

No.

In the Supreme Court of the United States

EMMANUEL JACOB, PETITIONER

v.

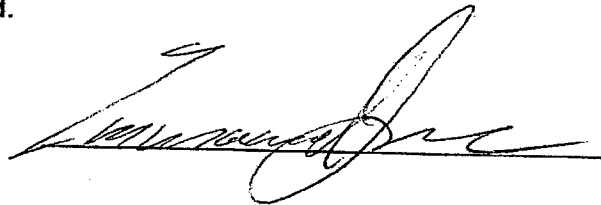
INDECK POWER EQUIPMENT CO., RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

- ☐ Petitioner has previously been granted to proceed in forma pauperis in the following court(s):
- ☒ Petitioner has not previously been granted leave to proceed in forma pauperis in any court.
- ☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.
- ☐ Petitioner's affidavit or declaration is not attached because the court below appointed counsel in the current proceeding, and:
- ☐ The appointment was made under the following provision of law: _____
- ☐ A copy of the order of appointment is appended.



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, **Emmanuel Jacob** am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 11,200.00	\$ 1,400.00	\$ 11,200.00	\$ 1,400.00
Self-employment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Income from real property (such as rental income)	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Interest and dividends	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Gifts	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Alimony	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Child Support	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Retirement (such as social security, pensions, annuities, insurance)	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Disability (such as social security, insurance payments)	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Unemployment payments	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Public-assistance (such as welfare)	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Other (specify): _____	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Total monthly income:	\$ 11,200.00	\$ 1,400.00	\$ 11,200.00	\$ 1,400.00

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Schneider Electric	7500 Dobson, Scottsdale AZ	10/2020	\$ 11,200.00
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Civana Spa	37220 Mule Train, Carefree, Az	9/2021	\$ 1,400.00
			\$
			\$

4. How much cash do you and your spouse have? \$ 400.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	\$ 600.00	\$ 1000.00
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<input checked="" type="checkbox"/> Home	Value 700,000.00	<input type="checkbox"/> Other real estate	Value
<input checked="" type="checkbox"/> Motor Vehicle #1	Year, make & model 2016 Honda, Odyssey	<input checked="" type="checkbox"/> Motor Vehicle #2	Year, make & model 2012 Honda Accord
Value 14,994.00		Value 8,925.00	

☐ Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
Empower	\$ 40,000.00	\$ 0.00
McFarlane	\$ 50,000.00	\$ 0.00
Prosper	\$ 20,000.00	\$ 0.00

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
Robel Jacob	Son	21
Aida Jacob	Daughter	18
AJ and BJ	Son and Daughter	15 and 13

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 4,500.00	\$ 0.00
Are real estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 500.00	\$ 0.00
Home maintenance (repairs and upkeep)	\$ 1,000.00	\$ 0.00
Food	\$ 1,500.00	\$ 0.00
Clothing	\$ 200.00	\$ 0.00
Laundry and dry-cleaning	\$ 150.00	\$ 0.00
Medical and dental expenses	\$ 200.00	\$ 0.00

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 200.00	\$ 600.00
Recreation, entertainment, newspapers, magazines, etc.	\$ 100.00	\$ 300.00
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0.00	\$ 0.00
Life	\$ 0.00	\$ 0.00
Health	\$ 0.00	\$ 0.00
Motor Vehicle	\$ 600.00	\$ 0.00
Other: _____	\$ 0.00	\$ 0.00
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0.00	\$ 0.00
Installment payments		
Motor Vehicle	\$ 500.00	\$ 0.00
Credit card(s)	\$ 1,500.00	\$ 0.00
Department store(s)	\$ 150.00	\$ 400.00
Other: _____	\$ 0.00	\$ 0.00
Alimony, maintenance, and support paid to others	\$ 0.00	\$ 0.00
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0.00	\$ 0.00
Other (specify): <u>Son's college expenses</u>	\$ 4,000.00	\$ 0.00
Total monthly expenses:	\$ 15,100.00	\$ 1,300.00

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ NO

If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes NO ☒

If yes, how much?

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ NO

If yes, how much?

If yes, state the person's name, address, and telephone number:

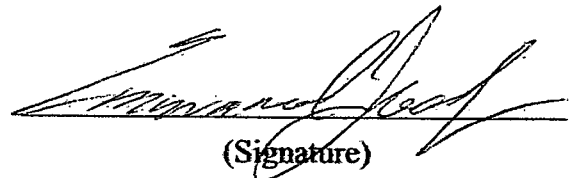
12. Provide any other information that will help explain why you cannot pay the costs of this case.

- a. I have had expenses beyond my earnings, my son is attending New York University (NYU), my two daughters are in competitive dancing.
- b. My wife could not work for most of the year for medical reasons. She is just now starting to work some limited hours.

- c. Indeck Power and Equipment Co. breached the contract with Pro Sapiens and it also breached the contract with PDVSA El Palito Refinery. The two boilers I brokered on behalf of Indeck are still seating in a warehouse 14 years after I sold them. This has damaged my relationships with PDVSA and could not obtain the equipment sales I used to make. I used to be able to pay my kids activities and school expenses with the extra income I generated by selling Equipment principally to PDVSA.
- d. In July 2016 Pro Sapiens' case was dismissed with prejudice because attorney for Pro Sapiens, Mario Utreras, did not respond and did not attend the hearing on July 20, 2016. I was sanctioned some \$250,000.00, I had to defend myself against the false accusations that caused the sanctions. Since then, I took the responsibility to defend myself and much of my time is spent researching and defending myself against these egregious accusations with little time left for me to take a second job.

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

Executed on: February 23, 2024


(Signature)

No.

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

EMMANUEL JACOB, PETITIONER

v.

INDECK POWER EQUIPMENT CO., RESPONDENT

***ON PETITION FOR A WRIT OF CERTIORARI
TO THE STATE OF ILLINOIS APPELLATE COURT
FIRST DISTRICT***

PETITION FOR A WRIT OF CERTIORARI

EMMANUEL JACOB

PRO SE

25206 N 42 Avenue

Phoenix, Arizona, 85083

(602) 321-9757

Ejacob14@yahoo.com

QUESTIONS PRESENTED

1. Can an Appellate Court Support a **VOID JUDGMENT** in violation of the **14th Amendment Due Process Protection**?
2. Can a Court obtain Jurisdiction to reinstate an order entered when it lacked jurisdiction?
3. Can a Court Reinstate a **VOID JUDGMENT** in violation of the **14th Amendment Due Process Protection** on a void judgment under **FRAP 60(b)(4)**?
4. Can a Court deliberately and maliciously deny the **14th Amendment due Process** to defending against the false allegations and presenting evidence to show that Judgment was obtained by **FRAUD** violating under color of law **42 U.S.C. § 1983** and **FRAP 60(b)(3)** ?

