

No. 21-865

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The
Supreme Court of the United States

DEBORAH WALTON,
Petitioner,

v.

FIRST MERCHANTS BANK,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

DEBORAH WALTON
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QUESTIONS PRESENTED

Whether the 7th Circuit Court of Appeals neglected to apply procedural due process in accordance with the Fifth and Fourteenth Amendments, by not accepting jurisdiction after the District Court entered a Final Order Denying a 60(B) Motion.

Whether a final order, from the 7th Circuit Court of Appeals, disposing of a Claim, that the U. S. Supreme Court denying cert., gives the 7th Circuit Jurisdiction over a 60(B) motion that was denied by the Southern District of Indiana.

PARTIES TO THE PROCEEDING

All parties are listed in the caption.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental Corporation. None of the petitioners has a parent Corporation or shares held publicly traded company.

STATEMENT OF RELATED CASES

Deborah Walton v. First Merchants Bank
Southern District of Indiana Docket No. 1:17-cv-
01888-JMS-MPB Ended July 7, 2020. Trial
Scheduled For February 7, 2022.

Deborah Walton v. First Merchants Bank
Southern United States Supreme Court Docket No.
19-93 Ended October 7, 2019

Deborah Walton v. First Merchants Bank
Southern United States Court of Appeals for the
Seventh Circuit Docket No. 19-3370 and 20-1206.
Ended July 7, 2020

Deborah Walton v. First Merchants Bank
Southern Seventh Circuit Court of Appeals Docket
No. 21-2020 Ended July 23, 2021

Deborah Walton v. First Merchants Bank
Southern Seventh Circuit Court of Appeals Docket
No. 21-2021 Ended September 20, 2021

Deborah Walton v. First Merchants Bank
Southern Seventh Circuit Court of Appeals Docket
No. 21-2026 Ended June 7, 2021

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THE UNITED STATES COURTS OF APPEALS SEVENTH CIRCUIT SHALL HAVE JURISDICTION OF APPEALS FROM ALL FINAL DECISIONS OF THE DISTRICT COURTS OF THE UNITED STATES, EXCEPT WHERE A DIRECT REVIEW MAY BE HELD IN THE SUPREME COURT. THE JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT SHALL BE LIMITED TO THE JURISDICTION DESCRIBED IN 28 U.S. CODE 1291 SECTION 1292 (c) AND (d) AND 1295	4
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Deborah Walton respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.



OPINIONS BELOW

The Opinion of the United States Court of Appeals Order is dated September 20, 2021 (7th Cir. 2021) is found at Appendix, **App. 1**. The Seventh Circuit, Opinion from the Order of (July 7, 2020), and is found at **App. 3**. The Seventh Circuit, order on Fees and Cost, November 5, 2021, and is found at **App. 15**. The Seventh Circuit, order on Damages, October 6, 2021, and is found at **App. 17**. The Seventh Circuit, order on Jurisdictional Statement, June 2, 2021, and is found at **App. 18**. The S.D. of Indiana, Order Denying Motion For Relief, May 27, 2021, and is found at **App. 20**. The S.D. of Indiana, Order Granting Defendant's Motion To Confirm, May 27, 2021, and is found at **App. 30**. The Seventh Circuit, order on rehearing, October 8, 2021, and is found at **App. 49**.



JURISDICTION

Petitioner seeks review of the decision of the United States Court of Appeals for the Seventh Circuit entered on September 20, 2021, the rehearing en banc entered on October 8, 2021 and the Fee and Cost Order entered on November 5,

2021. This Court's jurisdiction rests on 28 U.S.C. § 1254(1)



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution Fifth and Fourteenth Amendments

The right to due process.



STATEMENT OF THE CASE

The Appellant, Deborah Walton ("Petitioner"), filed a Complaint against First Merchants Bank ("Respondents") on Regulation E and TCPA claims on June 8, 2017. The case preceded to trial, and the Appellant, Deborah Walton ("Petitioner"), failed to prevail, and a Judgment of \$57,751.00 was entered against her. The Appellant, Deborah Walton ("Petitioner"), file an Appeal at the Seventh Circuit Court of Appeals, at which time they Affirmed the Regulation E claim; however, her TCPA claim was Remanded back to the District Court and set for a Jury Trial.

The Appellant, Deborah Walton ("Petitioner"), was informed that First Merchants Bank ("Respondents"), had terminated Brian T. Hunt and Christopher Horton, whom lied when he testified at trial. Both Brian T. Hunt and Christopher Horton, committed fraud on the court. When it was brought to opposing counsel's attention, they file a motion with the District Court, to Confirm the Scope of Claims for Trial at Docket [335], The District Court

granted their motion at Docket [350], **App.30.** ultimately reversing the Seventh Circuit Court of Appeals Order. **App.3.**

The Appellant, Deborah Walton (“Petitioner”), filed a motion under Federal Trial Rule 60(B)3, and her motion under Docket [341] was denied, and she was instructed to show cause as to why she should not be sanctioned for filing a 60(B)3 motion. See Docket [351], **App.20.**

The Appellant, Deborah Walton (“Petitioner”), immediately filed three Appeals on May 30, 2021, with the Seventh Circuit Court of Appeals under Docket Number(s); 21-2020; 21-2021; and 21-2026. The motion for Writ of Mandamus concluded, and the Appeal supporting the argument for the Writ of Mandamus was dismissed for lack of jurisdiction, on July 23, 2021. The Appeal for relief from the District Courts final order was filed on May 30, 2021 and an order was entered instructing the Appellant show the Seventh Circuit had jurisdiction on June 2, 2021; yet dismissed on September 20, 2021. Appellant, Deborah Walton (“Petitioner”), filed a motion for Rehearing En Banc, on September 22, 2021, and it was denied on October 8, 2021; however on November 5, 2021, the Seventh Circuit Court of Appeal Sanctioned the Appellant, Deborah Walton (“Petitioner”), for filing a Notice of Appeal. **App.15.**

REASONS FOR GRANTING THE WRIT

The United States Courts of Appeals Seventh Circuit shall have jurisdiction of appeals from all final decisions of the District Courts of the United States, except where a direct review may be held in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in 28 U.S. Code 1291 and 1295.

