

No. 22- 290

9/21/2022

**In the
Supreme Court of the United States**

ANNE-MARIE MENDIBLE,

Petitioner,

v.

SPECIAL PROCEEDING DEPARTMENT OF
THE WAKE COUNTY COURT U.S., ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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SEPTEMBER 20, 2022

SUPREME COURT PRESS

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QUESTIONS PRESENTED

The petitioner filed a complaint against a violation of the Fourteen Amendment and violation of Truth in Lending Act (TILA). The district court decided the petitioner complaint with the findings of lack of subject matter jurisdiction and the limitation, without giving an opportunity to file the interrogatories. In effect the court has decided the case on merits. And it is an admitted fact that the court in May 20, 2021, entered an Order for Discovery Plan requiring the parties to conduct a Rule 26(f) conference by June 19, 2021, after which the court suddenly decided the case. Despite the fact that the complaint was in contact with the respondent for the filing of the interrogatories. The lawyers of the defendants have taken tricks to dismiss the complaint by asking to file joint motion for interrogatories and the petitioner wait for their response but suddenly the petitioner received the decision. The court has irregularly decided the case despite of this fact and the precedent that the petitioner is a pro se litigant. And The United States Appellate Court has also re affirmed the judgment of District Court without any reason.

The Questions Presented Are:

1. Whether the due process constitutional right of the petitioner is infringed and the Federal Court has jurisdiction to entertain it.

2. Whether the court has decided the cases arbitrarily and without hearing the petitioner, as it is a settled principle of law that no one should be condemned unheard. but in the present case the case the court decided the case without giving an opportunity to file the interrogatories by the petitioner.

3. Whether the court has subject matter jurisdiction under the law, the District Court is proper forum to file the present case and the court has subject matter jurisdiction to proceed the case.

4. Whether the case is in continuation of the case filed before State Court, and *res judicata* is applicable, this case is separately filed and parties are not same there for res judicial will not be applicable.

5. Whether the petitioner has filed the case within limits prescriber under the statute of limitation. The case is within the limitation as it involves continuous cause of action.

6. Whether the petitioner has failed to made out her case. the petitioner has not given opportunity to file the interrogatories and the merits only can be decided after recording of evidence.

PARTIES TO THE PROCEEDINGS

Petitioner

- Anne-Marie Mendible

Respondents

- Special Proceeding Department of the Wake County Court U.S.
- Bank Trust, N.A., as Trustee of Lsf9 Master Participation Trust.
- Trustees Services of Carolina, LLC
- Mortgage Electronic Registration System, Inc.
- Caliber Home Loans, Inc.

LIST OF PROCEEDINGS

United States Court of Appeals for the Fourth Circuit
No. 22-1259

Anne-Marie Mendible, *Plaintiff-Appellant*, v. Special
Proceeding Department of the Wake County Court;
Us Bank Trust, N.A., as Trustee of Lsf9 Master
Participation Trust; Trustee Services of Carolina,
LLC; Mortgage Electronic Registration Systems, Inc.;
Caliber Home Loans, Inc., *Defendants-Appellees*.

Date of Final Opinion: June 27, 2022

United States District Court
Eastern District of North Carolina
No. 5:21-CV-87-M

Ann-Marie Mendible, *Plaintiff*, v. Special Proceedings
Division of Wake County Clerk; U.S. Bank Trust,
N.S., as Trustee of Lsf9 Master Participation Trust;
Trustee Services of Carolina, L.L.C.; Mortgage
Electronic Registration Systems Inc.; Caliber Home
Loans, Inc.; Et al, *Defendants*.

Date of Final Judgment: February 11, 2022

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PETITION FOR WRIT OF CERTIORARI

Anne-Marie Mendible petitions the Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit passed on June 27, 2022 and the judgment of the United States District Court Eastern District of North Carolina dated February 11, 2022.



OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is included at App.1a. The Order and Judgment of the United States District Court for the Eastern District of North Carolina are included at App.6a and App.33a. These opinions and orders were not designated for publication.

The circuit court (the court of appeal) re-affirmed the district court's judgment without any reasons and explanation. The district court dismissed the plaintiff's complaint on the ground of want of jurisdiction, cause of action and limitation.



JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered judgment on June 27, 2022. *See* App.1a. This petition is timely filed pursuant to Supreme Court Rule 10. This Court has jurisdiction under 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS INVOLVED

Fed R. Civ. P. 4(h)

Summons, Serving a Corporation

Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

- (1) in a judicial district of the United States:
 - (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
 - (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).



STATEMENT OF THE CASE

A. Introduction

This appeal is being filed against the illegal and Arbitrary decision of the district court vide impugned judgment dated February 11, 2022. The petitioner has filed a complaint against the violation of Fourteen amendment, violation of Truth in Lending Act (TILA).

In response to the petitioner complaint and for the relief for monetary damages the respondents filed motion to dismiss with the grounds that the court does not have subject matter jurisdiction and challenged the limitation the petitioner also filed Motion for the amendment of the complaint, the court has decided the petitioner complaint with the findings of lack of subject matter jurisdiction and the limitation and further without giving an opportunity to file the interrogatories the court has decided the case on merits. And it is an admitted fact that the court in May 20, 2021, entered an Order for Discovery Plan requiring the parties to conduct a Rule 26(f) conference by June 19, 2021 And the court has suddenly decided the case. Despite of the fact that the complaint was in contact with the respondent for the filing of the interrogatories. The lawyers of the defendants have taken tricks to dismiss the complaint by asking to file joint motion for interrogatories and the petitioner

wait for their response but suddenly the petitioner received the decision. The court has irregularly decided the case despite of this fact and the precedent that the petitioner is a prose litigant. Hence the present appeal.

B. Lower Court Jurisdictional Statement

This appeal is being filed against the final illegal and Arbitrary decision of the District court there for under 28 U.S. Code § 1295 this court has jurisdiction.

C. Statement of the Issues

(i) Whether the court has decided the cases arbitrarily and without hearing the petitioner as it is settle principle of law that no one should be condemned unheard. but in the present case the case has decided the case without giving an opportunity to file the interrogatories by the petitioner

(ii) Whether the court has subject matter jurisdiction under the law, the District court is proper forum to file the present case and the court has subject matter jurisdiction to proceed the case.

(iii) Whether the case is in continuation of the case filed before state court, and *res judicata* is applicable, this case is separately filed and parties are not same there for *res judicata* will not be applicable

(iv) Whether the petitioner has filed the case within limits prescriber under the statute of limitation. The case is within the limitation as it involves continuous cause of action.

(v) Whether the petitioner has failed to made out his case. the petitioner has not given opportunity

to file the interrogatories and the merits only can be decided after recording of evidence.

D. Statement of Proceedings Below

The 4th Circuit Court has reaffirmed the judgment of the District Court vide impugned judgment dated July 27, 2022 (App.1a) The petitioner filed a complaint vide dated February 24, 2021 and in that complaint the petitioner states that promissory notes, deed of trust, assignments of deeds of trusts, and appointments of substitute trustees. Have been executed filed with respect to a mortgage loan initiated on June 1, 2007. On December 21, 2016, caliber sent a notice of default and election to sell to plaintiff, which did not identify the owner or "Holder in Due Course" of the petitioner Deed of Trust and Note or who had authorized Caliber to enforce default and said notice was not filed in the wake Country Recorder's Office" furthermore an undated notice of foreclosure sale which did not identify the owner or holder in due course of plaintiff's Deed of Trust and Note or who had authorized Trustee to conduct a foreclosure sale, was sent to the petitioner and filed in Wake County Clerk of Superior Court Recorder's office. On June 6, 2018, Trustee sold the subject property to U.S. Bank. At no time did the Defendants knew, in fact, who the actual beneficiary of Deed of Trust was "and "the actual beneficiary of Deed of Trust Never Provided a declaration to Caliber stating that petitioner was in default. The Defendants in response the petitioner claims filed motion to dismiss with the assertion challenging the jurisdiction and limitation and the petitioner also filed a motion to amendment to add the following factual allegations.

1. Plaintiff's Deed of Trust and Note or who had authorized Caliber to enforce default,

pursuant to N.C.G.S.A. 25-3-301. Said Notice was not filed in the Wake County Clerk of Superior Court Recorder's Office.

