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19-8851 ORIGINAL

United States Supreme Court

Washington, D.C.

FILED

JUN 08 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Sup. Ct. #

Peter SZANTO

PETITIONER, PLAINTIFF

From 11th Circuit Court of Appeals

18-15151 - DD

vs.

Alyce Jurgens

Appealed from USDC – Mid. Dist. FLA

8:18-cv-846 WFJ

APPELLEE, DEFENDANT

Appealed from USBC – Mid. Dist. FLA

8:17-ap-427 RCT

Petition for Certiorari

May it please this Most Honorable Court - comes now Petitioner, Peter Szanto, a *pro se* litigant, filing this Petition for Certiorari relief from the effects of incorrect, irrational and plainly harmful errors of the Court of Appeals, the District Court and the Bankruptcy Court.

The 11th circuit decided the matter appealed from 8/6/19. [EXHIBIT A]. Rehearing was denied on 1/10/20. [EXHIBIT B]. 90 days from 1/10/20 is 4/9/20. This Court's March 19, 2020 Order # 589 extended the due date to 150 days from 1/10/20 making June 8, 2020 the due date.

1
2 This petition is postmarked on the June 8, 2020 due date.

3
4 Neither of the parties is a corporation.

5
6 Accompanying this petition is a request for fee waiver.

7
8 **1. Two Questions Presented**

9
10 Petitioner presents his contentions relating to the trial court, the District
11 Court and the Court of Appeals' failures properly to apply **28 USC § 157(c)** to
12 Petitioner's claims. Thereby Petitioner was harmed, because his claims in the
13 amount of \$260,000 against Appellee were dismissed and deprived a trial.

14
15 The events are these: Petitioner was awarded \$12,000 of sanctions. The
16 Bankruptcy judge who made that award then retired. The successor, second judge,
17 immediately made procedural decisions which were intensely adverse and hostile
18 to *pro se* Petitioner (who also contends those procedural decisions were irrational).

19 Then, the remaining substantive portion of the case was dismissed based
20 on the theory that the sanctions award was *res judicata* to all of Petitioner's claims.

21
22 These are the harmful error events presented now.

23 Petitioner is elderly and terminally ill. Petitioner's time and ability to
24 prepare this brief were constrained by 4 weeks hospitalization with the Covid
25 virus. Other health issues have also made preparation herein difficult. Petitioner
26 would pray additional time further to develop and refine this certiorari petition.

1
2 **a. Disregard of Mandatory Rule 28 USC § 157(c)**
3

4 The first question for review is that contrary to **28 USC § 157(c)** there was
5 no final judgment entered by the District Court to cause any *res judicata* finality
6 regarding the substance and merits of Petitioner's claims. Thus, the decisions by
7 the Bankruptcy Court, the reviewing District Court and the Court of Appeals all
8 disregarded the fact that Petitioner's \$12,000 sanctions award **could not have been**
9 any final judgment on the merits, because the **mandatory provision** that "*any final*
10 *order or judgment shall be entered by the district judge*" was not complied with
11 **(28 USC § 157(c)): lack of District court judgment means a lack of finality.**
12
13

14 **b. Irrational Bias Towards Pro Se Petitioner**
15

16 There were two trial judges. During the first three years of Appellee's
17 Bankruptcy, Petitioner and the first trial judge dealt with each other professionally.
18 Matters in the first judge's Bankruptcy Court proceeded in conformance with law,
19 without any *pro se* litigant bias. Petitioner was given the dignity, decorum and
20 respect afforded litigants in most courts in the United States of America.
21

22 The second trial judge **immediately** demonstrated immense and palpable
23 bias towards *pro se* Petitioner. That bias took the form of denial of equal protection
24 of the laws as to important and significant procedural aspects of the adversarial
25 case. Petitioner contends the second trial judge's deprivations inflicted upon him
26 were blatantly improper and obviously irrational to any unbiased observer.
27
28

Petitioner contends that the second trial judge's clear denial of access to due process of law as to procedural matters regarding Petitioner provides **obvious and direct evidence** the second trial judge had the **requisite malicious intent** of mind purposefully to disregard the 28 USC § 157(c) law to Petitioner's detriment.

