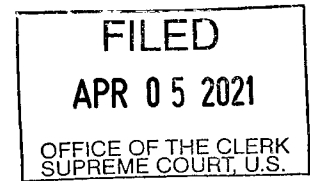


No. 20-7762

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

BINER MA — PETITIONER

VS..

CVS PHARMACY INC., et. al — RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATE COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a plaintiff has standing to sue while she did not act in reliance on the defendant's misrepresentation but another party acted in reliance on the truth of the misrepresentation and caused damage on her?
2. Whether a district court has the power to substitute a non-party who has never been served or waived to be served, and on whom the district court did not establish personal jurisdiction to bind adjudication?
3. Whether a Fed. R. Civ. P 12 (b) (6) motion of a non-party who has no engagement or interest in the causes of action, filed unlawfully by defendant's attorneys could be granted to dismiss the complaint?
4. Whether a defendant who violated the Federal Rules of Civil Procedures and refused to plead or otherwise defend since ever could be denied the Entry of Default under Fed. R. Civ. P. 55 (a) and instead be left in the case unresolved permanently?

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Biner Ma, Petitioner-Plaintiff

CVS Pharmacy Inc., Respondent-Defendant

CVS Health Corp. Respondent-Defendant

Randy R Hatfield, HR Manager of CVS Health, Respondent-Defendant

Highland Park CVS LLC., Respondent-Defendant

RELATED CASES

There is no related case

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 23, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 12, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment XIV to the U.S. Constitution: Section 1:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

2. Constitutional Standing Requirements under Article III, which were established by this Court based them on the authority granted by Article III of the Constitution and federal statute as follows:

“The ‘irreducible constitutional minimum of standing’ contains three requirements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-560 (1992). First and foremost, there must be alleged (and ultimately proved) an ‘injury in fact’—a harm suffered by the plaintiff that is ‘concrete’ and ‘actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Whitmore v. Arkansas*, 495 U. S. 149, 155 (1990) (quoting *Los Angeles v. Lyons*, 461 U. S. 95, 101-102 (1983)). Second, there must be causation—a fairly traceable connection between the plaintiff’s injury and the complained-of conduct of the defendant. *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 41-42 (1976). And third, there must be redressability—a likelihood that the requested relief will redress the alleged injury. *Id.*, at 45-46; see also *Warth v. Seldin*, 422 U. S. 490, 505 (1975)”; see *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102-04, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)

3. Federal Rules of Civil Procedures:

- 1) Rule 4 (k)(1): “In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant”.
- 2) Rule 12 (a) (1): “(A) A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint”.
- 3) Rule 12 (a) (4): “Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows: (A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court’s action; or (B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.”

- 4) Rule 17(a): "An action must be prosecuted in the name of the real party in interest"
 - 5) Rule 25. Substitution of Parties
 - "(a) DEATH"
 - "(b) INCOMPETENCY"
 - "(c) TRANSFER OF INTEREST"
 - "(d) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE."
 - 6) Rule 25 (a)(3): "Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4."
 - 7) Rule 55 (a): "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default".
4. Illinois Human Rights Act; 775 ILCS 5/7A-102 (D) (3):
- "If the Director determines that there is no substantial evidence, the charge shall be dismissed by order of the Director and the Director shall give the complainant notice of his or her right to seek review of the dismissal order before the Commission or commence a civil action in the appropriate circuit court. ... If the complainant chooses to file a request for review with the Commission, he or she may not later commence a civil action in a circuit court."
5. Local Rules of the United States District Court Northern District of Illinois:
- 1) LR. 5.6: "No pleading, motion [except for motion to intervene], or other document shall be filed in any case by any person who is not a party".
 - 2) LR 83.16. (b) "Who Must File. Except as otherwise provided in these rules, an appearance form shall be filed by every attorney or senior law student who represents a party in any proceeding brought in this Court".
6. Seventh Circuit Rules:
- 1) Cir. R. 3 (d): "An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented."
 - 2) Cir. R. 50: "Whenever a district court resolves any claim or counterclaim on the merits, terminates the litigation in its court (as by remanding or transferring the case, or denying leave to proceed in forma pauperis with or without prejudice), or enters an interlocutory order that may be appealed to the court of appeals, the judge shall give his or her reasons, either orally on the record or by written statement."

