No. 24A107

# In the Supreme Court of the United States

Jordan Powell, J.D.
1263 First Street, SE, 523
Washington D.C. 20003

Hon. Scott S. Harris
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington D.C. 20543

August 6, 2024

Dear Mr. Harris,

Pursuant to Rule 22 of the Court, this letter is presented for renewed emergency application for stay of the United States District Court for the District of Columbia's remand order. Renewal is made to the Honorable Clarence Thomas, Justice of the United States Supreme Court.

Since filing, a D.C. Superior Court status conference was held July 31, 2024. The proceeding was surprisingly conducted by a magistrate. Appellant denied consent again pursuant to D.C. Code § 11–1732(j)(5). The conference was rescheduled to October 25, 2024. After scheduling, Appellant requested the superior court maintain the closed case status quo. Appellee opposed. Appellant insisted the case should remain closed due to lack of consent and, a continuance request made to the assigned associate judge should be considered before reopening. The magistrate however reopened the case.

For some background, this case was initially closed December 8, 2023

following assignment to Associate Judge Scott and, Defendant's notice of removal. Pursuant to 28 U.S.C. § 1447(c) following remand the superior court "may thereupon proceed with such case" thereby establishing discretion as to if and when to do so. This discretion was exercised twice previously while assigned to Judge Scott, to keep the case closed. First following remand, approximately January 10, 2024 when the January 19, 2024 status hearing was cancelled and vacated during the window of opportunity to appeal. Second, following appeal in the D.C. Circuit April 9, 2024 when the superior court notified the parties that the case status remained: "Case Closed."

Essentially, consideration of reopening pending further appellate review is a matter of discretion pursuant to 28 U.S.C. § 1447(c) where the superior court previously decided to keep the case closed while assigned to an associate judge then, a magistrate changed that status without the parties' consent. However, "a magistrate judge may not conduct such proceedings without the parties' consent." *In re AOT*, 10 A. 3d 160, 162 (D.C. 2010).

Moreover, the superior court should also have maintained the "Case Closed" status quo set by Judge Scott due to the law of the case doctrine. "The law of the case doctrine "merely expresses the practice of courts generally to refuse to reopen what has been decided." See *In re Sa. C.*, 178 A. 3d 460, 462 (D.C. 2018) (*internal citation omitted*); also *In re DT*, 222 A. 3d 593, 598 n. 10 (D.C. 2019). "The law of the case doctrine reflects distinct concerns about relitigating issues based on the same legal and factual backdrop and is, in any event, discretionary." *In re Sa. C.* at 462. Accordingly, changing the status quo here based on a legal and

factual backdrop that is very much the same (e.g. forthcoming appellate review) would go against binding precedent of the D.C. Court of Appeals because the assigned superior court judge previously decided to keep the case closed.

At the status hearing, SBA (a required party) did not appear. Defendant also referred the court to *Gilliam v. US*, 80 A. 3d 192, 202 (D.C. 2013) regarding the 151 page continuance request that was not considered due to a filing rejection notice minutes before the hearing. Notice by phone and electronic mail was made again in those moments before the hearing. Meanwhile, continuances are granted upon demonstration that it is "reasonably necessary for a just determination of the cause [citing *O'connor v. United States*, 399 A. 2d 21, [34] (D.C. 1979) (where "the trial court must consider all the circumstances before ruling")]."

As this court may recognize there is no judicial power over SBA in the superior court. However, Appellee has since sought Appellant's consent to a protective order and will presumably file such a motion. However "[i]f the protective order is not entered by consent of both parties, the court will determine the amount of money that should be paid each month, which usually is the amount of the monthly rent." See District of Columbia Superior Court, Case Management Plan Civil Division Landlord and Tenant Branch (Rev. 02.21) at 26-27. Meanwhile "protective order payments may only be made in open cases." *Id.* at 27.

This presents a two prong problem that makes relief only available in this Court at this emergence of moments prior to a judgement on the ensuing motion for protective order. As to the first prong, seeking an appeal of the magistrate

finding to back-step this matter back into a closed case status quo would set up the potential for an "intrusion into the [local] judicial system" because the case would then be on appeal there. See *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 10 (1987). Meanwhile a protective order would issue given no adequate protection without SBA's joinder and thereby "it plainly appears that this course would not afford adequate protection" for lack of SBA jurisdiction under 15 U.S.C. § 634 unlike any state court in the United States. See *Younger v. Harris*, 401 U.S. 37, 45 (1971).

As to the second prong, typically "[f]ederal injunctions in such cases would interfere with the execution of state judgments on grounds that challenge the very process by which those judgments were obtained. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987). However, given clear precedent from the D.C. Court of Appeals, *supra*, those decisions are alike *certifications of questions of law* concerning the *the law of the case doctrine* regarding this "Case Closed" status quo (pending appeal) already decided by assigned associate Judge Scott as the law of the case, in contrast with the decision to reopen by a magistrate—without consent.

Accordingly, the Court should stay the district court's remand of this case pending the disposition of a forthcoming petition for writ of certiorari because it is closed in superior court as a matter of law but open as a matter of fact thereby depriving Appellant of certain rights and presenting certain irreparable harm.

Respectfully submitted,

JORDAN POWELL, J.D.

No. 24A107

# In the Supreme Court of the United States

JBG SMITH PROPERTIES, LP FIRST RESIDENCES,
*Plaintiff-Respondent,*

v.

JORDAN POWELL,
*Defendant-Third-Party-Plaintiff-Applicant,*

v.

THE UNITED STATES SMALL BUSINESS ADMINISTRATION,
*Third-Party-Defendant-Respondent.*

## PROOF OF SERVICE

I, Jordan Powell, do swear or declare that on this date, August 6, 2024, as required by Supreme Court Rule 29 I have served the enclosed RENEWED APPLICATION FOR STAY 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 name or title, address, and email addess of those served are as follows:

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530–0001

Melissa Polito
4200 Parliament Place
Suite 100
Lanham, MD 20706

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



Jordan Powell, J.D.