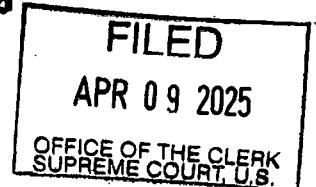


No. 24-7371

ORIGINAL

IN THE

Supreme Court of the United States



ABRAKA VANESSA OKPOSIO,

Petitioner

v.

BARRY UNIVERSITY, INC., et al

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

Is a District Court's Collateral Order denying a Motion for Default Final Judgment

Due to (Opposing Counsel's) Fraud Upon the Court, immediately appealable?

Parties to the Proceeding

Petitioner, Abraka Vanessa Okposio, was the appellant in the court of appeals.

Respondents were appellees in the court of appeals. They are: Barry University, Inc.; Maria L. Alvarez (neither served nor made an appearance); Roxanna P. Cruz; Leticia M. Diaz; Amy M. Lefkowitz; and Bethany Pierpont.

Related Cases

- *Okposio v. Barry University, Inc., et al.*, No. 24-13786, U. S. Court of Appeals for the Eleventh Circuit. Judgment entered Jan. 2, 2025 (Not published)
- *Okposio v. Barry University, Inc., et al.*, No. 1:20-cv-23814, U. S. District Court for the Southern District of Florida. Judgment entered Oct. 17, 2024 (Not published)
- *Okposio v. Barry University, Inc., et al.*, No. 22-13845, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Nov. 13, 2023 (Not published)
- *Okposio v. Barry University, Inc., et al.*, No. 1:20-cv-23814, U. S. District Court for the Southern District of Florida. Judgment entered Oct. 31, 2022 (Not published)

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28 U.S.C. §1291 1, 9, 10

Opinion Below

The opinions of the lower courts in this case and the other related case(s) have not been published.

Jurisdiction

The judgment of the court of appeals was entered on January 2, 2025. A petition for rehearing was denied on April 1, 2025 (App., *infra*, A and C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Statutory Provisions Involved

28 U.S.C. § 1291 provides in relevant part that “[t]he courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States...” 28 U.S.C. § 1291.

Statement of the Case

1. *Factual Background.*

On November 27, 2023, Ms. Okposio filed her Third Amended Complaint alleging, *inter alia*, fraudulent misrepresentation by Barry University and its employees, including Roxanna P. Cruz. On April 1, 2024, the U.S. Marshall executed service of the summons and Third Amended Complaint on Respondent-Cruz at Ms. Cruz’s place of business. Ms. Cruz’s response(s) were, therefore, due by April 22, 2024.

By May 1, 2024, neither Ms. Cruz nor Ms. Cruz's counsel had made an appearance in this action. Further, no response had been served on Ms. Okposio by Ms. Cruz. Accordingly, on Wednesday, May 1, 2024, at 9:09 AM, Ms. Okposio served on Opposing Counsel, via email, Ms. Okposio's Motion for Entry of Default by Clerk Against Defendant Roxanna P. Cruz., two business days before Ms. Okposio's courier package containing the motion would reach the District Court for filing by the Clerk. As a pro-se litigant, Ms. Okposio is required to conventionally file documents with the District Court.

On Friday, May 3, 2024, at 10:27 AM, Plaintiff's Motion for Entry of Default by Clerk Against Ms. Cruz was entered by the Court. At 10:35 AM, Ms. Okposio's motion was granted, and the Clerk's Entry of Default against Ms. Cruz was filed by the Court.

On Friday, May 3, 2024, at 2:55 PM and 2:57 PM, Opposing Counsel filed their respective Notices of Appearance for Ms. Cruz. At 4:15 PM, Respondents' Counsel, Mr. Todd Dobry, sent Ms. Okposio an email notifying Ms. Okposio of their intent to file a motion to set aside the Clerk's entry of default against Ms. Cruz. Mr. Dobry, expressing his intent to have the default entry set aside "expeditiously", requested for Ms. Okposio to notify him "as soon as possible" regarding whether Ms. Okposio opposed the motion.

At 8:51 PM, Mr. Dobry filed the Motion to Set Aside the Default, notably indicating in the Certificate of Conferral that they would "continue [their] efforts to

confer with Plaintiff in good faith and will submit a supplemental certificate as appropriate...”.

