

No. 19-615

In The
Supreme Court of the United States

ELAINE WARD,

Petitioner,

v.

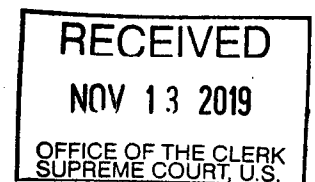
CITY OF NEW YORK, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

PETITION FOR WRIT OF CERTIORARI

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TWO (2) QUESTIONS PRESENTED

Petitioner filed a complaint in federal district court against City of New York, for denying Ward, notice, service of process and an opportunity to be heard by the City's Attorneys in addition to their use of perjured affirmations and no filings in the New York County Clerk's Office prior to the finalization of the deprivation of Ward's property, in state court.

The District Court, *sua sponte* dismissed the complaint without any responsive pleadings or motions; 2nd Circuit affirmed with a summary order.

In 2nd Circuit proceedings defendants' (again) used perjured affirmations, commercial metering machines in lieu of U.S.P.S. and failed to follow the rules for using summary orders as citations, and the 2nd Circuit failed to rule on Ward's objections.

THE 1st QUESTION:

1. Is there a violation of due process and equal protection under the 5th and 14th amendments as related to 42 U.S.C. 1983, when a municipality, fails to comply with the appropriate local statutes, for purposes of transparency, the public interest, and the Constitutional rights of the individual(s) who have a protected interest at stake in a matter, at the time of transferring that matter from and between the trial court and the appellate court, to the highest court of the state, which creates a right to be heard in federal court that is independent of the state court?

TWO (2) QUESTIONS PRESENTED – Continued

THE 2nd QUESTION:

2. Is there a violation of due process and equal protection of the law under the Constitution when a federal appellate court sets aside appellant's motions that object to the defendants' attorneys' violation of service by their use of commercial metering machines in the proceedings, as a U.S. post office substitute that prejudice appellant's time to answer, as well as defendants' attorneys' failure to comply with the rules for citing summary orders with respect to unrepresented litigants?

PARTIES TO THE PROCEEDINGS

Petitioner is:

ELAINE WARD

Respondents are:

CITY OF NEW YORK, Scott Stringer, New York City Comptroller, Bill de Blasio, New York City Mayor, Aisha Norflett, The NYC DOB Director of Licensing Unit, Rick Chandler, The NYC Department of Buildings Commissioner, Michael Cardozo, Former Corporation Counsel, Robert LiMandri, Former NYC DOB Commissioner, Drake Colley, NYC Law Department Sr. Appeals Attorney, Louise Moed, NYC Law Department of Counsel, Richard Paul Dearing, NYC Law Department Attorney, Luiggy Gomez, NYC Law Department Messenger, Moses Williams, NYC Law Department Notary, Debra Herlica, NYC Building Special Investigations Director, Patricia Pena, NYC BSIU Attorney, Zachary W. Carter, Corporation Counsel, Plumbing Foundation of the City of New York, Inc., Lawrence Levine, Chairman of the Board of Directors, Licensed Master Plumber of the City of New York, Stewart O'Brien, Executive Director of the Plumbing Foundation, Stuart A. Klein, Esq., Peter E. Sayer, Esq., The Law Offices of Stuart A. Klein, Esq., Par Plumbing, AKA The PAR Group, LT. Terrence O'Brien, Assistant Deputy Director of the Plumbing Foundation

RELATED PROCEEDINGS

- *In re Elaine D. Ward, Petitioner, against The City of New York, New York City Department of Buildings, New York City Office of Administrative Trials and Hearings and Commissioner Robert LiMandri, Respondents*, No. 100341/2012, New York Supreme Court Appellate Division, First Department. Judgment entered Nov. 14, 2013.
- *Elaine Ward, against CITY OF NEW YORK et al.*, No. 17-cv-03710, U.S. District Court for the Southern District of New York. Judgment entered Sept. 18, 2017. [A-10 to A-21]
- *Elaine Ward v. CITY OF NEW YORK, et al.*, No. 17-2973-cv, U.S. Court of Appeals for the 2nd Circuit. Judgment entered June 17, 2019. [A-1 to A-9]
- *Elaine Ward, Plaintiff-Appellant v. CITY OF NEW YORK, et al., Defendants-Appellees*, No. 17-2973-cv, U.S. Court of Appeals for the 2nd Circuit. Judgment entered July 23, 2019. [A-37 to A-38]

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CITATIONS OF OPINIONS BELOW

- *Matter of Ward v City of New York*, 2013 Slip Op 07569, Decided November 14, 2013, Appellate Division, First Department.
- *Matter of Ward v City of New York*, NY Slip Op 06006 Decided August 28, 2014, No. 212 SSM 16, State of New York Court of Appeals.
- *Ward v City of New York et al.*, 1:2017cv03710; U.S. Federal Court of the Southern District of New York; filed May 17, 2017, decided September 18, 2017.
- *Ward v City of New York*, 17-2973, U.S. Court of Appeals for the Second Circuit; filed September 22, 2017, decided June 17, 2019; Petition for En Banc Hearing and Rehearing filed July 1, 2019 and decided July 23, 2019.

JURISDICTION

The order to be reviewed was entered June 17, 2019; the order respecting rehearing was denied on July 23, 2019; the statutory provision to confer jurisdiction, to review the order in question is 28 U.S.C. 1254.

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V, “No person shall be deprived of life, liberty, or property, without due process of law”.

