

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

MARITHA MOGATI PETITIONER  
(Your Name)

VS.

Tom AND ROSA CHAN — RESPONDENT(S)

**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 leave to proceed *in forma pauperis* in the following court(s):

US DISTRICT Court

US APPEALS Court

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other 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: \_\_\_\_\_

, or

a copy of the order of appointment is appended.

RECEIVED

JUL 16 2024

OFFICE OF THE CLERK

RECEIVED

JUN 17 2024

(Signature)

OFFICE OF THE CLERK

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

I, MARITA I. O. MOGAI, 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.

<b>Income source</b>	<b>Average monthly amount during the past 12 months</b>		<b>Amount expected next month</b>	
	<b>You</b>	<b>Spouse</b>	<b>You</b>	<b>Spouse</b>
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Self-employment	\$ <u>650</u>	\$ <u>0</u>	\$ <u>650</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>400</u>	\$ <u>0</u>	\$ <u>400</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify): <u>N/A</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
<b>Total monthly income:</b>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

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
<u>FORSYTHE</u>	<u>169 DWY</u>	<u>2015</u>	<u>\$ Commission Pay</u>
<u>SHARAH</u>	<u>NASHUA</u>	<u>2016</u>	<u>\$ 650</u>
<u>LADEN</u>	<u>NH 03060</u>	<u>CURRENT</u>	<u>\$ Not Steady</u>
			<u>VARIETY</u>

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
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>\$ 0</u>
			<u>\$</u>
			<u>\$</u>

4. How much cash do you and your spouse have? \$ \_\_\_\_\_  
 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
<u>CHECKING</u>	<u>\$ 300</u>	<u>\$ 0</u>
<u>SAVINGS</u>	<u>\$ 200</u>	<u>\$ 0</u>

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

Home Value N/A  Other real estate Value N/A

Motor Vehicle #1 Year, make & model N/A  Motor Vehicle #2 Year, make & model N/A  
 Value N/A Value N/A

Other assets Description N/A Value N/A

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
N/A	\$ 0	\$ 0
Father NDimul	\$ 30,000 -	\$ 0
N/A	\$ 0	\$ 0

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
SSO	Father	87
PAO	Mother	77
None	None	None

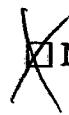
8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0 -	\$ 0 -
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0 -	\$ 0 -
Home maintenance (repairs and upkeep)	\$ 0 -	\$ 0 -
Food	\$ 500 -	\$ 0 -
Clothing	\$ 200 -	\$ 0 -
Laundry and dry-cleaning	\$ 50 -	\$ 0 -
Medical and dental expenses	\$ 75 -	\$ 0 -

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 60	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ 0
Life	\$ 0	\$ 0
Health	\$ 0	\$ 0
Motor Vehicle	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 6	\$ 0
Installment payments		
Motor Vehicle	\$ 0	\$ 0
Credit card(s)	\$ 0	\$ 0
Department store(s)	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Alimony, maintenance, and support paid to others	\$ 0	\$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ 0
Other (specify): _____	\$ 0	\$ 0
<b>Total monthly expenses:</b>	<b>\$ 885.00</b>	<b>\$ 0</b>

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



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.

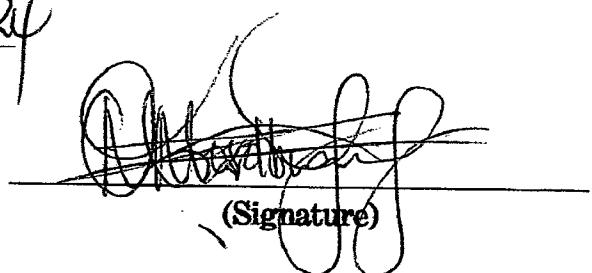
*Appellant is on medical leave from work*

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

Executed on: \_\_\_\_\_

*6/7*

, 20 *24*



A handwritten signature is written over a horizontal line. The signature is in cursive and appears to read 'John Doe'.