2. May 09, Defendant Wake County Clerk of Superior Court granted Trustee Services of Carolina LLC. The right to foreclosure (sic) on plaintiff's property.
3. June 2, final sale of plaintiff's property to U.S. Bank of Trust NA as Trustee for LSF9 Master Participation Trust.

The main relief sought by the petitioner in the complaint was declaration that the foreclosure of the plaintiff's residence was wrongful which was took place in 2018. And further the petitioner also seeks to cancel or void the Assignment of Deed of Trust and to quit title in favor of the petitioner which was occurred in December 2011 and March 2017 and US Bank took title to the property at June 2018. The petitioner also asserts and claims violation of FDCPA and violation of TILA against MERS, Trustee Caliber, and US Bank. it is alleged that Trustee was appointed a substitute trustee on April 19, 2017. Trustee Sold plaintiffs property to US Bank and Trustee sent petitioner a 'Notice of Foreclosure Sale' that took place on June 20, 2018. The defendants are creditors who violated 15 USC 1641 by failing to notify her "in writing of the transfer of the loan from the original lender. On December 16, 2011, MERS transferred its interest under the Deed of trust to Bank of America. Hence the present appeal.



REASONS FOR GRANTING THE PETITION

This writ is filed against the decision of the United States of Appeals 4th Circuit Court's judgment dated 27th June 2022 and United States District court's decision vide its decision dated February 11, 2022. The decision is consisting of material irregularities and illegalities, and against the principle laid down by Superior Court, the court has decided the case in an arbitrary manner despite of the fact a person's liberty is endangered due to the act of the defendants which are illegal and the court instead of going into true spirit of the procedure decided the case in an arbitrary manner.

I. PRO SE LITIGATION

In the present case the petitioner and were appearing prose and not represented by Lawyer therefore the courts has to consider and take care of the proceedings. In the present case the petitioner has been misinformed by the Defendant lawyer and the court also gave the benefit to the Defendant, the petitioner answered to the lawyer of the respondent and the petitioner was waiting for the response from the defendant lawyer suddenly the petitioner received the copy of judgment. Pro se litigants deserve, of course, the minimum due process rights to which all other litigants are entitled. The most significant of these rights is an opportunity to be heard, "granted at a meaningful time and in a meaningful manner." Other minimum Due Process protections include the requirement of adequate notice, the right to a neutral and detached decision maker, the right to hire

counsel, the right to present evidence and confront and cross-examine witnesses, and the right not to be subjected to the jurisdiction or laws of a forum with which one has no significant contacts", *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). See also *Little v. Streater*, 452 U.S. 1, 5-6 (1981). 102 See Note, 61 N.Y.U.L. Rev. at 483 and n.166-72 (cited in note 51). 103 455 U.S. 422, 437 (1982.) Protected Interest. Civil litigants have a protected interest in a meaningful opportunity to be heard. This interest is analytically distinct from any protected liberty or property interests that may underlie the litigant's cause of action or legal defenses. Litigants have invoked the interest in a meaningful opportunity to be heard in order to gain access to the courts in the absence of any potential deprivation of an underlying substantive interest." This subsection argues that, regardless of whether there are protected liberty or property interests attached to a given pro se litigant's underlying claim, courts should hold that a meaningful opportunity to be heard is itself a protected interest for such litigants. Authorities are split on whether there is a Constitutional Right to proceed pro se in civil cases." In fact, access to court is rarely unconditional where there are no fundamental constitutional rights at stake or there is no necessity to resort to the court system." Civil litigants, however, have a statutory right to proceed pro se under 28 U.S.C. § 1654. Although the government may not be required to give litigants access to court, case law indicates that once it does grant access, the procedures used must comport with due process." Moreover, statutory interpretation supports this argument: Congress, after all, would not have granted the right to proceed pro se without

conveying with that right a meaningful opportunity to be heard. Ordinarily, a denial of due process does not occur if a state restricts the right of access by means of reasonable procedural requirements. A litigant is denied due process, however, if these requirements work to deny him a meaningful opportunity to be heard.

