No. 19-7372

ORIGINAL

In The

SUPREME COURT OF THE UNITED STATES

SAUNDRA TAYLOR
Petitioner

v.

DISTRICT OF COLUMBIA
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO DISTRICT OF COLUMBIA COURT OF APPEALS' JUDGMENT OF OCTOBER 29, 2019. PETITION FOR A WRIT OF CERTORARI.

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QUESTIONS PRESENTED FOR REVIEW

1. Is the judgment of October 29, 2019, of the District of District Court of Appeals (DCCA) according to the law?

2. Did the judgment of October 29, 2019, deprived the the Petitioner of due process of the law?

List of Parties

SAUNDRA TAYLOR, Plaintiff and Petitioner, Pro se

DISTRICT OF COLUMBIA, Defendant
and Respondent

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STATUTES AND RULES

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

The opinion of the District of Columbia Court of Appeals of October 29, 2019, to review the merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

On October 29, 2019, the District of Columbia Court of Appeals decided my case. A copy of the judgment appears at "Appendix A." A timely petition for rehearing was thereafter denied on December 3, 2019, and a copy of the order denying rehearing appears at Appendix B. A state court's decision of last resort is in conflicts with the decisions of the state court, another state court of last resort of a United States court of appeals and decisions of the Supreme Courts. The jurisdiction of the Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV

> No state shall make or force any law that 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.

United States Constitution, Article VI

> The Laws of the United States which shall be made in Pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land and the Judges in every State shall be bound thereby, anything

[sic] in the Constitution or Laws of any state to the Contrary notwithstanding.

STATEMENT OF CASE

1. Facts Giving Rise to This Case.

On April 18, 2017, Petitioner filed a motion for reopening of evidentiary hearing and motion for leave to adduce additional evidence, motion for an order to show cause and motion to set aside/vacate to set aside ALJ Joan E. Knight's compensation order of August 6, 2010, because of fraud. On June 12, 2017, ALJ Donna J. Henderson dismissed the Petitioner's motions with prejudice. On August 18, 2017, Compensation Review Board (CRB) affirmed ALJ Donna J. Henderson's June 12, 2017 order of dismissal with prejudice in pursuant to 7 DCMR § 267.3. On August 20, 2018, District of Columbia Court of Appeals (DCCA) affirmed the CRB's decision and order of August 18, 2017, and found "that Ms. Taylor seeks either to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and thus, provides no basis for reopening Ms. Taylor's claim," (App. E, page 2, lines 1-5) and concluded that "under 7 DCMR § 264.1 (2018) "(party) seeking to introduce additional evidence after the decision of ALJ must establish "that there existed reasonable ground for the failure to present the evidence to an ALJ." (At p. 2, ln 5-7) On April 15, 2019, this Court denied the Petitioner's petition a for writ of certiorari.

Subsequently, on April 17, 2019, based on DCCA's findings and conclusion of law on August 20, 2018, the Petitioner filed a negligence claim against the District of Columbia for ten million ($10,000,000.00) dollars. In the complaint, the Petitioner alleged on May 24, 2011, Mr. **Mohammad** Sheikh, Director of Labor Standard, (the Defendant) directed the Petitioner to present the new (contradictory) evidence of Bluff Magazine's internet document to CRB that the defendant had inadvertently given Ms. Taylor on May 4, 2011, that the Petitioner presented in her motion to set aside on June 6, 2011, to CRB instead of an ALJ. Also, on April 17, 2019, the Petitioner's Application to Proceed without Prepayment of Costs, Fees, or Security, (In Forma Pauperis) was granted, based on the Petitioner's declaration (APP. H) and Judge

