

Case No. 20-7541 ORIGINAL

FILED
JAN 17 2021

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

BILLIAN JO, as Personal Representative of the Estate of Mee Jin-Jo,
Petitioner,
v.
JPMC SPECIALTY MORTGAGE LLC,
Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

All Circuit Courts have various Local Rules or Internal Operating Procedures (IOPs) that use Summary Orders to reduce judicial workload.

The Second Circuit has the Clerk analyze the case and write a decision, with the Clerk's name and signature, then issue the summary order. The other 11 Circuits issue summary orders, but under the Court's name, not with the Clerk's name or signature. Only in the Second Circuit the Clerk writes the decision and signs the Summary Order, like a judge, contrary to the 11 other Circuits.

The questions presented is whether the Second Circuit Clerks having equal discretion and powers to a judge is just, or the Second Circuit's system needs to be adjusted to be in line with the other 11 Circuits:

1. Is the Second Circuit Clerk having equal authority to a judge regarding Summary Orders appropriate under FRAP?
2. If records of the Clerk's unusual actions in my case are on PACER (Public Access to Court Electronic Records), with circumstantial evidence of corruption, but the Clerk wrote the decision, signed it and issued the summary order of a case, can this be considered fair and proper appellate procedure under FRAP and US Code?
3. If such actions of the Second Circuit Clerk continue without oversight of any Court, what chilling effect could it have on future cases?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), Petitioner states the parties to this proceeding are listed in the caption.

LIST OF PROCEEDINGS

Pursuant to Rule 14.1(b), Petitioner states the following list of proceedings:

Jo v. JPMC Specialty Mortgage LLC, No. 08-CV-00230, U.S. District Court for the Western District of

New York. Judgment entered June 21, 2018.

Jo v. JPMC Specialty Mortgage LLC, No-19-1616. U.S. Court of Appeals for the Second Circuit.

Judgment entered Aug 27, 2020.

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PETITION FOR CERTIORARI

Billian Jo, personal representative of the Estate of Mee Jin-Jo, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit was issued on Aug 27, 2020. As a summary order, it is unpublished and has been reprinted at App. A. The Second Circuit affirmed the decision of the United States District Court for the Western District of New York.

The District Court's order denying Petitioner's Motion for New Trial on March 28, 2019 is unreported and printed at App. B.

The Second Circuit's Oct 20, 2020 order denying En Banc Review is not reported, but is printed at App. C.

JURISDICTION

The judgment of the Second Circuit was entered on Aug 27, 2020. A timely petition for rehearing en banc was denied on Oct 20, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

The Appellate Circuit had jurisdiction under 28 U.S. Code § 1291.

INTRODUCTION

This case presents an important question of appellate procedure, that is currently splitting the Circuit and goes to the heart of appellate procedure in the United States. Each court formulates Local Rules and Internal Operating Procedures to streamline the judicial process, and work more efficiently. However, these procedures should maintain due process, and be clearly defined so the public and parties know what to expect when a case is filed, and practice within each Circuit remains consistent. If basic procedures are not followed, improper practices and favoritism can occur unchecked.

The Court's review is required to avoid different core proceedings between Circuits, and to make sure all IOPs and procedures adhere to the fairness and integrity of US Courts. This is the first case raising such an issue, and unless the system is examined and potentially fixed, will be again. Petitioner respectfully requests that this Court grant review.

STATEMENT OF THE CASE

A. Factual Background and Proceedings in the District Court

Jo rented and lived at the property known as 187 West 5th Street, Corning, New York for approximately 5 years with her family. In 2006, a foreclosure action was commenced on the house by the Defendant (“JPMC Specialty Mortgage LLC”),

against the landlord, who did not notify her tenant, Jo.

Jo's family was unaware of the pending foreclosure. Discovering the pending foreclosure just days before the eviction, Jo received information from the Sheriff's office that the property of no-fault tenants would be transported on the day of foreclosure for no extra charge. She assumed her property would be safe.

But the Defendant, JPMC, did not tell Jo the name or address of the moving company ("Advanced Moving Company") they had hired to transport her property. Finally learning the company's contact information after repeated inquiries, Jo visited them to claim her items, but was rebuffed on three separate occasions, and ultimately was unable to claim any of her property, since they would not release anything to her.

Beginning to suspect Advanced's intentions, Jo contacted the New York State Attorney General and Department of Transportation. Through their records, she came to learn the moving company was unlicensed and uninsured, having had their business license revoked roughly 6 months prior to this incident.

Alarmed, Jo requested JPMC's intervention. 6 letters via Certified Mail and Return Receipt were sent, alerting them to Advanced's illegal status, and refusal to return her property. JPMC never replied.

Ultimately, the Plaintiff filed suit in the Western District of New York on March 18,

2008, hoping to get her property back.

The claims in this case were conversion, violation of New York's "Truth in Storage" Act, N.Y. Gen. Bus. Law § 605-610, and intentional tort, for the property that was taken and never returned.

The case ultimately went to trial in June 2018.

