

No. \_\_\_\_\_

19-5662

IN THE

SUPREME COURT OF THE UNITED STATES

CARTER STEPHENS PETITIONER  
(Your Name)

FILED

AUG 14 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

vs. Bella Vista  
OVERSEAS BRAZIL / ALZA RESPONDENT(S)  
"ETAL" COA  
ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Ninth Circuit Ct of Appeal  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARTER STEPHENS  
(Your Name)

PO Box 361271  
(Address)

LA, CA 90036  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTIONS PRESENTED FOR REVIEW

1. The plaintiff Carter Stephens was not informed by the State Bar of the abhorrent record of the neglectful attorney he subsequently retained. This attorney destroyed his case, and left it in shambles. Why is it that the plaintiff/appellant Carter Stephens attorney Lori Smith is able to render these destructive actions and not be made responsible for them? *She has no malpractice insurance.*
2. F.R.C.P. 9024 60(b)(1)(2)(3)(6) is a rule that was established by the courts to address the unfair dismissal of clients cases by neglectful attorneys. This would bring the case back from denial, and or dismissal to the lower court to have the case finally be heard on its merits. Tani vs Cmty Dental, Lal vs State of Calif. Why is it that plaintiff Stephens who encountered the same, if not worse neglect and abandonment conditions than Tani or Lal, with his attorney, deserve the same privilege?
3. Why has this attorney Lori Smith been allowed to continue this debase pattern of abuse and neglect, not just with plaintiff Carter Stephens, but also before him, with 4 other clients in a destruction of their cases as well, and is still practicing? Conduct that plaintiff/appellant Stephens was not made aware of before his retaining of this attorney.
4. In being well aware of the conduct of this attorney in the case of plaintiff/appellant Stephens, why have the courts continued to ignore any type of repair or relief that they could give to client Carter Stephens? Actually supporting this attorney Smith in her debase, neglectful ways.
5. Why weren't the Hendersen Factors, and "less drastic sanctions" applied when the judge first noticed problems with plaintiff Stephens attorney?
6. Why is plaintiff/appellant Stephens being treated in this fashion with no relief?

These questions are being presented to address the unfair denial and dismissal of plaintiff Stephens Adversary in the lower courts under the application of failure to prosecute only. No merits or application of bankruptcy law are questioned or applied.

## **LIST OF PARTIES**

### **Defendants**

1. Overseas Brazil Inc.
2. Bella Vista Pizza Corp.
3. Supermercado Brazil (Grocery Store)
4. Adriana Fonseca Saraiva-Gomez
5. Leonid Krupitski
6. Eduard Reitshtein
7. U.S. Trustee

### **Plaintiff/ Appellant**

Carter Stephens

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## TABLE OF AUTHORITIES AND STATUTES CITED

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- Ringgold Corp vs. Worrall – 880 F2d 1188, 1147-42 (Ninth circuit )
- Bougher vs. Sec'y of Health Educ. And Welfare- 572 F 2d 976, 978, (3<sup>rd</sup> Circuit 1978)
- *Dahl vs. City of Huntington Beach*- 84 F 3d 363, 366, (Ninth Circuit 1996)
- Falk vs. Allen – 739 F 2d 461, 463, (Ninth Circuit 1984)
- Martello vs. Marine Cooks and Stewards Union – 448, F 2d 729, 730, ( 9<sup>th</sup> Ninth Circuit 1971)
- United States vs. Alpine Land and Reservoir Co.- 984, F 2d 1047, 1049, (9<sup>th</sup> Circuit 1993)
- Pioneer Investment Services vs. Brunswick Assocs. Limited P'ship – 507 U. S. 380, 393, 113, S Ct. 1489, 123 L. Ed. 2d 74 (1993)
- Shepard Claims Service Inc. vs. William Darrah and Assoc., - 796 F 2d 190, 195, (6<sup>th</sup> Circuit 1986)
- L. P. Steuart, Inc. vs. Matthews 329 F 2d, 234, 235, (D. C. 1964)
- Klapprott vs. United States, 335, U. S., 601, 613, 69 S. Ct. 384, 93, .Ed. 1099 (1949)
- United States for use and Benefit of Familian Northwest Inc. vs. RG & B Contractors Inc. 21 F 3d 952, 956, (Ninth Circuit 1994)

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B and C to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Feb 22, 2019

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 23, 2019, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

*\* see jurisdiction attachment*

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **Jurisdiction of Writ**

A petition for a writ of Certiorari to reviews a case pending in a United States court of appeals, before judgment is entered in that court , will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in the Supreme Court of the United States of America. 28 U.S.C. 2101(e), 1291, Rule 33.1, 33.2, 14.1. 14.1(a) 14.1(b).



