

22-169

ORIGINAL

In the
Supreme Court of the United States

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JUN 27 2022

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SUPREME COURT, U.S.

JAY LIN, ET AL.,

Petitioners,

v.

HUDSON CITY SAVINGS BANK, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The case started as a falsely debt collection case in New Jersey State Courts with the New Jersey Court Judges accepted personal, private, and secretive Stipulation from Defendant to overlook Defendant's violation of FDCPA. In the Federal FDCPA violation case that Plaintiff brought against Defendants, the New Jersey District Court judge circumvented his recusal by suspending FRCP R. 7.1 corporate disclosure statement requirement and afterward declared an exception to R. 7.1 requirement to the FDCPA case. The judge of Court of Appeals for the Third Circuit circumvented the recusal by issuing Defendant a waiver to exempt the FRAP R. 26.1 corporate disclosure statement requirement.

The questions presented are:

1. Must a reviewing court strictly adhere to Federal Rule of Appellate Procedure Rule 26.1 requirement that a nongovernmental corporate party to a proceeding in a court of appeals must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock as other Circuits have held.
2. The Court should revisit *Henson et al. v. Santander Consumer USA Inc.* 582 U.S. ____ (2017), 137 S. Ct. 1718 (2017) to resolve a clear violation on FRAP and FDCPA clear standard.
3. The Petition is an ideal vehicle to review the New Jersey Courts in lack of judicial ethics codes permitted the judges to accepted personal, private, secretive Stipulation from the counsels and circumvented FRAP

R. 26.1 and FRCP R. 7.1 recusal.* (National interest, important and recurring)

* Both the District Court and the Court of Appeal in circumventing FRCP R. 7.1 and FRAP R. 26.1 is suspect of violation of the Due Process law of the United States constitution.

CORPORATE DISCLOSURE STATEMENT

Petitioner, an individual, has no parent company, and no publicly-held company holds 10% or more of its shares.

LIST OF PROCEEDINGS

United States Court of Appeals for the Third Circuit
No. 21-1189

Jay Lin; Irene Lin, on Behalf of Themselves and All
Others Similarly Situated, *Appellants*, v. Hudson City
Savings Bank; M&T Bank; Parker McCay PA

Date of Final Order: February 8, 2022

Date of Rehearing Denial: March 31, 2022

United States District Court, District of New Jersey
Case No. 3:18-cv-15387

Jay Lin, Irene Lin, on Behalf of Themselves and All
Others Similarly Situated, *Plaintiffs*, v. Hudson City
Savings Bank, M&T Bank, and Parker McCay, P.A.,
Defendants.

Date of Final Order: January 29, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment below:



OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit at Appendix to the Petition is unpublished. It is available at Pet. App. 1a-3a.

The opinions of the United States District Court of New Jersey at Appendix to the Petition are unpublished. They are available at Pet. App. 4a-55a.



JURISDICTION

The court of appeals entered judgment on February 8, 2022, and the court of appeals denied rehearing on March 31, 2022. This Court's jurisdiction rests on 28 U.S.C. § 1254(1). By letter dated June 30, 2022, the Clerk of Court extended the time to file a brief under Rule 33.1 through August 29, 2022.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Appellate Procedure Rule 26.1:

- (a) Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of party's stock.
- (b) A party must file the statement with the principal brief of upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents."

Federal Rules of Civil Procedure Rule 7.1:

- (a) A nongovernmental corporate party must file 2 copies of a disclosure statement that (1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or (2) states that there is no such corporation."

U.S. Const., amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any state deprives any person of life, liberty, or property, without due process of law; nor deny

to any person within its jurisdiction the equal protection of laws."

15 U.S.C. § 1692 Fair Debt Collection Practices Act § 808:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the forgoing, the following conduct is a violation of this section: (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law."



