

23-5005
No. _____

ORIGINAL

FILED
JUN 27 2023
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SUPREME COURT, U.S.

**IN THE
SUPREME COURT OF THE UNITED STATES**

Otis A. Daniel, *Petitioner*

Vs.

T&M Protection Resources, LLC, *Respondent*

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

PETITION FOR A WRIT OF CERTIORARI

Otis A. Daniel
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New York, NY 10150
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QUESTIONS PRESENTED

(01). Is it lawful for an employer to intentionally and knowingly discriminate against an employee based on his/her race, national origin, gender, and sexual orientation?

(02). Is it lawful for an employer to intentionally and knowingly use an employee's "AT WILL" status to circumvent anti-discrimination laws such as Title VII Civil Rights Act of 1964?

(03). Is it lawful for an employer to terminate the employment of an "AT WILL" employee for reasons that were intentionally and knowingly false or manufactured?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page.
A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Daniel v. T&M Protection Resources, LLC, No. 22-1614, 2nd Circuit Court of Appeals summary order entered: 05/19/2023

Daniel v. T&M Protection Resources, LLC, No. 20-2283, 2nd Circuit Court of Appeals summary order entered: 02/23/2021

Daniel v. T&M Protection Resources, LLC, No. 18-2351, 2nd Circuit Court of Appeals summary order entered: 07/02/2019

Daniel v. T&M Protection Resources, LLC, No. 15-560, 2nd Circuit Court of Appeals summary order entered: 04/25/2017

Daniel v. T&M Protection Resources, LLC, No. 13 Civ. 4384, U.S. District Court of the Southern District of New York, order denying my 07/25/2018 Rule 59(e) motion entered: 07/27/2018

Daniel v. T&M Protection Resources, LLC, No. 13 Civ. 4384, U.S. District Court of the Southern District of New York, opinion and judgment entered: 07/12/2018 & 07/19/2018

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix M, O to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5/19/2023

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 6/12/2023, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

(01). On 05/19/2023, the 2nd Circuit Court of Appeals denied my appeal of the District Court's 07/22/22 order.

(02). On 06/12/2023, the 2nd Circuit Court of Appeals denied my timely filed petition for rehearing.

(03). In June 2018, the District Court held a bench trial in this case. In July 2018, the District Court awarded judgment to T&M.

(04). On July 25, 2018, I timely filed a Rule 59(e) motion for reconsideration. The District Court denied this motion on 07/27/2018.

In this petition, I use the term T&M /EJME senior management to collectively refer to Mr. Robert S. Tucker (T&M's chairman/CEO), Mr. Steven I. Gutstein (T&M's in-house counsel), Ms. Toni Scarito (T&M's HR manager), Mr. John Aleles (T&M's VP of administration), Mr. Carl Capponi (T&M's VP of operation), Mr. Robert Wood (T&M's VP of account management), Mr. Jeffrey Sussman (EJME VP of leasing and property management, and Mr. Joseph Greish (EJME worksite property manager)

(05). From August 2018 to present, I have filed various motions and appeals because I wanted T&M and the courts to address the factual allegations I made in my 07/27/2018 Rule 59(e) motion. In particular, my factual allegations that my employment termination was PRETEXTUAL and T&M's witnesses and attorneys intentionally and knowingly at trial gave false or manufactured statements to the court.

(06). On 12/21/2022, T&M in its response to my appeal correctly construed my appeal of the District Court's July 22, 2022 order as seeking reconsideration of the underlying July 25, 2018 Rule 59(e) motion and the court's 07/27/2018 denial order.

(07). On 12/21/2022, T&M in its response to my appeal appeared to have conceded that the statements I made in my 07/25/2018 Rule 59(e) motion are the indisputable facts in this case. But, the District Court and the 2nd Circuit Court of Appeals by their rulings in T&M's favor have already discredited those factual allegations.

(08). Before trial, On 07/13/2014, T&M filed for summary judgment in which they intentionally and knowingly submitted to the District Court false or manufactured statements in the form of affidavits and Rule 56 statements.

(09). In June 2018, at the bench trial, all of T&M's eyewitnesses and their attorneys from the law firm P&W, LLP, repeatedly, knowingly, and intentionally gave made-up or manufactured statements to the District Court.

(10). Between February 2011 to May 2012, at my workplace I was singled out and harassed by my supervisor Mr. John Melidones because of my race (Black), national origin (Vincentian/ West Indian), gender (male), and perceived sexual orientation (gay).