### **Constitutional and Statutory Provisions Involved**

- Application of F.R.C.P. 9024 60(b)(1)(2)(3)(6).
- Tani vs. Community Dental- 282 F 3d 1164 (Ninth Circuit 2002)  
“we hold that the appellant has demonstrated “extraordinary circumstances” that warrant setting aside the default judgment and therefore reverse the district court”
- Lal vs. State of California – 610 F3d 518, 524 Ninth Circuit 2010)  
“we reverse. We hold pursuant to Com. Dental v. Tani 282 F.3d 1164 (9<sup>th</sup> Cir. 2002) that an attorneys gross negligence constitutes an extraordinary circumstance warranting relief from a judgment dismissing the case for failure to prosecute.”
- Bougher vs. Sec’y of Health Educ. And Welfare- 572 F 2d 976, 978, (3<sup>rd</sup> Circuit 1978)  
“the circuits have distinguished negligence from gross negligence in the present context have granted relief to the client where the default judgment or court decision was a result of his counsels displaying “ neglect so gross that it is inexcusable”
- Dahl vs. City of Huntington Beach- 84 F 3d 363, 366, (Ninth Circuit 1996)  
“we hold that unfair dismissal under 41(b) or from counsel neglect is so harsh a penalty it should be imposed as a sanction only in extreme circumstances.”
- Falk vs. Allen – 739 F 2d 461, 463, (Ninth Circuit 1984)  
“judgment is an extreme measure and a case should whenever possible be decided on the merits”
- Martello vs. Marine Cooks and Stewards Union – 448, F 2d 729, 730, ( 9<sup>th</sup> Ninth Circuit 1971)  
“we have held that a party merits relief under Rule 60(b) if he demonstrates “extraordinary circumstances” which prevented or rendered him unable to prosecute his case in a proper fashion”
- United States vs. Alpine Land and Reservoir Co.- 984, F 2d 1047, 1049, (9<sup>th</sup> Circuit 1993)  
“to receive relief under Rule 60(b)(6) , a party must demonstrate extraordinary circumstances which prevented or rendered him unable to prosecute his case.”

- Pioneer Investment Services vs. Brunswick Assocs. Limited P'ship – 507 U. S. 380, 393, 113, S Ct. 1489, 123 L. Ed. 2d 74 (1993)
- Shepard Claims Service Inc. vs. William Darrah and Assoc., - 796 F 2d 190, 195, (6<sup>th</sup> Circuit 1986)
- L. P. Steuart, Inc. vs. Matthews 329 F 2d, 234, 235, (D. C. 1964)  
 “60(b) is broad enough to merit relief when as in this case personal problems of counsel cause him to grossly neglect a diligent clients case and mislead the client”
- Klapprott vs. United States, 335, U. S., 601, 613, 69 S. Ct. 384, 93, .Ed. 1099 (1949)  
 “conduct on the part of a clients alleged representative that results in the clients receiving practically “no representation” at all clearly constitutes gross negligence”
- United States for use and Benefit of Familian Northwest Inc. vs. RG & B Contractors Inc. 21 F 3d 952, 956, (Ninth Circuit 1994)
- Strickland v. Washington, 466 U.S. 668 687 104 S Ct. 2052 80 L.Ed. 2d 674  
 “courts are often called upon to distinguish between run-of-the-mill errors so egregious that they necessitate the reversal of even a conviction, through gross negligence.”

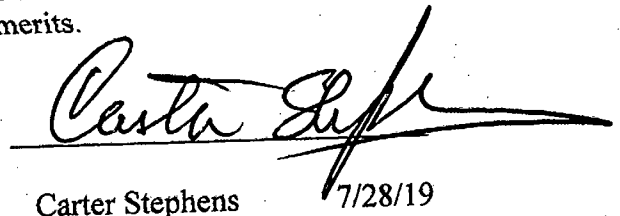
### Statement of the Case

This appeal to the Supreme Court is so the court can reverse the dismissal and closure of the plaintiffs (appellants) Carter Stephens appeal to the Ninth Circuit or lower bankruptcy court to be heard on its merits.

The denial of plaintiffs adversary under the application of failure to prosecute. This application of denial has been "totally" blamed on the innocent client/plaintiff/appellant Carter Stephens and it is not fair. This Petition for Writ of Certiorari is "not" meant to determine merits of bankruptcy court law, only to address and return plaintiffs adversary to the lower court to determine its merits.

Plaintiffs adversary case was unfairly dismissed due to a extreme, intentionally neglectful attorney, who created and enforced inexcusable circumstances on plaintiff /appellant Stephens. These malicious acts of neglect left plaintiffs case in "shambles". Plaintiff Stephens attempted to keep up with this attorneys malicious, neglectful acts, but could not so.

