

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALBERT JENKINS, THERESA LOWTHER - PETITIONERS

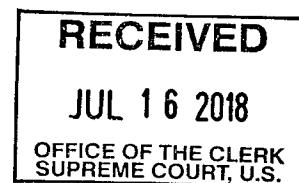
vs.

WMC MORTGAGE CO. - RESPONDENTS

ON PETITION FOR A WRIT OF *CERTIORARI* TO
THE DISTRICT OF COLUMBIA
COURT OF APPEALS

PETITION FOR A WRIT OF *CERTIORARI*

ALBERT JENKINS
THERESA LOWTHER
PETITIONERS, *PRO SE*
11 RHODE ISLAND AVENUE, N.E.
WASHINGTON, D.C. 20002



QUESTIONS PRESENTED

1. Whether it was error for the Honorable Brian F. Holeman, Associate Judge, District of Columbia Superior Court, to deny leave to submit an amended complaint deemed a “futility of amendment” beyond the allowable statute of limitations?
2. Whether it was error for the court below to find an oral contract between the Petitioners to be insufficient to support standing to Petitioner Jenkins to appear as a party plaintiff in the court below?
3. Whether it was error for the court below to deny Petitioners’ timely motion for leave to supplement the record to prevent a manifest injustice?
4. Whether it was error for court below to allow party Defendant-Appellee Adam Helfer to be dismissed from the case for lack of service when the evidence clearly showed that this Defendant engaged in affirmative acts to conceal his whereabouts?
5. Whether it was error for the District of Columbia Court of Appeals in a *per curiam* Memorandum Opinion and Judgment to find that the statute of limitations had run, even though parties opposing Petitioners had engaged in lulling and fraudulent concealment?

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF *CERTIORARI*

Petitioners Albert Jenkins and Theresa Lowther respectfully pray that a writ of *certiorari* issue to review the judgment below or, in the alternative, that the Court issue a summary remand directing that the Petitioners be allowed to submit an amended complaint in the Superior Court of the District of Columbia.

OPINIONS BELOW

The opinion issued as a *per curiam* Memorandum and Judgment on April 17, 2018, by the District of Columbia Court of Appeals appears as Appendix A and is unpublished.

On March 20, 2016, the Honorable Brian F. Holman, Associate Judge, Superior Court of the District of Columbia, granted WMC Mortgage Co.'s (WMC) motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. This order appears as Appendix C and is unpublished.

On April 1, 2016, Lowther-Jenkins filed their motion to alter or amend the March 20, 2016, dismissal order. Lowther-Jenkins also filed a motion to supplement the record. Judge Holman denied those motions on May 31, 2016. Judge Holman's final order was timely appealed. That order is also unpublished and appears as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provision involved is the Due Process Clause, Amendment V, United States Constitution. Petitioners are proceeding *pro se* and the courts below did not apply the applicable standards from this Court governing *pro se* complaints and parties who are representing themselves.

STATEMENT OF THE CASE

This case has an extended and tortured history. It is a controversy involving residential real property, a house (Lot 64, Square 3509) of Block 8 of Moore & Barbour's Second Addition to the City of Washington, D.C., at 11 Rhode Island Avenue, N.E. This house was originally constructed in the late 1880's in the historical Eckington section of the District of Columbia. Ms. Teresa Lowther, Petitioner, *pro se* (Lowther), was previously granted two judgments in her favor: the first was issued by the Honorable Maurice Ross, Associate Judge¹; the second was issued on May 12, 2010, by the Honorable John M. Mott, Associate Judge². Neither judgment resulted in the awards granted to Lowther from the defendants as she had no power to enforce those judgments.

On June 17, 2014, Albert Jenkins, Petitioner, *pro se* (Jenkins), filed a complaint for breach of contract naming Lowther as defendant. On August 22, 2014, Jenkins filed an amended complaint naming Adam Helper (Helper) and WMC as defendants. Lowther attempted to join the suit and on February 20, 2015, Judge Holman convened a

¹ *Lowther v. Adam Helper, et al.*, Civil Case No. 2007 CA 5398, Judge Ross entered a judgment in favor of Lowther on November 19, 2008, awarding \$161,358.56 in compensatory damages and \$250,000 in punitive damages.