(11). On May 15, 2012, during a disciplinary hearing, T&M senior management deliberately dismissed my attempt at complaining about my supervisor's known discriminatory misconducts.

(12). On May 18, 2012, T&M senior management terminated my employment for reasons that were intentionally and knowingly made-up or manufactured by my supervisor and themselves.

NOTE: *the above stated facts can be evidently proven in this case by T&M's 05/09/2012 disciplinary form, my 05/09/2012 I-phone audio recording, T&M's employee separation form, my former co-workers handwritten eyewitness statements, T&M's responses to the Legal Aide Society, N.Y.S.D.H.R./ E.E.O.C., the District Court and the 2nd Circuit Court of Appeals.*

(13). In May 2012, T&M senior management by their actions and inactions during the disciplinary hearing and in their termination of my employment showed a callous indifference to my supervisor's and their own discriminatory misconducts.

(14). In May 2012, T&M senior management by their actions and inactions during the disciplinary hearing and in their termination of my employment showed a wanton disregard of the company's anti-harassment policies and the truth.

(15). In May 2012, T&M senior management by their actions and inactions during the disciplinary hearing and in their termination of my employment showed a wanton disregard of New York City, New York State Human Rights and Federal Title VIII Civil Right laws.

(16). May 2012 to June 2013, before filing this lawsuit, T&M senior management intentionally and knowingly gave false or manufactured statements to an attorney at the Legal Aide Society and in their official responses to my New York State Division of Human Rights complaint/EEOC.

(17). On June 24, 2013, In the S.D.N.Y, I filed a pro se complaint against T&M Protection Resources, LLC, Edward J. Minskoff Equities, Inc, and Universal Protection Services.

(18). In my 06/24/2013 complaint, I factually alleged claims of wrongful employment termination, retaliation, discriminatory harassment, violation of New York City, New York State Human Rights laws, and Federal Title VII Civil Rights Act of 1964.

REASONS FOR GRANTING THE PETITION

(19). From June 2013 to present, T&M senior management through their legal representation by attorneys from the law firm P&W, LLP, have repeatedly, knowingly, and intentionally gave false or manufactured statements to the District Court, the 2nd Circuit Court of Appeals, my pro bono discovery and trial attorneys.

(20). From June 2013 to present, T&M senior management through their legal representation by attorneys from the law firm P&W, LLP have repeatedly, knowingly, and intentionally engaged in prosecutorial misconducts which resulted in the deliberate oversight, frivolous dismissal, and misrepresentation of much of the factual claims, allegations, and material evidentiary documents I had filed on the District Court's public docket.

(21). From June 2013 to present, T&M senior management through their legal representation by attorneys from the law firm Paduano & Weintraub, LLP have repeatedly, knowingly, and intentionally used manufactured statements and the court's favorable rulings to further violate and deprived me of my civil and constitutional rights.

(22). From June 2013 to present, T&M senior management through their legal representation by attorneys from the law firm Paduano & Weintraub, LLP have repeatedly, knowingly, and intentionally used manufactured statements, and the court's favorable rulings to:

- i. Falsely prosecute and exploit me solely because of my race, national origin, gender, and sexual orientation.
- ii. Criminalized and stigmatized me solely because of my race, national origin, gender, and sexual orientation.
- iii. Invade my privacy for no justifiable cause or reason(s).
- iv. Harassed and torture me psychologically and emotionally.
- i. Publicly humiliate and demean me solely because of my race, national origin, gender, and sexual orientation.

(23). From June 2013 to present, T&M senior management through their legal representation by attorneys from the law firm Paduano & Weintruab, LLP have repeatedly, knowingly, and intentionally engaged in malfeasance that violated my constitutional rights to privacy, against malicious prosecution and procedural due process.

(24). On 02/19/2015, the District Court granted T&M summary judgment in full based on their submission of affidavits and Rule 56 statement of fact that were intentionally and knowingly false or manufactured.

(25). On 02/24/2015, the District Court issued an order denying my timely filed Rule 59(e) motion. In its order, the court factually cited some of my allegations it failed to consider when it wrote the following:

- “Daniel’s motion includes a numbered list of 17 arguments which fall into roughly three categories: legal and factual conclusion, criticism of the defendants, and identification of facts the court did not address.”
- “First, Daniel asserts various legal and factual conclusions. For instance, Daniel claims that his termination was motivated by his protected class and by malice and that T&M’s proffered explanation for his termination was pretextual.
- “Finally, Daniel argues that he did nothing wrong and did not violate any policies of T&M.”