Brian Holeman departure (confirmation) to D.C. District Court, On April 24, 2019, the trial court served the defendant the Complaint,Summons, and Initial acknowledgment forms. On June 25, 2019, via the electronic filing system, the District of Columbia untimely filed its Super. Ct. Civ. Rule 8(c) motion to dismiss according to Rule 12(a)(2) and 6(a)(1)(C) asserting an affirmative defense of the statute of limitations. On June 28, 2019, in the Petitioner's answer Ms. Taylor requested the trial court to strike the untimely motion to dismiss of June 25, 2019, and filed a request for entry of default and a motion for default judgment. Contrary to, the Petitioner's request on July 3, 2019, the trial court granted the untimely motion to dismiss of June 25, 2019, and dismissed the Petitioner's complaint of April 17, 2019, with prejudice, vacated the Initial Scheduling conferences, and denied Ms. Taylor's motion for default judgment. (APP. C) In the order, the trial court found that "Petitioner failed to file proof of service in accordance with the rules...No acknowledgment forms were returned and no proof of service was filed, therefore, it is unclear whether or not DOES' response strictly falls with the requisite period and the Petitioner's complaint was barred by the statute of limitations." (APP. C, p. 1-2, ln 17-6). Contrary to, the record shows the motion to dismiss was outside of the sixty (60) days requisition period according to Super. Ct. Civ. Rule 12(a)(2) and 6(a)(1)(C). Furthermore, in the dismissal order, the trial court found that "the complaint alleges that the Plaintiff discovered the factual inconsistencies in 2011 and present them to CRB in 2011 therefore, the Court finds that the cause of accrued in 2011.

On July 10, 2019, under Super. Ct. Civ. Rule 41 (b) the Petitioner filed a motion to reinstate. On July 15, 2019, D.C. Superior Court denied the Petitioner's motion to reinstate and found that "in addition to the fact that Plaintiff's complaint is time-barred by the statute of limitations and the Plaintiff has also failed to comply with Judge Holeman's Order of Permanent Injunction." (APP. D) and (APP. H)

On August 12, 2019, the Petitioner filed a motion for summary reversal. On September 23, 2019, on appeal in the lengthy cross-motion for summary affirmance and opposition the District of Columbia proffered and asserted documents and facts that were not presented to the trial court and were not part of the record on appeal. On September 24, 2019, in the Petitioner's opposition in support of her motion for summary reversal, Ms. Taylor did not oppose the facts that were not presented to the trial court and were not part of the record on

appeal that DCCA asserted in its cross-motion for summary affirmance. However, on October 29, 2019, DCCA granted the District of Columbia's cross-motion for summary affirmance, and on its own, DCCA took judicial notice of documents and facts in the appellant's previous appeals, (APP. A, p. 1-2, ln 19-4) that the Petitioner did not oppose that the District of Columbia asserted in its cross-motion for summary affirmance that were not present to the trial court and was not part of the record on appeal. In the judgment of October 29, 2019, DCCA took judicial notice of the documents and facts of the previous related case of *Taylor v. Sedgwick CMS*, Appeal No. 12-CV-1320, including a copy of the Compensation Review Board's (CRB) July 27, 2011, decision, and appellant's October 2012 acknowledgment in her own words that her request for reconsideration with the CRB had been procedurally improper, and concluded that "even if the appellant did not recognize the full contours of her claim at that time, she knew that the advice at issue was denied, which is sufficient to trigger the running of the statutory limitation period." (p. 2, ln 7-11) Also, DCCA concluded that "the Defendant's motion to dismiss was timely filed on June 25, 2019, and its statute of limitations defense was properly before the trial court under Super. Ct. Civ. R. 5(b)(2)(C), and 6(d). (At p. 1, 10-19)

On November 5, 2019, the Petitioner filed a motion for reconsideration. On December 3, 2019, DCCA denied the Petitioner's motion for reconsideration and an opportunity to be heard on the documents and facts notice in the judgment, on October 29, 2019, under Federal Rule 201(e). (APP. B) In the order of December 3, 2019, DCCA concluded that the appellant now makes a **novel** assertion of an unspecified disability, she failed to assert this claim in the trial court, and this court will not entertain the argument for the first time in a petition for rehearing. At p.1, ln 3-7) At the same time, DCCA considered the documents and fact for the first time that the District of Columbia asserted in its motion for summary affirmance on appeal that Defendant failed to present to the trial court that was not in the record on appeal.

