

No. 20-8313

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jason Hunter Bell
(Your Name)

— PETITIONER



vs.

MACY'S CORP. SERVICES/MACY'S WESTFIELD MALL BROWARD
RAYMOND C. VEGA, III, individually
SHARI RHODES individually — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEAL FOR THE ELEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JASON HUNTER BELL

(Your Name)

1801 N W 75th Ave., Apt. 204

(Address)

Plantation, FL 33313

(City, State, Zip Code)

954-404-2030

(Phone Number)

RECEIVED

JUN 15 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION (S) PRESENTED

1. The issue is if the “Plaintiff timely Opted out of Arbitration.
 - 1A. Are records/software over 7 years old that are outdated and not currently in use, can be used by the Defendant’s to determine whether the Plaintiff, timely “Opted Out of Arbitration” without being authenticated, are they reliable?
 - 1B. Issue Plaintiff provided, an affidavit with bank statement with documentation from Macy’s Finance department/payroll division which corroborated evidence that start date was August 01,2020 and that he timely “Opted Out of Arbitration”
2. The issue the Clerk of Court entered a motion of default against Defendant’s for not responding to the court summons in a timely manner, Plaintiff denied due process (SEE DOCKT# 26,27, 28).
3. Issue the District Court dismissed Plaintiff **MOTION OF DEFAULT** against the Defendant. (SEE DOCKET#30,31,32) Plaintiff aggrieved by court actions.
4. Issue the Plaintiff filed a motion of default against the Defendant’s Macy’s, Judge Ruiz dismissed the motion and reset the deadline date. This action by the court aggrieved the Plaintiff and denied Plaintiff due process, once again

5. Issue the Defendant's were allowed to move forward in the case after the Clerk of Court enter a motion of default against the Defendant for not being timely?

Question did the district court error?

6. The District Court error when Defendant did not respond to Plaintiff "Amended Complaint" as order by Judge Ruiz. (**SEE DOCKET# 40**)

7. Question was it correct to allow Defendant to move forward without a Notice of Appearance, after the motion of default which later aggrieved the Plaintiff by this action which led to sanction by the court and denide Plaintiff due process.

8. The Court error when Defendant refused to participate twice in a joint schedule status conference ordered by Judge Ruiz and was allowed to move forward in this matter. Question was did the court have an inclination of favoritism in this matter.

9. Whether District Court error when it held an " ex parte" conference with only the Defendant Council present and Judge Ruiz. Plaintiff was aggrieved and denied due process by the District Court.

10. That the Plaintiff has been negatively impacted by the District Court order, that was flawed and deprived Plaintiff of due process. (**SEE DOCKET# 75**) order on motion to compel by the Defendant.

11. Whether Bell meet the Justiciability Doctrine Requirement and has standing as set forth by the Supreme Court?
12. Whether Bell established an adversarial relationship when employed by Macy's in a hostile workplace, EEOC complaint against the Defendant's and also litigation in the court shows that Bell has been aggrieved.
13. Question if Bell had standing would he meet the Supreme Court exception, *United States v. Munsingwear, Inc., 340 U.S. 36 (1950)*
14. Article III of the U.S. Constitution limits the jurisdiction of Federal Court cases and controversies, the Supreme Court made an exception to "**Mootness Doctrine**" that apply to Bell case. "**United States v. Munsingwear, Inc., 340 U.S. 36 (1950)**"
15. Whether Bell case that was dismissed by the Appeal Court on March 17, 2021, for lack of jurisdiction, if the Appeal Court made an error, would that make the decision/judgment flawed. What would be status of Bell case?
16. Bell injured his foot when ordered by supervisor Rhodes to climb a ladder to change lights in the ceiling. Bell is disable in accordance to the ADA of 1990 as Amended. We have causal and a concrete injury cause by the Defendant's

17. The Appeal Court errored in it's order dated March 17, 2021, it listed one of the Defendant's as a Ramond C. Vega III through out the order. Question is the Appeal order executable or valid?

18. Plaintiff ask if the Appeal order justifiable or executable since it's flawed?

19. That if the Defendant/Appellees retains the power to resume the practice or refile at any time, a motion to compel in the federal court may deem the case "*nonmoot*". Is the case still a live controversy?

