

No. 19-1202

In the Supreme Court of the United States

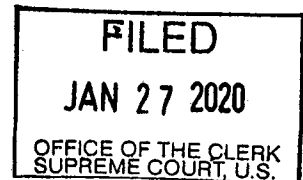
Thomas Taffe and Devony Lehner,

Petitioners,

v.

First National Bank of Alaska

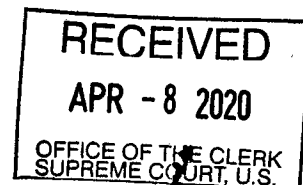
Respondent



*On Petition for a Writ of Certiorari
to the Supreme Court, State of Alaska*

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. Did a systemic bias against pro se litigants lead to the unconstitutional denial of Petitioners' right to a jury trial in this case?

(a) Did the summary judgment granted by the Alaska Superior Court recklessly violate state and federal legal standards?

(b) Did the Alaska Supreme Court fail to address the serious mistakes made by the Superior Court?

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IV. Petition for Writ of Certiorari

Thomas Taffe and Devony Lehner respectfully petition this Court for a writ of certiorari to review the summary judgment granted by the Superior Court of Kenai, Alaska in 2017 and the subsequent denial of relief on appeal by the Supreme Court of Alaska, Appellate Division in 2019.

V. Opinions Below

- (A) Order on Motion for Summary Judgment
(Adhesion, Ambiguity and Fraud) Superior
Court of Kenai Alaska (July 12, 2016).
- (B) Motion for Summary Judgment (Limitations)
Superior Court, Superior Court of Kenai
Alaska (09/13/2017).
- (C) Opinion (Denied Appeal) Alaska Supreme
Court, Appellate Division (09/27/2019).
- (D) Petition for Rehearing Alaska Supreme Court,
Appellate Division (10/29/2019).

VI. Jurisdiction

Petitioners request for a rehearing was denied on October 29, 2019. Taffe and Lehner invoke this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed (by USPS) this petition for a writ of certiorari within ninety days of the Alaska Supreme Court's refusal to grant a rehearing.

VII. Federal Constitutional Provisions Involved

United States Constitution Amendment VII:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.”

United States Constitution Amendment XIV:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. Statement of the Case

The right to a jury trial in civil cases is enshrined in both the United States Constitution (Amendment VII) and the Alaska Constitution (Article 1, §16). Similarly, the right to due process is found in United States Constitution Amendment XIV and the Alaska Constitution (Article 1, §7).

Alaska courts, like those in many other states, frequently have difficult interactions with pro se litigants. This often results in a negative bias—deserved or not. Typically, self-represented litigants are associated with wasting time and resources.

Nevertheless, those who represent themselves in a civil suit are constitutionally guaranteed equal protection under the law and a jury trial. This particular case is a test of the efficacy of those promises. These Petitioners are before this Court because they have been unfairly denied those rights.

Alaska Superior Court

During the four years of litigation in Superior Court, Petitioners (Plaintiffs) were continually under

attack with respect to due process, particularly their right to a jury trial. Indeed, at the first hearing in the case, on June 2, 2014, the lower court argued they were not entitled to a jury. Even after acknowledging they had filed the demand the lower court implied that there was no guarantee unless the court gave them a favorable ruling.

On October 28, 2014, the lower court announced it would delay ruling on the jury demand (filed for a second time with an amended complaint on September 3rd) until after Defendant's two motions for summary judgment were decided [R. 1728]. On December 2, 2014, the Plaintiffs made the demand for a for a third time as part of their 3rd amended complaint. [R. 0126-27]

Eighteen months later, at a hearing on April 27, 2016, four months before finally ruling on the two summary motions, the magistrate asked Petitioners if they had requested a jury trial, apparently hoping they would admit to abandoning their rights. Petitioners responded that they had filed a jury trial demand three times. [Trns. p.117, 3-4].

It took a total of twenty-two months for the

lower court to grant summary judgment on contractual ambiguity and deny summary judgment on fraud. These decisions were made on July 16, 2016 (R. 1777-1785). However, in its ruling court did not address the jury trial issue. However, on January 27, 2017, shortly after First National filed a new motion for summary judgment based on limitations (R.1597-98] the magistrate again tried to prevent the Petitioners from asserting their rights.

On February 2, 2017, six months after the summary judgments on ambiguity and fraud had been decided, the Superior Court told Petitioners that weren't going to have a jury trial because they "didn't make a request for a jury trial in a timely fashion" [Trns. 177, 21-25; 178, 1-8].