² In *Lowther v. Adam Helper, et al.*, Civil Case No. 2007 CA 005398B (consolidated with 2007 CA 007785 RP), Judge Mott, *inter alia*, held that Lowther was entitled to compensatory damages of \$131,000, \$25,000 in attorney's fees, and \$250,000 in punitive damages. The judgment also noted that Lowther had been the victim of fraud involving "false statements, material misrepresentation and omissions of material fact and [the] forging [of] documents"

scheduling conference and ruled from the bench that it was proper for Lowther to intervene as a party plaintiff in the action. On April 7, 2015, WMC filed a motion to dismiss. Judge Holeman denied the motion to dismiss on June 17, 2015. On June 25, 2015, WMC filed a motion for reconsideration. On August 31, 2015, WMC filed a motion for summary judgment. On October 12, 2015, the court below entered an Omnibus Order ruling, *inter alia*, that WMC's motion for summary judgment was denied without prejudice. Judge Holeman also explained that "it is unknown how Plaintiff Jenkins came into ownership, if at all, or otherwise developed his interest in the [Property]." Order of October 12, 2015, p 6. On November 2, 2015, Lowther-Jenkins filed an amended complaint. On February 1, 2016, they filed an additional amended complaint. On March 20, 2016, Judge Holeman granted WMC's motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. *See Order, March 20, 2016, Appendix C.* On April 1, 2016, Lowther-Jenkins filed their motion to alter or amend the March 20, 2016, dismissal order. Lowther-Jenkins also filed a motion to supplement the record. Judge Holeman denied those motions on May 31, 2016. A timely notice of appeal was filed and, after Lowther-Jenkins filed an unopposed motion for an extension of time, the Court of Appeals for the District of Columbia ordered Appellants' opening brief and appendix to be submitted on or before July 3, 2017. The briefs were timely filed. During the course of this entire case, Petitioners were subjected to fraudulent concealment and "lulling" by the various defendants to stifle their attempts to justly litigate their claims.

REASONS FOR GRANTING THE WRIT

I. It was Error for Judge Holeman to Deny *Pro Se* Litigants Leave to Submit an Amended Complaint.

Justice and equity require that Petitioners be allowed to submit an amended complaint. The court below was remiss in essentially sanctioning the illegal acts and omissions that led to fraud and knowing misrepresentation. *Eagle Wine & Liquor Co. v. Silverberg Elec. Co.*, 402 A.2d 31 (App. D.C. 1979). The rationale of SCR Civ. 15(c), is that if, within the statute of limitations, defendants are put on notice that the plaintiffs were attempting to enforce claims against them because of certain events, then there is no cognizable prejudice to the defendants when, after the running of the statute of limitations period, *pro se* plaintiffs are allowed to reassert claims that were deficiently stated in a previously submitted complaint. *Strother v. District of Columbia*, 372 A.2d 1291 (App. D.C. 1977). Since the original complaint was timely filed within the statute of limitations, it relates back to that timely filing. *Limitations of Actions* §263 (2000) 51 Am. Jur.2d.

Rule 15 of the civil rules of the Superior Court of the District of Columbia is based on its counterpart in the federal civil rules. *See Dyhouse v. Baylor*, 455 A.2d 900 (D.C.App. 1983). SCR Civ. 15(b) is an attempt to favor substance over form and “to avoid the tyranny of formalism.” *Rosden v. Leuthold*, 274 F.2d 747, 750, 107 U.S.App. D.C. 89, 92 (1960); *Moore v. Moore*, 391 A.2d 762, 768 (D.C.App. 1978)(Ferren, J.) “Courts accordingly are empowered to permit parties to amend pleadings after trial – even after judgment – to add claims, defenses, and counterclaims, as long as the proposed augmentation of the pleadings encompasses matters expressly or impliedly tried by

consent of the parties.³” *Moore, supra*, 391 A.2d at 768 (citations omitted). “It necessarily follows that [SCR Civ.] Rule 16 concerning pre-trial proceedings must be read in the light of [SCR Civ.] 15(b) in order to prevent manifest injustice” *Rosden, supra*, 274 F.2d 747 fn 11; *Seek v. Edgar*, 293 A.2d 474, 477 (D.C.App. 1972)(Yeagley, J.). Currently Petitioners face pecuniary loss of the value of the property because title is contested, and anxiety because of the potential loss of the very roof over their heads.

