

21-6854

No.

ORIGINAL

In The
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 25 2021

OFFICE OF THE CLERK

JOE BYRD,
PETITIONER AND MOVANT (*Plaintiff and Appellant Below*)

V.

**BANK OF NEW YORK MELLON, FORMERLY KNOWN AS TRUSTEE FOR THE
BENEFIT OF ALTERNATIVE LOAN TRUST 2007-J1 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-J1,
RESPONDENT (*Defendant and Appellee Below*)**

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit
No. 21-10469

FIRST AMENDED PETITION FOR A WRIT OF CERTIORARI

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Petitioner, Pro Se

QUESTION PRESENTED

1. Is it an error, a violation of federal statute, and an impermissible denial of due process of law and equal protection of law for a court without subject matter jurisdiction to purport to dismiss a case with prejudice to refiling, or may it only dismiss without prejudice to refiling?

LIST OF PARTIES AND COUNSEL

Petitioner/Appellant, Joe Byrd, hereby certifies that the following is a complete list of parties, attorneys, and any other persons who have any interest in the outcome of this lawsuit:

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CITATIONS TO THE OPINIONS BELOW

There is no opinion below, because the Court of Appeals for the Fifth Circuit did not reach the merits of the case and did not write an opinion. There are two (2) relevant orders which are listed here, and which are included with the Appendix. Neither of these orders is a reported case. Those two orders are as follows.

(1) **Appendix A** ---- The order of July 26, 2021, (07-26-2021) by the US Court of Appeals for the Fifth Circuit. It granted the Respondent's Motion to Dismiss the Appeal As Frivolous. Ninety (90) days from the date of this order is Sunday, October 24, 2021. The following day which is not a Saturday, Sunday, or a federal holiday is Monday, October 25, 2021 (10-25-2021). That is the deadline for filing this Petition for Writ of Certiorari, and that is the date this document is filed. Thus, this Petition for Writ of Certiorari is timely filed. (Fifth Circuit, Case: 21-10469 Document: 00515951788 Page: 1 Date Filed: 07/26/2021.)

(2) **Appendix B** ---- The order of January 7, 2020, by the trial court, the Federal District Court for the Northern District of Texas, Fort Worth Division, Judge Mark T. Pittman, presiding. It purported on its face to be a "Final Judgment" dismissing the case with prejudice to re-filing. (Trial Court, ECF 43. Fifth Circuit EROA 21-10469-455.)

JURISDICTION

The last order inn this matter which was signed by the US Court of Appeals for the Fifth Circuit was the order of July 26, 2021, (07-26-2021). It granted the Respondent's Motion to Dismiss the Appeal as Frivolous. Ninety (90) days from the date of this order is Sunday, October 24, 2021. The following day which is not a Saturday, Sunday, or a federal holiday is Monday, October 25, 2021 (10-25-2021). That is the deadline for filing this Petition for Writ of Certiorari, and that is the date this document is filed. Thus, this Petition for Writ of Certiorari is timely filed. Thus, the jurisdiction of the Supreme Court of the United States is invoked pursuant to both 28 USC §1254 (1), and Rule 13 of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment V

U.S. Constitution, Amendment XIV

STATUTES

28 USC §1254 (1)

28 USC §1332

RULES

Rules of the Supreme Court of the United States, Rule 13

Federal Rules of Civil Procedure, Rule 4 (m)

STATEMENT OF THE CASE

This Petition for Writ of Certiorari arose out of a lawsuit under Texas law in a state district court of the State of Texas. There was only one defendant at that time, and there was diversity of citizenship between the plaintiff and the single defendant. The Appellee removed the case to federal district court.

After a period of time and a number of filings in the case in the federal district court, the Plaintiff/Appellant sought leave of court to add three additional defendants. After notice and hearing, the trial court granted this motion for leave to add defendants. The Plaintiff/Appellant then added the three defendants, including two Texas defendants which were therefore not diverse. This destroyed the federal district court's diversity jurisdiction. The district court failed to follow both the diversity jurisdiction statute (28 USC §1332) and Rule 4 (m) of the Federal Rules of Civil Procedure. The non-diverse defendants are still legally present in the case. The case should be dismissed without prejudice. The procedures for this type of case under Texas law will be followed by the parties, and ultimately a new lawsuit will be filed. This will be a new action in a state district court in Texas. The issues of Texas law will be decided in the courts of the State of Texas, and the federal court system will not be burdened.

REASONS FOR GRANTING THE PETITION

Question 1:

1. Is it an error, a violation of federal statute, and an impermissible denial of due process of law and equal protection of law for a court without subject matter jurisdiction to purport to dismiss a case with prejudice to refiling, or may it only dismiss without prejudice to refiling?

Reasons for Granting The Petition:

The U.S. Supreme Court should grant the First Amended Petition for Writ of Certiorari, and after briefing and argument (if called for by the Court) reverse and render judgment dismissing the case without prejudice to refiling.

The subject litigation was removed from a state district court in Fort Worth, Tarrant County, Texas, to a federal district court in that same city and county and in the Northern District of Texas, Fort Worth Division.

The federal district court, which was the trial court after removal, and the US Court of Appeals for the Fifth Circuit, have both failed and refused to

enforce the following: (1) the federal statute that creates diversity jurisdiction in the federal courts (28 USC §1332); and (2) their own rules, to wit, Rule 4(m) of the Federal Rules of Civil Procedure,

The failure to follow the diversity statute is a *per se* violation of federal law.

The failure to follow and enforce these rules violates the *Accardi* doctrine which requires that a forum follow its own rules or be found in violation of the aggrieved party's rights to due process of law and equal protection of the law under Amendment V and Amendment XIV. *Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954). *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957). Courts must follow their own rules, or the rule of law is lost — for everyone. It is undisputed that three parties were added to the case as defendants. This included two Texas defendants. Their presence in the case destroyed diversity and diversity jurisdiction under 28 USC §1332. Notably, these newly added defendants were never dismissed from the case; therefore, they are still defendants in the case and diversity jurisdiction still does not exist. The trial court acknowledged that the jurisdictional issue had never been decided.

CONCLUSION

The First Amended Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

/s/ *Joe Byrd* [Electronic Signature]

Joe Byrd
Petitioner, Pro Se
December 28, 2021

