

No. \_\_\_\_\_

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

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TIBY SAUNDERS GOMEZ,

*Petitioner,*

v.

RUTLEDGE MAINTENANCE CORPORATION,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The Supreme Court Of Delaware**

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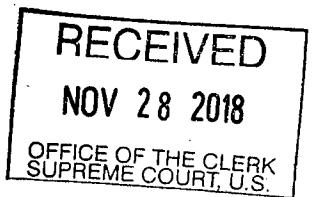
**PETITION FOR WRIT OF CERTIORARI**

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New Castle, DE 19720  
302-832-8516; 215-681-7954

*Counsel for Petitioner, Pro se*

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**QUESTIONS PRESENTED**

1. Whether it is a violation under the Constitution 5th and 14th Amendment Due Process and Equal Protection Under the Law Clauses that the Delaware Superior Court erred in asserting that the court had jurisdiction as “the claims were subject to the 20-year common law limitations period because the declaration was a recorded instrument under seal” in December 1991 while this action was first commenced in 2013 grossly exceeded the statute of limitation by 2 years, that the court’s decision should have been reversed and vacated since the Statute of limitation was time barred? And,
2. Whether the Del. Court of Common Pleas on appeal had ever obtained jurisdiction to review this claim since the controlling contract (“the declaration” dated 1991) under seal expired on December 18, 2011 and the Delaware Law does not permit the extension of the statute of limitations for breach of contract as this violates the stare decisis of the state’s mirror image law, and if in fact all claims including any judgment for legal fees are null and void?
3. Whether it is a violation under the Constitution Due Process Clause that a state’s trial Court acceptance of an amended complaint on appeal that changed the subject matter contract “the RMC II Declaration” and to uphold jurisdictional defects of facts and issues presented incorrectly by a Plaintiff and not provide a written decision on the review of the issues and facts for the defendant to oppose before and/or after trial?

**QUESTIONS PRESENTED – Continued**

4. Whether the court erred in asserting that Federal Fair Debt Collection Practices Act was not violated since a third-party was involved to collect the alleged debt and the verification requirements to protect consumers against fraud was not obtained?

**LIST OF PARTIES**

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner Tiby Saunders Gomez, respectfully petition for writ of certiorari to review the Superior Court of Delaware and the lower Courts decisions and judgments since the statute of limitation is tolled and time barred.

The Supreme Court of Delaware, affirmed by *Saunders-Gomez v. Rutledge Maintenance Corp.*, 2018 Del. Lexis 307 (Del., June 28, 2018) and a copy appears in Appendix A.

The Delaware Supreme Court does not permit pro se litigants to have oral arguments.

The Superior Court of Delaware New Castle on January 5: 2017, Submitted; April 3, 2017, Decided C.A. No. N16A-03-003 FWW Reporter 2017 Del. Super. Lexis 164.

Delaware Court of Common Pleas CPU 4-13-003588; *Saunders-Gomez v. Rutledge Maint. Corp.*, 2016 Del. C.P. Lexis 8 (February 25, 2016).

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**OPINIONS BELOW**

The Superior Court of Delaware, File #CA No. N16A-03-003 FWW Decided April 3, 2017, is reporter 2017 Del. Super. LEXIS 164, The Superior Court on April 3, 2017 reviewed the judicial defects and ignored stare decisis on the 20 year common law statute of limitation for contracts under seal dated December 18,

1991 which was grossly exceeded by 2 years and the lower courts decision was still affirmed and granted the opposing counsel/attorney excessive legal fees of approximately \$9,000.00.

The defendant took possession of the property in September 1994 and the deed was with the mortgage company and the December 18, 1991 declaration governs the maintenance corporation. This is not a dispute between the mortgage company rather a dispute with the controlling contract, Rutledge Maint. Corp. that deals with maintaining the open space.

