

APP NO. 21A302

ORIGINAL

In the Supreme Court of the United States

ANGELA CAO
Petitioner,
v.

FILED
DEC 30 2021

BSI FINANCIAL SERVICES, INCORPORATED; CHRISTIANA TRUST, OFFICE OF THE CLERK
SUPREME COURT, U.S.
WILMINGTON SAVINGS FUND SOCIETY, STANWICH MORTGAGE LOAN
TRUST SERIES 2012-10, STANWICH MORTGAGE ACQUISITION COMPANY
INCORPORATED, CARRINGTON MORTGAGE SERVICES L.C.,

Respondents,

ANGELA CAO
Petitioner,
v.

SELENE FINANCE L.P.; MTGLQ INVESTORS L.P.

Respondents.

On Application for an Extension of Time to File Petition for a Writ of Certiorari to the
United States Court of Appeal for the Fifth Circuit

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE PETITION
FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

To the Honorable Samuel Alito, as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.3 and 33.2, Petitioner Angela Cao, respectfully requests that the time to file her Petition for Writ of Certiorari in this matter be extended for 30 days up to and including February 12, 2022. The Court of Appeals issued its judgment on September 9, 2021 (Appendix ("App.") A) and denied rehearing en banc on October 13, 2021 (App. B). Absent an extension of time, the Petition for Writ of Certiorari would be due on January 12, 2022. Petitioner is filing this Application more than ten day before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1).

Background

This case is a consolidation of two actions. When consolidation occurred, the first action had already reached a stage where core issues have been fully litigated and both parties sought resolution under the summary judgment standard. The procedure used to determine the matters provided an opportunity for review and gave notice of waiver for appellate review upon the failure to object to a magistrate's report. None of the parties filed objections and the district court entered order fully adopting the report. This judgment is conclusive as to the issues that were litigated, decided and necessary to the judgment. Issue preclusion under res judicata bars the matters from relitigation and the judicial decision on the issues divested the court of its jurisdiction over those particular controversies.

The second action involves the same plaintiff and the defendants are in privity to the defendants in the first. Thus, issue preclusion for matters decided in the first are applicable in equal force.

In this case, the judgment was relied upon and expressly incorporated into pleadings without any dispute as to its effect. Thusly, the court's jurisdiction extended no further than to effectuate it. However, the district court decided to take action *sua sponte* to reopen and modify matters previously determined and enter *sua sponte* summary judgment, nullifying the prior judgment without establishing its jurisdiction to do so. The final judgment was simultaneously entered without providing notice or an opportunity to respond. The district court was asked to reconsider whether it failed to consider the pleadings and the record, whether issue preclusion barred its authority over the matters and whether it failed to provide fundamental due process. The district court refused to determine its subject matter jurisdiction and denied reconsideration.

On appeal, the Fifth Circuit was asked to resolve whether the district court had authority over matters barred by issue preclusion, whether its review was an improper application of the clear error standard and whether the decision violated statutes and Cao's substantial rights. The Fifth Circuit refused to consider and exacerbated the issues when it inexplicably ruled on matters being jurisdictionally challenged without determining its jurisdiction to do so. The judgment was arbitrary; it affirmed upon different grounds that were newly advanced and manifestly *unsupported* by the record. A petition for rehearing reurged the Fifth

Circuit to consider the relevant issues that were properly before it and to provide basis for its jurisdiction; it refused.

Article III, statute and precedents standing for over a century by this Court and held in accordance by all other circuits, state that the courts have an “unflagging” obligation to hear and decide cases and that it has an affirmative duty to determine its jurisdiction, even upon its own motion. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976); *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884). The Fifth Circuit, however, disagrees.

This Court has long held that stare decisis carries enhanced force as to the principle of repose and reliance when it affects title to land. *United States v. Title Ins. Co.*, 265 U.S. 472 (1924); (quoting *Minnesota Min. Co. v. National Min. Co.*, 3 Wall 332, 334 (1865)). The Fifth Circuit, however, disagrees.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 30 days for the following reasons:

1. Petitioner is currently suffering from COVID and seeks an extension to recover.
2. There is need of this Court’s supervisory power; the Fifth Circuit has vastly departed from the accepted and usual course of judicial proceedings and sanctioned the same by the lower court. The Fifth Circuit deprived petitioner of her statutory right to appeal and violated her substantial rights to due process and equal protection. The judgments below are an act of ultra vires

and constitute an expansion of judicial power beyond Article III, in violation of the separation of power doctrine.

3. Additionally, this case squarely presents the exigencies to provide litigants stronger due process protections when courts act *sua sponte*; a highly debated question touched but not yet resolved by this Court.

Conclusion

For the foregoing reasons, Petitioner respectfully request that the time to file the Petition for a Writ of Certiorari in this matter be extended 30 days, up to and including February 12, 2022.

Respectfully submitted,



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