

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ELIAS KIFLE AND ETHIOPIAN REVIEW, INC.,

Petitioners,

v.

JEMAL AHMED,

Respondent.

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

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR
WRIT OF CERTIORARI

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RULE 29.6 STATEMENT

Petitioner Elias Kifle is not a corporate entity.

Petitioner Ethiopian Review, Inc. was a private corporation without a parent company. No publicly traded company or corporation owns an interest in Ethiopian Review, Inc.

**TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE ELEVENTH CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30.2, Petitioners Elias Kifle and Ethiopian Review, Inc. respectfully request a 60-day extension of time, up to and including October 22, 2018, to file a joint petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit to review that court's decision in *Ahmed v. Kifle and Ethiopian Review, Inc.*, 728 Fed. Appx. 934 (11th Cir. 2018) (attached as Exhibit A).

In the case below, the Northern District of Georgia dismissed Petitioner Kifle—a diversity-destroying, Ethiopian citizen previously representing himself *pro se*—to reinstate a default judgment against Petitioner Ethiopian Review, Inc., which had previously been dismissed due to lack of subject-matter jurisdiction. (Attached as Exhibit B.) The Eleventh Circuit heard oral argument on March 9, 2018, and it issued its judgment on March 19, 2018. On May 25, 2018, the Eleventh Circuit denied Petitioners' request for panel or *en banc* rehearing. (Attached as Exhibit C.)

The petitioners intend to file a joint petition seeking review of this judgment under Supreme Court Rule 12.4. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will expire without an extension on August 23, 2018. *See* Supreme Court Rule 13.1 (“[A] petition for a writ of certiorari to review a judgment . . . is timely when it is filed . . . within 90 days after entry of judgment.”); *id.* at 13.3 (“[I]f a petition for rehearing is timely filed in the lower court . . . the time to file the petition for a writ of certiorari . . . runs

from the date of the denial of hearing.”). This application is timely because it has been filed at least ten days before the date the petition is due.

1. This case presents a substantial and important question of federal law: Whether a decision to cure a subject-matter jurisdiction defect by dismissing a non-diverse, diversity-destroying party after judgment has been entered should be reviewed de novo or for abuse of discretion. Below, the Eleventh Circuit reviewed the district court’s decision finding Petitioner Kifle to be a dispensable party under Federal Rule of Civil Procedure 19 and dismissing him to preserve default judgment under an abuse of discretion standard. In so doing, the Eleventh Circuit reinforced a circuit split about which standard of review should apply for Rule 19 determinations. *See Keweenaw Bay Indian Cmty. v. Michigan*, 11 F.3d 1341, 1346 (6th Cir. 1993) (“[W]e review a Rule 19(b) determination that a party is indispensable to an action de novo.”). The Supreme Court has not weighed on this split despite an opportunity to do so in *Republic of Philippines v. Pimentel*, where it demurred because the judgment at issue “could not stand ... [w]hatever the appropriate standard of review.” 553 U.S. 851, 864 (2008).

2. Fish & Richardson P.C. and Winston and Strawn L.L.P represent both petitioners in a *pro bono* capacity. Petitioners’ counsel have each had substantial obligations to other clients, limiting their ability to work on the petition for certiorari for the instant case as much as they would have liked. For example, Noah Graubart, counsel of record, had two weeks of depositions in Korea in July. *See SEVEN*

Networks LLC v. Samsung Electronics Co. Ltd., No. 2:17-cv-00441-JRG (E.D. Tex.). As another example, Adam Kessel has a district court litigation that currently requires significant briefing for multiple issues, see *Citrix Systems, Inc. v. Avi Networks, Inc.* Case 1:17-cv-01843-VAC-SRF (D. Del.), and twelve pending appeals before the United States Court of Appeals for the Federal Circuit, some of which have briefs due in the next several weeks. As another example, over July and August, Danielle Williams had multiple depositions. See *AVX Corp. v. Corning Incorp. et al.*, Case No. 5:15-cv-00543-FL (E.D.N.C.). Finally, Jonathan Bright has a district court litigation that unexpectedly resumed in July 2018 following a lengthy stay and now requires significant discovery and briefing efforts. See *MLC Intellectual Property, LLC v. Micron Technology, Inc.*, Case No. 14-cv-03657-SI (N.D. Cal.). Each of the foregoing counsel have responsibilities for multiple active district court litigations. In light of these obligations, petitioners respectfully request an extension of time so that they can prepare a petition of the highest quality for this court.

