors. No order seen grants such type of relief. Here, it is inapposite if resubmitted applications receive proper docket/merit/grant.

Sworn to before me this 27 day of
OCTOBER, 2018.

Burak H. Uzun
 Notary Public



Dated: October 27th, 2018

Michelle L. McGuirk
 Michelle L. McGuirk, Petitioner-Movant
 P.O. Box 369, New York, NY 10113-369

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of November, two thousand seventeen.

Airbnb, Inc.,

Plaintiff - Appellee,

v.

Michelle L. McGuirk,

ORDER

Docket No: 17-1000

Movant - Appellant,

v.

Bill de Blasio,

Defendant - Appellee,

Eric T. Schneiderman, Attorney General of the state of New York, in his official capacity, City of New York, a municipal corporation,

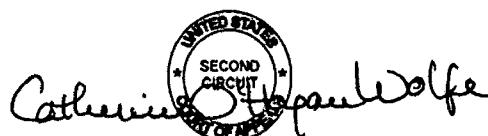
Defendants.

Appellant, Michelle L. McGuirk, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

Exh. 1

S.D.N.Y.-N.Y.C.
16-cv-8239
Forrest, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of August, two thousand seventeen.

Present:

Raymond J. Lohier, Jr.,
Susan L. Carney,
Christopher F. Droney,
Circuit Judges.

Airbnb, Inc.,

Plaintiff-Appellee,

v.

17-1000

Michelle L. McGuirk,

Movant-Appellant

v.

Bill de Blasio,

Defendant-Appellee,

Eric T. Schneiderman, Attorney General of the state of New York, in his official capacity, et al.,

Defendants.

Appellant, pro se, moves to deny counsel to the City of New York and to compel the appearance of Airbnb, Inc. Upon due consideration, it is hereby ORDERED that the motions are DENIED. It is further ORDERED that the appeal is DISMISSED because it lacks an arguable basis in law or fact. *See Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (holding Court has inherent authority to dismiss an appeal that lacks an arguable basis in law or fact).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

Exh.2

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

February 13, 2018

Michelle McGuirk
PO Box 369
New York, NY 10113

RE: McGuirk v. Airbnb, Inc., et al.
USCA2# 17-1000

Dear Ms. McGuirk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked February 5, 2018 and received February 7, 2018. The application is returned for the following reason(s):

The application does not specify the amount of additional time requested. Rule 13.5.

The application does not set forth with specificity the reasons why the granting of an extension of time is thought justified. Rule 13.5.

Sincerely,
Scott S. Harris, Clerk

By:


Redmond K. Barnes
(202) 479-3022

Enclosures

Exh. 3

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

April 19, 2018

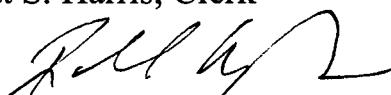
Michelle McGuirk
PO Box 369
New York, NY 10113-369

RE: McGuirk v. Airbnb, Inc.
USCA2# 16-2542

Dear Ms. McGuirk:

The above-entitled petition for a writ of certiorari was postmarked April 14, 2018 and received April 19, 2018. The papers are returned for the following reason(s):

The time for filing a petition for a writ of certiorari is not controlled by the date of the issuance of the mandate. Rule 13.3.

Sincerely,
Scott S. Harris, Clerk
By: 
Redmond K. Barnes
(202) 479-3022

Enclosures

Exh. 4

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

Copy

June 20, 2018

Michelle McGuirk
PO Box 369
New York, NY 10113-369

RE: McGuirk v. Airbnb, Inc., et al.
USCA2# 17-1000

Dear Ms. McGuirk:

The above-entitled petition for a writ of certiorari was postmarked June 14, 2018 and received June 19, 2018. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was November 9, 2017. Therefore, the petition was due on or before February 7, 2018. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The time for filing a petition for a writ of certiorari is not controlled by the date of the issuance of the mandate. Rule 13.3.

Your check number 2730 in the amount of \$300.00 is herewith returned.

Sincerely,
Scott S. Harris, Clerk
By:

Redmond K. Barnes
(202) 479-3022

Enclosures

Exh. 5

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

August 29, 2018

Michelle McGuirk
PO Box 369
New York, NY 10113-369

RE: McGuirk v. Airbnb, Inc., et al.
USCA2# 17-1000

Dear Ms. McGuirk:

The above-entitled petition for writ of certiorari was received August 23, 2018. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was November 9, 2017. Therefore, the petition was due on or before February 7, 2018. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

You may resubmit your petition for a writ of certiorari along with a motion to direct the Clerk to file out-of-time.

Sincerely,
Scott S. Harris, Clerk
By: 
Redmond K. Barnes
(202) 479-3022

Enclosures

Exh. 6

**Additional material
from this filing is
available in the
Clerk's Office.**