On Monday, May 6, 2024, at 6:18 AM, Ms. Okposio notified Mr. Dobry, via email, that Ms. Okposio “will be opposing [Defendant’s] Motion to Set Aside and/or Vacate the Clerk’s Default”. However, throughout that day, Mr. Dobry never notified the Court that Ms. Okposio had indeed responded to Mr. Dobry’s urgent request. At the end of the business day, at 5:47 PM, the District Court issued an Order granting Mr. Dobry’s Motion, in the absence of Ms. Okposio’s Opposition Memorandum, and provided a deadline of May 20, 2024, for Ms. Cruz to respond.

On Wednesday, May 8, 2024, at 11:33 AM, Opposing Counsel sent an email to Ms. Okposio notifying Petitioner of their intent to file a Motion for an Extension of Time, to May 20, 2024, on behalf of the other Respondents “to have the deadlines correspond and align to prevent an unwieldy record...” Opposing Counsel inquired whether Ms. Okposio consented to the Motion. At 2:34 PM, Ms. Okposio responded, discussing Mr. Dobry’s prior failure to notify the Court of Ms. Okposio’s previous response of May 6, 2024, indicating Ms. Okposio’s intent to oppose Defendant’s Motion to Set Aside and/or Vacate the Clerk’s Default. At 3:01 PM, Opposing Counsel responded. However, Opposing Counsel did not explain why they did not update the Court of their “continue[d] ... efforts to confer with [Ms. Okposio] in good faith” or of Ms. Okposio’s response, as they had represented they would. Instead, Opposing Counsel “clarified” that the Court had issued its Order before Mr. Dobry had an opportunity to update the Court that Ms. Okposio had responded. Opposing

Counsel also maintained that an updated certificate of conferral, informing the Court that Ms. Okposio had responded and intended to oppose, “would have simply confirmed that [Ms. Okposio] oppose[s] the motion which is materially the same as what was represented in the original certificate of conferral”.

On Tuesday, May 14, 2024, at 11:21 AM, Opposing Counsel sent Ms. Okposio an email notifying Petitioner of their updated intent to seek an extension, to June 19, 2024, to review, investigate, and evaluate the allegations in all of Plaintiff's filed complaints, before responding to Plaintiff's Third Amended Complaint. At 1:42 PM, Mr. Dobry filed Defendants' Second Motion for an Extension of Time, to June 19, 2024, to respond to Plaintiff's Third Amended Complaint. Included in the Motion was a Certificate of Conferral, in which Mr. Dobry stated that they had “(i) emailed Plaintiff on May 8, 2024, at 11:33a.m., (ii) emailed Plaintiff a second time on May 8, 2024, at 3:02 p.m clarifying Defendants' requested relief...”. Mr. Dobry made no mention of the fact that Ms. Okposio had communicated with Respondents' Counsel on May 6, 2024, *and* on May 8, 2024.

On July 3, 2024, Ms. Okposio filed a Motion for Default Final Judgment Against Defendant Barry University Due to Opposing Counsel's Fraud Upon the Court.

2. Procedural History

On November 27, 2023, Ms. Okposio refiled her Third Amended Complaint. On March 15, 2024, the District Court entered an Order granting Ms. Okposio's Motion for Leave to Proceed *in forma pauperis*. On March 21, 2024, the District Court entered an Order Requiring Personal Service by the U.S. Marshal. During the

period of March 26, 2024, through April 4, 2024, the U.S. Marshal executed service of the summons and Ms. Okposio's Third Amended Complaint on all Respondents, both in-state and out-of-state, except Maria L. Alvarez.

On Friday, May 3, 2024, the Clerk's Entry of Default against Ms. Cruz was filed by the Court. On May 6, 2024, the District Court entered an Order vacating the Clerk's Entry of Default against Ms. Cruz.

On October 17, 2024, the District Court entered an Order denying Ms. Okposio's Motion for Default Final Judgment Against Defendant Barry University Due to Opposing Counsel's Fraud Upon the Court.

On November 15, 2024, Ms. Okposio timely filed a Notice of Appeal. On November 18, 2024, the Court of Appeals granted Ms. Okposio permission to proceed on appeal *in forma pauperis*. Respondents filed a Motion to Dismiss Ms. Okposio's Appeal as Frivolous on December 20, 2024. Ms. Okposio filed her Opening Brief on December 30, 2024.