II. SUBJECT MATTER JURISDICTION

The learned Judge has dismissed the plaintiff's complaint with the reason that the District Court does not have subject matter jurisdiction on the present claim. The petitioner has rightly filed the present case before the District Court. A threshold concern for all Federal Courts is the presence, or absence, of constitutional standing. The standing requirement, as governed by Article III of the Constitution, permits federal courts to adjudicate only cases or controversies. A case or controversy must comprise an actual injury that can be redressed. *See Lujan v. Defenders of Wildlife* at 559. And the present case the controversy exists as the petitioner alleged in his claims the violation of FDCPA and violation of TILA against MERS, Trustee Caliber, and US Bank. Which will be determined after recording of evidence and after adjudication of evidence. Subject-matter jurisdiction does not exist in the absence of constitutional standing. This restriction prevents courts—whose members are not elected and are therefore not politically accountable—from influencing the law in a legislative capacity. In this sense, the standing doctrine and subject-matter jurisdiction facilitate the separation of powers. And in the present case an issue of constitutional illegality and liberty of the petitioner is established, there for even otherwise question of subject matter jurisdiction does not arise. The two primary sources of the

subject-matter jurisdiction of the federal courts are diversity jurisdiction and federal question jurisdiction. Diversity jurisdiction generally permits individuals to bring claims in federal court where the claim exceeds \$75,000 and the parties are citizens of different states. *See* 28 U.S.C. § 1332.

In the present case the proper forum in light of precedent set by apex court is district court. The learned District judge misinterpreted the concept of subject matter jurisdiction, the fact and issues involved in the claim are in the nature of Federal jurisdiction, as the parties are from more than one state; and secondly, the relief claimed is within the ambit of federal and constitutional jurisdiction. The very important factor in this case is liberty of an individual hereinafter the petitioner. In order to understand, whether the liberty of the petitioner is disturbing or not, it has to be explained here that, the claim of the petitioner is against the foreclosure of the plaintiff's residential house as mentioned in the claim in detail., now coming to the point the residential building is one of the basic right of the citizens and due the illegal act of the defendants the liberty, the living place of the petitioner has been effected hence the court has subject matter jurisdiction. Federal Rule of Civil Procedure 4(h), paragraphs (3) and (7) will be discussed in subsequent pages. If it were possible to frame a single question which would cover all the problems involved in this area, it would perhaps be phrased thusly: When is it appropriate for a federal court to exercise its authority over a particular corporate defendant? Traditionally, at least three broad conditions must be satisfied before it is considered appropriate for a tribunal to do so. There must be judicial

jurisdiction in the forum from which the court derives its authority. There must be statutory competence, *i.e.*, an empowering of the court to hear this controversy by the legislature; in the case of the federal courts, this would seem to be performed by the general venue provisions of title 28, such as section 1391(c), or by the special venue provisions of individual acts, such as section 12 of the Clayton Act. Finally, there must be reasonable notice given to the defendant in order that he may appear and defend. It is not always simple to make the distinction between these various considerations in the opinions; as will be suggested later the emphasis of many decisions of the federal courts is on the element of service, while in others it seems to be on the element of the existence of judicial jurisdiction. It may well prove helpful to keep all three of these factors in mind as we turn to a discussion of the cases decided under the federal rules for service. I. Fed R. Civ. P. Rule 4(h)

Rule 4(h) provides in part Service shall be made as follows: Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. In the present case the similar situation exists despite of the fact the court observed and dismissed on the want of jurisdiction with the reason mentioned in the judgment, surprisingly learned court has also admitted that the petitioner has not given

opportunity to argue in the case or submit any response in response the issue of jurisdiction raised by Wake County Court clerks arguments, which is an unfair decisions and is violation of law settled by Superior Court, legislature and natural justice system, it is one of the basic principle that no one should be condemned un heard, on which a well-known Latin Maxim is "*Audi Alteram Partem*" The rule of natural justice comes into power where no partiality is done with anybody during any regulatory activity. Rule of *Audi Alteram Partem* is the primary notion of the principle of natural justice. The principle also says that no one should be condemned unheard. Both the parties will get an opportunity of fair hearing and justice. This maxim also ensures that fair hearing and justice will be done towards both the parties, both the parties have right to speak. No decision will be taken by court without hearing both the parties. Both the parties have an opportunity to protect themselves. But surprisingly in the present case, the learned court while deciding the issue on subject matter jurisdiction, no opportunity is given to the present petitioner which results the judgment as illegal and arbitrary hence the judgment of the District Court has to considered illegal on this score alone and a fair opportunity has to be given to the petitioner to produce the interrogatories and decide the case after adjudication and evaluation of the evidence, in that manner a fair trial will be seen.

