No. 24-5522 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI

EIGHTH CIRCUIT OF APPEALS

ST. LOUIS MISSOURI

Billie R. James, Petitioner

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Phone: 901-440-7771

Southland Casino, Respondent

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QUESTION PRESENTED

The Age Discrimination in Employment Act of 1967 (ADEA) was signed into law by President Lyndon B. Johnson. The ADEA prevents age discrimination and provides equal employment opportunity under the conditions that were not explicitly covered in Title VII of the Civil Rights Act of 1964.

Proving age discrimination can be challenging but is possible through direct evidence. Southland destroyed essential information in this case and failed to present non-discriminatory reasons for its actions, and further failed to allow Plaintiff a reasonable opportunity for rebuttal.

Discrimination cases generally turn on circumstantial evidence. **Gavalik v. Continental Can Co.** 812 F.2d 834, 852 (3d.Cir. 1987), **cert. denied, 484 U.S. 979 (1987).** A presumption of discrimination arises when a prima facie case is established. **McDonnell-Douglas Corp. v. Green,** 411 U.S. 792 (1973), **Texas Dept. of Community Affairs v. Burdine,** 450 U.S. 248 (1981). Initially, it is the burden of the Plaintiff to establish that there is some substance to her allegation of discrimination. **McDonnell Douglas Corp; Furnco Construction Co. v. Waters,** 438 U.S. 567 (1978).

The question presented is:

Did the District Court's and the Court of Appeals' failure to address James' allegations (i.e. forgeries and fabricated documents, denial of motions, failure to submit requested copies, failure to submit video evidence, etc.), allow Southland to escape from proving a non-discriminatory reason for its actions and be granted summary judgment; thus, denying James a fair trial and reasonable opportunity for rebuttal?

PARTIES TO THE PETITION:

The parties are petitioner Billie Rose James and respondent Southland Casino. In the District Court, Ms. James is pursuing claims under Title VII of the Civil Rights Act of 1967 and the ADEA, which are at issue in this Court.

LIST OF PROCEEDINGS BELOW

James v. Southland Casino, United States District Court, Eastern District of Arkansas, Delta Division, Case No. 2:22-CV-00173-JM, Date of Opinion & Order: Filed November 7, 2023

James v. Southland Casino, U. S. Court of Appeals for the 8th Circuit, Case No. 23-3587, Date of Opinion & Order: Filed May 17, 2024

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IV. PETITION FOR WRIT OF CERTIORARI

Petitioner Billie Rose James respectfully petitions for a writ of certiorari to review judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is available at 8th Cir. R. 47B. The opinion of the United States District Court of the Eastern District of Missouri is available at Document 69 (E. D. Ark. 2023).

JURISDICTION

The Eighth Circuit Court of Appeals entered judgment on May 17, 2024, granting ninety (90) days to file petition for writ of certiorari. This Court has jurisdiction under 28 U.S.C. 1254(1)

RELEVANT STATUTORY PROVISIONS

Age Discrimination in Employment Act, Section 623 makes it unlawful to take an adverse employment action against persons over the age of 40, including discriminating against the employee with respect to his or her compensation, terms, conditions, or privileges of employment because of the employee's age. **(29 U.S.C. 623)**

Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2, provides:

(a) Employer practices

It shall be an unlawful employment practice for an employer – To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin(.)

(1) The Age Discrimination in Employment Act of 1967 (ADEA) was signed into law by President Lyndon B. Johnson. The ADEA prevents age discrimination and provides equal employment opportunity under the conditions that were not explicitly covered in Title VII of the Civil Rights Act of 1964.

INTRODUCTION

The Age Discrimination in Employment Act of 1967 (ADEA) was signed into law by President Lyndon B. Johnson. The ADEA prevents age discrimination and provides equal employment opportunity under the conditions that were not explicitly covered in Title VII of the Civil Rights Act of 1964.

Petitioner Billie R. James maintains that respondent/Defendant Southland Casino terminated her employment based on a false allegation of theft after she filed a harassment complaint against her supervisor. This adverse action was a pre-text meant to disguise Age Discrimination and Retaliation.

The Eighth Circuit Court granted summary judgment to the Defendant and denied Petitioner James without providing any non-discriminatory reasons for its action; thus, leaving Petitioner James with no opportunity for rebuttal.

The Court should do now what the lower courts failed to do in this process: Commit further review of the Entry of Judgment, investigate the forged and fabricated documents as they are presented, and compel the Defendant to submit original documents and video tape evidence. In doing so, the Court should review and reverse the Eighth Circuit 's decision and hold that once it has been established that the Defendant has discriminated against the Petitioner James because of a protected characteristic (Age), the analysis is complete.

