No. 19-8171

IN THE

SUPREME COURT OF THE UNITED STATES

CAROLYN R. DAWSON, pro se

Petitioner,

v.

THE BANK OF NEW YORK, MELLON, et al,

Respondent,

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

PETITION FOR REHEARING

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June 20, 2020

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PETITION FOR REHEARING

Pursuant to Rule 44.2, and based on intervening circumstances of a substantial or controlling effect, Petitioner Carolyn Dawson respectfully petitions for

rehearing of the Court's order denying certiorari in this case based on the grounds below:

1. Since denying *certiorari,* the Court has heard the *Lucky Brands Dungarees, Inc., et al v. Marcel Fashion Group, Inc.,* No. 18-1086; dated June 15, 2020; (remand).
2. On the grounds there is a strong need for definitive resolution by this court at this stage regarding "preclusion orders" that deprive citizens of their constitutional right to due process and a fair trial.
3. To be sure, because this case arises on appeal from the Fifth Circuit's lack of jurisdiction to hear disputes on preclusion orders the above case alters the outcome and/or sets precedence for preclusion order to be reviewed for their validity as further discussed below.

QUESTIONS PRESENTED

Pursuant to 28 U.S.C. § 1291, the Federal Appellate Circuit has jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title. In addition, the first rule of the Constitution is justice for all.

The question presented is (1) whether the Federal Circuit has jurisdiction under 28 U.S.C. § 1291 to review an appeal involving *Res Judicata* as defined under Article

38(1)(c), of the International Court of Justice Statute and other decided case laws regarding issues, claims and/or defenses preclusion. (2) whether a Temporary Restraining Order, TRO is a lawsuit per se; by or in itself a lawsuit or merely a request for relief not to exceed a specific timeframe, and (3) should Petitioner's case be remanded for due process.

LIST OF PARTIES

The undersigned Pro se of record certifies that the following listed persons and entities as described in the Circuits Local Rule 28.2.1; have an interest in the outcome of this case.

Appellant/Petitioner
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Appellee/Respondent
The Bank of New York Mellon, et al.; %Charles Townsend, SBN 24028053 and Monica Summers, SBN: 24083594; Akerman LLP; 2001 Ross Ave, Suite 3600, Dallas, TX 75201.Tel: 214-720-4300, Fax: 214-981-9339; NewRez, LLC d/b/a Shellpoint Mortgage Servicing is a wholly-owned subsidiary of Shellpoint Partner LLC, a Delaware, limited liability company. Shellpoint Partners LLC is a wholly-owned subsidiary of NRM Acquisition LLC and NRM Acquisition II LLC, Delaware limited liability companies. Both NRM Acquisition entities are wholly-owned subsidiaries of New Residential Mortgage LLC, a Delaware limited liability company. New Residential Mortgage LLC is a wholly-owned subsidiary of New Residential Investment Corporation, a Delaware corporation.

RELATED CASES

- *Lucky Brands Dungarees, Inc., Lucky Brand Dungarees Stores, Inc., Leonard Green & Partners, L.P., Lucky Brand Dungarees, LLC, Lucky Brand Dungarees Stores, LLC, Kate Spade & Co., v Marcel Fashion,* No. 18-1086, U.S. Supreme Court.

- *Halliburton Oil Well Cementing Co. v. Walker, 327, U.S. 812, (February 1946)*

- *Lawlor v. National Screen Service Corp.,* 349 U.S. 322, 327-328 (1955)

- *Macgregor v. Westinghouse Elec. & Mfg. Co.,* 329 U.S. 402 (1947), rehearing granted

- *Baltimore & Ohio R. R. v. Kepner, 314 U.S. 44 (1941)*

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TABLE OF AUTHORITIES CITED

Cases

STATUTES AND RULES

OTHER AUTHORITIES

OPINIONS BELOW

[X] For cases from **federal courts.**

The opinion of the **United States Supreme Court** appears at ***Appendix A*** to the petition and is:

[X] reported at: *Lucky Brand Dungarees, Inc., et al. v. Marcel Fashions Group, Inc.* 2nd Cir. 18-1086, argued January 13, 2020, decided May 14, 2020.