LIST OF PARTIES

All Parties appear in the caption of the case in the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	i
TABLE OF AUTHORITIES.....	ii,iii,iv,v,vi
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION	5
CONCLUSION.....	18
INDEX TO APPENDICES	
App. 1 Order of Illinois Supreme Court Denying Petition for Rehearing	
App.1 July 20, 2016 Order of Circuit Court of Cook County Illinois	

- App. 2 Order of the Illinois Appellate Court 1st district on second appeal
- App. 3 Order of Illinois Supreme Court Denying PAL
- App. 4 Order of the Illinois Superior Court Denial of Petition for Rehearing

TABLE OF AUTHORITIES

United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031 1043, 85 L.Ed. 1368(1941);.....	5
Accord, Monroe v. Pape, 365 U.S. 167, 187, 81 S.Ct. 473, 484, 5 L.Ed.2d 492 (1961);.....	7
Monell v. New York City Dept. of Social Services, 436 U.S. 658, 695– 701, 98 S.Ct. 2018, 2038–2041, 56 L.Ed.2d 611 (1978));.....	7
Polk County v. Dodson, 454 U.S. 312, 317–318, 102 S.Ct. 445, 449, 70 L.Ed.2d 509 (1981);.....	7
id., at 329, 102 S.Ct., at 455–456.....	7
Lugar v. Edmondson Oil Co., supra.....	7
Id., 457 U.S., at 935, 102 S.Ct., at 2752.....	7
Accord, Rendell–Baker v. Kohn, 457 U.S. 830, 838, 102 S.Ct. 2764, 2769, 73 L.Ed.2d 418 (1982);.....	7
United States v. Price, 383 U.S., at 794, n. 7, 86 S.Ct., at 1157, n. 7.....	7
Lugar, 457 U.S., at 937, 102 S.Ct., at 2753.....	7
West v. Atkins, 487 U.S. 42 (1988) 108 S.Ct. 2250, 101 L.Ed.2d 40, 56 USLW 466.....	7
Youngberg v. Romeo, 457 U.S. 307, 315, 324, 102 S.Ct. 2452, 2457–2458, 2462–2463 (1982) (dictum);.....	7
Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986);.....	7
Ingraham v. Wright, 430 U.S. 651, 672–674.....	8
n. 41, 97 S.Ct. 1401, 1413–1414,.....	8

n. 41 (1977); <i>Rochin v. California</i> , 342 U.S. 165, 169–174, 72 S.Ct. 205, 208–210, 96 L.Ed. 183 (1952);.....	8
<i>Johnson, supra</i> , at 1032–1033.....	8
<i>Hazel-Atlas Glass Co. v. Hartford Empire Co.</i> , 322..8 US 238 (1944)),.....	8
<i>United States v. Throckmorton</i> , 98 US 61 (1878).....	8
<i>Mitchell</i> , 2014 IL 116311, ¶ 43, 379 Ill. Dec. 85, 6 N.E.3d 162.....	8
<u><i>Pro Sapiens, LLC v. Indeck Power Equipment Company</i>, — N.E.3d — (2019) 2019 IL App (1st) 182019</u>	8, 9
Ill. S. Ct. R. 204(a)(3) (eff. July 1, 2014).....	9
<i>In re A.M.</i> , 128 Ill. App. 3d at 103, 83 Ill.Dec. 303, 470 N.E.2d 58.....	9
<i>KASC Corp. v. Recycle Free, Inc.</i> , 364 Ill.App.3d 593, 594, 301 Ill.Dec. 418, 846 N.E.2d 1021 (2006).....	9, 11
<i>In re Marriage of Verdung</i> , 126 Ill.2d 542, 547, 129 Ill.Dec. 53, 535 N.E.2d 818 (1989).....	11
<i>Capua v. Capua</i> , N.E.3d (2014) 2014 IL App (1st) 120993,.....	11
<i>C.T.A.S.S. & U. Federal Credit Union v. Johnson</i> , 383 Ill.App.3d 909, 911, 322 Ill.Dec. 543, 891 N.E.2d 558 (2008).....	11
<i>GMB Financial Group, Inc., v. Marzano</i> , 385 Ill.App.3d 978, 997, 326 Ill.Dec. 81, 899 N.E.2d 298 (2008).....	11
<i>BAC Home Loans Servicing LP v. Mitchell</i> , 2014 IL 116311.....	11
<i>Griffin v. Griffin</i> , 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635.....	12
<i>Ex parte Seidel</i> , 39 S.W.3d 221, 225 (Tex. Crim. App. 2001).....	12
<i>Ex parte Spaulding</i> , 687 S.W.2d at 745 (Teague, J.,concurring).....	12, 13
<i>Valley v. Northern Fire & Marine Ins. CO.</i> , 254 U.S. 348, 41 S. Ct. 116 (1920).....	12
<i>Williamson v. Berry</i> , 8 How. 945, 540 12 L. Ed. 1170, 1189 (1850).....	12
<i>Holder v. Scott</i> , 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.).....	12

Old Wayne Mut. L. Assoc. v. McDonough, 204 U. S. 8, 27 S. Ct. 236 (1907).....	13
State ex rel. Latty, 907 S.W.2d at 486.....	13
5 -Klugh v. U.s., 620 F.Supp. 892 (D.S.C. 1985).....	14
El-Kareh v. Texas Alcoholic Beverage Comm'n, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ);.....	14
Evans v. C. Woods, Inc., No. 12-99-00153-CV, 1999 WL 787399, at *1 (Tex. App.—Tyler Aug. 30, 1999, no pet. h.).....	14
Long v. Shorebank Development corp., 182 F.3d 548 (C.A. 7 111. 1999).....	14
Durukan America, LLC v. Rain Trading, Inc., 787 F.3d 1161 (7th Cir. 2015).....	15
Philos Technologies, Inc. v. Philos & D, Inc., 645 F.3d 851 (7th Cir. 2011).....	15
Hukill v. Oklahoma Native American Domestic Violence Coalition, 542 F.3d 794 (10th Cir. 2008).....	15
Price v. Wyeth Holdings Corp., 505 F.3d 624 (7th Cir. 2007).....	15
Shank/Balfour Beatty, a Joint Venture of M.L. Shank, Co., Inc., Balfour Beatty Construction, Inc. v. International Broth. Of Elec. Workers Local 99, 497 F.3d 83 (1st Cir. 2007).....	15
M & K Welding, Inc. v. Leasing Partners, LLC, 386 F.3d 361, 365 (1st Cir. 2004), citing Wright, Miller & Kane.....	16
Karak v. Bursaw Oil Corp., 288 F.3d 15 (1st Cir. 2002).....	16
Carter v. Fenner, 136 F.3d 1000 (5th Cir. 1998).....	16
Chambers v. Armontrout, 16 F.3d 257, 260 (8th Cir. 1994),.....	16
Wright & Miller. Honneus v. Donovan, 691 F.2d 1, 2 (1st Cir. 1982),.....	16

