

JUN 29 2023

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ORIGINAL

23-5048

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

LEONARD W. HOUSTON o/b/o
LOUIS HOUSTON, SR., *pro-se* — PETITIONER
(Your Name)

vs.
HIGHLAND CARE CENTER, INC. — RESPONDENT(S)

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

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LEONARD W. HOUSTON

(Your Name)

148 DEER COURT DRIVE

(Address)

MIDDLETOWN, NEW YORK 10940-6867

(City, State, Zip Code)

845-343-8923

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

The lower Court has not permitted the Plaintiff-Appellant, *pro-se* to proceed with this action *in forma pruperis*, and thus subject said "Motion Statement" with the attached "Exhibits" in support thereof, to screening under 28 U.S.C. § 1915(e), when events not contemplated by the "moving parties herein, render enforcement of the judgment "inequitable" as apparent in this particular case under the Civil Rights Act (42 §1983), as amended, and the adapted federal law and regulation --" **Resident rights**" (42 C.F.R. § 483.10 et seq.).

1. Whether it appears from the filed "Complaint" and the subsequent filed "Motion Statement" that there can be no set of facts, which entitled Plaintiff-Appellant *pr-se* to the relief of its claim of "Exceptional Circumstances" under Rule 60(b)(6). As specifically cited by said plaintiff, which said Rule provides that the court may relieve a party from a final judgment for "any other reason justifying relief from the operation of the judgment" the same being granted equitable power to do justice in a particular case where extraordinary circumstances to be present. F.ed. R. Civ. P. 60 (b)(6).
2. Whether the underlying claims of the Plaintiff-Appellant, *pro-se* of dismissal of its Motion Statement of the facts lacks merit and/or is similarly deficient. Which the lower Court, upon said Appellant, *pro-se* moved for leave to proceed *in forma pauperis*, and thus, Ordered that the motion is DENIED, and the appeal is DISMISSED, because it "lacks an arguable basis either in law or in fact, [citing, *see* 28 U.S.C. § 1915(e)].
3. Whether it appears from the subsequent filed "**Motion Statement**" and "**Motion For Panel Rehearing or Rehearing *En Banc***" that the Plaintiff-Appellant, *pro-se*'s "claims" does not lacks an arguable basis in law, when it is "based on an undisputable meritless legal theory," upon which relief may be granted. And when it appears beyond doubt that said plaintiff-appellant, *pro-se* can prove a set of facts in support of his claims, which would entitle him to relief under Rule 60 (b)(6).

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

None

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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 A 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 B 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 March 31, 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: May 25, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States

UNITED STATES CONSTITUTION

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III. DISPOSITION OF CASE IN DISTRICT COURT

Accordingly, on June 9, 1999, the Plaintiff, Louis Houston, Sr., *pro se* being unable to retain or afford legal counsel, then filed an application for appointment of counsel in the United States District Court for the Eastern District of New York (NICKERSON, District Judge), as was "So Ordered" by the Memorandum decision and Order of Magistrate Judge (MANN, U.S. Magistrate), the same dated June 4, 1999, and thereafter entered June 8, 1999.

It was therefore, that the written decision subsequently entered on August 12, 1999, ~~in these~~ proceedings by Memorandum and Order of the United States District Court for the Eastern District of New York (NICKERSON, District Judge), dated June 30, 1999, that the written "Objections" filed on behalf of the Plaintiff, Louis Houston, Sr., *pro se*, as to Magistrate Judge's endorsed Order of May 20, 1999, granting Defendant's Attorney extension of time to answer the Complaint, is denied as moot. pursuant to Magistrate Judge's Order, dated June 4, 1999, that determined, Leonard W. Houston's status was a non-attorney and may not prosecute his father's [statutory] claims without legal counsel.

It further Ordered, by the United States District Court for the Eastern District of New York, that the Motion for appointment of counsel is denied, and thereby stating its reasons, among other things, that upon review of the plaintiff's claims (i.e., Medicare fraud and Civil Rights violations) cannot at this time say whether they are likely to be of substance, and thus would not consider the other factors before appointing counsel for an indigent litigant.

(See, Appendix A-15-17, Attachment to Affidavit in support of said entitled Motion of Plaintiff-Exhibit A, U.S. District Court, Eastern District of New York (Brooklyn) **Civil Docket For Case #: 1:99-cv-02047-EHN-RLM)**

Thus, upon appeal to the United States Court of Appeal For Second Circuit, pursuant to its Motion and the memorandum and Order that denied the Appointment of Counsel for indigent litigant, dated August 12, 1999. Which pursuant to MANDATE of said U.S. Court of Appeals For Second Circuit, the Order granted the Plaintiff-Appellant's motion to allow for substitution of party [Fed. R. App. P. 43(a) - **Death of a Party**]. That Judgment of District Court is DISMISSED by detailed order of the court without opinion filed., entered June 23, 2000, followed by said issued Court Judgment and Mandate (Authorized Abbreviated Caption for use on correspondence and motions only).

