

Case No. _____

IN THE SUPREME COURT Of THE UNITED STATES

In re Rosemary Ida Mergenthaler,
Debtor

Rosemary Ida Mergenthaler,
Debtor-Appellant-Petitioner
-against-

Dean Osekavage, Creditor-Appellee,
R. Kenneth Barnard, United States Trustee,
Trustees-Appellees-Respondents

PETITIONER ROSEMARY IDA MERGENTHALER'S

NOTICE OF MOTION

**FOR ORDER GRANTING NUNC PRO TUNC
LEAVE TO FILE UNTIMELY PETITION
FOR A WRIT OF CERTIORARI**

In Compliance with Rule 13.
Review on Certiorari: Time for Petitioning

**Rosemary Mergenthaler, Petitioner
C/o IMDIT PRO SE**

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RECEIVED

JUL 16 2019

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

**PETITIONER ROSEMARY IDA MERGENTHALER'S
AFFIRMATION IN
SUPPORT OF MOTION
FOR ORDER GRANTING NUNC PRO TUNC
LEAVE TO FILE UNTIMELY PETITION
FOR A WRIT OF CERTIORARI**

In Compliance with Rule 13.
Review on Certiorari: Time for Petitioning

Rosemary Ida Mergenthaler, Applicant *pro se* in this Petition for a writ of certiorari to a final order of the United States Court of Appeals for the Second Circuit, affirms under the penalty of perjury as follows:

1. I am the Petitioner in the instant Petition for a writ of certiorari in this United States Supreme Court.
2. I make this Affirmation to seek *nunc pro tunc* leave to resubmit my Petition for a writ of certiorari in this United States Supreme Court because it was timely filed however wrongfully rejected by a clerk of this Court.

**PETITIONER'S INSTANT PETITION
FOR A WRIT OF CERTIORARI IS TIMELY
OR SHOULD BE DEEMED SO *NUNC PRO TUNC*
In Compliance with Rule 13.
Review on Certiorari: Time for Petitioning**

3. Rule 13. "Review on Certiorari: Time for Petitioning of this Court" provides as follows:
 3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, or

if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) **runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.** **[Emphasis added]**

4. Viewing the foregoing, the instant Petition that was submitted to this Court on or about June 16, 2019 is timely because:

- (a) On or about July 30, 2018 the United States Court of Appeals for the Second Circuit issued its Original Order dismissing Petitioner's Appeal [See, USCA2 Docket: 7/30/2018 Doc # 97 - MOTION ORDER, denying as moot motion to reverse district court order dated 01/17/2018 [47] [USCA2 Dkt#18-266 [See, Apx: Page 9]
- (b) Thereafter Petitioner herein timely filed my Motion for Rehearing

[See, USCA2 Dkt # 102 17 pg, 1.24 MB **MOTION, for reconsideration en banc (only), on behalf of Appellant Rosemary Ida Mergenthaler, FILED.** Service date 08/22/2018 by US mail. [2376914] [18-266] [Entered: 08/28/2018 09:41 AM]

[See, USCA2 Dkt # 119 **MOTION ORDER, denying motion for reconsideration en banc (only),** [102] filed by Appellant Rosemary Ida Mergenthaler, copy sent to pro se appellant, FILED. [2403731][119] [18-266] [Entered: 10/04/2018 02:33 PM] [See, Apx: Page 7]

[See, USCA2 Dkt # 221 **PAPERS, affirmation in support of motion for panel reconsideration, on behalf of Appellant Rosemary Ida Mergenthaler,** RECEIVED.[2413150] [18-266] [Entered: 10/18/2018 12:08 PM]

Then again:

See, USCA2 Dkt #134 dated 2/19/2019 CA: **MOTION, to recall mandate and to issue briefing schedule, on behalf of Appellant Rosemary Ida Mergenthaler**, FILED. Service date 02/19/2019 by hand delivery. [2502356] [18-266] [Entered: 02/21/2019 03:47 PM]

See, USCA2 03/18/2019 **Doc #154 MOTION ORDER, denying motion to recall mandate, reinstate the appeal and setting forth a briefing schedule** [134] filed by Appellant Rosemary Ida Mergenthaler, by RAK, JAC, RSP, copy sent to pro se appellant, FILED. [2519767][154] [18-266] [Entered: 03/18/2019 11:46 AM] [See, Apx: Page 3]

The foregoing undisputedly shows that only on March 18, 2019 the USCA2 denied with finality Petitioner's appeal and closed the case.