When plaintiffs attorney Smith missed the "first" status conference hearing, on 9-1-11, plaintiff Stephens was searching names for other attorneys. This attorney had mental problems, as well as a numerous record of incidents placing her on sanctions concerning the neglecting of 4 past clients and defrauding them. Information that the State Bar did not give to plaintiff/appellant Stephens, when he was checking on attorney Smiths record "before" retaining her. Stephens filed with the State Bar, and this attorney was placed on sanctions again while connected with his very case. At the next Status Conference on 2-2-12, plaintiff/appellant Stephens was prepared to ask the court for more time to obtain other counsel and did so. After making this request, the judge quickly refused the request, and dismissed plaintiff/ Stephens case. This attorney Smith left appellant Stephens case in shambles, and the bankruptcy court dismissed Stephens adversary on failure to prosecute allegations. Plaintiff Stephens is asking for F.R.C.P. 9024 60(b) (1)(2)(3)(6) relief to be able to return his case to the bankruptcy court to be heard finally on its merits.



Carter Stephens

7/28/19

## **Reasons for Granting Petition**

The issue of failure to prosecute stated here necessitate the going to the Supreme Court of the United States of America. *Petitioner is not asking for any merits or laws of bankruptcy to be considered in this writ. The issues of concern are the remanding of failure to prosecute as a tool for dismissal, and the applying of 60(b) relief.*

1. The hiring of a wanton treacherous attorney by an innocent appellant to defend said appellant Carter Stephens in an unlawful bankruptcy case. After appellant Stephens checked with the State Bar before hiring said attorney, the State Bar gave her a perfect record, and clean bill of health.
2. This treacherous, neglectful attorney had a record of mental illness, and a record of committing acts of neglect and abandonment against 4 other clients prior to Stephens. (See Appendix D). The neglectful intentional acts committed against Stephens were:
  - a. non attendance to Status conference hearings, two of them, and non preparation of Status Reports.
  - b. intentional non submitting of discovery for the appellant/petitioner Carter Stephens,
  - c. *non defense of client against a 41(b) submitted by the defense.*
  - d. lying to client Stephens on a consistant basis about the condition of his case.
  - e. lying in open court about her very own client Stephens character.
  - f. Then client attorney Lori Smith composes a declaration stating that all her neglect and abandonment was done for no reason.

- g. Appellants attorney Smith refusing to give client his case file.
3. These are only a few of all the abhorrent actions committed by appellants attorney Lori Smith in connection with the innocent appellant Stephens case. *At the third Status Conference of appellant Stephens adversary, on 2-2-2012, where attorney Smiths conduct reached and abhorrent level of lies and egregious neglect, appellant Stephens asked the judge for time to obtain other counsel. Even after all these acts of abandonment and neglect, which constituted extraordinary inexcusable circumstances, the bankruptcy court judge still denied appellants request, and dismisses appellant Stephens adversary case.*
  4. Stephens files for a motion for reconsideration, and bankruptcy court judge, who doesn't formally deny the motion for reconsideration in a proper fashion has the denial rejected and remanded by the BAP, for not presenting 'findings and facts' with said denial. Rule 9014 52(a) under rule 7052. (See Appendix D.) Where the fourteen days for an appeal has expired, the appeal is then viewed as a relief from judgment under civil rule 60(b). F.R.C.P 9023 59 e(2). *Negrete vs. Bleau (re.Negrete) 183 B. R. 195 197 (9<sup>th</sup> circuit BAP 1995.)*
  5. F.R.C.P. 9024 60(b) (1)(2)(3)(6) of this rule definitely apply in appellant Stephens case, but are never considered. The abhorrent and *inexcusable abandonment, and neglect of appellant Stephens by this attorney should qualify for the application of this rule of law as a relief.*
  6. After the bankruptcy courts denial is remanded by BAP to bankruptcy court judge, the judge takes nearly 9 months to return finding and facts. The findings and facts returned by the court supported failure to

prosecute as the basis for the denial.

concurring with bankruptcy court judges decision. (documents attached).

7. After more appeals and the courts concurring with the determination of failure to prosecute, the Ninth Circuit has as of May 23<sup>th</sup> 2019 ordered the case closed, and left the appellant with no other option but to file in the Supreme Court.

