

No. _____

In the Supreme Court of the United States

REV. BARRY D. BILDER, Applicant *Pro Se*

v.

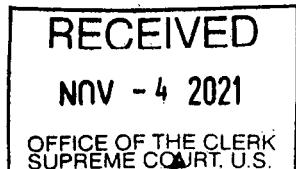
JANICE A. DYKSTRA, Respondent

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI
FROM THE 7TH CIRCUIT COURT OF APPEALS
TO THE U.S. SUPREME COURT**

To the Honorable Amy Coney Barrett, Associate Justice and Circuit Justice for the Seventh Circuit:

Applicant *Pro Se* respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for 45 days (30 days would put the due date in the middle of the holidays), to and including January 6, 2022. The 7th Circuit Court of Appeals issued its Order on July 22, 2021. Applicant filed a Petition for Rehearing En Banc on August 5, 2021; his Petition was Denied on August 20, 2021.

Without an extension of time, the Petition would be due on November 20, 2021, which falls on a Saturday. According to S. Ct. R. 30.1, the deadline would fall on Monday, November 22, 2021; Applicant files this Motion more than 10 days before that date, S. Ct. R. 13.5. This court will have jurisdiction pursuant to 28 U.S.C. §1253.



Introduction

When a settlement agreement (contract) states that “new facts” may arise; do such “new facts” need to be new and previously unknown to both (all) parties, or to only one party? Surprisingly, the term, “new fact” is not defined by the law dictionaries most commonly used, such as Black’s Law Dictionary, etc.

Reasons for Granting an Extension of Time

The time to file a petition of a writ of certiorari should be extended for 45 days, to and including January 6, 2022, (30 days would put the due date in the midst of the holidays), for the following reasons:

#1) An Extension of time is necessary for Applicant, who is *Pro Se*, for the following reason: His wife, Mrs. Lisa Bilder, has been his secretary and paralegal. Mrs. Bilder suffers from chronic bone marrow cancer. Her condition has recently worsened, affecting her immune system. On or about Thursday, September 2, 2021, Mrs. Bilder suffered an infection in her right leg, which she immediately brought to the attention of her oncologist, Dr. Melinda Dunlap, of the Oklahoma Cancer Research Specialists Institute. The doctors suspected that a brown recluse spider bite was the initial cause of infection. She was prescribed a round of antibiotics, which were ineffective. On September 11, 2021, Mrs. Bilder was admitted to St. Francis Hospital with a life-threatening infection, for which she received seven blood transfusions. She was discharged from the hospital on September 27, 2021. She remains under the care of Dr. Faisal Wasi (Infectious Disease Specialist), Dr. Shaw Tang (Surgeon, OSU Medicine), and Dr. Evan

Cole. Mrs. Bilder has only recently been strong enough to partially assist her husband in his legal writings. (See: Exhibit, 2 pages).

#2) An Extension of Time is necessary since, for the above reason, Applicant is in the process of interviewing and securing the assistance of professional Counsel. Additional time is necessary to study the record and the legal issues in the case, and to prepare a Petition. Moreover, the Petition is due on November 22, 2021, and the Reply Brief would be due during the holidays. With an Extension of Time, the Briefs would be due after the holidays had passed.

#3) An Extension of Time would not prejudice either party, since, if the Petition were granted, the Court would hear oral argument in this matter during the Spring 2022 term, regardless of whether an Extension is allowed.

#4) There is a reasonable prospect that this Court will grant the petition. There is no legal definition of the term, “new fact,” which the lower Court uses in its Order as rationale to the supposed inviolability of the settlement agreement. However, the Court’s decision is based upon the definition of a “new fact”. The settlement agreement in question states, *“Each party understands that he or she, or their attorneys may hereafter discover facts...different from or in addition to the facts... which they now know or believe to be true with respect to this subject matter of the action...”* (Case 1:19-cv-04999, Doc. 81, pg. 4). The question before this Court is whether such a “new fact” must be new to both (all) parties to the settlement agreement, or to only one party? Is the newly discovered evidence considered “new” if one party had prior knowledge of it, while the other party had no knowledge of it?

It is a matter of record that the existence of the “Letter”, which the Illinois District Court refers to as “a new fact”, was revealed as an Exhibit in the Respondent’s Reply, eight months after the settlement agreement had been signed. (*Id.* Doc. 77-1, pg 6, #16). Obviously the “Letter” was not a “new fact” to the Respondent.

Remarkably, the term, “new fact” is not defined in any law dictionary. However, Bouvier Law Dictionary (1856) defines “new” as, “something not known before.” Applying this logic, the lower Court erred in describing the Letter as a “new fact” since the Letter was “something not known before” to Applicant but something that was “known before” to the Respondent. Can the term, “new fact” be used to describe a fact which was only “new” to one party? By Respondent’s fraudulent concealment of the “new fact” (the Letter), Applicant argues the settlement agreement is invalid.

