No. 23-6136

IN THE SUPREME COURT
OF THE UNITED STATES

SHAWN C. LEFTWICH,
Petitioner,

v.

STATE FARM INSURANCE COMPANY, et al.,
Respondents.

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

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BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTION PRESENTED:

Whether Respondents were properly granted a summary judgment in this property insurance case where the undisputed facts showed that Petitioner's policy contained a one-year suit limitation provision and the lawsuit was filed more than one year after the loss or damage?[1]

[1] Respondent respectfully states that, contrary to the citations in the Petition, this case does not involve any question of federal law, including Petitioner's rights under the Fifth and Fourteenth Amendments to the United States Constitution, the statute of limitations for claims under the Fair Housing Act, or when a claim is deemed to accrue in other circumstances and in other jurisdictions. Nor is there any question presented regarding whether Petitioner's pleadings were reasonably and liberally interpreted because she was proceeding *pro se*. Indeed, as noted below, Petitioner did not file any response to Respondents' motion for summary judgment.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Supreme Court Rule 29.6, Respondent State Farm Fire and Casualty Company certifies that it is a wholly owned subsidiary of State Farm Mutual Automobile Insurance Company, its parent corporation. As a mutual insurance company, State Farm Mutual Automobile Insurance Company has no stock and is not a publicly traded corporation.

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STATEMENT OF THE CASE

A. *Background*[2]

Petitioner Leftwich rented a townhouse located in Loganville, Georgia (the "Property"). The Property was insured by a renter's insurance policy issued by Respondent State Farm Fire and Casualty Company ("State Farm") which was effective from January 20, 2019, to January 20, 2020, and covered up to $21,000.00 for loss to personal property and $10,000.00 for mold damage. The policy contained a suit limitation provision, as follows: "**SECTION I – CONDITIONS, 6. Suit Against Us.** No action will be brought against us unless there has been full compliance with all of the policy provisions. Any action by any party must be started within one year after the date of loss or damage."

Leftwich noticed an unusual smell and wetness at the Property as early as April 2019. On May 2, 2019, Leftwich again noticed an unusual "smell of mold" and called the maintenance department of the entity that managed the Property to report it. Three days later, on May 5, 2019, Leftwich also notified the Georgia Department of Community Affairs and City of Loganville about the moisture. Leftwich did not notify State Farm of the moisture at the Property at that time.

On July 10, 2019, Leftwich made a claim on her policy related to the moisture she noticed on May 2, 2019. On July 26, 2019, State Farm denied the claim after investigation and notified Leftwich that the moisture and concomitant property loss resulted from repeated seepage of water, which was not covered under the Policy.

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[2] The facts stated herein are taken from the district court's summary judgment order dated October 25, 2021. These facts were undisputed in the trial court.

B. Procedural History

Leftwich filed her lawsuit, *pro se*, against State Farm and its employee, Larry Watts, on July 8, 2020, in the State Court of Fulton County, Georgia. Respondents removed the lawsuit to the United States District Court for the Northern District of Georgia. According to the complaint, Leftwich was seeking "compensatory damages in [an] amount [of] $75,000.00 for emotional distress and [p]unitive damages in [an] amount of $35,000.00" on account of State Farm's denial of her property damage claim.

Following discovery, State Farm and Watts moved for summary judgment. Respondents argued that they were entitled to judgment as a matter of law on Leftwich's claim because, among other reasons, the undisputed evidence demonstrated that Leftwich filed her lawsuit against State Farm over a year after she was aware of the moisture issue at the Property and Leftwich never served Watts with the lawsuit. Leftwich did not respond to the motion for summary judgment. The district court granted the motion on the above-stated grounds on October 25, 2021. *Leftwich v. State Farm Ins. Co.*, 1:20-CV-3703-MHC, 2021 WL 6690349 (N.D. Ga. Oct. 25, 2021), reconsideration denied, 1:20-CV-3703-MHC, 2021 WL 6690567 (N.D. Ga. Dec. 20, 2021), appeal dismissed, 22-10213-BB, 2022 WL 2811988 (11th Cir. July 11, 2022), appeal reinstated (Oct. 31, 2022), and appeal dismissed, 22-10213-BB, 2022 WL 2811988 (11th Cir. July 11, 2022), appeal reinstated (Oct. 31, 2022), and aff'd, 22-10213, 2023 WL 5607885 (11th Cir. Aug. 30, 2023).

Leftwich appealed from the summary judgment order. However, she presented no argument concerning the summary judgment granted to Watts and any claim of error as to that portion of the order was deemed abandoned by the Eleventh Circuit Court of Appeals. *Leftwich v. State Farm Ins. Co.*, 22-10213, 2023 WL 5607885, *2, fn. 2 (11th Cir. Aug. 30, 2023).[3] Upon consideration of the undisputed facts and well-established Georgia law, the Circuit Court affirmed the summary judgment granted to State Farm. *Id.*

The Petition was filed in this Court on November 27, 2023, and placed on the docket on November 29, 2023.