STATEMENTS OF THE CASE

On Nov. 27, 2015, Petitioner (thereafter “Ma”), an Asian woman, went to Defendant CVS Pharmacy’s store for a refund. However, because of racial bias, Defendant refused to follow the agreement with its customers and denied her the service of a full refund. When Ma opposed Defendant's discriminatory practice, Defendant called the police on her. While two big policemen arrived and moved to stand by the two sides of Ma, suddenly Defendant lied to the police to wrong her of harassing others, trying to get her arrested. At the moment, Ma was intimidated to death with shaking in fear and peeing in pants as she thought she would be wronged to jail (App. D, at 2).

After the incident, because of the psychological trauma resulting from Defendant’s false accusation with malicious intimidation, Ma suffered post-traumatic stress disorder with memory loss; then, the tremendous stress caused other problems and triggered her medical condition (Eczema) to keep flaring up and she fell into depression (App. D, at 3).

Ma filed a Discrimination Charge against CVS Pharmacy with IDHR. During IDHR's process, Randy Hatfield, an HR Manager of CVS Health (which is CVS Pharmacy's parent company), employed by CVS Pharmacy, and its attorney Alex Desrosiers made the misrepresentation that CVS Pharmacy's proper legal name is CVS L.L.C. to IDHR when they knew that CVS Pharmacy did not have the proper legal name of CVS L.L.C and CVS L.L.C. is not existing (App. D, at 15, 16, 17). Their intent was to induce IDHR and Ma to act in reliance on the truth of their misrepresentation to substitute CVS Pharmacy with a non-existing entity to aim at preventing Ma from seeking justice for the damages caused by CVS Pharmacy's discriminatory practice with malicious intimidation.

With the misrepresentation, Defendants induced IDHR to act in reliance on the truth of the misrepresentation and present Ma the Amendment to sign for substituting CVS Pharmacy with CVS L.L.C. Ma did not sign the Amendment. However, IDHR acted in reliance on the truth of Defendant's misrepresentation that CVS Pharmacy's proper legal name is CVS L.L.C. and substituted CVS Pharmacy with CVS L.L.C. to "correct name" for "technical error" (App. D, at 15).

On March 21, 2019, although Ma established all elements of a prima facie case of discrimination and proved that Defendant's articulated reason was mere pretext for discrimination, IDHR dismissed the charge, but notified Ma that under the Illinois Human Rights Act, she had the right to commence a civil action against CVS L.L.C. in the state circuit court within 90 days after the notice.

However, under the Illinois State Secretary's business database, CVS L.L.C. is not an existing entity (App. D, at 17). Since CVS L.L.C. is not an existing entity, there is no way that Ma could exercise her right and commence a civil action in the state court to seek justice for damage from it.

Defendant's tortious acts resulted in the deprivation of Ma's right to seek justice for the damages caused by CVS Pharmacy's discriminatory practice with malicious intimidation in the state court, which is a right granted by the Illinois Human Rights Act (775 ILCS 5/7A-102 (D) (3)) and guaranteed to all persons within the state by the Fourteenth Amendment to the Constitution (Amendment XIV Section 1).

On May 31, 2019, Ma filed this complaint with claims of Fraud, Civil Conspiracy and Violation of §1985 (3) in the United States District Court for the Northern District of Illinois against CVS Pharmacy, and it was served properly on June 11, 2019.