Wright & Miller. Hospital Mortg. Group, Inc. v. Parque Indus. Rio Canas, Inc., 653 F.2d 54, 56 (1st Cir. 1981),.....	16
Wright & Miller. Covington Industries, Inc. v. Resintex A. G., 629 F.2d 730, 733 (2d Cir. 1980),.....	16
Wright & Miller. Thomas P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica, 614 F.2d 1247, 1256(9th Cir. 1980),.....	16
Wright & Miller. V. T. A., Inc. v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979),.....	16
Jordon v. Gilligan, 500 F.2d 701 (6th Cir. 1974).....	16
Williams v. Martinez, 192 F. Supp. 3d 1 (D.D.C. 2016).....	16
Citimortgage, Inc. v. Paniagua-Latimer, 756 F. Supp. 2d 211 (D.P.R. 2010).....	16
Track Transp., Inc. v. Lakeside Warehouse.....	16
Trucking Inc., 245 F.R.D. 213, 215 (E.D. Pa. 2007).....	16
Foster v. Arletty 3 Sarl, 278 F.3d 409 (4th Cir. 2002).....	17
Robinson Engineering Co. Pension Plan and Trust v. George, 223 F.3d 445, 453 (7th Cir. 2000).....	17
Sea-Land Service, Inc. v. Ceramica Europa II, Inc., 160 F.3d 849, 852 (1st Cir. 1998),.....	17
Wright, Miller & Kane. Precision Etchings.....	17
Findings, Inc. v. LGP Gem, Ltd., 953 F.2d 21, 22 (1st Cir. 1992),.....	17
Crosby v. Bradstreet Co., 312 F.2d 483 (2d Cir. 1963).....	17
David v. District of Columbia, 252 F.R.D. 56 (D.D.C. 2008).....	17
Rodrigues v. Genlyte Thomas Group LLC, 392 F. Supp. 2d 102 (D. Mass. 2005).....	17
Little v. Celebrezze, 259 F. Supp. 9 (N.D. Tex. 1966).....	18

Hicklin v. Edwards, 226 F.2d 410 (8th Cir. 1955).....	18
--	-----------

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the Illinois Civil Appeals Court 1st District appears at App. 1 to the petition and is unpublished. The Order of July 20, 2016 of The District Court of Cook County Illinois appears at App. 2 to the petition and is unpublished. The Supreme Court of Illinois denied Petition to Appeal at App. 3.

JURISDICTION

The date on which the Supreme Court of Illinois denied petition for rehearing on this case was December 7, 2023. A copy of which appears at App. 4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV

The 14th amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments that comply with the rules and case law. Most due process exceptions deal with the issue of notification. If, for example, someone gets a judgement against you in another state without your having been notified, you can attack the judgement for lack of due process of law. In *Griffin v. Griffin*, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 a pro se litigant won his case in the Supreme Court who stated:

The Fourteenth Amendment states:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV.

RULE 60(b) (1) (2) (3) (4) (6)

42 U.S.C. § 1983

§ 2862 Void Judgment

STATEMENT OF THE CASE

The case is Pro Sapiens v. Indeck Power and Equipment. Petitioner, Emmanuel Jacob, is an employe of Pro Sapiens and was never a party to the case.

Respondent was granted forensic examination of Petitioner's computer systems, when they did not find what they wanted, they requested forensic analysis of all Petitioner's email accounts, yahoo, cox, g-mail accounts. Petitioner asserted that he uses Web Services to access these email accounts, therefore, the original emails reside in Yahoo. Cox and G-mail servers and suggested they subpoena them. The District Court was well aware of these facts but in a deliberate act decided to let them conduct their forensic analysis on Petitioner servers.

Respondent expert witness on his first and second report, reported that there was no bulk deletion of emails. Perhaps under pressure from Respondent, he edited his report to state that three years of emails were deleted from the yahoo account. Pro Sapiens retained a forensic expert, and he showed how

Respondent's forensic expert was committing fraud and not using conventional methods to arrive at his findings. He also testified that these emails are on Petitioner's yahoo account. On July 20, 2016 the Cour Dismissed the case with prejudice and sanctioned Pro Sapiens and Petitioner \$205,489.00 in attorney fees and \$39,544.76 in expert costs. Judge Patrick Sherlock denied motion to reconsider and motion to vacate even though the attorney for Pro Sapiens had admitted that it was his fault that he did not respond and did not show up to the hearing and requested he be punished for his act and not Pro Sapiens and

Petitioner. Judge Patrick Sherlock during the hearing of July 20, 2016 erroneously stated that the attorney for Pro Sapiens did not respond and failed to show up because he did not know how to defend against these egregious violations. After July 20, 2016 Order, the Court had one motion to resolve, Respondent's motion for sanctions on Rule 137 against Pro Sapiens and Pro Sapiens first attorney. The allegations for Rule 219 and Rule 137 were intertwined. The Court deliberately prevented Petitioner, Pro Sapiens and its expert witness testimony and ruled on the motion without their testimony.

Petitioner was granted Appeal, in the first Appeal the court found that the District Court did not have jurisdiction over Petitioner and declared the Order of July 20, 2016 Void. On Remand, the District Court reentered that same order and on second Appeal, the Appellate Court affirmed the Order (App. 2). The Appellate Court found that the Order of July 20, 2016 (App. 1) was not properly before them because the order impacted Pro Sapiens and not Petitioner, this is false as the order Sanctioned Pro Sapiens and Petitioner (App. 1). Although the Appellate Court in their analysis refer to Orders of July 25, 2018 August 16, 2018 and failed to address the most critical order, that of July 20, 2016(App. 1). Nevertheless, Orders of July 25, 2018 and August 16, 2018 also impacted Petitioner since they affirmed Sanctions directed at Petitioner.

Petitioner request for Appeal to the Illinois Supreme Court was denied (App. 3) and his request for rehearing was also denied on December 7, 2023 (App. 4).

REASONS FOR THE PETITION

- 1. 14 Amendment right to due process, FRCP 60(b)(3), and under color of law the violation of U.S.C. 42 1983,**

There was one motion pending for Sanctions on Rule 137 against Pro Sapiens and Pro Sapiens first attorney, Arnold Landis, again Judge Patrick Sherlock heard testimony from Respondent, Pro Sapiens first attorney and ruled on the motion and denied Petitioner, Pro Sapiens and Pro Sapiens Expert witness present their testimony. This was a deliberate act to prevent testimony from Petitioner, Pro Sapiens and its expert on the Fraud committed on the Court by Respondent. Judge Sherlock was well aware that Respondent's expert witness alleged accusation were fraudulent and Pro Sapiens' expert witness had shown how fraudulent they were. By preventing testimony of Petitioner and Pro Sapiens' expert Judge Sherlock built a wall to prevent Petitioner from exercising his 14 Amendment rights to due process to defend himself and committed under color of law the violation of U.S.C. 42 1983, citing **Mireles v. Waco, 502 U.S. 9, 12-13 (1991)**. These actions defy the prohibitions against fraud in **FRCP Rule 60(b)(3)** and prohibitions against impropriety in the Code of Conduct for United States Judges (A judge must avoid all impropriety and the appearance of impropriety). To permissively grant leave to a lower court to commit fraud flies in the face of the United States Constitution. Judge Patrick Sherlock acted in conscious disregard of justice.

On July 20, 2016, during the Court Hearing that Pro Sapiens's attorney, Mario Utreras, failed to be present at the hearing, Judge Sherlock showed his prejudice against Petitioner and stated " ...the Court can only assume that the reason Mr. Utreras is not here today is because he has no response to the very, very serious allegations that are being leveled against Mr. Jacob as it relates to his obligations in this litigation". Judge Sherlock further stated " I will add that Counsel for Pro Sapiens did their best with what appears to me to be a very difficult client who was playing "hide the ball" not only from the Defendant but also from their own counsel in the case until it was too late in the game; I can only assume that Mr. Utreras came to the conclusion that Indeck's motion was so well-founded that he chose not to respond at all....." Even when Pro Sapiens' attorney, Mario Utreras, pleaded with Judge Sherlock to punish him instead of punishing Petitioner, because it was his fault that he did not respond and did not show up for the hearing and asked him to reconsider his ruling, Judge Sherlock continued with his prejudice against Petitioner and denied Petitioner the opportunity to defend himself violating Petitioner 14 Amend right to due process and violating under color of law the violation of U.S.C. 42 § 1983.

