NO. 18-1242

In The
Supreme Court of the United States

Endre' Glenn (Pro SE)

Petitioner

v.

NORDIC SERVICES, INC.

Respondents

On Petition for a Writ of Certiorari to the Washington State Supreme Court

REPLY BRIEF OF PETITIONER

Endre' Glenn(ProSE)
10518 165th PL NE
Redmond, WA 98052

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SUMMARY OF ARGUMENT

Appellant Endre Glenn Petition for Certiorari should be granted because it poses significant constitutional questions on the right to due process, and equal protection under the laws. Supreme Court of Vermont and Texas Supreme court both follow the same laws in holding the plaintiff responsible for initiating arbitration procedures. *Hermitage Inn Real Estate Holding Co., LLC v. Extreme Contracting, LLC, 2017 VT 44, 170 A.3d 604 (Vt. 2017).* Washington Supreme Court does not require parties to arbitration follow public law or its application does not pertain to unrepresented parties.

I. ARGUMENT BACKGROUND UNDERLYING LAWSUIT

NORDIC Services and subcontractor VAN WILD replaced the water damaged carpet in the family room of the homeowner's residence. VAN WILD worked directly with NORDIC project manager on approving the selection of carpet, coordinating the delivery of the carpet, and scheduling the installation. On May 6, 2015 the homeowner, Mr. Glenn advised David Omli owner of NORDIC Services about the personal injury, and raised several contractual issues in company evaluation dated November 1, 2014. When NORDIC Services served an unfiled complaint, homeowner retained attorney Samantha Arango to assist with negotiating a settlement. The signed agreement was the result of those negotiations but NORDIC Services declined to honor it. Alternatively, they opted for three years of litigation, and foreclosing judgment lien against the property. (Petition App 19).

NORDIC Services filed the complaint July 20, 2015 (CP 1-11). Attorney Samantha Arango suggested the homeowner retain a personal injury lawyer to answer the complaint. Therefore, homeowner retained the services of attorney Ray

Brooks. He filed an answer to the claim, and counter claim on August 25, 2015 (CP 35-41). NORDIC never engaged either attorney in arbitration. They continued to pursue litigation until the court ordered arbitration. NORDIC never filed a request to initiate arbitration pursuant to RCW 7.04A.090. Both attorneys filed notice of intent to withdraw October 21st and 20th 2015 respectively, effective November 5, 2015, and October 30, 2015 (CP 58-60, 61-63).

Respondent NORDIC mischaracterizes the facts. The homeowner was duly represented by counsel until end of October 31, 2015, and early November 5, 2015. The record does not reflect the homeowner's reluctance to participate in arbitration; only his concern that NORDIC pursued litigation than present a demand for arbitration in accordance with RCW 7.04A.090. CP 115-117.

The trial court denied the motion to dismiss but never considered requiring NORIDC to comply with the statutory provisions for initiating arbitration. NORDIC wrongly vilifies homeowner when he agreed to settle the dispute. Considering the amount in dispute NORDIC could have simply initiated arbitration by filing a demand with American Arbitration Association (AAA) and served the request on the homeowner pursuant to the statutory provisions for initiating arbitration RCW 7.04A.090. How can the respondent and trial court claim the homeowner acted in bad faith when NORDIC failed to follow the AAA rules and RCW 7.04A.090 procedures for initiating arbitration?

Arbitrator scheduled the hearing for September 28, 2016 when he issued his June 14, 2016 discovery order that allowed homeowner to take the depositions of John Rossnagle, NORDIC employee, and Rob Tooley Van Wild Furnishings; also requested NORDIC's personal injury attorney Wendy Kent to disclose her expert witness CP 443.

> The arbitration hearing will be conducted on Wednesday, September 28, 2016 at the office of Judicial Dispute Resolution, 1425 4th Avenue, #300, Seattle, Washington beginning at 9:00 am.

