

No. _____

IN THE SUPREME COURT OF THE UNITED
STATES

JAMES LEONARD HINES,
PETITIONER,

v.

REGIONS BANK,
f.k.a. Union Planters Bank, N.A..
RESPONDENT.

On Appeal from the United States Court of
Appeals For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

This case is predicated on the due process of law in a summons and complaint, as to whether it was properly served on the defendant. The questions presented are:

- 1. Was the precedent established by the U. S. Supreme Court in summons and complaint followed in the lower courts' decisions.**
- 2. Did the summons and complaint served by Plaintiff provide adequate notice under due process of law for defendant to answer the complaint as required by Federal Rules of Civil Procedure Rule 12(a).**
- 3. Is mere form of service sufficient to deny that notice of complaint under due process of law was served on defendant.**
- 4. Was the district court correct in denying plaintiff's request for default judgment when the defendant did not answer the complaint in the period of time allowed by Rule 12(a) of Federal Rules of Civil Procedure.**
- 5. Is defendant deemed to have waived any objection to personal jurisdiction or service of process if the defendant makes a pre-answer motion under Rule 12 and fails to include such objections in that motion.**
- 6. Did the district court abuse its discretion and make an error of law when it dismissed plaintiff's complaints refusing to grant default judgment when defendant failed to answer the complaint under Rule 12(a).**

7. Did plaintiff state a claim on which relief may be granted.
8. Was defendant's motion to transfer the case to the federal district court evidence that it had received notice of the summons and complaint of plaintiff?

PARTIES TO THE PROCEEDINGS

The caption of the case names all the parties to the proceedings in the court below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner James Leonard Hines respectfully submits this petition for a writ of certiorari for the court to review the district court and the United States Court of Appeals decisions when they used improper guidelines and clearly ignored the direction of the Supreme Court's precedent established for summons and complaint in its decisions in *United Student Aid Funds, Inc. v. Eapinosa* (no. 08-1134) 553 F. 3d 1193 and *Simon v. Craft*, 182 U.A. 427 (1901).

OPINIONS AND ORDERS BELOW

A copy of the Order of the United States District Court for the Northern District of Alabama Northeastern Division, plaintiff's notice for and motion for reconsideration of final order, unpublished opinion of the court of appeals, plaintiff's notice and motion for reconsideration of the order are included in the appendix

STATEMENT OF JURISDICTION

The opinion and judgement of the United States Court of Appeals was entered on the 29th day of July, 2019. Plaintiff's notice and motion for reconsideration of the order was filed on the 12th day of August, 2019. The court denied Plaintiff's petition for rehearing on August 28, 2019. This petition is filed within 90 days thereafter. The Court has jurisdiction to grant certiorari under 28 U.S.C.1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

Alabama Rules of Civil Procedure 4(c)(6)

Federal Rules of Civil Procedure 12(a)

**United States Supreme Court precedent established
in summons and complaint**

28 U.S.C. 1254(1)

STATEMENT

The district court used the *Alabama Rules of Civil Procedure* 4 (c)(6) to determine that the defendant, Regions Bank, was not properly served stating that Mr. Hines' attempts at service do not comport with Alabama's rules. A footnote in the Memorandum Opinion states that the *Federal Rules of Civil Procedure* contain a similar provision. However, the district court clearly ignored the directions of the United States Supreme Court given in due process of law in this case. The Court stated that due process of law requires notice "reasonably calculated, under all circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." *United student Aid Funds, Inc. v. Espinosa* (No. 08-1134) 553 F. 3d 1193. All of the requirements of this procedure was executed by plaintiff.

If the district court had used the Supreme Court's ruling in due process of summons and complaint, it would have entered a default judgment against Regions Bank, since the bank did not respond in the allotted time as stated in Federal Rule 12(a). By not responding, the defendant cannot object to any of plaintiff's assertions in the complaint, and they are therefore acknowledged to be true and correct.