LIST OF PARTIES

[V] 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:

RELATED CASES

Bell v. Macy's, No. 20-civ-60338 U.S. District Court for the Southern District of Florida. Judgment entered May 20, 2021.

Bell v. Macy's, No. 20-13968-J, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered March 17, 2021

Bell v. Macy's, No. 20-13968-J, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered April 30, 2021

Bell v. Macy's, No. 20-13968-J, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered May 10, 2021

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APPENDIX B --Bell v. Macy's, No. 20-13968-J, U.S. Court of Appeals for the Eleventh Circuit. Motion for Reconsideration of Panel Order DENIED
Judgment entered, April 30, 2021. (**SEE ATTACHED: Motion to Reconsider**)

APPENDIX C -- Bell v. Macy's, No. 20-13968-J, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered, Motion to Reply to Appellee Response, Notice of Receipt. No action taken by the Appeal Court, May 10, 2021.
(**SEE ATTACHED: Motion to Reply to Appellee Response**)

APPENDIX D -- Bell v. Macy's, No. 20-civ-60338 U.S. District Court for the Southern District of Florida. Filed and entered in District Court: July 13, 2020 Report and Recommendation by the Magistrate Judge Strauss.

APPENDIX E-- Bell v. Macy's, No. 20-civ-60338 U.S. District Court for the Southern District of Florida. Judgment entered October 13, 2020 in District Court " Order Affirming and Adopting Report and Recommendation and setting Bench Trial" (SEE ATTACHED: Order and Published Order)

APPENDIX F-- Bell v. Macy's, No. 20-civ-60338 U.S. District Court for the Southern District of Florida. Judgment entered: November 02, 2020 for Omnibus Order, (SEE ATTACHED: Order full docket text for document 81), (SEE ATTACHED motion filed by Defendant November 06, 2020 Motion to withdraw), Judgment entered November 12, 2020 for Order Granting Motion to Withdraw. (SEE ATTACHED: Order), Defendant filed on December 11, 2020 a Request for Scheduling Order or Status Conference. (SEE ATTACHED Request)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>United States v. Munsingwear, Inc.</i> , 340 U. S. 36, 39-40 (1950)	
Article III of the U.S. Constitution, 14 th Amendment	
<i>U.S. Constitution, Justiciability Doctrines</i>	
<i>Doctrine of Standing</i>	
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 560-61 (1992).	
<i>Flast v. Cohen</i> , 392 U.S. 83, 95 (1968).	
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STATUTES AND RULES	
28 U.S.C. § 1254(1) and state cases from 28 U.S.C. § 1257(a).	

United States v. Munsingwear, Inc., 340 U.S. 36 (1950).

Roe v. Wade, 410 U.S. 113 (1973)

Radian Guaranty, Inc. v. Whitfield, No. 07-834, the Supreme Court

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(preliminary injunction review mooted by entry of final judgment);

Claiborne v. United States, 127 S. Ct. 2245 (2007) (No. 06-5618)
(death of petitioner mooted criminal sentencing dispute).

Selig v. Pediatric Specialty Care, Inc., 127 S. Ct. 3000 (2007) (No. 06-415)

Roe v. Wade, 410 U.S. 113 (1973)

OTHER

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 D 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 MARCH 17, 2021

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: APRIL 30, 2021, and a copy of the order denying rehearing appears at Appendix B.

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).

STATEMENT OF THE CASE

1. November 13, 2018, Mr. Bell filed his EEOC complaint in person in Miami.
2. On that day, Mr. Bell provided telephone numbers to witnesses of the situation in addition to providing the SSI Disability approval letter and extensive medical records from the University of Miami.
3. The EEOC representative, refused the SSI Disability approval letter and the medical records from, University of Miami Orthopedic Dept. even after much insistence from Mr. Bell as this was the easiest way to prove his disability.
4. The EEOC rep instructed Mr. Bell that his documents wasn't needed and that someone would call him. The next week a phone interview was held.
5. Eventually there was a phone interview about my EEOC case, but nothing was ever investigated by EEOC. The SSI Disability approval letter was never asked for again, nor were the medical records reviewed. No witnesses were contacted.
6. April 22, 2019 Macys after previously requesting for a time extension, provided their response to Mr. Bell's EEOC claim/complaint.