3. Accordingly, the petitioners respectfully request that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including October 22, 2018.

CONCLUSION

For the foregoing reasons, Elias Kifle and Ethiopian Review, Inc. respectfully request that this Court grant their petition for a writ of certiorari.

Respectfully submitted this 13th day of August 2018,

/s/ Noah C. Graubart

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CERTIFICATE OF SERVICE

I hereby certify that on this date August 13, 2018, copies of the foregoing document were served on all parties required to be served, via email and first class mail, to their counsel as indicated below.

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Counsel for Respondent Jemal Ahmed

/s/ Noah C. Graubart
Counsel for Petitioners Elias Kifle
and Ethiopian Review, Inc.

EXHIBIT A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17008

D.C. Docket No. 1:12-cv-02697-SCJ

JEMAL AHMED,

Plaintiff - Appellee,

versus

ELIAS KIFLE,
ETHIOPIAN REVIEW, INC.,

Defendants - Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

(March 19, 2018)

Before WILSON, and DUBINA, Circuit Judges and GOLDBERG, * Judge.

PER CURIAM:

Defendants/Appellants Ethiopian Review, Inc. (“ER”) and Elias Kifle (“Kifle”) appeal the district court’s order reinstating a default judgment against ER and dismissing Kifle from the case. For the reasons that follow, we affirm.

I. BACKGROUND

This case arises out of the publication by Kifle and ER of allegedly false and defamatory statements that Appellee Jemal Ahmed (“Ahmed”), a private business man, runs a vast human trafficking operation. According to a March 2012 post on ER’s website, this illegal scheme allegedly involves trafficking of underage girls to the Middle East where they are reportedly held against their will and subjected to horrific abuses. Immediately after learning of the publication, Ahmed advised Kifle that the statements were untrue and demanded that they be removed from the website. Kifle not only refused to do so, but further dared Ahmed to sue him and, thereafter, republished the article. Given the very serious nature of the charges and Kifle’s refusal to remove the defamatory material, Ahmed filed a defamation suit against both Kifle and ER.

* Honorable Richard W. Goldberg, Judge for the United States Court of International Trade, sitting by designation.

After two years of court proceedings—which included ER’s failure to appear and significant misconduct by Kifle—the case was litigated to a final judgment in the district court. After a default by Kifle and ER and a subsequent bench trial for damages, the district court entered an award for Ahmed of \$428,910.00 for compensatory and punitive damages, costs and attorneys’ fees, along with injunctive relief.

Approximately five months after the judgment had been entered, Kifle and ER moved to dismiss the case for lack of complete diversity between the parties. The district court granted that motion and vacated its previous judgment in Ahmed’s favor. Ahmed appealed that order to our court and moved us to sever Kifle to preserve diversity jurisdiction, or, in the alternative, to remand to the district court to decide the still-pending motion to sever. We granted that motion and remanded the case to the district court. On remand, the district court granted Ahmed’s motion and severed Kifle from the judgment, thus preserving diversity jurisdiction and reinstating the judgment as to ER. Kifle and ER then perfected this appeal.

II. ISSUE

Whether the district court erred in dismissing Kifle from the case to create subject-matter jurisdiction on the basis that Kifle was neither a required party nor

an indispensable party pursuant to Fed. R. Civ. P. 19 and thereby improperly reinstated the default judgment against ER.

III. STANDARD OF REVIEW

Both Fed. R. Civ. P. 19 and Fed. R. Civ. P. 21 determinations are reviewed for an abuse of discretion. *See United States v. Rigel Ships Agencies, Inc.*, 432 F.3d 1282, 1291 (11th Cir. 2005); *Laker Airways, Inc. v. British Airways, PLC*, 182 F.3d 843, 847 (11th Cir. 1999); *Mann v. City of Albany*, 883 F.2d 999, 1003 (11th Cir. 1989); *Fritz v. Am. Home Shield Corp.*, 751 F.2d 1152, 1154 (11th Cir. 1985).