STATEMENT OF THE CASE

Petitioner Billie R. James brought an employment discrimination claim under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 623(a)(1); alleging she suffered workplace discrimination because of her age and was fired in retaliation for formally filing a complaint about the hostile work environment. (Doc. 2 at 3). Both parties moved for summary judgment (Doc. 33; 36, 39) which was GRANTED to the Defendant by the trial court.

However, the evidence, viewed in the required light most favorable to James as the nonmoving party, raises a genuine issue of material fact as to whether age was a substantial factor in Southland's decision to terminate. James was unfairly discriminated against as she was objectively much higher qualified than any other employee in her area and was clearly much higher qualified than other employees outside of her protected class. The Defendant destroyed essential information in this case sufficiently specific to allow James a reasonable opportunity for rebuttal.

MOTIONS

MOTION FOR ENTRY OF JUDGMENT

James filed an Entry for Judgment on February 22, 2023, after Southland submitted forged and fabricated documents during Discovery. Supreme Court Rule 21 – Consequences of Refusal to Comply Rules or Order Relating to Discovery or Pretrial Conferences, Failure to Comply with Order or Rules. James requested an Entry for Judgment against Southland who submitted and used forged and fabricated evidence.

Per Order of the Honorable James M. Moody, responding to Plaintiff's Motion for Entry of Judgment, Docket 19, was DENIED. Judge Moody stated, "In it, she asks the Court to weight the authenticity of Defendant's evidence and to strike large portions of it as forged, (Id.). This motion is premature. The authenticity of documents can be challenged either in summary judgment or at trial." IT IS SO ORDERED this 24th day of February 2023."

Plaintiff was notified, by mail, that her Motion for Summary Judgment was DENIED, and an ORDER cancelling the jury trial scheduled to begin November 6, 2023, and signed by the Honorable Judge James M. Moody on October 23, 2023. **NOTE:** James was scheduled to present a trial brief before Judge Moody presented an Order of Dismissal. His sudden and abrupt actions prevented James from arguing her case – the Judge simply cancelled everything. Thus, the Judge ***erred*** when he failed to allow James to present her case after stating that her motions were premature and further stating those matters would be addressed in summary judgment or trial.

In Plaintiff's Response to Defendant's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment, Plaintiff provided a detailed listing of Other Documents Attached (Forgeries). Plaintiff submitted this information for the Court to address as promised in its Order, dated February 24, 2023.

MOTION TO COMPEL DISCOVERY Per Order of the Honorable Judge James M. Moody filed November 7, 2023, he replied to Plaintiff's Motion, stating: "Ms. James' motion to compel (Doc. 28) is DENIED. Ms. James requested a number of surveillance videos created between January and March 2022. (Id.). Southland explains that its in-house surveillance video footage is overwritten every ten days. (Doc. 29, Doc. 45-2)." The Court stated it "accepts Southland's explanation that it cannot comply with Ms. James' May 6, 2023, discovery requests for footage from the spring of 2022, as that footage no longer exists."

On March 7, 2022, Ms. James submitted a harassment complaint listing February 25, 2022, and March 5, 2022, as two (2) days – out of many -- that Supervisor Angela Smothers harassed, humiliated, and used age-based name-calling in front of guests and co-workers. The harassment

complaint was submitted on March 7, 2022. Southland had time to pull these videos for review. James was discriminated against because of age when Southland cut her hours, suspended her without pay, and terminated her within a three (3) week period – all because she filed a harassment complaint, and not because of theft. That video would have shown the discrimination in action and proved that the Plaintiff was not "slow", but Southland chose to destroy the video tape evidence. It stands to reason that any action that claimed discrimination would have required Southland to pull video tape evidence. Spoliation of evidence is a legal term that refers to the intentional or negligent destruction, alteration, hiding or withholding of evidence that is relevant to a trial. It can happen before or after filing notices, or at any other time. Anyone involved in the case, such as attorneys, analysts, custodians, targets, or investigators can be responsible for spoliation. Spoliation of evidence occurs when someone with an obligation to preserve evidence with regard to a legal claim neglect to do so, or intentionally fails to do so. Such a failure to preserve evidence can take place by destruction of evidence, damage to the evidence, or losing the evidence. The video would have shown the Plaintiff working alone with a much younger employee -in-training. It also would have shown James multi-tasking: cashiering, bartending, and cleaning the bar, keeping it in order, while other employees and guests were standing around looking in awe at Ms. Smothers because of her abusive, discriminatory, and hostile behavior. At the least, this video tape evidence could have prevented the Defendant from convincing the judge to dismiss the case without a trial. **See Meade v. Turman; Scott, supra.; Swigart, supra.** Marvin Meade was employed with Turman as a loader operator. Meade and his supervisor Brandon Graves got into a physical altercation. Meade claimed that Graves charged at him, and he was only defending himself. Graves, of course, said Meade instigated it. The manager ended up firing only Meade. Meade claimed that he was fired because of his race and his age.

