

No. 21-1529

IN THE
Supreme Court of the United States

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

JIAN WANG. a/k/a JAMES WANG,

Petitioner,

v.

INTERNATIONAL BUSINESS MACHINES CORP.,

Respondent,

On Petition For Writ Of Certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES WANG Pro Se

Petitioner

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QUESTION PRESENTED

Whether the Petitioner, as a Deaf plaintiff in a civil proceeding was denied property rights without due process and equal protection of the laws that are afforded all other litigants who are Deaf or Hard of Hearing.

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THE CASE REPRESENTS AN EXCEPTIONALLY IMPORTANT CONSTITUTIONAL QUESTION THAT SHOULD BE REVIEWED WHETHER A PETITIONER, AS A DEAF PLAINTIFF IN A CIVIL PROCEEDING, WAS DENIED PROPERTY RIGHTS WITHOUT DUE PROCESS AND EQUAL PROTECTIONS OF THE LAWS THAT ARE AFFORDED ALL OTHER DEAF LITIGANTS WHO ARE EITHER CRIMINAL DEFENDANTS OR DEFENDANTS WHERE THE UNITED STATES IS A PARTY, AND ARE PROVIDED BY LAW AND UNDER THIS COURT'S PRECEDENTS, WITH OFFICIAL CERTIFIED ASL INTERPRETERS BY THE COURT THROUGHOUT THE PROCEEDING, WHERE THE RESULT OF PETITIONER BEING DEPRIVED OF A CERTIFIED ASL INTERPRETER I WAS FORCED TO ACCEPT A SETTLEMENT

THAT I WOULD NOT HAVE AUTHORIZED
HAD I UNDERSTOOD ITS TERMS THROUGH
AN ACCURATE INTERPRETATION. THE
PETITIONER PROCESSING PRO SE, SERVES
CORRECT VERSION OF SECOND COUNTER-
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jian Wang, a/k/a James Wang, respectfully petitions for a writ of certiorari to review all the orders and judgments of the United States Court of Appeals for the Second Circuit and the District Court for the Southern District of New York.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Second Circuit are available at appendix 1a, 36a and 58a, the opinions of the District Court for the Southern District of New York are available at appendix 3a, 42a, 63a and 67a.

STATEMENT OF THE CASE

Petitioner brought suit against Respondent IBM ("Respondent") alleging violations of Title I of the Americans with Disabilities Act of 1990, as codified 42 U.S.C. §§ 12101 et. seq. (amended by the Civil Rights Act of 1991, ("Title I" or "ADA") as well as the New York State Human Rights Law, N.Y. Exec. L. §§ 296 et. seq. ("NYCHRL"), and alleging unlawful termination from employment because I am Deaf.

Respondent moved for summary judgment, and the District Court for the Southern District of New York, by the Honorable Judge Vincent L. Bricetti, issued a Memorandum Order denying Respondent's motion for summary judgment and subsequent motion for reconsideration, upon grounds that Petitioner has sufficiently made out a prima

facie case with evidence that my termination was for legitimate reasons was pre-textual and that there was sufficient terminated for discriminatory reasons because I am Deaf.

Thereafter, the parties entered into negotiations to settle the action without going to trial.

FACTUAL BACKGROUND

Following the denial of defendant's motion, Andrew Rozynski, Esq., ("Rozynski"), one of attorneys then representing me, he misunderstood the amount of settlement in American Sign Language ("ASL").

At the mediation held on April 9, 2014, Mr. Rozynski told me in ASL that I got \$207 millions from IBM and a settlement was purportedly arrived at, in the written form designated as a Memorandum of Understanding ("MOU") which was signed by Petitioner's attorney out of Petitioner's presence, with the specific provision that it was to be followed by a more extensive, formal agreement.

Following the mediation, I reached out to a real broker to purchase a \$3-8 million home in Los Angeles, California, purchased plane tickets to fly to Los Angeles, CA and rented a car because I plan to take about \$10 million from the \$207 millions of settlement.

When Mr. Rozynski emailed a copy of the settlement agreement and release to me for review

and sign almost a full month after the mediation, I was shocked to learn the case had settled for \$207,500, rather than \$207 million, and I refused to sign the proposed agreement and release. I also cancelled all travel reservations to Los Angeles, CA and notified the real broker.