On September 21, 2016 Arbitrator rescheduled the hearing for October 28, 2016 at the request of attorney Wendy Kent. At this time, NORDIC's subcontractor VAN WILD failed to comply with the July 25, 2016 subpoena to provide documents by August 25, 2016. CP 151-152. Therefore the arbitrator suggested the homeowner provide a proposed order granting the motion to compel discovery. Arbitrator issued 14 September 2016 order to compel discovery of NORIC's subcontractor VAN WILD. The subpoena required VAN WILD to produce address of former employee(s) who worked on the job, i.e. Rob Tooley. By NORDIC Services, and their subcontractor withholding this information prevented the homeowner from deposing these witnesses prior to calling them to testify at the hearing, and more importantly preparing the prehearing statements due October 14, 2016. He could not subpoena the employees to testify or depose the witnesses without their home address. CP 333

From: Wendy M Kent<kent@bodyfeltmount.com>;
Sent: Wednesday, September 07, 2016 5:07 PM
To: burdell@jdrllc.com'<burdell@jdrllc.com >; Frontier (Advx)'<advx@frontier.com>; Steve'<steve@thirdstreetlaw.com>;
Cc: Beth Forbes'<forbes@jdrllc.com>; Debra J. Slater<slater@bodyfeltmount.com>; Jen L. Davis<davis@bodyfeltmount.com>;

Subject: Nordic v. Glenn

Dear All:

Arbitration of this matter is currently for September 28th.

This is to advise that we still do not have all of the medical records that have been requested via subpoena. The providers have been slow to assimilate and produce records which will need to be reviewed.

Accordingly, I am raising a concern that we may need to request a brief postponement of the arbitration so that we obtain the necessary medical information.

Please advise if you require a formal motion. I would suggest postponement to latter part of October.

Thank you.
Wendy M. Kent

Arbitrator discovery order required the homeowner to participate in NORDIC's deposition at their offices in Marysville WA which was a 1 ½ hour commute from Redmond Washington but failed to offer the same discovery to the homeowner as outlined in his June 14, 2016 discovery order. CP 137-138.

Homeowner raised issues about his failure to attend the hearing with good cause by requesting a trial de novo CP 588, an aggrieved party right under RCW 7.06.050 but the issue was moot considering the trial court entered judgment for the plaintiff, and struck the trial de novo request without a hearing. *Barr v. Young, 187 Wash. App. 105, 111–12, 347 P.3d 947, 951 (2015).* Homeowner objected to the trial court imposition of sanctions for submitting the Emergency Motion for Relief Motion CP 433. The trial court imposed sanctions without a hearing.

Homeowner raised the issue again about his illness in the motion to vacate arbitration award, sanctions, and judgment CP 596. The trial court denied motion to vacate, and request to show cause without a hearing CP 671. Mr. Glenn's provider received approval for the procedure in mid- October 2016, and even then the exact time and date was questionable due to scheduling issues. When the arbitrator rescheduled the hearing September 7, 2016 Mr. Glenn was unaware of the date and time of the scheduled procedure or if it would happen. Following the procedure he required care, and Margaret provided that assistance. Just as the arbitrator ignored the motions to reschedule the hearing for good cause, i.e. subcontractor's ignored the order to compel discovery, the trial court failed to consider any post-judgement hearing after the deprivation of the homeowner's interest.

Mr. Glenn requested the arbitrator reschedule October 28, 2016 hearing for good cause because VAN WILD ignored the subpoena, and order to compel discovery. CP 315. Attorney Steve Hanson surreptitiously obtained the discovery from VAN WILD the same day October 14, 2016 the arbitrator required both parties to present pre-hearing statements; affording the defendant no time to

prepare pre-hearing brief. He had no opportunity to depose key witness or cross exam NORDIC's expert witness that attorney Wendy Kent never disclosed. Mr. Glenn raised due process claims at the trial and appellate court in his motion for emergency relief. CP 133, 134, CP 227; Reply Brief Appellants 2, 6, 7, 12.

II. PETITION SHOULD BE GRANTED

The very essence of Mr. Glenn's claims throughout the litigation, arbitration, and appeals pertain to due process and a fair opportunity to be heard. He raised the issue at the trial and appellate level CP 134, CP 227, and Reply Brief Appellants 2, 6, 7, 12.

CP 134 227

> Since the Arbitrator is unable to honor the June 14, 2016 order granting discovery for the Defendant, how can he fairly arbitrate the matter? His rulings show bias for NORDIC Services and subcontractor VAN WILD when they should be held accountable for violating discovery rules. The arbitrator is penalizing the Defendant rather than the offending party who failed to produce discovery. The Defendant should be provided adequate time to complete discovery, identify key facts/issues, and prepare the brief. Otherwise, he's denied due process.