Delaware Court of Common Pleas CPU 4-13-003588; 2016 Del. C.P. Lexis 8 (February 25, 2016) and this court ignored the Common law for contracts under seal statute of limitation and stare decisis mirror image law. The defendant stated in the Answer affirmative defenses to the complaint on appeal that the mirror image law and the statute of limitation barred the court's jurisdiction to proceed with the matter. The defendant filed a motion for summary judgment since the claim in this action was for contract (The RMC II Declaration) that lacked jurisdiction over the defendant or defendant's property and those violated the mirror image law inasmuch as the issue was based on a debt from a different community. The court denied the summary judgment motion and granted leave to amend the complaint on appeal without the reviewing the language in the "declaration" to ensure that the issues and facts of the case had not substantially changed. And, if in fact that the defects would not violate the jurisdictional question of stare decisis state's

mirror image law. The court erred in its review to uphold the mirror image law since “the declaration dated 1991” grossly exceeded the statute because this action was commenced in August 2013. The court proceeded with the trial and the decision resulted with an increase in the excessive legal fees awarded and no written decision about the issues other than the alleged debt was substantially reduced. The Court expressed the impact that the amended complaint had on the debt at the end of the trial and the court engaged *ex parte* communication during the trial.

Appellant Opening Brief d.Dec.8,2017; XVII on pg9

**2. “Question The Trial Court Erred of Law on Jurisdiction** – Whether or not the Judge allowed the Atty. to Amend the Complaint on Appeal knew that the interest rates were difference in the Deed Declaration presented on Appeal [“see Transcript d. Nov 23, 2015; p164:22-23; The Court “I have a Rule 72 in the Court of Common Pleas”] and [“see Transcript d. Nov 24, 2015; p207:21-23] [“The Court see Transcript d. Nov. 24, 2015 p208:1-4; The Court “ the interest rate calculations was a little offensive. Particularly when I brought that to your attention in open court some 18 month ago that I perceived it to be a problem.”]. The court abused its discretion and Erred of Law knew that a jurisdictional defect of the Mirror Image Rule was raised 18 months prior as stated in the transcript and the court lacked jurisdiction over the Appellant’s appeal

because the Appellee failed to comply with the mirror image rule under Rule 72.3F and further the matter should have been vacated and no legal fees" granted.

The Appellant / Defendant "for ans. On appeal av#18; #38 the affirm. Defense ["the following is a debt validation notice required under law; the amount of the debt is \$1,735.62"] and not providing an interpretation of the deed declaration language that does not allow any compensation for the collection of the annual assessments ["rmc i deed declaration, exhibit i para. B, nov. 23, 2015 "transcript" pg. 51, ln. 19-23; pg. 52, ln.1-23"]"

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## **JURISDICTION**

28 U.S. Code § 1257 – State courts; certiorari

US Code

- (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or

authority exercised under, the United States.

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### **STATUTORY PROVISIONS AND RULES AT ISSUE**

In 1965, the Delaware general assembly mandated that New Castle County government regulate the development of land and issued regulations controlling subdivision in 1967. This regulation is under the Article 27 of the unified development code that focus entirely on maintenance corporations and many of the newer subdivisions were established by a declaration that *under* Articles 27 Regulatory authority.

### **STATUTE OF LIMITATION**

25 Del. C. § 131

This document is current through 81 Del. Laws, ch. 440  
Delaware Code Annotated > TITLE 25. PROPERTY >  
PART I. GENERAL PROVISIONS > CHAPTER 1.  
DEEDS > SUBCHAPTER II. FORM, ACKNOWLEDG-  
MENT AND PROOF OF DEEDS AND OTHER LE-  
GAL INSTRUMENTS

#### **§ 131. Validation of certain instruments as deeds**

An instrument which by its terms purports to alienate or convey lands, tenements or hereditaments situated in this State and which was signed by the persons or corporations who at the time were the owners of the lands, tenements or hereditaments mentioned

therein and which was also acknowledged by owners before an officer authorized by the laws of Delaware to take acknowledgments, as the act and deed of such persons, shall be deemed to alienate or convey the title, estate and interest, both at law and in equity, of the owners signing and acknowledging such instrument, according to the true intent and meaning of such instrument, notwithstanding that the instrument is not under the seals of the owners and notwithstanding that the instrument does not contain the words commonly known as the "use clause" and/or the word "grant" and/or the words "bargain and sell." No right of dower or courtesy shall be barred or released except when the person who would have such right of dower or of courtesy has signed and acknowledged the instrument. Nothing in this section shall preclude any action or right of action, either at law or in equity, which any party in interest would have had if the instrument had been under the seals of the persons executing the same and had been in the customary form of a deed in this State and this section had not been passed.