INTRODUCTION

This case was originated as a falsely debt collection case in New Jersey State Court. Plaintiff executed one mortgage to Defendant Hudson City Savings Bank of \$680,000.00 to pay off an existing mortgage of \$200,000.00. Defendant Hudson City Savings Bank filed a foreclosure case in New Jersey Court to foreclose on Plaintiff's mortgage on both \$200,000.00 and \$680,000.00.

To collect the \$200,000.00 debt, Defendant provided the New Jersey trial court judge a personal, private, and secretive Stipulation to overlook Defendant's collection of \$200,000.00. The personal, private, secretive Stipulation was delivered by Defendant's hired attorney in person walked in the trial court judge's chamber before trial.

In the District Court, Defendant Hudson City Savings Bank sought to hide its entity to escape the liability of the FDCPA falsely debt collection case brought by Plaintiff against it. Defendant Hudson City Savings Bank refused to submit the corporate disclosure statement as mandated by FRCP Rule 7.1. The district court ignored Defendant's refusal to comply with FRCP Rule 7.1 corporate disclosure statement requirement by suspending Rule 7.1. Afterward, the district court issued an exemption to Hudson City Savings Bank R. 7.1 corporate disclosure statement requirement.

In the reviewing court, Defendant Hudson City Savings Bank refused to comply with FRAP R. 26.1 and submitted the corporate disclosure Statement. The Third Circuit Court ignored Defendant's refusal to comply with R. 26.1 by issuing Defendants a waiver.



STATEMENT OF THE CASE

A. Factual Background

This case was originated as a falsely debt collection case in New Jersey State Court. In 2007, Plaintiffs executed one mortgage to Defendant Hudson City Savings Bank of \$680,000.00 to pay off an existing mortgage of \$200,000.00. In 2010, Defendant Hudson City Savings Bank filed a foreclosure case in New Jersey State Court to foreclose on Plaintiff's mortgage of both \$200,000.00 and \$680,000.00. Defendant Hudson City Savings Bank refused to settle the case of collecting the wrong amount of debts due to a pending merger with M&T Bank. After the merger,

Hudson City Savings Bank attempted to shield its entity and liability in the federal district court by skipping the FRCP R. 7.1 requirement on defending the FDCPA complaint case Plaintiff brought against it.

In the Appeals Court Hudson City Savings Bank continued to shield its entity by skipping the FRAP R. 26.1 corporate disclosure statement requirement.

B. The Decisions Below

In March 1, 2019, the New Jersey District Court in suspending FRCP Rule 7.1, to assist Defendants issued Orders administratively terminated Defendants' motion for Sanction. App. 54a.

In March 25, 2019, the New Jersey District Court in suspending FRCP Rule 7.1, issued Orders administratively terminated Plaintiffs' cross-motion against Defendants. App. 52a.

In August 26, 2019, the New Jersey District Court ignored Defendant's refusal to comply with FRCP Rule 7.1, declared that Hudson City Savings Bank was wholly acquired by M&T Bank in 2015 and as a result, Hudson City Savings Bank is no longer an independent corporation and thus exempted from FRCP Rule 7.1 filing requirement. The district court entered Orders and Opinions dismissed Plaintiff's actions against Defendants. App.27a-49a. App.49a, footnote 9.

In July1, 2020, the New Jersey District Court entered Orders and Opinion denied Plaintiff's Motion to vacate Order entered on August 26, 2019. Despite Plaintiff provided proofs that Hudson City Savings Bank was an existing independent corporation and contrary to the judge's declaration of that Hudson City Savings Bank is no longer an independent corporation

and thus exempted from FRCP Rule 7.1 filing requirement. The District Court doubled down that in the event that Hudson City Savings Bank was an existing independent corporation and was required to submit corporate disclosure statement, the outcome of the case would not change. No recusal issues were discussed. App.19a-26a. App. 23a, 2nd Paragraph.

In January 29, 2021, the New Jersey District Court entered Orders and Opinions granted Defendants' Renewed Motion of for Sanction of March 1, 2019, against Plaintiffs for raising the issues of complying with FRCP Rule 7.1 and the issues of recusal.¹ App. 4a-16a.

