

No. 17-8000

IN THE
Supreme Court of the United States

SORAZAM BETHUNE,
Petitioner,

v.

MTA LONG ISLAND BUS,
Respondent.

On Petition for Writ of Certiorari to the
New York State Court of Appeals

BRIEF IN OPPOSITION

MICHAEL J. PAGLINO, ESQ.
COUNSEL OF RECORD
ARMIENTI, DEBELLIS,
GUGLIELMO & RHODEN,
LLP
39 Broadway, Suite 520
New York, New York
10006
(212) 809-7074
mpaglino@adgrlaw.com
Counsel for Respondent

QUESTIONS PRESENTED

None – no issues of federal law were involved in the disposition of this state court tort action; nor is there any conflict in law between the state court of last resort in the forum state – that is, the New York State Court of Appeals – and any court of last resort of any other state or the United States Court of Appeals.

Indeed petitioner makes no such claim.

Rather, in the state court proceedings petitioner sought to recover for personal injuries she claimed to have sustained by reason that the local commuter bus on which she was a passenger allegedly drove in an unsafe manner. An action was brought against the public authority bus company on a theory that its bus operator was negligent in the manner in which he drove the bus, *but the jury found otherwise*. A judgment was entered after a jury verdict in respondent's favor and plaintiff's (petitioner's) complaint thereby dismissed. Petitioner failed to timely appeal the judgment, a circumstance she attributes to the fault of her then trial counsel. But such is collateral to the subject matter of the personal injury action she brought, and this is *not* the forum to seek redress from, or as a result of, any action or inaction of her former counsel.

CORPORATE DISCLOSURE STATEMENT

Respondent is not a publicly held corporation. Rather, respondent, Metropolitan Suburban Bus Authority d/b/a and s/h/a MTA/Long Island Bus was formerly a wholly owned subsidiary of the Metropolitan Transportation Authority, a public benefit corporation created by New York State Public Authorities Law §1263. MTA Long Island Bus ceased operations as of December 31, 2011.

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SUMMARY OF BASES FOR DENIAL OF A *WRIT OF CERTIORARI*

No *certiorari* review is available or warranted in this court as no federal statutes, rules or regulations were plead or involved in the disposition of this state court action. Nor is there any claim of a conflict between the highest court in the forum state – that is the New York State Court of Appeals- and the highest court in any other state. Rather petitioner expresses dissatisfaction with her then counsel, Stuart A. Jackson, Esq., who is not a party to these proceedings, for, among other things, the fact that no timely appeal of the Judgment was filed. To the extent petitioner seeks redress against her former counsel, this is not the appropriate venue to adjudicate such complaints.

This is a civil tort action commenced by petitioner (as the plaintiff) in a New York State court of general jurisdiction, that is, in the Supreme Court of the State of New York, in the County of Nassau, by which petitioner (as plaintiff) sought to recover for personal injuries allegedly sustained on August 24, 2011 by reason of the purported negligence of a bus operator, with regard to his movement of the bus on which plaintiff was a passenger. There was no collision involved; rather, plaintiff's pleading contended that as the bus traversed the roadway, its movement was "sudden", "excessive" and unduly "abrupt." A common law negligence claim was asserted by petitioner (as plaintiff) against respondent (as defendant) MTA/Long Island Bus. *No federal statutes, rules or regulations were plead or involved in the disposition of this state court matter at any level.*

After the conclusion of pre-trial proceedings, the matter came on for a jury

trial in the state court system. At the time plaintiff was represented by Stuart A. Jackson, Esq. Consistent with the prevailing rules the trial was bifurcated¹ (meaning the liability phase would precede the damages phase). The jury trial on liability was conducted on November 5 and 6, 2015. On the latter date a unanimous jury determined that the bus operator was not negligent. The verdict was thereafter reduced to a judgment dismissing plaintiff's complaint, which judgment was entered by the Nassau County Clerk on April 22, 2016 and served on both plaintiff and plaintiff's trial counsel with notice of entry on May 13, 2016.

As relates to the judgment, plaintiff who was, by then, *pro se*, filed a Notice of Appeal of the Judgment with the Nassau County Clerk on September 19, 2016, but which was three months past the statutorily mandated time-frame afforded by New York's Civil Practice Law and Rules ("CPLR") §5513(a) thereby depriving the state appellate court (that is, the Appellate Division, Second Department) of jurisdiction to entertain an appeal of the judgment.

