No._____

In the
SUPREME COURT OF THE UNITED STATES

Sara Ann Edmondson,
Petitioner,

vs.

Lilliston Ford Inc; JANE AND JOHN DOES 1- 10, individually and as owners, officers, directors, founders, managers, agents, servents, employees, representatives and/or independent contractors of LILLISTON FORD, INC.; XYZ CORPORATIONS 1- 10,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Third Circuit and District Court are acting in opposition to long standing, controlling law and in splitting from other Circuits by refusing to follow the directives established and implemented by this Court in its Oscanyan ruling when a representing attorney concedes in open court as a judicial admission that the contract connecting the parties was corrupt in itself containing intentional misrepresentations of essential terms. Oscanyan v. Arms Co., 103 US 261 (1880); 28 USC 2072; 28 USC 1367.
2. Whether a district court may refuse to consider state law principles governing contract formation in deciding whether such an agreement exists as prescribed in 28 USC 1652 and by this Court in First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995).
3. Whether a district court may refuse to issue an executed order granting or denying summary judgment on the issue of contract validity as prescribed in statute 28 USC § 56(a), thus challenging this Court's Power to Prescribe under 28 USC 2072 in First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995).
4. Whether a Court of Appeals adjudicating a motion under Federal Rule of Civil Procedure 60(d)(3) is authorized to fabricate the existence of executed orders - including an order on summary judgment under 28 U.S.C. § 56(a) - in its rulings that neither appear on the record on appeal nor on the district court civil docket kept by the clerk as prescribed under the Fed Rules of Civ Procedure 79 and FRAP 10(a)1-3.
5. Whether the district court's refusal to follow the binding directives of this Court in 28 USC 56(a) and 28 USC 1652 constitutes fraud on the court under Federal Rule Civil Procedure 60(d)(3).

LIST OF PARTIES

1. Sara Ann Edmondson, Petitioner
   71 Rainbow Trail
   Pittsgrove, NJ 08318

2. Lilliston Ford, et al., Respondents
   833 N. Delsea Drive
   Vineland, NJ 08360

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CITATIONS OF OPINIONS AND ORDERS ENTERED

- Edmondson v. Lilliston Ford et al., No. 13-cv-7704, U.S. District Court for New Jersey. Judgment entered April 26, 2017.
- Edmondson v. Lilliston Ford et al., No. 14-1415, U.S. Court of Appeals for the Third Circuit. Judgment entered Nov. 4, 2014.
- Edmondson v. Lilliston Ford et al., No. 17-1991, U.S. Court of Appeals for the Third Circuit. Judgment entered Jan. 11, 2018.
- Edmondson v. Lilliston Ford et al., No. 18-2203, U.S. Court of Appeals for the Third Circuit. Judgment entered July 18, 2019.

v.

CONCISE STATEMENT OF JURISDICTION

Petitioner's complaint on the Federal District Court Docket No. 13-cv-7704 under the Magnuson-Moss Warranty Act, 15 USC 2301, and Odometer Fraud gave rise to jurisdiction in the Federal District Court. State claims gave rise to supplemental jurisdiction, 28 USC 1367, in the Federal venue.

TABLE OF AUTHORITIES

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Treatise

PETITION FOR A WRIT OF CERTIORARI

Sara Ann Edmondson petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The Third Circuit's opinions are reported at Edmondson v. Lilliston Ford et al., CA 18-2203 and CA 17-1991 (3rd Cir. 2018 and 2019) and reproduced at Appendices B & C. The Third Circuit's denial of petitioner's motion for reconsideration and rehearing en banc is reproduced at Appendix A.

JURISDICTION

The Court of Appeals entered judgment on May 15, 2019. Appendix B. The court denied a timely petition for rehearing en banc on July 18, 2019. Appendix A. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves interpretation of statutory provisions 28 USC 56(a), 28 USC 1291, 28 USC 1292, 28 USC 1367 and 28 USC 1652.

INTRODUCTION AND STATEMENT OF THE CASE

The parties entered into a commercial agreement through Respondents' contract of adhesion. In less than 24 hours, issues of consumer fraud surfaced.