The arbitrator's bias extends to the award; per section #36 of the award he stated in the event of foreclosure and sale of the property at foreclosure sale, the purchaser of the property at such sale is entitled to immediate possession of said property. CP 518-519. This statement violates Washington public policy one year redemption period RCW 6.23.020.

Mr. Glenn raised Constitutional *(U.S. Constitution XIV Section 1)* and Statutory provisions throughout the litigation and arbitration proceedings. The state courts interpretation and application of state law deprived the homeowner of life, liberty, and property without due process of law, and equal protection of the laws. The trial court sanctioned Mr. Glenn but neither the trial court nor the

arbitrator applied the same law when NORDIC's subcontractor VAN WILD ignored the subpoena and failed to comply with the order to compel discovery. Attorney Steve Hansen's October 11, 2016 comments epitomize the bias Court and arbitrator exhibited toward NORDIC CP 142.

> Mr. Glenn's Motion To Sanction Van Wild: I have no idea what delayed production of the documents or whether Van Wild faced unexpected challenges in identifying them. I believe it's a small company likely lacking staff to assign document searching tasks. In any event, I would oppose sanctions & do not see that sanctions would provide any benefit to Mr. Glenn, the parties or the Arbitrator with the documents now having been produced.

III. FACTURAL/PROCEDURAL ERRORS SUPPORTED BY RECORD

From the onset of NORDIC filing a complaint in superior court, Mr. Glenn raised the issue of their failure to comply with the statutory provisions for initiating arbitration. CP 115-116. He objected to their selection of arbitrators from JDR Judicial Dispute Resolution; and proposed Judicial Arbitration and Mediation Services (JAMS) because they have a more diverse pool of arbitrators with different cultural experiences. CP 604. Both parties should review a list of potential arbitrators and mutually agree on an arbitrator per the arbitration clause in the contract CP 103. Washington Court of Appeals Division 1 ruled Glenn timely objected to selection of arbitrators but his argument fails on the merits because he failed to respond to NORDIC's letter January 2016.

A. Appointment of Arbitrator

When attorney Ray Brooks and attorney Samantha Arango represented Mr. Glenn during and prior to litigation, NORDIC could have engaged either attorney, reviewed a potential list of arbitrators, agreed on an arbitrator and entered a stipulation at any time to stay proceedings pending completion of arbitration; i.e. avoiding litigation. CP 115-116. The letter NORDIC sent CP 110 42 days before the hearing failed to comply with Washington Statue for initiating arbitration procedures RCW 7.04A.090. CP 103, CP 115, 116.

NORDIC simply should have submitted a demand for arbitration considering the amount in dispute. NORDIC's arbitration agreement though private invoked mandatory arbitration procedures. According to Washington Supreme Court, the standards by which an aggrieved party appeals an arbitral proceeding differ between private arbitration and mandatory arbitration and the standards may not be intertwined. *Malted Mousse, Inc. v. Steinmetz, 150 Wash. 2d 518, 79 P.3d 1154 (2003), as corrected on denial of reconsideration (Mar. 11, 2004).* Washington public policy ensures parties to an arbitration proceeding receive proper service by

certified or registered mail, return receipt requested and obtained or by service as authorized for initiation of civil action. RCW 7.04A.090. The person must describe the nature of the controversy and remedy sought. NORDIC's adoption of mandatory arbitration rules does not invalidate this statutory requirement. NORDIC' willingly invokes RCW 7.04A.110 pertaining to the selection of an arbitrator but fails to acknowledge their responsibility to comply with RCW 7.04A.090 Initiation of Arbitration.

B. Trial Court and Arbitrator Rulings RE Discovery & Continuance of Hearing.

NORDIC counsel misconstrues the facts. The problem was not a mere inability of the homeowner to conduct discovery but a deliberate and conscience effort by NORDIC, and their subcontractor to disobey a subpoena and court order to compel discovery. Rob Tooley refused to participate in deposition or hearing CP 136. The deposition of John Rossnagle and Rob Tooley was pertinent to the personal injury claim. CP 182. Arbitrator allowed homeowner to depose these two witnesses as defined in his June 14, 2016 discovery order CP 137-138.