Accordingly, on defendant's motion, by Order of the Appellate Division, Second Department dated and entered May 10, 2017, plaintiff's appeal of the Judgment was dismissed as untimely pursuant to CPLR §5513(a).

The May 10, 2017 order of the Appellate Division, Second Department *correctly* dismissed plaintiff's appeal as untimely. Indeed, plaintiff did not dispute in the state court, nor in this court that her appeal of the Judgment was untimely. Rather she blames her former attorney, Stuart A. Jackson, Esq. for having

¹ Uniform Rules for the New York State Trial Courts 22 NYCRR §202.42

“forgotten” to appeal from the Judgment. However, any dispute plaintiff may have with her former counsel was not grounds to ignore the statutory constraint.

Thereafter plaintiff sought to appeal to the highest court in New York State, that is, the New York State Court of Appeals, who declined discretionary review, per its order dated and entered September 12, 2017.

Even assuming *arguendo*, jurisdiction of this court, none of the considerations listed by Rule 10 of this court² are present in the case *sub judice*.

OBJECTION TO JURISDICTION OF THIS COURT

Respondent objects to the jurisdiction of this court. This court is without jurisdiction under 28 U.S.C. §1257(a).³ Indeed petitioner does *not* assert the jurisdiction of this court under that statute (or under any other statute) but merely contends in her jurisdictional statement that “The [*presumably* NYS] Court of Appeal’s Clerk’s Office advised me that I could make a Motion to the United States Supreme Court in Washington D.C. with respect to reviewing the case” (Petition at p. 3).

Additionally, because petitioner seeks to premise review on actions that themselves were untimely, i.e., an untimely motion to set aside the verdict; and an

² Sup. Ct. Rule 10

³ 28 U.S.C. §1257(a) states:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

untimely notice of appeal of a judgment, petitioner's persistence in thereafter litigating the matter despite the foundational untimeliness cannot create jurisdiction even if the last activity in state court was the issuance of an Order dated September 12, 2017 by the New York State Court of Appeals declining discretionary review of an appellate division order dismissing the untimely appeal.

STATEMENT OF THE CASE

As indicated, this is a civil action commenced in the Supreme Court of the State of New York, County of Nassau⁴, whereby petitioner (then designated as plaintiff), Sororazam Bethune, alleges she sustained personal injuries on August 24, 2011 when she was a passenger on an N79 bus, allegedly consequent to the negligence of the bus operator who, according to plaintiff's complaint, "suddenly, abruptly and with excessive, unnecessary and undue force, swerved and steered said bus". (See ¶8 of Plaintiff's Verified Complaint which is set forth, together with the Summons, in Resp. App. 1)⁵

Plaintiff claims that the movement of the bus caused her to lose her balance and, while she did not fall, she claims to have hit her left ankle on a chair. There was no contact between the bus and any other vehicle.

Respondent (then designated as defendant) denied plaintiff's assertions of negligence on the part of the bus operator by its answer dated November 9, 2012

⁴ In New York State this is a trial level court and a court of original instance.

⁵ Respondent has submitted appendices setting forth documents referred to in this Brief in Opposition. The appendices submitted by respondent will be cited herein as "Resp. App." followed by the number designation of the document.

and served on plaintiff's original counsel of record, Law Offices of Kevin A. McCarthy. (See, Resp. App. 2 – Answer of defendant together with proof of service).

After a period of pre-trial disclosure, defendant had moved pursuant to CPLR Rule 3212 for summary judgment in its favor. (See, Resp. App. 3 – defendant's Notice of Motion dated April 14, 2015 and supporting affirmation of even date (without exhibits)). Such motion was denied by Order of Hon. Angela A. Iannacci dated July 6, 2015 (Resp. App. 4) as the judge perceived that there was a factual dispute precluding the grant of a judgment as a matter of law

The Iannacci Order (Resp. App. 4) is mentioned herein only to explain its context, since petitioner quotes from that court's decision (Petition at p. 5, ¶2). The Iannacci Order, however, has no relevance to the issues sought to be raised before this court.