Since the complaint stated several claims against Regions Bank that have been determined to be true and correct, it cannot assert the defense of failure to

state a claim in this action.

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI TO DECIDE IF IMPROPER DUE PROCESS OF LAW WAS USED BY THE DISTRICT COURT AND APPELLATE COURT.

The central issue under consideration in this action is whether the lower courts used the proper guidelines to establish due process of summons and complaint as established by the United States Supreme Court. According to the Court's directions in due process of law of summons and complaint requires notice be "reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Citing *United Student Aid funds, Inc. v. Espinosa* (no. 08-1134) 553 F.3d 1193. The Court further stated in *Simon v. Craft*, 182 U. S. 427 (1901) that "the due process clause in the Fourteenth Amendment to the Constitution does not necessitate that the proceedings in a state court should be by particular mode, but that there shall be regular course of proceedings, in which notice is given of the claim asserted and an opportunity afforded to defend against it." An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Miliken v. Meyer*, 311 U.S. 457. Plaintiff avers that due process was served as evidenced by the lack of any returned mail to

the mailing address of Regions Bank and to their attorney of record. Further evidence can be established by defendant filing a motion to transfer the case to federal district court. How could defendant have known of the complaint if it had not received service of the complaint?

If the district court and the U.S. Court of Appeals had used the United States Supreme Court's ruling in due process of law in a summons and complaint it would have entered a default judgment against Regions Bank, since the bank did not respond in the allotted time as prescribed in Federal Rule 12(a). And, since the defendant did not respond to the complaint of plaintiff, the defendant cannot object to any of plaintiff's assertions in the complaint, and they are therefore to be acknowledged as true and correct, thereby establishing the claims of plaintiff.

A party is deemed to have waived any objection to personal jurisdiction or service of process if the party makes a pre-answer motion under Rule 12 and fails to include such objections in that motion. See *Wright & A. Miller*, Federal Practice and Procedure Sec. 1391, at 852-53 (1969). Therefore, the defendant, Regions Bank, failed to raise its personal-jurisdiction and service-of-process objections in its pre-answer motion to dismiss. It waived any objections that it might have had to the court's exercise of personal-jurisdiction and service-of- process. See *Kerah v. Derozier*, 951 F.2d 1509, 1512 (5th Cir. 1988). Only in its motion to remove the case to district court did the defendant mention that it had no record of receiving

the summons and complaint, however no objection was filed in that motion. It is certain from the language of the motion that it was aware of the complaint or why else would it have filed an action to remove it to the district court? From this action, defendant was certainly aware of the complaint but tried to rely on a procedural error to justify its position for not filing an answer to deny the complaint.

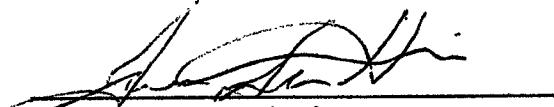
CONSLUSSION

The real issue in this appeal is due process of law of summons and complaint; not that the other issues are unimportant but if the district court and appellate court would have followed the precedent established by the United States Supreme Court regarding due process of law in summons and complaint this appeal would not be necessary. This Court is very clear as to what is required to fulfill the duties of plaintiff when filing a complaint against a defendant. The essential elements of due process of law are notice and an opportunity to defend, and in determining whether such rights are denied, the court is governed by the substance of things and not by mere form. The majority of courts are correct that the due process clause does not require "heroic efforts" to ensure actual notice. The moral is that a party who received actual notice but is not vigilant cannot depend upon a claimed denial of due process to reclaim its rights. In this case Regions Bank was served with the summons and complaint by mailing it to the

address listed for the bank to receive mail and, as an added precaution, it was mailed to the attorney of record for the bank and could have timely filed an objection to the claim.

Plaintiff, James Leonard Hines, avers that the only thing left for the Court to do is grant a default judgment against the defendant, Regions Bank, and determine the compensation that is due to him from the bank.

Respectfully Submitted this 15th day of November, 2019.



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