IV. DISCUSSION

First, we conclude that the district court correctly noted that by defaulting both ER and Kifle are deemed to have admitted the well-pled allegations in the complaint. *See Giovanni v. Fabec*, 804 F.3d 1361, 1366 (11th Cir. 2015). This court has also recognized that a default judgment is a legitimate sanction for a party's repeated refusal to cooperate with court proceedings and to obey court orders, as was the case here. *See African Methodist Episcopal Church, Inc. v. Ward*, 185 F.3d 1201, 1203 (11th Cir. 1999).

Contrary to Kifle and ER's claims, we conclude that the district court properly found that ER was co-responsible with Kifle for the posting of the

defamatory content in question. That finding was based on evidence submitted by Ahmed from the website itself, which solicited donations to ER to be used in support of the website. Kifle's belated self-serving affidavit claiming sole responsibility for the website cannot rebut the admission. Moreover, the affidavit cannot evade the consequences of ER's failure to appear and the default judgment entered against it.

This appeal really turns on Kifle and ER's challenge of the district court's finding that Kifle is not a required party under Fed. R. Civ. P. 19(a). Rule 19 presents "a two-part test for determining whether an action should proceed in a nonparty's absence." *City of Marietta v. CSX Transp., Inc.*, 196 F.3d 1300, 1305 (11th Cir. 1999). This court has held that the relevant inquiry, in the first step, "is whether complete relief can be afforded in the present procedural posture, or whether the nonparty's absence will impede either the nonparty's protection of an interest at stake or subject parties to a risk of inconsistent obligations." *Id.* (citing Fed. R. Civ. P. 19(a)(1)–(2)). Because defendant ER was the corporate vehicle through which the website was funded and operated, we conclude that the district court correctly found that Kifle was not a required or indispensable party and thus could be severed under Rule 21 of the Federal Rules of Civil Procedure. Indeed, complete relief in the form of money damages can be afforded to Ahmed from ER,

which was found jointly and severely liable for defamation in the district court.

We also conclude that there has been no showing of prejudice to either Kifle or ER resulting from Kifle's severance.

In *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 109 S. Ct. 2218 (1989), the Supreme Court of the United States affirmed the court of appeals' dismissal of a non-diverse party, noting that "given that all of the [defendants] are jointly and severally liable, it cannot be argued that [one defendant] was indispensable to the suit." *Id.* at 838, 109 S. Ct. at 2226.

Accordingly, for all of the above reasons, we affirm the district court's order dismissing Kifle from this case and in its reinstatement of the judgment against ER.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

March 19, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-17008-GG
Case Style: Jemal Ahmed v. Elias Kifle, et al
District Court Docket No: 1:12-cv-02697-SCJ

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against the appellant.

The Bill of Costs form is available on the internet at www.ca11.uscourts.gov

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Joe Caruso, GG at (404) 335-6177.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1A Issuance of Opinion With Costs

EXHIBIT B

grounds for this Court's jurisdiction asserted in the complaint was diversity of citizenship, pursuant to 28 U.S.C. § 1332(a). *Id.* p. 4, ¶12.

Based on a demonstrated "pattern of noncompliance with the rules of procedure and this Court's orders" over the course of the litigation in this case, Magistrate Judge Scofield recommended granting default judgment against Kifle. Doc. No. [68], pp. 16, 19. Kifle filed no objections to the magistrate judge's report and recommendation ("R&R), and this Court adopted the R&R. Doc. No. [70].

Ethiopian Review never responded to the complaint or to Plaintiff's motion for default judgment and, because the well-plead allegations in the complaint established a basis for liability, this Court entered default judgment against Ethiopian Review. Doc. No. [92], p. 4-5; Doc. No. [93].

After filing their notice of appeal in this case, Defendants' filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction. Doc. No. [139]. The Eleventh Circuit issued a remand in this case was "for the limited purpose of adjudicating [the] pending motion to vacate and dismiss for lack of subject-matter jurisdiction." Doc. No. [156], p.2.

II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction, and are “empowered to hear only those cases within the judicial power of . . . Article III of the Constitution or otherwise authorized by Congress.” Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994). Because subject-matter jurisdiction involves a court’s power to hear a case, it cannot be forfeited or waived and may be raised by a party “at any stage in the litigation, even after trial and the entry of judgment.” Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006).

In order for a federal court to have jurisdiction under 28 U.S.C. § 1332, complete diversity between the parties is required. See Cabalceta v. Standard Fruit Co., 883 F.2d 1553, 1557 (11th Cir.1989). “Thus the presence of at least one alien on both sides of an action destroys diversity.” Id.