6A. One such statement included a meeting that Mr. Vega had with Mr. Bell that never took place due to Mr. Bell working on his 2nd job that same day.

6B. A co worker was willing to provide a statement to EEOC that he and Bell was working their second job that day and time.

6C. The exhibits that Bell provided to EEOC with his reply to MACY'S response were the same weekly clock in times that Macy's provided in their response, that showed and proved that Bell didn't work that day.

7. The Report included falsified statements from managers Ms. Rhodes and Mr. Vegan, in their response to EEOC.

8. Mr. Bell responded in May of 2019 to the perjury committed by Ms. Rhodes, Mr. Vega, and MACY'S senior counsel Landon E. Pelkola who signed off on their statements. EEOC ignored his reply to MACY'S response to his complaint.

9. The response included the same exhibits that MACY'S used, but pinpointed the inaccuracies of their statements, in the fabricated documents they gave EEOC.

10. On June 26, 2019, MACY'S hired a crew to fix the OSHA violations men-
tioned

in the whistle blower complaint Bell reported to his supervisors and EEOC. Bell's reported the above to EEOC in his response May 2019. (Visual proof of this was later added to Mr. Bell's federal lawsuit, filed on February 14th, 2020) in an affidavit with pictures, of workers correcting the OHSA violations Bell reported.

11. EEOC would later redact parts of Bell's response when submitted to MACY'S. (Visual proof of this is available in the (Courts Exhibits 1,2,3,4,5, 6, 7).

12. November 18, 2020, EEOC granted Mr. Bell, a right to sue letter while dismissing his claims due to the inability to **authenticate** his disability claim. (See visual proof in exhibits submitted to District Courts)

13. This further proves that EEOC never investigated Mr. Bell's claims or even attempted to call SSI to verify his disability.

14. February 14, 2020, Mr. Bell filed his lawsuit against MACY'S for wrongful termination and violation's of ADA, (Case NO. 20-60338-Ruiz/Strauss).

15. Judge Ruiz dismissed the Plaintiff original complaint and order that the Plaintiff had six days to submit an Amended Complaint to the District Court or the case would be dismissed (DOCKET # 24) while Defendants where in default.

16. Defendants were in default May 04,2020, (**DOCKETS# 26,27,28,30,31,32**) never reprimanded by the court. The court reset the deadline on May 13, 2020, (**NO DOCKET#**). Defendant's joined the case on May 18, 2020. (**DOCKET#38**)

17. Defendants never filed a Notice of Appearance which is a mandatory Federal Rule procedure and once again Defendants were never reprimanded by the court.
(As an officer of the courts, she didn't have to follow federal procedure)

18. This pattern of turning a blind eye to every transgression from MACY'S, Defendant's would be a recurring theme throughout the proceedings.

19. Mr. Bell was denied due process because the defendants would not participate in the joint status conference as ordered by Judge Ruiz. (**SEE DOCKETS# 61**)

20. The defendants refused to participate in the joint status conference ordered by Judge Ruiz on 2 different occasions and was never reprimanded for it, by the the court. (**SEE DOCKET#34,61**)

20A. However the Defendant's did participate in a Arbitration pre trial Status Conference **"ex parte"** (**SEE DOCKET#81**) when Bell submitted an appeal.

21. The defendants were even granted their motion for a time extension after already being in default (5/22/2020). **(SEE CLERK OF COURT MOTION DEFAULT, (DOCKETS# 38)**

22. Defendants provided the wrong address to receive the motions and responses from Bell. **(SEE DOCKET# 50)**

23. Since the defendants never filed an official Notice of Appearance, the only address that was available was the one in the signature of the defendant's email.

23A. Defendants refused to respond to Judge Ruiz's order **(SEE DOCKET#40)**

26. Judge Ruiz even sanctioned Mr. Bell, forcing him to pay a \$25 fee to the courts when he was aware that the only income Mr. Bell had was a monthly disability check from Social Security. **(SEE DOCKETS# 70,71)**

REASONS FOR GRANTING THE PETITION

That the Court has deemed the Plaintiff appeal/case to be moot.

the Court states in it's order it no longer has the power to entertain the Plaintiff legal claims and must dismiss the complaint due to lack of jurisdiction.

