

No. 21-1280

Supreme Court, U.S.
FILED

OCT 14 2021

OFFICE OF THE CLERK

IN THE
Supreme Court Of The United States

Sherif A. Philips, MD,
Petitioner,

v.

Pitt County Memorial Hospital, Inc.,
Respondent.

On Petition For A Writ of Certiorari
To The United State Court Of Appeals
For The Ninth Circuit & Guam Supreme Court

PETITION FOR WRIT OF CERTIORARI

Sherif A. Philips, MD
1406 North Marine Corps Drive
Upper Tumon, GU 96913
Tel (671) 689-7611
sherifap@aol.com

QUESTIONS PRESENTED

Unrecognized Transfer The Case From Guam Superior Court To Guam District Court , even with *lack of Jurisdiction* lead To Default Judgement And Levi on Petitioner valuable Properties. And The Ninth Circuit Court of Appeal *Abuse Petitioner in Discriminatory manner as being Pro Se.*

I- Petitioner Pursuant To *Federal Question Jurisdiction (Due Process- Equal Protection Under the Law); Diversity Jurisdiction; Personal Jurisdiction (State of Domicile) and the disputed amount is over \$75,000.*

II- Petitioner Pursuant to *First Amendment, Fifth Amendment and Fourteenth Amendment*

III- Petitioner Pursuant To *Title 42 U.S Code & 1983* Appellant had been treated in discriminatory manner as *being Pro Se.*

IV- Petitioner Pursuant To *Fraud Upon The Court And Fraud in the Court* (North Carolina order was a default Judgement entered without any judicial assessment or Trial on The Merit of the Action. *This judgment wasn't final, where N.C rules and regulations guarded legal fees never been followed nor Rule 54 (2). Appellee was trying to enforcement in his favorite Court.*

V-Petitioner Pursuant To *Rooker- Feldman Doctrine*

VI- Petitioner Pursuant To *28 U.S.C Section 1407, Rule 42 (a) and 28 U.S.C Section 1404 (a) (For Consolidation and Transfer)*

PARTIES TO THE PROCEEDING

All parties are listed in the caption.

RELATED CASES

Philips v. Pitt County (Philips 1)
4:05-CV-97-F (3)
On 29 July 2005 - Eastern District of North Carolina

Philips v. Pitt County (Philips 2)
4:07-CV-49-F- Eastern District of North Carolina
On Dec 19, 2006

Philips v. Pitt County (Philips 3)
09-CVS-2652
On August 2009 State Court Case

Philips v. State of North Carolina, Pitt Count etc.
(Philips 4)
5:15- CV-95 F
Feb 15,2015 - Eastern District of North Carolina

Philips v. Pitt County (Philips 5)
CV 18-00046
Dec 26, 2018- Guam District Court

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceeding	iii
Related Cases	iii
Table of Authorities	v
Jurisdiction	1
Statutory Provisions Involved	1
Introduction and Statement of the Case	1
Argument	8
Conclusion	27
Appendix A – Ninth Circuit Court of Appeals Mandate, October 8, 2021	1a
Appendix B – Ninth Circuit Court of Appeals Order, September 30, 2021	3a
Appendix C – Fourth Circuit Court of Appeals Letter Denying Jurisdiction, September 14, 2021	5a
Appendix D – Ninth Circuit Court of Appeals Memorandum, August 6, 2021	7a
Appendix E – Supreme Court of Guam Order with Exhibits, August 27, 2021	11a

TABLE OF AUTHORITES

Cases

<i>Abada v. Charles Schwab Co.</i> , 300 F.3d 1112 (9 th Cir. 2002).....	10
<i>Action Embroidery Corp. v. Atlantic Embroidery, Inc.</i> , 368 F.3d 1174 (9 th Cir. 2004).....	26
<i>A.E.C. v. Internet Solution for Bus Inc.</i> , 509 F.3d 1161 (9 th Cir. 2007)	11
<i>American Ass'n of Naturopathic Physicians v. Hayhurst</i> , 227 F.3d 1104 (9 th Cir. 2000).....	12
<i>Bean Ltd v. Roller Derby Skates Inc.</i> , 366 F.3d 972 (9 th Cir. 2004).....	10
<i>Bianchi v. Rylaaradam</i> , 334 F.3d 895 (9 th Cir. 2003)	26
<i>Boschetto v. Hanging</i> , 539 F.3d 1011 (9 th Cir. 2008)	21
<i>Brady v. United States</i> , 211 F.3d 499 (9 th Cir. 2000)	11
<i>Brandt v. Am. Banker Ins. Co of Florida</i> , 653 F.3d 1108 (9 th Cir. 2011)	11
<i>Campbell v. Aerospace Corp.</i> , 133 F.3d 1308 (9 th Cir. 1997).....	10