The matter thereafter proceeded to trial, which, according to applicable rules, was bifurcated. The liability trial was conducted before the Hon. Thomas Feinman in the Supreme Court, Nassau County on November 5 and 6, 2015 which resulted in a defense verdict. A unanimous jury determined that defendant MTA Long Island Bus was not negligent. (See Resp. App. 5 - relevant pages of the trial transcript - at page 155).⁶

⁶ Petitioner makes a misstatement of fact to this court when she falsely asserts (e.g., Petition at p. 23, ¶20) that the trial judge told the jury not to waste their time on this case and they should decide it in the same day and go home. To the contrary, as reflected in the trial transcript the jury was told just the opposite, that is, they were instructed that the matter was very important to the parties and so they should give the matter careful deliberation and should take as much time as they needed to decide the issues. (See Resp. App. 5 – Trial Transcript at pps. 146-149). Petitioner also mistakenly states that the liability trial was one day (Petition at p. 4) when in fact it was two days. (See Resp.

While during the trial proceedings defense counsel had moved for a directed verdict, the court deferred ruling on same, and, after the defense verdict, denied the motion as moot (See Resp. App. 5 – relevant pages of the trial transcript at page 155).⁷

Because, at the liability trial, the jury found no negligence on the part of the respondent, the matter did not proceed to a damages trial.⁸

Petitioner's then counsel, Stuart A. Jackson, Esq., moved by Order to Show Cause requesting that Judge Feinman set aside the defense verdict. However, such motion was untimely. Under New York State Civil Practice Rules and Laws ("CPLR") Rule 4405, "A motion under this article [i.e. to set aside a verdict] shall be made before the judge who presided at the trial within fifteen days after decision, verdict or discharge of the jury." The verdict in the above-captioned matter was rendered, and the jury discharged on November 6, 2015. See Resp. App. 5 – Trial Transcript at p.

App. 5 – Trial Transcript cover)

⁷ Petitioner makes a misstatement of fact to this court when she falsely asserts (e.g., Petition, at p. 23, §E) that defense counsel moved the trial court for a directed verdict *outside* the presence of her counsel. Such motion for a directed verdict was made by defense counsel in the presence of petitioner's (plaintiff's) then counsel, Stuart A. Jackson, Esq., as reflected by the transcript of the trial proceedings before Judge Feinman which prove the presence and participation by plaintiff's counsel in the oral argument before the court on defense counsel's motion (Resp. App. 5 – Trial Transcript at pps. 151-154). The court reserved decision (Resp. App. 5 – Trial Transcript at p. 154), and thereafter denied defendant's motion as moot after the jury returned a verdict in defendant's favor (Resp. App. 5 – Trial Transcript at p. 155).

⁸ Accordingly, petitioner's discourse as to her alleged injuries and the numerous medical records appended to her motion papers were *not* part of the liability trial conducted before Judge Feinman and are *de hors* the reviewable record. As liability was determined in favor of the defendant a trial on damages was not necessary. Thus the issue of whether or not petitioner's alleged injuries were causally related to the bus "accident" was not litigated, and plaintiff's statements in this regard are *ipse dixit* pronouncements that were never established, and which are disputed by the respondent.

155.

According to New York State law, CPLR §2211, "A motion on notice is made when a notice of the motion or an order to show cause is served." Plaintiff's Order to Show Cause was served on November 30, 2015, a full twenty-four (24) days after the verdict was rendered. Therefore, Plaintiff's Order to Show Cause to set aside the verdict in this matter was untimely. See, Resp. App. 6 - Defendant's Affirmation dated January 7, 2016 at ¶¶8-9 (without exhibits) submitted in opposition to plaintiff's motion to set aside the verdict wherein defendant opposed plaintiff's motion on timeliness grounds and also on the merits.

Plaintiff's *untimely* motion to set aside the defense verdict was denied by Order of Hon. Thomas Feinman dated March 1, 2016. Resp. App. 7.⁹

The verdict was then reduced to a judgment that was entered on April 22, 2016 in favor of the defendant MTA Long Island Bus dismissing plaintiff's complaint. (See, Resp. App. 8 - Judgment with Notice of Entry and proof of its service by mail on May 13, 2016 on both the petitioner and on Stuart A. Jackson, Esq., the attorney who represented petitioner during the liability trial.)

Petitioner first attempted to pursue an appeal, only of the Order of Judge Feinman dated March 1, 2016 and entered on March 2, 2016. However, the Appellate Division, Second Department by its order dated June 30, 2016 dismissed

⁹ Petitioner does not dispute that her counsel's motion to set aside the defense verdict was untimely. To the contrary, it is petitioner's contention that her attorney committed legal error in this regard. However, such contention is not a matter properly before this court.

the appeal of Judge Feinman's Order on the ground that the right of direct appeal of that order terminated upon the entry of the final judgment (so no appeal lied from that order). (See, Resp. App. 9 - Order of Appellate Division, Second Department dated June 30, 2016).

