NO. 21-8061

IN THE SUPREME COURT OF THE UNIED STATES

OCTOBER TERM, 2022

BARBRIE LOGAN, Petitioner

v.

MGM GRAND DETROIT CASINO, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT COURT

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING OUT OF TIME

Under Supreme Court Rule 44, a petition for rehearing must be submitted within 25 days after the decision of the Court. Although the Rules of this Court make no provision for filing an application for an extension of time within which to file a petition for rehearing of an order denying a petition for a writ of certiorari, pro se Petitioner Barbrie Logan respectfully request an extension of time to resubmit her untimely petition for rehearing with this motion. In support of this Motion, Logan states:

1. On Friday, October 28, 2022, Logan experienced technical difficulties in printing the petition for rehearing, which resulted in missing the postmark deadline, and inability to file electronically due to the Court's pro se rules. The next day, Saturday, October 29, 2022, Logan Express mailed the documents to the Court, which arrived Monday, October 31, 2022 at 11:13 a.m., the same day or sooner had they been mailed first-class by the United States Postal Service.

2. The Office of the Clerk received Logan's petition for rehearing November 1, 2022, and with a letter dated November 2, 2022, returned the documents to Logan as out-of-time because it was due to be submitted by October 28, 2022.

3. On November 10, 2022, Logan priority mailed a letter to the Clerk of the Court requesting the Court to extend the time for submission of the petition for rehearing since the delay was not intentional nor substantial, had not prejudiced the defendant, nor caused undue delay in the administration of justice.

4. On December 12, 2022, Logan received a letter from the Office of the Clerk dated December 5, 2022, allowing her to resubmit her untimely petition for rehearing with a motion for leave to file it out of time.

WHEREFORE, Logan respectfully requests that the Court grant this motion and extend the time for filing her petition for rehearing, which is resubmitted at this time with this motion.

Respectfully submitted,

Barbrie Logan, pro se

3501 Woodward Avenue

Apartment 505

Detroit, Michigan 48201

(313) 590-2314

Email: barbrielogan@yahoo.com

Dated: December 13, 2022

No. 21-8061

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OCTOBER TERM, 2022

BARBRIE LOGAN, Petitioner,

v.

MGM GRAND DETROIT CASINO, Respondent.

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PETITION FOR REHEARING

BARBRIE LOGAN

Pro Se

3501 Woodward, Apt 505

Detroit, MI 48201

(313) 590-2314

barbrielogan@yahoo.com

PETITION FOR REHEARING

Pursuant to Rule 44.2 of the Rules of the United States Supreme Court, Barbrie Logan respectfully petitions for rehearing of this Court's October 3, 2022, Order denying her petition for a writ of certiorari in Barbrie Logan v MGM Grand Detroit, No. 21-8061 (filed May, 28, 2022).

REASONS FOR GRANTING THE PETITION FOR REHEARING

Substantial grounds not previously presented warrant rehearing of the denial of Logan's petition for a writ of certiorari.

Rule 44.2 of the Rules of the Supreme Court of the United States allows petitioners to file petitions for rehearing of the denial of a petition for writ of certiorari and permits rehearing on the basis of "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." Rule 16.3 permits the suspension of a denial of a writ of certiorari on the order of the Court or of a Justice if "there is any reasonable likelihood of the Court's changing its position and granting certiorari." *Richmond v. Arizona*, 434 U.S. 1323, 1326 (1977).

The substantial grounds not previously presented in Logan's petition for a writ of certiorari stems from the denial of Plaintiff's First Amendment right to freedom of speech. Plaintiff asserted her workplace rights, and as a union steward advocated for the rights of co-workers,

both verbally and in writing. Defendant retaliated because she was female and a threat to the status quo of the male dominated culture of the casino.

There are extenuating circumstances in this case, including, but not limited to:

1. "Material omissions in the record that affect the disposition of a case provide a "strong appeal for re-argument". *Ambler v Whipple*, 87 U.S. (20 Wall.) 546, 558 (1874);

The Sixth Circuit Court of Appeals heard oral arguments in the first appeal of this case on March 21, 2019, ***Logan v MGM Grand Detroit Casino***, 939 F.3d (6th Cir. 2019) before Circuit Judges BOGGS, GIBBONS AND BUSH. During oral argument, the Circuit Judge asked the attorney for the United States Equal Employment Opportunity Commission (EEOC) for Amicus Curiae, something to the effect of why the EEOC granted an early right-to-sue letter rather than litigate this case. The EEOC indicated that they had discretion to grant a Right-to-sue letter before 180 days if they did not anticipate completing the investigation before 180 days. (See Title VII of the Civil Rights Act of 1964, as amended, SEC. 2000e-5(f)(1). The EEOC elected to issue a right-to-sue letter 132 days after Plaintiff filed a charge. On December 22, 2015, Plaintiff personally delivered a request for reconsideration of the dismissal, which was denied. Therefore, it was not Plaintiff who failed to exhaust the EEOC's administrative process, it was the EEOC's discretionary decision. The EEOC stated to the Court during oral argument they did not have the time to investigate claims. The EEOC omitted material the material fact in this case, that Plaintiff did all that she could do to exhaust her EEOC administrative remedies.