*(Signature)*

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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**MARTHA MOGAJI,**

**Petitioner**

**VS.**

**ROSA CHAN, TOM CHAN, TRC TRUST, NAN KING RESTAURANT**

**Respondent**

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**On Petition For A Writ of Certiorari From  
The United States Appeals Court For the  
First Circuit**

**PETITION FOR WRIT OF CERTIORARI**

**Martha I. Omorodion Mogaji  
P.O. Box 2073, Westford MA 01886  
Voicemail: (978) 799-0920  
MsMMogaji@gmail.com**

## QUESTIONS PRESENTED

- A. The state of New Hampshire Revised Statute 153:10(a) § (II-a) requires the Landlord to be responsible for a leased property maintenance, does this create a condition precedent in a Landlord and Tenant contract, and does the failure to enforce the statute by preference unconstitutional under the 14<sup>th</sup> Amendment?
- B. When a Landlord promises the court to allow Tenant entry to move out but does not. Does the courts dismissal of a scheduled contempt hearing constitutional under the 14<sup>th</sup> Amendment or under FTC Act § 5 (15 U.S.C. 45), and MA 93A rule the prohibited deceptive act or practices? Does un-enforcement of the law without an applicable defense constitutional?
- C. Was the New Hampshire Appeals Court Rule 5.11 § (B) constitutional when the appeal as of right was denied after the lower court denied Defendants right to a hearing?
- D. Was the US Appeal courts decision to limit review of an appeal as of right an unfair discrimination under the 14<sup>th</sup> Amendment when the appeals court have the jurisdiction to review de-novo and remand or Can the primary basis of a complaint filed be, an issue not raised to demonstrate error?
- E. Was the US Appeals Courts decision not to consider material evidence to Plaintiffs claim and defense of a condition precedent thereof a fair hearing under the 14<sup>th</sup> Amendment?
- F. Whether the affirmation of an unjust decision was constitutional under the 14<sup>th</sup> amendment or under 42 U.S.C. § 1981, when the pleading for review was based on the lower courts record of judgement, decisions, exhibits, and pleadings not requiring a transcriber script that the Appellant cannot afford?

## **LIST OF PARTIES**

[ ] All parties appear in the caption of the case on the cover page.

[ X ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Pharah Ladey African Restaurant.

Forsyte Von Buren & Company Project Management

Softcharms Cosmetics & Beauty Studio

Plaza Prints

Convenience Depot Store

## **RELATED CASES**

*Martha Tenant v. Rosa Chan, et al.*, No. 23-1024, United States Court of Appeal For the First Circuit. Judgement entered February 8, 2024.

*Martha Tenant v. Rosa Chan, et al.*, No. 20-cv-249-JL, United States District Court, District for New Hampshire. Judgement entered October 7, 2022.

*Martha Tenant v. Rosa Chan, et al.*, No. 459-2019-LT-00046, Ninth Circuit District Court Nashua New Hampshire. Dismissal entered February 21, 2019.

*TRC Trust et al., v. Martha Tenant et al.* No. 2019-0159, NH State Appeals Court. Judgement entered October 25, 2019.

*TRC Trust et al., v. Martha Tenant et al.*, No. 2018-0511, New Hampshire State Supreme Court. Judgement entered November 14, 2018.

*TRC Trust et al., v. Martha Tenant et al.*, No. 459-2018-LT-00423, Ninth Circuit District Court Nashua New Hampshire. Judgement entered December 26, 2018.

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

Dear Lord, Petitioner earnestly prays that a writ of certiorari issue to review the judgments below.

**OPINIONS BELOW**

**[ X ] For cases from federal courts:**

The opinion of the United States Court of Appeals appears at Appendix B to the petition and  
[ ] is reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ X ] is unpublished.

The opinion of the United States District Court appears at Appendix C to the petition and  
[ ] reported at \_\_\_\_\_; or,  
[ X ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

**[ X ] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix D to the  
petition and is [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ X ] is unpublished.

The opinion of the New Hampshire State Supreme Court appears at Appendix E to the  
petition and is [ ] reported at. \_\_\_\_\_; or, [ ] has been designated for publication but is not  
yet reported; or,  
[ X ] is unpublished.