Meade filed a lawsuit and in support of its motion for summary judgment, Turman presented an affidavit from the manager. The manager said that he terminated Meade because of his role in the altercation after witnessing the fight and reviewing the video footage. However, because Turman had not put a litigation hold on the video footage, the video had been destroyed. In light of this, the court found that the manager's affidavit as to the legitimate nondiscriminatory reason for the termination was not enough to award summary judgment – after all, a jury might believe Meade's version of events and find that the manager either wasn't correct in what he recalled or was lying about what he saw. This is a dispute of fact that is "further exacerbated from the destruction of the video footage featuring the altercation." Meade, p.6. Additionally, the court noted that if it turned out that the destruction of the video was willful, this could result in an adverse inference against

Turman at trial. Because there was no video tape to view, there was the potential that a jury could believe Meade and not Turman. Based on this, the court denied summary judgment to Turman.

In *Shimanovsky v. General Motors Corp., 181* III. 2d 112, the court held that a potential litigant owes a duty to take reasonable measures to preserve the integrity of relevant and material evidence.

Without such a duty, the court reasoned, a potential litigant could circumvent discovery rules or escape liability simply by destroying the proof before filing the complaint. The court concluded that the plaintiff's destructive testing interfered with the defendant's discovery rights. Thus, under the specific circumstances of this case, the court affirmed the trial court's finding that the plaintiff's actions constituted unreasonable noncompliance with discovery rules.

James requested the Security video tape recorded in the Southland Casino Security Room at approximately 3:55am on March 20, 2022. James was instructed by Shuntale Walker to enter the security room to make a recording of disciplinary action (suspension) that would be **"used as evidence"** that she suspended James and would be kept on file. (See Shimanovsky v. General Motors Corp. Pg. 7) Where is that video tape evidence now? To date, Southland Casino has not produced this video tape. This tape is guaranteed to show what transpired in the security room on that date – that James was questioned about two male guests (not a man and a woman.) This was the suspension James signed off on. The documents Southland submitted in Discovery were fabricated and forged. As for the video tape, it serves as a vital piece of evidence. Southland responded by saying, "All available videos have been produced." (Supreme Court Rule 219; Scott, supra; Swigart, supra.) (See Meade v. Turman. If there is any indication that the destruction of the video was willful, that could mean that there will be an adverse inference against the company at trial (meaning that the jury can infer that the evidence would have been damaging to you).

Because there was no video tape to view, there was the potential that a jury could believe James not Southland. Based on this, the court denied summary judgment. James maintains that this video was made for evidence (per Ms. Walker) and should have been preserved and made available. Had this tape been made available, the Courts would have known Southland submitted forged and fabricated documents. The tape would have shown James' suspension involved two \(2) guests Donnel & Lambert; not a man and a woman, Roger & Carter. James maintains that Southland's actions constituted unreasonable noncompliance with discovery rules. (Shimanvosky v. General Motors Corp. Pg. 9)

MOTION FOR COPIES

> Per Order of the Honorable James M. Moody filed November 7, 2023, it states, "Ms. James' motion for copies (Doc. 50) is DENIED as MOOT. In that motion, Ms. James asked the Court to provide her a copy of Southland's response to summary judgment. Southland's response was filed on September 14, 2023 (Doc. 45) and contained a certificate of service that the document had been mailed via first-class mail to Ms. James. (ID. At 19)"

James requested a copy of Defendant's Response to Plaintiff's Summary Judgment. Defendant filed this document with the Court on September 14, 2023, but did not provide James a copy. In the Court Order, the Judge further states Defendant filed the document, which contained a certificate of service that the document had been mailed via first-class

mail to James – NOT TRUE. James never received this piece of first-class mail and did not sign for it. Southland has misled the Court to cover the fact that the document was never mailed. After James made her motion for copies, Defendant's Attorney Ebelhar called James on September 22, 2023, to state he sent her an email copy and asked if she had received the email. James told Mr. Ebelhar that she had not received the email. Mr. Ebelhar then sent a copy of the email on September 22, 2023, but James was unable to retrieve (download) it from her phone. Defendant's actions were misleading and made James appear to be lying about the situation. Subsequently, on September 23, 2023, she searched for it on pacer.gov, then went to FedEx to request assistance in printing/copying this 60-page document at a cost of 20 cents per copy. See U.S. v. Kross

MOTION FOR ORDER

Per order of the Honorable James M. Moody filed November 7, 2023, it states, "Ms. James' motion for order (Doc. 64) is DENIED as MOOT. Ms. James challenges the admissibility of Southland's 'video tape evidence.' It is evident from the record that Southland provided camera footage to Ms. James during discovery; however, Southland has not attached this evidence to any of its pleadings."