As such Petitioner contends that the actual disregard of 28 USC § 157(c) can be easily understood as **further intentional deprivation of equal protection** so that the second trial judge could purposefully inflict even further and more focused intentional **malicious harm** upon Petitioner.

c. Summary

Thereupon, Petitioner seeks reversal of the various lower court decisions which were based on denial of due process of law influenced by the improper and erroneous intent to inflict disparity of treatment upon *pro se* Petitioner.

2. MEMORANDUM

a. Two Substantial and Significant Deprivations of Law

The disregarded law which has created the need for review and reversal in this case is 28 USC § 157(c)(1) which mandates:

1
2 A bankruptcy judge may hear a proceeding that is not a core
3 proceeding but that is otherwise related to a case under title
4 11. In such proceeding, the bankruptcy judge shall submit
5 proposed findings of fact and conclusions of law to the
6 district court, and any final order or judgment shall be entered
7 by the district judge after considering the bankruptcy judge's
8 proposed findings and conclusions and after reviewing de novo
9 those matters to which any party has timely and specifically
10 objected.

11 **1. What Happened in the Trial Court**

12
13 The parties entered into a settlement agreement. The **one, absolutely most**
14 **essential provision** of that agreement was the return of a solid gold Rolex watch to
15 Petitioner. The agreement provided \$12,000 of sanctions to be paid to Petitioner if
16 there were a breach of the agreement to return the solid gold Rolex watch.

17 The settlement agreement was breached, **Petitioner's solid gold Rolex**
18 **watch was not returned to him.** The first Bankruptcy trial judge made two breach
19 of settlement agreement awards to Petitioner totaling **\$12,000 of sanctions.**

20
21 The Bankruptcy judge **did not** "submit proposed findings of fact and
22 conclusions of law to the district court" (28 USC § 157(c)) regarding the award of
23 sanctions.

24
25 As a matter of law, the fact that "findings of fact and conclusions of law
26 [were not submitted] to the district court" (*ibid*), it is clear that the sanctions
27 award was not "any final order or judgment."

1
2 Thereafter, the first Bankruptcy judge retired from his judicial office.

3
4 As clear demonstration of the second, successor judge's irrational bias and
5 hostility towards Petitioner (**for no other reason than Petitioner's pro se status**)
6 three very significant, purely procedural, events occurred.

7
8 First, the new Bankruptcy judge immediately (without hearing or warning)
9 revoked Petitioner's electronic filing privilege. ¹ This caused a very big increase in
10 Petitioner's litigation expenses, because thereafter every filing to the Tampa, FLA
11 Bankruptcy court had to be sent *via* FEDEX from Southern California (Petitioner's
12 home) to Tampa, Florida. (an extra \$38.50 for each filing).

13
14 Second, the new Bankruptcy judge **would not** grant additional time beyond
15 statute for Petitioner to file responses by physical mailing of those papers for filing.
16 This made the necessity of FEDEX even more critical so that Petitioner's filings
17 would be timely (IE, that is, the second Bankruptcy judge refused to consider that
18 filing electronically and being forced to file physical papers **were not equivalent**.
19 Cross-country physical filing necessitates completion at least 2 days prior to the
20 due date to give leeway for physical delivery. A paper due on Monday necessitated
21 four extra days of early completion to be certain of arrival by Monday for filing,
22 because in Petitioner's location there is no weekend processing. Unlike this Court,
23 the successor Bankruptcy judge refused to rely on the postmark).

24 ***1. The revocation / disconnection of Petitioner's electronic filing privilege was a surprise.***
25 ***Petitioner telephoned the court's electronic filing team anticipating to find just a service***
26 ***outage. During the course of the conversation, Petitioner asked if there were any cause***
27 ***for the rescinding of his filing privilege. The lead of the team responded that in fact***
28 ***Petitioner maintained his filings account better than most attorneys. Further evidence***
of the successor judge's bias is that the District judge did not impair Petitioner's
electronic filings!!

1
2 Third, the new Bankruptcy judge changed the only approved telephone
3 appearance vendor. During the first three years of the case the original Bankruptcy
4 judge allowed Petitioner to use nationally recognized as the premier telephone
5 appearance vendor, COURT CALL, to appear by telephone. There were no
6 incidents which impaired any appearance with the use of COURT CALL.