The opinion of the 9<sup>th</sup> Circuit District Court appears at Appendix F & G to the petition and  
is [ ] reported at. \_\_\_\_\_; or, [ ] has been designated for publication but is not yet  
reported; or,  
[ X ] is unpublished.

## **JURISDICTION**

**[ X ] For cases from Federal Courts:**

The date on which the United States Court of Appeals decided my case was:  
February 8, 2024

[ X ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 16, 2024, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

**[ X ] For cases from State Courts:**

The date on which the highest state court decided my case was: October 25, 2019. A copy of that decision appears at Appendix E.

[ X ] A timely petition for rehearing was thereafter denied on the following date: November 14, 2018, and a copy of the order denying rehearing appears at Appendix E.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. Constitution 14th Amendment - Equal Protection Clause**

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.

### **42 U.S. Code § 1981 - Equal rights under the law**

#### **(a) Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

#### **(b) Make and Enforce contracts**

For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

#### **(c) Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

### **The Federal Trade Commission Act (FTC Act) (15 USC §45)**

The Federal Trade Commission Act (FTC Act) (15 USC §45) prohibits “unfair or deceptive acts or practices in or affecting commerce.” This prohibition applies to all persons engaged in commerce, including banks.

#### **Unfair Practices**

An act or practice is unfair where it • causes or is likely to cause substantial injury to consumers; • cannot be reasonably avoided by consumers; and • is not outweighed by countervailing benefits to consumers or to competition. Public policy, as established by statute, regulation, or judicial decisions may be considered with all other evidence in determining whether an act or practice is unfair.

#### **Deceptive Practices**

An act or practice is deceptive where • a representation, omission, or practice misleads or is likely to mislead the consumer; • a consumer’s interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and • the misleading representation, omission, or practice is material.

**Massachusetts G.L.c. 259, § 1 (5)**

**Section 1: Actionable contracts; necessity of writing**

Section 1. No action shall be brought:

Fifth, Upon an agreement that is not to be performed within one year from the making thereof, Unless the promise, contract or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or by some person thereunto by him lawfully authorized.

**MA General Law - Part I, Title XV, Chapter 93A, § 2**

Section 2. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(b) It is the intent of the legislature that in construing paragraph (a) of this section in actions brought under sections four, nine and eleven, the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

**NH Rev Stat 153:10(a) § (II-a)**

II-a. The owner of the rental unit shall be responsible for maintaining the automatic fire warning device and carbon monoxide detection device in a suitable condition.

**NH Rev Stat 540-A:3 § II**

II. No landlord shall willfully seize, hold, or otherwise directly or indirectly deny a tenant access to and possession of such tenant's rented or leased premises, other than through proper judicial process.

II-a. Notwithstanding paragraph II, and subject to the notice requirements of paragraph II-b

**NH Rev Stat 540-B**

VII. Other than residential real estate under RSA 540-B, a landlord shall maintain and exercise reasonable care in the storage of the personal property of a tenant who has vacated the premises, either voluntarily or by eviction, for a period of 28 days after the date upon which such tenant has vacated. During this period, the tenant shall be allowed to recover personal property without payment of rent or storage fees. After the 28-day limit has expired, such personal property may be disposed of by the landlord without notice to the tenant.

**NH Rev Stat 540:A:2 § (C)**

No landlord shall willfully violate a tenant's right to quiet enjoyment of his tenancy or attempt to circumvent lawful procedures for eviction pursuant to RSA 540.

**NH Rev Stat 540-A:4**

I. All district courts shall have concurrent jurisdiction with the superior court to enforce the provisions of RSA 540-A:2 and RSA 540-A:3.

II. Any tenant or landlord may seek relief from a violation of RSA 540-A:2 or RSA 540-A:3 by filing a petition in the district or county where the rental premises are located.

IX. (a) Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3 shall be subject to the civil remedies set forth in RSA 358-A:10 for the initial violation, including costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues after issuance of a temporary order shall constitute a separate violation.