<i>Crawford Country Homeowner Ass'n v. Delta Say & Loan</i> , 77 F.3d 1163 (9 th Cir. 1996)	21
<i>Cruz - Aguilera v. I.N.S.</i> , 245 F.3d 1070 (9 th Cir. 2001)	25
<i>Dental Serbs. v. Tani</i> , 282 F.3d 1164 (9 th Cir. 2002)	11
<i>Dep't of Fair Employment & Housing v. Lucent Techs, Inc.</i> , 642 F.3d 728 (9 th Cir. 2011).....	20
<i>Doe v. Rumsfeld</i> , 435 F.3d 980 (9 th Cir. 2006)	10
<i>Estrada v. Speno & Cohen</i> , 244 F.3d 1050 (9 th Cir. 2001)	11
<i>Exxon Mobil Corp. v. Saudi Basic Industries Corp.</i> , 544 U.S 280 (2005)	25
<i>FDIC v. Aaron Ian</i> , 93 F.3d 636 (9 th Cir. 1996).....	11
<i>Franchise Holding II v. Huntington Restaurant Group, Inc.</i> , 375 F.3d 922 (9 th Cir. 2004).....	11
<i>Gonzalez v. Metropolitan Transp Auth.</i> , 174 F.3d 1016 (9 th Cir. 1999)	10
<i>Gulf Oil Corp v. Gilbert</i> , 330 U.S. 501 (1947)	24
<i>Husian v. Olympic Airways</i> , 316 F.3d 829 (9 th Cir. 2002)	10
<i>In re Morris</i> , 363 F.3d 891 (9 th Cir. 2004)	24

<i>Jeff D. v. Kemp Thorne</i> , 365 F.3d 844 (9 th Cir. 2004)	11
<i>Johnson v. Reilly</i> , 349 F.3d 1154 (9 th Cir. 2003)	24
<i>Jorgensen v. Cassidy</i> , 320 F.3d 906 (9 th Cir. 2003)	13
<i>Kildare v. Saenz</i> , 329 F.3d 1078 (9 th Cir. 2003).....	24
<i>Kougasian v. TMSL Inc.</i> , 359 F.3d 1136 (9 th Cir. 2004)	26
<i>Kroske v. U.S. Bank Corp.</i> , 432 F.3d 976 (9 th Cir. 2005)	20
<i>Leader Nat'l Ins. Co v. Indus. Ins. Co.</i> , 19 F.3d 444 (9 th Cir. 1994).....	16
<i>Lim v. City of Long Beach</i> , 217 F.3d 1050 (9 th Cir. 2000)	10
<i>Maldonado v. Harris</i> , 370 F.3d 945 (9th Cir. 2004)	26
<i>Manufacture Home Communities Inc. v. City of San Jose</i> , 420 F.3d 1022 (9 th Cir. 2008).....	25-26
<i>Marrow v. Torrance Bank</i> , 189 B.R. 793 (1995).....	26
<i>Miller v. French</i> , 530 U.S. 327 (2000)	24
<i>Miller v. Grammies</i> , 335 F.3d 889 (9 th Cir. 2003)	24

<i>Nebraska ex rel. Dep't of Soc. Serve v. Bentson</i> , 146 F.3d 676 (9 th Cir. 1998).....	10, 21
<i>O'Connor v. Nevada</i> , 27 F.3d 357 (9 th Cir. 1994)	11
<i>Patel v. Del Taco, Inc.</i> , 446 F.3d 996 (9 th Cir. 2006)	10, 21
<i>Pesnell v. Arsenault</i> , 543 F.3d 1038 (9 th Cir. 2008).....	13
<i>Phoenix Eng'g & Supply Inc. v. Universal Elec Co.</i> , 104 F.3d 1137 (9 th Cir. 1997)	10-11
<i>Preminger v. Peake</i> , 552 F.3d 757 (9 th Cir. 2008)	10
<i>Providence Health Plan v. McDowell</i> , 385 F.3d 1168 (9 th Cir 2004).....	10
<i>Schnabel v. Lui</i> , 302 F.3d 1023 (9 th Cir. 2002).....	10
<i>Schwarzenegger v. Fred Martin Motor Co.</i> , 374 F.3d 797 (9 th Cir. 2004)	26
<i>Singleton v. Fifth Third Bank of Western Ohio</i> , 230 B.R. 53 (1999)	26
<i>Tripathi v. Henman</i> , 814 F.2d 659 (9 th Cir. 1987)	16
<i>Tucson Airport Auth v. General Dynamic Corp.</i> , 136 F.3d 641 (9 th Cir. 1998).....	24
<i>United State v. 2.164 Watches</i> , 336 F.3d 767 (9 th Cir. 2004).....	11

<i>United States v. Real Property</i> , 135 F.3d 1312 (9 th Cir. 1998).....	12
---	----

Constitutional and Statutory Provisions

U.S. Const. Amend. 1.....	1, 9
U.S. Const. Amend. 5.....	1, 9, 28
U.S. Const. Amend. 14	1, 9, 28
28 U.S.C. 1332.....	22-23
28 U.S.C. 1404.....	4, 24, 27
28 U.S.C. 1406.....	27
28 U.S.C. 1407	4, 24
28 U.S.C. 1446	22
28 U.S.C. 1466(b)(c)(1).....	2
28 U.S.C. 1655.....	2, 14, 23
42 U.S.C. 1983.....	1, 9, 27
Healthcare Quality Improvement Act Of 1986.....	12

Rules

Cal. Code of Civ. Proc. 8.212.....	17
Cal. Code of Civ. Proc. 1008(a)	2, 14
Guam Court Rule 3.....	16
Guam Court Rule 17.....	17
Guam Court Rule 30-1	16
Guam Court Rule 54.....	2, 15, 19, 28
Guam Court Rule 59.....	3, 12, 14, 15, 16

Guam Court Rule 60.....	3, 11, 12, 15
Guam Court Rule 62.....	3
FRAP 35	26

Hereby given that Appellant Sheriff A.Philips, MD Filed For Petition For Writ of certiorari to review the Judgment of Guam Supreme Court on August 27, 2021. And to review the Ninth Circuit Court of Appeal Memorandum on August 6, 2021, and denial of the petition for rehearing on September 30, 2021. Petitioner received an order of Mandate on October 8, 2021.