On July 7, 2015, one day prior to the initial EEOC interview to file a charge, Plaintiff was given an EEOC Intake Questionnaire to complete and submit at the interview. Page two (2) Question 4 of the questionnaire asked, "What is the reason (basis) for your claim of employment

discrimination?" Plaintiff checked five of the nine boxes, which were, Race, Sex, Age, National Origin, and Retaliation. Question four also asked, "Other reason (basis) for discrimination (Explain):" Plaintiff printed on the line provided, "Hostile environment, Continuous ongoing retaliation for union representation in discrimination complaints, ie.,Baldwin Daye". Plaintiff completed, signed and submitted the four-page EEOC Intake Questionnaire in the Detroit EEOC office with four additional handwritten pages attached. Appendix A.

Plaintiff raised the claims of hostile environment and continuing violations on July 8, 2015, and in subsequent filings dated November 6, 2015, and December 17 2015.

The Sixth Circuit Court relied solely on the district court's opinion, stating, "Plaintiff did not raise those claims in her EEOC charge and they were not exhausted." There is no evidence or reasonable inference that Plaintiff failed to exhaust EEOC's administrative remedies or process. In ***Mach Mining, LLC v EEOC***, 135 S. Ct. 1645 (2015), it was revealed that the EEOC has complete control and limited oversight concerning its administrative process. It was in the EEOC's best interest to relinquish its responsibilities in this case due to limited time and resources and the complex issues presented. However, the courts decided that, "Because Logan's allegation would not prompt the EEOC to investigate a hostile work environment claim or a continuing violation claim, the district court did not err by concluding that Logan failed to exhaust her administrative remedies as to these claims and that her action was limited to allegedly discriminatory conduct that occurred between September 11 2014, and December 4 2014. (See Case 21-1149, Document 17-2, Filed: 12/22/2021, Page 3.)

Plaintiff was not given a meaningful opportunity to be heard concerning the EEOC's lack of a thorough investigation or the lack of conciliation efforts before or after her case was dismissed.

Neither was Logan given a meaningful opportunity to be heard before the courts decided the exhaustion issue.

Substantial grounds for a Rehearing not previously mentioned in Plaintiff's petition for a writ of certiorari concerns Plaintiff's Complaint.

Plaintiff filed her Complaint in this case in federal court February 17, 2016, ninety days after the EEOC relinquished its responsibility and authority to enforce the Civil Rights Act of 1964, Title VII, as amended. Plaintiff alleged in her Complaint that "throughout the course of her employment with Defendant, Plaintiff was treated differently from similarly situated male employees with respect to the terms, conditions, and benefits of employment." Plaintiff made other specific allegations including the dates that they occurred. Seven of the nine dates specified in Plaintiff's Complaint occurred before September 11, 2014, the EEOC's cutoff date. Plaintiff's Complaint is no longer a concern of the EEOC or the EEOC's procedural rules. The Federal Rules of Civil Procedure (FRCP) govern the Plaintiff's Complaint and did not mention a 300 day statute of limitations for filing, nor any statute of limitations for referencing relevant and material evidence or incidents. The allegations contained in Plaintiff's Complaint should not be barred due to anything done during or due to the EEOC's procedures, which are designed to avoid "burdening" court. Civil rights complainants should not have the burden of complying with two set of rules, Title VII's elaborate pre-suit process and when that fails, the FRCP's elaborate pre-suit process, specifically Rule 56, designed to eliminate frivolous court actions, even at the expense of non-frivolous court actions.

Substantial grounds for Rehearing not mentioned in Plaintiff's petition for a writ of certiorari concerns the violation of Plaintiff's First Amendment right to freedom of speech.

Plaintiff was a union steward and had the duty to fairly represent employees at MGM, including, but not limited to discrimination complaints, and complaints of retaliation for opposing discrimination. Due to Plaintiff's exercise of her right to freedom of speech, Defendant retaliated and perpetuated a hostile work environment. The more Plaintiff complained, the more difficult and unreasonable work Defendant assigned to Plaintiff to force her to quit.

Plaintiff endured the perceived discrimination and retaliation without submitting a resignation because she could not afford to quit. Then, on November 26, 2014, while Plaintiff was working, loading stock from the hallway to take into the restaurant, she saw the Vice-President of Food and Beverage, along with a Food and Beverage manager whom she had spoken to several days prior about the excessive amount of stock she was assigned to put away, walking toward her. Plaintiff showed them the assignment she was given, and asked again for help moving more than 1,000 pounds of supplies at the beginning of her shift. Both individuals walked away from the request with no remedy for assistance. Although any food and beverage team member in the casino could have been assigned to help per the union contract, no one was assigned to help. A female, 59 years old, reasonably feared injury lifting that much weight. Defendant refused to comply with discovery request to ascertain exactly how much supplies were ordered that day as compared to any other day. A similar incident occurred in December 2010. Plaintiff was suspended for complaining about unrealistic weight loads to a union steward. Following the incident on November 26, 2014, Plaintiff did not complain to anyone after bringing it to the attention of management. Plaintiff quietly completed the assignment, went to Human Resources

and handwrote a one-week notice to resign. Plaintiff was tired of fighting. Considering the totality of the circumstances any reasonable person would have resigned.

CONCLUSION

In the interest of justice, the Court should suspend the rejection of Logan's petition for writ of certiorari and grant rehearing of Logan's petition.

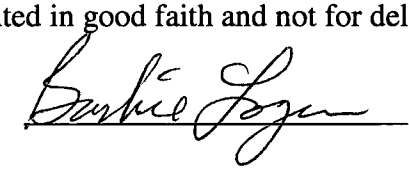
Respectfully submitted,

BARBRIE LOGAN
Pro Se
3501 Woodward Avenue
Apartment 505
Detroit, Michigan 48201
(313) 590-2314

October 28, 2022

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.



Barbrie Logan, Pro Se