On January 2, 2025, the U.S. Court of Appeals for the Eleventh Circuit dismissed, *sua sponte*, Ms. Okposio's appeal for lack of jurisdiction. Ms. Okposio timely filed a Petition for Panel Rehearing on January 23, 2025. On April 1, 2025, the Court of Appeals denied Ms. Okposio's Petition for Panel Rehearing.

Reasons for Granting a Writ of Certiorari

I. Petitioner Raises a Question of Exceptional Importance

At the heart of this petition is the issue of fraud on the court, its associated sanction of a default judgment, and the need for the urgency of the sanction due to its high importance. The U.S. Supreme Court has previously established the seriousness of fraud on the court and its inevitable dire effects on the courts and the public noting,

“... tampering with the administration of justice...involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.”

Hazel-Atlas Co. v. Hartford Co., 332 U.S. 238, 246 (1944). Thus, this Court has recognized that fraud on the court presents an immediate call to action.

One of the ways in which that call to action is executed is through a default final judgment. *Hazel-Atlas Co.*, 332 U.S. at 250 (Providing that a discovery of fraud on the court warrants a dismissal [or default]). In ceasing judicial proceedings, a default judgment brings the deleterious effects of fraud on the court to an immediate end, thereby protecting the sanctity of the judicial process. Therefore, whether a default judgment is immediately implemented has serious implications.

A. The Question Presented is of Fundamental Societal Significance.

As previously noted by this Court, the administration of justice was implemented to protect and safeguard the public. Therefore, conduct which constitutes fraud on the court undermines the administration of justice and thereby threatens the safeguarding and protection of the public. An immediate implementation of a default judgment, abruptly ceases the proceedings which have been compromised, preventing any further tampering of the judicial process by the offender and deters others from similar misconduct, thereby protecting the sanctity of the judicial process. As a result, the court's function of safeguarding and protecting the public is immediately restored and thus, preserved.

B. Serious Practical Problems are Implicated by the Question Presented.

Delaying the implementation of a default judgment creates serious practical problems. It irreparably prolongs the effects of fraud on the court, renders the judicial process vulnerable to further abuse, and in effect, leaves the public without the protection the court was intended to provide. The time during which there is an absence of the implementation of a default judgment has the effect of unjustly placing the punishment for fraud on the court onto the public, forcing the public to forfeit the security of the courts. Furthermore, the time during which the public is without the safeguarding and protection of the courts cannot be recaptured.

C. The Question Presented is National in Scope

Fraud on the court and, therefore, a sanction of a default judgment, has the potential to present itself in any type of proceeding and in all matters that come before the courts. Furthermore, it is not limited to any specific court and may arise at all levels of both the state and federal court system across the country. Accordingly, the ramifications of delaying the implementation of a default judgment will affect the public at large.

This case is a good vehicle for addressing the question presented. The undisputed facts, which describe the conduct constituting fraud on the court in this case, are not exclusive to the underlying action before the court. Rather, fraud on the court is collateral to the underlying action. *Parker v. Parker*, 950 So. 2d 388, 391 (Fla. 2007) (Providing that extrinsic fraud is conduct which prevents a party from trying an issue before the court and the prevention itself becomes a collateral issue to the cause). See also *Parker*, 950 So. 2d at 391 (Providing that extrinsic fraud is considered 'fraud on the court'). As such, an analysis of whether an order denying a motion for default judgment due to fraud on the court is immediately appealable, is applicable across the multitude of matters and proceedings that come before the various courts across the nation.

II. The Decision of the U.S. Court of Appeals Requires Immediate Review

The U.S. Court of Appeals for the Eleventh Circuit dismissed, for lack of jurisdiction, Petitioner's appeal from a District Court's Order denying

Petitioner's motion for a default final judgment due to Opposing Counsel's fraud upon the court. For the reasons mentioned *supra* – I. B., the Eleventh Circuit's decision requires immediate review.

The preservation and/or restoration of the safeguarding and protection of the public through a default judgment due to fraud on the court, is a substantial public interest. As explained *supra* – I. B., that substantial public interest is jeopardized in the absence of the immediate implementation of a default judgment. The Eleventh Circuit's decision has the effect of postponing appellate review of Petitioner's appeal until a final decision on the merits of the underlying action. However, this delay will cause irreparable harm to the substantial public interest. To counter this harm, the Eleventh Circuit's decision should be immediately reviewed.

III. The Decision of the U.S. Court of Appeals Should be Reversed

In dismissing Petitioner's appeal, for lack of jurisdiction, the U.S. Court of Appeals for the Eleventh Circuit appears to have erred in a significant way.

