

No.-----

**IN THE
SUPREME COURT OF THE UNITED STATES**

RICKY KAMDEM-OUAFFO

Petitioner

v.

BALCHEM CORPORATION, GIDEON OENGA (In Personal capacity and in capacity with Balchem Corporation), BOB MINIGER (In Personal capacity and in capacity with Balchem Corporation), RENEE McCOMB (In Personal capacity and in capacity with Balchem Corporation), THEODORE HARRIS(In Personal capacity and in capacity with Balchem Corporation), JOHN KUEHNER (In Personal capacity and in capacity with Balchem Corporation), TRAVIS LARSEN (In Personal capacity and in capacity with Balchem Corporation), MICHAEL SESTRICK(In Personal capacity and in capacity with Balchem Corporation)

Respondents

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE US COURT OF APPEALS FOR THE SECOND CIRCUIT**

**APPLICATION ADDRESSED TO JUSTICE SONYA SOTOMAYOR FOR
EXTENSION OF TIME TO FILE RELATED PETITIONS FOR WRIT OF
CERTIORARI FOR COURT OF APPEALS CASES # 23-455 AND 23-458**

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GROUND FOR THE APPLICATION

Honorable Justice Sotomayor,

In the year 2017, Petitioner filed an employment discrimination case against Respondents in the US District Court for the Southern District of New York which was then docketed as *Kamdem-Ouaffo v. Balchem Corporation et al*, U.S. District Court Southern District of New York (“SDNY”), Case No. 7:17-cv-02810-PMH-PED (See **EXHIBIT A**, Civil Docket Sheet). In the course of proceedings, additional causes of Action accrued, and upon Notice from the Equal Employment Opportunity Commission (“EEOC”) Petitioner filed a Second suit which was docketed as *Kamdem-Ouaffo v. Balchem Corporation et al*, U.S. District Court Southern District of New York (“SDNY”), Case No. 7:19-cv-09943-PMH (See **EXHIBIT B**, Civil Docket Sheet). The District Court did not consolidate the two Actions. However it subsequently dismissed them both with prejudice under the Fed. R. Civ. Rule 37(b and d) with pretext that Petitioner had failed to comply to a Magistrate Judge’s 7:17-cv-02810-[Dkt # 194] Order for Petitioner’s deposition.

The petitioner filed a Motion pursuant to the Fed. R. Civ. P. Rule 60(b)(4) requesting the District Court to vacate its Dismissal Orders. Petitioner argued that the District Court’s 7:17-cv-02810-[Dkt # 244] Dismissal Order was issued in a manner that violated the due process of law. In specific, the Magistrate Judge’s 7:17-cv-02810-[Dkt # 194] Order upon which the District Court based its Dismissal

Order was issued on 10/01/2020 and required the parties to participate in a test of the Respondents' remote deposition platform prior to petitioner's deposition on 10/13/2020. Respondents scheduled the test for their virtual deposition platform for the mid-afternoon of 10/12/2020. During the test, it was confirmed in fact that Respondents' virtual deposition platform was unconstitutionally defective because it could not remotely display respondents' evidentiary Exhibits to Petitioner's device. Petitioner informed Respondents' lawyers that notwithstanding the defects of their virtual deposition platform, Petitioner was available to attend his deposition. Ordered for 10/13/2020 provided that Respondents' lawyers did not enter any evidentiary Exhibits on their Platform. This was particularly important because Respondents had NOT produced their evidentiary documents to Petitioner during discovery, although Petitioner had served on them his Demand for documents.

However, although the precedents of the Second Circuit permitted during the Covid-19 that depositions could be taken even by telephone, Respondents' lawyers rejected Petitioner's suggestion to take Petitioner's deposition without entering Exhibits through their defective virtual platform, as the test thereof had shown that petitioner will not be able to read their Exhibits. Having reached an impasse, the Petitioner filed a formal and timely Objection pursuant to the Fed. R. Civ. P. Rule 72(a) to the Magistrate Judge's Discovery Order on 10/12/2020 (See 7:17-cv-02810-[Dkt # 195]). In Response the Magistrate Judge rushed to issue a Recommendation

to Dismiss petitioner's Complaint with prejudice under the Fed. R. Civ. P. Rule 37, and it was adopted by the District Court Judge without any adjudication of the Petitioner's 7:17-cv-02810-[Dkt # 195] Rule 72(a) Objection. Accordingly Petitioner contends that the Dismissal of his complaint was done in a manner that violated the due process of law because the District Court Jumped over Petitioner's Rule 72(a) Objection to dismiss Complaints.