Respondent moved to enforce the settlement agreement and Mr. Rozynski moved to withdraw as my counsel. The District Court granted both motions.

At that time, I was unable to find a "deaf-friendly" attorney who would take my case on a contingency basis, so I was proceeding pro se. On October 7, 2014, Memorandum Decision granting Respondent's motion to enforce, the District Court directed Respondent to submit a proposed judgment and permitted me to submit a counter-proposed judgment.

I received Respondent's Proposed Judgment and misunderstood that Counter-Proposed Judgment meant to "oppose" the Respondent's "Proposed Judgment". So I timely submitted Counter-Proposed Judgment to reject the MOU.

The District Court entered Judgment on October 22, 2014. The same day, the District Court construed Petitioner's counter-proposed judgment as a motion for reconsideration of the Court's decision granting the motion to enforce and denied it. I was shocked and learned that Counter-Proposed Judgment in legal term is in fact a motion for reconsideration. I resubmitted "correct" version of Counter-Proposed Judgment to the District Court by

Certified Mail and certified mail provided me that the document was delivered on November 4, 2014. I did not realize that the document was never placed on the District Court's ECF docket for some reason.

On November 4 2014, I appealed the judgment of the District Court to United States Appeals Court for the Second Circuit, case no. 14-4183-cv.

PROCEDURAL BACKGROUND

After a notice of appeal was filed, I continued to look for potential attorneys who would represent me before the Second Circuit. In the early December 2014, a retired attorney named Harvey Baum ("Baum") emailed me that he reviewed documents in PACER about my case and told me that Mr. Rozynski did not have my authority to settle with IBM for \$207,500, and would like to schedule a face-to-face meeting with me for December 18, 2014 and he would introduce another active attorney named Peter Hurwitz ("Hurwitz") to the meeting.

On or about December 18, 2014, Baum and Hurwitz both attended the meeting in Starbucks store, Newburgh, NY, we made brief communication in written form only. Baum and Hurwitz discussed a lot each other in verbal language for about 15 minutes. I was unable to hear what they talked about due to my hearing disability. After their discussion, Baum told me that they both agreed that Rozynski did not have my authority to settle with IBM for \$207,500, which I agreed with, so I should win a case. Hurwitz then talked to me that he would like to take my case and take care of all documents in

PACER for my appeal because he did not represent me in the District Court. I did not realize correct version of Counter-Proposed Judgment was never filed in PACER at that time. I was required to make small initial deposit of \$5000. I told him that I would withdraw \$5000 from my 401K account so that I retained him from that time.

On or about February 25, 2016, Hurwitz emailed me with the decision of the Second Circuit that the Second Circuit affirmed on the grounds that Rozynski had actual authority to settle the case, noting that my statement regarding my belief that the parties had agreed to settle the case for \$207 million was implausible, and insufficient to warrant reversal.

Hurwitz disagreed with the Court's conceptions. I reviewed the Second Circuit's opinion myself. It was unclear to me. He advised me to "be a writ of certiorari to the U.S. Supreme Court based upon a constitutional issue of denial of equal protections of the law since you were disadvantaged because of your hearing disability. A point the court recognized in a footnote but said it did not change the outcome to you". I agreed with him that we seek a writ before the U.S. Supreme Court. He took care of a writ on the behalf of me for the United States Supreme Court. Case No. 16-561.

On or about January 9, 2017, the U. S. Supreme Court denied the petition for the Writ about the right of a Deaf person to have a proper interpreter for effective communication in a civil lawsuit. Hurwitz advised me to find a lawyer who

specialize in legal malpractice and file complaint against Rozynski and his firm for legal malpractice.

I called New York State Bar Association to find an attorney. I was advised to file a complaint with Attorney Grievance Committees, which I did. Docket No. 2017.0220. Attorney Grievance Committees have concluded that no further investigation dated April 14, 2017.

On or About February 14, 2017, I filed complaint with the District Court against Rozynski and his firm for legal malpractice. Case No. 17-CV-1107 (KMK).

About April 10, 2017, the complaint was dismissed without prejudice by the District Court for lack of subject matter jurisdiction over this case. I was advised that the decision does not in any way affect my ability to file my claim in state court, where legal malpractice claims may be heard.

On or about April 18, 2017, I filed complaint with the New York State Supreme Court of New York County against Rozynski and his firm for legal malpractice. Case No. 100481/2017.