STATEMENT OF THE CASE

This civil action filed on April 13, 1999, was brought pursuant to Medicare-medicaid Anti-Fraud and Abuse Amendments of 1977, Nursing Home Reform Amendments Act, as contained within the Omnibus Budget Reconciliation Act of 1987 (OBRA-87), and pursuant to title 42, Civil Rights Act, **section 1983**, in the District Court by Leonard W. Houston (son) on behalf of his 79 years old disable father, Louis Houston, sr., *pro se*, Plaintiff, against the Defendant, Highland Care Center, Inc., a "**Skilled Nursing Facility**" to secure protection of and redress unlawful deprivation of property's rights and "*due process*" of law, and thus seek to recover compensation and damages in the sum of \$6,900,000.00, sustained as a resident/patient of said nursing facility since on about April 21, 1997.

That said Plaintiff, Louis Houston, Sr., has been a victim of continuous financial abuse and substandard care, being attributed to solely by the wanton acts, and behavior of the Defendant, Highland Care Center, Inc., "**Skilled Nursing Facility**" and more specifically in violation of applicable federal and state statutes pertaining to Nursing Home Standards under the Medicare and Medicaid regulations and procedures, as to requirements for, and assuring quality of care in said skilled nursing facilities.

Further, ordered the referral of the written objection now raised by Defendant's Attorney, Heller, Horowitz & Feit, P.C. (By: May Orenstein, Attorney) as to Leonard W. Houston's representation as non-licensed attorney on behalf of his disable father, Louis Houston, Sr. Plaintiff, *pro-se*, to Magistrate Judge (ROANNE L. MANN, Magistrate) to hear and report.

That by letter, dated May 4, 1999, fro Leonard w. Houston to the United States District Court for the Eastern District of New York (NICKERSON, District Judge), requested that he be allowed to continue to appear in this civil action, and Volunteer to serve as Guardian *ad litem* on behalf of Louis Houston, Sr., if the Court finds it is required, therein citing applicable federal statutory authority for such consideration.

Subsequently, Defendant's Attorney for Highland Care Center, Inc.,requested by letter, dated May 18, 1999, to the United States District Court for the Eastern District of new York (MANN, Magistrate Judge) for further additional and/or extension of time to file an "Answer" to said Complaint, which was also granted in part, and thus, allowing said Defendant until June 30, 1999, to answer the Complaint. It was thereafter, so entered by an Endorsed Order, on the written request, dated May 20, 1999, and entered on June 3, 1999.

The Endorsed Order was objected to by Leonard W. Houston on behalf of Louis Houston, Sr., Plaintiff, *pro-se*, and thereafter written Objections, dated May 20, 1999, were filed in the United States District Court for the Eastern District of New York (NICKERSON, District Judge), requesting as for relief, that said plaintiff's objections be sustained and deny Defendant's request in its entirety, and the same, not be limited to the entry of Judgement by Default against the Defendant, Highland Care Center, Inc., "Skilled Nursing Facility."

Thus, in accordance with the aforesaid District Court's Order (NICKERSON, District Judge), dated May 11, 1999, to hear and report on the issue and objections by Defendant's Attorney for Highland Care Center, Inc., as to Leonard W. Houston representation of Louis Houston, Sr., *pro-se*. Memorandum and decision and Order were entered by the United States District Court for the Eastern District of New York (MANN, Magistrate Judge), dated June 4, 1999.

It was thereafter, determined, in the absence of a Court hearing as was Ordered by the District Court (NICKERSON, District Judge) in theses proceedings, that Leonard w. Houston may not prosecute his father's [statutory] claim without legal counsel being in accordance under well-established legal principles. And the he shall cause the filing of a Notice of Appearance of retained counsel on Plaintiff's behalf. Further ordered, that if unable to retain legal counsel, shall they apply to the United States District court for the Eastern District of New York (NICKERSON, District Judge), by July 19, 1999, for appointment of counsel; and the time within which the Defendant, Highland Care Center, Inc., must respond to the Complaint is adjourned *sine die*.

STATEMENT OF RELEVANT FACTS

This civil case is before this Court upon appeal from a final ORDER of the United States District Court for the Eastern District of New York (DONNELLY, District Judge), made and entered on October 4, 2022, that stated among other things, that the Plaintiff's [27] motion for relief from a judgment and order pursuant to FRCP 60 (b)(6) is denied as untimely.