Defendant did not attach any video evidence to its pleadings; yet they fired James on the basis of what they perceived the video to reveal. That video evidence is pertinent to this case; yet Defendant only discusses a video that has not been shared with the Court. Without the video evidence, the Court has opted to just take Ms. Young's word, and that is not enough to award the motion for summary judgment to Southland. Ms. Young failed to give a non-discriminatory reason for termination. **This is a Pretext (theft). But, for cause, age discrimination is the deciding factor in the employment decision.** See Meade v. Turman; Scott, supra; Swigart, supra.

In the Court of Appeals Opinion, it concludes "that the district court did not err in denying James' motion to exclude video evidence,"

In James Motion to Object to Video Tape Evidence Admission, she questioned why Defendant's 8:19am video evidence was presented cut and paste, out of chronological order, and placed in a different file. The time stamp was wrong, and the video was obviously tampered with. Plaintiff requested that this video tape stamped 8:19am be ruled

inadmissible. Out of twelve (12) frames submitted by Defendant, James only requested that the tampered frame stamped 8:19am be ruled inadmissible. The 7:32am frame proves Ms. James' case, that she served two (2) drinks and rung up two (2) drinks; collected $20 from the guest and placed it in the register.

Judge James Moody in his Order filed November 7, 2023, stated, "Ms. James' assertions that the theft did not happen; however, are not persuasive in light of Ms. Young's sworn statement that she verified the theft on video and provided the ticket stub from the time of the sale reflecting that only one drink was reported sold." Ms. Young presented a fabricated receipt that reflected James' name misspelled. For the record, James' name has never appeared on any ticket receipt.

Judge James Moody further stated in his order that, "...Southland has not attached this evidence to its pleadings." Yet, James attached the video for the Court's review.

In **Meade vs. Turman, Pg. 6**, it states, "...the court found that the manager's affidavit as to the legitimate nondiscriminatory reason for the termination was not enough to award summary judgment – after all, a jury might believe Meade's version of events and find that the manager either wasn't correct in what he recalled or was lying about what he saw. "

The Defendant's attorney, William Davis, also questioned Ms. Young's sworn testimony, saying, "But the video shows you giving two drinks, but you can't see from the video how many drinks were rung up, right?" See Deposition, pg. 78, Lines 6-8.

DOCUMENTS REQUESTED

James requested several documents that are vital to her case, including the original suspension she was issued, the original write-up, the original harassment complaint, time sheets, tip reports, and other documents Southland failed to provide because of fabrication and forgery. See (Rule 219/Fraud & Forgeries).

Forged evidence and documents have become more prevalent as parties can use programs such as Adobe Acrobat to alter key documents. Judge Shadur, a well-respected judge in Chicago's federal court stated that "a bona fide signature...that has indisputably been transposed onto a totally bogus document...is the most egregious fraud on the court that this Court has encountered in its nearly 33 years on the bench." Flava Works, Inc. v. Momient, 11 C 6306, 2013 w: 1629428 at *2 (N.D. III. Apr. 16, 2013). Judge Shadur went on to suggest that plaintiff's (the offending party's) complaint would ultimately be dismissed with prejudice as a sanction for this fraud on the court. Id. At *3(citing Pope v. Fed. Express Corp., 974 F.2d 982 (8th Cir. 1992) and Chambers v. NASCO, 501 U.S. 32 (1991).

Illinois Circuit courts have authority to enter judgment against a party who attempts to use forged evidence on two independent bases: (I) Illinois Supreme Court Rule 219 and (II) the inherent authority of the Court to issue sanctions. Dismissal or entry of judgment under the court's inherent powers is frequently invoked when parties rely on or create forged documents. See Brady v. United States, 877 F. Supp 444 (C.D. III (1994) (dismissal where

plaintiff fabricated and destroyed evidence); Aoude v. Mobil Oil Corp., 892 F. 2d 1115, 1117 (1st Cir. 1989) (dismissal affirmed where plaintiff attached forged document to his complaint and relied upon the document as the centerpiece of the litigation); Pope v. Fed. Express Corp., 974 F. 2d 982, 986 (dismissal affirmed where forged document was attached to complaint and was the "linchpin of plaintiff's case").