A. This Court Should Grant Certiorari Because The Petitioner Was Denied Due Process.

The Seventh Circuit Court of Appeals, entered an Order on September 20, 2021; stating the Following: “Generally, an appeal may not be taken in a civil case until a final judgment disposing of all claims against all parties is entered on the district court’s civil docket pursuant to Fed. R. Civ. P. 58. *See Alonzi v. Budget Construction Co.*, 55 F.3d 331, 333 (7th Cir. 1995); *See Cleaver v. Elias*, 852 F.2d 266 (7th Cir. 1988).

“Plaintiff-appellant Deborah Walton’s case is not at the end in the district court. Her case is scheduled to proceed to a jury trial. There is no jurisdictional basis for appellant review at this time.” App.1.

However; according to Fed. R. App. P. 28(a)(4)(D), which requires that an appellant’s brief contain a jurisdictional statement, including “an assertion that the appeal is from a final order or

judgment that disposes of all parties claims. The Appeal challenges the District Judges Order, on a 60(b)3 motion, of a final order, since the Appellant has an absolute right to Appeal.

An order is “Final” for appeal purposes when a decision has been entered that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. See *Coopers & Lybrand v. Liversay*, 437 U.S. 463, 467 (1978); *In re IBI Sec. Serv., Inc.*, 174 B.R. 664, 668 (E.D.N.Y. 1994). Therefore; Appellant’s Appeal is in accordance with 28 U.S.C. § 1291, from a Final Order entered on May 27, 2021; timely Appealed on May 28, 2021.

The Seventh Circuit Court of Appeals entered an Order on July 7, 2020 at No. 19-3370 and No. 20-1206 which makes it the Law of the case. However; the Judgment entered in the amount of \$57,751.00 is considered as judicial estoppel; therefore it falls under Res judicata which bars the Appellant from re-litigating her claim at trial. See *Energy Co-op., Inc.*, 814 F.2d 1226, 1230 (7th Cir. 19867) (citing Restatement (Second) of Judgments § 87 (Am. Law Inst. 1982); 18 C. Wright et al., Federal Practice and Procedure § 4466 (1981); Ronan E. Degnan, Federalized Res Judicata, 85 Yale L.J. 741, 769 (1976)). **App.3.**

Res judicata ensures “that there be an end to litigation; that those who have contested an issue shall be bound by the results of the contest, and that matters once tried shall be considered forever settled as between the parties.” *Car Carriers, Inc. v. Ford Motor Co.*, 789 F.2d 589, 594 (7th Cir.1986)(quoting *Baldwin v. Iowa State Traveling Men’s Ass’n*, 283

U.S. 522, 525 (1931)). “[A]n unsuccessful party ought not be able to ‘frustrate the doctrine of res judicata by cloaking the same cause of action in the language of a theory of recovery untried in the previous litigation.’” *Car Carriers*, 789 F.2d at 594. (quoting *Harper Plastics, Inc. v. Amoco Chems. Corp.*, 657 F.2d 939, 945 (7th Cir. 1981)). Courts should strictly enforce this rule of fundamental and substantial justice to encourage [] reliance on judicial decisions, bar [] vexatious litigation, and free [] the courts to resolve other disputes.” *Car Carriers*, 789 F.2d at 593. (quoting *Brown v. Felsen*, 442 U.S. 127, 131 (1979)). Therefore; the Districts Court ‘Final Order’, at **Docket [351]**, **App.20**, precludes the Appellant’s claim from going to trial. Emphasis added in its entirety.

The Fed. T.R. Civ. Pro 60(b)3, motion for relief from a final judgment that was, upheld by the Seventh Circuit Court of Appeals, is timely and warranted. The Plaintiff’s 60(b)3, motion is not untimely, especially when it relates to Fraud. See *Apotex Corp. v. Merck Co., Inc.*, 507 F.3d 1357 (7th Cir. 2007), the court explains “fraud upon the court” as properly understood to justify granting relief from a final judgment or order outside the express time limits of Rule 60(b). Hence; Appeal is warranted; yet the Order from the Seventh Circuit, dated September 20, 2021 states: “Plaintiff-appellant Deborah Walton’s case is not at the end in the district court. Her case is scheduled to proceed to a jury trial. There is no jurisdictional basis for appellant review at this time.” To the contrary, the case was at the end in the District Court, at the time the Seventh Circuit upheld the District Courts Final

Judgment; therefore the Plaintiff/Appellant, will not be able to raise the Regulation E Claim as trial. Not to mention the United States Supreme Court denied cert.

The right to appeal is a fundamental right and a part of due process. However; it must be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the remedy of appeal must comply with the requirements of the rules; otherwise, the appeal is lost. Rules of procedure are required to be followed, except only when, for the most persuasive of reasons, they may be relaxed to relieve the litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. The Petitioner followed the rules of procedure; yet was still denied her right to due process.

◆

CONCLUSION

For all these reasons, this Court should grant the Writ of Certiorari Petition.

Respectfully submitted,

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