The Illinois Northern District Court continues, *“As such, any consideration of this fraud claim would not change the final judgment...”* (*Id* Doc. 81, pg 5). This decision undermines two seminal U.S. Supreme Court cases, *United States v Throckmorton*, 98 U.S. 61, 25 L.Ed. 93 ¶ 1, which states, *“There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.”*

And in *Husky Int'l Elecs., Inc. v Ritz*, 136 S.Ct. 1581, 1586 (2016), *“...anything that counts as ‘fraud’ and is done with wrongful intent is ‘actual fraud.’”*

The case now before the bar is ripe for consideration by the U.S. Supreme Court specifically because the term, “new fact” is ubiquitous in contract law. However, this term is ambiguous as to whether “new fact” refers to something known to one party or refers to something known to all parties.

#5) Lastly, an Extension of Time is necessary to perfect the record of the documents which appear on PACER, and on which the Applicant has relied for copies to provide his future Counsel. Applicant takes this opportunity to alert this Court and the Clerk of the 7th Circuit that in the scanned records for this case, downloaded from PACER, multiple pages are missing from the official record of Doc. 10 and Doc 11. The missing pages from: Doc. 10, “*Brief and Required Short Appendix of Plaintiff-Appellant Pro Se, Rev. Barry D. Bilder*”, are pages 17-20, 42-43, and R.S. Appx 19-20; the missing pages from Doc. 11, “*Supplemental Appendix to Appellant’s Brief*”, are pages 30-33.

Background of the Case

On January 5, 1994, John Bilder, the father of Applicant Barry Bilder and Respondent Janice Dykstra, purchased real estate in Tulsa, Oklahoma for his son, Barry. The cost of the real estate was fifty-thousand dollars (\$50,000.00), which he loaned to his son for the purchase. On January 6, 1994, the day after John Bilder purchased the Tulsa property, Applicant wrote a personal letter to his father acknowledging the loan and thanking his father for purchasing the Tulsa property on his behalf (1:19-cv-04999 Doc. 30-1, pg. 13).

On June 17, 1996, unbeknownst to Applicant, their father John wrote a letter to his son, the Applicant, forgiving him the loan of the purchase price of the Tulsa property in the amount of fifty-thousand dollars (\$50,000.00), (*Id.* Doc. 18-2, pg. 38). That 1996 Letter, hereinafter “the Letter” was in the possession of the Respondent, who was the executor of the estate. The Applicant never saw, had knowledge of, nor received a copy of “the Letter”, as he attests in his Affidavit, (*Id.* Doc. 30-1, pg. 16, #10). Applicant first learned of this “new fact” in October 2019, when Respondent filed it as an exhibit in the Illinois Northern District Court.

On July 2, 2015, Applicant filed a Quiet Title action in Tulsa County District Court, Tulsa, Oklahoma, regarding the ownership of the Tulsa property; he and his sister, the Respondent, were parties to that action.

As memorialized in Applicant's "Third Affidavit" (*Id. Doc. 77-1*, pg. 9, 11, 15, 26), he diligently pursued the production and discovery of all documents in Respondent's possession pertinent to the subject property. On December 5, 2016, Applicant issued his "Deposition Subpoena Duces Tecum For Records", to Respondent, to which she only produced the Cook County Probate documents of Bilder Family estate of which she was the sole executor. Respondent fraudulently concealed the most important document to the Quiet Title settlement agreement, "the Letter", which showed that the loan for the purchase price of the Tulsa real estate had been forgiven. The Quiet Title case was settled on February 21, 2019, with a condition within the settlement agreement that Applicant pay Respondent for the price of the land.

Applicant found his signatures forged on multiple probate documents, and he initiated a lawsuit against the Respondent (*Id. Doc. 1*) on July 25, 2019, in the Illinois Northern District Court. During the course of that litigation, the Respondent produced the "Letter" as an Exhibit in her Reply. (*Id. Doc. 18-2*, pg. 38). The Illinois District Court later referred to the "Letter" as a "new fact." (*Id. Doc. 81*, pg. 5).

In December 2019, the Illinois District Court ruled that the settlement agreement precluded Applicant from bringing suit citing the phrase in the release, and the 7th Circuit agreed that "... *new facts may arise and that he waives any and all claims related to those new facts.*" (Case 20-3062, Doc. 22, pg. 3).

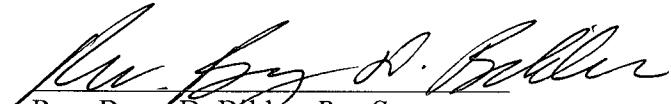
The 7th Circuit reiterated the lower Court's opinion, "*The existence of the letter is a new fact that was discovered after entering into the settlement agreement. Bilder acknowledged in the settlement agreement that new facts may arise and that he waives any and all claims related to those new facts,*" (*Id.* Doc. 22, pg. 3).

On July 22, 2021, the 7th Circuit Court of Appeals issued its Panel Order denying review. On August 20, 2021, Appellate Court denied Petition for Rehearing En Banc.

Conclusion

For these reasons, the time to file a petition for a writ of certiorari should be extended 45 days to and including January 6, 2022.