On July 2, 2019, CVS Pharmacy substituted itself with Highland Park CVS who had no engagement or interest in the causes of action and had never been served, by itself without any legal procedures. Then, its attorneys filed a Fed. R. Civ. P. 12 (b)(6) motion to dismiss the Complaint under the name of Highland Park CVS (App. E), whom they claimed that they were representing but refused to file the notice of appearance for it required by rules. Ma opposed it.

On July 23, 2019, Ma filed the Amended Complaint to add Defendants CVS Health and Randy Hatfield (App. D). On Sept. 20, 2019, Defendants filed a motion to join the newly-added defendants CVS Health and Randy Hatfield to Highland Park CVS' Rule 12 (b) (6) motion to dismiss (App. F). Ma opposed it as Highland Park CVS is a non-party.

On Sept. 29, 2019, Ma filed a motion with affidavit for the Entry of Default on CVS Pharmacy under Fed. R. Civ. P. 55 (a), as it violated Fed. R. Civ. P. 12 (a) (1) and refused to plead or otherwise defend since ever.

On October 23, 2019, after substituting CVS Pharmacy with Highland Park CVS by themselves without any legal procedures, Defendants changed their minds and filed a motion for substituting CVS Health with Highland Park CVS instead. Ma opposed it because the discrimination charge with IDHR was not a cause of action; who did the wrong in that charge was not relevant to this lawsuit, and Highland Park CVS had no engagement or interest in this action; and even if CVS Health were misidentified, Defendants could **only** dismiss CVS Health.

On Feb. 3, 2020, the District Court entered order to deny Ma's motion for the Entry Default on CVS Pharmacy, grant Defendants' motion to substitute CVS Health with

Highland Park CVS who had never been served or waived to be served and on whom the Court did not establish personal jurisdiction to bind adjudication, grant Defendants' motion to join CVS Health and Hatfield to Highland Park CVS' Rule 12 (b)(6) motion, and grant Highland Park CVS' Rule 12 (b) (6) motion to dismiss the Complaint (App. B).

On Feb. 28, the District Court entered Final Judgment to close the case while CVS Pharmacy still remains in the case since it neither pled or otherwise defended itself nor filed a motion for it to join Highland Park CVS' Rule 12 (b) (6) motion to dismiss, and leave CVS Pharmacy in the case unresolved permanently.

Ma appealed it to the United States Court of Appeals for the Seventh Circuit. The Appeal Court affirmed all the District Court's decisions, but refused to review the following key issues raised in the Appeal (see App. A).

- 1). Whether the District Court had the power to substitute CVS Health with Highland Park CVS who had never been served or waived to be served and on whom the Court did not establish personal jurisdiction to bind adjudication?
- 2). Whether a Rule 12 (b) (6) motion of the non-party Highland Park CVS who had no engagement or interest in the causes of action, prohibited by Fed. R. Civ. P. 17 (a) and Local Rule 5.6, and filed unlawfully by Defendant's attorneys who claimed that they were representing the non-party but refused to file the notice of appearance for it required by rules, could be granted to dismiss the Complaint?

Ma filed a petition for the rehearing, but the Appeal Court again refused to review these key issues raised in the Appeal but totally ignored in its decision (App. C).

REASONS FOR GRANTING THE WRIT

1. This Court should grant a writ of certiorari to address the issue of whether a plaintiff has standing to sue while she did not act in reliance on the defendant's misrepresentation but another party acted in reliance on the truth of the misrepresentation and caused damage on her to clarify the confusion, resolve the conflict and set the law to be followed nationwide in future

Under the constitutional requirements of Article III, "Plaintiffs have standing if they have been injured, the defendants cause that injury, and the injury can be redressed by a judicial decision." See *Morrison v. YTB intern. Inc.* 649 F3d.533, 536 (7th Cir. 2011); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102-04, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998); *Denney v. Deutsche Bank AG*, 443 F. 3d 253 (2nd Cir. 2006); *The Pitt News v. Fisher* 215 F. 3d 354 (3rd Cir, 2000); *Townes v. Jarvis*, 577 F. 3d 543 (4th Cir. 2009); *Barnes v. City of Cincinnati*, 401 F. 3d 729 (6th Cir. 2005); *Okpalobi v. Foster*, 244 F. 3d 405 (5th Cir. 2001).