#### History

35 Del. Laws, c. 194; Code 1935, § 3676; 46 Del. Laws, c. 203, § 1; 25 Del. C. 1953, § 131; 49 Del. Laws, c. 181, §§ 1, 2; 50 Del. Laws, c. 157, § 1; 59 Del. Laws, c. 451, § 1; 68 Del. Laws, c. 319, § 1. Annotations.

#### Case Notes

#### NOTES TO DECISIONS.

**LIMITATIONS OF ACTIONS.** – Although this section does not require deeds to be under seal, where the contract is under seal it is not controlled by the 3-year

statute of limitations under 10 Del. C. § 8106; the common law limitation of 20 years would apply. *State ex rel. Secretary of DOT v. Regency Group, Inc.*, 598 A.2d 1123 (Del. Super. Ct. 1991).

§ 8106 Actions subject to 3-year limitation.

(a) No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, no action based on a statute, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action; subject, however, to the provisions of §§ 8108-8110, 8119 and 8127 of this title.

The Delaware Title 8 chapter 81 is this statutory authority and the Superior Court filed its opinion on April 3, 2017 and cited the controlling statutes of limitation as the 20 year Common law for contracts under seal dated December 18, 1991. "The superior court in its decision states that "The MC's claim was not time barred under code ann. Title 10 section 8106 and 8108, as the account was not a "mutual and running" as the account and the claims were subject to the 20-year Common law limitations period because the

declaration was a recorded instrument under seal.” And, the Rutledge Maintenance Corporation is governed by a “declaration” dated December 18, 1991 contract under seal.

Black’s Law definition for “barred” obstructed by a bar; subject to hindrance or obstruction by a bar or barrier which, if interposed, will prevent legal redress or recovery; as, when it is said that a claim or cause of action is “barred by the statute of limitation” Knox County the Y. Morton, 68 Fed. 791, 15 C. C. A. 671; Cowan v. Mueller, 176 Mo. 192, 75 S. W. 606; Wilson v. Knox County, 132 Mo. 387, 34 S. W. 45, 477.

### **THE MIRROR IMAGE LAW**

The subject matter jurisdiction law required by 10 Del. C. § 9570 *et seq.* and Court of Common Pleas Civ. R. 72.3(f) provides that “[a]n appeal to this Court that fails to join the identical parties and **raise the same issues that were before the Court below shall result in a dismissal on jurisdictional grounds**”. This provision is commonly known as the “mirror image rule”]” was established to protect parties from seeking favors from the court.

### **THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT**

THE FAIR COLLECTION DEBT PRACTICE ACT §1692 (A,F,G,J) THAT REQUIRED THE REMOVAL OF THE DISPUTED DEBT, 15 U.S. Code § 1692g – Validation of debts Authorities (CFR)

(b) Disputed debts

"If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt"

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**STATEMENT OF THE CASE**  
**THE DELAWARE COURT PROCEEDINGS**  
**Justice of the Peace Court #13 Complaint**

The Appellee, Rutledge Maintenance Corporation was represented by counsel the "The Attorney" and BC Community Management Company "BCC" was the management/collection company "The Agent" was the representative for Rutledge Maintenance Corporation (RMC) that initiated this breach of contract/debt action with the Rutledge Maintenance Corporation II Deed Declaration dated January 19, 1995 as the subject matter contract by filing a complaint in the JP Court 13 "(JP)" on August 26, 2013 for the "amount of \$1989.05 plus court costs \$35.00 and other costs \$250.00" see JP Court Complaint of record. The Appellant, on September 10, 2013 served an answer to the complaint requested a trial for the alleged Debt "The Debt" and a more detailed statement of the claim known as "Bill of Particulars" (BP) of record. The