(b) Notwithstanding the provisions of subparagraph (a), a landlord who violates RSA 540-A:3, VII shall be subject only to an award of actual damages, plus costs and reasonable attorneys fees.

**New Hampshire Court Rule 5.11 § (B)**

**B. Possessory Action Instituted for Reason Other than Nonpayment of Rent**

If the possessory action was instituted for a reason other than nonpayment of rent, the defendant shall pay into the Court or to the plaintiff, as the Court directs, all rents or portions thereof becoming due from the date the Notice of Intent to Appeal is filed with the District Court. In any case in which the duty to pay rent or a portion thereof is in dispute, the defendant shall be required to pay such portions of the rents becoming due after the notice of intent is filed into Court, as the Court may direct, which amounts shall be held in escrow until a final decision is rendered. If the defendant fails to make a rental payment as it comes due, the plaintiff shall file an affidavit setting forth the defendant's failure to make timely payment along with a motion to dismiss defendant's appeal. A copy of the motion and affidavit shall be filed with the Supreme Court. The District Court shall file a written recommendation to the Supreme Court that the motion be granted unless, within five (5) days of the filing of plaintiff's motion, defendant files an affidavit setting forth that timely tender of payment was made or that defendant had a lawful reason for failing to tender payment. If defendant files such an affidavit in a timely manner, a hearing shall be scheduled on the motion within ten (10) days of the filing of defendant's affidavit. Following hearing, the District Court shall recommend in writing to the Supreme Court what action should be taken on the motion.

**Restatement (Second) of Contracts § 225**

Performance of a duty subject to a condition cannot become due unless the condition occurs or its non-occurrence is excused. Unless it has been excused.

A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.

The non-occurrence of a condition discharges the duty when the condition can no longer occur.

**2nd Restatement of Contracts § 238**

Where all or part of the performances to be exchanged under an exchange of promises are due simultaneously, it is a condition of each party's duties to render such performance that the other party either render or, with manifested present ability to do so, offer performance of his part of the simultaneous exchange.

## STATEMENT OF THE CASE

The Appellant, Martha Mogaji herein (“Tenant”) is a Massachusetts resident doing business in the state of New Hampshire. The Appellee, Tom and Rosa Chan herein (“Landlord”) are New Hampshire residents, and owners of Nan King Restaurant; TRC Trust, and the 6 unit commercial property in Hudson New Hampshire herein (“Premises”). On July 27<sup>th</sup> 2015, Tenant, and Landlord signed an amended 7 year Lease Contract to rent a 2 unit commercial office space herein (“Contract”). Among other stipulations, the Contract allowed the Tenant to build to suit; be responsible for obtaining permits. Tenant went, and obtained business registrations, and licenses from the various governing departments. Tenant also went to the Town to obtain permits including certificates of occupancy which were approved for the first unit containing three compact rooms comprising of a project management office (Forsyte), a Beauty Studio (Softcharms), a Print & Copy shop (Plaza Prints), and a Convenience Store (Comfy Depot). The Town approved the second unit for a cafeteria (Fharah Ladey) and the State approved Tenants food license. Tenant decorated the premises with furnitures, products, and goods, and began operating.

Tenant received a notice of building violations addressed to the Landlord, and a dispute arose about why only the Tenant have to pay for the whole building maintenance violation fee when there were other Tenants occupying the building. Tenant went to the Town, and was given three forms, and gave it to the Landlord notifying the Landlords of the Towns demand for the Landlord to sign the authorization forms even though Tenant was going to pay for the permit. Tenant began waiting for the Landlords signed authorization to obtain further permits, but the Landlord refused to sign the forms. Tenant sent several demand letters to the Landlord to no avail. The Town issued an order stating that the Landlord was in violation, and the town issued a Stop Work Order shutting down only the Tenants units resulting in Tenants loss of earnings and income. Tenant began experiencing hardship, and stopped paying the rent. The Landlord sent an eviction notice, and then filed a complaint to obtained a writ of possession from the Nashua District Court herein (“NDC”). Tenant filed an Answer with counterclaims requesting a jury trial, and a motion to extend the hearing date due to a PTSD medical condition, to allow more time. The Tenants motion was denied, and a bench trial date was scheduled.