If the above is not absolutely clear, then annexed to the Appendix Page #1 is the Order entitled NOTICE OF NON-JURISDICTION dated 3/27/2019 stating the foregoing:

NOTICE OF NON-JURISDICTION

This is to acknowledge receipt of papers dated 03/21/2019, in the case referenced above. Because this case was mandated on 01/16/2019 and **the previous motion to recall the mandate was denied on 03/18/2019** this Court no longer has jurisdiction to entertain your request. For this reason, your papers are returned unfiled.

Inquiries regarding this case may be directed to 212-857-8522.

[See, Apx: Page 1 - Annexed to Petition for Certiorari]

Viewing the foregoing this Petition is timely or must be deemed timely in the interest of justice and allowed to be filed with the Court.

PETITIONER'S MAILING ADDRESS HAS BEEN CHANGED AGAIN

5. Due to despicable criminal activities, which are more detailed in my instant Petition for a Writ of Certiorari, and can be proven beyond a reasonable doubt on court records, of the USCA2 acting in concert with the lower courts in glaring and willful disregard of most of the rules of the U.S. Bankruptcy Code, the Chapter 7 Trustee's Handbook, and 18 USC 153, 155, 157 and 1961, to convert my \$3,000,000.00 cash assets in the custody of Trustee Barnard, respondent herein, since about May 2016, Petitioner Rosemary and my husband Peter Mergenthaler have been literally homeless. We do not have enough food to eat nor do we have proper health care. Peter, 78 years of age, is going to be blind. We have moved from shelter to shelter. Our last mailing address that was specified on our Petition has recently been changed again.

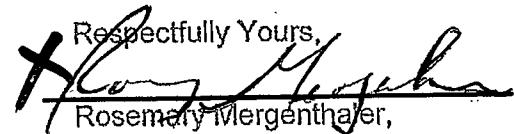
6. Our current mailing address is now as written on the first page of the instant Notice of Motion.

7. Any lateness in the filing of this motion is excusable because it is neither intentional nor due to inexcusable neglect by Petitioner in this matter. Indeed, I have never received any notice from the Court regarding my filing since June 16, 2019, and only on July 9, 2019 Peter could call and talk to Mrs. Nesbitt, and was advised that my Petition had been rejected and I would have to promptly send it back with the instant motion.

8. Also, since we have not received my original Petition back, may it please the Court to receive herewith a re-signed duplicate thereof.

WHEREFORE, I, Petitioner Rosemary Mergenthaler, respectfully move this United States Supreme Court to deem timely my Petition for a Writ Certiorari together with the already submitted Appendix thereto and grant other further relief that the Court may deem just, fair and proper

Dated: 10th Day of July, 2019

Respectfully Yours,


Rosemary Mergenthaler,
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LIST OF PARTIES TO BE SERVED

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Melissa Beth Levine, Esq.
Attorney for Dean Osekavage
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Bellmore, NY 11710

E.D.N.Y.-C. Islip
16-cv-2466
Seybert, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of July, two thousand eighteen.

Present:

Robert A. Katzmann,
Chief Judge,
José A. Cabranes,
Rosemary S. Pooler,
Circuit Judges.

In re Rosemary Ida Mergenthaler,

Debtor.

Rosemary Ida Mergenthaler,

Debtor-Appellant,

v.

18-266

Dean Osekavage,

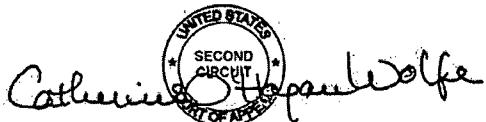
Creditor-Appellee,

R. Kenneth Barnard, United States Trustee,

Trustee-Appellee.

Appellant, pro se, moves for in forma pauperis ("IFP") status, "summary judgment," and to file an oversize opposition and supplemental pleading. Appellees move for extensions of time to file opposition papers. Upon due consideration, it is hereby ORDERED that Appellees' motions are GRANTED, nunc pro tunc. It is further ORDERED that Appellant's IFP motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e). Appellant's other motions are DENIED as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of October, two thousand eighteen.

In re: Rosemary Ida Mergenthaler,

Debtor.

ORDER

Rosemary Ida Mergenthaler,

Docket No: 18-266

Debtor - Appellant,

v.

Dean Osekavage,

Creditor - Appellee,

R. Kenneth Barnard, United States Trustee,

Trustees - Appellees.

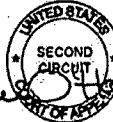
Appellant, Rosemary Ida Mergenthaler, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



**Additional material
from this filing is
available in the
Clerk's Office.**