During the trial, over Petitioner's strong objections, the trial court made evidentiary rulings that excluded important exhibit of this trial showing Defendant's wrongdoing and liability. The records from the NY Department of Transportation regarding Advanced's unlicensed and uninsured state were never shown to the jury, as were many other of Petitioner's exhibits.

Once the jury returned a verdict of "no cause of action," Petitioner Jo entered a timely Rule 59 Motion for New Trial, which was denied.

During the case, original Petitioner Mee Jin-Jo passed away, so Billian Jo proceeded as Personal Representation of the Estate of Mee Jin-Jo, with the permission of the court.

B. Proceedings in the Second Circuit

Jo timely appealed. As relevant here, she was challenging the fairness of a jury's verdict issued without seeing the important exhibits of a case.

She urged that certain evidentiary rulings did not follow Circuit rule, nor the law itself.

The Second Circuit issued a summary order which denied the appeal succinctly, signed by the Court Clerk.

Jo timely entered a Petition for Rehearing En Banc on Sept 11, 2020, because she was not assured the Summary Order, signed by the Court Clerk, had been reviewed and issued by the panel of 3 judges as per law. This was denied, also issued and signed by the Clerk.

The process left several questions, because of the conduct of the Clerk's Office, as the following shows:

Jo mailed 6 copies of her appeal brief and 3 copies of both volumes 1 and 2 of her appendix, per Local Rule, in one big box to prevent any loss or confusion. However, Volume 2 of her appendix went missing and was not filed on PACER, though Appendix Volume 1 and the brief was. App. D Frantic, via Express Mail Jo asked the Circuit Executive of the Second Circuit to help find the missing appendix, sending the evidence she had prepared.

Jo had been wary and mailed all her papers with Postal tracking, as well as recording video and the weight of the package she sent, which showed the missing part had been mailed and had to be in the Clerk's Office. Though the Circuit Executive never replied, the missing appendix was eventually found and filed, 19 days after the full package had been delivered. App. D

After Defendant filed an Objection Brief, Jo entered a Reply Brief. This was timely filed and entered with the proper caption on PACER, labeled “REPLY BRIEF, on behalf of Appellant Bilian Jo, FILED.” App. E. However, after a few days Jo discovered the contents on file were that of an unrelated case, Case #12-0000, clearly a switched brief. App. F. Jo entered a Motion to Stay to rectify this error, because not having her brief filed would prevent fair review of Petitioner's case and especially following prior issues in filing in this case, it seemed to be intentional tampering.

The Court's Summary Order denying Petitioner's appeal was issued on August 27, 2020, but was not mailed to Petitioner Jo, though per FRAP 45(c) and the Docket, the Clerk should have mailed it to her, as a pro se party. All other papers before had been received. Not receiving this led to Jo only discovering the denial 10 days late, and rushing to enter her Petition for En Banc review timely, by using USPS overnight service.

However, while USPS attempted timely delivery on Sept 9, 2020, they failed, posting, “No access to Delivery Location,” A second delivery attempt the next day was also not successful. A third delivery attempt, on Sept 10, 2020, was finally entered. But on top of the delays due to not accepting the delivery, the Petition for En Banc Review was stamped as having been received on the next day, Sept 11, 2020. App. G

This would have made the Petition very untimely under FRAP 40, and was precisely why Jo mailed it via Overnight with Tracking.

To avoid the Petition being dismissed as untimely, Jo entered an Emergency Motion to Rectify Date, entered on Sept 18, 2020, and requesting action by Sept 25, 2020. However, this motion was never addressed, and was automatically dismissed as moot when the Petition was dismissed.

Jo sent a complaint to Second Circuit Chief Judge Livingston on Sept 30, 2020, via tracked mail, complaining about all of these happenings. No reply was received.

Since no acknowledgment or any other result to the Complaint was received for over 2 months, Jo contacted the Clerk's Office again requesting some reply or acknowledgment of receipt of her complaint to the Chief Judge. This again had no reply. Since all mail to the Second Circuit passes through the Clerk's Office, Jo has come to believe all the mail she sent to the Circuit Executive and Chief Judge had not been delivered, since none of it received a reply.

Jo timely petitioned for review from this Court on Jan 15, 2021.

REASONS FOR GRANTING THE WRIT

I. This Case Presents a Perfect Vehicle to Resolve the Circuit Split on Appellate Procedure

The Summary Order issued by the Second Circuit on my case provides a perfect vehicle for the Supreme Court to determine the scope and use of so called 'summary orders,' and their proper use in today's courts. To save time, most courts and Circuits formulate and use IOPs that shorten and simplify judicial proceedings. This is lawful, and necessary for efficient court proceedings.

Up to 80% of orders in the Federal Circuits are said to be decided by Summary Order in recent years, and this has become an issue lately, as the public question the appropriateness of having such a large body of judicial writing be unpublished, and unbinding as precedent.

But the process itself is also a question, especially if one Circuit follows a different method than any other.

When it comes to basic proceedings, all Circuits need evenness and proper procedure, appropriate to corresponding laws. This regularity and transparency is especially important for all involved in the Court to know what can be expected, especially the parties.