REASON FOR GRANTING THE PETITION

I. Review Is Warranted Because Supreme Court Allows Review On A Writ Of Certiorari Of

1. Judicial Decision Of State (And D.C.) Courts Of Last Resort.

A. The Opinions Of DCCA Conflicts With Decisions Of This Court And DCCA.

The October 29, 2019, judgment is in conflict with legal precedents of DCCA, Circuit Courts and Supreme Courts

B. **This Court Should Reverse The October 29, 2019, judgment.**

To stop bias and prejudice in the District of Columbia's judicial system. The judgment of October 29, 2019, of DCCA is not according to the law, and deprived the Petitioner of due process of the law that affirmed the trial court's decision that dismissed the Petitioner's complaint about ten million ($10,000,000.00) dollars with prejudice.

1. **The judgment of October 29, 2019, of DCCA is not according to the law.**

A. **DCCA erred denying the Petitioner an opportunity to be heard on the document and fact notice.**

In the order of July 15, 2019, the trial court denied the Petitioner's motion to reinstate and found "Here Plaintiff explains numerous reasons for why her complaint should be reinstated, including her misunderstanding of the rules. Plaintiff also asserts that at the motion to dismiss stage, a court should not dismiss a complaint on statute of limitations grounds unless the claim is time-barred on the face of the complaint ... . In addition, to the fact that Plaintiff's complaint is time-barred by the statute of limitations and the Plaintiff has also failed to comply with Judge Holeman's Order of Permanent Injunction. It appear that the Clerk of the Superior Court was prohibited from accepting for filing any documents submitted by Plaintiff ... ."(APP. D, p. 1-2, ln 7-4)(APP. H) However, in the judgment of October 29, 2019, DCCA held a differing opinion and concluded that "even if the appellant did not recognize the full contours of her claim at that time, she knew that the advice at issue was denied, which is sufficient to trigger the running of the statutory limitation period." (AT APP. A) Also, on its own DCCA takes judicial notice of the documents and facts of the previous related case of *Taylor v. Sedgwick CMS*, Appeal No. 12-CV-1320, including a copy of the Compensation Review Board's (CRB) July 27, 2011, decision, and appellant's October 2012 acknowledgment, in her own words that her request for reconsideration with the CRB had been procedurally improper, which are the same facts the District of Columbia asserted in its long lengthy cross-motion for summary affirmance and opposition that the Petitioner did not oppose in her answer that were not presented to the trial court and were not part of the record on appeal. (At APP A, p.

1-2, ln 20-4) Even though, in *Johnson v. Berry,* 658 A.2d 1051, 1054 n.5 (D.C. 1995) DCCA said "on appeal, Petitioner challenges only the ruling declining to reinstate her suit," this court does not face directly the issue of whether the trial court's original or order of dismissal itself is sustainable. Also, the judicial notice statute requires a "reviewing court" to take judicial notice of matters that were properly already judicially notice by the trial court. In addition, the California Supreme Court has explained as a general rule, [an appellate] court should not take [judicial] notice if, upon examination of the entire record, it appears that the matter was not been presented to and considered by the trial court in the first instance." *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4Th 434, 444 n.3 (1996) see also *People v. Preslie*, 70 Cal. App.3d 486,493(1997), citing *People v. Superior Court* (Mahle), 3 Cal. App.3d 476, 482 n.3 (1970)

Moreover, under Federal Rule 201(c)(1) DCCA may take judicial notice on its own. Indeed, in the judgment of October 29, 2019, DCCA takes notice of the Petitioner's first appeal T*aylor v. Verizon Communication Inc. et al*, No. 11-AA-1019 and second appeals *Saundra Taylor v. Sedgwick, CMS* 12-CV-1320. On the other hand, the doctrine prevents DCCA from selecting only portions of documents that support District of Columbia's claim while omitting portions of those very documents that weaken or perhaps doom a claim. However, the Petitioner's entire extended litigation history on appeal in the writ of certiorari was unnoticed from **August 2011 to February 2019** of the many decisions of the D.C. Dept. of Employment Services and D.C. Superior Court, which do not support DCCA' conclusion of law in the judgment of October 29, 2019.