U.S. Const. amend. XIV, sec. 1: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES

28 U.S.C. 1331; 28 U.S.C. 1343; 42 U.S.C. 1983.

STATEMENT OF THE CASE

This petition is to request review of the United States Court of Appeals for the 2nd Circuit's denial of en banc review [A-37 to A-38], and affirmance, by summary order [A-1 to A-9], of the *sua sponte*, order of dismissal, from the United States District Court for the Southern District of New York. [A-10 to A-21]

The *sua sponte* dismissal order occurred prior to, and without, responsive pleadings, or motions, from any of the defendants. The order dismissed the complaint as to all defendants for failure to state a claim based on 28 U.S.C. 1915(e)(2)(B)(ii), although petitioner did not apply for *in forma pauperis* status in the court.

The basis for Federal Jurisdiction in the U.S. District Court for the Southern District of New York is based on 28 U.S.C. 1331, 28 U.S.C. 1343 and Due Process; Equal Protection violations of the 5th and 14th amendments through 42 U.S.C. 1983 and 1985.

◆

MATERIAL FACTS

Facts material to consideration of the questions presented, are, on May 17, 2017, Ward, a self-represented litigant, filed a complaint in the Southern District of New York to complain about, and seek relief from, injuries caused by the City of New York's failure to file and record in the New York County Clerk's office [A-39 to A-40], notice, service of process, thereby denying transparency and Ward's right to be heard, prior to the City finalizing deprivation of Ward's property and its associated entitlements.

On June 13, 2017, the District Court ordered Ward to amend her complaint by stating "it does not appear that the defects in Plaintiff's complaint can be cured with an amendment. In an abundance of caution, however, the Court grants Plaintiff an opportunity to amend her complaint." [A-35]

Ward submitted her amended complaint on August 11, 2017. Respondents were given an extended deadline of October 20, 2017 to file answers.

On September 18, 2017, the District Court, on its own motivation, issued an order of dismissal, without

any answers or motions to dismiss from any of the defendants. The order stated: "For the reasons set forth here and in the June 13, 2017 order, the complaint in its entirety is dismissed as to all defendants for failure to state a claim on which relief may be granted. 28 U.S.C. 1915(e)(2)(B)(ii)." [A-20]

On September 22, 2017, Ward filed a Notice of Appeal. On June 17, 2019, the 2nd Circuit Clerk of the Court, issued a summary order, affirming the district court dismissal. [A-1 to A-9]

On July 23, 2019, the same 2nd Circuit Clerk of the Court signed an order denying Ward's petition for rehearing. [A-37 to A-38]

The 2nd Circuit orders that denied Ward's right to have her complaint heard, did not address any of Ward's allegations presented in Ward's motions submitted during the pre-argument litigation in 2nd Circuit in which Ward objected to the defendants' attorney's perjured affirmations of service and misuse of their commercial metering machines.

Ward submits this petition to this Court seeking relief in the form of, granting certiorari, to remedy the denial of her right to be heard by both the lower federal courts. [A-1 to A-38]

WHY THIS WRIT SHOULD BE GRANTED

Ward's petition for a writ of certiorari should be granted in this matter, because the 2nd Circuit has

buried the important federal issue of due process in Ward's case, by not allowing Ward's complaint against the City of New York, to be heard.

The 2nd Circuit has strayed so far from accepted practice of judicial procedure in their deference to The City of New York and the private defendants' attorneys in this matter, that this Court's supervisory authority is necessary.

This Court needs to put the lower federal courts in their place with regards to the significance of the right to be heard that has been expressed by this Court's holding, nearly seventy (70) years ago, in *Mullane v Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), that, '[t]he fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean*, 234 U.S. 385, 34 S. Ct. 779, 58 L.Ed. 1363 (1914).

Both lower federal courts have deprived Ward of her right to be heard.

The 2nd Circuit's summary order, by definition, is not a legal opinion. This summary order is not signed by a judge. Ward's right to be heard has been squashed without legal grounds and without judicial authority. [A-1 to A-9]

This summary disposition regurgitated the district court order without Ward having any opportunity to be heard and without any discovery or responses from defendants. [A-1 to A-9] [A-10 to A-21]

The 2nd Circuit permitted and reinforced the lower court's departure from Constitutional law of the 5th and 14th amendments by denying Ward's right to be heard.

The 2nd Circuit, sanctioned by default, the failure of defendants' attorneys, to follow the local federal rules and procedures.

The 2nd Circuit did this by setting Ward's motions aside, not ruling on Ward's objections, and then, by declaring, *on the docket only, after the affirmance of the district court dismissal, by the "non-opinion", that the motions were "moot"*. [A-9; see Footnote #2]

Ward was not heard on the issue of the perjured affirmations and misuse of the City of New York's attorneys' law firm's postage metering machine. This is part of the practice of the City of New York's attorneys that Ward was complaining about in the district court. [A-15, A-17]

Ward has been adversely prejudiced by their conduct and the federal courts have improperly used their authority to sanction this conduct.

"It is procedure that spells much of the difference between rule by law and rule by whim or caprice", see *Joint Anti-Fascist Refugee Committee v McGrath*, 341 U.S. 123, 71 S.Ct. 264, 95 L.Ed. 817, 1951 U.S. LEXIS 2349, 2389 (1951).

If this Court still holds that the right to be heard is the fundamental requisite of due process, as it relates to the Constitution of the United States; if this

protection of due process, exists for everyone who resides in this country; these rulings violate the Constitution, injure Ward's rights and undermines public policy.

The alleged "non-precedent" that summary orders can squash the right to be heard, is set.

"The law must save the rights of parties, and not leave them to the discretion of the courts as such." *Louis & Nash. R. Co. v Stock Yards Co.*, 212 U.S. 132, 212 U.S. 144 (1909).

It is inherent in the public interest that Ward's complaint be heard because this is a democracy.

CONCLUSION

This petition for writ of certiorari should be granted.

Respectfully submitted,

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