But as my case shows, while other Circuits have Clerks follow procedures to complement judicial rulings and add efficiency, the Second Circuit has the Court Clerk take the judge's place in some sense. They issued and signed the Summary Order, as well

as the Order upon the Petition for En Banc Review questioning it, in my case.

Some other Circuits also issue unpublished Summary Orders following unanimous decisions by the 3 assigned judges, but these are issued in the name of the court. The Court Clerk does not sign these, and many courts have the judges issue the Order under their name. App. H

The IOPs for Summary Orders and Clerks' discretion is meant to assist cases.

But in the Second Circuit, the Clerk reviews, decides and issues the orders of a case, creating questions as this method of handling Summary Orders is very different from other Circuits.

All Circuits have the Clerks as vital help, with various levels of discretion and powers.

However, the narrow extent of the motions Clerks can decide in Appellate Court is explicitly written, as outlined in FRAP 45 and FRAP 27(b). Further local rules such as Fifth Circuit Local Rule 27.1 describe what constitutes motions Clerks may decide, so there is no uncertainty about what clerks can and cannot determine. App. I

The Clerk is not given the authority to decide dispositive issues, or sign them.

Court Clerks are meant to assist, but the Clerks of the Second Circuit have equal power to a judge, or even more so, the only circuit to do so, and no countermeasures in law to avoid abuse, as the issues in this case show.

II. The Second Circuit Clerk's Office Has Unchecked Powers

The Clerk of the Second Circuit decided like a judge, acting as a substitute not founded by any law or local rule.

The Summary Order issued in my case has the 3 judges' names, but it is signed by the Clerk, not even keeping with the Second Circuit's own IOP 32.1.1. And each question or complaint I have sent regarding the Clerk's Office seems to have gone missing.

Frankly this concern was why Petitioner contacted the Circuit Executive Jordan and Chief Judge Livingston, but no reply was ever received. The Clerk's office may have cut communication, in which case they have unilateral power to decide and control all cases in the Second Circuit. Each paper filed passes through the Clerk's hands, and there's no way to properly proceed a case if you cannot trust papers in the case are filed properly and timely, and that a judge will be able to review it.

As the Appendix shows, even the filing in my case has been disturbed by the Clerk's Office, at every step in a seemingly intentional manner. There is no oversight or counter to such actions, as lethal as they can be to a case. Without this basic belief, there can be no public trust in the Courts, when the basic process has doubts or suspicions.

The history detailed in Section B. Proceedings in the Second Circuit show the issues that raise questions to the actions of the Clerk's Office. If a party mails a paper via

tracked Postal Service and timely under the standards of FRAP, but cannot trust it will be filed on the date of receipt, how can a case be properly proceeded, especially by a pro se party? There is no reason why Plaintiff's Petition for En Banc Review could not have been delivered on Sept 9, 2020 a Wednesday. Or Sept 10, a Thursday. It was only after 3 delivery attempts the paper was accepted, when FRAP 45(a)(2) specifies:

"the court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays."

Yet, a paper first delivered by USPS on Sept 9, 2020, was stamped as received on Sept 11, 2020, making it untimely.

Due to the Emergency Motion to Rectify that date being dismissed, it is unclear whether the artificially delayed untimeliness of the Petition for En Banc review played a role in the Petitioner's Petition for En Banc being dismissed.

This case is filed due to the Petitioner's belief that proper judicial review did not happen in this case, due to the Clerk's interference.

III. A Blindspot in the Justice System

The Appellate Circuit exists as a recourse for parties who feel the decision of the trial court was unjust.

Jo appealed this case because the trial judge's rulings upon important exhibits were not consistent with Circuit precedent or law, and Petitioner felt the one-sided removal of

evidence led to the jury's verdict.

It was in hopes of Appellate review, that Petitioner filed her case.

But every step of the case received some form of interference, and if a judge even saw her case is in question.

The Petitioner's main brief, reply brief, Emergency Motion to Rectify Filing Date, Petition for En Banc review, were all, in various ways, tampered with. In fear, Jo mailed every paper with tracking, to ensure there would be proof of delivery. But even this did not ensure proper filing. And orders from the Court, such as the Summary Order, were not delivered to the Petitioner.

While there are systems for requesting review of judges' actions for Judicial Conduct, there is no legal recourse to complain or request investigation into clerks. This oversight in the American Court system allows the Clerks unchecked powers.

In desperation, Petitioner reached out to the Second Circuit Executive and Chief Judge. However, seeing the lack of reply, how do we know the complaint was even delivered?

If this continues, then where is justice in the American court system? The wall is already high for any pro se due to the lack of legal acumen, but when the cards are stacked even further by unchecked powers and uncovered parts of the system, nothing can be done.

This Petition respectfully draws this Court's attention to this systematic issue, and requests writ of certiorari so the powers and roles of Clerks may be determined, without inconsistencies between Circuit.

CONCLUSION

Ms. Jo respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,



The image shows a handwritten signature in black ink, appearing to read "Billian Jo".

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JANUARY 15, 2021