The Scott Court turned this standard on its head in the context of video evidence by opining that facts should be viewed "in the light depicted by the videotape." (Scott supra, 550 U.S. at 381.) Through this analysis, Supreme Court held that summary judgment was appropriate where videotape evidence obviously contracted the non-moving party's version of events -- James serving two drinks, collecting the $20 for the drinks (at $10 each), and ringing up two drinks. The video does not show James taking the money out of the register shortly after. Mr. Davis, the attorney for Southland, questioned Southland's claim of theft. Southland did not attach the video to its pleadings because it knew that the video did not depict theft. Southland wants the Court to rely on Arainna Young's declaration for the truth. A manager's affidavit should not be enough to award summary judgment. **See Meade v. Turman.**

Expanding on principles set forth in Scott, the Swigart Court reasoned that to extent witness testimony was inconsistent with video footage, it could properly decline to consider the inconsistency as a disputed fact. Instead, the Court "relied on the evidence in the video" as dispositive. (Swigart supra, 13 Cal. App. 5th at 534, In4.) Like in Scott, the Swigart decision gives California defendants the power to overcome self-serving witness and expert declarations in the face of video evidence to the contrary.

James reported to work at 11:55pm on March 11, 2022, and signed the Daily Banks Issue/Return Log at 11:55pm. She was trained by the Cage (Money Room) to sign in on the date she was scheduled for work which was March 11, 2022. James was the only employee assigned to work the graveyard shift. She dated her cash slip 3/11/22, which reflected her scheduled work date. The Daily Banks Issue/Return Log and Cash Slip provided in Discovery by Defendant was a fabrication and a forgery, reflecting a sign-in date of 3/12/22 instead of 3/11/22. **See Supreme Court Rule 219.**

Many instances of improper motives have been cited in Plaintiff's Motion for Summary Judgment – hiring improprieties; forged and falsified documents – false writeups with a

forged signature; suspension, a fabricated document, with a forged signature; changing the reason for termination three (3) times; re-creating text of harassment complaint an applying a forged signature; and untrue charges of theft.

Supervisor Angela Smothers created the hostile environment that led to James filing a harassment complaint on March 7, 2022. Her continued age-based name-calling,

humiliation and harassment attacks on James' character, and workplace harassment were evidence of the age discrimination and the retaliation.

PRIMA FACIE CASE FACTS

In Judge James M. Moody's Final Order Pg. 6, the Judge states, "Because Ms. James offered no direct evidence of age discrimination, her claims will be considered under the burden-shifting framework set forth in **McDonnel Douglas Corp. v. Green, 411 U.S. 792 (1973).** The reasoning behind *McDonnell Douglas* burden-shifting approach is to allow a victim of discrimination to establish a case through inferential and circumstantial proof. As Justice O'Connor has noted, "the entire purpose of the McDonnell Douglas prima facie case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by." **Price Waterhouse v. Hopkins, 496, 490 U.S. 228, 271, 109 S.Ct. 1775, 1802 104 L.Ed.2d 268 (1989) (O'Connor, J. concurring);** ***see also Trans World Airlines, Inc. v. Thurston, 469 U. S. 111, 121, 105 S.Ct. 613, 622, 83 L.Ed.2d 523 (1985)*** ("The shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the plaintiff [has] his day in court despite the unavailability of direct evidence.") If a plaintiff attempts to prove its case using the McDonnell Douglas framework, then the plaintiff is not required to introduce direct evidence of discrimination. **Kline v. Tennessee Valley Auth., 128 F.3d 337, 349 (6th Cir. 1997).**

Under the *McDonnell Douglas* framework a plaintiff can establish a prima facie case of age discrimination by proving that he or she: (1) was a member of a protected class, (2) was discharged, (3) was qualified fpr the position from which she was discharged, (4) was replaced by a person outside the protected class. **Kline, 128 F.3d at 349.** In age discrimination cases the fourth element is modifiewd to require replacement not by a person outside the protected class but replacement by a significantly younger person. **O'Connor v. Consol. Coin Caterers Corp., 517 U. S. 308, 313, 116 S.Ct. 1307, 1310, 134 L.Ed. 2d 433 (1996).**

In establishing a prima facie case, Plaintiff has satisfied requirements for all four (4) elements:

1. Plaintiff was 69 years old when she was hired;

2. Plaintiff was qualified for the position for which she was hired/was meeting Southland's expectations;
3. But nevertheless, suffered adverse employment action – workhours cut, suspended without pay, subsequently terminated;
4. Similarly situated younger employees were treated more favorably/plaintiff was replaced by significantly younger employee.

St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993) held that once the plaintiff establishes a prima facie case, the defendant must then produce evidence that it took the action for a legitimate, non-discriminatory reason. If the defendant fails to meet its burden, judgment must be entered in favor of the plaintiff as a matter of law. If the defendant is able to meet its burden, the plaintiff may show that the defendant's proffered reasons are pretextual. Once the factfinder finds that the proffered reasons are pretext, it may find discrimination. **See Sheridan v. E. I. DuPont de Nemours and Co.,** 100 F.3d 1061 (3rd Cir. 1996) (en hanc), **cert. denied.** – U. S. --, 1128 L.Ed.2d 1031 (1997). The factfinder need find only that the discriminatory or retaliatory motive was a substantial motivating factor to find that the employer is liable.

