

No. 18-859

In The
Supreme Court of the United States

EARNEST PEEL,

Petitioner,

vs.

H.E. BUTT GROCERY COMPANY,

Respondent.

**On Petition For Writ Of Certiorari
To The Fourteenth Court Of Appeals Of Texas**

REPLY BRIEF

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ARGUMENT

This brief responds to Mr. Staley's opposition brief and his accusation that there are no compelling reasons to hear the case because of evidence of fraud; in fact, the opposite is true.

The Supreme Court's rules state the circumstances in which a judge can set aside a default judgment. Under Federal Rules of Civil Procedure 60(b)-(c), a judge can set aside a default judgment for the following reasons, among others, (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.

The Fourteenth Court of Appeals incorrectly dispensed with this issue and did not take into account the fact that the holding shows that the Petitioner was prevented from making a meritorious defense by the opposing party's fraud. The arrangement between Mr. Vic Shapiro and the Petitioner was that the settlement would consist of \$200,000 rather than \$115,000. Shapiro's personal financial interest in a fast settlement in which he would quickly turn around fees resulting in \$38,333.33 precluded his adequate representation of the Petitioner. Working with Mr. Tom Laucius, Mr. Shapiro's attorney, Mr. Shapiro collected his attorney fees on a settlement contract that he did not negotiate in the Petitioner's best interest, or with the Petitioner's agreement. The fiduciary relationship between attorney and client in the United States imposes upon the attorney a "duty to exercise in all his relationships with this client-principal the most

scrupulous honor, good faith and fidelity to his client's interest" (*Daugherty v. Runner*, 581 S.W.2d 12, 16 (Ky. Ct. App. 1978)). In addition, "the relationship between attorney and client has been described as one of *uber-ima fides*, which means, 'most abundant good faith', requiring absolute and perfect candor, openness and honesty, and the absence of any concealment or deception" (*Perez v. Kirk & Carrigan*, 822 S.W.2d 261, 265 (Tex. App.-Corpus Christi 1991)). The Petitioner therefore believes that he has the right to a new trial based on the fact that his attorney did not act in good faith, and instead Mr. Shapiro told Mr. Mitchell that the Petitioner had accepted a payout of \$115,000 when in fact the Petitioner had agreed to a payout of \$200,000.

Mr. Staley and Mr. Mitchell tainted the discrimination with this settlement by introducing Mr. Shapiro's fraudulent intervention into the discrimination case when it should not have been part of it. In 2014, Mr. Staley sent the Petitioner's then attorney Mr. Debes a request for admission wherein H.E. Butt Grocery Company (HEB) admitted that, on October 14, 2013 the Petitioner had not accepted their settlement agreement and had not resigned. Then, on August 28, 2015 at the enforcement hearing, Mr. Staley teamed up with Mr. Laucius and used Mr. Shapiro's fraudulent Intervention when he asked Judge Palmer to enforce HEB's \$115,000 settlement. In essence, Mr. Staley used Mr. Shapiro's fraudulent intervention as a basis for obtaining a summary judgment for HEB. Mr. Staley had defrauded Judge Palmer in order to obtain this judgment, and the timing of this process meant that

the Petitioner missed an appeal and new trial. On September 23, 2016, Judge Palmer refused to let the Petitioner speak pro se, which prevented him from going on the record with his fraud evidence. This essentially sabotaged the Petitioner's discrimination case.

The holding shows that the Petitioner was prevented from making a meritorious defense by the opposing party's fraud. The arrangement between Mr. Shapiro and the Petitioner was that the settlement would consist of \$200,000 rather than \$115,000. Shapiro's personal financial interest in a fast settlement in which he would quickly turn around fees resulting in \$38,333.33 precluded his adequate representation of the Petitioner. Working with Mr. Tom Laucius, Mr. Shapiro's attorney, Mr. Shapiro collected his attorney fees on a settlement contract that he did not negotiate in the Petitioner's best interest, or with the Petitioner's agreement. The fiduciary relationship between attorney and client in the United States imposes upon the attorney a "duty to exercise in all his relationships with this client-principal the most scrupulous honor, good faith and fidelity to his client's interest" (*Daugherty v. Runner*, 581 S.W.2d 12, 16 (Ky. Ct. App. 1978)). In addition, "the relationship between attorney and client has been described as one of *uberima fides*, which means, 'most abundant good faith', requiring absolute and perfect candor, openness and honesty, and the absence of any concealment or deception" (*Perez v. Kirk & Carrigan*, 822 S.W.2d 261, 265 (Tex. App.-Corpus Christi 1991)).

The holding shows that the Petitioner did not bear any fault or negligence on the Petitioner's own part. The Petitioner fired Mr. Shapiro on knowing that he accepted a payout of \$115,000 when in fact the Petitioner had only agreed to a payout of \$200,000. After the Petitioner's subsequent attorney Mr. Debes resigned from this discrimination case, the Petitioner was at a disadvantage because he had two months to either prepare for the case or hire an attorney to represent him for the August 28, 2015 enforcement hearing. While he wanted to hire an attorney, the fraudulent \$115,000 settlement agreement made it impossible for him to find one to take his case so he had to represent himself. The court ruled on HEB's motion for summary judgment on the same day they ruled on HEB's fraudulent settlement agreement with the court.

The Petitioner therefore believes that he has the right to a new trial based on the fact that his attorney did not act in good faith, and that HEB's current attorney, Mr. Staley, is a part of this set of fraudulent acts to deprive the Petitioner of a fair court process and fair settlement. Because the Petitioner was not represented in a good faith capacity, one that he required in order to sue HEB inclusive of a retaliation charge, he should have the right to refile his suit against HEB under new representation. To this end, the summary judgment in the settlement agreement should be overturned, and a new trial be permitted to take place in order to protect the interests of the Petitioner.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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