

In the
Supreme Court of the United States

THE ROUGE HOUSE, LLC,

Petitioner,

v.

308 DECATUR-NEW ORLEANS, LLC,

Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeals of Louisiana, Fourth Circuit

**MOTION FOR LEAVE TO FILE PAPER COPIES OF
TIMELY E-FILED PETITION FOR REHEARING**

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MOTION FOR LEAVE

On October 18, 2021, the Court denied Movant The Rouge House, LLC’s (“Rouge House”) Petition for Writ of Certiorari. On November 12, 2021, within 25 days of the denial, Rouge House timely filed its Petition for Rehearing via the Supreme Court’s Electronic Filing System and sent a check for the filing fee via FedEx delivery. Opposing counsel was also served on the same day.

At the time that the Petition for Writ of Certiorari was filed, The Court’s Covid-19 Orders were in place. Unbeknownst to undersigned counsel, the orders had been rescinded by the time that the Petition for Rehearing was filed. Notice of the rescission is buried deep within the Court’s website. Consequently, it was missed by undersigned counsel. On December 1, 2021, the Clerk’s office informed counsel for Rouge House that it faced possible rejection of the Petition for Rehearing and must file 40 paper copies in booklet form.

Because the 25-day deadline to request a rehearing has long passed, Rouge House respectfully files this Motion for Leave to File Paper Copies of the Timely E-filed Petition for Rehearing. Rouge House further posits that this Motion is appropriate and should be granted because:

- 1) The Petition for rehearing was timely e-filed and timely served on opposing counsel;
- 2) The clerk’s office only notified Rouge House of the deficiency on December 1;
- 3) The Court’s Covid-19 Orders are not readily apparent and hidden within its website;

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- 4) This Motion is filed and the oversight was made in good faith and not for purposes of undue delay or harassment; and

Important issues affecting commercial business and the rights of Service members are at stake in the underlying Petition for Rehearing and Writ of Certiorari.



CONCLUSION

The Court should grant leave to file the paper copies of the accompanying Petition which was timely e-filed and served upon opposing counsel.

Respectfully submitted,

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DECEMBER 8, 2021

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PETITION FOR REHEARING

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CORPORATE DISCLOSURE STATEMENT

Petitioner Rouge House LLC has no parent company and no public company owns 10% or more of its stock.

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PETITION FOR REHEARING

Petitioner The Rouge House, LLC (hereinafter “Rouge House”) respectfully petitions this Court for a rehearing from its denial of a Writ of Certiorari on October 18, 2021.



OPINIONS BELOW

On April 9, 2018, following motions for summary judgement by Plaintiff/Respondent 308-Decatur-New Orleans LLC (hereinafter “308-Decatur”) the trial court rendered judgment against Petitioner/Defendant Rouge House in the amount of \$137,135.55 plus interest. Rouge House filed its initial Motion for Devolutive Appeal in the trial court on November 13, 2019 seeking to appeal the October 21, 2019 judgment of the trial court which granted 308 Decatur-New Orleans, LLC’s Peremptory Exceptions of Res Judicata and No Right of Action. That Motion was denied by the trial court on February 21, 2020. Rouge House then timely filed a second Motion for Devolutive Appeal on April 21, 2020 seeking to appeal the trial court’s dismissal off its first Motion for Devolutive Appeal. On December 23, 2020 the Louisiana Fourth Circuit issued an unpublished opinion affirming the judgment of the trial court. On January 22, 2021, Rouge House timely filed its Petition for Writ of Certiorari in the Louisiana Supreme Court. In an unpublished opinion, the Louisiana Supreme Court denied the writ on April 7,

2021. None of the orders of either courts have been officially reported but they are reproduced in the Appendix of the Writ for the court’s reference and convenience.



JURISDICTION

The Louisiana Supreme Court entered its judgment on April 7, 2021. Rouge House did not file a petition for rehearing. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.