The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *United States v. Classic*, 313 U.S. 299, 326, 61 S.Ct. 1031,

1043, 85 L.Ed. 1368 (1941). *Accord*, *Monroe v. Pape*, 365 U.S. 167, 187, 81 S.Ct. 473, 484, 5 L.Ed.2d 492 (1961) (adopting Classic standard for purposes of § 1983) (overruled in part on other grounds, *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 695–701, 98 S.Ct. 2018, 2038–2041, 56 L.Ed.2d 611 (1978)); *Polk County v. Dodson*, 454 U.S. 312, 317–318, 102 S.Ct. 445, 449, 70 L.Ed.2d 509 (1981); *id.*, at 329, 102 S.Ct., at 455–456 (dissenting opinion). In *Lugar v. Edmondson Oil Co.*, *supra*, the Court made clear that if a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, “that conduct [is] also action under color of state law and will support a suit under § 1983.” *Id.*, 457 U.S., at 935, 102 S.Ct., at 2752. *Accord*, *Rendell-Baker v. Kohn*, 457 U.S. 830, 838, 102 S.Ct. 2764, 2769, 73 L.Ed.2d 418 (1982); *United States v. Price*, 383 U.S., at 794, n. 7, 86 S.Ct., at 1157, n. 7. In such circumstances, the defendant's alleged infringement of the plaintiff's federal rights is “fairly attributable to the State.” *Lugar*, 457 U.S., at 937, 102 S.Ct., at 2753.

In *West v. Atkins*, 487 U.S. 42 (1988) 108 S.Ct. 2250, 101 L.Ed.2d 40, 56 USLW 466 Justice Escalia noted: “I agree with the opinion of the Court that respondent acted under color of state law for purposes of § 1983. Violates the Fourteenth Amendment's protection against the deprivation of liberty without due process. See *Youngberg v. Romeo*, 457 U.S. 307, 315, 324, 102 S.Ct. 2452, 2457–2458, 2462–2463 (1982) (dictum); see generally *Daniels v. Williams*, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986);

Ingraham v. Wright, 430 U.S. 651, 672–674, and n. 41, 97 S.Ct. 1401, 1413–1414, and n. 41 (1977); **Rochin v. California**, 342 U.S. 165, 169–174, 72 S.Ct. 205, 208–210, 96 L.Ed. 183 (1952); **Johnson**, *supra*, at 1032–1033.

Court's denial of certiorari review would provide a perception that fraud is acceptable when a lower court feels a prejudice or bigotry towards a specific pleadant, **Hazel-Atlas Glass Co. v. Hartford Empire Co.**, 322 US 238 (1944)), **United States v. Throckmorton**, 98 US 61 (1878).

2. Ruling Contradicts BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311

Mitchell, 2014 IL 116311, ¶ 43, 379 Ill. Dec. 85, 6 N.E.3d 162 (“A party who submits to the court’s jurisdiction does so only prospectively and the appearance does not retroactively validate orders entered prior to that date.” (internal quotation marks omitted)). In **Pro Sapiens, LLC v. Indeck Power Equipment Company**, — N.E.3d — (2019) 2019 IL App (1st) 182019 court stated, “even if we agreed that Jacob waived his objection to personal jurisdiction in November 2017 (we do not), it would not somehow vest the court with personal jurisdiction over Jacob back in May 2016, when the motion for Rule 219 was first filed and served on counsel for Pro Sapiens, or in July and August 2016.”

And Indeck treated Jacob as an employee or officer of Pro Sapiens during the litigation. It did not subpoena him for deposition but, instead, issued a notice of deposition to the corporation plaintiff, Pro Sapiens, to produce the employee subject to its control, Jacob—which is typically how lawyers request depositions from an

opposing party's employees. See Ill. S. Ct. R. 204(a)(3) (eff. July 1, 2014) (notice of deposition "sufficient," in lieu of subpoena, to compel deposition of party's employee or officer). When it sought to compel documents and e-mails in Jacob's possession, it issued all notices (and motions to compel) to Pro Sapiens, not Jacob individually—which, again, is the standard course of action. All of that made sense, because a corporate party is deemed to be in control of its employees and officers, and thus the actions of those employees and officers are compelled by compelling the party to the lawsuit—the corporation. 84 Here, of course, Jacob, an employee (or perhaps an officer, or both) of the corporate plaintiff, Pro Sapiens, was personally sanctioned—to the tune of almost a quarter of a million dollars. Because the trial court never acquired jurisdiction over Jacob before doing so, due process concerns are directly implicated. Indeed, recall that, by the time of that hearing, the trial court had already imposed sanctions on Jacob personally some 18 months earlier and had already denied a motion for reconsideration filed by Pro Sapiens. By that point in November 2017, the court had made it abundantly clear that it would not revisit that ruling. And the court emphasized as much to Jacob, at that November 2017 hearing, when Jacob tried to discuss that topic on the merits. We find no basis to conclude that Jacob's mere attendance at that hearing waived his objection to personal jurisdiction. See *In re A.M.*, 128 Ill. App. 3d at 103, 83 Ill.Dec. 303, 470 N.E.2d 58 (in proceedings against mothers for violating School Code by failing to ensure their children's attendance at school, order of contempt against children for failing to attend school was void, as children, while present at all times in court and aware of order to attend school, were never "served with process" and, thus, "the circuit court was without

jurisdiction to enter the orders”). Second and related, the purpose of the November 2017 hearing was to discuss not the Rule 219 sanctions but the motion for Rule 137 sanctions for filing a frivolous lawsuit. That motion was directed at Pro Sapiens and its first lawyer, Mr. Landis, not at Jacob personally. The court had requested of Pro Sapiens's new lawyer, Mr. Utreras, that he bring Jacob to this hearing so Jacob could hear, straight from the court, that Pro Sapiens was facing sanctions that could amount to attorney fees dating back to the onset of the case—nearly a half-million dollars. By then, in other words, the topic of Rule 219 sanctions was off the table entirely. Third and most importantly, even if Jacob's appearance at the November 2017 hearing constituted his consent to jurisdiction, and thus a waiver, our decision would be the same. Personal jurisdiction can be waived, but it can only be waived going forward. It can't be waived retroactively.