[3] Leftwich similarly makes no argument in her Petition that summary judgment was improperly granted to Watts.

REASONS FOR DENYING THE PETITION

A petition for a writ of certiorari will be granted only for compelling reasons. *See* Sup. Ct. Rule 10. Here, the Petitioner presents no such compelling issue for this Court's review. Specifically, there is no conflict between circuit courts on decisions involving a matter of an important federal question. There is no conflict between a decision of a circuit court and a state court of last resort on a matter of an important federal question. There is no conflict regarding an important federal question between a U.S. Court of Appeals decision and other Supreme Court decisions. And the Eleventh Circuit has not so far departed from the accepted and usual course of judicial proceedings so as to require this Court's intervention.

Instead, the District Court and the Eleventh Circuit applied well-established Georgia state law in this diversity matter. That precedent, concerning the enforcement of contractual suit limitation provisions, when properly applied to the undisputed facts of the case, resulted in the summary judgment in favor of Respondent State Farm. The Court of Appeals correctly affirmed that judgment. Petitioner not only has failed to show that this case meets the "compelling reasons" standard for review by this Court, she has also failed to show any error in the rulings of the courts below. Accordingly, the petition should be denied.

The material facts are simple and they are undisputed.[4] Although Leftwich did not respond to the motion for summary judgment in the District Court, on

[4] Petitioner repeats in her petition the same material factual assertions she made below: she discovered a smell in her apartment in May 2019; she reported the smell to her apartment management and to the City; and the smell was determined to be caused by mold and excessive

appeal she argued the one-year suit limitation should have begun running no earlier than when State Farm denied her claim. As both the District Court and the Court of Appeals held, under Georgia law: contractual limitation provisions are enforceable; unambiguous terms of a contract must be enforced as written; the suit limitation provision at issue here was unambiguous; and the one-year limitation in the insurance policy began to run on the date the water damage occurred, not when Leftwich's insurance claim was denied (or some later date). *Thornton v. Georgia Farm Bureau Mut. Ins. Co.*, 287 Ga. 379, 695 S.E.2d 642 (2010); *Georgia Farm Bureau Mut. Ins. Co. v. Kephart*, 211 Ga. App. 423, 439 S.E.2d 682 (1993).

The Eleventh Circuit previously examined a similar suit limitation provision and held that under Georgia law the limitation period is triggered – at the latest – when the damage is discovered:

> "Like any other contract, an insurance policy must be construed according to its plain language and express terms." *Georgia Farm Bureau Mut. Ins. Co. v. Kephart*, 211 Ga.App. 423, 439 S.E.2d 682, 683 (1993). Though "loss" is not defined in the Policy, it clearly does not mean "the refusal of the insurer to pay a claim," as A Plus essentially argues. Rather, a fair reading of the Policy (and common sense) makes clear that a "loss" is an adverse event for which coverage is available—i.e., bodily injury, property damage, in some cases theft. In other words, "loss" takes on its ordinary meaning here. *See W. Pac. Mut. Ins. Co. v. Davies*, 267 Ga.App. 675, 601 S.E.2d 363, 367 (2004) ("In construing a contract of insurance to ascertain the intent of the parties, the court should give a term or phrase in the contract its ordinary meaning or common signification as defined by dictionaries, because they supply the plain, ordinary, and popular sense unless the words are terms of art.") .... In this case, the date of the loss was—at the latest—March 2014, when the Mitchells discovered the damage to their attic and crawlspace. *See Thornton v. Ga. Farm Bureau Mut. Ins.*

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moisture. The Petition further asserts that the results of moisture and mold testing were reported to her on July 2, 2019. Yet, Petitioner's lawsuit was not filed until July 8, 2020.

> *Co.*, 287 Ga. 379, 695 S.E.2d 642, 643–44 (2010) (holding that a suit under a policy with a provision similar to the one in this case was barred because the limitations period began to run on the date the loss occurred, rather than on the date the insurer's investigation window expired). A Plus waited until April 2016 to file its complaint. It is thus contractually barred from bringing the suit. *See Suntrust Mortg., Inc. v. Ga. Farm Bureau Mut. Ins. Co.*, 203 Ga.App. 40, 416 S.E.2d 322, 323 (1992) (noting that Georgia courts have held that suit-limitation provisions are binding).

A+ Restorations, Inc. v. Liberty Mut. Fire Ins. Co., 714 F. App'x 923, 925–26 (11th Cir. 2017).

The same rule applies in this case and, because Petitioner discovered the mold and excessive moisture in her property more than a year before she filed suit, the courts below did not err.

CONCLUSION

Based upon the foregoing arguments and authorities, and because neither the District Court nor the Circuit Court decisions raise important questions of law requiring this Court's review, and further because no error is shown in the decisions of the courts below, Respondent respectfully requests that this Honorable Court DENY the Petition for Writ of Certiorari.

Respectfully submitted,

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