(26). From June 2013 to present, T&M/EJME senior management and their attorneys from the law firm P&W, LLP have been fully aware of the fact they had no factual statements or material evidentiary documents that proved they had a justifiable cause or reason(s) for the disciplinary and prosecutorial actions taken against me. **FOR EXAMPLE:**

- Pre-trial discovery in this case officially concluded on 06/02/2014. Before T&M/EJME attorneys Ms. Meredith Cavallaro and Ms. Alicia Valenti Etri took my 8hrs long deposition on May 29, 2014, they and their clients were fully aware of the above stated fact.
- Before settling my claims against EJME, T&M through its attorneys Ms. Meredith Cavallaro and Ms. Alicia Valenti Etri falsely led me to believe that they will not be filing for summary judgment. But, shortly after I settled my claims against EJME, they filed for summary judgment to have those same claims dismissed against T&M.

(27). Before and at trial, based on the 2nd Circuit Court of Appeals 04/25/17 ruling in T&M's favor, my pro bono trial attorneys and the District Court could not consider or apply in their analysis of the case the McDonnell Douglas shifting framework.

(28). Before and at trial, based on the 2nd Circuit Court of Appeals 04/15/17 ruling in T&M's favor, my pro bono trial attorneys and the District Court could not consider the following facts:

- My employment termination was PRETEXTUAL
- T&M and its client EJME in their termination of my employment acted with malice
- T&M/EJME and their attorneys from the law firm Paduano & Weintraub, LLP intentionally and knowingly submitted to the District Court and the 2nd Circuit Court of Appeals made-up or manufactured statements.

PRE-TRIAL PLEADINGS

(29). June 2013 to June 2018, in various pre-trial pleadings to the courts, I made factual statements about T&M/EJME and their attorneys from the law firm P&W, LLP such as the following:

- “I filed this lawsuit because it was my only recurs to obtain justice. The defendants T&M and Minskoff violated their own anti-harassment policies, city, state, and federal anti-discrimination laws in their mistreatment of me. SEE: my 11/19/2013, exparte letter to Magisrat Judge Henry B. Pitman
- “The defendants T&M and Minskoff through their initial disclosure to me, answers to my interrogatories and denials, have shown me thus far that they are lacking any factual corroborating statements, eyewitnesses, or any solid evidences such as video recordings to support their claims about my wrongdoings or violations.: SEE: my 11/19/2013 exparte letter to Magistrate Judge Henry B. Pitman
- “The defendant T&M from the beginning have used its knowledge of the judicial system and laws to intentionally hurt me. For years, T&M has deliberately used its knowledge of the judicial system to adversely affect the lives of many of its minority employees.” SEE: 13 Civ. 4384 Dkt#96
- “The defendant T&M has submitted an overwhelming amount of material such as affidavits, factual statements, and memorandums of law to support their motion for summary judgment. Most of the materials the defendant has submitted to support their motion for summary judgment such as affidavits and factual statements are misleading and very untruthful.” SEE: 13 Civ. 4384 Dkt#74

- “To prolong this matter any longer is unnecessary and will cause me too much agony. I feel there has been enough delays and extensions in this matter. I have shared with the defendants counsel all of my evidences and so have they.” SEE: 13Civ. 4384 Dkt#60
- “The defendants counsel has subjected me to more than nine hours of deposition. I have responded to their interrogatories, and they have subpoenaed all of my employment and medical records. To prolong this legal matter and in doing so my suffering, the defendants and their counsel are acting with deliberate and malicious intentions. SEE: 13 Civ. 4384 Dkt#74
- “It is my feeling or believe that the defendants and their previous counsel attempted to take advantage of my lack of legal knowledge and the court’s procedural process. I also consider the deceptive actions of the defendants in this matter to be an attempt to cover-up this entire matter.” SEE: 13 Civ. 4384 Dkt#96
- “The court in its opinion should not have considered the defendant’s attached affidavits. The defendant’s attached affidavits statements were fabricated and entirely untruthful. In the affidavits of Mr. Clinton lisk, Ms. Carmen Negron and Mr. John Melidoness, I believe their signatures were forged and their statements made-up by the defendant “T&M.” SEE: 13 Civ. 4384 Dkt#113 pg. 1
- “I would like to inform the court that I find the actions of the defendant T&M and their counsel to be reprehensible. It is my opinion that the defendant and their counsel are playing games with this court. SEE: 13 Civ. 4384 Dkt#74