Respectfully submitted November 1, 2021



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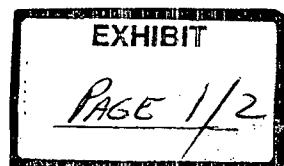
Name: Lisa Ann Bilder | DOB: 8/9/1956 | MRN: 6591621 | PCP: Evan Dean Cole, DO

Visit Records

Select the visits you'd like to view, download, or send. You can select a single visit or multiple visits using the options below.

Your Lucy Summary is also available.

<input type="radio"/> Hospital Outpatient Visit with Infusion Station Saint Francis Hospital OP Infusion	Tuesday October 19, 2021
<input type="radio"/> Documentation with Nikhil Mukhi Warren Clinic Oncology Center	Tuesday October 19, 2021
<input type="radio"/> Office Visit with Nikhil Mukhi Warren Clinic Oncology Center	Friday October 15, 2021
<input type="radio"/> Hospital Outpatient Visit with Shaw Tang OSU HOSPITAL WOUND CENTER	Monday October 11, 2021
<input type="radio"/> Emergency Department Saint Francis Hospital South Emergency	Sunday October 10, 2021
<input type="radio"/> Office Visit with Evan Dean Cole Warren Clinic Fam Med WIL1220	Tuesday October 05, 2021
<input type="radio"/> Anesthesia Event with John Renner Barnes Saint Francis Hospital Main OR	Wednesday September 15, 2021
<input checked="" type="radio"/> Hospital Visit SAINT FRANCIS HOSPITAL INC	September 11, 2021 - September 27, 2021
<input type="radio"/> Hospital Outpatient Visit with Saint Francis X-Ray SPR Saint Francis Hospital Springer Dx Radiology	Saturday September 11, 2021
<input type="radio"/> Office Visit with Mark Richard Gillen Warren Clinic Urgent Care Spr	Saturday September 11, 2021



Location:

- Saint Francis Hospital
- Saint Francis Hospital IP Rehab
- Saint Francis Hospital South
- Saint Francis Hospital Vinita
- Saint Francis Hospital Muskogee
- Laureate Psychiatric Clinic and Hospital
- Health System TTY Service call

6161 South Yale Avenue • Tulsa, Oklahoma 74136	918.494.1145
6161 South Yale Avenue • Tulsa, Oklahoma 74136	918.494.4250
10501 East 91st Street • Tulsa, Oklahoma 74133	918.307.6484
735 North Foreman Street • Vinita, Oklahoma 74301	918.256.7551 ext 390
300 Rockefeller Drive • Muskogee, Oklahoma 74401	918.684.2492
6655 South Yale Avenue • Tulsa, Oklahoma 74136	918.491.5789
	918.494.2300

**IMPORTANT MESSAGE FROM MEDICARE**

PATIENT-NAME IN FULL

PATIENT NUMBER

YOUR RIGHTS AS A HOSPITAL INPATIENT:

- You can receive Medicare covered services. This includes medically necessary hospital services and services you may need after you are discharged, if ordered by your doctor. You have a right to know about these services, who will pay for them, and where you can get them.
- You can be involved in any decisions about your hospital stay.
- You can report any concerns you have about the quality of care you receive to your QIO at: **KEPRO at 1-888-315-0636 toll free; For TTY Service call 1-855-843-4776.** The QIO is the independent reviewer authorized by Medicare to review the decision to discharge you.
- You can work with the hospital to prepare for your safe discharge and arrange for services you may need after you leave the hospital. When you no longer need inpatient hospital care, your doctor or the hospital staff will inform you of your planned discharge date.
- You can speak with your doctor or other hospital staff if you have concerns about being discharged.

YOUR RIGHT TO APPEAL YOUR HOSPITAL DISCHARGE:

- You have the right to an immediate, independent medical review (appeal) of the decision to discharge you from the hospital. If you do this, you will not have to pay for the services you receive during the appeal (except for charges like copays and deductibles).
- If you choose to appeal, the independent reviewer will ask for your opinion. The reviewer also will look at your medical records and/or other relevant information. You do not have to prepare anything in writing, but you have the right to do so if you wish.
- If you choose to appeal, you and the reviewer will each receive a copy of a detailed explanation about why your covered hospital stay should not continue. You will receive this detailed notice only after you request an appeal.
- If the QIO finds that you are not ready to be discharged from the hospital, Medicare will continue to cover your hospital services.
- If the QIO agrees services should no longer be covered after the discharge date, neither Medicare nor your Medicare health plan will pay for your hospital stay after noon of the day after the QIO notifies you of its decision. If you stop services no later than that time, you will avoid financial liability.
- If you do not appeal, you may have to pay for any services you receive after your discharge date.

SEE PAGE 2 OF THIS NOTICE FOR MORE INFORMATION.**Please sign below to indicate you received and understood this notice.**

I have been notified of my rights as a hospital inpatient and that I may appeal my discharge by contacting my QIO.

Signature of Patient or Representative

Date
9/27/21Time
18:50

PATIENT LABEL

EXHIBIT

PAGE 2/2

**DISCHARGE RECORD
IMPORTANT MESSAGE FROM MEDICARE**

Form CMS 10065-IM (Exp. 12/31/2022)

OMB approval 0938-1019

SAP 10054119 – Front / 03-20

WHITE – Patient / Beneficiary

CANARY – Hospital