Appellant demanded the Bill of Particulars "(BP)" on or about October 2, 2013 pursuant to the JP Court Rules for BP Civ. R. 26(a);(b);(c) the statement on account must be notarized and The Supreme Court R.57 (a) the debt for a corporation must be verified by an officer of the corporation. The JP decision on October 8, 2013 in the transcript states that "it complied with JP Civ. R. 26" that the notarized signature was obtained which this was a misrepresentation. The Appellant filed a "Motion to Compel" to obtain a verified BP notarized by an officer of RMC which was denied and was notified by phone. The JP Trial was on November 13, 2013 and the case was decided for judgment in favor of the plaintiff/appellee based on the "RMC II Deed Declaration", the contract under seal dated 1995 with the delinquency interest rate of 27% annually on the assessments. The Appellant informed the Attorney that the RMC II Deed Declaration does not govern the property for this debt and timely filed the Notice of Appeal and was served on November 19, 2013.

#### **Del. Court of Common Pleas Complaint and the Answer**

The Appellant resides in New Castle County in a property located in Rutledge since September 1994 timely filed a Notice of Appeal in the Court of Common Pleas (Del. CCP), Wilmington Delaware on December 2, 2013. The Plaintiff/Appellee timely filed the Complaint on Appeal under Rutledge Maintenance Corporation (RMC) and specified that the subject property

was registered under the microfilm number 12469 Declaration (The "RMC II Declaration") dated January 19, 1995 in the record Majors Subdivision Land Development Plan (The "Plan") as the contract under seal for the debt about a "homeowner association" from "2005 through August 31, 2013" in the amount of "\$1989.05 plus \$35.50 court cost and \$250 in attorney fees" and the attorney plead quantum merit under the Rutledge Maintenance Corporation II (RMC II) Deed Declaration used below. The Attorney filed the Complaint on Appeal noted that Gomez received title to the subject property on September 6, 1994 prior to the construction of the "RMC II Maintenance Deed Declaration" which was January 19, 1995, he knew or should have known this was the wrong contract for the property in question. The Appellant filed the Answer to the Complaint on Appeal on December 23, 2013 [ "ans. aver #1. "It is Denied that the Rutledge Maintenance Corporation Deed Declaration is the subject matter of this complaint rather RMC II (Exhibit D) which lacks jurisdiction over Appellant,"], see Gomez ans. "Affirmative Defenses av#27-34"]. The Appellant filed the Motion for Summary Judgment on January 30, 2014 to vacate the judgment/order in JP 13 inasmuch as the issues, facts, evidence and/or subject matter "RMC II Deed Declaration" does not have jurisdiction for the subject property for the trial de novo review which violates the state's stare decisis mirror image law.

### **The Motion to Dismiss**

The appellant/defendant filed a motion to dismiss the complaint on appeal because the plaintiff failed to present the same issues from the court below. Primarily, the issue was an alleged debt from August 2005 through September 2014 for a specific dollar amount of approximately \$1900 with \$250 in legal fees. Furthermore, it was based on a contract under seal for "The Rutledge Maintenance Corp. II declaration dated 1995" that lacked jurisdiction over the appellant/defendant property to impose an assessment that exceeded the 20 year common law statute of limitation. This matter was filed in August 2013 in the Justice of The Peace Court and The Court of Common Pleas review did not consider the statute of limitation, nor the impact the higher interest rate on the assessments, and that the declaration lacks jurisdiction over defendant/Appellant's property and denied the motion. This is a violation of state's stare decisis mirror image rule that said the issues and facts must be the same. The Court summarily denied every motion that was filed including the summary judgment motion and allowed the matter to proceed without providing the appellant/defendant with a written decision to oppose since the issues of the specific alleged debt was changed. The following are statements from the Briefs submitted to the Delaware Supreme Court that the violations of the appellate/defendant due process rights to fairness and the state's stare decisions mirror image and 20 year common law statutes of limitation based on the December 18, 1991 Declaration that resulted with the

amended complaint on appeal and the court denying the motion to dismiss.

Rutledge Maintenance Corporation Answering Brief dated January 16, 2018 to Appellant's Opening Brief dated December 8, 2018.

SUMMARY OF ARGUMENT – Table of Content  
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I. Whether or not The Courts Erred by Concluding that JP Civ. R.26 Bill of Particulars (BP) was certified by an officer of the RMC II resulted as an Error of Law that was required by the Supreme Court Rules.