To prevail, Complainant must show that the agency's reasons for its actions were a pretext to mask discrimination, either because the agency ***more likely*** had a discriminatory motive, or because the stated reasons ***lacked credibility.*** **Burdine** at 248.

The plaintiff retains the burden of persuasion. She now **must have the opportunity to demonstrate that the proffered reason was not the true reason** for the employment decision. This burden now merges with the ultimate burden of persuading the court that she has been the victim of intentional discrimination. She may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. See **McDonnell Douglas**, 411 U.S., at 804-805."

James has established a prima facie case of discrimination, which if left unrebutted, entitles her to prevail in this matter

An adverse inference should be drawn from the Southland Casino's failure to preserve evidence. Southland's complete failure to even offer an excuse as to this destruction of evidence is concerning at the least. **See Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure.**

The United States Supreme Court has sanctioned the use of the "adverse inference rule," namely that if the information had been provided, it would have been unfavorable to

Southland Casino and favorable to the opposing party. **See Insurance Corp. of Ireland v. Compayne Des Bauxites,** 456 .S. 694, 705 (1982), **Hammond Packing Co. v. Arkansas,** 212 U.S. 322, 350-1 (1909). As in the attached EEOC decision, these "records destroyed by Southland were highly relevant to the matters raised" in this complaint. Further Southland's failure to make any effort to reconstruct the record is evidence of bad faith. **Reginald t. Huey v. Department of Health and Human Services Equal Employment Opportunity Commission, EEOC** 01831403, 86 FEOR 3088 (February 28, 1986).

REASONS FOR GRANTING THE PETITION

Defendant submitted forged and fabricated documents during Discovery. James requested an Entry for Judgment against the Defendant who attempted to use forged and fabricated documents as evidence.

Per Order of the Honorable James M. Moody, responding to Plaintiff's Motion for Entry of Judgment, Docket 19, was DENIED. Judge Moody stated, "In it, she asks the Court to weight the authenticity of Defendant's evidence and to strike large portions of it as forged, (Id.). This motion is premature. The authenticity of documents can be challenged either in summary judgment or at trial. IT IS SO ORDERED this 24th day of February 2023.

Judge Moody erred when he prematurely DENIED Plaintiff's request as well as the right to challenge in summary judgment or at trial by prematurely granting Defendant summary judgment without ever addressing the matter of forged and fabricated documents.

The Illinois courts stated that moreover, all courts have the inherent authority to sanction a party who "has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. NASCO,* 501 U.S. 32, 33, 45-46 (1991). It is well recognized that any sanction short of dismissal with prejudice or entry of judgment against a party fails as sufficient punishment for reliance upon inauthentic, forged evidence." In *Quela v. Payco-Gen. Am. Creditas, Inc.,* finding "that default judgment is the only appropriate remedy under the inherent power of the court", Judge Castillo of the Northern District of Illinois stated: Given the extreme importance of accurate and truthful discovery, our court system must have zero tolerance for parties who seek to intentionally distort the discovery and trial process...The defendants' conduct shows such blatant contempt for this Court and a fundamental disregard for the judicial process that their behavior can only be adequately sanctioned with a default judgment. Entering a default judgment will send a strong message to other litigants, who scheme to abuse the discovery process and lie to the Court, that this behavior will not be tolerated and will be severely punished. 99 C 1904, 2000 WL 656681 (N.D. III. May 18, 2000).

In Judge Moody's Order, filed February 24, 2023, on pgs. 3 & 4, he displayed information from a forged and fabricated document (harassment complaint) to appear as if James wrote it. In the Motion for Entry of Judgment, James specifically addressed the altered information, making the court aware that Defendant had submitted a forged and fabricated complaint in place of the original. The Defendant had rewritten the complaint, changed the date of the complaint from March 7, 2022, to March 11, 2022; then, continued to use this information and deem it to be true. The Court never addressed the status of any forgery and fabrication exposed by James – from the harassment complaint, to the writeups, to the suspension, and to various employee reports as well. The Court of Appeals erred when they failed to even address Plaintiff's Motion for Entry of Judgment. The Court of Appeals stated, "...we conclude that the grant of summary judgment was

proper. See Said v. Mayo Clinic, 44 F.th 1142, 1147 (8th Cir. 2022) (a grant of summary judgment is reviewed de novo).

