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App No _____

ORIGINAL

**In The
Supreme Court of the United States**

No.23-7923

Gerald Nelson

Applicant,

FILED
JAN 06 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

V.

New York City Transit Authority,
Department of Buses, (East New York Depot),
Transportation Workers Union Local 100,

Respondent,

**On Application for an Extension of Time to File Petition for Writ of Certiorari
to the United States Court of Appeals for the Second Circuit**

Gerald Nelson
Pro Se /Applicant
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Brooklyn, New York 11233
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January 6, 2025

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SUPREME COURT, U.S.

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals to the Second Circuit.

In accordance with these Rules 13.5, 22, 30.2, and 30.3, Applicant Gerald Nelson respectfully request that the time to file its petition for writ of certiorari be extended for 60 days, up to and including Monday, April 7, 2025. The Court of Appeals issued its summary order on September 30, 2024 (Exhibit B) and denied Rehearing en banc on November 6, 2024 (Exhibit A). Absent an extension of time, the petition would be due February 4, 2025. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). Applicant (hereinafter “Nelson”) was unable to reach Respondents.

Background

This case presents an important question on the application of the (1.) Lack of Federal Jurisdiction 28 U.S.C. Section 1331 (Unconstitutional Statute) ,(2.) fraudulent removal based on 301 Labor Management Relation Act (“LMRA”), 29 U.S.C. 185 , (3.) Fraud Upon the Court, (4.) 60 B rule 1-6. (5.) Lack of Federal Subject matter jurisdiction. , (6.) Fraudulent Brief by Respondents (New York City Transit (“Hereinafter NYCTA”) and Transportation Workers Union Local 100 (“Hereinafter TWA”), both brief that were submitted to Second Circuit Court Of

Appeals , cited case law which intentionally deceived the court and Nelson, (7.)
The Justiciability doctrine, (8.) The Unconstitutional conditions Doctrine, (8.) 28
U.S.C, section 1441 ,(C), (9) Duty of fair Representation, (1 0.) Whether the
State Court (Concurrent Jurisdiction) has Jurisdiction over federal statute that
confer on federal district courts jurisdiction over suits for violation of contracts
between employers and labor organizations representing employees in industries
affecting interstate commerce, and was Nelson's case fraudulent removed wholly
and insubstantial (Bad Faith).

This is an array of violations of law that Nelson will raise in his Writ of
Certiorari, that are in violation of United States Supreme Court Precedents Cases.

On August 25 , 2022, Appellant commenced this action in the Supreme Court
for the State of New York , County of Kings, under 301 Labor Management Act
301 (a), against NYCTA. On October 12, 2022 , NYCTA removed the action to
federal court. Thereafter, NYCTA requested leave to file a pre-Answer motion to
Dismiss for failure to state a cause of action. A conference was held before Chief
Magistrate Judge Lois Bloom (Eastern District Court/Brooklyn) during which
NYCTA'S arguments in support of the claim for breach of contract ,the 301 labor
management was discussed. Nelson was granted and exercised leave to file an

amendment to his complaint. On December 11, 2023, Appellant filed the Amended Complaint which repleaded the 301 labor management Act. The Amended Complaint added TWU as a named party , both complaints never had state claims. Thereafter NYCTA claimed political subdivision status of the State of New York and was granted leave to move to dismiss. TWU also was granted leave to move to dismiss. Nelson complaints were based on the collective bargaining agreement between TWU and NYCTA , Nelson was past his probationary period and there was a just cause clause in the contract. Nelson filed a grievance but the union ignored the grievance. Instead Nelson was terminated in violation of 301 Labor Management Duty of Fair Representation(Wrongful Discharge)(Opposition).

On August 7, 2023, Magistrate Judge Bloom issued a Report and Recommendation it was ruled in part for TWU and NYCTA motion to dismiss was granted for failure to state a claim and denied the aspect of TWU and NYCTA motions to dismiss for lack of subject matter jurisdiction due to both parties were joined together on the removal.

On October 29, 2023 District Judge Rachel P. Kovner adopted the Report and Recommendation.