DENIED. Gomez' s argument refers to an alleged error which took place in the Justice of the Peace Court. Her appeal to the Court of Common Pleas was de novo thus any alleged error in the Justice of the Peace Court was of no legal consequence in the de nova appeal.

II. Whether or not the Atty. underlined the RMC II Deed Declaration para 2(d) "legal rate of Interest" filed on November 2013 in the Del CCP which was calculated at a rate of 27% or higher on the Bill of Particular, knew or should have known that the debt was erroneous after leave was granted to Amend the Complaint on Appeal violated the Mirror Image Law inasmuch as the issues and facts changed including the alleged debt.

DENIED. Rutledge specifically denies that any debt owed by Gomez is "erroneous. "Rutledge believes this argument refers to its error in attaching the wrong

Declaration to the Complaint on Appeal filed in the Court of Common Pleas. The trial court granted Rutledge leave to amend the Complaint on appeal to attach the correct Declaration. The undersigned attorney represents both Rutledge Maintenance Corporation and Rutledge II Maintenance Corporation. He incorrectly attached the Rutledge II Declaration to the Complaint on Appeal filed against Gomez. The mirror image rule is a jurisdictional rule and thus does not apply to this situation. The mirror image rule was satisfied when the Complaint on appeal included the same parties and same claims as were made in the Justice of the Peace Court. The rules of the Court of Common Pleas, and the case law involving the mirror image rule, make it clear that once the mirror image rule is satisfied the case proceeds like any other case. Thus, Judge Danberg properly permitted Rutledge leave to amend the Complaint on Appeal.

III. Whether or not the Trial Court Erred of the Law on Appeal in Del. CCP decided to accept the Attorney assertion that the RMC Deed Declaration presented in the Complaint on Appeal was a mistake after the Answer filed by Gomez that questioned the Del. CCP "Lack of Subject Matter Jurisdiction" seeking a dismissal inasmuch as this violated the Del. CCP R. 72.3(f) Mirror Image Rule provides that "[a]n appeal to this Court that fails to join the identical parties and raise the same issues that were before the court below should have resulted in a dismissal on jurisdictional grounds".

DENIED. For the reasons set forth above, this argument is denied.

III. Whether or not this provision is commonly known as the mirror-image rule") that The Atty. Sought the leave to amend the complaint to change from the RMC II Deed Declaration to the RMC Deed Declaration which had a material different delinquency interest rate calculation at 27% (twenty seven percent) use on the Bill of Particular that represented a significant miscalculation in the alleged versus the RMC delinquency rate is 6% (six percent) and, "A party satisfies the Mirror Image Rule when the Complaint on Appeal "presents no parties or issues other than those presented by the original complaint below" i.e. RMC II Deed Declaration.

Denied. For the reasons set forth above, this argument is denied. Furthermore, nothing in the mirror image rule requires Rutledge to use the same evidence that was used in the Justice of the Peace Court.

V. Whether or not the Trial de nova means that all of the same relevant issues, facts, and the evidence should not be changed based on the Attorney assertion "that the Complaint on Appeal inadvertently reference the Maintenance Declaration of Rutledge II" in the Attorney Answering Brief.not dated; on page 12 that used the assessments rate of 27% (twenty seven percent) interest unlike the RMC Deed Declaration 6% (six percent rate) caused jurisdictional defect and violated the mirror image rule.

DENIED. The Court of Common Pleas properly granted Rutledge leave to amend the Complaint on Appeal for the reasons set forth above. Once the mirror image rule is satisfied, the appeal in Court of Common Pleas proceeds like any other case. Parties have the right to amend their pleadings and use any relevant evidence they choose, whether or not that evidence was used in Justice of the Peace Court.

VI. Whether or not the Trial Court Erred by granting leave for the Motion to Amend the Complaint on Appeal that changed the RMC II Deed Declaration violates the Mirror Image Rule because the alleged debt was changed as a result of the replacement of the RMC Deed Declaration with the lower interest rate of 6% (six percent) i.e. a lower alleged debt. Lynch vs Szabo (C.P. New Castle Cnty.) June 2, 2015.

