

App. No.

In the
Supreme Court of the United States

Michael Collins on behalf of himself and
all other persons similarly situated,

Petitioner,

v.

Village of Palatine, Illinois

**PETITIONERS' APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Seventh Circuit

Petitioner Michael Collins respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for thirty days to and including April 13, 2018. The Court of Appeals issued its opinion on November 16, 2017 (App. A) and denied a petition for rehearing en banc on December 13, 2017 (App. B). The Petition is currently due on March 13, 2018. Petitioner is filing this Application at least ten days before the due date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Corporate Disclosure

None of the parties have parent companies nor do any publicly held companies have any ownership.

Background

This is a successor class action to *Senne v. Village of Palatine*, 10 cv 5434 (N.D. Ill.) (“*Senne*”). Jason Senne filed a putative class action, on behalf of himself and all other persons whose personal information was similarly disclosed in the four year period before he filed his lawsuit, against the Village of Palatine for violating the Driver’s Privacy Protection Act (18 U.S.C. §2721-25) by posting personal information from motor vehicle records to the windshields of unattended vehicles. At the same time that he filed the complaint, Senne also filed a motion for leave to take limited and expedited discovery concerning class issues. The district court dismissed Senne’s class action complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim and terminated as moot Senne’s discovery motion.

Senne appealed and a divided panel affirmed holding that the statute was not violated. The court granted a petition for rehearing en banc, vacated the panel Opinion, and reversed with seven judges holding that the statute was violated and four judges dissenting. *Senne v. Vill. of Palatine*, 695 F.3d 597 (7th Cir. 2012) (en banc).

After the case was remanded, Senne filed a motion to certify the class. The parties conducted discovery as well as briefed and argued the motion for class certification. The district court took the motion under advisement and directed Palatine to file a motion for summary judgment against Senne alone. Palatine complied and the district court granted summary judgment against Senne on the merits holding once again that the statute was not violated, in direct contravention of the en banc Opinion. The court also terminated the motion for class certification as moot. Other than terminating the motion for class certification, the court’s opinion did not discuss the class or class allegations. Senne appealed and a panel consisting of Judges Posner and Sykes, two of the dissenting judges from the en banc Opinion, as well as district court Judge Simon, sitting by designation, affirmed the dismissal finding that the statute

was not violated. Senne again sought an en banc hearing. Four of the five judges eligible to vote from the original en banc majority voted in favor of rehearing the case, because the panel's Opinion was inconsistent with the en banc majority's Opinion. Thus, the petition for rehearing was denied five to four. Senne filed a petition for a writ in this Court which was denied. On the same day that this Court denied Senne's petition, a successor class action case was filed, *Murphy v. Vill. of Palatine*, as a placeholder until a suitable representative was located. Petitioner sought to intervene in *Murphy* for the purpose of substituting as named plaintiff, Palatine objected, and Petitioner filed this case. Palatine filed a Fed. R. Civ. P. Rule 12(b)(6) motion to dismiss arguing that Collins case was untimely because the statute of limitations was not tolled while *Senne* was on appeal, even though Senne was appealing the dismissal of the class action complaint. Collins filed a motion for class certification. At Palatine's urging, the district court stayed briefing on the motion to certify, granted the motion to dismiss the class action complaint on statute of limitations grounds and denied the motion for class certification without briefing or comment.

A panel consisting of Judges Posner, Sykes, and Bauer heard the appeal. However, Judge Posner retired and the case was decided by a quorum. Judge Sykes and Judge Bauer affirmed the dismissal by invoking a new rule never before announced and without notice to the parties – that tolling of the statute of limitations ceases when a case is dismissed with prejudice even before any appeal can be taken effectively eliminating the ability to appeal the dismissal of a class action complaint. The court held that the statute was running for the two years it took to decide the appeal and that the statute of limitations ran out on Collins and more than half of the class's case before the court reversed the erroneous dismissal and remanded the case.

REASONS FOR GRANTING AN EXTENSION OF TIME

Petitioner respectfully requests that the time to file a Petition for a Writ of Certiorari be extended for thirty days for the following reasons:

1. This case presents extraordinarily important issues warranting a carefully prepared Petition.
2. The decision of the court of appeals is in direct conflict with the tolling rules announced by this Court in *American Pipe* and *Crown Cork & Seal*, where this Court held that statute of limitations is tolled for all putative class members from the time a class action is filed until class certification is denied.
3. If the new rule adopted by the Seventh Circuit is correct, then *American Pipe*, *Crown Cork & Seal*, and *Campbell Ewald Co. v Gomez*, were all moot before they reached this Court, because the statute of limitations would have run out.
4. The Court should grant certiorari because the decision of the Court of Appeals involves an important question and conflicts with the decisions of this Court and other federal Courts of Appeals.
5. Petitioner's counsel has been working with outside counsel with Supreme Court expertise to assist in this case. Additional time is necessary and warranted for that counsel to become familiar with the complicated record below and help frame the issues involved in this matter to narrow the arguments for this Court.
6. No meaningful prejudice would arise from the extension, as this Court would hear oral argument and issue its opinion in the October 2018 Term regardless of whether an extension is granted.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks that the time to file a Petition for a Writ of Certiorari in this matter be extended thirty days to and including April 13, 2018.

Respectfully submitted,

s/ Martin J Murphy

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