NO. _____

THE SUPREME COURT
OF THE UNITED STATES

SCOTT RICHARD PENDERGRAFT;
DANIELLE PAULINE PENDERGRAFT,
Applicants-Appellants-Defendants,

v.

NETWORK OF NEIGHBORS, INCORPORATED,
Respondent-Appellee-Plaintiff.

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

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the United States Supreme Court and
Circuit Justice for the Fifth Circuit

Scott Richard Pendergraft
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To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Fifth Circuit:

Applicants-Defendants-Appellants, Scott Pendergraft and Danielle Pendergraft (collectively "Applicants") respectfully request an extension of time to file a petition for writ of certiorari. The deadline for Applicants to file their petition is Tuesday, November 6, 2018, which is ninety days from August 8, 2018, the date when the Court of Appeals for the Fifth Circuit issued an order affirming the District Court's order affirming the Bankruptcy Court's denial of their motion for new trial. Applicants recognize applications for extension should only be filed when absolutely necessary. For good cause set forth herein, Applicants ask that this deadline be extended by forty-five days so that the new deadline would be Friday, December 21, 2018.

BACKGROUND

This case arises from the United States Bankruptcy Court's denial of Applicants' Rule 9023 Motion for New Trial entered on July 11, 2017.

On October 22, 2012, Network of Neighbors, Inc. ("Respondent") filed a complaint to determine the dischargeability of an alleged debt owed by Applicants.[1] Applicants deny there is any debt owed Respondent. Debtors could not afford counsel and represented themselves pro se. They were eager to defend the case, were well-prepared, professional, and respectful

1 *Network of Neighbors, Inc. v. Scott R. Pendergraft, et al*, No. 12-03445 in the U.S. Bankruptcy Court for the Southern District of Texas

during a two-day bench trial which took place on October 6 and 7, 2016. However, during trial, Applicants were treated in a hostile and impatient manner by the Court and opposing counsel, prohibited by the Court from cross-examining Respondent or impeaching the credibility of a key witness, and the Court stated it did not have time to allow Applicants to go through the line items of the invoices which were the basis for Respondent's complaint. It is astounding and unacceptable that any Court would prevent a litigant, represented by counsel or pro se, from going through evidence in its defense, or from confronting the witnesses against him, especially evidence at the heart of the case. If it took longer than a two-day trial to accomplish this, then so be it, but it was crucial to Applicants' defense and to the Court's understanding of the facts. Applicants doubt the Court would have told a licensed attorney there "wasn't enough time" to hear his/her client's case. When Applicants tried to make an objection on the record or ask a question, they were abruptly told to sit down or were threatened with the U.S. Marshal, to the point where Applicants were intimidated and fearful of arrest as they simply tried to defend themselves.

The Bankruptcy Court entered its Opinion on May 11, 2017 determining the Applicants owed a debt to NON in the amount of $43,486.30 and that such debt was non-dischargeable due to defalcation in a fiduciary capacity under 11 U.S.C. 523(a)(4). Applicants filed a Motion for New Trial and Recusal of Judge, citing the hostility, gross inconsistencies in the Court's application of evidence, and errors in the Court's math calculations, among other

things. The Court's opinion attempted to dissect each and every line item on the subject invoices to arrive at its conclusions; however, it is very clear that because the Court did not allow Applicants to go through those line items at trial, it did not understand what the majority of those line items were or represented, and as a result its determinations about those line items were in error. Additionally, the Bankruptcy Court ignored written evidence and testimony provided in defense of Applicants and instead favored Respondent's key witness, who made three distinctly conflicting statements on the record about the subject matter of the complaint. The Bankruptcy Court's opinion made no sense given the evidence and was riddled with error. Applicants were left no choice but to believe the Court was prejudiced against them for some reason and they had been denied a fair trial.

Applicants believed their best remedy was to cite the errors and ask for a new trial, which the Bankruptcy Court denied. Applicants timely appealed to the United States District Court.[2] They filed their brief enumerating the Bankruptcy Court's many errors, and meticulously addressed the Court's misinterpretations or misunderstandings of each invoice line item. The District Court must not have thoroughly read Applicants' brief, supporting evidence or transcript. It stated in its ruling that managing a trial where there are pro se litigants can be "difficult" and "frustrating" for the judge and opposing counsel, as well as "pro se plaintiffs". Applicants were pro se defendants, not plaintiffs. If the District Court