On October 7, 2023 , Nelson filed a motion pursuant to Ed. R. Civ. P. 60(b) in this motion Nelson raised that the District Court did not have Subject

Matter jurisdiction. The District Court denied the 60 (b) motion.

On November 29 , 2023 ,Appellant filed Notice of Appeal.

On September 30, 2024 The United States Second Circuit issued a Summary Order affirming the Judgment of the District Court . Second Circuit stated Nelson did not raise any challenge in his brief to the district court's determination that he could not state a hybrid section 301/ duty of fair representation claim. Nelson never abandoned or waived his 301 claim. 301 was the basis of the brief and implicated throughout the brief . Nelson was ousted out of State Court, State Court had concurrent Jurisdiction over 301 claims. Congress did not give exclusive jurisdiction to federal courts(Fraudulent Removal).

On November 6th 2024, Nelson's request for panel rehearing and or in the alternative , for rehearing en banc was denied.

Reason for Granting an Extension of Time

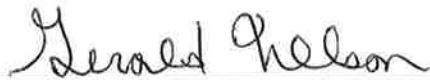
Nelson is a Pro Se litigant and due to losing his job , it has put a him in a financial deficit. Nelson needs additional time to prepare his petition and familiarize himself with cases and statues/ this case is complex and Nelson need more time to proceed with the writ of certiorari

Conclusion

Applicant (Nelson) request that the time to file a Writ of Certiorari in the above-captioned matter be extended 60 days to and including April 7, 2025

Dated this 6th day of January 2025.

Respectfully Submitted



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EXHIBIT A

MANDATE

23-7923

*Nelson v. New York City Transit Authority,
Department of Buses*

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of The United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of September, two thousand twenty-four.

PRESENT:

BARRINGTON D. PARKER,
BETH ROBINSON,
Circuit Judges,
VERNON D. OLIVER,
*District Judge.**

GERALD NELSON,

Plaintiff-Appellant,

v.

No. 23-7923

NEW YORK CITY TRANSIT AUTHORITY,
DEPARTMENT OF BUSES, (EAST NEW YORK

* Judge Vernon Dion Oliver, of the United States District Court for the District of Connecticut, sitting by designation.

MANDATE ISSUED ON 11/25/2024

DEPOT), TRANSPORTATION WORKERS UNION
LOCAL 100,

Defendants-Appellees.

FOR APPELLANT:

GERALD NELSON, *pro se*, Brooklyn,
NY.

FOR APPELLEE NEW YORK CITY
TRANSIT AUTHORITY:

NEIL H. ABRAMSON, Proskauer
Rose LLP, New York, NY.

FOR APPELLEE TRANSPORTATION
WORKERS UNION LOCAL 100:

JADE L. MORRISON, Colleran
O'Hara & Mills L.L.P., Woodbury,
NY.

Appeal from a judgment of the United States District Court for the Eastern
District of New York (Kovner, *Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,
ADJUDGED, AND DECREED** that the judgment of the district court is
AFFIRMED.

Representing himself, plaintiff Gerald Nelson sued the New York City
Transit Authority, Department of Buses (the "Transit Authority") in state court,
citing violations of § 301 of the Labor Management Relations Act ("LMRA"), 29
U.S.C. § 185. A bus operator hired for a one-year probationary period expiring in
February 2022, Nelson alleged that he was made to sign a stipulation that extended
the probationary period, in violation of various rules and regulations. He

protested, but Transportation Workers Local 100 (the “Union”) did not help him—allegedly in violation of its duty of fair representation—and he was eventually fired without prior notice or cause.

The case was removed to federal court. At an initial conference in anticipation of a motion to dismiss, the magistrate judge explained to Nelson that he appeared to be bringing a “hybrid” § 301/duty of fair representation claim. Counsel for the Transit Authority advanced its view that the Authority could not be sued under the LMRA and commented on Nelson’s ability to bring a New York Taylor Law claim (N.Y. Civ. Serv. Law §§ 200, *et seq.*) instead. Nelson responded that he was familiar with Taylor Law claims and his other options under state and federal law. However, Nelson’s eventual amended complaint did not add a Taylor Law claim.