The Emergency Motion filed on October 19, 2016 advised the Court NORDIC subcontractor VAN WILD failed to comply with the subpoena, and order to compel discovery. Arbitrator's September 12, 2016 order required both parties to provide summary of issues, documentary evidence and witness they plan to call by October 14, 2016. CP 181. How could the homeowner comply with this order considering NORDIC's attorney produced the discovery the same day the arbitrator required pre-hearing briefs. NORDIC's attorneys had over six hours of deposition testimony on the homeowner, an undisclosed expert witness report, and more than a couple of weeks to prepare pre-hearing statements after receiving discovery.

Arbitrator granted NORDIC all the discovery defined, and undefined (undisclosed expert witness report) in the order while denying homeowner the same opportunity to conduct discovery. CP 137-138.

HIPPA regulations require the protection of health care information. Ms. Wendy Kent violated 42 USC § 1320d-5 by transmitting unsecured sensitive health care information electronically. The reason all parties agreed to mail medical records and related information is to prevent unauthorized disclosure of private/sensitive information by e-mail. The arbitrator limited the medical records because Ms. Wendy Kent subpoenaed providers with blanket requests for all medical records; clearly not within the scope of the arbitration proceedings.

NORDIC counsel falsely states the arbitrator's decision to reschedule the hearing was at the request of the homeowner. Ms. Wendy Kent initially requested to reschedule the hearing because she was waiting on several medical records from providers. CP 333. On September 7, 2016 NORDIC's subcontractor VAN WILD failed to answer the subpoena. Therefore, the arbitrator issued VAN WILD an order to comply with the subpoena. NORDIC counsel neglects to consider the arbitrator requested prehearing statements due October 14, 2016; the same day the homeowner received the limited discovery produced by NORDIC's counsel Steve Hansen on-behalf of their subcontractor VAN WILD who never answered the subpoena, and court order. They denied the homeowner reasonable opportunity to prepare for the hearing, and depose key witness witnesses. Unlike opposing counsel, he had no depositions or testimony to aid in the preparation of his pre-hearing statements. Due process requires a meaningful opportunity to be heard. The opportunity to be heard in a meaningful time and in a meaningful manner may include the right to a predetermination hearing absent emergency circumstance. *16 AMJUR § 1000 Minimum due process requirements-Requirement of a meaningful opportunity to be heard.*

Given VAN WILD's failure to respond to the subpoena, and Attorney Wendy Kent's undisclosed expert report submitted October 14, 2016, the homeowner would have been better off if the arbitrator held the hearing on September 28, 2016. At least both parties would have been denied key discovery to support their claims.

Mr. Glenn identified exculpatory evidence included in this Emergency Motion that demonstrated NORDIC was aware of the impaired shoulder which supports homeowner's counter claim. Rob Tooley advised John Rossnagle about the injury. CP 337. The homeowner raised the significance of this information at the trial, and appellate level. Reply Brief of Appellant 16. Contrary to NORDIC's counsel presumption the arbitration hearing provided Mr. Glenn opportunity to be heard, he could not cross examine NORDIC's expert witness on the personal injury claim because Attorney Wendy Kent never disclosed her expert witness, and schedule a deposition as required by the arbitrator's June 14, 2016 discovery order. CP 137-138. Procedural due process requires a real opportunity to be heard at a meaningful time and in a meaningful manner; in other words, to qualify under due process standards, the opportunity to be heard must be meaningful, full, and fair and not merely colorable or illusive. U.S.C.A. Const.Amend. 14.

The U.S. Supreme Court said in *Golberg v. Kelly*; In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses *Goldberg v. Kelly, 397 U.S. 254, 269, 90 S. Ct. 1011, 1021, 25 L. Ed. 2d 287 (1970)*

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by **malice**, **vindictiveness**, intolerance, **prejudice**, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find

expression in the Sixth Amendment * * *. This Court has been zealous to protect these rights from erosion.

CONCLUSION

For the reasons cited above, respectfully request the Court grant the Petition for Writ of Certiorari.

Tuesday, May 14, 2019

Respectfully submitted,

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