DENIED. For the reasons set forth above, this argument is denied.

VII. Whether or not the RMC Agent, BC Community had legal standing as a management company to bring this alleged debt action and knew or should have known the locations for the RMC II properties versus RMC properties and the difference in the Deed Declaration.

DENIED. BC Communities is the property manager for Rutledge. BC Communities did not "bring this alleged debt action." Rutledge did. BC Communities was never a party to this case. BC's standing was never an issue at trial and thus this issue is not ripe for appellate review.

VIII. Whether the Trial Court Erred of Law that required verification of the alleged debt by an officer with the notarized signature after leave was granted for the Amended Complaint on Appeal to determine the validity of the debt.

DENIED. Rutledge believes Gomez is referring to Justice of the Peace Court Rule 26 which requires a Corporation to file a Bill of Particulars which is signed by an authorized representative of the Corporation. No such requirement exists in the Court of Common Pleas as there was no Bill of Particulars produced in that Court. The Bill of Particulars is a document unique to the Justice of the Peace Court. The Complaint on Appeal set forth with proper specificity the nature of the debt against Gomez.

IX. Whether or not that the Trial Court reduced the debt to \$1,060.00 due to the misrepresented facts about the interest rates at the conclusion of the trial was confirmation that the issues as required by the Mirror Image Law were not the same and the Amended Complaint should have been dismissed and the JP Court decision vacated.

DENIED. For all the reasons set forth above, there was no legal error committed by Judge Danberg in permitting Rutledge to amend its Complaint on Appeal. The mirror image rule was satisfied by the Complaint on Appeal filed by Rutledge.

X. Whether or not the Trial Court Abuse of Discretion and Erred of Law that required RMC to confirm

the debt should have resulted with the denial of the Amended Complaint and the JP decision vacated

DENIED. Rutledge does not understand this argument and it is therefore denied.

XI. Whether or not the Trial Court Erred on the interpretation of the New Castle County Maintenance Corp Ordinance Laws the specify the Maintenance Corp are govern by Title 8 of the Corporation Laws and the Statute of Limitations of 3 years for debt/breach of contract because no evidence of services was proven from 2005 to September 2014 under quantum meruit and the debt was never verified. Please take notice that the alleged debt included an advance assessment and it was reduced at Trial.

DENIED. Rutledge cannot specifically address the “Ordinance Laws” or Title 8 claims since they are not set forth with any specificity. The statute of limitations does not bar Rutledge’s claims against Gomez. In Superior Court, Rutledge argued that Gomez’s account was mutual and running. Therefore, since she owned the property and continued to be responsible for annual assessments, as well as continue to accrue interest on unpaid amounts, the statute of limitations had not begun to run on her debt. Judge Wharton disagreed and believed that the debt was pursuant to the Declaration, a document filed under seal and was thus subject to a 20 year statute of limitations. Rutledge adopts both arguments on appeal. At Trial, the fact-finder did not consider quantum meruit since Rutledge prevailed on the debt cause of action.

XII. Whether or not the Trial Court Abused its discretion by engaging in an ex parte communication on November 23, 2015 during the morning of the Trial violated Gomez Rights to have fairness and lawful hearing that resulted with a reduction in the debt and the substantial excessive, unreasonable legal fees that were obtained in bad faith.

DENIED. Judge Danberg did not engage in an improper ex parte communication during the trial. Judge Danberg and the undersigned did have an ex parte discussion, however it had nothing to do with the case being tried. With respect to the reasonableness of the attorney's fees awarded by Judge Danberg, Gomez has never made this argument before and Rutledge submits that she has waived the right to do so for the first time in Supreme Court.

Skipped XIII TO XVII

XVIII. COURT OF COMMON PLEAS CIVIL RULE 72.3 PROVIDES THAT APPEALS FROM THE JUSTICE OF THE PEACE COURT ARE DE NOVO AND THUS ANY DECISION MADE IN THE JUSTICE OF THE PEACE COURT BECAME A LEGAL NULLITY WHEN GOMEZ FILED A NOTICE OF APPEAL IN THE COURT OF COMMON PLEAS.