The Transit Authority and the Union moved to dismiss. The magistrate judge recommended dismissal, reasoning that Nelson failed to state a viable hybrid claim because the MTA was a political subdivision excluded from the reach of the LMRA; his duty of fair representation claim, which was derivative of his LMRA claim, failed as well. *Nelson v. New York City Transit Authority, Department of Buses (East New York Depot)*, No. 22-cv-6112, 2023 WL 5979174, at *4–5 (E.D.N.Y.

Aug. 7, 2023) (Bloom, Mag.). The magistrate judge observed that Nelson had not added a Taylor Law claim to his amended complaint despite being on notice of that option. *Id.* at *5 n.9.

The district court adopted the report and recommendation over Nelson's objections. *Nelson v. New York City Transit Authority, Department of Buses (East New York Depot)*, No. 22-cv-6112, 2023 WL 6370773, at *3 (E.D.N.Y. Sept. 29, 2023). After the court denied a subsequent motion under Fed. R. of Civ. P. 60(b), Nelson appealed. We assume the parties' familiarity with the remaining facts, the issues, and the procedural history.

Our review of an order dismissing a complaint under Fed. R. Civ. P. 12(b)(6) is *de novo*—that is, without any deference to the district court—and ordinarily assesses whether the facts of the complaint, taken as true and with all reasonable inferences drawn in the plaintiff's favor, states a plausible claim to relief. *Noto v. 22nd Century Group, Inc.*, 35 F.4th 95, 102 (2d Cir. 2022). Since Nelson has represented himself throughout, his filings are liberally construed to raise the strongest arguments they suggest. *Sharikov v. Philips Medical Systems MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024).

Despite this liberal construction, however, Nelson does not raise any challenge in his brief to the district court's determination that he could not state a hybrid § 301/duty of fair representation claim because he is a public employee. We generally will not reach issues or argument that a pro se litigant abandons, and we decline to do so here. *See Green v. Department of Education of City of New York*, 16 F.4th 1070, 1074 (2d Cir. 2021).¹

Instead, Nelson challenges the district court's jurisdiction; for instance, he argues that his complaint was fraudulently removed to federal court. But a complaint can be removed to federal court if it could have been brought there in the first place, *see* 28 U.S.C. § 1441(a), and federal question jurisdiction exists for "all civil actions arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331. In deciding whether to remove a case, a court looks to

¹ If we reached the question, we would reach substantially the same conclusion as the district court and magistrate judge. In particular, we agree that Nelson could not, as a public employee, pursue his hybrid claim under the National Labor Relations Act ("NLRA") as amended by the Labor Management Relations Act ("LMRA"). Employees of political subdivisions of a state are not covered by the NLRA, as amended by the LMRA. *Green v. Department of Education of City of New York*, 16 F.4th 1070, 1075 (2d Cir. 2021). The Metropolitan Transportation Authority ("MTA") is a political subdivision of New York state. *See Rose v. Long Island R.R. Pension Plan*, 828 F.2d 910, 915 (2d Cir. 1987) (concluding, in context of a different federal statute that the MTA is a political subdivision of New York state). And, because Nelson's duty of fair representation claim is derivative of his § 301 claim against the employer, it too fails. *See Jusino v. Federation of Catholic Teachers, Inc.*, 54 F.4th 95, 101 (2d Cir. 2022).

the face of the complaint to see if “plaintiff’s statement of his own cause of action shows that it is based on federal law.” *Romano v. Kazacos*, 609 F.3d 512, 518 (2d Cir. 2010) (internal quotation marks omitted). Nelson’s complaint explicitly relied on § 301—a federal statute. That gave the federal court jurisdiction and made removal proper. The fact that he can’t actually state a hybrid claim under § 301 relates to the merits of his claim, not the district court’s jurisdiction to decide it. *See Green*, 16 F.4th at 1076. Thus, his complaint was removable even before he amended it.

* * *

We have considered Nelson’s remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court




A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit




EXHIBIT B

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of November, two thousand twenty-four.

Gerald Nelson,

Plaintiff - Appellant,

v.

New York City Transit Authority, Department of Buses,
(East New York Depot), Transportation Workers Union
Local 100,

Defendants - Appellees.

ORDER

Docket No: 23-7923

Appellant, Gerald Nelson, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