7
8 The second Bankruptcy judge changed the allowed telephone appearance
9 vendor. The sole new telephone appearance vendor was a local Tampa company
10 which did not possess (nor did they desire to obtain) the required technology to
11 connect calls from California. Thus, Petitioner's costs were further increased by the
12 need physically to appear in Tampa for hearings (added to the additional cost of
13 travel, lodging and food, Petitioner would also lose money from being away from
14 his business for four days each time he had to personally appear in Tampa).

15 There was no technical basis, nor cost savings, nor any other reason not to
16 allow COURT CALL to connect Petitioner's calls to the successor judge's court-
17 room. The new judge would not allow, nor would she entertain any argument to
18 reinstate COURT CALL to facilitate Petitioner's appearances.

19 Petitioner contends that these extra burdens purposefully heaped on him by
20 the second Bankruptcy judge were done intentionally to increase Petitioner's costs
21 of litigation, frustrate his efforts to pursue his claims and punish his *pro se* status.

23 **2. Petitioner's Case is Dismissed**

24
25 Thereafter, the new Bankruptcy judge dismissed Petitioner's claims on a *res*
26 *judicata* theory.

1
2 As continuing and further intentional disregard of the 28 USC § 157(c) law,
3 the judgment of dismissal **was not** “submit(ed as) proposed findings of fact and
4 conclusions of law to the district court.” (*ibid*) Contrary to law the final *res judicata*
5 decision **was not** “entered by the district judge after considering the bankruptcy
6 judge’s proposed findings and conclusions.” (*ibid*)

7
8 Petitioner was unsuccessful in convincing either the trial court, the District
9 Court or the Court of Appeals that **nothing** had been fully and fairly adjudicated –
10 and that **nothing** was *res judicata* to any part of the action.

11
12 The sanctions awards in the trial court were insufficient to create finality as
13 to Petitioner’s substantive claims.

14
15 **a. This Court’s Prior Decision**

16
17 This Court has reviewed *res judicata* many times, of relevance here is:

18 *In determining the validity of a plea of **res judicata** three*
19 *questions are pertinent: Was the issue decided in the prior*
20 *adjudication identical with the one presented in the action in*
21 *question? Was there a final judgment on the merits? Was the party*
against whom the plea is asserted a party or in privity with a
party to the prior adjudication?

22 *Blonder-Tongue Labs. v. Univ. of Illin. Found., (1971) 402 U.S. 313, 323-4*

23
24 Pursuant to *Blonder*, the only aspect of adjudication is that the parties are identical.
25 No substantive issue was ever decided. There was never any consideration of
26 merits. There was no final judgment on the merits.

1
2 Thus, the second Bankruptcy judge's *res judicata* reliance and decision were
3 just harmful errors which caused the matter to be decided erroneously, based solely
4 on bias towards *pro se* Petitioner; all to Petitioner's immense detriment.

5
6 Petitioner now approaches this Court with confidence that the plain and
7 obvious error that the **lack of finality, the absence of any and all decision on the**
8 **merits** and – most importantly – **no District Court Judge's entry of any final**
9 **judgment demonstrates that there was no *res judicata* final judgment as to any**
10 **matter in the underlying action.**

11
12
13 **b. Disparate Treatment Based on Pro Se Status Alone**
14

15 Petitioner realizes that for this Court there is a fundamental perception that
16 all Federal judges do an admirable job. That Bankruptcy judges are overburdened
17 and attempt to be as fair and impartial as possible.

18
19 And indeed, Petitioner has no criticism as to the first Bankruptcy judge.

20
21 However, as was discussed, the successor trial judge: a) revoked Petitioner's
22 electronic filing privilege; b) failed to allow extra time for physical filing by mail
23 or FEDEX; c) changed telephone appearance vendors to a Tampa local, unusable
24 from California telephone appearance vendor. All these depravations seriously and
25 dramatically impaired Petitioner's ability fully and completely to prosecute his
26 claims (and cost him unnecessary additional monetary expenditures).

1
2 The equal protection argument which arises is that Petitioner was treated
3 differently than local Tampa attorneys in the prosecution of the underlying case.
4 The disparity of treatment between *pro se* Petitioner and the local Tampa attorney
5 opposing Petitioner was dramatic, because Petitioner's access to the Bankruptcy
6 court was constrained by physical filing and very expensive cross-country personal
7 appearances.