Petitioner is asking the court to consolidate his petition with the previous petition for writ of certiorari Sheriff Philips v. State of North Carolina etc. (copy enclosed) (Exhibit C)

JURISDICTION

THE JURISDICTION OF THIS COURT IS INVOLVED UNDER 28 U.S.C.1254 (1)

STATUTORY PROVISION INVOLVED

Due Process Of Law. The First Amendment, The Fifth Amendment, Fourteenth Amendment and Title 42 U.S Code & 1983

INTRODUCTION AND STATEMENT OF THE CASE

*1- On May 21, 2018, Pitt County lawyer tried to implement a disputed North Carolina order at his favorite court (*Guam Superior Court*). Prior to the resolution of the plaintiff's North Carolina Appeal.*

- 2-North Carolina order wasn't final and was a disputed legal fee *where North Carolina rules and regulation (Guarded legal fees never been followed nor Rule 54 (2) (b)*
- 3- North Carolina order *was defaulted judgment was entered without any judicial assessment or trial on The Merit of The Action.*
- 4- On October 10, 2018, Defendant-Appellant filed for Motion For *Clarification and Motion For Reconsideration To Review the order prior to enforcing the North Carolina Court order, Pursuant To Section 1008 (a) of the California Code of Civil procedure, reply To Summary Judgement Motion, Relief of All orders in violation of the law, Fraud Upon The Court, Grant Relief Under 28 U.S.C § 1655 And Set Aside Judgment for Fraud on the Court.*
- 5- On December 14, 2018, *On the evening of the summary judgment motion. Guam Superior Court Denied the defendant's Motion and requested for sanction.*
- 6- *As the result of this order, On December 26, 2018, Defendant-Appellant filed a new claims and request to transfer to Guam District Court. pursuant to 28 U.S.C § 1446 (b)(c)(1).*
- 7- On December 28, 2018, Defendant filed for *Motion To Transfer at Guam Superior Court.*
- 8- On January 2019 Pitt County filed for *Judicial Notice at Guam Superior Court.*

9- As a result of that, Guam superior Court **granted a summary judgment motion and bad judgment on January 24, 2019.**

10- On January 29, 2019, Defendant **filed for Rule 59 and Rule 62 at Guam Superior Court.**

11- Guam Superior Court **enforced bad judgment and Levi prior to the ruling of Guam District Court and the resolution of Guam Rule 59.**

12- On November, December 19, 2019, Defendant-Appellant filed for Rule 60 (b), **Rule 54(2) and Set Aside Motion at Guam Superior Court.**

13- On January 14, 2020, Guam Superior Court **Denied the defendant motion prior to oral Argument (No Transcript!)**

14- On January 27, 2020, Defendant-Appellant filed for the **First Appeal (CVA20-002) at Guam Supreme Court.**

15- Pitt County local lawyer kept filing **frivolous, malicious, and harassment motion (subpoena) at his favorite court (Guam Superior Court).**

16- Guam Superior court kept scheduled hearings without any agenda try to enforce North Carolina judgment and granted all motions of strike to Pitt County lawyer. **And enforced local administration issuses only on the appellant (Striking CVR 7.1 Form 1)**

(Omitted Citation- Functus Officio- Abuse of Discretion).

17- During ***one of these hearings (on June 3rd, 2020)***, Defendant got by surprise that the local RSA Lawyer was discussing ***The interpleader Motion.*** (without Appellant approval)

It looks to the appellant that ***The interpleader was as a side talk with the local RSA lawyer and the local Pitt County lawyer without the appellant's knowledge.***

18- On July 7th, 2020, RSA filed for ***Complaint About interpleader*** at Guan Superior Court.

19- On July 13th, 2020 Defendant filed for ***a Motion To Transfer***, removing the Interpleader Action To Guam District Court. pursuant to complete Diversity Jurisdiction and the disputed the amount is over \$75,000.

20- Appellant ***had no choice to file for the Second appeal at Guam Supreme Court On July 17, 2020 (CVA20-016).***

21-On July 30, 2020, Appellant Sherif A. Philips, MD filed for Motion - Petition pursuant to ***28 U.S.C SECTION 1407, Rule 42(a) and 28 U.S.C SECTION 1404 (a) (For Consolidation And Transfer)*** at Guam Superior Court.

22- On October 2, 2020. Guam Supreme Court Grant PCMH's Motion To Strike and Sanctions to PCMH.

(Failure to Order Transcript!) {CVA20-002}

23- Appellant Sherif A. Philips, MD was out of the island (Guam). Appellant asked the court for an extension for refilling the opening brief by Email. The appellant was asked to file a ***Motion for an extension. (Discrimination - Abuse of Discretion)***

24- Motion of extension was granted on October 8, 2020.