II. It was Error for the Court Below to Disregard the Oral Contract Between Lowther-Jenkins.

Oral contracts may be binding and, as here, where there is no dispute between Lowther and Jenkins as to her granting him 50% in the interest in the house, it was error for court below to disregard their agreement and hold that Jenkins had no standing. *Farnsworth on Contracts*, §3.4, p 205 (3d Ed. 2004). See Omnibus Order, p. 3, ¶2; Appendix B, p. 3, ¶2. Moreover, the requirements of standing are met in this case. See *Lewis v. District of Columbia DMV*, 987 A.2d 1134, 1138 (D.C. 2010); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

III. It was Error for the Court Below to Deny Lowther-Jenkins Leave to Supplement the Record.

The trial judge asked Lowther-Jenkins to provide evidence of their claims, but when they did make the attempt, the court refused to allow the supplementation. This was unfair and an abuse of discretion. *Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218, 227, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964). See Omnibus Order, p 2, ¶2; Appendix B, p 2, ¶2.

IV. Defendant-Appellee Adam Helfer Knowingly Sought to Conceal his Location.

³ Lowther and Jenkins never received any money from WMC for the theft of their house. WMC was not able to produce any documentation to verify that payment was ever made to Lowther.

Judge Holeman held that Helfer was never served a copy of the last amended complaint filed by Lowther-Jenkins. *See*, Omnibus Order, p. 3, ¶4; Appendix B, p. 3, ¶4. Helfer has engaged in affirmative acts to conceal himself and avoid service of process, as well as having committed fraud against Lowther⁴. Thus, Petitioners were being punished by Judge Holman for the acts and omissions of the defendants. *Bulin v. Stein*, 668 A.2d 810 (App. D.C. 1995). This is not just or logical.

V. It was Error for the District of Columbia Court of Appeals to Disregard *Stare Decisis* Concerning Fraudulent Concealment.

Fraudulent concealment by the defense during the course of litigation working to the extreme disadvantage of a plaintiff results in the tolling of the statute of limitations.

William J. Davis v. Young, 412 A.2d 1187, 1191-92 (D.C. 1980); *Bailey v. Green berg*, 516 A.2d 934, 937 (D.C. 1986). This is particularly true where, as in this case, the plaintiffs are proceeding *pro se*, are not sophisticated, and did not have the assistance of retained legal counsel. *Aimonetto v. National Union Fire Ins. Co.*, 365 F.2d 599, 600 (10th Cir. 1966); *Peters v. St. Paul Fire & Marine Ins. Co.*, 213 F.Supp. 441 (S.D.N.Y. 1963). If a plaintiff can show that the delay in filing suit or a timely amendment to it was induced as a result of "lulling" by a defendant, that defendant would be estopped from pleading the statute of limitations. *Bailey v. Green berg, supra*, 516 A.2d at 940.

CONCLUSION

Petitioners Lowther and Jenkins will continue to be victimized due to fraud, material misrepresentations, and outright theft of money that should have accrued to Lowther. Jenkins will be left homeless and Lowther will be denied her pecuniary interest in the property. It has already been adjudged that Helfer, Rodney Spellen, Certified Title

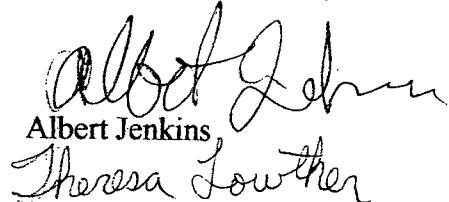
⁴ Lowther-Jenkins obtained a private detective and subsequently learned the current location of Defendant Adam Helfer and informed the courts below of this fact.

& Escrow, Inc., George Philep, Jamel Lyel, Mir-Atlantic Consulting Firm, committed fraud and WMC will reap the benefits of fraudulent conversion.

For the reasons given hereinabove and the record of the case, Petitioners Theresa Lowther and Albert Jenkins respectfully move this Honorable Court to reverse and remand this case with instructions that they be granted leave to submit an amended complaint, serve Defendant Adam Helfer and WMC, and grant such other and further relief as the Court deems just and equitable.

Dated:

Respectfully submitted,


Albert Jenkins
Theresa Lowther

Theresa Lowther
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