REHEARING STANDARD

Rule 44.2 of the Rules of the United States Supreme Court provides that “Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Here, Rouge House urges, for the first time in this Court, that Maj. Tracy Riley the owner and for most of the life of the case the sole representative of Rouge House was denied the protections of the Servicemembers’ Civil Relief Act (“SCRA”) as codified

at 50 U.S.C. § 3901, *et seq* while she was on active duty. The underlying eviction occurred while Maj. Riley was on active duty at Fort Polk, Louisiana. Her attorney at the time informed the court that she was away on active duty and was denied a continuance until she could return.



PROCEDURAL HISTORY

The instant case arises out of a dispute over a commercial installment contract and an eviction proceeding. Rouge House entered into a lease-to-own of commercial property with 308 Decatur) for the express purposes of operating a supper club that would serve liquor and alcohol. Unfortunately for Rouge House, 308 Decatur took Rouge House's \$50,000 down payment but did not disclose that the building had been cited for numerous code violations that would not allow for an alcohol permit to be issued to any business operating on the premises. 308 Decatur's deliberate omission caused Rouge House to lose over \$150,000.00 on repairs and rehabilitation, down payment, rents, and an untold amount of revenue from not being able to operate for several months. Further, on September 5, 2013, the owner of Rouge House, Major Tracy Riley, was called to active duty in the U.S. Army and deployed to Ft. Polk in Leesville, Louisiana. Thus, Rouge House was unable to pay the \$25,000 monthly rent. On October 14, 2013, 308 Decatur filed an eviction proceeding against Rouge House.

On November 22, 2013, the trial court entered a judgment of eviction against Rouge House and ordered it to vacate the premises. Reh.App.16a. With judgment in hand, 308 Decatur later initiated a second action when it filed a Petition for Damages, Declaratory Judgment, or in the Alternative, Specific Performance to which Rouge House answered and filed a counter claim. 308 Decatur then filed two motions for summary judgment, one relative to its claim and the other relative to Rouge House's counter-claim. On February 2, 2018, the trial court held a hearing on both of 308 Decatur's Motions for Summary Judgment. Judgment was rendered from the bench on the same day, granting both motions for summary judgment in favor of 308 Decatur and dismissing Rouge House's claims. Reh.App.1a. It was signed on April 9, 2018.

Rouge House then filed its Petition for Possession of Premises and Relief Due to Breach of Contract on September 14, 2018, the third action in this case. 308 Decatur responded with Exceptions of Res Judicata and No Right of Action.

On October 11, 2019, a hearing was held on the Exceptions filed by 308 Decatur. Rouge House contended that the Summary Judgment granted on February 2, 2018 was not Res Judicata because it was not a valid judgment. It was not a valid judgment because it was rendered against an incompetent person, Rouge House, because Rouge House was not represented by counsel, as corporations are required to be by law. Additionally, Rouge House argued the exception of no right of action, must fail because Rouge House has stated a claim that it was, and indeed it has been, disturbed in its peaceful possession of the leased property due to the fault of the lessor, 308

Decatur, that 308 Decatur breached its contract, and that the leased property was rendered unsuitable for its intended use by vice or defect. The law affords remedies for said disturbance, breach, and vice or defect. The trial court was unpersuaded by Rouge House's argument and granted both of 308 Decatur's Exceptions on October 11, 2019.

Rouge House then filed a Motion for Devolutive Appeal on November 13, 2019 to appeal the October 11, 2019 judgment. The Motion was granted by the trial court. On December 11, 2019 the Clerk of Court estimated the appeal cost to be \$8,361.00 which would be due by December 31, 2019. Said cost being exorbitant and far surpassing Rouge House's ability to pay, Rouge House sought and obtained pauper status. The *in forma pauperis* affidavit was captioned with the correct case title, reflecting that the litigants were 308 Decatur and Rouge House. The financial information was that of the Riley household and it was signed by Tracy Riley. The pauper affidavit was granted by a duty judge on February 05, 2020.