A prior version of § 1332 stated: “For the purposes of this section, . . . an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.” 28 U.S.C. § 1332(a) (2005). However, after a change to the statute in 2011, this language was eliminated. See 28 U.S.C. § 1332(a). The current version of the statute only discusses an alien’s domicile when excepting from the grant of jurisdiction any action “between citizens of a State and citizens or

subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State.” Id. § 1332(a)(2).

III. ANALYSIS

Based on the allegations in the complaint, Plaintiff and Kifle are both aliens. Doc. No. [1] pp. 2-3, ¶¶3, 5. The fact that Kifle is a permanent resident of the United States and domiciled in Georgia does not make him a citizen of Georgia for the purposes of § 1332. Under the current version of § 1332, an alien’s permanent residence status can only destroy complete diversity, not to create it. See 28 U.S.C. § 1332(a)(2). Kifle’s presence as a defendant in this action would, thus, prevent this Court from exercising diversity jurisdiction. See Cabalceta, 883 F.2d at 1557.

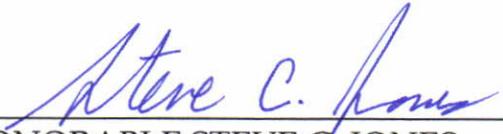
This court notes that Plaintiff has also filed a Motion to Sever Defendant Kifle. Doc. No. [157]. However, this case was remanded only “for the limited purpose of adjudicating [the] pending motion to vacate and dismiss for lack of subject-matter jurisdiction.” Doc. No. [156], p.2. Thus, this Court does not reach the question of whether Kifle could properly be dismissed from the case in order to preserve subject-matter jurisdiction.

IV. CONCLUSION

For the foregoing reasons, Defendants’ Motion to Dismiss (Doc. No. [139]) is **GRANTED**. The default judgment in this case (Doc. No. [93]) is hereby **VACATED**

and this case is **DISMISSED** for lack of subject-matter jurisdiction. Defendants' Motion to Stay Enforcement of the Judgments (Doc. No. [144]) is **DENIED** as moot.

IT IS SO ORDERED, this 18th day of November, 2015.



HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE

EXHIBIT C

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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May 25, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-17008-GG
Case Style: Jemal Ahmed v. Elias Kifle, et al
District Court Docket No: 1:12-cv-02697-SCJ

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joe Caruso, GG/lt
Phone #: (404) 335-6177

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17008-GG

JEMAL AHMED,

Plaintiff - Appellee,

versus

ELIAS KIFLE,
ETHIOPIAN REVIEW, INC.,

Defendants - Appellants.

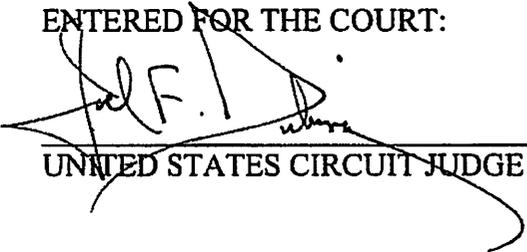
Appeal from the United States District Court
for the Northern District of Georgia

BEFORE: WILSON and DUBINA, Circuit Judges, and GOLDBERG,* Judge.

PER CURIAM:

The petition(s) for panel rehearing filed by the Appellants is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

*Honorable Richard W. Goldberg, Judge for the United States Court of International Trade, sitting by designation.

ORD-41

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17008-GG

JEMAL AHMED,

Plaintiff - Appellee,

versus

ELIAS KIFLE,
ETHIOPIAN REVIEW, INC.,

Defendants - Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

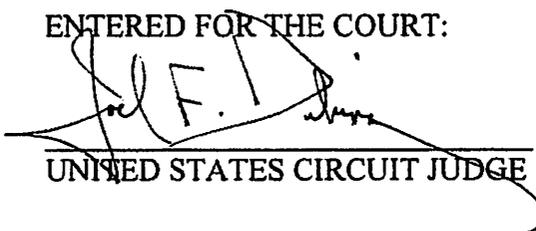
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON and DUBINA, Circuit Judges, and GOLDBERG,* Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

*Honorable Richard W. Goldberg, Judge for the United States Court of International Trade, sitting by designation.

ORD-42