Furthermore, under Rule 201(b) DCCA may judicially notice a fact that is not subject to reasonable dispute. However, in the order of December 3, 2019, DCCA denied the Petitioner's motion for reconsideration and concluded that "the appellant now makes a "**novel**" assertion of an unspecified disability, (after ignoring and failing to consider the Petitioner's mental and physical abilities in the notice and unnotice appeal) she failed to assert this claim in the trial court and this court will not entertain the argument for the first time in a petition for rehearing. (AT APP. B, p.1, ln 3-7) At the same time, in the judgment of October 29, 2019, DCCA takes notice of the documents and facts that the District of Columbia proffered and asserted for the first time in its cross-

motion for summary affirmance and opposition on appeal that the Petitioner did not oppose her opposition that were not presented to the trial court, and were not part of the record on appeal. *Truong v. Nguyen*, 156 Cal. App. 4Th 865, 882 (2007) Here, the Petitioner's complaint was dismissed with prejudice before the initial scheduling hearing in which Ms. Taylor never had an opportunity to assert a legal disability defense that the Petitioner asserted in the petition for rehearing, opposing the document and facts that were noticed on appeal, that was not presented to the trial court and were not part of the record on appeal. Under Super. Ct. Civ. Rule 8 the Petitioner has "no duty to set out all of the relevant facts in her complaint." Also, this court has explained that a complaint need only "give the defendant fair notice of want the plaintiff's claim is and the ground upon which it rests." *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). In addition, in *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) this Court said [A] court may dismiss the Plaintiff's complaint only if it is clear that no relief could be grant under any set of fact that could be proved consistent with the allegations and not for lack of detail. at 555, 127 S Ct 1955

Nevertheless, DCCA denied the Petitioner an opportunity to explain the Petitioner's previous appeal notice *Saundra Taylor v. Sedgwick, CMS* (At No.12-CV-1230) and unnoticed *Saundra Taylor v. D.C. Dep't of Employment Svcs.* (At No. 14-AA-1253). Here, the multiple medical reports and the various medical opinions of Ms. Taylor's treating physicians describe the Petitioner's mental and physical abilities, which supports Ms. Taylor's legal disability defense asserted in the denied motion for reconsideration. Under Federal Rule 201 (e) on timely request, the Petitioner is entitled to be heard on the appropriateness of taking judicial notice and the nature of the fact that was noticed outside of Ms. Taylor's complaint.

B. DCCA improperly found that the Petitioner's complaint is outside of the statute of limitations (3 years) under the discovery rule.

Under the injury rule, a claim begins to accrue when the Petitioner suffers actual injury, not when the act causing the injury occurs. *Byers v. Burleson*, 713 F.2d at 860, *Weisberg v. William, Connolly & Califano*, 390 A.2d 992, 995 n.5 (1978) But where the "relationship between the fact of injury and alleged tortious conduct and alleged tortious conduct is obscure," the "discovery rules" applies instead. *Bussineau v. Pres. & Dirs. Of Georgetown Coll.*, 518 A.2d 423,425 (1986)