Nevertheless petitioner continued pursuing an appeal of Judge Feinman's Order, in seeking review by the New York State Court of Appeals (the highest court of the state). In this regard plaintiff filed a Notice of Appeal dated July 14, 2016 (Resp. App. 10) directed to the New York State Court of Appeals (which was improper); moved the New York State Court of Appeals for leave to appeal the Order of the Appellate Division, Second Department dated June 30, 2016; and, also sought poor person relief. The New York State Court of Appeals on its own initiative requested briefing on the jurisdictional issues. A copy of the letter brief filed by defense counsel dated August 3, 2016 is set forth in Resp. App. 11; A copy of the Affirmation of defense counsel dated July 22, 2016 (without exhibits) submitted in opposition to plaintiff's motion for leave to appeal the Order of the Appellate Division, Second Department dated June 30, 2016 to the New York State Court of Appeals is set forth in Resp. App. 12.

By Order of the New York State Court of Appeals dated and entered *September 8, 2016* (Resp. App. 13), petitioner's appeal of Judge Feinman's "March 2016 Supreme Court order and the April 2016 Supreme Court Judgment [were] dismissed... as untimely" citing CPLR §5513(a). While respondent disputes that

certiorari could properly be taken to this court in the absence of any Rule 10 considerations, or outside the scope of 28 U.S.C. §1257(a), nevertheless, it should be noted that plaintiff (petitioner) sought no relief from this court as to the September 8, 2016 final disposition of plaintiff's attempted appeals of the March 2016 Order and of the April 2016 Judgment by New York State's court of last resort. Thus, petitioner is time-barred from review of the *September 8, 2016* Order of the New York State Court of Appeals (Resp. App. 13) by reason of the 90 day deadline imposed by 28 U.S.C. §2101 which elapsed without review having been sought in this court. See also Sup. Ct. Rule 13.1.

Instead, what plaintiff (petitioner) did, was to file *another* (untimely) Notice of Appeal (dated September 18, 2016), with the Nassau County Clerk (that is, in the court of original instance, the Supreme Court of the State of New York, County of Nassau, again attempting to appeal the April 2016 judgment. (See Resp. App. 14 - Plaintiff's Notice of Appeal dated September 18, 2016).¹⁰

¹⁰ Petitioner states that she was "given a chance to file Untimely Notice of Appeal as Prose, given a new Docket Number to appeal" (Petition at p. 20, ¶15, last two lines). Such suggests some type of approval was given to petitioner from some unspecified entity to file an untimely Notice of Appeal. That was not the case. The Nassau County Clerk accepted plaintiff's untimely Notice of Appeal dated September 18, 2016 for filing in accordance with CPLR Rule 2102(c) which provides that "a clerk shall not refuse to accept for filing any paper presented for that purpose" unless there is a specific direction not to do so. When tendering a Notice of Appeal for filing in the lower court, two additional copies of the Notice of Appeal must be presented to the clerk. (Rules of Appellate Division, Second Department 22 NYCRR §670.3) The reason for multiple copies is that the lower court then forwards the two copies to the Appellate Division, Second Department. (Rules of Appellate Division, Second Department 22 NYCRR §670.3) Thereafter, for administrative purposes, each new filing in the Appellate Division, Second Department is issued a docket number. It is therefore of no moment that a docket number was assigned by the Appellate Division, Second Department in connection with plaintiff's September 18, 2016 Notice of Appeal (Resp. App. 14).

Along these same lines petitioner misstates in in her QUESTIONS PRESENTED at Petition, item

By Notice of Motion dated March 6, 2017, defendant moved to dismiss plaintiff's September 18, 2016 Notice of Appeal pursuant to CPLR §5513 by reason that it was time-barred. See, Resp. App. 15 - defendant's Notice of Motion dated March 6, 2017, and the supporting affirmation of defense counsel of even date (without exhibits) and Resp. App. 16 - Reply Affirmation of defense counsel dated March 29, 2017 (without exhibits).

This motion practice culminated in the unanimous Order of the Appellate Division, Second Department dated May 10, 2017 (Resp. App. 17) dismissing plaintiff's appeal of the April 2016 Judgment by reason that it was time-barred pursuant to CPLR §5513(a).