[X]*Baltimore & Ohio R. R. v. Kepner,* *314 U.S. 44 (1941).*

[X] reported at: *Halliburton Oil Well Cementing Co. v. Walker,* 327 U.S. 812, the Court granted rehearing in February 1946, *ibid.*, and heard reargument 240 days later October 1946, see 329 U.S. 1 (1946).

[X]*Lawlor v. National Screen Service Corp.,* 349 U.S. 322, 327-328 (1955)

[X]*MacGregor v. Westinghouse Elec. & Mfg. Co.,* 329 U.S. 402 (1947

JURISDICTION

The Fifth Circuit issued its opinion on December 12, 2019, and denied Rehearing En Banc on February 28, 2020; Petition for Certiorari denied on May 18, 2020; therefore, the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Rule 44.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The International Court of Justice Statute Article 38 (1)(c); *Res Judicata* Statutory law, and the U.S. Fifth and Fourteenth Amendments.

GROUNDS FOR REHEARING

The need for rehearing in this matter is more pressing than in *Halliburton Oil Well Cementing Co., v. Walker, 327 U.S. 812,* the Court granted rehearing in February 1946, ibid., and heard reargument 240 days later in October 1946, see 329 U.S. 1 (1946). Also, in *Macgregor v. Westinghouse Elec. & Mfg. Co.,* 329 U.S. 402 (1947), rehearing granted; *Baltimore & Ohio R. R. v. Kepner, 314 U.S. 44 (1941).* In addition, this Court remanded the *Lucky Brands Dungarees, Inc. v. Marcel Fashions Group, Inc.*, No. 18-1086; regarding "preclusion" of a different claim, issue or defense which should apply to the courts as well; and in this case the 5th Circuit has said it has no jurisdiction over preclusion orders issued by the district court which is obviously not true and that Dawson defied the March 05, 2014, preclusion order

because she filed for temporary relief in defense of an action brought against her; in essence saying that temporary injunctions are lawsuits which they are not as opined in the 5th Circuit's decision dated December 12, 2019; ***Appendix B***. However, if the 5th Circuit has no jurisdiction; then who does? This is a question that should be resolved by this body in conjunction with procedural due process of civil law in which the Fifth Amendment forbids the United States to "deprive" any person of "life, liberty, or property without due process of law." The fourteenth amendment imposes an identical prohibition on the states. Due process is the ancient core of constitutionalism.

Ordinarily, this Court has not granted a rehearing for a Pro se litigant against a financial institution since its implementation in 1789; in which some are currently arguing in essence that this body is not sufficiently staffed as a last resort court for all 50 states; and that its members should be larger because folks like Petitioner are constantly having their rights violated with no equal representation; it is not just, right or fair when there are well established case laws that allows Pro se litigants to not entirely be held to the standards of lawyers; therefore their meritorious claims should be heard and not disposed of based on erroneous opinions and decision by the lower courts. Nevertheless, Petitioner is not seeking for a precedent but an exception to the normal operation of business as usual because what she has endured is horrific and someone should take the time to conduct a thorough review of the entire record in which this body do

not have as of yet and let the cards fall where they may because for an Appellate court to stipulate it has no "jurisdiction" over a final preclusion order, among other egregious violations should not be allowed to stand; and to accurately differentiate between a lawsuit and Temporary Restraining, TRO; (as not the same) because a TRO only last for a limited period of time; and in this matter was temporary relief for 14 days only. Therefore, Dawson did not defy the preclusion order that is preventing her from further proceedings. All because Respondent(s) have convinced the judge that since Petitioner's original lawsuit in 2010 was settled in which she entered into a settlement agreement (of a different claim) she should in essence be barred under *res judicata* from any future claims which was not accurate at the time nor is it accurate today in this matter. However, since financial institutions have favor with the courts whether their