The Plaintiff -Appellant upon Notice of Motion and Affidavit, dated September 16, 2022, sought an order pursuant to Rule 60 (b)(6) of the Federal Rules of Civil Procedure, granting said plaintiff relief from the Judgment and Order that the "Complaint" (*i.e.*, **CV-99-2047**, filed April 13, 1999) be dismissed, as said plaintiff is entitled to relief from the judgment if the party is not otherwise entitled to relief under Rule 60 (b)(1)-(5). but exceptional and extraordinary circumstance existed that demonstrate the Judgment was manifestly unjust.

And in the absence that the plaintiff, Louis Houston, Sr., *o/b/o* Leonard W. Houston, did not received **MEMORANDUM** and **ORDER** dismissing this case, entered on October 27, 2000. Further in the absence of a Judicial ruling of this Court on the merits of his claim. [Feb. R. Civ. P. 60 (b)(6)].

The reason why the Plaintiff, Leonard W. Houston entitled to the relief, sought herein, is that said dismissal was based upon the Plaintiff's failure to appear for a hearing for **Motion** conference, scheduled for September 15, 2000, before the United States District Court of the Eastern District of New York (NICKERSON, District Judge), that was taken under submission, and by Judge Magistrate ROANNE L. MANN's Memorandum and Order, entered on June 8, 1999.

Which said "Complaint" that was dismissed, being then, subsequent to said entitled Appeal to the United States Court of Appeals for the Second Circuit, as the District Court Judgment was dismissed with out opinion, entered on June 23, 2000, under said Court's Docket No. 99-9114. Thereby, the Motion of the Plaintiff to vacate order of Judgment and for renewal of these proceedings with respect to the aforesaid field "Complaint" under the Docket Entry on July 24, 2000.

That there were clearly exceptional circumstances that justify relief from the Judgment of this Court. entered on November 22, 2000. As the Plaintiff. Leonard W. Houston, as the Voluntary Administrator (Surr. Ct. Proc. Act, Article 13, § 1306-Powers and § 1307-Duties), upon entry of formal Decree by the Surrogate Court of the State of New York, County of Orange, as was such, upon the untimely death at 73 of LOUIS HOUSTON, SR., as filed in this proceedings, which required his personal attendance of legal proceeding and subsequent formal resolutions to be submitted thereof, with respect to the aforesaid estate.

The aforesaid legal proceedings had caused said plaintiff from seeking more timely relief during the pendency of proceedings before this Court, and therefore, said Judgment and order entered by this Court, which the filed "complaint" [04/13/1999] was dismissed, is manifestly unjust, in the absence of adjudication sought by the Plaintiff, pursuant to his statutory civil in this case., on be half of said decease-plaintiff, Louis Houston, Sr., pro-se.

Here, the court must apply subsection (b)(6), only as a means to achieve substantial justice when something more than one of the grounds contained in Rule 60 (b)'s first five clauses are present as clearly appeared in this case.

The Appellant, Leonard W. Houston, respectfully submits that the final ORDER of the United States District Court for the Eastern District of New York (DONNELLY, District Judge) patently showed abused of discretion and erred by applying an improper standard, as well as failed to undertake the proper analysis with respect to the Appellant's [statutory] claim of Medicare fraud and Civil Rights violations sustained, as a result of acts of deprivation of property rights and abusive conduct by the Appellee, Highland Care Center, Inc. "Skilled Nursing Facility" on behalf of Louis Houston, Sr. Plaintiff, pro- se.

Thereby, constituted more than "colorable" claims presented with likely merit and substance, as therein asserted under the various statutory provisions and pursuant to the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, and the Nursing Home Reform Amendments Act, as contained within the Omnibus Budget Reconciliation Act of 1987 (OBRA-87), with *pendente lite* claims on the existence of New York State statutory violations of Residents' Rights under the New York Public Health Law, and New York Social Services Law, as amended.

Thus, upon review of the *forma pauperis* statue, 28 U.S.C. § 1915(e), as amended, for appointment of counsel, must be readily understood to guarantee indigents, such as herein, Louis Houston, Sr., "meaningful access" to the courts and readies of law that congress made available and incorporated under title 42, Civil Rights Act, 42 U.S.C. § 1983, that provided the right of equal protection of the laws secured by the 14th Amendment of the Constitution of the United States, and the entitled relief, pursuant to Rule 60 (b)(6) of the Federal Rules of Civil Procedure,¹ the same being just and proper.

¹Rule 60(b)(6) contains the residual clause, giving the court ample power to vacate a judgment whenever such action is appropriate to accomplish justice. *Pierre v. Bemuth, Lembeke Co.*, 20 F.R.D. 116 (S.D.N.Y. 1956).