More ever, the reason for the jurisdiction of federal court is, that the petitioner has added claim against the defendants, due process violation of Fourteen Amendments.

In order to make it clear about the jurisdiction here the concept of due process and has to be explained.

The Fifth Amendment Due Process Clause received little judicial attention in the early years of U.S. history. The first Supreme Court discussion of any length came in 1856, in *Murray's Lessee v. Hoboken Land and Improvement Co.* While this case dealt with the validity of a federal statute, and not with issues of judicial jurisdiction, the Supreme Court specifically noted that the words "due process of law" in the Fifth Amendment have "the same meaning as the words 'by the law of the land,' in the Magna Carta," thus imposing "a restraint on the legislature as well as on the executive and judicial powers of government. This concept of due process as a limitation on government is fundamental to the understanding of its use in decisions on judicial jurisdiction.

The discussion of due process and jurisdiction in U.S. Courts generally begins with the 1878 case of *Pennoyer v. Neff*, 95 U.S. 714 (1878). A resident of California (Neff) had acquired title to land in Oregon through a grant from the government, issued in 1866 under the 1850 Donation Law of Oregon. When Pennoyer purchased the same property at a sheriff's sale resulting from an Oregon lawyer's execution on the property to satisfy unpaid fees, Neff brought an action to recover possession, claiming that the sale had resulted from proceedings in which service was effected by publication, and not by personal service, with no appearance in the action by Neff. Justice Field's opinion for the U.S. Supreme Court focused on a territorial approach to jurisdiction over the defendant, looking for the presence of the defendant within the territory, and enunciating "two well-established principles of public law respecting the jurisdiction of an independent State over persons and property".

One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory . . . The other principle . . . is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. But learned judge has not considered this position while deciding the case, the learned judge district court has decided this issue mere on assumption, without going into the spirit of the case, the judge has decided the case without going forward, for interrogatories. In order to analyze this aspect, the documentary evidence is must, but reason mentioned in the judgment reveals, that the decision has made in the air.

In light of above mentioned citations and arguments it concludes that the claim and issue in the case involved, which are a matter of federal jurisdiction there for the petitioner has filed the case before the learned District Court and later before the Appellate Court.

III. *RES JUDICATA* CLAIM PRECLUSION

The learned court has confused the concept of *res judicata*/Claim Preclusion and decided the case by reason that the case is not maintainable under the principle of *res judicata* coming to this point in order to explain and interpret the concept of *res judicata* the meaning of *res judicata* has to be added "*res judicata*, according to Britannica (Latin: "a thing adjudged"), a thing or matter that has been finally juridical decided on its merits and cannot be litigated again between the same parties. The term is often used in reference to the maxim that repeated reexamination of adjudicated disputes is not in any society's interest." But in the petitioner's claim this concept

and principle will not have attracted. The reason mentioned in the judgment is the petitioner has filed similar claim before the Federal Court too. But requirements, to attract the concept of *Res judicata* is as explained in the definition, but this criterion is not clear, as the parties are not same in both the suits, despite this fact learned court has decided the case on the ground of this too hence the judgment is based conjectures and likeness of the judge and the judgment speaks judge favoritism and support to the defendants. The definition itself is quite clear it has mentioned in the definition that "between the same parties" but in the petitioner case all the parties are not same which also admitted and it is mentioned in the judgment. There for this principle does not attract on petitioner case and it cannot be dismissed on this principle. According, however, to Rule 41(b) of the Federal Rules of Civil Procedure, the following are not claim preclusive and are not considered an adjudication "on the merits": a lack of jurisdiction improper venue failure to join a party when required to do so under Federal Rule of Civil Procedure 19 (*aka "Mandatory Joinder"*) voluntary dismissals if the dismissal order does not state otherwise (*i.e.* a decision made "without prejudice" would not be claim preclusive"), in light of law mentioned *supra*, the claim of which learned court is talking about is, firstly not properly adjudicated and the parties are also not same, more over the learned court has not seeks any details nor adjudged the above requirements hence the decision is null and void decision and need to set a side and the plaintiffs/petitioner case has to be considered. While concluding this portion of arguments, it is hereby stated that the reasons in the judgment on the ground of want of the

principle of *res judicata* is incorrect and this principle does not apply to the present case.

IV. LIMITATION

The learned court also has mentioned one reason as the claim has not filed, within the time, as prescribed by the statute of limitation. The limitation always starts from the date of cause of action, there for there are multiple reasons on it, firstly the cause of action, accrued on the date of Foreclosure and secondly on the date when it was transferred hence the present case is within the limitation prescribed under the statute and the precedents which has been cited by Superior Court Many Federal laws contain statutes of limitations that bar plaintiffs from filing civil lawsuits after a specified time period. 15 U.S.C. § 15b, for example, provides that certain civil antitrust lawsuits "shall be forever barred unless commenced within four years after the cause of action accrued and the clock in the present case within the time limitation. Hence there is no any plausible reason to decide and dismiss the case on the pretext of statute of limitation. In *Rotkiske*, a debt collector sued a consumer in 2009 to collect an unpaid credit card debt. Because the debt collector allegedly served the lawsuit on the wrong person, the consumer was unaware of the lawsuit, and the debt collector obtained a default judgment against him. The consumer claimed he did not discover that adverse judgment until 2014. Once he finally learned about the 2009 case, the consumer filed his own lawsuit against the debt collector in 2015. The consumer specifically claimed that the debt collector violated the FDCPA by filing the 2009 lawsuit after the applicable statute of limitations governing debt collection actions had expired.

However, the consumer encountered statute of limitations problems of his own. 15 U.S.C. § 1692k(d) requires plaintiffs to file FDCPA lawsuits “within one year from the date on which the violation occurs.” The debt collector argued that this one-year limitations period had expired because the alleged FDCPA violation occurred in 2009, but the consumer did not file his FDCPA suit until six years later. The consumer, however, claimed his suit was timely because the one-year statute of limitations instead ran from the date he discovered the alleged FDCPA violation—that is, when he learned about the default judgment in 2014. The Supreme Court, in an opinion by Justice Thomas joined by seven other Justices, agreed with the debt collector and affirmed the lower court’s order dismissing the consumer’s case. The Court first determined that 15 U.S.C. § 1692k(d) unambiguously states that the petitioner must bring an FDCPA suit “within one year from the date on which the violation occurs,” not one year from the date on which the petitioner discovered the alleged violation. The Court reasoned that if Congress intended the statute of limitations to run from the date of discovery, it would have said so explicitly. For example, the Court explained, Congress could have instead drafted 15 U.S.C. § 1692k(d) like 12 U.S.C. § 3416, which allows a petitioner to sue to enforce certain financial privacy laws “within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.” Because Congress did not do so when enacting the FDCPA, the one-year limitations period ran from the date of the alleged violation itself, and the consumer’s lawsuit was therefore untimely. However, the Court left open the possibility that, in other cases, equitable considerations could justify letting otherwise

time-barred FDCPA actions proceed. The Court cited older opinions suggesting that when a defendant engages in fraud that prevents the petitioner from learning about the defendant's wrongful conduct, the statute of limitations runs from the date the petitioner discovers the fraud instead of the usual start date. The consumer in *Rotkiske* claimed he qualified for that exception because the debt collector allegedly served the 2009 lawsuit on the wrong person on purpose, thereby fraudulently preventing him from learning about the FDCPA violation until 2014. Because the consumer neither, there for the petitioner case is similar to the case mentioned *supra* and the limitation issue does not attract in the petitioner's case.



CONCLUSION

The reasons mentioned *supra*, the claim of the petitioner is well reasoned claim and the petitioner has not given opportunity to produce the interrogatories and the learned court has decided the case mere on technicalities, the learned district court has jurisdiction over the dispute, the concept of principle of *res judicata* will not attract on the petitioner claim and the court admittedly has not given opportunity to produce the documents to establish the case and decided the case in the air, there for the petitioner has a good case against the defendant as the Constitutional Rights of the petitioner and Due Process rights is infringed,

In the circumstances this Court should grant certiorari to review the fourth Circuit's judgment and the judgment of District Court directing to hear the petitioner complaint on merit.

Respectfully submitted,

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SEPTEMBER 20, 2022

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