Thereafter, plaintiff sought review of the Order of the Appellate Division, Second Department dated May 10, 2017 (Resp. App. 17) by the New York State Court of Appeals. That court *sua sponte* invited comment on whether the court had jurisdiction. Defendant submitted a letter brief dated June 28, 2017 explaining, *inter alia*, that none of the bases set forth in CPLR §5601 would permit an appeal as of right to the New York State Court of Appeals (Resp. App. 18). An Affirmation of defense counsel dated June 23, 2017 was also submitted in opposition to plaintiff's motion for leave to appeal and other relief. See Resp. App. 19 –

Q5, top of p. iii that, "Thereafter Appellate Division allowed me to file Untimely Notice of Appeal from the Judgment due to legal Mis-representation..." The appellate court permitted no such thing as explained above. Rather petitioner, on her own initiative, and without any court's "approval" filed an untimely Notice of Appeal of the Judgment with the Nassau County Clerk's office. Moreover, despite petitioner's numerous references and criticisms of her former attorney, any dispute she may have with him is not the subject of the personal injury action she brought against the bus company.

Affirmation in Opposition dated June 23, 2017 (without exhibits).

The New York State Court of Appeals dismissed plaintiff's appeal and denied plaintiff's motion per its Order dated September 12, 2017 (Resp. App. 20).

Thereafter plaintiff petitioned this court for a *writ of certiorari* which is the matter *sub judice*.

ARGUMENT

Plaintiff concedes to this court that no timely appeal was taken of the April 22, 2016 judgment. Indeed, in blaming the untimeliness of the appeal of the Judgment on her trial counsel, petitioner asserts to this court that "My attorney did not Appeal from the JUDGMENT entered April 22, 2016, and the Appellate Division 2nd J.D. Dismissed my case because my attorney forgot to file from the Judgment" (Petition at p. 20, ¶15).

This court is not imbued with the power to correct an error by a litigant or litigant's counsel in failing to timely serve and file a Notice of Appeal as is the circumstance in the case *sub judice*.¹¹

Petitioner is apparently dissatisfied with her discharged counsel.¹² However,

¹¹ We take no position as to who, as between petitioner and her former counsel, had failed to timely file a Notice of Appeal of the Judgment entered on April 22, 2016.

¹² Petitioner unilaterally discharged her counsel sometime in May 2016. Petitioner states, "I released my attorney which was approved by the Appellate Division" (Petition at p. 20, ¶15, third line from bottom). The first part of that sentence is accurate, that is, according to document's petitioner submitted earlier in these proceedings, petitioner had discharged her attorney. The second part of petitioner's representation is not, however, accurate. No approval of the Appellate Division was required to be sought, nor was it sought by petitioner to discharge her own counsel.

this is not a proper forum for such grievances.

There is no dispute that no *timely* Notice of Appeal was filed in the Supreme Court, Nassau County with regard to the Judgment entered by the Nassau County Clerk on April 22, 2016.

The Appellate Division correctly applied the relevant New York State statute, CPLR §5513(a) which provides a mandatory time frame for a party to take an appeal as follows: “An appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry....”

On May 13, 2016, both plaintiff and plaintiff's then counsel, Stuart A. Jackson, Esq., were served with written Notice of Entry of the April 2016 Judgment (Resp. App. 8).

While CPLR §5513(a) provides a deadline to file a Notice of Appeal for no later than 30 days after service with Notice of Entry, where, as in this case, service was made by regular mail, an additional five (5) days is added pursuant to CPLR §5513(d) and CPLR Rule 2103, making the deadline 35 days. Thus, the 35 days from May 13, 2016 in which plaintiff had to file a Notice of Appeal of the Judgment expired on *June 17, 2016*, three months prior to *September 18, 2016*, the date of petitioner's Notice of Appeal of the Judgment (Resp. App. 14). Indeed this

Petitioner repeats her hybrid misstatement at p. 21, ¶16. As was petitioner's right, she discharged her former counsel. She then *informed* the Appellate Division, Second Department of the fact, which is different than having had the approval of that court.

mandatory statutory timeframe (that is 30 days, plus an additional five days for mailing) has been strictly enforced by the appellate courts of New York State. See, e.g. Ashton v. Morris M. Goldberg, P.C., 201 A.D.2d 602 (2nd Dept. 1994); Aetna Casualty & Surety Co., v. D'Elia, 149 A.D.2d 587 (2nd Dept. 1989); Bernstein v. Board of Appeals, 31 A.D.2d 650 (2nd Dept. 1968).

