

No. 18-1490

In The Supreme Court of The United States

Carolyn J. Florimonte, Petitioner

v.

Borough of Dalton, a.k.a. Borough Council, Respondent

APPLICATION FOR EXTENSION OF TIME TO FILE

PETITION FOR WRIT OF CERTIORARI TO THE

U. S. COURT OF APPEALS FOR THE THIRD CIRCUIT

To The Honorable Ruth Bader Ginsburg:

Petitioner, Carolyn J Florimonte, requests an extension of time to file her Petition for Writ of Certiorari. An additional thirty (30) days until February 15, 2019, is requested due to ongoing health issues.

Final judgment was entered on October 18, 2018 and the date of expiration to file is January 16, 2019. This application is being filed more than 10 days before the due date.

Attached are copies of the lower federal district and appeals court Opinions and Orders, preceded by the Opinion of the Commonwealth Court of Pennsylvania on April 4, 2013, reversing a state court judge's Decision (but failing to award just compensation which Petitioner

clearly requested at trial on August 10, 2011, indicated in transcript).

Dismissal of this instant complaint by the lower federal courts began with a magistrate judge's disbelief of fraud (matters best left to a jury) and his claim that an eighteen year occupation and invasion by Respondent is not a manifest injustice.

This dismissal weakens the guaranteed protections provided to private property owners by the Fifth and Fourteenth Amendments to the U.S. Constitution. In particular, the Fifth Amendment provides an absolute imperative of just compensation for a "public use" taking.

The jurisdiction of this Court is invoked under provisions of the United States Constitution's Fifth and Fourteenth Amendments, 28 U.S.C. Sections 1331 and 1343a, 28 U.S.C. Section 1738, 42 U.S.C. Sections 1983 and 1985, Federal Rules of Civil Procedure Title VII Rule 60 (d) (1) and (3) Extrinsic Fraud and Fraud Upon the Court.

The district court magistrate judge approached the lawsuit by first dismissing allegations of fraud, despite clear and convincing evidence to the contrary. This Court decreed in granting the Petition for Writ of Certiorari in *Bell Atlantic Corp, et al, v. Twombly, (No.05-1126)*, 127 S.

Ct. 1955, 1965-1966, U.S. Supreme Ct. (2007), that a judge's disbelief is not adequate grounds to dismiss, under Rule 12 (b) (6).

For a property and life ravaged by Respondent, this Court is the last hope of ending an intolerable situation created by the taking of private land first by one means and after 2013, by alternate continuing means, which still violates the Commonwealth Court's April 4, 2013, Opinion.

Fraud is the only matter of relevance for this instant complaint, not the number of lawsuits filed in Pennsylvania, a state which legally recognizes a continuing trespass as the justification for multiple lawsuits. Each day of continuing trespass bestows a right for a new suit. Even a trespass suit in Pennsylvania may be awarded compensation for the amount of time that an offender occupies the property, whether or not there are damages.

A fraudulent coverup of the true facts surrounding the corruption, conspiracy and taking without due process, was accomplished by Respondent's claim of innocence regarding who placed the hidden pipes on her land for the express purpose of escaping just compensation payment for the years of unconstitutional taking. Respondent was

aided in this fraud by the state court judge whose rulings were so egregious that he is no longer a sitting judge in Lackawanna County.

Opposing Counsel's own words in the transcript of a Hearing on September 26, 2016, confirm that Petitioner's Judicial Board complaint caused the state court judge to "end up on the wrong end of the stick."

Fraud Upon The Court was established by the state judge's Decision denying the fact that a continuing trespass/taking was occurring on Petitioner's property, despite having personally observed and inspected on May 1, 2009, the 18" PVC pipes directly at and on the property. The judge's overturned Opinion of December 28, 2011, was the final part of his pattern of denials issued regarding the original 2003 complaint.

However, those prior biased opinions, used knowingly by opposing Counsel, would continue to affect the outcome of all future complaints, both state and federal.