25- On October 14, 2020, Appellant filed for ***Petition for Reconsideration, Consolidation, Transfer to the Ninth Circuit and Relief From Sanction. {CVA20-002}***

26- On October 26, 2020, Appellant Filed for ***Reply To Opposition To Petition and Request For Sanction.***

27- On November 9, 2020, Appellant filed for Amended Opening Brief and Appellant Supplement expert of record. {CVA20-002}

28- On November 20, 2020, Defendant-Appellant filed for ***Reply To Appellee Motion To Strike. {CVA20-002}***

29- On November 20, 2020, ***Brief Schedule for Second Appeal. {CVA 20-016}***

30- On December, 1, 2020 Appellant filed for Motion ***To Strike Appellee's Motion For Enlargement of***

Time To File Amended Response Brief. {CVA20-002}

31- On December 14, 2020, the Guam Supreme Court order ***Dismissed Appellant Appeal.***

***(Abuse of Discretion - Omitted Citation - Moots)
(Up till now Appellant never been served with such order.) {CVA20-002}***

32-On December 14, 2020, Supreme Court order To Show Cause {CVA20-016}

33- On December 15, 2020, Appellant filed For ***Appellant Motion To Show Cause.***

34-On December 18, 2020, Appellant file for ***Appellant Opening Brief and Appellant***

***Supplemental Excerpts of Record {CVA 20-016}.
Appellant asked for the June 3rd hearing transcript (up till now wasn't available).***

35- On December 22, 2020, Appellant Filed ***For Petition For Reconsideration on Dec 14, 2020, Order And Petition For Consolidation & Transfer to 9th Circuit. {CVA-20-002}***

(Appellant never been ***Served*** with such order up till now)

36- On January 4, 2021 Pitt County local lawyer filed Motion ***To Dismiss The Appeal; Or In The Alternative Motion To Stay Briefing schedule on Appeal {CVA20-016}***

37- On January 15, 2021, Pitt County lawyer filed for a 14-day extension for ***Reply Brief by An Email which was accepted by the court (No written motion was requested) (CVA 20-016)***

38-On January 20, 2021, the Guam Supreme Court order for ***Granting Motion To Stay while the court considers and determines the Motion To Dismiss. (Abuse of Discretion)***

39-On January, 25,2021 Defendant filed ***For First Memorandum of Law For Enforcement of Consolidation & Transfer To 9th Cir Court Of Appeal (which was docketed on Both 9th cir. and Guam Supreme Court).***

40- On Feb 11, 2021 appellant filed for ***Reply to Appellee Opposition For First Memorandum of law For Enforcement of Consolidation & Transfer To 9th Circuit Court Of Appeal (Docketed in Both Court - 9th Cir and Guam Supreme Court)***

41- On Feb 26, 2021. Defendant field ***For Proof of Acceptance at 9th cir was docketed at Guam Supreme Court.***

42- On August 6, 2021, The Ninth Circuit denies appellant appeal due to lack of Personal Jurisdiction. ***(Unpublished Memorandum!)***

43- Appellant filed for a motion to consolidation and transfer to the Fourth Circuit.

44- Appellant also filed for Re-Hearing at the Ninth Circuit. **Which was denied on Sep 30, 2021**

ARGUMENT

45- Supreme Court of Guam is the ultimate ***authority on local matters, Appeal of questions involving The U.S. Constitution or Federal laws or treaties are treated by three-judges an appellate panel of the U.S. District Court of Guam (not to be dismissed at the clerk level. (Appellant was asking for consolidation, transfer prior asking for a review by The Ninth Circuit)***

46- Appellant never asked Guam Supreme Court to review North Carolina Ruling, Appellant was asked to review ***The Abuse of Discretion by Guam Superior Court.***

47- Even with the ***absence of personal jurisdiction over appellant (State Of Domicile) and after the appellant transferred his case to Guam District Court within the time allowed Guam Superior Court kept making bad rulings (Levi and public auction of the appellant private property).***

48- Appellant's case never been ***local Matters, It was a defaulted judgment was entered without any judicial assessment or trial on The Merit of The Action.***

49- ***A decision produced by Fraud Upon The Court is not, in essence, a decision at all and***

never become final (That was the case under the jurisdiction of the U.S Supreme Court since 2018).

50- The Federal Circuit Court's *duty to be satisfied that the law has been correctly applied to the fact (This was the main reason for consolidation and transfer)*

51- Appellant *lost valuable property (hospital privilege) and was deprived of the due process (This was a violation of the Fifth Amendment as well as of the Fourteenth Amendment)*

52- *Not only violated due process of law but also denied equal protection under the law even the law was creatively interpreted.*

53- Both Federal and State courts *was mishandled appellant claims in discretionary manner pursued that the law didn't recognize appellant claims or the court can't provide redress.*

54- Appellant pursuant to *The First Amendment, The right to petition the government for a redress of grievance and the right to ask the government to provide relief for a wrong through the court.*

55- Appellant case was a *Federal Court Case For The Federal Question Jurisdiction (Due Process, Fifth Amendment, Fourteen Amendment and Title 42 U.S Code & 1983), Complete Diversity Jurisdiction And The Disputed Amount over \$ 75,000. Appellant is*

asking for equal protection under the law (implement the law as prescribed). Appellant was treated in a Discriminatory manner as Being ProSe.

Constitutionality of Regulations is a review de novo *Preminger v. Peake*, 552 F.3d 757,765 n.7 (9th Cir.2008); *Doe v. Rumsfeld*, 435 F.3d 980, 984 (9th Cir.2006); *Ganzalez v. Metropolitan Transp Auth.*, 174 F.3d 1016, 1018 (9th Cir.1999)

56-Removal is a question of Federal subject matter jurisdiction reviewed de novo

(*Providence Health Plan v. McDowell*, 385 F.3d 1168, 1171 (9th Cir 2004); *Schnabel v. Lui*, 302 F.3d 1023, 1029 (9th Cir.2002);

D-Bean Ltd v. Roller Derby Skates Inc., 366 F.3d 972, 974 n.2 (9th Cir.2004); *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998 (9th Cir.2006);