1. Question Presented: Did an allegedly deficient Bill of Particulars in the Justice of the Peace Court have any legal effect on Appellant's appeal to the Court of Common Pleas?

2. Scope of Review: There is no standard of review for determining whether the Bill of Particulars complied with Justice of the Peace Court Rule 26 because the trial in the Court of Common Pleas was de novo.

3. Merits of the Argument: Thus, any alleged error, and Rutledge submits there were none, which may have made the Bill of Particulars defective in the Justice of the Peace Court, had no effect on the trial in the Court of Common Pleas. There is no appellate review of the Justice of the Peace Court's determination that the Bill of Particulars was proper.

It is reasonably clear, The Del. CCP lacked jurisdiction to proceed and failed to review the issues as required by the state's stare decisis mirror image rule and was time barred, however, the court granted the amended complaint on appeal and this violated the appellant's/defendants rights under the constitution due process clause.

### **The Request to Amend Complaint on Appeal**

The Amended Complaint was filed on or about February 2014 in response to the Gomez answers that "the Deed Declaration" for Rutledge Maintenance Corp. was established on December 1991 and the delinquency rate is only 6% (six percent) and this changes the amount of the debt and this violates the Delaware CCP R.72 "Mirror Image Rule" for a Trial De Novo. The Appellant filed a Response in Opposition Appellee's Motion to Amend Complaint on Appeal on

March 12, 2014 that the RMC II Deed Declaration was the original issue and/or subject matter/evidence used below and Appellant moved to vacate the judgment based on Lack of Subject Matter Jurisdiction but it was summarily denied. The Del. CCP Judge misinterpreted the jurisdictional relevance of stare decisis mirror image rule so the issues and facts from the lower court as required were not reviewed prior to the trial De Novo and no written decision was issued for the defendant's answer about lack of subject matter jurisdiction on appeal. The Appellant/Defendant property is under the RMC Declaration dated December 18, 1991 a contract under seal governed under the 20 year common law statute of limitation and this action was commenced on or about August 2013 which grossly exceeded the statute by 2 years as it was time barred.

### **The Del. CCP Trial**

The Agent acted as the representative for both RMC and RMC II (The "Agent") without proof of an agreement and requested by the Motion to Compel Discovery on June 22, 2015 and it was denied on November 9, 2015 a few days prior to the Trial. The RMC had no officer present at the trial only their alleged Agent who operated under the Fair Debt Collection Practice Act (FDCPA) by letter as noted in the Answer on Appeal in their attempt to collect a debt and "The Agent" charges 33% (thirty three percent) to collect the assessments without the member's authorization which violates the New Castle County Ordinance Laws. The Attorney acted in Bad Faith to continue this

matter after the Complaint on Appeal failed to comply with the Mirror Image Rule which requires the same issues, i.e. "RMC II Deed Declaration" presented by the original complaint below for a trial de novo. On November 23, 2015 during the trial, the attorney with the court engaged in an *ex parte* communication in chambers which resulted in the excessive legal fees, approximately nine thousand dollars (\$9,000.00) and the Trial Court issued no written decision "[see Transcript] other than the attorney fees but requested that the clerk provide Gomez with the cases cited and that was not received. The Appellant filed a response to the affidavit surrounding the excessive legal fees which the court claimed the fees were unopposed. The Appellant timely filed an Appeal to Superior Court and requested the CCP transcripts on or about the end of March 2016 and this cost \$1,400.00 and this was received after the Labor Day Holiday. On October 27, 2016 the Superior Court Clerk issued a letter for the brief and reply schedule and it was received on or about November 3, 2016 and the Opening Brief was filed on November 22, 2016 and the subsequent reply was served on December 22, 2016 which was not recorded by the Superior Court Clerk.

### **THE SUPERIOR COURT DECISION**

The Delaware Title 8 chapter 81 is this statutory authority and the Superior Court filed its opinion on April 3, 2017 and cited the controlling statutes of limitation as the 20 year Common law for contracts under seal dated December 18, 1991. However, the Court

miscalculated the statutes time because it had expired on December 18, 2011 which grossly exceeded statute of limitation by 2 years; and the law does not permit the statute of limitation to be extended, and most States and Federal Law doesn't allow the matter to proceed if it is tolled, because it is considered time barred, but the lower court's decision were still affirmed.