Pro Sapiens, LLC v. Indeck Power Equipment Company, --- N.E.3d ---- (2019) 2019 IL App (1st) 182019) this Court stated:” *Trial court lacked personal jurisdiction over non-party employee of equipment supplier in supplier's breach of contract action against equipment vendor, and thus could not impose discovery sanctions against employee, even though employee was one of only two employed by supplier; employee was never served with a subpoena or any other process in his individual capacity, and all notices were issued to supplier as a corporate entity. Ill. Sup. Ct. R. 219.*”

KASC Corp. v. Recycle Free, Inc., 364 Ill.App.3d 593, 594, 301 Ill.Dec. 418, 846 N.E.2d 1021 (2006). Waiver, however, only applied prospectively. That is, a party's appearance did not operate to retroactively validate orders entered in the absence of

jurisdiction prior to the appearance. See **In re Marriage of Verdung**, 126 Ill.2d 542, 547, 129 Ill.Dec. 53, 535 N.E.2d 818 (1989) (finding that a general appearance made in a collateral proceeding attacking an earlier judgment did not confer personal jurisdiction retroactively). **KSAC Corp.**, 364 Ill.App.3d at 595, 301 Ill.Dec. 418, 846 N.E.2d 1021.

In Capua v. Capua, N.E.3d (2014) 2014 IL App (1st) 120993, The Court Stated: On several occasions, courts have examined the effect of the 2000 amendment on the temporal scope of waivers of personal jurisdiction and have come to different conclusions. Compare **C.T.A.S.S. & U. Federal Credit Union v. Johnson**, 383 Ill.App.3d 909, 911, 322 Ill.Dec. 543, 891 N.E.2d 558 (2008) (rejecting the argument that amended section 2–301 could be applied to allow for retroactive waivers, reasoning: “Section 2–301 has never been applied in a postjudgment proceeding to give a trial court retroactive jurisdiction or to validate orders entered without section 2–301”); with **GMB Financial Group, Inc., v. Marzano**, 385 Ill.App.3d 978, 997, 326 Ill.Dec. 81, 899 N.E.2d 298 (2008). In **BAC Home Loans Servicing LP v. Mitchell**, 2014 IL 116311, however, our supreme court recently addressed and resolved the split in authority regarding the temporal scope of section 2–301’s waivers of personal jurisdiction.

3. Void Judgment, 14th Amendment due process protection, lack of Jurisdiction and Rules Civ. Proc., Rule 60(b)(4).

In the first Appeal the Court found that the District Court Order of July 20, 2016 (App.1) was **Void**. On Remand the District Court reentered same Order. In the

second Appeal (App.3) the Court affirmed the District Court Order in Conflict with other similar cases as illustrated below. Only this Court can resolve the conflict.

The 14th amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments that comply with the rules and case law. In *Griffin v. Griffin*, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 a pro se litigant won his case in the Supreme Court who stated: A void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights. *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001), *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring).

The law is well-settled that a void order or judgment is void even before reversal, *Valley v. Northern Fire & Marine Ins. CO.*, 254 U.S. 348, 41 S. Ct. 116 (1920) Courts are constituted by authority, and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal. *Williamson v. Berry*, 8 How. 945, 540 12 L. Ed. 1170, 1189 (1850). It has also been held that it is not necessary to take any steps to have a void judgment reversed, vacated, or set aside, It may be impeached in any action direct or, collateral. *Holder v. Scott*, 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.). A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well-established law that a void order can be challenged in any court", *Old*

Wayne Mut. L. Assoc. v. McDonough, 204 U. S. 8, 27 S. Ct. 236 (1907).

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, **Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const.**

FRCP Rule 60(b) provides that the court may relieve from a final judgment and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

F.R.C.P. Rule 60(b)(1)-(b)(6). To be entitled to relief, the moving party must establish facts within one of the reasons enumerated in **Rule 60(b)**.

A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." **Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J.,concurring).**

This cannot be ignored its fact recorded! Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or

acted in a manner inconsistent with due process, Fed. Rules Civ. Proc.. Rule 60(b)(4), 28, U.S.C.A. Const. Amend. 5 -Klugh v. U.s., 620 F.Supp. 892 (D.S.C. 1985).

When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See **El-Kareh v. Texas Alcoholic Beverage Comm'n**, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also **Evans v. C. Woods, Inc.**, No. 12-99-00153-CV, 1999 WL 787399, at *1 (Tex. App.—Tyler Aug. 30, 1999, no pet. h.).

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See **Long v. Shorebank Development corp.**, 182 F.3d 548 (C.A. 7 111. 1999).

Rule 60(b)(4) authorizes relief from void judgments. A void judgment cannot acquire validity because of laches on the part of the judgment debtor. A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner

inconsistent with due process of law. Of course, although a challenge on one of those three grounds can be made under Rule 60(b)(4), if the court finds that there was subject-matter or personal jurisdiction, or that no due-process violation has occurred, the motion will be denied.

If the district court lacked personal jurisdiction over defendant at the time it entered a default judgment, the judgment is void, and it is a per se abuse of discretion to deny a motion to vacate that judgment. **Durukan America, LLC v. Rain Trading, Inc.**, 787 F.3d 1161 (7th Cir. 2015). **Philos Technologies, Inc. v. Philos & D, Inc.**, 645 F.3d 851 (7th Cir. 2011). When the rule permitting a court to relieve a party from a final judgment that is void is properly invoked, relief is not a discretionary matter, it is mandatory, and, accordingly, appellate review is de novo. **Hukill v. Oklahoma Native American Domestic Violence Coalition**, 542 F.3d 794 (10th Cir. 2008). Although relief under Rule 60(b) is subject to review for abuse of discretion, if a judgment is void, it is a per se abuse of discretion for a district court to deny a movant's motion to vacate the judgment. **Price v. Wyeth Holdings Corp.**, 505 F.3d 624 (7th Cir. 2007). Although denial of a motion for relief from a judgment or order is normally reviewed for abuse of discretion, the district court has no discretion when deciding a motion to vacate a judgment as void because the judgment is either void or it is not. **Shank/Balfour Beatty, a Joint Venture of M.L. Shank, Co., Inc., Balfour Beatty Construction, Inc. v. International Broth. Of Elec. Workers Local 99**, 497 F.3d 83 (1st Cir. 2007). **M & K Welding, Inc. v. Leasing Partners, LLC**, 386

F.3d 361, 365 (1st Cir. 2004), citing Wright, Miller & Kane. A judgment on the merits that is entered after a plaintiff has filed a proper notice of dismissal is void and the court's refusal to vacate an unarguably void judgment is an abuse of discretion. **Karak v. Bursaw Oil Corp., 288 F.3d 15 (1st Cir. 2002).** **Carter v. Fenner, 136 F.3d 1000 (5th Cir. 1998).** **Chambers v. Armontrout, 16 F.3d 257, 260 (8th Cir. 1994), citing Wright & Miller.** **Honneus v. Donovan, 691 F.2d 1, 2 (1st Cir. 1982), citing Wright & Miller.** **Hospital Mortg. Group, Inc. v. Parque Indus. Rio Canas, Inc., 653 F.2d 54, 56 (1st Cir. 1981), citing Wright & Miller.** **Covington Industries, Inc. v. Resintex A. G., 629 F.2d 730, 733 (2d Cir. 1980), citing Wright & Miller.** **Thomas P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica, 614 F.2d 1247, 1256(9th Cir. 1980), quoting Wright & Miller.** **V. T. A., Inc. v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979), citing Wright & Miller.**