This litigated matter was initiated by Lilliston Ford et al. (Respondents) in the Superior Court of New Jersey in June 2012 and was cross petitioned by Sara Ann Edmondson (Petitioner) with consumer fraud in August 2012 in the Superior Court of New Jersey Law Division; the matters were consolidated. The cases were later dismissed without prejudice by the Superior Court of New Jersey in June 2013. Petitioner initiated arbitration through the American Arbitration Association (AAA) in November 2013; Respondent, the drafter and originator of the contract, refused to pay the costs associated with arbitration and the matter was closed by the AAA and directed to the Federal District Court.

In December 2013, Petitioner filed a complaint in the Federal District Court of New Jersey where a protracted litigation ensued. In February 2014, Petitioner moved to compel arbitration under 9 USC 4, which was immediately denied by the Federal District Court. The Third Circuit Court of Appeals reversed the order in Edmondson v. Lilliston Ford, Inc., 593 F. App'x 108 (3d Cir. 2014), and remanded the matter to the Federal District Court for further proceedings.

In June 2015, the Federal District Court established jurisdiction and instructed the parties to arbitrate pursuant to the terms of Respondents' contract of adhesion. Petitioner filed for arbitration with the AAA for a second time. Respondents refused to pay the fees associated with the arbitration, refused to arbitrate before the AAA and submitted an alternative list of "mediators" from which it asked Petitioner to choose. The AAA provided Respondent a second opportunity to

adhere to the terms of its contract and noted that it had never previously reviewed nor filed a copy of Respondents' arbitration clause; Respondent refused and added that it had severed its relationship with the AAA years prior. On August 10, 2015, the AAA declined to administer Respondents' arbitration and referred the matter back to the Federal District Court.

Given the written, evidentiary admissions by both the AAA and the Respondents that essential terms in its contract had been intentionally misrepresented, Petitioner moved for summary judgment under a contract validity challenge, which this Court prescribes in First Options Chicago and the Third Circuit prescribes in Spinetti v. Service Corp. Int'l. The Federal District Court conducted oral arguments on summary judgment on January 27, 2016. In open court, the Respondents, who are the drafters of the contract, again acknowledged that it had severed its relationship with the AAA years prior as

it refused in court to arbitrate before or through it and also refused to pay the fees associated with arbitration. These were Respondents' untruths unknown to Petitioner that needed no further inquiry. The Federal District Court instructed Petitioner to choose a mediator from the list previously provided by Respondents in its August 2015 correspondence. Petitioner demanded a written order of instructions from the District Court encapsulating the hearing while also asking for an executed order either granting or denying summary judgment challenging contract validity.

On February 28, 2016, the Federal District Court issued a Memorandum Order [74] in response to "Sara Ann Edmondson's 'Demand for District Court Order Granting or Denying Motion for Summary Judgment'"; the Memorandum Order acknowledges Respondents' repeated judicial admissions that "it had severed its ties with the association years" and that it "disputed that it

should advance the filing fees". The Memorandum order ended by "directing the parties to agree on the selection of an arbitrator by 3/10/16" and "administratively terminating 67 Motion for Summary Judgment as improperly filed". (Appendix E) Petitioner responded, citing Spinetti, which is a Third Circuit case instructing the district courts to look to State contract law to determine the validity of a contract, again demanding an order granting or denying summary judgment on the issue of the contract and stating that directing the parties to "agree on the selection of an arbitrator" would breach the terms of the contract had the contract been valid.

In response to Petitioner, the Federal District Court vacated its prior memorandum order [74] and replaced it with a Motion to Show Cause [77] on Respondents. Ultimately, the Federal District Court forced arbitration without reviewing or following the directives of this Court on the obligations associated with

judicial admissions in its ruling, Oscanyan, which includes reviewing New Jersey State Contract Laws to determine the viability of Respondents' contract, and without issuing an executed order granting or denying summary judgment.

9 USC 16 prevents seeking Appellate review at this juncture, therefore, Petitioner had to await final judgment in order to appeal to the Third Circuit, which was done in June 2017 in CA 17-1991.