In the judgment of October 29, 2019, the Petitioner's last

appeal *Saundra Taylor v. DC Dept. of Employment Svc* (At No. 17-AA-0956), was unnoticed. Here, on June 12, 2017, the Administrative Law Judge (ALJ) Donna J. Henderson dismissed with prejudice the Petitioner's previous April 17, 2018 motion for reopening of evidentiary hearing and motion for leave to adduce additional evidence, motion for an order to show cause and motion to set aside/vacate to set aside ALJ Joan E. Knight's compensation order of August 6, 2010 because of fraud. In the memorandum opinion and judgment of August 20, 2018, DCCA found "that Ms. Taylor seeks either to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and thus, provides no basis for reopening Ms. Taylor's claim," (App. E, page 2, lines 1-5) and concluded that "under 7 DCMR 264.1 (2018) (Party seeking to introduce additional evidence after the decision of ALJ must establish that "there existed reasonable grounds for the failure to present the evidence to **ALJ".** (At p. 2, ln 5-7) Subsequently, Ms. Taylor immediately became knowledgeable that the District of Columbia caused harmed and damaged to the Petitioner on May 24, 2011[1], when Mr. **Mohammad** Sheikh, Director of Labor Standard, (the Defendant) directed the Petitioner to present the new (contradictory) evidence of Bluff Magazine's internet document to CRB that District of Columbia had inadvertently given Ms. Taylor on May 4, 2011, that the Petitioner presented in her motion to set aside on June 6, 2011, to CRB instead of an ALJ. In the complaint, Ms. Taylor pleaded that on August 20, 2018, the Petitioner became knowledgeable that Mr. Sheikh intentionally misguided Ms. Taylor on May 24, 2011, according to 7 DCMR §§ 211.1 and 268.1 to proffered the new evidence to CRB instead of an ALJ, which harmed and damaged the Petitioner. (At Compl.¶10) It is therefore credible that Petitioner's case did not accrue before August 20, 2018[2]. However, DCCA did not take the Petitioner's claim to be true that before its memorandum opinion and judgment of August 20, 2018, Ms. Taylor did not know of Mr. Mohammad Sheikh's, Director of Labor Standard, (the Defendant) wrongdoing and negligent misconduct of **May 24, 2011.** In *Twombly*, this Court said, courts "must take all of the factual allegations in the complaint as true" and construe the

[1] The Petitioner's April 18, 2017 motion for reopening of evidentiary hearing, motion for leave to adduce additional evidence, motion for order to show cause, and motion to set aside/vacate ALJ Joan E. Knight compensation order of August 6, 2010, because of fraud on the court, were dismissed with prejudice on June 12, 2017.

allegations and facts in the complaint, in the light most favorable to the appellant. While this is true, in the judgment of October, 29, 2019, DCCA took judicial notice documents and facts of the previous related case of *Taylor v. Sedgwick CMS*, Appeal No. 12-CV-1320, including a copy of the Compensation Review Board's (CRB) July 27, 2011, decision, and appellant's October 2012 acknowledgment in her own words that her request for reconsideration with the CRB had been procedurally improper, and concluded that "even if the appellant did not recognize the full contours of her claim at that time, she knew that the advice at issue was denied, which is sufficient to trigger the running of the statutory limitation period." In *Khoja v. Orexigen Therapeutics*, No. 16-56069 (9th Cir. 2018) 9th Court said, "the District Court abused its discretion by improperly considering materials outside of the complaint." Also, under the law the District of Columbia bears the burden of proof to prove the Petitioner's Complaint of **April 17, 2019**, is time-barred by the statute of limitations (SOL). *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1019–20 (D.C. 2013) (citation omitted) However, in the motion to dismiss of June 25, 2019, the District of Columbia presented no evidence in exhibits A and B to the trial court, which substantiates Ms. Taylor knew or should have known about her injury before August 20, 2018. In *Wagner v. Sellinger*, 847 A.2d 1151, 1154 (2004) DCCA has clarified that for the statute to beginning running, the Appellant "need only have some knowledge of some injury," and that knowledge is sufficient if she "has reason to suspect that defendant has done something wrong even if the full extent of the wrongdoing is not yet known.

[2] (1) Under the discovery rule, the statute of limitations will not run until the Petitioner know or reasonably should have known that she suffered injury due to Mr. Sheikh's (District of Columbia) wrongdoing. *Oparaugo v. Watts*, 884, A.2d 63, 72 n.6 (D.C. 2005); (2) under the law the Petitioner's claim is not conclusively time-barred on the face of the complaint under the discovery rule. Dismissal is only appropriate "if the complaint on its face is conclusive time-barred." *Id.* And *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1019–20 (D.C. 2013) (citation omitted) (citing *Brin v. S.E.W. Inv'rs*, 902 A.2d 784, 800-01(D.C. 2006); see also *Bregman v. Perles*, 747 F.3d 873, 875 (D.C. Cir. 2014); (3) "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007)); and (4) A claim is facially plausible when "the Petitioner pleads factual contents that allow the court to draw the reasonable inference that the Defendant is liable for the misconduct alleged." *Id.*