A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside. **Jordon v. Gilligan, 500 F.2d 701 (6th Cir. 1974).** **Williams v. Martinez, 192 F. Supp. 3d 1 (D.D.C. 2016).** **Citimortgage, Inc. v. Paniagua-Latimer, 756 F. Supp. 2d 211 (D.P.R. 2010).** **§ 2862 Void Judgment, 11 Fed. Prac. & Proc. Civ. § 2862 (3d ed.) © 2024 Thomson Reuters.** **On Track Transp., Inc. v. Lakeside Warehouse & Trucking Inc., 245 F.R.D. 213, 215 (E.D. Pa. 2007), citing Wright, Miller & Kane.**

Motion by French company and its principal to vacate a default judgment entered against them, which was brought four months after the entry of judgment, was brought within a reasonable time, as required by the rule governing motions to vacate, given the international status of the parties, the multiple and duplicative lawsuits filed by plaintiff, and the fact that the motion was based on a void judgment. **Foster v. Arletty 3 Sarl**, 278 F.3d 409 (4th Cir. 2002). **Robinson Engineering Co. Pension Plan and Trust v. George**, 223 F.3d 445, 453 (7th Cir. 2000), citing **Wright, Miller & Kane**. Defendants' unreasonable delay in bringing a third motion for relief from judgment, as void for lack of personal jurisdiction, nearly one year after the entry of the default judgments and nearly nine months after filing a second set of such motions, did not alone provide a basis for denial. **Sea-Land Service, Inc. v. Ceramica Europa II, Inc.**, 160 F.3d 849, 852 (1st Cir. 1998), citing **Wright, Miller & Kane**. **Precision Etchings & Findings, Inc. v. LGP Gem, Ltd.**, 953 F.2d 21, 22 (1st Cir. 1992), citing **Wright & Miller**. Judgment was vacated as void 30 years after entry in **Crosby v. Bradstreet Co.**, 312 F.2d 483 (2d Cir. 1963). **David v. District of Columbia**, 252 F.R.D. 56 (D.D.C. 2008). Party does not waive jurisdiction requirement by failing to challenge jurisdiction early in the proceedings; rather, motions to set aside a judgment for lack of jurisdiction may be made at any time. **Rodrigues v. Genlyte Thomas Group LLC**, 392 F. Supp. 2d 102 (D. Mass. 2005).

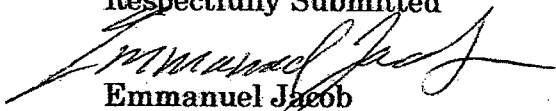
Under both Texas and federal law, only judgments that show a jurisdictional defect on the face of the record are classified as "void judgments" so as to be subject to

collateral attack. *Little v. Celebrezze*, 259 F. Supp. 9 (N.D. Tex. 1966). *Hicklin v. Edwards*, 226 F.2d 410 (8th Cir. 1955).

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully Submitted



Emmanuel Jacob

Pro Se

25206 N. 42nd Avenue

Phoenix, AZ 85083

(602) 321-9757

Ejacob14@yahoo.com

February 23, 2024

(L.B.)

Order

(Rev. 9/13/04) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PRO SAPIENS LLC

v.

No. 14 L 5730

INDECK POWER EQUIPMENT

Page 2 of 2

ORDER

5. That this matter is continued until August 31, 2016 at 10:15 a.m. for status on Indeck's post-judgment Petition for Sanctions, including attorneys' fees and expert fees awarded by the Court; 6293

6. Because the Court's Order on Indeck's Rule 219 motion disposed of ^{all} Pro Sapiens' claims, which are dismissed with prejudice, the Court declines to ⁵²⁵¹ Rule on Indeck's motion for sanctions for violating the Protective Order and Renewed motion for Summary Judgment.

Atty. No.: 58775
Name: ST Roeder
Atty. for: INDECK POWER
Address: 77 W. WASHINGTON
City/State/Zip: CHICAGO IL 60602
Telephone: 312/667-6000

Judge Patrick J. Sherlock

JUL 20 2016

Circuit Court - 1942

ENTERED:

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

C 3136



Order

(Rev. 9/13/04) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PRO SAPIENS, LLC

v.

No. 14 L 5730INDECK POWER EQUIPMENT Co.

Page 1 of 2

ORDER
 This matter coming to be heard on Indeck Power Equipment Company's Rule 219 motion for Dismissal and other Sanctions, Indeck's Rule 219 motion for Sanctions for violation of the September 17, 2015 Protective Order, and Indeck's Renewed motion for summary Judgment on Count II, the Court being fully advised in the premises, IT IS ORDERED:

1. That Indeck's Rule 219 motion for Dismissal and Sanctions is granted for the reasons stated on the record; and, that
2. This case is dismissed with prejudice; 4020
3. That Sanctions are awarded against Pro Sapiens and Emmanuel Jacob as stated on the record; 9269
4. That Indeck has 28 days to file its Petition for Sanctions (August 12, 2016); 4231

Atty. No.: 58775Name: S.J. RolderAtty. for: INDECK POWERAddress: 77 W. WASHINGTONCity/State/Zip: CHICAGO IL 60602Telephone: 312/667-6000

Judge Patrick J. Sherlock

ENTERED:

JUL 20 2016

Circuit Court - 1942

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

C 3135

APPENDIX 2

**Order of Illinois Appellate
Court 1st District**

corrected copy

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2023 IL App (1st) 200779-U

SECOND DIVISION
March 28, 2023

No. 1-20-0779

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PRO SAPIENS, LLC,)	
)	
Plaintiff,)	Appeal from the
)	Circuit Court of
v.)	Cook County
)	
INDECK POWER EQUIPMENT COMPANY,)	19 L 13671
)	
Defendant-Appellee)	Honorable
)	Patrick J. Sherlock, and
(Emmanuel Jacob, Appellant).)	Jerry A. Esrig,
)	Judges Presiding
)	

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirmed. Trial court did not err in re-entering Rule 219 sanctions against non-party.
- ¶ 2 In a prior opinion, *Pro Sapiens, LLC v. Indeck Power Equipment Co.*, 2019 IL App (1st) 182019 (*Pro Sapiens I*), we vacated a discovery sanction against Emmanuel Jacob, a non-party but the owner of plaintiff Pro Sapiens, because the circuit court had not obtained personal jurisdiction over Jacob *individually* before entering the judgment. In making this finding, we indicated that, had Indeck taken the appropriate steps to secure jurisdiction, it would have been free to seek sanctions. We remanded the matter for further proceedings.

¶ 3 Unsurprisingly, Indeck did exactly that on remand. Indeck served Jacob with a subpoena, on the record and in open court, and filed a motion to re-impose sanctions. The court then imposed the same sanctions as before. Jacob appeals, but we find no error and affirm.

¶ 4 BACKGROUND

¶ 5 As we noted in *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶ 6, this case has an enormous and convoluted record. We laid out the facts and procedural background with as much brevity as possible then and attempt the same here.

¶ 6 Briefly: Indeck sells and rents industrial boilers to various companies, including oil refineries. Jacob, through Pro Sapiens (a company he owned with his wife), claimed he brokered two boiler sales between Indeck and Venezuela's state-owned oil and natural gas company, Petroleos de Venezuela, S.A. (PDVSA). Pro Sapiens, not Jacob—an important distinction—filed several lawsuits against Indeck, claiming the company failed to pay a 10% commission on those two sales.