Nebraska ex rel. Dep't of Soc. Serve v. Bentson, 146 F.3d 676, 678 (9th Cir.1998); *Abada v. Charles Schwab Co.*, 300 F.3d 1112, 1117 (9th Cir 2002); *Campbell v. Aerospace Corp.*, 133 F.3d 1308, 1311 (9th Cir.1997)

57-Finding OF Fact and Conclusion Of Law are reviewed for clear error

(*Husian v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir.2002); *Lim v. City of Long Beach*, 217 F.3d 1050, 1054 (9th Cir.2000); *Phoenix Eng'g & Supply Inc. v.*

Universal Elec Co., 104 F.3d 1137, 1140 (9th Cir.1997)

58-A district court's interpretation of the Federal Rules of Civil Procedure is reviewed de novo *United State v. 2.164 Watches*, 336 F.3d 767, 770 (9th Cir.2004)

{a} Appellant filed for undisputed claims of *Fraud Upon the Court and Fraud in the court on Both United States Supreme Court and United States Court Of Appeal Of the Ninth Circuit. (A decision produce by Fraud upon the Court is not in essence a decision at all and never becomes final.)*

A motion to set aside an enters of *default judgment and Rule 60 (b) is a review for an abuse of discretion*

(*Brandt v. Am. Banker Ins. Co of Florida*, 653 F.3d 1108, 1110-11 (9th Cir.2011); *Franchise Holding II v. Huntington Restaurant Group, Inc.*, 375 F.3d 922, 925 (9th Cir 2004); *Brady v. United States*, 211 F.3d 499, 503 (9th Cir.2000); *O'Connor v. Nevada*, 27 F.3d 357, 364 (9th Cir.1994); *Estrada v. Speno & Cohen*, 244 F.3d 1050, 1056 (9th Cir.2001)

A default judgment is void for lack of personal jurisdiction is a question of law reviewed de novo (*A.E.C. v. Internet Solution for Bus Inc.*, 509 F.3d 1161, 1165 (9th Cir.2007); *FDIC v. Aaron Ian*, 93 F.3d 636, 639 (9th Cir.1996); *Jeff D. v. Kemp Thorne*, 365 F.3d 844, 850 (9th Cir.2004); *Dental Serbs. v. Tani*, 282 F.3d 1164, 1167 n. 7 (9th Cir 2002);

American Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1109 (9th Cir. 2000); United States v. Real Property, 135 F.3d 1312, 1314 (9th Cir. 1998)

{b} Failure To Obtain Substantial Justice at North Carolina Courts (Federal § State) Lead To File For Such Claims.

{c} Failure To implicate Healthcare Quality Improvement Act Of 1986 (HCQIA), Ignorance about rules and regulations to enforce Summary Suspension Physician-Hospital privilege (as corrective action). intentionally enforced such corrective action to destroy Appellant's carrier and reputation.

{d} Appellant lost his hospital privileges for none professional review issue, all the corrective action was done by the Board of Trustees and neither PCMH nor their physicians are State Actors to be awarded absolute immunity.

{e} The Appellee's lawyer was asking for his entire legal fees, cost, and paralegal for One Claims never contended (granted by N.C lower court and affirmed by North Carolina Court of Appeal.

{f} Appellant, Sherif A. Philips, MD filed for an appeal of Rule 59 and Rule 60 (b) at Both North Carolina lower court and North Carolina Court of Appeal (After 2 years the Appellant's appeal was dismissed in his

absence by N.C lower Court (No Pending Appeal Docketed) (Fraud in The Court)

{g} North Carolina order was a default judgment entered without any judicial assessment or trial on The Merit of the Action.

{h} A decision produced by Fraud Upon The Court is not, in essence, a decision at all and never become final

*{l} Appellant filed on multiple occasions for consideration a **Recusal of N.C Trial Court Judge.** The Appellant's request was denied. If the judge was asked to **recusal and judge refused.** This is a good example of his appearance of **partiality. (up To 5 times)** (*Pesnell v. Arsenault (9th Cir.2008) - Jorgensen v. Cassidy (9th Cir. 2003)*)*

{j} Should a judge not disqualify himself, then the judge is violating Due Process.

*{k} Before the ruling of the North Carolina lower Court, Appellee's try to enforce **North Carolina Disputed legal fees at Guam Superior Court (Favorite Court)***

*{l} North Carolina Court order wasn't **final and was a disputed legal fee where N.C rules and regulation guarded legal fees never been followed nor Rule 54(2).***

It was a Summary Judgment Motion,** according to N.C § 6-21.5 Attorney fees in none-justifiable case **Rule 50 or a Motion of Summary

Judgment is not in itself a sufficient reason for the court to award them an attorney's fee.

{m} Abuse of Discretion at Guam Superior Court

- (1) *Even with lack of Jurisdiction over Defendant-Appellant (Appellant State of Domicile is never been Guam* The court denied the *motion to dismiss, counterclaims, the request of hearing Rule 59 and Rule 60 (b)*
- (2) The trial court *claimed* in her order for *Rule 60 (b)* that the court was *willing to review* the North Carolina order before enforcement by filing a separate motion or during a *summary Judgment motion*. Appellant followed the trial court recommendation.
- (3) Denial, *Appellant's Motion* for clarification, and motion for reconsideration to review the order prior to enforcing the North Carolina order, pursuant to Section 1008(a) of California code of civil procedure, replay for Summary Judgment Motion, relief of all orders in violation of law, Fraud Upon the Court, Fraud in the Court, Grant relief of all orders under 28 U.S.C § 1655 and Set Aside For Fraud on the court.

