

No. 22-_____

IN THE
Supreme Court of the United States

GLENN ARCARO,

Petitioner,

v.

ALBERT PARKS, *et al.*,

Respondents.

**PETITIONER GLENN ARCARO'S
APPLICATION FOR A SIXTY-DAY EXTENSION OF TIME
IN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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TO THE HONORABLE CLARENCE THOMAS, AS CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT:

Pursuant to Rule 13.5, Petitioner Glenn Arcaro respectfully requests a 60-day extension of time in which to file a petition for writ of certiorari in this Court, to and including September 19, 2022. The Opinion of the Eleventh Circuit Court of Appeals from which review is sought was filed on February 18, 2022, and is attached hereto as Exhibit A. On March 11, 2022, the Petitioner timely filed a Petition for Rehearing En Banc, which was denied on April 22, 2022. A copy of the Order denying rehearing is attached hereto as Exhibit B. The time to file a petition for writ of certiorari in this Court expires on July 21, 2022. This application is being filed more than 10 days before that date. S. Ct. R. 13.5. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

BACKGROUND

This action implicates the reach of “statutory seller” liability under Section 12(a)(1) of the Securities Act of 1933, 15 U.S.C. § 771 (the “Securities Act,” or the “Act”), as applied to modern methods of communication through social media, and the purchase of cryptocurrency products by market speculators. Respondents are those speculators – plaintiffs below in a putative class action, each of whom alleges that they invested in the highly volatile cryptocurrency market and purchased BitConnect Coins (“BCC”) as part of a program that originated in the U.K. and eventually collapsed. Plaintiffs/Respondents allege Petitioner Glenn Arcaro was a YouTube influencer who promoted BCC through social media and internet videos. Mr. Arcaro was one of more than a dozen Defendants named in the action below, and each Defendant, including Arcaro, is alleged to have been the “statutory seller” of unregistered securities to each of the Plaintiffs/Respondents.

The District Court dismissed Respondents' claims against Mr. Arcaro, applying this Court's decision in *Pinter v. Dahl*, 486 U.S. 622 (1988), which instructs lower courts to focus on a defendant's "relationship with the plaintiff-purchaser" in deciding who qualifies as a statutory seller of unregistered securities. *Id.* at 651. Liability under Section 12 extends only to a "broker acting as agent of one of the principals to the transaction" when he or she "successfully solicits a purchase." *Id.* at 646. In such cases, the broker "is a person from whom the buyer purchases within the meaning of § 12 and is therefore liable as a statutory seller." *Id.* This Court's decision in *Pinter* has defined the contours of statutory seller liability for more than thirty years.

The District Court dismissed with prejudice the claims of the Respondents, because Respondents failed to plead a relationship with Mr. Arcaro that could establish he was their statutory seller under the Act. Although Respondents alleged that they encountered Arcaro's widely published content, the District Court correctly concluded that the Respondents' mere allegation that they encountered that content while researching investments, and later purchased BCC, was insufficient to state a claim against Arcaro. On February 18, 2022, a Panel of the Eleventh Circuit Court of Appeals reversed the District Court's dismissal of the Respondents' claims against Mr. Arcaro, and in so doing, failed to apply the test articulated by this Court in *Pinter*. The Eleventh Circuit's published opinion extends liability under Section 12 of the Securities Act to persons "collateral" to the sale of an unregistered security, in a manner that is directly contrary to *Pinter*. The Panel erroneously concluded that *Pinter* did not answer the question at hand, and in so doing, it departed from the reasoning of this Court's controlling decision, potentially expanding Section 12 liability beyond the broker/customer relationship envisioned by Congress, to anyone who publishes content to the public regarding an unregistered security via social media or other mass communications. Such persons, under the Panel's

analysis, are liable under the Act to rescind the purchase of anyone who saw their content and later bought the security, regardless of whether the purchaser alleges facts establishing the existence of a relationship with the defendant that resulted in the purchase. Arcaro's Petition for Writ of Certiorari is due to be filed on July 21, 2022. No prior extension of time to file the petition has been requested. Respondents have indicated that they do not consent to the relief requested herein. For the reasons set forth below, however, good cause exists for the extension sought in this Application.

REASONS FOR GRANTING AN EXTENSION OF TIME

1. Arcaro's Petition for a Writ of Certiorari will present the substantial question of whether the Eleventh Circuit's published Opinion decided a federal question of exceptional importance in a manner that directly conflicts with this Court's controlling decision in *Pinter*, and whether the Eleventh Circuit Court of Appeals has decided an issue of exceptional importance under federal law related to the dissemination of social media content involving unregistered securities that has not been, but should be, settled by this Court.

2. Due to the importance of this issue, and counsel of record's other personal and professional pre-existing commitments through July, including an impending family medical leave and the press of other litigation, the undersigned counsel for Mr. Arcaro require additional time to complete the Petition for Writ of Certiorari in a manner that concisely and cogently frames the issue for this Court.

3. The undersigned counsel of record has represented Mr. Arcaro through the entirety of the appellate proceedings in this case, served as primary author of briefs and other papers in the Eleventh Circuit Court of Appeals, and presented oral argument to the Eleventh Circuit Panel that heard this case. Counsel of record must take a family medical leave at the end

of July, which requires the transitioning of multiple responsibilities and matters to other lawyers. This includes her entire caseload as well as management responsibilities at her law firm. While the undersigned and her co-counsel have been diligently working on the Petition, due to the press of these matters and the transition, additional time is required. For this reason, good cause exists for the 60-day enlargement of time sought herein, which is not being sought for any improper purpose.

4. The 60-day extension sought herein will work no hardship on any party, and no prejudice would arise as this Court would hear oral argument and issue its opinion in the October 2022 Term should the petition for writ of certiorari be granted, regardless of whether an extension is granted. Petitioner has requested no previous extension from this Court.

WHEREFORE, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari by 60 days, to September 19, 2022.

Respectfully submitted,

/s/ Julianna Thomas McCabe

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June 22, 2022

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