Honorable Judge Bluth scheduled an oral argument for December 12, 2017 and provided an ASL interpreter for the oral argument. Rozynski's attorney named Robert Bergson ("Bergson") and I appeared in the court room. I had an opportunity to clarify more facts before the Judge in response to statements raised by Bergson.

On January 3, 2018, Judge Bluth issues the court's decision and she addresses "Simply put, the federal courts did not believe plaintiff's claim that there was a misunderstanding over how much money plaintiff would take to settle the case. They did not believe that plaintiff actually thought IBM would settle for an amount more than 3,000 times greater than plaintiff's annual salary when he was terminated". I was shocked for the first time and realized that the federal courts must have overlooked correct version of Counter-Proposed Judgment and essentially misunderstood me.

On January 28 2018, I appealed the dismissal of malpractice lawsuit to the Appellate Division, First Department and provided more relevant evidence to First Department to support the correct version of Counter-Proposed Judgment I resubmitted to the District Court in 2014. On October 23, 2018, the First Department affirmed the state Supreme Court's ruling. I subsequently requested permission to either reargue my case before the First Depart or for leave to appeal to the New York Court of Appels. The First Department denied my request on January 15, 2019. I subsequently file a "Motion to Renew" my malpractice claim before Justice Bluth which she denied on May 24, 2019. In her order, Justice Bluth wrote that:

The new fact that Plaintiff could not find a "deaf-friendly" attorney who would take his case on a contingency basis was known to Plaintiff at the time of the original motion before this Court. In any event, had that information been presented at the time of the

original motion, this Court would have made the same decision.

In June 2019, I was shocked to discover that the alleged correct version of Counter-Proposed Judgment did not appear on the public docket after an email exchanged with Hurwitz who represented me before the Second Circuit in 2016.

I submitted a motion to reopen with attached a copy of correct version of Counter-Proposed Judgment to the District Court in 2019 and I argued that if the District Court knew that I was planning to use the settlement proceeds to purchase several multi-million-dollar homes, the District Court would have concluded that I could not have authorized Rozynski to settle the case for \$207,500 and reversed its decision on IBM's motion to enforce the settlement.

The District Court issued Court's Opinion and Order to deny Motion to Reopen as time-barred or meritless under Fed. R. Civ. P. 60, dated October 28, 2019. I moved for reconsiderations, which the District Court Summarily denied. So I timely appealed again. Case No. 19-3851-CV.

After reviewing the written submission and hearing oral argument, the U. S. Appeals Court for the Second Circuit affirmed again the orders of the district court on January 27, 2021. Specifically, the Court stated that "the fact that Mr. Wang claims that he originally filed his second counter-proposed judgment in 2014 is irrelevant because the filing subject to the one-year limitations period is the current motion."

On April 21, 2021, two weeks after the Second Circuit denied Petitioner's second appeal, the Petitioner filed a "Motion to Reopen and Cure Defective" in the District Court. On May 10, 2021, the District Court denied the request.

On May 11, 2021, the following day, the Petitioner filed a submission labelled as a "reply" and the District Court reviewed the "reply" and determined that it would not change its ruling.

On May 19, 2021, the Petitioner filed another motion, entitled "Motion to Clarify Fact," seeking to vacate the 2014 judgment enforcing the settlement. The District Court denied that motion the following day, May 20, 2021, holding that the motion was frivolous. In its order, the District Court imposed a filing restriction, ordering that the Petitioner was prohibited from filing further papers without first submitting a letter to the District Court seeking permission to do so. The District Court again warned the Petitioner that monetary sanctions would follow if I continued to file frivolous motions.

The Petitioner thereafter filed four more letter requests from May to July 2021, all of which were denied.

On June 25, 2021, the Petitioner wrote to the District Court's Clerk's Office, asking it to locate the "correct" version of the second counter-proposed judgment filed in 2014 but not docketed. On July 13, 2021, the Petitioner wrote another letter to the Clerk's Office substantially identical to the first letter. In response to those letters, the District Court

undertook a review of its records and located the document, entitled "Counter Proposed Judgment (Correct Version)," dated October 31, 2014, and docketed the letter.

The District Court construed the Petitioner's June 25 and July 13, 2021 letters as a renewed motion seeking relief from a final judgment under Rule 60(b)(2) and denied it. Specifically, the District Court states that Petitioner did not understand that the case was closed and judgment of District Court was final.