REASONS FOR GRANTING THE PETITION

A party is entitled to relief from the judgment if the party is not otherwise entitled to relief under Rule 60 (b) (1)-(5) but exceptional circumstances exist that demonstrate the judgment is manifestly unjust. Fed. R. Civ P. 60 (b)(6)

Here, the Appellant assert a motion for relief under Fed. R. Civ. P. 60 (b)(6), due to exceptional circumstances, was due to the statutory duties as Voluntary Administrator of the deceased, Appellant. Louis Houston, Sr. *pro se*, Plaintiff. *Bakery Mach. & Fabrication, Inc. v. Traditional Baking, Inc.*, 570 F.3d 845, 848 (7th Cir. 2009); *U.S. v. Orleans Parish Sch.Bd.*, 397 F.3d 334, 337 (5th Cir. 2005); *Helm v. Resolution Trust Corp.* 84 F.3d 874, 877 (7th Cir. 1996); e.g., *In re Gledhill*, 76 F.3d 1070, 1080-81 (10th Cir. 1996) (in bankruptcy case, conversion from chapter 11 to chapter 7, etc.)

Moreover, see also *Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1225 (10th Cir. 2002) (court should grant relief under FRCP 60 (b)(6) only when it offends justice to deny such relief). As were cited in the case *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, at 864, “a court considering a judgment should be vacated because of this type of violation should evaluate (1) the risk of injustice to the parties in the particular case, (2) the risk that the denial of relief will produce injustice in other cases, and (3) the risk of undermining the public’s confidence in the judicial process.” *id.*, *U.S. v. Cerceda*, 172 F.3d 806, 812 (11th Cir. 1999).

Thus, said appellant has demonstrated the requested relief under Rule 60 (b)(6), which requires the demonstration of extraordinary circumstances prevented Movant from seeking more timely relief. See 12 MOORE'S FEDERAL PRACTICE § 60.48[3] (Matthew Bender 3d ed). thereby the evidence shows, that the Movant (*i.e.*, Appellant) is free of any fault.

Characterization of the Appellant's Motion, Fed. R. Civ. P. 60(b)(6), clearly depends on the substance asserted in the motion, not timing .

In the Court's ORDER, dated and entered on October 4, 2022, which stated, among other things. "the plaintiff's is seeking relief from the court's memorandum and order entered [dated] on October 27, 2000. Twenty-two years is not a reasonable amount of time. (Citations omitted). Further stated, "In a typical case, five years from a judgment to a Rule 60 (b) motion would be considered too long."

Here, the Court abused its discretion in this proceeding, by not referring to "Reasonable time" to be interpreted according to the articular facts of this case. *BUC Int'l v. International Yacht Council Ltd.*, 517 F.3d 1271, 1275 (11th Cir. 2008), *Miller v. Mays*, 879 F.3d 691, 698 (6th Cir. 2018)

Thus, Fed. R. Civ. P. 60(b)(6), a party can assert a motion for relief from judgment under said provision, which has been described as a "grand reservoir of equitable power to do justice in a particular case." *In Re Woods*, 173 F.3d at 780; *Pierce v. Cook & Co.*, 518 F.2d 720, 722 (10th Cir. 1975).

Thereby, said appellant has shown by preponderance of the evidence, exceptional circumstances, which warrants this relief, that is central to this litigation and would have affected the outcome of this case, is exceptional circumstances. And that said provision [Fed. R. Civ. P. 60 (b)(6)] is an inherently equitable, granting of relief can be only challenge on equitable grounds.

And therefore, a motion for relief from the judgment is reviewed for an abuse of discretion.

In re Syncor ERISA Litig., 516 F.3d 1095, 1099 (9th Cir. 2008); *Rucci v. U.S. INS.*, 405 F.3d 45,48 (1st Cir. 2005). Moreover, a motion for relief from the judgment should be liberally construed to do substantial justice. *In re Roxford Foods, Inc.* 12 F.3d 875, 879 (9th Cir. 1999)

For these foregoing reasons, and in the interest of justice and fairness, Appellant asks this Court to grant the relief, as sought under Fed. R. Civ. P. 60 (b)(6), as said appellant is entitled to relief from the judgment. If, as asserted, the party is not otherwise entitled to relief under Rule 60(b)(1) -(5), but exceptional [extraordinary] circumstances exist that demonstrate the judgment is manifestly unjust.

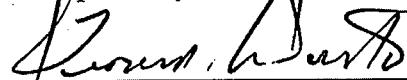
(Lilejeberg. Health Serv. Acquisition Corp., 486 U.S. 847, 863-64 (1988))

Therefore, I respectfully ask that this Court to reverse the Order of the District Court and subsequent decisions rendered by the Circuit Court of Appeals for Second Circuit with a finding of fact in favor of the appellant. In the alternative, the Court should remand this case for a fair and impartial trial before an unprejudiced jury on proper evidence and under correct instructions as is just and proper.

CONCOULSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



LEONARD W. HOUSTON o/b/o
LOUIS HOUSTON, SR. *pro-se*
Petitioner

Dated: **June 30, 2023**