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#### **REASONS FOR GRANTING THE PETITION**

**THIS ISSUE CONCERNS AN IMPORTANT AND REOCCURRING QUESTION OF BOTH STATE AND FEDERAL LAW THAT IMPACT NEARLY ALL LITIGATION ON THE 20 YEAR COMMON LAW STATUTE OF LIMITATION FOR CONTRACTS UNDER SEAL.**

The issue presented in this petition is whether the court has jurisdiction on appeal if the dispute in the lower court was about a different subject, i.e., contract that does not govern you and/or your property and it has different terms and condition of the repayment rates. If you present an argument on the lower court should you be allowed to change the issue "the contract or the debt" on appeal in a different court. The mirror image law states that the issues and facts must be the same before you can obtain jurisdiction. However, the Amended complaint changed the debt – court in transcript -The trial the nova means that you start a new proceeding but you do not change their issues which in this case was the RMC II declaration which has been

systematically use to assess fraudulent interest rates to achieve excessive account balances. The declaration States that if the assessments are necessary then the board will submit a budget for the members approval along with the assessments and that no one is to collect the fee for collecting the assessments. In the defendant's answer see "for ans. On appeal av#18; #38 the affirm. Defense ["the following is a debt validation notice required under law; the amount of the debt is \$1,735.62"] and not providing an interpretation of the deed declaration language that does not allow any compensation for the collection of the annual assessments ["rmc i deed declaration, exhibit i para. B, nov. 23, 2015 "transcript" pg. 51, ln. 19-23; pg. 52, ln.1-23"]"

The mirror image law was not reviewed because no decision was rendered in writing surrounding the declaration that was presented below of record (**appendix-JP court transcript**). This violates the fair debt collection practices act because the attorney knew or should have known when he held that declaration up and underlined the market interest rate of 27% used to calculate the Account to achieve a balance of \$1900 for a period of 8+ years. The attorney or the agent should have had this verified since it was disputed prior to the action in October 2012 but yet it was never verified. The statute of limitation as were establish to prevent people from challenging a person memory, and ability to maintain records beyond a reasonable timeframe. And the declaration was the contract under seal dated December 18, 1991 was the document that provided Rutledge maintenance corporation the legal authority to pursue a claim in the court

of equity and the date of the mortgage deed there's not the subject matter in this case. Therefore, the date that the defendant took possession the property is irrelevant because that was dictated by the mortgage loan and the mortgage is not in dispute. If someone moves into the Rutledge community after 2014 what becomes the controlling contract under seal, the maintenance corporation declaration or the deed with the mortgage company. In Delaware, there are many communities operating with a maintenance corporation and this question of the 20 year common law statute of limitation for a contract under seal as the controlling document needs to establish if in fact the mortgage deed amend the original declaration since Delaware courts have not been able to properly address this matter. This matter should be remanded and vacated.

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### **CONCLUSION**

The petition for writ of certiorari should be granted.

November 26, 2018.

Respectfully submitted,

TIBY SAUNDERS GOMEZ,  
Petitioner  
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302-832-8516; 215-681-7954

*Counsel for Petitioner, Pro se*

App. 1

IN THE SUPREME COURT OF THE  
STATE OF DELAWARE

TIBY J. SAUNDERS-	§	No. 184, 2017
GOMEZ,	§	
Appellant Below-	§	Court Below—Superior
Appellant,	§	Court of the State of
	§	Delaware
v.	§	C.A. No. N16A-03-003
RUTLEDGE	§	
MAINTENANCE CORP.,	§	
Appellee Below-	§	
Appellee.	§	

Submitted: April 27, 2018

Decided: June 28, 2018

Before **VALIHURA, VAUGHN, and SEITZ**, Justices.

**ORDER**

After careful consideration of the parties' briefs and the record below, the Court concludes that the judgment should be affirmed on the basis of and for the reasons assigned by the Superior Court in its April 3, 2017 opinion affirming the Court of Common Pleas' post-trial judgment in the appellee's favor and its award of attorney's fees under a contractual fee-shifting provision.