2 *Scott Richard Pendergraft, et al v. Network of Neighbors, Inc.*, No. 4:17-CV-2297 in the U.S. District Court for the Southern District of Texas

read the trial transcript, it would not have seen any behavior from Applicants which would have produced a difficult or frustrating experience for the Court. Again, Applicants were well-prepared, rather versed on courtroom procedures and rules for pro se litigants, were professionally prepared with trial notebooks and exhibits for all parties (actually better assembled than opposing counsel's materials) and were respectful to all parties. The District Court stated that Applicants did not proffer relevant evidence that they were prevented from presenting their case, yet Applicants' brief cited from the transcript where they requested to present certain items and the Court either refused or said it didn't have time to hear it. Most egregious perhaps, the District Court never addressed in its opinion any of the errors involving the invoices or miscalculations in the Bankruptcy Court's math, stating, "the remainder of appellants' claims are inconsequential in light of these holdings and will not be addressed." These claims were at the very heart of the Bankruptcy Court's erroneous ruling, and the District Court refused to review them, affirming the Bankruptcy Court's denial of Applicants' Motion for New Trial. Indeed, this review would have taken some time for the District Court to make, and probably would have been best facilitated through oral argument, which Applicants requested for this reason. However, the claims which the District Court felt were "inconsequential" amount to $43,486.30, which is not at all inconsequential to Applicants, especially since it is not based on an accurate or factual interpretation of the evidence and is also the result of a math error. Applicants were dumbfounded by the lack of

care by the District Court. They timely appealed to the Fifth Circuit[3], who rubber-stamped the District Court's findings and produced an opinion equally as erroneous on August 8, 2018. Applicant's misunderstood the timing to file a request for panel rehearing, but filed an unopposed request in cooperation with opposing counsel, which the Fifth Circuit nonetheless denied as untimely.

Following the Fifth Circuit's ruling which disposed of Applicants' post-trial motion, Applicants assumed their best remedy was to appeal the Bankruptcy Court's final judgment. On September 7, 2018, Applicants timely filed their Notice of Appeal to the United States District Court from the Bankruptcy Court's final order pursuant to Federal Rule of Bankruptcy Procedure 8002(b)(1)(c), which specifies that the time to file an appeal runs from the entry of the order disposing of a Rule 9023 motion for new trial. The new appeal from the final judgment was assigned to the same District Court judge as the appeal concerning the post-trial motion. Unexpectedly, on October 10, 2018, the District Court dismissed the appeal stating, "The Court dismisses with prejudice this appeal as it seeks to appeal issues that have been unfavorably resolved against the debtors/appellants or "should" have been raised in the first appeal." Applicants do not believe Rule 8002(b)(1)(c) would have reason to exist if they were not permitted to appeal the final judgment in their case following disposal of their post-trial motion. The District Court does not have advanced knowledge of the arguments

3 *Scott Richard Pendergraft, et al v. Network of Neighbors, Inc.*, No. 18-20045 in the U.S. Court of Appeals for the Fifth Circuit

Applicants will make in this new appeal and Applicants believe they have a lawful right to be heard. On October 23, 2018, Applicants timely filed a Notice of Appeal to the Fifth Circuit from this order dismissing their appeal.

It was at this point, a matter of days ago, that Applicants realized that the miscarriage of justice in their case was a much bigger issue than just their particular case. Applicants are not attorneys, but deep down expected that justice prevails in U.S. Courts and expected to be heard fairly and completely. The truth is, the judicial system is greatly flawed in many ways and this particular case has been nothing short of going down the rabbit hole in *Alice in Wonderland.* A bankruptcy judge has stated on the record *we don't have time to go through your thirteen invoices that are the subject of the litigation*, but then misstates what certain invoice line items mean resulting in a ruling against a defendant. Those errors are pointed out on appeal to the district court, but that judge says *they aren't worth responding to*, and the Fifth Circuit essentially rubber-stamps the findings by saying *the district court reviewed the evidence and dealing with pro se litigants can be a challenge*... but in reality the district court did not review the evidence, the interpretation is grossly factually inaccurate, and there is no evidence to support the notion that defendants were unruly during trial. This is insanity. The way this case has been managed has been the opposite of just or logical, and Applicants cannot help but believe had they had the financial resources to employ proper counsel from its inception how differently they would have been viewed by the Court, even pre-trial.

