
In the Supreme Court of the United States

TOWAKI KOMATSU,
Petitioner,

v.

NTT DATA, INC., CREDIT SUISSE AG,
AKA CREDIT SUISSE SECURITIES (USA) LLC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER

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1. The 5/3/23 order by the U.S. Court of Appeals for the Second Circuit (“Second Circuit”) in Pena v. 220 East 197 Realty LLC, No. 21-2031 (2d Cir. May 3, 2023) points out that the Federal Arbitration Act a) “explicitly denies the right to an immediate appeal from an interlocutory order that compels arbitration or stays proceedings” and b) prohibits appeals “of interlocutory orders favorable to arbitration”. This is a new intervening development in applicable case law that repudiates the assertion that the Second Circuit made in its 7/12/18 decision in Komatsu v. NTT Data, Inc., No. 16-2977 (2d Cir. Jul. 12, 2018) as it claimed then that the *Rooker–Feldman* doctrine deprived it and the district court of jurisdiction to review my claims because of the Second Circuit’s claim that I could have appealed the 4/11/14 order New York City Civil Court Judge Jennifer Schecter was issued in Komatsu v. NTT Data, Inc., No. 30955/12 (Civ. Ct.) that granted a motion by NTT Data, Inc. (“NTT”) to compel arbitration and stayed that case.

2. Together with this Court’s decision in Helix Energy Solutions Group, Inc. v. Hewitt, 143 S. Ct. 677, 598 U.S. (2023) concerning overtime pay, the fact that the Second Circuit’s decision in SEC v. Musk, 22-1291 (2d Cir. May 15, 2023) points out the following clearly warrants having this Court grant this petition and also grant me immediate injunctive relief partly against NTT partly by ordering it to immediately pay me back-pay that it has owed me since 2012:

a. The Second Circuit may grant relief about a district court’s decision due to abuse of discretion when exceptional circumstances exist.

b. The Second Circuit may relieve a party from a final judgment where “applying it prospectively is no longer equitable.

c. To determine whether a modification or termination is equitable, the movant must first show either a significant change in factual conditions or in law.”

d. Significant changes in factual conditions may warrant equitable relief where (1) “changed factual conditions make compliance with the decree substantially more onerous”; (2) “a decree proves to be unworkable because of unforeseen obstacles”; or (3) “enforcement of the decree without modification would be detrimental to the public interest.”

e. “Once a moving party has met its burden of establishing either a change in law or in fact warranting modification of a consent decree,” the district court must then “determine whether the proposed modification is suitably tailored to the changed circumstance.”

3. This Court confirmed in its 5/11/23 decision in Santos-Zacaria v. Garland, No. 21-1436 (U.S. May 11, 2023) that “this Court’s certiorari review is “not a matter of right, but of judicial discretion.” That means that this Court may deny those who petition it for a writ of certiorari even when granting such a writ is clearly warranted. This Court’s unexplained decisions to deny me rehearing in both a) Komatsu v. City of New York, No. 22-6605 (U.S. May 15, 2023) and b) Komatsu v. City of New York, No. 22-5681 (U.S. Jan. 23, 2023) confirm this.

4. The Second Circuit’s 5/12/23 decision in Searle v. Red Creek Central School District, Brian Corey, No. 22-2049 (2d Cir. May 12, 2023) cites Zherka v. Amicone, 634 F.3d 642, 645 (2d Cir. 2011) that points out that forms of harm besides chilling of expression has been accepted for First Amendment retaliation claims.

5. New York State Supreme Court Judge Alexander Tisch is assigned to Komatsu v. NTT Data, Inc., No. 101264/21 (Sup. Ct., NY Cty.) and issued 2 related orders on 5/11/23 in which he baselessly and prejudicially refused to grant me relief that I sought in response to an emergency order to show cause application that I filed in that case on 5/10/23 after he unlawfully refused to reassign that case to In short, despite the fact that I clearly informed him that Helix Energy Solutions Group, Inc. v. Hewitt confirms that I’m entitled to immediate injunctive relief against