In the Petitioner's first appeal, T*aylor v. Verizon Communication Inc. et al* (At No. 11-AA-1019) DCCA takes notice of the copy of the decision of CRB on July 27, 2011, that dismissed the Petitioner's **June 6, 2011** motion to set aside the CRB's decision and order of January 14, 2011, that affirmed ALJ Joan E. Knight's compensation order of August 6, 2010. However, DCCA take no notice on **June 6, 2011**, more than four (4) months after the date shown on the certification of service the Petitioner filed an **untimely** motion to CRB to set aside CRB's decision and order of **January 14, 2011**, that affirmed ALJ Joan E. Knight's Compensation order of August 6, 2010, that the Petitioner alleged her employer procured the judgment by fraud on the court in Ms. Taylor's worker's compensation claim. So here the Petitioner did not know that according to 7 DCMR § 211.1 "all pre-hearing conferences and formal hearings on claims are not conducted **by CRB**" and according to 7 DCMR § 268.1 "A party who files a request for reconsideration of a decision and order of the CRB of January 14, 2011, must do so within **ten (10) calendar days**." Equally important, the Petitioner's motion for clarification was also unnotice, that DCCA denied on **February 22, 2012**, (At APP. F) which Ms. Taylor (Pro se) with no legal knowledge or background, and could not afford an attorney inquired why the appellate court dismissed the appeal of CRB's dismissal order of July 27, 2011, (At No. 11-AA -1019) which substantiates the Petitioner did not know of 7 DCMR §§ 211.1 and 268.1, the law, rules, regulations, procedures, and statutes about the denied workers'compensation claim that Ms. Taylor alleged her employer procured a judgment by fraud on the court, and thus, DCCA's conclusion in the judgment of October 29, 2019, is incorrect.

Also, in the Petitioner's second appeal, *Taylor v. Sedgwick CMS* (At No. 12-CV-1320) DCCA takes notice of the Appellant's October 2012 acknowledgment, in her own words that her request for reconsideration with the CRB had been procedurally improper. First, in the Petitioner's filed appeal brief of October 15, 2012, Ms. Taylor was unable to locate the acknowledgment notice. (At APP. A, p. 2, ln 2-4) Secondly, DCCA takes no notice on **December 29, 2011**, that the Petitioner filed a civil action in D.C. Superior court after DCCA denied the appeal on **November 26, 2011**, of the CRB's order on July 27, 2011, alleging her employer procured a judgment by fraud. It has long been the law in this jurisdiction that the Appellant may seek relief from Judge Knight's Compensation Order of August 6, 2010 that January 14, 2011 CRB's decision

and order affirmed by collaterally challenging the final alleging fraud in the procurement of the order in that original forum. *Mitchell v.* Gales, 61 A.3d 678 (2013) (quoting *Indemnity Ins. Co. v. Smoot*, 152 F.2d 667, 669, 80 U.S. App. D.C. 287 (1945) (emphases added) (citation omitted) Finally, DCCA takes no notice before the October 2012 acknowledgment noticed, (At No. 12-CV-1320) the Petitioner filed an appeal of the trial court's decision on **June 30, 2012**, after DCCA denied Ms. Taylor's motion for clarification on **February 22, 2012**, (At No. 11-AA-1019). So here the Petitioner still did not know that according to 7 DCMR § 211.1 "all pre-hearing conferences and formal hearings on claims shall be conducted by an ALJ," and thus, DCCA's conclusion in the judgment of October 29, 2019 is incorrect.

Besides, the Petitioner's third appeal S*aundra Taylor v. Verizon Communication Inc.*, (At No. 14-CV-408), was also unnoticed. Here, DCCA takes no notice on **August 2, 2013**, after DCCA affirmed the decision of the D.C. Superior Court on **June 24, 2013**, *Taylor v. Sedgwick,* (At No. 12-CV-1320) the Petitioner filed a second civil action in D.C. Superior court against her employer Verizon Communication Inc. alleging her employer procured a judgment by fraud. *Mitchell v.* Gales, 61 A.3d 678 (2013) (quoting *Indemnity Ins. Co. v. Smoot*, 152 F.2d 667, 669, 80 U.S. App. D.C. 287 (1945) (emphases added) (citation omitted) Equal important, DCCA takes no notice on **April 14, 2014**, after DCCA denied the Petitioner's motion for clarification on **February 22, 2012**, two (2) years later, Ms. Taylor filed another appeal of the trial court's decision that dismissed the Petitioner's complaint for lack of subject-matter jurisdiction. So, here Ms. Taylor still did not know that according to 7 DCMR § 211.1 "all pre-hearing conferences and formal hearings on claims shall be conducted by an ALJ," and thus, DCCA's conclusion in the judgment of October 29, 2019 is incorrect. Generally, the question of when the appellant discovered her claim is factual and is presumably for the trial court or a jury to consider. In *Pullman-Standard v. Swint*, 456 U.S 273, 291 (1982) this court said, Factfinding is the "basic responsibility" of the trial Courts "rather than appellate courts." (quoting *DeMarco v. United States*, 415 S. 449, 450 n.22 (1974); see also *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S 100, 123, (1969) ("appellate courts must constantly have in mind that their function is not to decide factual issues")

C. DCCA improperly found that the District of Columbia timely filed its motion to dismiss according to Rule 5(b)(2)(C), and 6(d), therefore, the statute of limitations defense was properly before the trial court.

In the order of July 3, 2019, D.C. Superior Court dismissed the Petitioner's complaint with prejudice and the trial court found that no acknowledgment forms were returned, and no proof of service was filed, therefore, it is unclear whether or not DOES' response strictly falls with the requisite period. (At APP. C, p. 2, ln 4-6) However, in the judgment of October 29, 2019, DCCA held a differing opinion and concluded that the District of Columbia's motion to dismiss was timely filed on June 25, 2019, according to Super. Ct. Civ. R. 5(b)(2)(C), and 6(d). (At APP. A, p. 1, ln 9-13) In the record, the docket shows that on April 24, 2019, D.C. Superior Court served the Complaint, Summons and Initial Order to the District of Columbia. Under Super. Ct. Civ. Rule 12 (a)(2) the United States or the District of Columbia or an agency, officer, or employee of either sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia), therefore, the time for the District of Columbia to respond to the complaint was no later than Sunday, June 23, 2019. Under Super. Ct. Civ. R. 6(a)(1)(C) since the sixty (60) days deadline expired on a Sunday, the period continues to run until the end of the next day Monday, **June 24, 2019**, which was not a legal holiday. Consequently, on June 25, 2019, the District of Columbia's motion to dismiss was untimely filed.

Under Rule 4(j)(3)(A) "The District of Columbia must be served by delivering (pursuant to Rule 4(c)(2)-(3)) or **mailing (pursuant to Rule 4(c)(4)** a copy of **the summons, complaint, Initial Order**, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor of the District of Columbia (or designee) and the Attorney General of the District of Columbia (or designee)". Rule 4(c)(4) states "any defendant described in Rule 4 (e), (f), (h), (i), **(j)(1), or (j)(3)** may be served by mailing a copy of the **summons, complaint, Initial Order,** any addendum to that order, and any other order directed by the court to the parties at the time of filing to the person to be served by registered or certified mail, return receipt