However, on January 28, 2020, 308 Decatur filed a Motion to Dismiss Rouge House's Devolutive Appeal based on failure to pay costs. At a Rule to Show Cause on February 21, 2020, after Rouge House had obtained pauper status and the Clerk of Court had adjusted its appeal costs to \$0.00, the trial court still granted 308 Decatur's Motion to Dismiss Rouge House's Devolutive Appeal.

Rouge House then filed a Second Motion for Devolutive Appeal to appeal the February 21, 2020 dismissal of its first appeal. This motion was granted by the court and Rouge House proceeded to with its appeal as a pauper. The same pauper status That

despite having it, the trial court threw out its previous motion for appeal.

On December 23, 2020, the Louisiana Fourth Circuit Court of Appeal issued its opinion affirming the February 21, 2020 judgment of the trial court that dismissed Rouge House's appeal for non-payment of costs. In reaching its decision, the appellate court determined that only the appeal of the trial court's February 21, 2020 judgment was properly before the court as the initial appeal was not perfected because of the nonpayment of costs. The appellate court, although it discussed the merits of all the other arguments at great length, only acted upon the February 21, 2020 dismissal of Rouge House's initial Motion for Devolutive Appeal for non-payment of costs.

The Louisiana Supreme Court declined to review the matter and simply denied the writ on April 7, 2021.

Rouge House timely filed Petition for Writ of Certiorari in this Court which was denied on October 18, 2021.



REASONS FOR GRANTING THE PETITION FOR REHEARING

- I. THE DEPOSIT SHOULD HAVE BEEN RETURNED TO ROUGE HOUSE AND DAMAGES AGAINST IT LIMITED UNDER THE SCRA. LOWER COURTS ERRED IN REFUSING TO EXTEND THE PROTECTIONS OF SCRA TO TRACY RILEY, AND SUBSEQUENTLY TO ROUGE HOUSE.**
 - A. There Is Precedent to Extending SCRA Protection to Commercial Leases Entered into by a Service Member Who Is a Member of an LLC.**

Major Tracy Riley, the owner/manager of the Rouge House, was called out on active duty shortly after entering into the lease-to-own agreement with 308 Decatur. While in Major Riley was deployed to Ft. Polk in Leesville, Louisiana, 308-Decatur filed an eviction proceeding against Rouge House. Maj. Riley was able to have last minute representation at the eviction hearing who apprised the court of Maj. Riley's deployment and requested a continuance until she returned. The SCRA is an exercise of Congress' power to raise and support armies and to declare war. *Dameron v. Brodhead*, 345 U.S. 322 (1953). The purpose of the act is to provide for, strengthen, and expedite the national defense by protecting service members, enabling them to "devote their entire energy to the defense needs of the Nation." 50 U.S.C. § 502

"Except by court order, no one who has collected a deposit as partial payment for property, where the

remainder of the price is to be paid in installments, can repossess the property or cancel the sale, lease, or bailment because of the failure to meet the terms of the contract, if the buyer enters active duty military service after paying the deposit and subsequently breaches the terms of the contract. A violation of this section is punishable by imprisonment for up to one year, a fine as provided in Title 18, U.S. Code, or both. A court may order the cancellation of the installment sale, mandating the return of the property to the seller as well as the return of paid installments to the buyer, or the court may stay the proceedings.” 50 U.S.C. § 532. (App.) Because Maj. Riley was on active duty at the time of the eviction, the proceedings either should have been stayed or the lease rescinded and the down payment refunded.

Although the Rouge House is, of course, not a service member, the courts have applied the SCRA to cases where the service member was a member/manager of an LLC and entered into a commercial lease. *See Mie Props.-La, L.L.C. v. Carey*, 213 So.3d 1274 (La. App. 1st Cir. 2017).

In *Mie*, John Carey was one of two members of an LLC who entered into a 5-year commercial lease with Mie Properties to operate a bar, Heaux Jeaux. Five months into the term of the lease, Carey was called to active duty by the Louisiana National Guard. Heaux Jeaux was not profitable and consequently, Carey’s wife and the other member of the LLC turned over the keys to Mie Properties and vacated the premises. Mie Properties then filed suit for breach of contract, seeking past due rents and other damages on April 7, 2014. Thereafter, on June 2, 2014, Carey sought to terminate the lease in a letter he slid

under the door of Mie Properties citing the SCRA and his active duty status. Carey later filed his Answer to the suit asserting that he had been on active military duty since February 7, 2013, and seeking relief under the SCRA.