(On the night of Summary Judgment Motion Hearing and even request for sanction was order).

- (4) Trial court *granted Summary Judgement Motion to Appellee, Even after Appellant filed*

for New Claims, and Request to transfer the case to Guam District Court.

(5) The trial court erred from granting Summary Judgment Motion to Appellee even by saying what was in his complaint (**Against Rule 50**).

(6) *At any time as a defendant, Appellant has the right to remove his case to Guam District Court.* Once the case has been removed from State To Federal, *The State Court no longer has jurisdiction over the matter*

(7) *Unrecognized motion To Transfer To Guam District Court and Rule 59* (which was filed within 10 days after granting *Summary Judgment Motion.*)

(8) *Enforcement Bad Judgment and Levi prior to the ruling from Guam District Court and the resolution of Rule 59.*

(9) Denial Appellant's Motions for **Rule 60 (b), Set Aside Judgment, and Rule 54(2)(b)** on Jan 14, 2020, before the hearing (**No Oral Argument**).

(10) The trial court on her *Post Judgement Order, claimed that motion to transfer to Guam District Court wasn't True.*

(11) *Negligence about Rule 54 (2)(b) and Statue of limitation.*

(12) Requesting for remote hearing without **any agenda twice** (on June 3, 2020, and July 29, 2020).

{n} *Abuse of Discretion at Guam Supreme Court First Appeal # CVA 20-002*

(1) Dismissing the appeal on *Summary Judgment Motion against Rule 3(c) (3)*

(The time for filing a notice of appeal is tolled if Rule 59 is filed)

Leader Nat'l Ins. Co v. Indus. Ins. Co., (9th Cir. 1994); Tripathi v. Henman, (9th Cir. 1988)

(2) After five months the court strike the appellant opening briefing (Even after the appellant asked for *Motion-Petition For Consolidation and Transfer to The Ninth Circuit Court of Appeal. (Omitted Citation). (No Transcript was ordered and missing appellant's supplemental expert of record and grant sanction)*

(3) Appellant was *pursuant to circuit Rule 30-1. The Expert of Record. No experts required for Pro Se Party.* Counsel for appellee must file supplemental experts of record that contain all the documents that are cited in the pro se *opening brief (Page 8 of the opening brief).*

(4) When the petitioner asked to strike responder supplemental expert of record due to lacking the *petitioner exhibits. The court denies his motion and asked for sanction (Against Circuit Rule 30-1).*

(5) No Transcript was available because the trial court made her ruling prior to the hearing (The Appeal never been dismissed in The Merit)

*(6) On Dec 14, 2020, The court **dismissed** the appellant appeal (fail to file a compliant brief and Appellant Supplemental Expert of Record)*

(Up Till now appellant had never been served with such order)

*(7) Appellant refilled for **Amended Opening Brief and Appellant Supplemental Expert of Record as requested by the court (which was denied at the clerk level as usual (Abuse of Discretion) (appellant had been treated in a discriminatory matter as been Pro Se.***

(8) Denies Appellant Motion To Strike the entire Appellee Opening Brief (Appellee missed the due date apply for an extension from default. According to Rule 8.212 (b) of the California Court of Appeal. Any party need not apply for an extension or relief from default.

(9) Even Appellee filed for a Second Request of Extension (The reason was an excess of surprise client demands and deadlines for work on unexpected fast schedules!) by phone and Email which was granted by the court. According to GRAP17 (C) (1) To grant an extension of time under this rule will bar any further motion to extend the brief's due date unless such a motion which filed in writing, demonstrate extraordinary and compelling circumstances.)

(10) Dismissing the petitioner's appeal for **None - Compliance Opening Brief** was a **Cover- Up by the court for the responder mistake for missing the due date of filling.**

Second Appeal #CVA 20-016

(11) Appellee tried for dismissal of the appellant appeal 1st on **Lacking Of Jurisdiction Statement** and 2nd of not paying **The Docket fee!!**

(12) As usual the appellee **unrecognized the statement of jurisdiction which was included within the Notice Of The Appeal (approved by the court).**

(13) Court order for schedule **The Opening Briefs. After the appellant docketed the appellant opening brief and the appellant's supplemental expert of records. Appellee filed multiple frivolous meaningless motions of strike request for extension of time motion to dismiss and stay which was granted by the court.**

(14) As far appellant's knowledge, **If the appellant filed for Motion of Reconsideration the motion was supposed to be run by a different panel of judges (3 of them from U.S. District of Guam if Appeals of question involving U.S Constitution or Federal laws or treaties) (Not To Be Dismissed at Clerk level). (This information is coming from Guam Supreme Court Web site).**

(15) *Appellant filed a petition To Set Aside Judgement, Reconsideration and Review by the Ninth Circuit at both The Ninth Circuit Court of Appeal and Guam Supreme Court. due to lack of Jurisdiction and Fraud (which was denied)*

(16) *No reason was given why Guam Supreme Court dismissed the second appeal*

(Abuse of Discretion)

(17) *All the motions of strikes, stays, and extension of time filed by the appellee had been either a strikeout or denied by the Ninth circuit. (NOT ON GUAM COURTS)*

(Abuse of Discretion)

(18) *Even Appellant's opening brief and expert of record got approved by the Ninth Circuit!!*

(19) *The keystone for the appeal at Guam Supreme Court was*

(a) Lack Personal Jurisdiction over appellant, Diversity Jurisdiction and Federal Question Jurisdiction

(b) Transfer To Guam District Court within the limited time approved by the statute.