¶ 7 During the litigation, Indeck sought to discover any communications that Jacob had with PDVSA and its employees. Long story short, Indeck concluded that Jacob had committed egregious discovery violations—most notably deleting e-mails before a court-ordered forensic review and then lying about their (non)existence. Indeck then sought discovery sanctions against not only plaintiff Pro Sapiens, but Jacob *individually*. Specifically, Indeck asked the court to dismiss Pro Sapiens's lawsuit and also enter significant monetary sanctions against both Pro Sapiens and Jacob.

¶ 8 The circuit court, recognizing the serious allegations against Jacob, told Pro Sapiens's counsel that the motion raised issues that needed a response. But counsel neither filed a response nor even appeared for the hearing on the motion. Without any response whatsoever, the court

was “left with [] a series of un rebutted contentions about the destruction of documents, about the destruction of e-mails, about the failure to produce information that is highly relevant to the case, a series of allegations, all supported by affidavit and other forensic information.” The court granted the sanctions motion, dismissing Pro Sapiens’s complaint and entering monetary sanctions against Pro Sapiens *and* Jacob individually. The court ordered Indeck to file a petition to finalize the amount of sanctions. Indeck’s petition requested \$332,338.92 in attorney fees, expert fees, and costs.

¶ 9 Shortly after Indeck’s petition was filed, Pro Sapiens (*not* Jacob) filed a motion to vacate the sanctions order. The motion argued that any delay in responding to the motion or attending the hearing was solely attributable to counsel—who claimed that he had been overwhelmed by several things, both personal and professional. But the court was not persuaded after it had already granted an extension to respond to the motion. The court found “no basis to vacate my prior ruling. I’m not going to vacate my prior ruling, and I’m not going to reconsider the order.”

¶ 10 Two years after the court entered the sanctions order, it held the hearing “to determine what costs and fees, if any, will be awarded to Indeck, and the reasonableness of those fees.” During the hearing, Pro Sapiens’s counsel tried to revisit the court’s order granting sanctions. For example, when Jacob was testifying, counsel tried to question him about whether he destroyed e-mails—again the basis for sanctions. Throughout the hearing, the court repeatedly refused to revisit the issue and emphasized that the only purpose of the hearing was to determine the amount of the sanctions. Two weeks after the hearing, the court granted Indeck’s petition and levied \$205,489.00 in attorney fees and \$39,544.76 in expert costs against Indeck and Jacob.

¶ 11 Jacob, *pro se*, appealed the sanctions award on behalf of himself and Pro Sapiens—*Pro Sapiens I*. We found that we lacked jurisdiction to consider Jacob’s *pro se* arguments on behalf

of Pro Sapiens, a separate entity that did not appeal the court's judgment. *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶¶ 61, 63.

¶ 12 As to Jacob individually, we vacated the sanctions order on the narrow but important ground that Jacob was not a party to the case and had never been served with process. *Id.* ¶ 76. Nor did we find that Jacob had voluntarily submitted to the court, thus waiving an objection to personal jurisdiction. See *Id.* ¶¶ 91-94. And even if he had submitted to jurisdiction when he did appear before the court, that later appearance would not have validated the previously entered void order. *Id.* ¶ 96. We made it clear, however, that “[h]ad Jacob been served with a subpoena at any time before or in connection with the motion for Rule 219 sanctions, the trial court would have acquired personal jurisdiction over him.” *Id.* ¶ 76. In the end, the law required us to vacate the sanctions order against Jacob. *Id.* ¶ 100. We remanded the case for further proceedings. *Id.*

¶ 13 Which brings us to the start of this case: on remand, in accordance with our decision, Indeck served Jacob with a subpoena and copy of their motion for sanctions in open court on December 12, 2019. With Jacob now served, Indeck moved to re-enter sanctions against Jacob. (The record also shows that Indeck served Jacob with a summons in connection with the motion to re-impose sanctions.)

¶ 14 In response, Jacob filed a “motion to dismiss” for lack of jurisdiction. He primarily argued that the court lacked subject-matter jurisdiction over the motion for sanctions because the case was “final” when after the claims brought by Pro Sapiens, the only party-plaintiff, were dismissed. He claimed that Indeck could not “piggyback onto the prior litigation because the only litigation that this trial court had jurisdiction over, that of the parties consisting of Indeck and Pro Sapiens, has concluded.”

¶ 15 After briefing, the court denied Jacob's "motion to dismiss" and ordered briefing on Indeck's motion for sanctions. As he did with the initial motion for sanctions, Jacob did not initially file a separate response. Again noting the lack of response, the court granted the motion to reinstate sanctions on April 28, 2020. Within a week of that order, Jacob filed a motion for leave to file a response *instantly* and for the court to reconsider its order.

¶ 16 While those motions were pending, Jacob filed a premature notice of appeal challenging the court's imposition of sanctions. Recognizing this court's lack of jurisdiction, we granted Indeck's motion to stay proceedings until the motions to reconsider could be resolved. The circuit court ultimately denied both the motion to file a late response and the motion to reconsider. Pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. July 1, 2017), Jacob's premature notice of appeal then became ripe.

¶ 17 ANALYSIS

¶ 18 Before this court, Jacob—again *pro se*—challenges the court's reimplementation of sanctions for several reasons. But before we get to his arguments, we must address which arguments are properly before us and which are not.

¶ 19 I

¶ 20 We will start with the easiest question to resolve. In this appeal, among other things, Jacob challenges the dismissal of Pro Sapiens's complaint; orders of July 25, 2018 and August 16, 2018; and evidentiary rulings by the court in the July 2018 hearing. We agree with Indeck that these orders are not properly before us.

¶ 21 Those rulings impacted Pro Sapiens, the corporate entity and party-plaintiff, not Jacob personally. Jacob lacks the ability to represent the corporate entity as a non-attorney, *pro se* litigant, as we previously ruled in *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶¶ 38-45. See

Downtown Disposal Services, Inc. v. City of Chicago, 2012 IL 112040, ¶ 17, 20 (corporations must be represented by counsel in legal proceedings). We thus dismissed the portion of the previous appeal as to any claims belonging to Pro Sapiens that Jacob attempted to raise on its behalf. *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶¶ 63, 100. The result of our dismissal was that those orders remained final judgments, “as if no appeal had been taken.” Ill. S. Ct R. 369(b) (eff. July 1, 1982). We made it clear there that the only issue properly before us was the order of sanctions directed at Jacob individually. See *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶ 65 (“this issue, and only this issue, is properly before us.”). So we will not review those orders in this appeal, either.

¶ 22 That leaves the arguments that comprise Jacob’s substantive challenge to the April 28 sanctions order. They fall into two categories. First, Jacob filed a “motion to dismiss” Indeck’s motion for re-entry of sanctions, raising three arguments. Those arguments are properly before us. Jacob’s notice of appeal identifies the order denying the “motion to dismiss” as an order he is challenging—the March 11, 2020 order. Indeck does not argue otherwise.

¶ 23 The other category of substantive arguments raised on appeal were raised below for the first time in Jacob’s motion for reconsideration. Recall that Jacob did not file a timely response to the motion for sanctions and then, after the April 28, 2020 sanctions order, he filed a motion to file a late response and a motion for reconsideration—both of which were denied nearly a year later on March 19, 2021.