In the Third Circuit Appeal's ruling in CA 17-1991, the panel acknowledges the appearance of a Motion for summary judgment challenging the validity of the contract on the record but fails to mention any executed order granting or denying summary judgment. The Third Circuit ruling also acknowledges Respondents' judicial admission of intentional misrepresentation of essential terms in its contract.

In May 2018, Petitioner submitted a Motion under Rule 60(d)(3) which ultimately headed to the Third Circuit Court of Appeals on June 28, 2018 and was given the docket number CA 18-2203. On May 15, 2019, almost a full year later, the Third Circuit Court of Appeals issued its ruling on 18-2203 (App. B) where it stated, "The District Court denied the motion as improperly filed ..." Fortunately, FRAP 10 and FRCP 79 provide evidence that - in fact - no executed order either granting or denying summary judgment exists in the record or on the docket. The motion, however, was administratively terminated from the docket by order of the Court.

REASONS FOR GRANTING THE PETITION

"The law in this area is clear. This Court has supervisory authority over the federal courts, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals."
-Dickerson v. United States, 530 U.S. 428, 437 (2000).

THE KEY QUESTIONS PRESENTED ARE IMPORTANT AND AFFECT FEDERAL PROCEEDINGS THAT RELATE

TO THE LEGAL SYSTEM'S FOUNDATION, INTEGRITY AND ORDER

I. The Third Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

A. Oscanyan v. Arms Co.

The Third Circuit has a documented history of rulings regarding judicial admissions: "[J]udicial admissions' [] are admissions in pleadings, stipulations, etc. [] which do not have to be proven in the same litigation." Giannone v. U. S. Steel Corp., 238 F.2d 544, 547 (3d Cir. 1956). "It has been held that judicial admissions are binding for the purpose of the case in which the admissions are made including appeals, and that an admission of counsel during the course of trial is binding on his client." Glick v. White Motor Co., 458 F.2d 1287, 1291 (3d Cir. 1972) (citations omitted). When a party has admitted to a fact, the opposing party may "dispense with proof of facts for which witnesses would otherwise be called" as to that issue, and "any fact, bearing upon the issues involved,

admitted by counsel, may be the ground of the court's procedure equally as if established by the clearest proof." Oscanyan v. Arms Co., 103 U.S. 261, 263 (1880). (App. K)

This Court ruled in Oscanyan v. Arms Co., 103 US 261 (1880),

> a. Where it is shown by the opening statement of counsel for the plaintiff that the contract on which the suit is brought is void as being either in violation of law or against public policy, the court may direct the jury to find a verdict for the defendant.
> b. A court is, in the due administration of justice, bound to refuse its aid to enforce such a contract although its invalidity be not specially pleaded.

This Court continued,

> "According to the settled practice in the courts of the United States, it was proper to give the instruction, if it were clear the plaintiff could not recover. It would have been idle to proceed further when such must be the inevitable result. The practice is a wise one; it saves time and costs; it gives the certainty of applied science to the results of judicial investigation; it draws clearly the line which separates the provinces of the judge and jury, and fixes where it belongs the responsibility which should be assumed by the court." *OSCANYAN v. ARMS CO*, 103 U.S. 261, 265 (1880)

This Court furthered,

> "But, the question in regard to the disposition of this case does not depend upon rules of pleading. The plaintiff, in his opening statement, stated the facts which he claimed to be true, and upon which he should rely. It is not suggested that they were not stated truthfully. These facts satisfy me that the contract was contra bonos mores. Such an objection it is not possible for the defendant to waive. If he undertakes to waive or to disregard it, the duty of the court is still imperative, not to enforce a contract which the law regards as injurious to public morals and against public policy." Oscanyan v. Arms Co, 103 U.S. 261 (1880).

It is clear where this Court has stood on the issue of judicial admissions by representatives' counsel in open court; this has remained constant over nearly 140 years. Further, Petitioner is under no obligation to plead invalidity of contract nor does Petitioner have the ability to waive the judicial admissions made by Respondents' attorney in open court. The responsibility to address this issue rests with the court "in the due administration of justice". Oscanyan . Arms Co., 103 U.S. 261 (1880).