requested, "**except as specified in Rule 4(i) and 4(j)(3)(A) is to be serve**." However, the record does not show a return receipt requested or a signed return receipt according to Super. Ct. Civ. Rule 4(c)(4) and 4(j)(3)(A), and thus, on April 24, 2019, no service was made to the District of Columbia by registered and certified mail under Rule 5(b)(2)(C). Super. Ct. Civ. Rule 6(d) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE states "When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (**mail**), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a). So, under Rule 6(d) an additional three (3) days was not added to the deadline of June 24, 2019, once the 60-days requisite period expired according to rule 6(a). Then, under Rule 6(d) on June 25, 2019, the District of Columbia's motion to dismiss was not timely filed, and thus, the Respondent's defense of the statute of limitations was not properly before the trial court. Besides, in the lengthy cross-motion for summary affirmance and opposition, the District of Columbia does not assert its motion to dismiss was timely filed under Rule 6(d) or 5(b)(2)(C). Because of service upon the District of Columbia is served under Rule 5(b)(2)(A), by the D.C. Superior court hand-delivering the Complaint, Summons, and Initial Order to Ms. Tonia Robinson (Designee) of the District of Columbia on April 24, 2019, according to Rule 4(j)(3)(B). Rule 4(j)(3)(B) Designees states "the Mayor and the Attorney General may each designate an employee for receipt of service of process by filing a written notice with the court clerk." In fact, in the lengthy cross-motion for summary affirmance and opposition, the District of Columbia argued "on June 25, 2019, DOES move to dismiss the complaint, arguing that it was barred by the applicable statute of limitations." (At p. 11, ln 5)

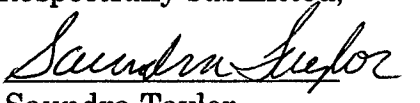
Furthermore, in the motion to dismiss on **June 25, 2019**, the District of Columbia asserts in the certification of service that "on **June 24, 2019**, a copy of the foregoing motion was sent via first class and email to the Petitioner," and on **June 25, 2019**, undersigned counsel received a notification from CaseFileXpress that the filing was reject. Accordingly, on **June 25, 2019**, a copy of the foregoing motion was re-filed with a redacted version of the exhibits attached, which was sent via First-Class Mail and email to the same address. (At APP. G) First, email is inadequate and does not satisfy the requirements under the Super. Ct. Civ. P. Rule 5(b). In *Magnuson v. Video*

Yesteryear, 85 F.3d 1424, 1431 (9th Cir. 1996) the 9th circuit court stated service by fax does not satisfy Fed. R. Civ. P. Rule 5(b). Secondly, under Super. Ct. Civ. Rule 5.2(i) The responsibility for redacting personal identifiers rests solely with the person or entity making the filing. Under Rule 6(b)(1)(B) the District of Columbia's motion to dismiss on June 25, 2019, can only be accepted on a motion made after the deadline of June 24, 2019. *U.S. v. McLaughlin,* 470 F3d 698 at 700 (7th Cir. 2006) Rule 6(b)(1)(B) states "on motion made after the time has expired if the party failed to act because of excusable neglect." In the record, the docket of D.C. Superior Court shows no motion for extension of time Nunc Pro Tunc filed by District of Columbia. In the dismissal order of July 3, 2019, the trial court found the District of Columbia's motion to dismiss was filed on June 25, 2019, (At APP. C, p. 1, ln 1-3) and thus, in the record, there is no evidence, which substantiates the motion to dismiss was mail to the Petitioner on **June 24, 2019**. Rule 5(b)(2)(C) states "[s]ervice by mail is completed upon mailing." The date shown on the certification of service is June 25, 2019, which is the same date the District of Columbia filed its motion to dismiss. So, on June 25, 2019, the District of Columbia's motion to dismiss was not timely filed under Rule 5(b)(2)(C), and thus, the Respondent's defense of the statute of limitations was not properly before the trial court. In light of DCCA's conclusion that the Defendant timely filed its motion to dismiss on June 25, 2019, and thus its statute of limitations defense was properly before the trial court under Super. Ct. Civ. R. 5(b)(2)(C), and 6(d) is erroneous.

CONCLUSION

For the reasons set forth above, Petitioner respectfully submit this Petition For A Writ Of Certiorari should be granted. This Court may wish to consider summary reversal the judgment of the District of Columbia Court of Appeals.

Respectfully submitted,



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