That the U.S. Supreme Court has several exceptions to the Mootness Doctrine.

The Justiciability Doctrines Under Article III of the U.S. Constitution,

That the jurisdiction of federal courts are limited to actual, ongoing cases and "live" controversies. That the constitutional requirement under **Article III** of the U.S. Constitution, "**justiciability doctrines**", allow Plaintiff the right to invoke in federal court actions that could prevent Plaintiff's from maintaining a legal claim against the Defendants.

That Plaintiff has invoke his rights under the "**justiciability doctrines**" by filing a Motion for the Court to **Reconsider** his appeal and states that he was injured by the Defendants, when he was (A) ordered to claim a ladder at work by his supervisor and suffered (1) an injury to his feet and had an operation at the University of Miami department of Orthopedics in October of 2020, and is schedule for future surgery due to my injury. (2) wrongful termination due to being disable. (3) Defendants took away reasonable accommodation which caused Plaintiff injury. (4) That the Defendants action caused "concrete harm" to the

Plaintiff, that led to additional surgery.

The Plaintiff is still suffering from the injury and medical expenses to include rehab. (SEE Docket #1 Plaintiff original complaint and (SEE Docket # 25, amended complaint ordered by the district court).

(B) That the supervisor and management was responsible for a hostile and unsafe working environment. (SEE Docket # 1 and 25, with exhibits and medical documentation). (C) The Plaintiff request from the Court judicial relief by remanding the case back to the district court. (D) Request the court dismiss the Defendant motion to compel arbitration and stay with instruction to dismiss with prejudice.

(E) Plaintiff would like to move forward with complaint against the Defendant Macy's for wrongful termination due to a disability. (F) Plaintiff request the redressability of his physical injury and expenses for past, present and future medical expenses caused by the Defendants.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

The four elements of the justiciability doctrines that are available to the Plaintiff to maintain his legal claim against the Defendants in Court are. States Plaintiff, has standing because plaintiff is the proper party to assert a claim in federal court in this matter because he was aggrieved by the Defendants.

The Plaintiff case is Ripe because the facts of the case has matured into an existing substantial controversy warranting judicial intervention. Plaintiff case is justiciable, because the legal claim may be resolved only by the courts.

(**Flast v. Cohen**, 392 U.S. 83, 95 (1968). (**Nixon v. United States**, 506 U.S. 224, 226 (1993). The Plaintiff claim is justiciable and can be solved in court.

That Equitable, or prudential mootness, has been referred to as the "*cousin of the mootness doctrine*" and described as relating to the court's discretion in matters of remedy and judicial administration. Unlike Article III mootness, it addresses not the power to grant relief but the court's discretion in the exercise of that power. In some circumstances, a controversy, is sometime not actually moot, however it is so attenuated that considerations of prudence and comity for coordinate branches of government counsel the court to stay its hand, and to withhold relief it has the power to grant.

The Supreme Court has recognized several exceptions to the mootness doctrine (SEE In **Radian Guaranty, Inc. v. Whitfield**, No. 07-834, the Supreme Court ordered the Third Circuit's decision in that case vacated based on a *58-year old* Supreme Court decision, **United States v. Munsingwear, Inc.**, 340 U.S. 36 (1950). that, if found to apply to a case, which would permit federal court adjudication of the dispute. Some disputes or injuries may have the potential for recurrence, but always fail to last long enough to permit federal judicial review.

That in the Defendant response to the Plaintiff motion to reconsider alledge that theoretically the Defendant/Appellees as been aggrieved not the Appellant.

However the Supreme Court don't agree with the Defendant/Appellees theory.

The Supreme Court states that:

If a defendant voluntarily terminates the allegedly unlawful conduct or motion to compel after the lawsuit has been filed but retains the power to resume the practice or refile at any time, a motion to compel the federal court may deem the case "*nonmoot*". The Court will give the Defendants the ability to resume the motion to compel arbitration, if the Court don't reverse or vacate the lower court judgment and remand with direction to dismiss with prejudice.