B. 28 USC 56(a)

The Federal Rules of Civil Procedure, which are promulgated by the Supreme Court under the authority vested by the US Congress, 28 USC 2072, to regulate practice in district courts, are supervisory rules. Such procedures are binding on inferior courts. Allowing the Third Circuit to act in opposition to the supervisory rules established by the US Supreme Court opens the door for other District Courts in the Circuit to follow suit.

Federal Rule Civil Procedure 56(a) (28 USC 56) clearly instructs district courts to issue an order granting or denying summary judgment. Petitioner's motion for summary judgment resulted from an evidentiary admission made by Respondents in reference to the formation of its contract. The evidentiary admission became a judicial admission offered by Respondents' counsel in open court and chronicled by the district court in its Memorandum Order (Appendix E). The inferior court in this matter was bound by both Oscanyan and the

state law rule of decisions under 28 USC 1652. The Third Circuit is aware of its obligations - "Only 'final decisions of the district courts' are appealable, 28 U.S.C. § 1291, and because Quilloin neither filed nor claims to have filed a motion to dismiss or for summary judgment, the District Court issued no corresponding order." Quilloin v. Tenet Healthsystem Philadelphia, Inc., 673 F.3d 221, 227 n.3 (3d Cir. 2012)

Accordingly, the Quilloin ruling clearly establishes that Petitioner was entitled to a "corresponding order" on the motion for summary judgment pursuant to this Court's directives in Oscanyan. In the CA 17-1991 ruling, however, there is no mention of a corresponding order denying summary judgment on the issue of contract validity which this Court addressed in First Options Chicago. In the CA 18-2203 ruling, a District Court order denying summary judgment is mentioned twice, although no such evidence exists in the record.

The district court could have denied the motion, but knew it lacked legal authority to do so; hence, it administratively terminated the motion so as not to be compelled to conduct the necessitated directives prescribed in 28 USC 1652 and Oscanyan.

C. FRAP 10 and FRCP 79

The Third Circuit's May 15, 2019 ruling in CA 18-2203 (App. B, page 4a) justifies its ruling in CA 17-1991 by offering that it had rejected the motion for summary judgment on contract validity that had been previously denied by the district court. Although its ruling states, "The District Court denied the motion" and "We find no abuse of discretion in the District Court's denial of the motion", the district court record maintained by the Clerk pursuant to Federal Rule Civil Procedure 79 as well as the District Court's February 18, 2016 memorandum order do not substantiate the Third Circuit's claim. Appendices G & E demonstrate in real time that no such executed order

granting or denying summary judgment ever existed in the record.

Also in this ruling, the Appellate Panel insists again on evidence that simply does not exist. There is and never was a Motion under Rule 60(b)(3) in the record. Had Petitioner submitted a Rule 60(b)(3) motion, the Panel would never have had to point out the definition of the Rule. (App. B)

In Susquehanna Boom Co., v. West Branch Boom Co., this Court stated, "Our jurisdiction extends only to a review of the judgment as it stands in the record. We act on the case as made to the court below when the judgment was rendered. 110 U.S. 57, 28 L.Ed. 69, 70 (1884). Citing Clark v. Commonwealth of Pennsylvania, this Court offered, "We act only upon the record of the court below." 128 U.S. 395, 9S. Ct 113, 32 L.Ed. 487, 488. Additionally, in Clune v. United States, this Court added, "It is beyond the jurisdiction of this Court to consider and

rule upon defendant's supposed facts, outside and opposite the record on appeal. 159 U.S. 590, 593, 40 L.Ed. 269, 271.

D. 28 USC 1652

This Court's ruling in First Options of Chicago v. Kaplan determined that Courts generally should apply ordinary state law principles governing contract formation in deciding whether such an agreement exists, 28 USC 1367. First Options of Chicago v. Kaplan, 514 U.S. 938 (1995). In Oscanyan, this Court opined, "Matters bearing upon the execution, the interpretation and the validity of a contract, are determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance." Scudder v. Union Nat. Bank, 91 U. S. 406.