Plaintiff satisfies the three requirements of Article III Standing:

- 1) Plaintiff was injured - the deprivation of her right to file a lawsuit in the state court to seek justice for the damage caused by CVS Pharmacy's discriminatory practice with malicious intimidation.
- 2) The injuries were caused by Defendants' misrepresentation that CVS Pharmacy's proper legal name is CVS L.L.C. to induce IDHR to act in reliance on the truth of the misrepresentation to substitute CVS Pharmacy with a non-existing entity to "correct name" for "technical error".
- 3) The injuries can be redressed by a judicial decision.

Therefore, Plaintiff has standing to sue and she *does not need* to enforce the other's rights because she has her own rights and interest in the claim.

The elements of a cause of action for fraudulent misrepresentation (or referring to "fraud", "fraud and deceit" or "deceit") are: "(1) false statement of material fact (2) known or believed to be false by the party making it; (3) intent to induce the other party to act; (4) action by the other party in reliance on the truth of the statement; and (5) damage to the other party resulting from such reliance"; see *Soules v. General Motors Corp.* (1980), 79 Ill.2d 282, 402 N.E.2d 599; *Steinberg v. Chicago Medical School* (1977), 69 Ill.2d 320, 333; *Roth v. Roth* (1970), 45 Ill.2d 19, 23; *Roda v. Berko* (1948), 401 Ill. 335, 339-40; *Bennett v. Hodge* (1940), 374 Ill. 326, 332.

Under the mathematical theory (the Fundamental Principle of Counting; see <https://www.csus.edu/indiv/j/jgehrman/courses/stat50/prob/counting.htm>), there are four possible cases in a fraud claim resulting from the plaintiff's reaction to the defendant's misrepresentation and the plaintiff's damage by the defendant's misrepresentation:

01. The plaintiff did **not** act in reliance on the defendant's misrepresentation, and the plaintiff did **not** have damage. Thus, under the requirements of Article III Standing, the plaintiff *does not have standing* to sue as it *did not have damage* caused by the defendant's misrepresentation.
02. The plaintiff **acted** in reliance on the defendant's misrepresentation, but the plaintiff did **not** have damage. Thus, under the requirements of Article III Standing, the plaintiff **does not** have standing to sue as it **did not** have damage caused by the defendant's misrepresentation.

03. The plaintiff **acted** in reliance on the defendant's misrepresentation, and the plaintiff **had** damage. Thus, under the requirements of Article III Standing, the plaintiff **has** standing to sue as it **had** damage caused by the defendant's misrepresentation if the injury can also be redressed by a judicial decision.

04. The plaintiff did **not** act in reliance on the defendant's misrepresentation, but the plaintiff **had** damage caused by another party's act in reliance on the defendant's misrepresentation. Thus, under the requirements of Article III Standing, the plaintiff **has** standing to sue as it **had** damage caused by the defendant's misrepresentation if the injury can also be redressed by a judicial decision.

For the first three situations (01, 02 and 03), the laws were long settled for the issues, but for the last situation (04), there is no law clearly set to deal with the issue.

Because there is no law to specifically address the situation, the District Court dismissed the claim as no standing to sue and enforcing other party's right simply basing on Plaintiff's no action in reliance on Defendants' misrepresentation but totally ignoring her injury caused by IDHR's action to substitute CVS Pharmacy with a non-existing entity in reliance on the truth of the Defendants' misrepresentation to "correct name" for "technical error", and *left Plaintiff with no remedy for her injury* (App. B, at 9-10).