The Appeals Court Opinion of August 24, 2018, in a footnote on p. 4 states that Robert Fisher provided testimony at one of two Injunction Hearings regarding the Respondent's installation of the hidden pipes on the property. This is true, however, Petitioner was denied the right, by

the state court judge, to quote that testimony in later proceedings. Over and over, he refused admission of those facts, vehemently saying, repeatedly, "We are done with that." This prompted Petitioner's demand for recusal, which was denied.

When a state court judge refuses to permit inclusion of previous controlling facts concerning unconstitutional actions by Respondent, during Summary Judgment, it is an egregious failure of the highest order, specifically designed to wound Petitioner's case because she was a pro-se litigant.

This exclusion of those facts would cause the Commonwealth Court of Pennsylvania to deny the negligence claim, reasoning:

"At no time during the course of this litigation did the Borough represent that it installed the pipes or that it had knowledge of who may have installed the pipes."

A copy of the Complaint to the Judicial Board, was provided as evidence, for this suit, of the state court judge's bias.

During Summary Judgment he denied Petitioner's two requests for a stenographer. He refused to consider a taking of the property "because it wasn't filed that way." Meanwhile, he allowed Respondent, in 2007,

to assert a claim of prescriptive easement, without requiring amending.

He stated to then Counsel for Petitioner on February 12, 2009, that he wasn't sure if damages could even be considered since Florimonte is a secondary owner. *See: Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, (1982)*. Loretto was also a secondary owner, who prevailed in this U. S. Supreme Court even though the taking was only of minimal size.

The District Court and the Appeals Court erred in accepting the December 14, 2017, Magistrate Judge's Report and Recommendations. There are important questions which were determined adversely by the federal lower courts despite Petitioner's reliance on other district Court Opinions as well as U.S. Supreme Court Opinions, to support her case as stated in her December 27, 2017, Objections to the R & R.

The Magistrate Judge supplied his own conclusions not based on fact to dispense with fraud issues, then applied res judicata to all remaining matters. In some areas, he contradicted himself, as well as creating quotes which are found nowhere in evidence. Even claiming that a deceased witness testified at trial on August 10, 2011.

In the areas of extrinsic fraud, and fraud upon the court it was clear that he misunderstood both applications, even concluding that an invasion and flooding of private property for almost two decades by Respondent was not a Manifest Injustice.

For the last eighteen (18) years, Petitioner has lived in a home surrounded by Respondent's artificially created flooding which is so excessive -around the home, under the home and engulfing every inch of her property- that it has caused severe heaving of the home as well as mold everywhere inside and outside the home.

Respondent has stripped Petitioner of every portion of the bundle of rights guaranteed to private property owners by the U. S. Constitution, a violation of Petitioner's civil rights under U.S.C. 1983 and 1985 because she, and she alone, has been deprived of her property by this heinous, unconstitutional, conspiracy and corruption and flooding.

Most recently Respondent has purposely raised the lower elevations of properties across the street from Petitioner's where the flooding still collects. The flooding moves onto the street then roars onto Petitioner's property causing continuous damage and harm.

The stress of being continually underwater has caused a decline in Petitioner's health. Petitioner's mold allergies are comparable to an inescapable cold. Petitioner has undergone three major surgeries since 2013, debilitating Lyme Disease in 2017, which triggered the onset of Sjogren's, an autoimmune disease, bringing with it exhausting fatigue. And most recently, painful Shingles which surfaced shortly after the Denial of Appeal, Rehearing and Judgment of October 18, 2018, by the federal appeals courts, all of which violate her substantive and procedural rights, entitling her to relief.

This continuing elder abuse and the sense that, at the age of 73, this may be the situation for the rest of her life, and fatigue of Sjogrens and Shingles have caused a nearly two month loss to illness, therefore, a 30 day extension, until February 15, 2019, is requested so that Petitioner may adequately perfect her Petition for Writ of Certiorari to this Court.

Respectfully submitted,

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December 8, 2018