Third appeal followed, case no. 21-1897. The Second Circuit ruled to affirm again the Order of the District Court on February 3, 2022 with vague texts.

Petition for a Writ of Certiorari followed.

REASONS FOR GRANTING THE WRIT

THE CASE REPRESENTS AN EXCEPTIONALLY IMPORTANT CONSTITUTIONAL QUESTION THAT SHOULD BE REVIEWED WHETHER A PETITIONER, AS A DEAF PLAINTIFF IN A CIVIL PROCEEDING, WAS DENIED PROPERTY RIGHTS WITHOUT DUE PROCESS AND EQUAL PROTECTIONS OF THE LAWS THAT ARE AFFORDED ALL OTHER DEAF LITIGANTS WHO ARE EITHER CRIMINAL DEFENDANTS OR DEFENDANTS WHERE THE UNITED STATES IS A PARTY, AND ARE PROVIDED BY LAW AND UNDER THIS COURT'S PRECEDENTS, WITH OFFICIAL CERTIFIED ASL INTERPRETERS BY THE COURT THROUGHOUT

THE PROCEEDING, WHERE THE RESULT OF PETITIONER BEING DEPRIVED OF A CERTIFIED ASL INTERPRETER I WAS FORCED TO ACCEPT A SETTLEMENT THAT I WOULD NOT HAVE AUTHORIZED HAD I UNDERSTOOD ITS TERMS THROUGH AN ACCURATE INTERPRETATION. THE PETITIONER PROCESSING PRO SE, SERVES CORRECT VERSION OF SECOND COUNTER-PROPOSED JUDGMENT TO THE DISTRICT COURT IN 2014 BUT NOT DOCKETED WITHOUT LETTING ME KNOW THAT CAUSES ME TO LOSE A CASE ALL THE TIMES.

Peter Hurwitz, Esq. I retained submitted a petition for a writ of certiorari on the behalf of me to this Court in 2016, Case No. 16-561. He presented same question and professionally raised legal arguments already. Please revisit his petition. I will point out missing facts here that he did not raise related to the correct version of second Counter-Proposed Judgment the District Court received in 2014, but not docketed.

The District Court states "Plaintiff relies on documents purportedly showing that in the days following the mediation, he reached out to a real estate broker to purchase a \$3-8 million home in Los Angeles, purchased plane ticket to fly to Los Angeles, and rented a car." (Appendix 46a).

The district court states "notes plaintiff appears to have misconstrued the purpose of the provision in the Court's October 7, 2014, Memorandum Decision, directing him to submit a counter-proposed judgment."

The district court also states "plaintiff submitted a document that was titled "Counter-Proposed Judgment" but largely asserted grounds for reconsideration. Thus, as noted above, the Court construed the submission as a motion for reconsideration and denied it."

The U.S. Court of Appeals for the Second Circuit states "he argues that, had the district court docketed his second counter-proposed judgment and considered his evidence that he expected a multi-million-dollar settlement, it would not have ordered enforcement of the MOU." (Appendix 39a)

The Second Circuit states "specifically, appendices to the second counter-proposed judgment contain emails from 2014 in which Mr. Wang communicates with a realtor about purchasing a multi-million-dollar home in Los Angeles, as well as contemporaneous travel reservation to Los Angeles."

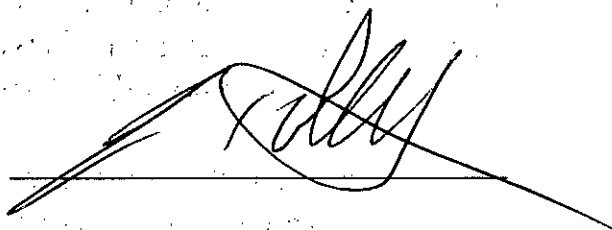
The Second Circuit also states "the fact that Mr. Wang claims that he originally filed his second counter-proposed judgment in 2014 is irrelevant because the filing subject to the one-year limitations period is the current motion."

The District Court states "the Second Circuit affirmed on the basis that plaintiff's attorney had actual authority to settle the case, noting that beyond plaintiff's own "implausible statement" (Appendix 5a)

CONCLUSION

The petition for a Writ of Certiorari should respectfully be granted for the reasons stated herein, that Petitioner was denied due process of law and equal protection of the laws, so judgment shall be vacated.

Dated: April 12, 2022



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