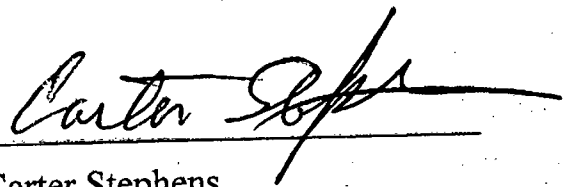
#### Additional Circumstances

After extensive measures by petitioner/appellant Stephens to obtain justice and return the dismissed Adversary (2:11-ap-02360-TD) to reinstatement, however, each attempt has been blocked and denied by either BAP, or the Ninth Circuit judges. Appellant/Petitioner has been suffering unjust and dire circumstances under this unfair closure by the Ninth Circuit on May 23, 2019. that does not even have the "appearance" of justice. The justices are well aware of the abhorrent conduct, neglect and abandonment that the appellant/petitioner Stephens attorney Lori Smith applied to his case, she was even sanctioned by the state bar while part of petitioner very case. (documents attached- see appendix E). Yet the judges of the Ninth Circuit and BAP have consistently applied the premise of failure to prosecute (LBR 7016 (1)(g), to petitioners adversary dismissal.

Petitioners attorneys Smith conduct made it impossible for appellants case to progress or proceed in a "proper fashion", Martelo vs. Marine Cooks and Stewards Union 448 F2d 729 730.

Yet, the inexcusable neglect and abandonment that appellant/petitioner Stephens attorney manifested somehow, for the court, does not allow the courts to apply FRCP 9024 60(b)(1)(2)(3)(6) relief which in this specific case definitely should apply.

Appellant/Petitioner Stephens additionally has a State Court case against the appellee Gomez, which in connection with this discharge, would make the State case more difficult if not impossible to prosecute, and the appellee/respondant will go free. The losses and injustice for appellant/petitioner Stephens are tremendous and has left him no other option but to plead to this U.S. Supreme Court for any type of justice.

A handwritten signature in black ink, appearing to read "Carter Stephens", written over a horizontal line.

Carter Stephens

## CONCLUSION

The petitioner, Carter Stephens would like to make it very clear that he is asking for the remanding of the application of the law that governs "failure to prosecute" only. L.B.R. 7016 (1)(g). This being applied because of an extremely, grossly neglectful attorney. F.R.C.P. 9024 60(B) (1)(2)(3)(6), applies here. Tani vs. Cmty Dental, (282 F 3d 1164) also Lal vs. State of Calif. (610 F3d 518 524). The Petitioner, Carter Stephens had a legal issue, where he proceeded to hire an attorney, a Lori Smith, for the purpose of supporting and defending his case. The petitioner was a firefighter by profession and realized the value of his retirement money. The petitioner was also a creditor, and was attempting to stop the discharge of money he had invested in a corporation. NO REQUEST FOR INTERPRETATION of lower court bankruptcy law is requested here. The attorney involved here is a Lori Smith, who stopped defending petitioner in "everyway", and grossly abandoned and neglected his case. This neglect and abandonment resulted in his case being dismissed in the lower court for failure to prosecute. Petitioner was unaware of all of the neglect and destruction to his case. The attorney unknown to the petitioner committed many, many acts of abandonment and gross neglect. The only flag to petitioner of gross neglect was the not attending a court ordered hearing of a status conference on 9-1-11. When he saw this, he began to search for other counsel, which he found. At a future status conference on 2-2-12, the petitioner asked the court for time for a new attorney to take over, but was denied the privilege to do so, and the petitioner's case was dismissed. There were many more issues of neglect that petitioner was not informed or aware of. All of these issues contributed entirely to the "failure to prosecute" ruling. In absolutely no way did the petitioner Stephens contribute to the lack or failure to prosecute, but is suffering the dire consequences of this action. The existence of the federal law F.R.C.P. 9024 60(b) (1)(2)(3)(6) was established to protect innocent clients from this type of gross abuse and neglect by attorneys who have abandoned their clients and their clients cases. Petitioner has included in this writ evidence of his attorneys medical deficiencies, sanctions by the state bar, and restrictions to practice law. Petitioner Stephens knew "nothing" about this attorney's mental condition, or her past incredible acts of neglect against other clients, until drastic damage was done to his case. 4 prior clients were affected by this attorneys gross neglect and conduct. (documents included). Petitioner is asking for the highest court in our land to overturn and remand this decision of dismissal for failure to prosecute, and return his case to the lower bankruptcy court to be finally heard on its merits. This right, this privilege of a case being heard on its "merits" is every American citizens right, but has not been effected or applied in this petitioners case. I, Carter Stephens am not asking the Supreme Court of America to interpret or apply "any" laws of the bankruptcy court. I am petitioning for F.R.C.P 60(b)(1)(2)(3)(6) application and relief. I am petitioning for the court to remand the failure to prosecute ruling, on the basis of petitioners grossly neglectful attorney. So this petitioner can finally have his case heard on its merits. Which petitioner truly does deserve.