The burden of persuading the court that a case has been mooted by the defendant's voluntary actions lies with the party asserting mootness, and the standard for such a determination is strict. However subsequent events make it absolutely clear that the allegedly wrongful behavior of the Defendants can reasonably be expected to recur based on the Defendants past actions against the Plaintiff.

Selig v. Pediatric Specialty Care, Inc., 127 S. Ct. 3000 (2007) (No. 06-415)

(mootness due to respondents' unilateral dismissal of complaint);

This exception is supported by the Supreme Court because, in addition to ensuring that the defendant is not "free to return to his old ways," there is "a public interest in having the legality of the practices settled. *Munsingwear* addresses what to do

with a court of appeals decision when the case becomes moot while it is pending on review by a higher court (whether the Supreme Court or a court of appeals). In *Munsingwear*, the Supreme Court held that, where intervening mootness prevents appellate review of the underlying decision, the decision in the lower court ordinarily should be vacated. The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way to the Court or pending a decision on the merits is to reverse or vacate the judgment of the lower court and remand with a direction to dismiss with prejudice.” 340 U.S. at 39.

Harper v. Poway Unified School Dist., 127 S. Ct. 1484 (2007) (No. 06-595) (preliminary injunction review mooted by entry of final judgment); *Claiborne v. United States*, 127 S. Ct. 2245 (2007) (No. 06-5618) (death of petitioner mooted criminal sentencing dispute). The Supreme Court explained that vacatur due to intervening mootness is an equitable doctrine designed to rescue a losing party whose only opportunity to have an adverse judgment set aside has been frustrated by either the “unilateral action of the party who prevailed in the lower court” or the “vagaries of circumstance.” *Id.* at 25 (“Vagaries of circumstance” would include the death of the petitioner in a case challenging a criminal sentence, as occurred in *Claiborne*, or the graduation of a high school student, which is part of what

mooted *Harper* (the preliminary injunction petition was also mooted by the district court's entry of final judgment in the case), the Appellant pray and seek relief from this Honorable Court and request the Court to remand the lower court by following the precedent set by the Supreme Court in matters such as this which has come before the Court this day, vacate the order by Judge Ruiz based on the erroneous Report and Recommendation of the Magistrate Judge Strauss.

That the lower court reinstate all Appellant/Plaintiff responses that were stricken by the court that contain vital evidence to the Plaintiff case to move forward through the lower court for the case is ripe for litigation for at present there is a purely legal issue, that only can be resolved by the Courts.

That the Court as in accordance with the Supreme Court has stated that a (the Defendant) a party that has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the remedy of *vacatur*.

Such cases are therefore not unreviewable, but simply unreviewed as a result of the losing party's own choice. Likewise, the Court has ruled that it is inappropriate to clear the path for future relitigation of the issues between the parties when the Defendant renders the case moot by voluntarily

agreeing to permanently withdraw its claims against the Plaintiff. In such instances, rather than wiping the slate clean in the manner contemplated by Munsingwear, the Court has ordered that the case be dismissed with prejudice to refiling so that it cannot be resumed in this or any subsequent action.

In *Munsingwear*, the Supreme Court held that, where intervening mootness prevents appellate review of the underlying decision, the decision in the lower court ordinarily should be vacated. The Appeal Court jurisdiction is generally not limited to the final decisions of the District Court, however the Appeal Court can make an exception in this case but chose not to. That the Supreme Court has recognized several exception to the "Mootness Doctrine"

Which states that the "Equitable or Prudential Mootness Doctrine" relates to the Appeal Court discretion in matters of remedy and judicial administration.

That the "United States v. Munsingwear, Inc. 340 U.S. 36 (1950)." has set an precedent which has stood for over 71 years. That the Supreme Court has ordered that a case be dismissed with prejudice to refiling so that it cannot be resumed in this or any subsequent action.

CONCLUSION

That dismissing the case with prejudice thereby prevents the regeneration of the controversy if the Defendant later changes its mind and attempts to relitigate the dismissed claims in federal court. UNITED STATES v. MUNSINGWEAR, INC.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jason H Bell

Date: June 10, 2021