8
9 However, Petitioner's standing and status before the successor judge's
10 Bankruptcy court *vis-a-vis* those opposing him should have continued in the
11 manner of equanimity as was the case during the tenure of the first Bankruptcy
12 judge.

13
14 The disparity of treatment arises because in the court environment where the
15 balance of equal standing between the parties should be indistinguishable, the
16 successor judge's Bankruptcy court nevertheless caused Petitioner's litigation
17 efforts to become hindered, burdensome and dramatically more expensive without
18 any rational basis. *Ross v. Moffitt* (1974) 417 U.S. 600.

19 From the successor Bankruptcy judge's creation of improper, unnecessary
20 and irrational burdens for Petitioner, it is easy to infer and imply that the second
21 judge would be inclined intentionally to misconstrue and misapply the *res judicata*
22 rule as well as the mandatory requirement that "any final order or judgment shall be
23 entered by the district judge." 28 USC § 157(c)

24
25 And that is precisely the harmful error that happened. This Court is asked
26 to reverse the *res judicata* dismissal and allow this matter to be tried.

1
2 ***c. Further Analysis***
3

4 Thus, the outcome in the trial court, the District Court and Court of Appeals
5 was to petitioner's detriment because what had been intended by the original
6 Bankruptcy trial judge as a sanction, was interpreted by the successor Bankruptcy
7 judge as a final decision on the merits. That incorrectly perceived decision on the
8 merits was then used to prevent petitioner from pursuing his well-founded claims
9 against Appellee.
10

11 Petitioner herein contends: had there been truth to the contention that the first
12 Bankruptcy judge intended that the sanctions be a final decision on the merits, he
13 would have proceeded according to **the strict mandate** of 28 USC § 157(c) and
14 "submit(ted) proposed findings of fact and conclusions of law to the district court."
15

16 Petitioner argues the only reasonable metric for the successor Bankruptcy
17 judge, the reviewing District court judge and the 11th Circuit Court of Appeals to
18 follow was that: **IF THE BANKRUPTCY COURT DID NOT ASK THE**
19 **DISTRICT JUDGE TO ENTER A FINAL ORDER OR JUDGMENT, THEN**
20 **THE JUDGMENT ENTERED WAS NOT ANY FINAL JUDGMENT!!!**
21

22 And if no final judgment were entered, then Petitioner was free to pursue his
23 claims against Appellee.
24

25 Thus, the foundation for review in this Court is Petitioner's contention that
26 the law – which should be applied identically in all courts – was not applied
27 properly to this case.
28

3. Grounds for Certiorari

a. Basis for Jurisdiction

This Court's jurisdiction arises from this Court's Rule 10(a):

a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power

Very specifically, jurisdiction arises from the 11th Circuit Court of Appeals' error, conflict with other court's decisions and departure from accepted application of law as arises from disregard of 28 USC § 157(c)(1) which provides "any final order or judgment shall be entered by the district judge."

Here, it was harmful error for "the bankruptcy judge (not to) submit proposed findings of fact and conclusions of law to the district court, and (thus not to allow the District judge to enter) final order or judgment" 28 USC § 157(c)

Petitioner suggests that a matter of grave concern for this Court should be whether, or not, Bankruptcy judges across the country are properly complying with 28 USC § 157(c) so as to obtain District court approval for their decisions.

Upon these ground there are three methods for reversal: a) that sanctions **are not** a final decision, and / or b) that lack of entry of a final judgment by the District Judge demonstrates that there was no final decision, and /or c) that the metric of finality to create *res judicata* simply did not occur in the case herein.

1
2 **4. Declaration of Petitioner Peter Szanto**
3

- 4 1. I am over 18 years of age.
5 2. The statements I make here, I would testify to, in person, under oath
6 before this Supreme Court.
7 3. All of the statements I have made in this application are true of my
8 own **personal knowledge OR are based on information** which I
9 believe to be true.
10 4. I declare under penalty of perjury under the laws of the United
11 States that the foregoing is true and correct. Signed at Irvine CA.

12
13 DATED 6-7, 2020 -


Peter Szanto

14
15
16 **5. Conclusion**
17

18 Petitioner's claims have merit and should proceed to trial in the
19 Bankruptcy court. This petition for certiorari is the first step to reverse those
20 harmful errors which occurred in the Bankruptcy trial court.
21

22
23 Most Respectfully,

24
25 DATED 6-7, 2020 -


Peter Szanto