The Landlord demanded to regain their property for failure of the Tenant to satisfy a material condition on the contract to obtain town permits. The Tenant claimed that there was a 7 year lease; the Town required the Landlord to sign the towns authorization before the Tenant would be allowed to obtain the permits. Tenant further claimed that the Tenants customers were being confronted; Tenant sent Mike Braun and a lady by the name Rose who were also tenants, to harassed Tenant to move out; Tenant received false website reviews that the restaurant did not have a food license; Tenant was physically harassed with trash thrown in front of business; car blocked in; floor painted signages were wiped out, and Tenant was told that Blacks were not welcomed in the Hudson community. Mike and Rose also blocked Tenant in, and started parking in Tenants parking lots so that the customers could not park.

The Nashua District Court ruled that the Landlord had a right to their property overriding the terms of the Contract, and the Landlord signed authorization for permits that could have been cured at the time to resolve the issue. Appellant appealed to the New Hampshire Appeals Court to review the Trial Courts finding, and the appeal was dismissed before it was heard on the District Courts recommendation to dismiss for failure to pay rent when it became due. Appellant then sought further review at the New Hampshire Supreme Court, and the decision was affirmed. On January 9<sup>th</sup> 2019, Tenant was locked out of the premises, and was asked to leave without taking anything. Tenant contact the clerks office, and was told to make arrangement with the Landlord to move out. Tenant contacted the Landlord to negotiate an extension of time to move out due to the holidays and difficulty finding movers, but the Landlord only allowed a 4 hour move out time. The move out date, and time was scheduled for January 15<sup>th</sup> 2019. Tenant hired about 10 men to do the same day move out. When the Movers arrived they were not allowed to move. The Landlord obstructed the Tenants moving out with the help of the Police who assaulted and harassed Tenant. The Landlord demanded payments and that the officer should lock the Tenant out if no payments were made. Tenant responded that it was not part of the move out agreement, and had no such money. When they locked out the premises, Tenant immediately went to the Nashua District Courts clerks office to complaint that the Landlord did not allow the scheduled move to continue. The clerks office gave a form to the Tenant to complete. The court immediately granted Tenants request, and ordered that the Landlord should allow the Tenant to move, and a 7 day move, and a hearing date was scheduled.

On January 15<sup>th</sup> 2019, the Landlord was served on the same day, and notified by phone but they refused to comply with the court order insisting on being paid by the Tenant. The Landlord responded on the same day with a motion to dismiss that they would allow the Tenant to move out, but Tenant and Movers waited until around 7pm for them to show up, but they never did. The Movers demanded full payments even though the move was not done. So they called the Police, and Tenant explained the situation to the Police, and responded to the officer the amount that Tenant had for the movers, and that the Movers should write and sign their witness testimony and get paid partially until the move was done another day, and they agreed. After they were done with their affidavits, the officer asked us to leave the premises. Tenant complained of the violation of the court order stating that Tenant was not allowed to move, the Court cancelled the scheduled contempt hearing date, and revoked the preliminary injunction on the Landlords motion that they would allow the Tenant to move out, but despite further demands, the Tenants were never allowed again into the Premises to move, and the Tenants properties seized were disposed off by the Landlord. The Nashua District Court stated they had no jurisdiction. Tenant filed a complaint with the US District Court to recover damages totaling \$175000 among other issues for loss of earnings, and income; negligence; violations, and deceptive business practices over the Landlords seizure of Tenants properties as compensation for rent; Tenant further claimed failure to satisfy a condition precedent before Tenants duty to comply became due; damages to property, and provided evidences appended herein. Landlord raised Tenant breach of lease; affirmative defenses of a lack of subject matter jurisdiction, res judicata, and contributory negligence, but the Landlord did not have any evidence to support their defense. The US District Court excluded the Town Authorization forms, and ruled for the Landlord to recover their rent. Tenant appealed to the US Appeals Court for the First District, and the court affirmed the US District Court decision. Tenant petitions for a writ of certiorari.