(c) Rule 54 (2) Attorney's fee (b) Unless otherwise provided by statute or order of the court, the motion must find no later than 14

days after enters of judgment, must specify the judgment and statute, rule, or other grounds entitling the moving party to the award.

{o} Abuse of Discretion At Guam District Court.

(1) *Defendant-Appellant Sherif A. Philips, MD* is the residence of Guam for almost 14 years, But his permanent address (*State of Domicile*) is *St. Petersburg Florida (As recognized by the court definition) The Disputed amount was over \$75,000.*

(2) If the court considers a natural person's state citizenship is... determined by determined by her state of *Domicile not her state of residence. And A person's domicile is her permanent home, where she resides intending to remain or to which she intends to return.*

(3) So Appellant Sherif A. Philips, MD, *permanent address (Domicile) is St.Petersburg Florida. (Public Record). (Guam Court lacking personal Jurisdiction over Appellant)*

Diversity Jurisdiction is reviewable de Novo (*Dep't of Fair Employment & Housing v. LucentTechs, Inc., 642 F.3d 728, 736 (9th Cir.2011) Kroske v. U.S. Bank Corp., 432 F.3d 976, 979 (9th Cir.)*)

(4) The trial court decision to remand a removal case is reviewed de novo

(Patal v. Del Tack, Inc., 446 F.3d 996, 998 (9th Cir.2006;%); Nebraska ex rel. Dep't of Soc. Serve v. Benton, 146 F.3d 676, 678 (9th Cir.1998); Crawford Country Homeowner Ass'n v. Delta Say & Loan, 77 F.3d 1163, 1165 (9th Cir 1996)

(5) The district court of Guam erred for ***unrecognized minimum contact which was continuous systemic (as defined by U.S. Supreme Court - Set forth a basic test to determine whether a particular person has established minimum contacts with that state and the cause of action are related to that activity).***

Boschetto v. Hanging, 539 F.3d 1011, 1915 (9th Cir.2008)

(6) Continuous systemic ***contact and related lawsuits jurisdiction*** is permissible when defendant's activity in the forum is ***continuous and systemic and the cause of action is related to that activity (continuous ruins plaintiff-appellant career - reputation by PCMH***

A- PCMH through their lawyers; forward privilege material to ***Guam Memorial Hospital to block the hiring of the plaintiff- Appellant.***

I -According to PCMH bi-law all inquiries are supposed to be approved by the chief of staff or chief of service before to be handled to a different agency.

II - The report to the ***Data Bank*** was done by Ms. Gaston (secretary) without any approval by

anyone. (9 defamation and malicious reports for
None- Professional Review Issues)

III - Greech is a malpractice lawyer ***as an independent contractor*** intentionally forward this privileged material and wrote a letter about ***Fraudulent Allegation Of Medicare Fraud and even he mention that this letter was approved by the plaintiff's lawyer.*** That statement was denied by Ms. Meyer (Plaintiff's lawyer).

IV - Greech refused to provide any inquiries about plaintiff-appellant to different Medical Board Agency (West Virginia Medical Board - Mississippi Medical Board) ***blocking appellant earning*** (This is the job of ***risk management after been reviewed by the chief of staff or chief of service accounting to PCMH bi-law .***)

B- PCMH through their lawyers got in ***Touch with PDN (Guam Newspaper) to ruin plaintiff-appellant reputation.*** The report was ***Fraudulent Allegation about plaintiff appellant Slender North Carolina License (wasn't true).***

(7) The district court ***errored for unrecognized transfer which is well documented on page 2 of the complaint, 1st Memorandum of law, and 2nd Memorandum of law.***

(8) Plaintiff-Appellant was pursuant his transfer to ***28 U.S.C § 1446 (b)(c)(1)***

An exception applied if complete diversity jurisdiction is conferred by 28 U.S.C Section

1332 and thus removal is lacking at the time of the initial pleading in state court, But become available within a year after initiation of the suit. And within 30 days from the order served to the defendant made the defendant case is removable (Guam lower Court ruling on relief of all orders in violation of the law, Due Process, Fraud upon the court, Fraud in the court, and Grant relief-of all orders under 28 U.S.C § 1655- (On the night of Summary Judgment Motion - Dec.14,2018) new complaint (transfer) was filed on Dec. 27, 2018

(9) Plaintiff-Appellant was abuse by the court in a discriminatory manner as being Pro Se,

(The court enforced a statute, appellant never asked for it.)

(p) Abuse of Discretion By the Ninth Circuit Court of Appeal

(1) The 9th Cir erred on denied appellant appeal on an unpublished memorandum on August 9, 2021. (Not on the Merits- lack of Jurisdiction, Unrecognized Transfer and Unrecognized minimum contact.)