- “I now believe that these prior pro bono attorneys failure in representing my best interest during the discovery phase of litigation was caused by the malicious, deliberate, fraudulent, and possibly unethical actions of the appellee T&M and their previous counsel Ms. Meredith Cavallaro.” SEE: 2nd Cir. Case No. 15-560 Dkt#12 pg. 2
- “The appellee T&M along with their prior counsel Ms. Meredith Cavallaro and Ms. Alicia Valenti tried every tricky maneuver to avoid legally taking any accountability in this case. I cannot play the legal game that lawyers play. I do not know how. All I do know is that I was wronged. SEE: 2nd Cir. Case No. 15-560 Dkt#12 pg. 2

MY RULE 60(b) MOTION

(30). On 06/18/2020, in the District Court, I filed a Rule 60(b) motion. On 06/22/2020, the District Court denied this motion as untimely and meritless. The 2nd Circuit Court of Appeals later affirmed the District Court's order. SEE: SDNY 13 Civ. 4384 Dkt# 211, 212, SEE: 2nd Cir. Case No. 20-2283

(31). In my 06/18/2020 Rule 60(b) motion, I made the following pertinent statements:

- “For the past eight years, I have consistently repeated the facts in this case (written/verbally). I believe my factual statements, allegations, claims and material evidentiary documents on court’s public record indisputably proves that my employment with T&M was terminated solely because of my race, national origin, and perceived sexual orientation. If the Civil Rights Act of 1964 prohibits this form of discrimination, I’m deeply distressed and confused as to why T&M prevailed in this action.”
- “Given the defendants prominence and various connections in law enforcement, legal, business communities and other institutions, it is very likely that their deliberate discriminatory misconducts will be adapted and replicated by others.
- “Before my employment with T&M, I had no reason to fear the police, now I do. I had no reason to mistrust those who represent the legal system such as lawyers, prosecutors, etc., now I do. If I was to return to my former worksite, my former co-workers were instructed to call the police. I have had a false police complaint filed against me for harassment.”

- “The defendants have caused the police to come to my home in full force under the guise they were there to check on my wellbeing. That action could have easily led to my death, but instead it directly caused my sick dying father to become resentful towards shortly before he died.”
- “The defendants through its outside counsel Ms. Meredieth Cavallaro and Ms. Alicia Valenti Etri have treated and falsely depicted me as psychotic and emotionally unstable. My entire life has been exposed and will forever be on public record for no reason.”
- “In the twenty plus years I have been in this country, I have had no encounter or personally known of anyone who have had any encounter with the criminal justice system. But, through my employment with the defendants, I became ensnared in a legal system that not only felt to me like a criminal persecution, but ultimately let me feeling like a criminal.”
- “Having to defend myself in court for the past eight years has not been easy or funny to me. My race, national origin, and sexual orientation is not or should not have been a matter to be played with, but that is exactly what the defendants have done for the past eight years of litigation in this court.”
- “On 06/15/2020, The United States Supreme Court ruled that the Civil Rights Act of 1964 protects individuals against discrimination based on his/her race/color, national origin, religion, sex and now sexual orientation/gender identity. “
- “For many LGBTQ people in America, I’m sure it was a victorious and joyous moment. But, for me it was a very sad reminder that there are those among us such the defendants who can intentionally and knowingly violate such laws and be justified in doing so because: (1). they are above the law and, (2). individuals like myself can be violated in this way because we have no recognizable legal rights, no worth or value because we are employed AT WILL.”

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

OTIS A. DAM

Date: 06/28/2023

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OTIS A. DANIEL — PETITIONER
(Your Name)

VS.
TEN PROTECTION RESOURCES LLC RESPONDENT(S)

PROOF OF SERVICE

I, OTIS A. DANIEL, do swear or declare that on this date, JUNE 28, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

MR. LEONARD WEINTRAUB (TEN Counsel)
1251 AVENUE OF THE AMERICAS
NEW YORK, NY 10020

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JUNE 28, 2023

OTIS A. DANIEL
(Signature)