NTT partly about wage-theft and retaliation claims that I asserted against it, his 5/11/23 orders confirm that he baselessly, prejudicially, and in bad-faith refused to grant me any of the relief that I sought. He also didn't properly explain his rationale for those orders. Attached is one of the those orders. He didn't explain his rationale at all in the other order that he issued then to which I referred. He also issued a decision on 6/13/22 in Poll v. Gallagher's Stud, Inc., 2022 N.Y. Slip Op 31865 (Sup. Ct. 2022) in which he stated that "where the rights of parties are clear, the courts should interfere to prevent a violation of the rights, instead of allowing the rights to be violated and the wrong committed, and then remitting the party injured to a remedy at law, many times uncertain at best". Prior to being assigned to Komatsu v. NTT Data, Inc., No. 101264/21, Judge Tisch illegally ignored the entirety of the USB thumb drive that I filed on 8/13/18 in conjunction with and support of the order to show cause application that I filed then in Komatsu v. New York City Human Resources Administration, No. 100054/2017(Sup. Ct., NY Cty. Feb. 26, 2020). Exhibits that I stored on that USB thumb drive in the form of PDF files were partly about NTT and relief that I sought to be granted in that case included having an order issued that would cause me to be provided pro-bono legal representation for use partly against NTT. These facts confirms that Judge Tisch was prohibited from being assigned to Komatsu v. NTT Data, Inc., No. 101264/21 largely because he subjected me to obstruction of justice and fraud on the court by illegally ignoring that USB thumb drive in its entirety. The preceding facts clearly show that **a)** reversal of decisions and orders that have been issued against me in litigation of mine in which NTT has been an opposing party, **b)** reassignment of such litigation to other judges, and **c)** consolidation of such litigation due to overlapping claims and to befit the interests of judicial economy is warranted partly to allow for the appearance of justice to exist.

CONCLUSION

The petition for a writ of certiorari should be granted. Also, as shown in this supplemental brief, my mailing address and telephone contact information has changed.

Respectfully submitted,

Date: May 17, 2023

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH

PART

18

Justice

KOMATSU, TOWAKI

Plaintiff,

- v -

NTT DATA, INC.

Defendant

INDEX NO. 101264/2021

MOTION DATE

MOTION SEQ. NO. 006

**Decline to sign proposed order
to show cause**

The following papers, numbered 1 _____, were read on this application to/for _____

Proposed OSC; Affidavit + Exhibits

No(s) 1-2

Answering Affidavits - Exhibits

No(s)

Replying


No(s)

Upon the foregoing documents, the Court declines to sign plaintiff's proposed order to show cause (OSC), which seeks immediate interim relief only, for failing to comply with 22 NYCRR §§ 202.7(f) and/or 202.8-e, and because the requested relief inappropriately seeks multiple Court declarations and monetary relief, which appears to be the ultimate relief sought in the whole case, immediately upon signing of the order and without any opportunity for defendant to respond (see generally Second on Second Café, Inc. v Hing Sing Trading, Inc., 66 AD3d 255, 264-65 [1st Dept 2009]). To the extent that any non-interim relief could be plausibly inferred, the Court would still decline to sign the OSC per 22 NYCRR § 202.8-d as not urgent in nature/no cited statute mandates that the relief be sought by order to show cause.

Conversion to e-filing (and inherently related requested relief for, e.g., electronic service of papers) is appropriately done by stipulation. Movant is directed to the New York County Supreme Court's website for

- the rules regarding conversion: www.nycourts.gov/supctmanh > “E-Filing” tab under “Quick Links” > “Uniform Rule 202.5-b (Consensual Program)”;
- the rules governing participation in e-filing generally, once in the program: www.nycourts.gov/supctmanh > “E-Filing” tab under “Quick Links” > “Uniform Rule 202.5-bb (Mandatory Program)”;
- the stipulation form to convert the matter to e-filing: www.nycourts.gov/supctmanh > “E-Filing” tab under Quick Links section > “Other Forms” under Forms section > “Supreme Court” link at item 11 > “Stipulation and Consent to E-Filing” labeled as form EF-10.

If defendant does not stipulate to convert to e-filing, plaintiff is granted leave to renew only that branch of this proposed OSC that requests conversion and directs service of papers electronically.

<u>5/11/2023</u>			
DATE		ALEXANDER M. TISCH, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE