

NO. 20-1713

IN THE SUPREME COURT OF THE UNITED STATES

SYMON MANDAWALA,
Petitioner,

v.

ERA LIVING Et al,
Respondent.

On Petition for Writ of Certiorari to the Washington State
Court of Appeals for the Division 1

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, petitioner Symon B. Mandawala ("petitioner" or "Mr. Mandawala") respectfully petitions this Court for an order (1) granting rehearing, (2) vacating the Court's October 4, 2021 order denying certiorari, and (3) re-disposing of this case by granting the petition for a writ of certiorari, vacating the Washington state superior court order to dismiss Mr. Mandawala's complaint, and remanding with instruction on further consideration to Washington Court of Appeals in light of Krupski v Crociere 130 S. Ct. (2010) for the purpose and in line to so many federal district courts permitting or leave to amend should be "**freely given.**" Forman v. David, 371 U.S. 178 (1962)

Mr. Mandawala submits his petition on the issue of lower courts denying him a one-time amendment of his complaint (Wash.Sup.C.R 15(a) and (c.) corresponding to Fed.R.Cv.P 15(a) (c.)), this court denial of his petition on that issue, this Court granted petitions for writ of certiorari raising the same issue as that raised in Mr. Mandawala' s case with respect to the lower courts must freely be given a plaintiff's a leave to amend the complaint once before defendant file responsive pleading. **Cert granted** Wanda Krupski, Petitioner v. Costa Crociere S.p.A # 09-337. He seeks rehearing on that part of the Complaint and Process amendment issue raised in his petition for a writ of certiorari. He recognizes that the Court also denied petitions for certiorari raising some conspiracy issues under 42 U.S.C 1985(2). Mr. Mandawala does not seek a rehearing on that aspect of that issue raised in his petition because the 5th Circuit court is looking at a similar issue right now in one case of that circuit. It is within this court's discretionary power to entertain that issue before the 5th circuit revisited it.

Mr. Mandawala challenged his state complaint dismissal with the superior court denying him an amendment to cure all deficiencies before Era Living put an answer on two grounds, both tied to his argument that question presented 2(a) falls. The Washington state's error in its opinion about Amended complaint and Process is not consistent with due process requirements in the

U.S. constitution. In the light of Foman v. David, 371 U.S. 178 (1962). This court said in considering whether to allow an amendment. The court may consider any undue delays, lack of notice, bad faith by the moving party, repeated failure to cure the deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendments. If these factors are not present, leave to amend should be **“given freely.”**

As grounds for this petition for rehearing, petitioner states the following:

1. Mr. Mandawala is challenging both the Washington court of appeals and Era Living's objection that Mr. Mandawala failure to put the name of the officer to the service of process package is the main reason for dismissing his complaint bases on **“ improper party identity.”** RCW 4.28.080 (9) corresponding to Fed..R.Cv.P 4(m) such views already rejected in a unanimous decision delivered by Justice Sotomayor's opinion in Krupski v. Crociere 130 S. Ct. (2010)

“That a plaintiff knows of a party's existence does not preclude her from making a mistake with respect to that party's identity. A plaintiff may know that a prospective defendant—call him party A—exists, while erroneously believing him to have the status of party B. Similarly, a plaintiff may know generally what party A does while misunderstanding the roles that party A and party B played in the “conduct, transaction, or occurrence” giving rise to her claim. If the plaintiff sues party B instead of party A under these circumstances, she has made a “mistake concerning the proper party's identity” notwithstanding her knowledge of the existence of both parties.” wrote by Justice Sotomayo (2010)

Thus, either this court or Mr. Mandawala should not ~~overrule~~ this court's rejections on ~~similar~~ objection of the **“Mistake of proper party identity”** on service of process. The officer of the corporation being Mistakenly unnamed does not change that Mr.

Mandawala was suing Era Living (**proper party**), not the principal officer receiving the process because of this court's opinion on Krupski v. Crociere 130 S. Ct. _____ (2010). it should stand as an opinion to Mandawala v. Era Living to Washington state court of appeal.

2. The Washington court of appeals opinion did not establish or mention any of these factors to support such hash denial of the court allowed amendment. Because Mr. Mandawala requested a one-time amendment of the complaint and was denied by just simply, the court lacks the discretion to allow him an amendment even though Era Living did not answer at all was the first time request. One wonders if leave to amend the deficiencies such as Mistake of proper party should be a rule for not a privilege based on court dislike the party or not. This is because the same court ordered to grant others a leave to amend.

Eventhough, the same Washington state court of appeals denied Mandawala to make a first time Amendment, it allowed other cases in similar situation and some plaintiff's that has already amend their complaint two or three times. This is the same Washington court of appeals instructing the trial courts that, **"if the defects in pleading or summon are amendable, the trial court should permit such amend, and deny any motion seeking dismissal of the claims on defects."** in re marriage of Marrison 26 Wn. App 571, 573-78 613 p.2d 557 (1980)

The same Washington courts of Appeals said in a similar issue, **"No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed (by the trial court) after objection for ratification of commencement of the action,..."**— words omitted citing Superior Court Rule 17 also Beal vs City of Seattle, 134 Wn.2d 769,780,954 P.2d 237(1993).

The Washington state superior court denying Mr. Mandawala a leave to amend the complaint is that the Era living motion to dismiss was untimely with at least 120 days. So for the court to grant Mandawala a leave to Amend undisputedly state rule

Wash.Sup.C.R 15 (c.) corresponding to Fed.R.Cv.P 15 (c.) relate back will apply, and Era living will not allow filing an answer. For that reason, the only way of buying back the 20-day presenting defense of insufficient service is the coercive tactic of demanding reservice of the process without the court's knowledge or leave. The timeline in Era Living letter to Mr. Mandawala to reservice the process does not support a standard court's period most courts allows parties to make an amendment. For Mr. Mandawala to follow the Era Living timeline is definitely could unintentionally be made Mandawala waiving Wash.Supe.CR. 15(c.), which corresponds to Fed.R.Cv.P 15(c.). Because of the out-of-time, the Era Living motion to dismiss the Era Living waived the challenge of Mr. Mandawala's complaint. Thu, coercive behavior is seen in Era Living counsel to Mr. Mandawala and the questionable comments of the trial judge "Mr. Mandawala should glad to get free legal help from Era Living counsel."

CONCLUSION

For the foregoing reasons, petitioner Symon Mandawala prays that this Court (1) grant rehearing of the order denying his petition for writ of certiorari in this case, (2) vacate the Court's October 4, 2021, order denying certiorari, and (3) grant the petition for a writ of certiorari, vacate the order to dismiss Mandawala's complaint and remand with instruction to Washington state court of appeal for further consideration in light of Krupski v Crociere 130 S. Ct. _____. (2010) for the purpose of "**Freely Given**" Mr. Mandawala a one time amendment of the complaint and process.

Date: October 21, 2021

Respectfully submitted,



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CERTIFICATE OF UNREPRESENTED

As the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2



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