Reviewed "de novo" indicates a case is reviewed "anew", "from the beginning", or "afresh". When a court hears a case "de NoVo", it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case. The Court of Appeals erred when they concluded the lower court's actions were proper. "De novo" or not – neither court investigated Plaintiff's allegations of forgery and fabrications, only abruptly ended the case with no hearings or investigative phone calls. Defendants used the effectiveness of technology to rewrite and reconstruct documents to cover their forgeries and fabrications. Defendants produced a completely fictional history of forged and fabricated documents and submitted it as facts. Plaintiff was denied original copies, videos, and documents in discovery, and instead, was provided a host of forgeries and fabrications. The Court erred when it accepted the Defendants' course of events as real and true, and erred when they "seconded the motion" in concluding Defendants' actions were proper. The Court further erred when they did not address James's plea for investigation into Defendant's abusive actions.

Illinois courts routinely used evidentiary hearings to determine whether to impose sanctions for spoliation and other discovery violation issues. *Shimanovsky,* 181 III.2d at 123 (remanding to the trial court for an evidentiary hearing to determine the appropriate sanctions for plaintiff's spoliation of evidence); *Doe v. Lutz, 253 III.* App. 3d 59, 63 (1st Dist. 1993) (noting that the circuit court held an evidentiary hearing for, inter alia, a motion for sanctions under Rule 219); *In re Estate of Smith,* 201 III.App.3d Dist. 1990) (remanding to the circuit court for an evidentiary hearing regarding Rule 219 sanctions so that the circuit court could make "an informed and reasoned decision" on sanctions).

The Court of Appeals erred in their Opinion filed May 17, 2024 (Pg. 2), stating "we find no abuse of discretion in the district court's denial of James's motion to compel discovery. See Vallejo v. Amgen, Inc., 903 F.3d 733 742 (8th Cir. 2018) (standard of review).

On November 21, 2022, February 10, 2023, and June 5, 2023, James filed Motions for subpoenas to produce documents and things. Each time, the motions were denied, stating they were premature. Discovery was due to end July 31, 2023 – time was running out – James was forced to request a motion to compel. Yet, the Court of Appeals maintains there was "no abuse of discretion" on the district court's part. The Court of Appeals erred when it failed to recognize that the Defendant was not acting in "good faith" and further erred when it failed to find an abuse of discretion in the district court's denial of James' motion to compel discovery.

In *Shimanovsky v. General Motors Corp., 181* III. 2d 112, the court held that a potential litigant has a duty to take reasonable measures to preserve the integrity of relevant and material evidence. Without such a duty, the court reasoned, a potential litigant could circumvent discovery rules or

escape liability simply by destroying the proof before filing the complaint. The court concluded that the plaintiff's destructive testing interfered with the defendant's discovery rights. Thus, under the specific circumstances of this case, the court affirmed the trial court's finding that the plaintiff's actions constituted unreasonable noncompliance with discovery rules.

The Court of Appeals erred when they concluded that the district court did not err in denying James's motion to exclude video evidence. See Oglesby v. Lesan, 929 F.3d 526, 534 (8th Cir. 2019) (Standard of Review).

Judge James Moody further stated in his order that, "...Southland has not attached this evidence to its pleadings." Yet, James attached the video for the Court's review.

In **Meade vs. Turman, Pg. 6**, it states, "...the court found that the manager's affidavit as to the legitimate nondiscriminatory reason for the termination was not enough to award summary judgment – after all, a jury might believe Meade's version of events and find that the manager either wasn't correct in what he recalled or was lying about what he saw. "

The Defendant's attorney, William Davis, questioned Ms. Young's sworn testimony, saying, "But the video shows you giving two drinks, but you can't see from the video how many drinks were rung up, right?" See Deposition, pg. 78, Lines 6-8.

The district court erred when they stated James was requesting that the entire video tape be inadmissible. James did not refer to the entire video tape – just the 8:19am frame that was be cut and paste, and attached to a different file -- a tampered video out of sequence. The other frames, specifically the 7:32am frame, are proof that James did not commit theft.

Per Order of the Honorable James M. Moody filed November 7, 2023, it states, "Ms. James' motion for copies (Doc. 50) is DENIED as MOOT. In that motion, James asked the Court to provide her a copy of Southland's response to summary judgment. Southland's response was filed on September 14, 2023 (Doc. 45) and contained a certificate of service that the document had been mailed via first-class mail to Ms. James. (ID. At 19)"