¶ 24 Indeck suggests that we lack jurisdiction to consider those legal arguments, because “Jacob has not appealed any order entered after April 28, 2020, including any order entered in connection with his motion for reconsideration or his motion for leave to file a response.” But our jurisdiction is proper. Under the procedural posture here, Jacob was not required to explicitly

identify the March 19, 2021 order denying reconsideration in his notice of appeal; his appeal of that order was implied by rule.

¶ 25 When a party like Jacob files a premature notice of appeal—after a final judgment but before the postjudgment motion to reconsider has been adjudicated—the notice of appeal becomes effective when the court disposes of the postjudgment motion to reconsider. Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017). And if, as here, the “postjudgment motion is denied, an appeal from the judgment is *deemed to include* an appeal from the denial of the postjudgment motion.” (Emphasis added.) *Id.*; see also Ill. S. Ct. R. 303, Committee Comments (rev. Mar. 16, 2008) (“Note that under subparagraph (a)(2), there is no need to file a second notice of appeal where the postjudgment order simply denies the appellant’s postjudgment motion.”).

¶ 26 But there is another reason we will not consider the substantive arguments raised by Jacob in his motion to reconsider—they are forfeited. As noted, besides the jurisdictional attacks he raised in his “motion to dismiss,” Jacob did not file any timely response to the motion for sanctions, missing the deadline set by the court’s briefing schedule. His motion to reconsider raised issues that he surely could have raised in a timely response; he is not permitted to hold them back and spring them on the court post-judgment. See *Tafoya-Cruz v. Temperance Beer Co., LLC*, 2020 IL App (1st) 190606, ¶ 87 (“[I]t is well-settled that one may not raise a legal theory for the first time in a motion to reconsider.”) (quoting *Holzer v. Motorola Lighting, Inc.*, 295 Ill. App. 3d 963, 978 (1998)). That is why our supreme court has emphasized that “[a]rguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal.” *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 36.

¶ 27 So the only issues properly before us are the arguments raised by Jacob in the pleading he styled a “motion to dismiss” the motion for re-entry of sanctions. There are three, all of a

jurisdictional variety: (1) the court lacked jurisdiction to hear the motion for sanctions, as there was no longer a case pending; (2) the court could not retroactively validate the prior sanctions order; and (3) Jacob was a non-party not subject to sanctions.

¶ 28

II

¶ 29 First, Jacob claims that the court did not have the authority to re-impose sanctions on remand. His logic is that Pro Sapiens was the only party to the case; its claims had been dismissed; so there was no case in which the circuit court could adjudicate the sanctions motion.

¶ 30 That argument is based on a fundamental misunderstanding of the effect of our prior judgment. We did not determine that sanctions against Jacob were inappropriate for any reason other than a personal jurisdictional defect. There was no decision on the merits of the sanctions order. We only found that “because Jacob, a non-party to this case, was never officially served with process via a subpoena, the trial court never acquired personal jurisdiction over him. We have no choice but to vacate that portion of the court’s sanction order as void for lack of jurisdiction.” *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶ 87.

¶ 31 We did not outright vacate or reverse the judgment; we vacated it and remanded the matter to the circuit court “for any further proceedings.” See *id.* ¶ 100. That was our mandate to the trial court. And our mandate defined the trial court’s jurisdiction, if you will—its authority to act. *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28 (the “ ‘mandate vests a trial court with jurisdiction only to take action that complies with the reviewing court’s mandate.’ ”).

¶ 32 As Indeck notes, we gave the circuit court no specific instructions, which meant the circuit court was called upon to “ ‘examine the opinion and determine what further proceedings would be consistent with the opinion.’ ” *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28 (quoting *People ex rel. Bernardi v. City of Highland Park*, 225 Ill. App. 3d 477, 482 (1992)).

Here, with the remainder of the case completed, a remand could *only* mean relitigating the motion for sanctions after acquiring personal jurisdiction over Jacob. See Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994) (court may enter any order it deems just, including remand to circuit court).

¶ 33 So any notion that the trial court lacked jurisdiction—authority to act—on the motion for re-entry of sanctions is meritless.

¶ 34

II

¶ 35 Nor do we agree with Jacob that the court's re-entry of sanctions offended the rule against retroactive jurisdiction. See *Mitchell*, 2014 IL 116311, ¶ 43. That rule merely provides that "[a] party who submits to the court's jurisdiction does so only prospectively and the appearance does not retroactively *validate orders entered prior to that date*." *Id.* (emphasis added.) (internal quotation marks omitted.)

¶ 36 It is undisputed that Indeck served Jacob with a subpoena (as well as a summons, out of an abundance of caution) before presenting the motion for re-entry of sanctions. These were precisely the "'authority-asserting measure[s]" the Supreme Court has identified as necessary to secure personal jurisdiction over a non-party. *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶ 75 (quoting *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999)).

¶ 37 So the court acquired personal jurisdiction over Jacob, who was given full and fair notice and an opportunity to litigate the motion for re-entry of sanctions, *before* issuing the sanctions order. The rule against retroactive jurisdiction was not disturbed.

¶ 38

III

¶ 39 Finally, we can quickly resolve Jacob's last preserved challenge: that he, as a non-party, could not be sanctioned. Of course he could be. Illinois Supreme Court Rule 219(c) (eff. July 1, 2002) specifically allows sanctions against "a party, or any person at the instance of or in

No. 1-20-0779

collusion with a party.” See also *Dolan v. O’Callaghan*, 2012 IL App (1st) 111505, ¶ 44 (directly refuting argument that sanctions are limited to parties).

¶ 40 It should come as no surprise that Jacob easily falls within the category of sanctionable non-parties. As we acknowledged, he was the driving force behind Pro Sapiens and was obviously aware of the litigation. *Pro Sapiens I*, 2019 IL App (1st) 182019, ¶¶ 77-78. He is the individual who personally swore that Pro Sapiens’s discovery responses were complete. See Ill. S. Ct. R. 214(c) (eff. July 1, 2018) (affidavit of complete production); Ill. S. Ct. R. 216(c) (eff. July 1, 2014) (“sworn statement” for requests to admit). And he personally committed these egregious discovery violations.

¶ 41 As we reject the only arguments Jacob properly preserved for review, we find no error in the trial court’s re-entry of sanctions.

¶ 42 CONCLUSION

¶ 43 The judgment of the circuit court is affirmed.

¶ 44 Affirmed.

APPENDIX 3
Supreme Court of Illinois
Denied PAL



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

September 27, 2023

In re: Pro Sapiens, LLC, v. Indeck Power Equipment Company,
respondent (Emmanuel Jacob, petitioner). Leave to appeal,
Appellate Court, First District.
129675

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 11/01/2023.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

APPENDIX 4
Supreme Court of Illinois
Denied Petition for
Rehearing
December 7, 2023



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

December 07, 2023

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Emmanuel Jacob
4647 W. Moon Blossum Lane
Phoenix, AZ 85083

In re: Indeck Power Equipment Company v. Jacob
129675

Today the following order was entered in the captioned case:

Motion by Petitioner, *pro se*, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Denied.

Order entered by the Court.

This Court's mandate shall issue forthwith to the Appellate Court, First District.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Appellate Court, First District
Steven Joseph Roeder