Plaintiff's *pro se* status does not relieve her of the obligation for timely filing a Notice of Appeal. Pravda v. N.Y. State DMV, 286 A.D.2d 838 (3rd Dept. 2001).

Further, the New York State Court of Appeals has categorically held that "[t]he power of an appellate court to review a judgment is subject to an appeal being timely taken". Hecht v. City of New York, 60 N.Y.2d 57, 61, (1983). See also, Ocean Accident & Guarantee Corp. v. Otis Elevator Co., 291 N.Y. 254 (1943); Malik Coughlin, 127 A.D.2d 948 (3rd Dept. 1987).

Indeed, because it is a jurisdictional defect, a motion to dismiss an appeal can be raised at any time, even at oral argument of an appeal. Roy v. National Grange Mut. Ins. Co., 85 A.D.2d 832 (3rd Dept. 1981). Thus, the failure of plaintiff to have timely served/filed a Notice of Appeal of the Judgment in the office of the Nassau County Clerk was a fatal jurisdictional defect.

Therefore, by reason that plaintiff's Notice of Appeal dated September 18, 2016 (Resp. App. 14) was untimely by some three months, plaintiff's Notice of Appeal dated September 18, 2016 was correctly dismissed by the Appellate Division, Second Department in its Order dated May 10, 2017 (Resp. App. 17) as

that court was without authority to entertain such untimely appeal.

Notably, a *jurisdictional* defect cannot be overcome by petitioner's contention that the failure to have timely filed a Notice of Appeal of the judgment lies with her former attorney, Mr. Stuart A. Jackson, Esq. To the extent petitioner has any dispute with her former attorney as to the handling of her case, this is not the forum to address such matters.

Accordingly, plaintiff's Notice of Appeal of the Judgment dated September 18, 2016 (Resp. App. 14) was *untimely*, and since dismissal of such appeal was mandated by application of CPLR §5513(a) and the jurisdictional constraints of the appellate court and dismissal was therefore properly granted.

There is no question of law for this court's review; there is no question of federal law for this court's review.

Moreover, in seeking leave to appeal to the New York State Court of Appeals, petitioner had failed to address the *certiorari* factors set forth in §500.22(b)(4) of the rules of the N.Y. App. Dept nor articulated any persuasive basis for that court's review. Petitioner made no claim to the New York State Court of Appeals that there is a conflict between the law in any of the four intermediate appellate divisions of the state requiring the highest court of the state's resolution on any legal issue; nor, suggest that the outcome of this litigation present any statewide implications or raise any novel issue. This is simply a matter of an unsuccessful litigant seeking to avail herself of further appellate review for what she *perceived* as wrongs committed

against her, but which were not established.

**PETITIONER'S STATED REASONS FOR SEEKING
REVIEW BY THIS COURT ARE OUTSIDE THE
SCOPE OF RULE 10 OF THE RULES OF THIS
COURT**

It is indeed significant that petitioner points to none of the considerations articulated by this court in Rule 10¹³ which sets forth the "character" of the reasons the court considers in determining a petition for a *writ of certiorari*. Inarguably this matter does *not* involve disposition of federal law *at all* much less involve a situation where a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

Thus, petitioner has advanced no reason within the "character" of considerations of Rule 10 warranting review by this court.

Rather, petitioner has advanced a myriad of "reasons" but which are non-reviewable by this court.

Petitioner's first asserted "reason" for petitioning this court is her claim that her trial counsel committed legal malpractice in failing to timely file a motion to set aside the verdict, and in failing to timely file a Notice of Appeal from the Judgment. (Petition at p. 20, item V, §A, ¶15). Petitioner blames the untimeliness of the appeal of the Judgment on her trial counsel, Mr. Jackson telling this court that "My attorney did not Appeal from the JUDGMENT entered April 22, 2016, and the

¹³ Sup. Ct. Rule 10

Appellate Division 2nd J.D. Dismissed my case because my attorney forgot to file from the Judgment” (Petition at p. 20, ¶15). As Mr. Jackson has not weighed in on this issue since he is a non-party, we do not know whether the reason a timely Notice of Appeal of the Judgment was *not* filed was because he “forgot.” Nor do we know what verbal exchange Mr. Jackson had with petitioner in relation to the Judgment. All we know in fact on this record is that *neither* Mr. Jackson, *nor* the plaintiff herself filed a *timely* Notice of Appeal of the April 2016 Judgment, and for that reason the appellate division properly invoked CPLR §5513 in dismissing the untimely appeal.