Defendant Hudson City Savings Bank continued to carry that it is no longer an independent corporation and thus exempted from filing corporate disclosure statement, and refused to comply with FRAP R. 26.1. On February 8, 2022, the Third Circuit Court refused to review the applicability of FRAP Rule 26.1 on Hudson City Savings Bank by issuing a waiver and allowed Hudson City to skip filing of corporate disclosure statement and to submit motion, response, petition, and answer in the court of appeals. App. 1a-3a.

On March 31, 2022, The Third Circuit Court denied Plaintiff's Petition for En Banc and Panel Re-hearing. App. 56a-57a.

¹ The New Jersey District Court judge recused himself after the case was appealed.



REASONS FOR GRANTING THE WRIT

The Court should grant the petition as this case presents the questions only surfaced due to the era of COBVID-19 and the courthouses were closed with the court proceeding went into virtual in New Jersey Courts.

I. MUST A REVIEWING COURT STRICTLY ADHERE TO FEDERAL RULE OF APPELLATE PROCEDURE RULE 26.1 REQUIREMENT THAT A NONGOVERNMENTAL CORPORATE PARTY TO A PROCEEDING IN A COURT OF APPEALS MUST FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK AS OTHERS CIRCUITS HAVE HELD

The requirement of FRAP Rule 26.1 is to help judges determine whether they must recuse themselves because of an “interest that could be affected substantially by the outcome of the proceeding.” Code of Judicial Conduct, Cannon 3(C)(1)(c)(2009). Recusal issues involve the operations of the courts and the judicial conduct of judges, and thus are matters of utmost public concern.

In the Eleven Circuit, R. 26.1-5(a) This Circuit Court will not act upon any papers requiring a Corporate Disclosure Statement except to prevent manifest injustice. (b) The Clerk is not authorized to submit to the court any papers where the Corporate Disclosure Statement has not been completed. (c) The failure to comply with R. 26.1-1 may result in dismissal of the case or appeal, return of deficient documents

without action, or other sanctions on counsel, the party, or both.

In the Third Circuit, L.A.R. 26.1.1(a) Promptly after the notice of appeal is filed, each corporation that is a party to an appeal, must file a corporate / financial interest disclosure statement on a form that identifies every publicly owned corporation with which it is affiliated but which is not named in the appeal or states that there is no such corporation. The form must be completed whether or not the corporation has anything to report.

FRAP Rule 26.1, and Local Rules of the First Circuit Court requires counsel representing a nongovernmental corporation must include a disclosure in the first document submitted for filing with the Court. A disclosure statement must be filed even if the party has no information to disclose. A failure to comply with FRAP 26.1 will result in the striking or return for correction of submitted documents.

The reviewing court in this case refused to adhere to FRAP Rule 26.1 that any of others Circuits have held. Defendant Hudson City Savings Bank circumvented the Clerk and submitted papers to the reviewing court. The reviewing court in turns issued a waiver on Hudson City Savings Bank's court filings.

This Court should summarily reverse the Third Circuit's FRAP R. 26.1 waiver issued to Hudson City Savings Bank, or grant plenary review to resolved a clear circuit split on R. 26.1 clear standard.

II. THE COURT SHOULD REVISIT *HENSON ET AL. V. SANTANDER CONSUMER USA INC.*, 582 U.S. ____ (2017), 137 S. CT. 1718 (2017) TO RESOLVE A CLEAR VIOLATION ON FRAP AND FDCPA CLEAR STANDARD

The FRAP R. 26.1 corporate disclosure statements exist to assist judges in determining whether they might have a financial interest in a corporate entity that is related to a corporate party in case before them and therefore requires their recusal which involves the operations of the courts and the operation of judges.