Plaintiff requested a copy of Defendant's Response to Plaintiff's Summary Judgment. Defendant filed this document with the Court on September 14, 2023, but did not provide Plaintiff a copy. In the Court Order, the Judge further states Defendant filed the document, which contained a certificate of service that the document had been mailed via first-class mail to James – NOT TRUE. Plaintiff never received this piece of first-class mail and did not sign for it either. Southland has misled the Court to cover the fact that the document was never mailed. After James made her motion for copies, Defendant's Attorney Ebelhar called James on September 22, 2023, to state he sent her an email copy and asked if she had received the email. Ms. James told Mr. Ebelhar that she had not received the email. Mr. Ebelhar then sent a copy of the email on September 22, 2023, but Ms. James was unable to retrieve (download) it from her phone. Defendant's actions were

misleading and made Plaintiff appear to be lying about the situation. Subsequently, she searched for it on pacer.gov, then went to FedEx to request assistance in printing/copying this 60-page document at a cost of 20 cents per copy. See U.S. v. Kross

The district court and the Court of Appeals erred by accepting Southland's Attorney Ebelhar's statement as truth. James has evidence of receiving four (4) phone calls on September 22, 2023

Plaintiff requested a copy of Defendant's Response to Plaintiff's Summary Judgment. Defendant filed this document with the Court on September 14, 2023, but did not provide Plaintiff a copy. In the Court Order, the Judge further states Defendant filed the document, which contained a certificate of service that the document had been mailed via first-class mail to Plaintiff – NOT TRUE. Plaintiff never received this piece of first-class mail and did not sign for it either. Southland has misled the Court to cover the fact that the document was never mailed. After Plaintiff made her motion for copies, Defendant's Attorney Ebelhar called Plaintiff on September 22, 2023, to state he sent her an email copy and asked if she had received the email. Ms. James told Mr. Ebelhar that she had not received the email. Mr. Ebelhar then sent a copy of the email on September 22, 2023, but Ms. James was unable to retrieve (download) it from her phone. Defendant's actions were misleading and made Plaintiff appear to be lying about the situation. Subsequently, she searched for it on pacer.gov, then went to FedEx to request assistance in printing/copying this 60-page document at a cost of 20 cents per copy. See U.S. v. Kross.

The district court and the Court of Appeals erred when they agreed with Attorney Ebelhar's version of events.

Judge Shadur, a well-respected judge in Chicago's Federal Court stated that, 'a bona fide signature...that has indisputably been transposed onto a totally bogus document is the most egregious fraud on the court that this Court has encountered and its nearly 33 years on the bench." *Flava Works, Inc. v. Momient, 11 C 6306, 2013 WL 1629428 at 2 (N.D.lll. Apr. 16, 2013)*

In Quela v. Payco-Gen. Am. Creditas, Inc., finding "that default judgment is the only appropriate remedy under the inherent power of the court", Judge Castillo of the Northern District of Illinois

stated: "Given the extreme importance of accurate and truthful discovery, our court system must have zero tolerance for parties who seek to distort the discover and trial process."

CONCLUSION

The District Court and the Court of Appeals were in direct opposition to promoting a fair and truthful conclusion to this case. Neither Court expressed any desire to resolve the issues at hand. Instead, they failed to conduct thorough investigations, nor encourage any oral hearings prior to denying James any opportunity for rebuttal. Judge James M. Moody stated, "Ms. James' motion for entry of judgment was premature. The authenticity of documents can be challenged either in summary judgment or trial". Both the district court and the Court of Appeals erred when they failed to investigate. These Courts failed to address James claims in their quest to promote an unproven allegation of theft (pre-text) by the Defendant in an effort to mask their real intent to discriminate against James on the basis of age and retaliation. James thoroughly presented a prima facie case of discrimination which the Courts failed to address.

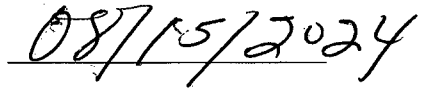
By the district court and the court of appeals failing to address James' Entry for Judgment and Motion to Compel, it led to Southland being able to escape responsibility and liability for their actions. Southland offered no non-discriminatory reason for their intentional age discrimination, harassment, inhumane treatment, and retaliation.

Plaintiff has been subjected to interrogatory demands and investigative depositions, and requests for discovery at every phase of this process; and has been denied cooperation and opportunity for rebuttal by the Court when all motions were denied based on the "word" of one manager's sworn testimony. Plaintiff's "word" is testimony as well as to the inhumane and unlawful treatment received from the Defendant which was against the protected rights she is assured of by law. Plaintiff is supported by a timeline of events supporting each claim. A thorough review will show evidence of unexpected shift changes, instructions directed only to Plaintiff vs. another set of instructions for the younger employees; ongoing humiliation and intimidation tactics; and other matters evident of Age-based discrimination. Attempts to cut workhours for Plaintiff, but not for others; unfounded accusations of theft; suspension and subsequent termination (after filing an internal harassment complaint) -- alludes to Age Discrimination and Retaliation, as well as the constant workplace harassment and hostile working environment.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Billie R. James, Plaintiff



Date