In general, under 28 U.S.C. §1291, appellate jurisdiction is reserved for final decisions of U.S. District Courts. 28 U.S.C. §1291. Final decisions are generally defined as a decision "which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). Consequently, an appellant is typically required to "raise all claims of error in a single appeal following judgment on the merits." *Holt v. Ford*, 862 F. 2d 850, 851 (11th Cir. 1989). This is often referred to as "the final judgment rule" of §1291.

However, the U.S. Supreme Court has established the longstanding practical interpretation of §1291 which

“...recognize[s] an exception to the final judgment rule for a ‘small class’ of decisions that ‘finally determine claims of right separate from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.’”

Holt, 862 F. 2d at 851 (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 46 (1949)). Accordingly, the U.S. Supreme Court has defined a three-pronged test to determine whether an order that does not end the litigation on the merits “is nonetheless appealable.” *Holt*, 862 F. 2d at 851.

Under the *Cohen* test, an interlocutory order is eligible for immediate appellate review if it “conclusively determine[s] the disputed question, resolve[s] an important issue completely separate from the merits of the action, and [is] effectively unreviewable on appeal from a final judgment.” *Holt*, 862 F. 2d at 851 (citing *Coopers & Lybrand v. Livesay*, 437 U.S. 463. 468 (1978)).

The Eleventh Circuit found that the Order Petitioner appeals from is not final and appealable, because Petitioner’s third amended complaint remains pending before the District Court. However, the Eleventh Circuit’s finding appears to have overlooked established U.S. Supreme Court precedent recognizing the practical interpretation of 28 U.S.C. §1291 which also allows appellate review of final decisions that are collateral to the underlying action. *Cohen*, 337 U.S. at 545-46.

The District Court’s October 17, 2024 Order that Petitioner appeals from denies Petitioner’s Motion for default final judgment due to Opposing Counsel’s fraud on

the court as “border[ing] on frivolous”. In so doing, the District Court conclusively determined that Opposing Counsel did not engage in fraud upon the court.

Accordingly, the District Court’s Order also rejects and thereby, finally resolves the important issue of Petitioner’s claimed right to avoid further proceedings (including a trial) through a default judgment. Holt, 862 F. 2d at 852 (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 376 (1981)) (Providing that an interlocutory order is appealable as a final collateral order, [when it] constitutes ‘a complete, formal and, in the trial court, final rejection’ of a claimed right.) Since fraud on the court is collateral to the underlying action, as discussed *supra*, I. C., the Eleventh Circuit appears to have overlooked that the District Court’s order, resolving the issue of fraud on the court and default judgment, is a final decision that is collateral to the underlying action and is, therefore, eligible for immediate appellate review.

More importantly, however, the Eleventh Circuit found that Petitioner’s appeal is *not* effectively unreviewable on appeal from a final judgment resolving the case on the merits because the order did not conclude the litigation. This finding also appears to have overlooked established U.S. Supreme Court precedent establishing that the determinant of “whether a[claimed] right is effectively unreviewable is whether delaying review until the entry of final judgment ‘would imperil a substantial public interest...’” *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 601 (2009) (quoting *Will v. Hallock*, 546 U.S. 345, 352-53 (2006)). As previously discussed, the restoration and/or preservation of the safeguarding and protection of the public is a substantial public interest. As such, the Eleventh Circuit appears to

overlook that delaying review of Petitioner's claimed right to avoid further judicial proceedings through a default judgment, jeopardizes the substantial public interest that is provided with the immediate implementation of a default judgment due to fraud on the court, as discussed supra, I. B. The importance of the substantial public interest that was apparently overlooked and the Eleventh Circuit's findings, which conflict with the decisions of this Court, warrants correction.

Furthermore, the issue of whether an order denying a motion for default judgment due to (Opposing Counsel's) fraud on the court is immediately appealable, should be settled by this Court.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

DATED: May 29, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

No. _____

ABRAKA VANESSA OKPOSIO,

Petitioner

v.

BARRY UNIVERSITY, INC., et al.

Respondents.

As required by Supreme Court Rule 33.1(h), I certify that this petition for a writ of certiorari contains 2, 835 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

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

Executed on May 29, 2025.

Respectfully submitted,

By: A. Okposio
Abraka Okposio
(Pro Se)