assertions are true or not always prevail to the point of the Judge now calling lawyers "crazy"; see ***Appendix D***; pg. 2; because they are constantly introducing a bunch of unsubstantiated assertions and want the court to co-sign because of their favor with the courts; even when the court knew what they were putting forth was blatantly inaccurate and pointed out one impropriety in the transcript; ***Appendix D***; that Petitioner's property indeed had been "improperly accelerated': on pg 15; in accordance with the cited 5th Circuit decision in the Foreclosure Judgment Review; at ***Appendix B***; previously submitted; but was forced by protocol to disadvantage and disenfranchise Petitioner; which appears to have taken a toll on the court when he lashed out and referred to Respondent(s) as "crazy;" lawyers (as to say enough) in which Petitioner wholeheartedly agrees with because of all the wrong doing she has personally encountered; and

all the obvious disparities within our civil and criminal courts toward folks like her has been an overwhelming uphill battle in which all people should "matter" not just the powerful. Therefore, the Court's language and decision in the following case on pg. 8; should apply; ***Appendix C;*** *Lucky Brand Dungarees, Inc., et al., v. Marcel Fashion Groups, Inc.*, No. 18-1086; "Put simply, the two suits here were grounded on different conduct, involving different marks, occurring at different times. They thus did not share a "common nucleus of operative facts." Also, on pg. 9, "*Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 327-328 (1955) (holding that two suits were not "based on the same cause of action," because "[t]he conduct presently complained of was all subsequent to" the prior judgment and it cannot be given the effect of extinguishing claims which did not even then exist and which could not possible have been sued upon in

the previous case"). This is for good reason: Events that occur after the plaintiff files suit often give rise to new "[m]aterial operative facts" that "in themselves, or taken in conjunction with the antecedent facts," create a new claim to relief. Restatement (Second) §24, Comment f, at 203; 18 J. Moore, D. Coquillette, G. Joseph, G. Vairo, & C. Varner, Federal Practice § 131.22[1], p. 131-55, n. 1 (3d ed. 2019) (citing cases where "[n]ew facts create[d a] new claim')..." This is what Petitioner has been arguing all along but no one listens to her because she is Pro se and do not matter as previously discussed. Also, because she has presented factual documentation; case laws; and proof no one wants to hear because they would have to admit the truth and not show favor to Respondents. In addition, a final point to be made regarding the transcript in which the court would not let Dawson finish her answers and became frustrated or irritated when she tried to complete

her sentences and/or clarify; and is when she had to email the case manager not only to try and clarify but to find out why she told the Judge that Dawson was rude to her when the record speaks for itself in that Petitioner only emailed the case manager twice regarding the upcoming hearing date for September 18, 2018. The first email she got no reply then followed-up with a second email because of the gravity of the matter to ascertain if the scheduled hearing date was still valid after receiving the management order on September 13, 2018. In which one can see from the two emails on record there was nothing rude or offensive about them but in hind sight alleged as a catalyst for the following orders to be issued to make Petitioner look like a monster. She was already initially called a "liar" three times by the Judge as soon as the hearing commenced with such force and disdain and was asked what are you doing in my court; in which Dawson

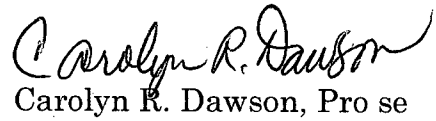
replied in a state of bewilderment that "counsel is here"; plus the case manager had emailed Dawson back informing her the hearing was still scheduled as planned. However, the transcriber omitted all of this; but all in attendance know it to be true, even the Fifth Circuit because Dawson was so upset, degraded and humiliated she cried all the way home and filed a complaint with the 5th Circuit to no avail because according to their webpage they do not act on complaints they are all dismissed; which is further affirmation Black people do not matter and can be treated less than human and absolutely no one will hear them. Nevertheless, but for the erroneous actions of the Respondent from A-Z, Petitioner has lost not only her homestead property but her and family's entire personal belongings in which the entire property household goods were confiscated because of Respondent's documented violations, lies and waiver not to respond; if

Petitioner filed a waiver her case would automatically be lost and Dawson is too old to start over from scratch and pray this Court for justice; mercy and reconsideration.

CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted and the case remanded.

Respectfully submitted,



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