Then, for the same reason, the Appeal Court affirmed the lower court's decision to dismiss the claim also simply basing on Plaintiff's no action in reliance on the Defendants' misrepresentation but totally ignoring her injury caused by IDHR's action to substitute CVS Pharmacy with a non-existing entity in reliance on the truth of the Defendants' misrepresentation to "correct name" for "technical error" (App. A, at 4).

The decision is in conflict with the decisions about the Article III Standing by this Court and many other United States Courts of Appeals; see *Steel Co. and others, supra*.

The ultimate element in a fraud claim is the plaintiff's damage caused by the defendant's misrepresentation rather than the plaintiff's reaction to the defendant's misrepresentation. In Consumer Fraud, for the similar situation, the Supreme Court of Illinois recognized that "[i]f others were deceived and acted in reliance on the deception in a way that harmed the plaintiff, the plaintiff is entitled to seek recovery for his damages under the Act even if he, himself, was not misled"; see *Oliveira v. Amoco Oil Co.* 776 NE 2d 151 (2002), 201 Ill. 2d 134, 267 Ill. Dec. 14; *Shannon v. Boise Cascade Corp.*, 805 NE 2d 213 (2004), 208 Ill. 2d 517, 281 Ill. Dec. 845.

Therefore, it is necessary for this Court to address the issue, clarify the confusion, resolve the conflict, and set the law to be followed nationwide in the future.

2. This Court should grant a writ of certiorari to exercise its supervisory power because the District Court's proceedings are so far departed from the accepted and usual course of judicial proceedings and the Appeal Court sanctioned such departures by the lower court

A. Substituting a non-party without establishing personal jurisdiction

Highland Park CVS has never been served or waived to be served, and the District Court did not establish personal jurisdiction on it; see Fed. R. Civ. P 4 (k)(1). Under Fed. R. Civ. P. 25 (a) (3), a non-party must be served "as provided in Rule 4" before being substituted.

"A court "without personal jurisdiction of the defendant" is wholly "without power to proceed to an adjudication" binding on that defendant"; see *Philos Technologies, Inc. v. Philos & D, Inc.*, 645 F.3d 851 (7th Cir 2011).

The District Court substituted CVS Health with Highland Park CVS who had no engagement or interest in the action, who had never been served or waived to be served and on whom the Court did not establish personal jurisdiction, without the grounds specified by Fed. R. Civ. P. 25, to destroy the diversity jurisdiction.

Because the District Court did not establish personal jurisdiction on Highland Park CVS to bind the adjudication on it, without a doubt, the Court's order to substitute CVS Health with Highland Park CVS is void.

However, the Appeal Court refused to review this key issue raised in the Appeal, by totally ignoring it, to sanction the lower court's departure so far away from the accepted and usual course of judicial proceedings (App. A).

B. Granting a non-party's motion filed unlawfully to dismiss the Complaint

Since the District Court's order to substitute parties is void as it did not establish personal jurisdiction on Highland Park CVS to bind the adjudication, Highland Park CVS is a non-party, who has no engagement or interest in the causes of action.

Fed. R. Civ. P. 17(a) states, "An action must be prosecuted in the name of the real party in interest", and Local Rules 5.6 states, "No pleading, motion [except for motion to intervene], or other document shall be filed in any case by any person who is not a party".

Also, Defendants' attorneys claimed that they were representing Highland Park CVS but refused to file the Notice of Appearance for it required by Local Rule 83.16. (b) and Circuit Rule 3 (d) either in the district court or in the appeal court. Apparently, Highland Park CVS never hired Defendants' attorneys to get itself sued. Their representations of Highland Park CVS were false, and their filings on behalf of Highland Park CVS were unlawful; see Local Rule 83.16. (b) and Circuit Rule 3 (d).

The District Court granted a Fed. R. Civ. P 12 (b) (6) motion of a non-party who had no engagement or interest in the action, prohibited by Fed. R. Civ. P 17 (a) and Local Rule 5.6, and filed unlawfully by Defendants' attorneys, to dismiss the Complaint.