Complaints about Mr. Jackson whether for any purported malpractice in missing deadlines or in the handling of any monies (which petitioner also alludes to) are *not* matters for this court. Again, it must be noted that Mr. Jackson is *not* a party to these proceedings and any dispute petitioner may have with him is not properly before this court.

Petitioner further asserts that “obstruction of justice” occurred during the November 5, 2015 trial, contending that the presiding justice yelled at her and allegedly pressured her to accept a settlement offer. There was no evidence such had in fact occurred and such not reflected in the record.

Petitioner further asserts that she was having chest pains and had to testify under stress. No such claim was made during the trial. Moreover, the trial spanned two days, and if petitioner felt unwell she could have alerted her counsel before the

trial began, during a break in the proceedings, during the two hour lunch break, after the court session ended on November 5, 2015, or in the morning before the next court session on November 6, 2015.¹⁴ However, this is all collateral to the issues before this court.¹⁵ In any event, petitioner testified at length at the trial regarding her version of events while she was a passenger on the bus and it is not clear what, if any, connection she is attempting to make between her alleged physical condition and the fact that apparently the jury did not credit her testimony.

Petitioner's complaint that her attorney was not permitted to elicit testimony from her concerning her alleged injuries and her alleged income as a real estate broker is explained by the fact that the trial was bifurcated so the *only* issue before the jury was liability – not damages.

There is also discussion in the petition concerning petitioner's identification of the bus operator which argument lacks clarity, and in any event presents no

¹⁴ In fact, Judge Feinman specifically asked petitioner at the commencement of trial, before the jury was called in, whether she wanted to talk to her attorney and she declined. (See Resp. App. 5 - Trial Transcript at p.7 where Judge Feinman asks petitioner before the jury is brought in, "Do you want to talk to your attorney" to which petitioner answered, "I just want to get water your Honor.")

¹⁵ Parenthetically, in unrelated eviction proceedings commenced against petitioner in the Superior Court in Connecticut (*Shelton Properties, LLC v. Sororazam Bethune*), the court docket reflects that when the matter came on for trial in that court, in lieu of same, the parties entered into a stipulated judgment of possession, but with a stay of execution. Then, when the time came for petitioner to move out of the subject apartment, she instead sought on multiple occasions (unsuccessfully) to vacate the stipulated judgment asserting among other things, that the presiding judge had yelled at her and that she had chest pains and that the landlord's counsel had committed misconduct. See, Resp. App. 21, Reply Affidavit of Sorarazam Bethune in landlord/tenant litigation sworn to on June 30, 2017 without exhibits (Resp. App. 23, p.2, ¶¶2, 4, p. 3, ¶5(a), (c)); See also, Resp. App. 22, Petitioner's motion in landlord/tenant litigation to open judgment dated July 17, 2017 and the supporting affidavit of Sororazam Bethune sworn to on July 16, 2017 (without exhibits).

issue for this court's review. Petitioner's other complaints about the conduct of the trial are disjointed and confusing, and in any event present no cognizable basis for this court's review.¹⁶

Likewise, petitioner's "QUESTIONS PRESENTED" do not cogently state any discernable basis for this court's review. Indeed most of the "questions" are statements (or *misstatements* as the case may be), complaints about her former counsel and the presiding judge, and a discourse about the bus operator produced at trial. From even a liberal reading of the "QUESTIONS PRESENTED" could one divine any claim reviewable by this court.

To the extent petitioner comments on the September 8, 2016 Order of the New York State Court of Appeals (Resp. App.13), while no cognizable claim is apparent, nevertheless any complaint with regard to that order is long since time barred. 28 U.S.C. §2101; Sup. Ct. Rule 13.1

Therefore, petitioner's application to this court must be denied.

**THIS COURT SHOULD DENY PETITIONER'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS IN THIS COURT**

Denial of the petition for a *writ of certiorari* will render petitioner's concomitant application to proceed *in forma pauperis* in this court moot.

¹⁶ While respondent disputes any impropriety in the conduct of the proceedings below, for the sake of brevity, this document does not undertake to dissect each and every inaccuracy in the moving papers. The court is respectfully referred to Resp. App. 6 which rebuts petitioner's claims made at the trial level in her *untimely* bid to set aside the verdict.