Recently, another Justice on the United States Supreme Court asked to be completely and fairly heard and given due process, and he was afforded this opportunity, although it was not in a court of law – but the Constitution provides for the manner in which we are to treat one another, whether inside or outside of a courtroom, if we are to be a civilized people. Applicants watched those proceedings and wept for that man. Sobbed. Applicants know exactly what it is like to be attacked with false accusations, to be defamed and ridiculed, to have their family, children, and livelihoods harassed and attacked through horrific tactics and in the media, and even to have vicious stage shows produced about them, far worse than a five-minute Saturday Night Live parody, because that is precisely what Respondent has done to Applicants for six and half years now in this litigation. To persevere through those things with the hope of being fairly and completely heard someday in court to clear their names, only to be either bullied or railroaded, is disheartening to say the least. Applicants cannot accept this is what was intended through the judiciary. Applicants have come to realize in recent weeks that other litigants have had similar unfortunate experiences, especially those without resources to defend themselves. Citizens should not be intimidated or fearful as they navigate our judicial system, and should be afforded due process, *especially* those who are respectful and striving to follow the many rules and procedures in place, *and even* if they are representing themselves pro se.

It seems that neither the District Court nor the Fifth Circuit have taken the necessary

time to dissect the evidence in the record and detailed in Applicants' briefs; otherwise, they would surely see the errors. The errors are blatant. A thorough review and understanding of the evidence and testimony cannot yield two possible interpretations of Applicants' conduct in this case, but the courts charged with review of the lower courts must take the time and care to do this. When will someone look at the actual invoices and documentation to see the errors Applicants pointed out in their briefs? There are math errors in the Bankruptcy Court's calculations! If an Appellate Court will not do this, or order the Bankruptcy Court to do so, then a wrongful judgment against Applicants remains. That's not the justice the judiciary is employed and entrusted by citizens, Applicants included, to ensure and protect. All that Applicants have asked is to be fairly and completely heard, and that is what they respectfully request through continued proceedings.

Applicants realized what has happened to them is systemic and of national and public importance, and for these reasons they determined this week they should file a petition for writ of certiorari with the United States Supreme Court.

REASONS EXTENSION IS JUSTIFIED

Supreme Court Rule 13.5 provides that "An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified." The specific reasons why an extension of time is

justified are as follows:

The timeline of events in this case has been provided hereinabove. It was a matter of days ago, only subsequent to the District Court's dismissal of Applicants' recent appeal and their filing of notice with the Fifth Circuit on that issue, that Applicants realized what was continuing to occur in this case was inherently wrong and they should file a petition for writ of certiorari. Applicants recognize that a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings, but this case reaches beyond that to the Courts' responsibilities and obligations to a litigant. As pro se litigants, Applicants realize they must conduct a tremendous amount of research in a short period of time on the constitutionality of these issues and respectfully request this Court's extension of forty-five days to do so. There will be no unfair prejudice to Respondent in granting this extension.

The Supreme Court has jurisdiction in the appeal from the order of the Fifth Circuit affirming the District Court's order affirming the Bankruptcy Court's denial of Applicants' Motion for New Trial. The Fifth Circuit's order sought to be reviewed is attached hereto.

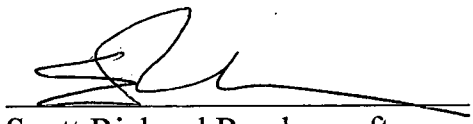
CONCLUSION

For the foregoing reasons and good cause shown, Applicants respectfully request that this Court grant this application for an extension of time to file a petition for writ of certiorari.

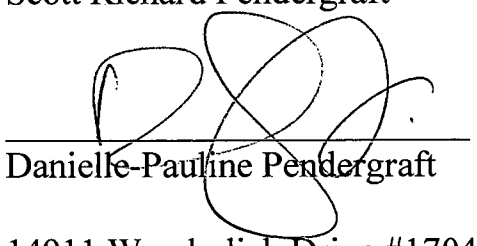
DATED: October 25, 2018

Respectfully submitted,

APPLICANTS



Scott Richard Pendergraft



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI has been served upon counsel for all parties to this proceeding as identified below via electronic mail on October 25, 2018:

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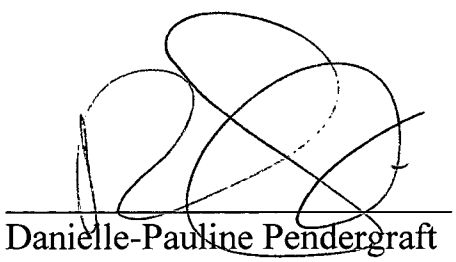

Danielle-Pauline Pendergraft

ATTACHMENT

Opinion of the Fifth Circuit Panel dated August 8, 2018