On Appeal, the Court still did not consolidate both Actions, although it issued an Order that Petitioner's Appeals ought to be heard in tandem (See **EXHIBIT C**, Clerk's Order). Under Court of Appeals docket Nos. 23-455 and 23-458, Petitioner presented a Question on whether the District Court erred in denying Petitioner's Rule 60(b)(4) Motion to vacate dismissal of complaint as void on ground of Petitioner's right to due process. Then, the Court of Appeals used the Standards of "*Abuse of Discretion*" to Affirm the Denial by the District Court of Petitioner's Rule 60(b)(4) motion to vacate Judgment as Void. However, in *United Student Aid Funds v. Espinosa* U.S. 559 U.S. 260 (2010) the Supreme Court stated that "...*Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard. See ...; Stoll v. Gottlieb, 305 U.S. 165, 171-172, 59 S.Ct. 134, 83 L.Ed. 104 (1938).*" *Id* at 270-271. Thus because a motion under Rule 60(b)(4) only deals with Jurisdiction or the due process of law, it is a pure

question of law and it must be reviewed De Novo on Appeal. In *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559 (2014) the Supreme Court stated:

“Traditionally, decisions on “questions of law” are “reviewable de novo,” decisions on “questions of fact” are “reviewable for clear error,” and decisions on “matters of discretion” are “reviewable for ‘abuse of discretion.’ ” *Pierce v. Underwood*, 487 U. S. 552, 558 (1988).” See also *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC No. 15-1509 (U.S. Mar. 5, 2018)*)

De Novo Review is also known as “*Plenary*” or “*Independent*”. In *Bose Corp. v. Consumers Union* 466 U.S. 485 (1984), the Supreme Court explained that “*For the rule of independent review assigns to judges a constitutional responsibility that cannot be delegated to the trier of fact, whether the factfinding function be performed in the particular case by a jury or by a trial judge.*” *Id* at 501. In *Salve Regina College v. Russell* 499 U.S. 225 (1991), the Supreme Court also elaborated that “*When De Novo Review Is Compelled, No Form Of Appellate Deference Is Acceptable,*” *Id* at 238. Subsequently, the Supreme Court held that “*The upshot in terms of judicial review is some practical difference in outcome depending upon which standard is used.*” (See *Dickinson v. Zurko*, 527 U.S. 150, 152-61 (1999)).

With regard to deadlines, the Court of Appeals denied Petition for Rehearing in Court of Appeals Cases # 23-458 and 23-455 on 05/02/2024 and 05/08/2024 respectively (See **EXHIBITS D and E**, SUMMARY ORDERS and ORDERS Denying Petition for Rehearing). Thus Petitions for Writ Of Certiorari are due on 08/02/2024 05/08/2024 respectively. Petitioner seeks an extension of time.

The petitioner previously reported to the District Court that he had some health issues and medical challenges and requested some accommodation for the same. The petitioner is proceeding *Pro Se* and continues to have medical issues for which he has previously sought accommodation from the District Court. Under the current circumstances, the Petitioner has to prepare and file two petitions for Writ Of Certiorari within the same 90 days window of time. The Petitioner has made progress in identifying relevant questions and developing some parts of his petition for case 23-455 but needs some more time to perfect his petitions. Based upon all the above, Petitioner would like to request an Extension of the time to file his two petitions for Writ of Certiorari. Accordingly, the petitioner Requests that Your Honor grant an extension of time and set a new due date of September 08, 2024 for both petitions.

The Petitioner considered the question whether to Request your Honor to issue an Order consolidating both Petitions, and the answer is “No.” Although the two cases are related, the 7:19-cv-09943-PMH Action was Dismissed based upon the doctrine of Res Judicata, thus creating a different set of legal questions.

Respectfully submitted.

A handwritten signature in black ink, appearing to read 'Ricky Kamdem-Ouaffo', with a horizontal line drawn underneath it.

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