## REASONS FOR GRANTING THE PETITION

### A. Effect Upon The Public Interest

The Appellant prays that there is an extreme need that this honorable court would grant a review of the US Appeals Court decision in light of the lower court records to appropriate precedence in contract, and constitutional law that are of great importance to the public interest. Such cases, including *Cyprus v. Diskin*, 936 F. Supp. 259 - Dist. Court, ED Pennsylvania 1996, "The Court has long acknowledged that the equal protection clause is available to redress such evils as selective enforcement." Here, as in Cyprus, in denying Tenant effective review of the court records, the Courts have affirmed that Appellant did not have the right to contract; the right to have received a fair hearing; due process of law, and appeal as of right. If this decision remains in place, the equilibrium of rights that the legislature sought to establish will be upset.

"When rendering that determination, a court may not look beyond the facts alleged in the complaint, documents incorporated by reference therein and facts susceptible to judicial notice. *Haley v. City of Boston*, 657 F.3d 39, 46 (1st Cir. 2011). A court also may not disregard properly pled factual allegations even if actual proof of those facts is improbable. *Ocasio-Hernandez v. Fortuño-Burset*, 640 F.3d 1 (1st Cir. 2011). Rather, the relevant inquiry focuses on the reasonableness of the inference of liability that the plaintiff is asking the court to draw."

"Stability of precedent and the uniform application of correct law to achieve the correct result are the assignment of the Federal Circuit, for our rulings are of nation-wide effect. A primary purpose for which our court was formed was to provide the judicial stability that supports commercial investment." *Pfizer v. Apotex Inc.*, US Court of Appeals, Fifth Circuit, 2000.

"The Supreme Court has not limited itself to the face of the law, "Where the... official enjoys unduly broad discretion in determining whether to grant or deny... There is a risk that he will favor or disfavor... We have thus required that... a regulation is to contain adequate standards to guide the official's decision and render it subject to effective judicial review." *Thomas v. Chicago Park District*, 534 U.S. 316 (2002).

A result as such undercuts not only the intent of the equal protection clause of the 14<sup>th</sup> Amendment; the 42 U.S.C. § 1983; 42 U.S. Code § 1981; FTC Act § 5 (15 U.S.C. 45); NH Rev Stat § 540-A:3 § III & VII, and other laws, but also of collective bargaining right of good faith, and fair dealings.

### **B. Interests of Justice**

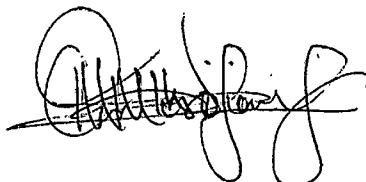
Appellant submits that the United State Court of appeals has entered a decision in conflict with the decision of other United States court of appeals on the same important matter, and has decided an important federal question in a way that conflicts with relevant decisions of this Court in essence that the courts cannot remand or provide effective review because the record is inadequate to permit reasoned review of a claim. An important federal question in a way that conflicts with a decision by a state court of last resort has not been decided, and has so far departed from the accepted and usual course of judicial proceedings, or sanction. Such a departure by a lower court calls for an exercise of this honorable Court's supervisory power to make decisions.

Appellant prays that it is in the interests of justice that the issues and the affirmed judgment against Appellant should be reviewed by this Honorable Court. Appellant maintains that her legitimate interests concerning the impact of not considering applicable defenses such as the statutory condition precedent which creates a legal duty before performance is due, and the fundamental right to a fair hearing or a jury trial as demanded were not protected; and Appellant as a person for whom the law was designed to protect should be afforded the protection of such interests that was intended to be provided by the law. Appellant prays to review that when there is a law, it should be enforced to recover in the absence of applicable defense (s).

### **CONCLUSION**

Wherefore, Appellant prays that the petition for a writ of certiorari would be granted because it involves whether trending practices of the courts to deprive of substantial rights are constitutional.