In its opinion, the Louisiana First Circuit limited the amount of damages that could be imputed to Carey under the SCRA, including no early termination damages could be charged nor the future lost rents sought by Mie Properties. *Id.* at 1280-81. Specifically, the court found that SCRA applied to commercial leases held by service members, as well as residential ones. *Id.* at 1278-79.

Here, the trial court had two options. It could have either cancelled the contract and ordered that the deposit be returned to Rouge House and the property be returned back to 308-Decatur or, in the alternative, SCRA mandated that the trial court should have stayed the proceedings. That simply did not happen here. Instead, the trial court proceeded with the eviction, which arguably did terminate the contract and return the property back to 308-Decatur, but Rouge House's deposit was not order returned to it, nor did it stay the proceedings. The trial court was in blatant error. The guidance of this Court is needed to not only correct this injustice but to also provide clarification of the proper interpretation and applicability of SCRA.

B. The Trial Court Erred in Denying a Stay Under SCRA to Counsel for Rouge House at the Eviction Proceeding.

In its opinion, the Fourth Circuit held that "The Service Members' Civil Relief Act, 50 U.S.C.A. Section

520, *et seq.*, applies to active service members. Its purpose is to protect service members from having default judgments entered against them without their knowledge. It does not prevent entry of a judgment when there has been notice of the pendency of an action and adequate opportunity to appear and defend.”

In actuality, the purpose of the Servicemembers’ Civil Relief Act, 50 U.S.C 3901, *et seq.* (“SCRA”) is much broader than that. As codified, the purpose of SCRA is:

- (1) to provide for, strengthen, and expedite the national defense through protection extended by this chapter to service members of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their military service.¹

The extension of benefits under SCRA extends to legal representatives of the service member.² In other words, the attorney that was representing Rouge House while its members were away on active duty was entitled to the same benefit as the active-duty members, themselves. App. E. In addition to protection from default judgments, SCRA mandates a stay of all proceedings while the service member is

¹ 50 U.S.C. § 3902.

² 50 U.S.C. § 3920.

on active-duty.³ As it relates to the case at hand, the fact that an attorney was present that the eviction hearing for Rouge House is not dispositive because SCRA entitled him to a stay of the proceedings, as well. This only makes sense, as an attorney would be understandably deprived in preparing adequate defenses of his case if he cannot readily contact his client due to their deployment in the Armed Services of the United States. Although a continuance was eventually granted from the November 8, 2013 eviction proceeding, the trial judge specifically excluded the availability of SCRA protections and extended a continuance to November 22, 2013 only because the attorney had just been hired. She was legally incorrect in doing so.

³ 50 U.S.C. § 3932.



CONCLUSION

This Petition for Rehearing should be granted. Rouge House prays that this Honorable court would find that SCRA requires that the deposit paid by Rouge House be returned because the trial court returned the property to 308-Decatur. Moreover, Rouge House respectfully requests this Honorable Court reconsider its previous denial of Rouge House's Petition for Writ of Certiorari and reverse the Louisiana Fourth Circuit's findings that:

- 1) Rouge House was unable, as a corporation, to proceed *in forma pauperis*;
- 2) Pauper status applied to Tracy Riley, individually, although she was not a party to the suit and the application identified this suit with only 308 Decatur and Rouge House as litigants; and
- 3) Rouge House was competent in that it was represented by a non-attorney member in a case exceeding \$5,000 in controversy.

with direction to remand the case to the Orleans Parish Civil District Court for trial consistent with the findings of this Court.

Respectfully submitted,

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DECEMBER 8, 2021

RULE 44.1 CERTIFICATE

Pursuant to Supreme Court Rule 44.1, I certify that (1) This petition for rehearing is presented in good faith and not for delay; and (2) The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

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