In Henson, Petitioner relied on *Bridge, v. Ocwen Federal Bank, FSB*, 681 F.3d 355 (6th Cir. 2012), *Davidson, v. Capital One Bank (USA), N.A.*, 797 F.3d 1309 (11th Cir. 2015), *FTC, v. Check Investors, Inc.*, 502 F.3d 159 (3rd Cir. 2007), *IBP. v. Alvarez*, 546 U.S. 21, 34 (2005), *Logan, v. LaSalle Bank Nat'l Ass'n*, 80 A.3d 1014 (D.C. 2013), *McKinney, v. Cadleway Props., Inc.*, 548 F.3d 496 (7th Cir. 2008), *Perry, v. Stewart Title Co.*, 756 F.2d 1197 (5th Cir. 1985), *Pollice, v. National Tax Fundings, L.P.*, 225 F.3d 379 (3rd Cir. 2000), *Ruth, v. Triumph P'ships*, 577 F.3d 790 (7th Cir. 2009), *Schlegel, v. Wells Fargo Bank, NA*, 720 F.3d 1204 (9th Cir. 2013), *Schlosser, v. Fairbanks Capital Corp.*, 323 F.3d 534 (7th Cir. 2003). None of these cases were pertinent to FRAP R. 26.1 and FDCPA violations that Plaintiff raised in this case.

In Henson, the Court referred to *Dodd, v. United States*, 545 U.S. 353 (2005), *IBP. v. Alvarez*, 546 U.S. 21, 34 (2005), *Kirtsaeng, v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013), *Loughrin. v. United States*, 573 U.S. 351 (2014), *Magwood. v. Patterson*, 561 U.S. 320 (2014), *Rodriguez. v. United States*, 480 U.S. 522 (1987).

None of these cases were related to FRAP R. 26.1 and FDCP violations that Plaintiff raised in this case.

In Henson, the Court held a company can collect debts that it purchased for its own account, without triggering the statutory definition in dispute.

In this case, the term of company is of disputed as the FRAP R. 26.1 was not filed by Hudson City Savings Bank.

The debts Hudson City Savings Bank collected are in dispute. The debt amount of \$200,000.00 Hudson City Saving Bank collecting was a non-existing debt set by the clear standard of FDCPA § 808: (1) The collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

This Court should summarily reverse the Third Circuit's FRAP R. 26.1 waiver issued to Hudson City Savings Bank, or grant plenary review to resolve a clear violation of the Court's Henson decision.

III. THE PETITION IS AN IDEAL VEHICLE TO REVIEW THE NEW JERSEY COURTS IN LACK OF JUDICIAL ETHICS CODES PERMITTED THE JUDGES TO ACCEPTED PERSONAL, PRIVATE, SECRETIVE STIPULATION FROM THE COUNSELS AND CIRCUMVENTED FRAP R. 26.1 AND FRCP R. 7.1 RECUSAL. (NATIONAL INTEREST, IMPORTANT AND RECURRING)

The New Jersey Courts do not have judicial ethics codes that prohibited New Jersey Judges from accepting personal, private, and secretive Stipulation from counsels of their presiding cases. The practices of New Jersey judges adopting and advancing the personal,

private, and secretive Stipulation practices are only surfaced during in the era of Covid-19 in New Jersey when the trials and litigation were held by virtual. ² ³

The district court overlooked the FDCPA falsely collection debts in this case. The reviewing court and the district court ignored the recusal of FRAP Rule 26.1 and FRCP Rule 7.1 when no judicial ethics codes to stop them.

The petition is an ideal vehicle for the court to review matters of utmost public concern. (National interest, important and recurring) (Suspect of violation of Due Process of the U.S. Constitution)

² The Supreme Court of New Jersey Advisory Committee of Judicial Conduct does not discipline Judges accepted personal, private, and secretive Stipulation from litigants.

³ The New Jersey judges adopted and advance the personal, private, and secretive Stipulation practices are further detailed in the case of *Jay Lin v. Aaron Sayers*, Case No. A-001819-21, Superior Court of New Jersey Appellate Division.

CONCLUSION

The Court should grant the Petition for Writ of Certiorari. In the alternative, this Court should reverse, vacate, and remanding this case for reconsideration by the Third Circuit.

Respectfully submitted,

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AUGUST 19, 2022