Respectfully submitted,



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Martha I. Omorodion Mogaji  
P.O. Box 2073, Westford MA 01886  
Voicemail: (978) 799-0920  
MsMMogaji@gmail.com

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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MARTHA MOGAJI,

Petitioner

VS.

ROSA CHAN, TOM CHAN, TRC TRUST

Respondent

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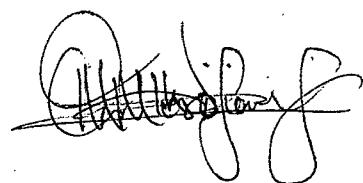
**PROOF OF SERVICE**

I, Martha Mogaji, do swear or declare that on June 12, 2024, as required by Supreme Court Rule 29 have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

Rosa Chan and Tom Chan: 143 Dracut Rd. Hudson NH 03051

I declare under penalty of perjury that the foregoing is true and correct to my personal knowledge.

Executed on June 12<sup>th</sup> 2024.



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Martha I. Omorodion Mogaji

# United States Court of Appeals For the First Circuit

No. 23-1024

MARTHA I.O. MOGAJI,

Plaintiff - Appellant,

v.

ROSA CHAN; TOM CHAN; NAN KING RESTAURANT; TRC TRUST,

Defendants - Appellees.

Before

Barron, Chief Judge,  
Lynch, Howard, Kayatta,  
Gelpí, Montecalvo and Rikelman, Circuit Judges.

## ORDER OF COURT

Entered: February 8, 2024

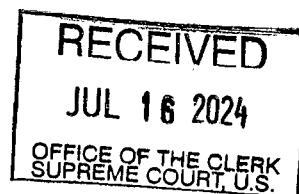
The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Martha I.O. Mogaji  
Arthur O. Gormley III



# United States Court of Appeals For the First Circuit

---

No. 23-1024

MARTHA I.O. MOGAJI,

Plaintiff - Appellant,

v.

ROSA CHAN; TOM CHAN; NAN KING RESTAURANT; TRC TRUST,

Defendants - Appellees.

---

Before

Barron, Chief Judge,  
Lynch and Howard, Circuit Judges.

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## JUDGMENT

Entered: October 23, 2023

The underlying matter concerned a commercial landlord-tenant dispute. Pro se plaintiff-appellant Martha I. O. Mogaji appeals from an adverse judgment entered in accordance with the district court's October 7, 2022, "findings of fact and rulings of law after bench trial." Mogaji also appeals from the district court's denial of post-judgment relief.

We have carefully considered Mogaji's arguments to the extent not waived via insufficient development on appeal or via failure to present the arguments to the district court in the first instance. See Fed. R. App. P. 10(b)(2) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion."); Andrade v. Moran, 14 F.3d 44 (1st Cir. 1994) (per curiam) (discussing Fed. R. App. P. 10(b)(2)); Downey v. Bob's Disc. Furniture Holdings, Inc., 633 F.3d 1, 8–9 (1st Cir. 2011) ("An appellant has the burden of ensuring that the record is adequate to permit reasoned review of her claims."); Saunders v. Town of Hull, 874 F.3d 324, 331 (1st Cir. 2017) ("It is hornbook law that theories not raised squarely in the district court cannot be surfaced for the first time on appeal.") (internal quotations omitted); United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

We conclude that, with any preserved, sufficiently developed arguments, Mogaji has failed to demonstrate error. See Paraflon Invs., Ltd. v. Fullbridge, Inc., 960 F.3d 17, 24 (1st Cir. 2020) (bench trial standard of review); Markel Am. Ins. Co. v. Díaz-Santiago, 674 F.3d 21, 32 (1st Cir. 2012) (Fed. R. Civ. P. 59(e) standard of review); Roosevelt REO PR II Corp. v. Del Llano-Jimenez, 765 F. App'x 459, 461 (1st Cir. 2019) (unpublished) (Fed. R. Civ. P. 60(b) standard of review).

Affirmed. See 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Martha I.O. Mogaji  
Arthur O. Gormley III

**Additional material  
from this filing is  
available in the  
Clerk's Office.**