*(2) It is also clear that the courts of appeal have the power to review by **mandamus** a transfer order under their general supervisory control of actions of the district court*

However, it may also, be possible to review a discord court decision pursuant to

The interlocutory Appeal Act of 1958. The appellant's case *was transferred to a district that had proper jurisdiction and venue.*

(*Miller v. French*, 530 U.S. 327, 329 (2000); *Johnson v. Reilly*, 349 F.3d 1154 (9th Cir.2003) *Miller v. Grammies*, 335 F.3d 889, 895 (9th Cir.2003) (en banc); *Kildare v. Saenz*, 329 F.3d 1078, 1081-83 (9th Cir.2003) *Tucson Airport Auth v. General Dynamic Corp.*, 136 F.3d 641, 648 (9th Cir.1998); *In re Morris*, 363 F.3d 891-92 (9th Cir. 2004)

(3) The court was neglecting about Appellant filed for *Motion, Petition For consolidation and transfer in The United States Court of Appeal For The Ninth Circuit at Guam Superior Court On July 30, 2020. Pursuant To 28 U.S.C Section 1407, Rule 42(a) and 28 U.S.C Section 1404 (a).*

(4) According to *Rule 42 (a) The Consolidation actions involved a common question of law or facts (Federal Court Claims and Complete Diversity Jurisdiction and Transferred was done under Section 1404 (a) and Section 1407 (Gulf Oil Corp v. Gilbert (U.S Supreme decision).*

(5) On December 28, 2020, Appellant filed for *a Petition For Consolidation and Transfer to the Ninth Circuit Court of Appeal pursuant to lack of Jurisdiction at Guam Supreme Court. Followed by the First Memorandum of Law For Enforcement Of Consolidation and Transfer To The Ninth Circuit Court of Appeal on Jan 25, 2021.*

(6) *The transfer was brought for the interest of justice, the familiarity of the forum with law and avoidance of conflict of law.* This Transfer was appropriate for the interest of Justice.

(*Cruz - Aguilera v. I.N.S.*, 245 F.3d 1070 - 1074 (9th Cir. 2001)

(Transfer defendant case from the Pitt County favorite court (rendered favorable decision).

(7) The district court was aware of ***The Rooker Feldman Doctrine*** in both United States Supreme Court and The Ninth Circuit.

(8) Court apply The Rooker Feldman Doctrine when the following factors are present

(1) The plaintiff seeking a bring a claim in the federal district has already lost on that claim the state court

(2) The plaintiff is complaining that the state court judge caused him some sort of injury or harm.

(3) The plaintiff is asking the federal district court to review and overturn state judgment.

(4) The State Court finalized the decision on the claim before a district court judgment began its own proceeding

(*Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S 280 (2005); *Manufacture Home Communities Inc., v. City of San Jose*, 420 F.3d

1022,1025 (9th Cir.2008); *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir.2004); *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1177 (9th Cir.2004); *Maldonado*, 370 F.3d at 949; *Kougasian v. TMSL Inc.*, 359 F.3d 1136, 1139 (9th Cir.2004); *Bianchi v. Rylaaradam*, 334 F.3d 895, 898 (9th Cir.2003)

(9)The ***Rooker-Feldman Doctrine*** gives only the authority to review final judgments of a State Court in a judicial proceeding only by U.S Supreme Court and Unite State Court of Appeals For Federal Circuit.) (Appellant filed such doctrine in both United State Supreme Court and the Ninth Circuit).

(10) A pertinent case involving ***The Rooker-Feldman Doctrine and the automatic stay***

(*Singleton v. Fifth Third Bank of Western Ohio*; *Marrow v. Torrance Bank*)

(11) The federal court must analyze whether the relief requested in the federal action would effectively reserve the state court decision or void its ruling.

(12) Petitioner pursuant his petition ***To Rule 35 (En Banc Hearing) at 9th Circuit***

(a) en banc consideration is necessary to secure or maintain uniformity of the court's decision or

(b) the proceeding involved a question of exceptional importance.

*Appellant pursuant his petition for rehearing
To Title 42 U.S Code & 1983 appellant had been
treated in a discriminatory manner as being
Pro Se.*

*(13) On Sep 30, 2021. The 9th Cir. denied the
petition for rehearing by Voting!
(Abuse of Discretion)*

*(q) Abuse of Discretion at Fourth Circuit
Court of Appeal*

*(1) Petitioner pursuant his petition to transfer
to 28 U.S.C & 1404 & 1406 (a) No cause,
proceeding, or appeal should be dismissed,
rejected, or thrown out solely because - brought
in or taken to the wrong court of the wrong
venue, But if there is one where it may be
brought or prosecuted it should be transferred
thereto and go on there, all prior proceedings
being saved.*

*(2) The Court attempted to dismiss the
appellant's petition for transfer at the clerk
level.*

CONCLUSION

*For the above forgoing reason, Appellant asked
the court to accept his Petition Petitioner case
was a Federal Court case, Guam Courts tried to
enforce local rules only to the petitioner- It was
obvious about Guam Courts unfamiliar with
Federal rules, regulations, a constitutional*

amendment, and Rule 54 (2)(b) The law has never been followed but creatively interpreted. With the absence of personal jurisdictions, Federal questions jurisdiction and Diversity Jurisdiction Guam Court enforce Levi and public auction to petitioner private property. (Where the Due Process, Fifth Amendment and Fourteenth Amendment). The Ninth Circuit Court of Appeal abused the petitioner in a discriminatory manner as being Pro Se. And the statutes have never been followed. Petitioner asked the court for consolidation of his petition with the previous petition Sherif A. Philips v. State of North Carolina etc. (Since 2018).

Best Regards

Yours

Sherif A. Philips, MD
1406 North Marine Corps Dr.
Upper Tumon, GU 969313
671-689-7611
sherifap@aol.com

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
OCT 08 2021
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHERIF A. PHILIPS, M.D.; Dr.,
Plaintiff - Appellant,

v.

PITT COUNTY MEMORIAL
HOSPITAL, INC.; et al.,
Defendants - Appellees.

No. 19-17313

D.C. No. 1:18-cv-00046
U.S. District Court of Guam v.

MANDATE

The judgment of this Court, entered August 06, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7