However, the Appeal Court refused to review this key issue raised in the Appeal, by totally ignoring it, to sanction the lower court's departure so far away from the accepted and usual course of judicial proceedings (App. A).

C. Leaving a defendant in the case unresolved permanently

Under Fed. R. Civ. P. 12 (a) (1), CVS Pharmacy must answer within 21 days after being served. Under the FRCP, there is no rule allowing a defendant to substitute itself without any legal procedures. Also, neither the FRCP itself nor this Court has the language that the rules of procedures could be violated when one side is Pro Se.

CVS Pharmacy willfully violated the rules of procedures to substitute itself with Highland Park CVS, who had no engagement or interest in the action and had never been served or waived to be served, on its own without any legal procedure with the intent to turn the proceedings into another way to deprive Ma's right of justice, and refused to plead or otherwise defend since ever.

Fed. R. Civ. P. 55 (a) provides: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default" (either by the clerk itself or by court order). Thus, under Rule 55 (a), CVS Pharmacy is subject to default.

However, the District Court denied the Entry of Default under Fed. R. Civ. P. 55 (a) on CVS Pharmacy who violated the Federal Rules of Civil Procedures and refused to plead or

otherwise defend since ever, *without giving a reason for the denial* (see App. B), and instead it entered Final Judgement to close the case while CVS Pharmacy still remains in the case and leave it unresolved permanently.

The Appeal Court sanctioned the lower court's departure so far away from the accepted and usual course of judicial proceedings by making an excuse that when Defendants changed their mind and filed a motion for substituting CVS Health with Highland Park CVS instead of substituting CVS Pharmacy with Highland Park CVS (which they did by themselves), CVS Pharmacy "moved immediately to join the motion to dismiss. Because the district court granted that request, that motion altered CVS Pharmacy's time to file a responsive pleading" (App. A, at 5), without any factual or legal basis.

- 1) CVS Pharmacy did **not** file a Rule 12 motion timely itself (see App. E - Motion [13])
- 2) CVS Pharmacy did **not** file a motion for it to join Highland Park CVS' Rule 12 (b)(6) motion to dismiss either (see App. F - Motion [30]).
- 3) The District Court's order to grant "Defendants' motion [42] to substitute/clarify party defendants" had **two** parts; one was that "CVS Health Corporation is dismissed as a defendant" and the other was that "Highland Park CVS L.L.C. is added as a defendant" (see App. B, Order). Such order had nothing to do with CVS Pharmacy's failure to plead or otherwise defend, and it did **not** alter "CVS Pharmacy's time to file a responsive pleading" under Fed. R. Civ. P. 12 (a) (4).
- 4) The District Court's order (see App. B; Order) to grant Defendants' *all three motions, Motion [42]* (for dismissing CVS Health and adding Highland park CVS;

see App. B; Order), *Motion [30]* (for CVS Health and Hatfield to join Motion [13]; see App. F), and *Motion [13]* (filed by Highland park CVS to dismiss the Complaint; see App. E); it did **not** release CVS Pharmacy from the Complaint, and CVS Pharmacy remains in the case unresolved permanently.

Defendants' legal team, with its leading attorney who has been licenced for 25 years, well knew the rules of procedures. There is no technical error; the violations are all willful with no respect to laws. The District Court knew the wrong. So, it refused to give a reason for its denial on the entry of default, which is required by Circuit Rule 50.

The Appeal Court also knew the wrong. So, it refused to review the key issues raised in the Appeal to sanction the District Court's departures so far away from the accepted and usual course of judicial proceedings.

All the reasons foregoing loudly call for an exercise of this Court's supervisory power to rescue the rules of procedures for the sake of public interest.

CONCLUSION

Wherefore, the petition for a writ of certiorari should be granted.



Respectfully submitted

Date: April 5, 2021