Nevertheless respondent opposes such relief.

Petitioner's papers seeking *in forma pauperis* status reflect that she pays monthly installment for a car she financed, premiums for car insurance, and, therefore, necessarily for the incidentals that go with owning same including gas and maintenance; she pays life insurance premiums, and she takes two trips to Iran each year to collect her inheritance.

Petitioner asserts that she was funded the sum of \$380,000 against potential recovery from her lawsuits by a company Mayfield Settlement Funding and received these funds over the short span of a two year period from October 2014 to December 2016 which apparently petitioner has already spent, based on her assertions to this court.

No credible explanation has been given as to an expenditure of so large a sum in such a short expanse.

By plaintiff making reference to what she "owe[s]" Mayfield Settlement Funding, such is suggestive that petitioner is actually required to reimburse Mayfield regardless of the outcome of her litigation. However, a document petitioner submitted to this court entitled Mayfield Settlement Funding Security Agreement and Transfer of Proceeds (Petitioner's Exhibit 6 to her motion) contains this provision: "The repayment of this financial commitment *is contingent upon an award or settlement*" of one of plaintiff's litigation matters. From this it would

appear that repayment is *only* required in event of recovery.¹⁷

Unfortunately, petitioner is no stranger to the litigation system. Indeed the case *sub judice* is the later of two cases plaintiff brought against MTA Long Island Bus. The earlier case involved an alleged April 11, 2011 “accident.” That action commenced under Nassau County Index Number 4148/2012 was thereafter dismissed by Order of Hon. John M. Galasso entered March 14, 2014, which dismissal was then unanimously affirmed by the Order of the Appellate Division, Second Department dated April 27, 2016 (Resp. App. 23). The New York State Court of Appeals denied leave to appeal per its September 8, 2016 Order (Resp. App. 24).

Petitioner’s moving papers also contain a litany of allegations with regard to injuries she supposedly sustained at the hands of a “Dr. Monhian” per paragraph 3 of petitioner’s moving Affidavit sworn to on March 2, 2018 relating to her application for *in forma pauperis* relief. In this regard petitioner had commenced a medical malpractice action in the Supreme Court, Nassau County against Dr. Nathan Monhian and subsequently the defendant, Dr. Monhian was granted summary judgment and plaintiff’s complaint dismissed per the Order of Hon. Denise L. Sher entered on October 19, 2015. (See, Resp. App. 25 – Order of Hon. Denise L. Sher dated October 19, 2015).¹⁸

¹⁷ If there are any other documents relating to petitioner’s agreement with Mayfield that contain any contrary provisions, we are not privy to same.

¹⁸ Petitioner has appealed Judge Sher’s Order and according to the Appellate Division, Second Department, such appeal is pending and awaiting a date for oral argument.

It is therefore submitted that the proliferation of litigation by petitioner which has been shown to lack merit, weighs in favor of declination of the exercise of this court's jurisdiction to grant *in forma pauperis* relief.

It is therefore respectfully requested that petitioner be denied leave to proceed *in forma pauperis* in this court.

**GENERAL OBJECTIONS TO PETITIONER'S
MISUSE OF COURT PROCEEDINGS**

We are constrained to make further comment.

While we understand that a *pro se* litigant's papers may not be held to the same standard as those of a member of the bar, nevertheless, we have seen in far too many of petitioner's submissions in this case, and in her other court matters containing liberal use of criticisms, accusations, and the use of derogatory language impugning Judge Feinman, various counsel in the office of the undersigned, and her own (former) attorney.

Additionally, most of petitioner's statements to this court are *dehors* the record and clearly outside the scope of the narrow issue raised to this court. Inarguably, plaintiff's notice of appeal of the Judgment was three months late and dismissal of the appeal was therefore warranted and appropriately issued.

CONCLUSION

For all the reasons set forth above, the petition for a *writ of certiorari* must be denied.

Executed on the 5th day of April, 2018.

Respectfully submitted,



MICHAEL J. PAGLINO, ESQ.

COUNSEL OF RECORD

ARMIENTI, DEBELLIS, GUGLIELMO &
RHODEN, LLP

39 Broadway, Suite 520
New York, New York 10006
(212) 809-7074
mpaglino@adgrlaw.com

Counsel for Respondent