This Court incorporated 28 USC 1652 in the judicial admission process: the mandate that State Laws

must provide the rules of decision for the validity of a contract. "The general rule undoubtedly is that the validity of a contract is to be decided by the law of the place where it is made, unless it is to be performed in another country" *OSCANYAN v. ARMS CO,* 103 U.S. 261, 277 (1880) On the issue of state law as rule of decision on whether a contract exists, this Court has been sound.

The district court did not deny summary judgment because the Erie Doctrine, 28 USC 1652, and First Options of Chicago mandate state law review of general commerce issues and Respondents' judicial admission of misrepresentations of essential terms in its contract bound the court's hands under Oscanyan; consequently, denying the summary judgment was not an option. However, sequestering a motion for summary judgment - as done by the inferior court in this matter - in order to circumvent judicial obligations, directives and prescriptives under Oscanyan, 28 USC 1291 and 28 USC

1652 is fraud and - in addition to reaching back to Swift v. Tyson where federal courts were not bound by the decisions of state courts - is so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Swift v. Tyson, 41 U.S. 1 (1842).

2. The District Court ruling and the affirmed ruling by the Third Circuit Court have decided an important federal question in a way that conflicts with relevant decisions of this Court and from the State Court of last resort.

In Roach v. BM Motoring, LLC, a case with a statement of facts duplicating this instant matter, the New Jersey Supreme Court offers that issues of contract formation are resolved through the flexible criteria in the Restatement (Second) of Contracts (. 155 A. 3d 985 - NJ Supreme Court 2017. (Appendix H)

The Third Circuit Court of Appeals has its own version of this Court's First Options Chicago in Spinetti v. Service Corp. Int'l. In its ruling in Spinetti, the Third Circuit Court of Appeals offered:

> Under the FAA, federal arbitration policy must be implemented in lock-step with a determination of contract validity under state law. First Options, 514 U.S. at 944, 115 S.Ct. 1920. We therefore turn to whether, under Pennsylvania contract law, the stricken portions of the arbitration agreement can be considered the essential part of the bargain. Deibler, 81 A.2d at 560-561. We have no difficulty in concluding that the primary purpose of the arbitration bargain entered into by Spinetti and SCI was not to regulate costs or attorney's fees. Instead, it was designed to provide a mechanism to resolve employment-related disputes.. 324 F.3d 212 (3d Cir.2003)

II. THE COURT'S GUIDANCE IS NEEDED TO AFFIRM A PROPER SUPERVISORY CHECK ON ABUSIVE JUDICIAL BEHAVIOR

Certiorari is warranted because the decisions below misapprehended important questions going to the legitimacy of our legal system. The conduct of Federal judges must be beyond reproach. Yet the District Court and the Third Circuit panel overlooked egregious misconduct on its part in the course of misconstruing the appropriate scope of evidence reviewable in connection with a Rule 60(d)(3) motion. However, in quoting Root Refining Co. v. Universal Oil Products Co., 169 F.2d 514,

534 (3d Cir. 1948), a judgment's freedom from fraud is a matter of "vast public importance" that "may always be the subject of further judicial inquiry". Furthermore, citing Moore's Federal Practice ¶60.33 at 515 (1971 ed.), fraud on the court should "embrace only that species of fraud which does or attempts to defile the Court itself, or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

The Third Circuit itself established parameters for fraud on the court in Herring v. U.S., 424 F.3d 384 (3d Cir. 2005) as:

> In order to meet the necessarily demanding standard for proof of fraud upon the court we conclude that there must be: (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court.[1] We further conclude that a determination of fraud on the court may be justified only by "the most egregious misconduct directed to the court itself,: and that it "must be supported by clear, unequivocal and convincing evidence."

The footnote provides citations from other Circuits having established guidelines around fraud on the court. The Court should also grant certiorari to emphasize the duty the Federal Judiciary owes to upholding justice. The errors below are particularly troublesome because they form the basis for the courts excusing intentional bad acts by judicial agents.

CONCLUSION For the foregoing reasons, the Court should grant a writ of certiorari.

Sara Ann Edmondson

SARA ANN EDMONDSON, PRO SE