Petitioners responded that they were "certain" they had timely filed. They reminded the magistrate she had raised the question several times and that their claim had been repeatedly confirmed.

Even though the magistrate was "pretty sure" a request had not been made she agreed to "double check," claiming (incorrectly) that the demand was not listed in Courtview. She indicated: "what I'm

going to have to do is dig back, because it makes a difference when we're going to set this for trial, whether I'm setting for court trial or jury trial" [Trns. 218, 18-25]. She also indicated [Trns. 219, 2-4]: "My recollection when I looked at it a long time ago was...it wasn't filed timely."

The court clerk, who had been tasked with checking the record, later acknowledged in writing that the Petitioners' demand had been timely filed. But the lower court had also argued that a jury trial required too much time and effort.

At the February 2, 2017, hearing the magistrate complained about the prospect of a jury trial in Homer, Alaska (where the case had been filed) and indicated: "...maybe I'll even have a chance to dig through all this and make a ruling...I need to resolve the issue of jury or judge." [Trns. p. 219, 21-25 to p. 220, 1]

About seven weeks later, on March 21, 2017, after discussing summary judgment and a motion in limine also filed by First National. [Trns. p. 223, 21-22] the magistrate indicated: "I don't really have to get to the motion in limine if I grant the motion for

summary judgment because the motion for summary judgment on statute of limitations has time-barred the whole case” [Trns. p. 224, 1-7].

In response, partly because they felt the Court was pre-judging the limitations issue without reviewing the factual record, Petitioners asked for an evidentiary hearing [Trns. p. 225, 1-6].

The lower court magistrate then claimed: “Motion for summary judgment doesn't usually...give rise to an evidentiary hearing” and asked opposing counsel for advice [Trns. p. 226, 25 to p. 227, 14]. She concluded “I'm not going to have an evidentiary hearing...because that's not what we do here.” [Trns. p. 229, 4-5]

And yet, at the next status hearing, on June 7, 2017, the Superior Court magistrate advised the parties that Reasner v State of Alaska, 394 P.3d 610 (Alaska, 2017), decided a few weeks earlier, required her to hold an evidentiary hearing before deciding a summary judgment motion. Later, the Petitioners would argue to the lower court that it had misconstrued Reasner and deprived them of their due process and jury trial rights (to no avail).

There is no question that the issue was presented and that the lower court sought to prevent a jury trial from happening. Unfortunately, the State Supreme Court also acted unfairly and ignored the ill-conceived rulings and erratic reasoning of the lower court magistrate.

Alaska Supreme Court

The jury trial and due process issues were presented to the state supreme court several times. In their initial appeal to the Alaska Supreme Court, on p. 3, section VI, Petitioners argued the lower court “affirmatively acted to deny their constitutional right to a jury trial and their right to due process.”

On p. 27, section VI, entitled “Constitutional and Due Process Rights Violated,” Petitioners stated argued that the lower court “wrongfully denied” their “constitutional right to a jury trial and their right to due process.”

On p. 7 of the state Supreme Court's September 27, 2019, opinion it stated “Taffe and Lehner also contend that at the evidentiary hearing the superior

court violated their constitutional due process rights” and denied “their right to a jury trial.” The Court asserted that “...Taffe and Lehner offer no specific facts to suggest that the hearing’s length violated their due process rights, and their other arguments stand in direct opposition to our case law.”

The “other arguments” included many specific facts that showed the hearing had violated their due process rights and the hearing's length was one of many choices made by the lower court that strongly suggest an underlying bias.

The lower rulings in this case are so filled with errors, so unreasonable and inaccurate with respect to the facts and the law, that they cannot be explained as mere mistake. Instead, they are much more likely to be the product of systemic bias. Turning a blind eye at the Supreme Court level is even more inexplicable.

IX. REASONS FOR GRANTING THE WRIT

A brief review of the legal mistakes made by the Superior Court are outlined below, followed by an analysis of the state Supreme Court's failure to supervise and correct the lower court. Petitioners

humbly request that this Court grant a writ of certiorari so that they can fully demonstrate the extent of the failures and the threat these practices pose to the larger judicial system.

The Superior Court Denied Petitioners Due Process

Discovery Rule Errors

In this case the Superior Court mistakenly granted summary judgment loosely based on one element of the discovery rule (inquiry notice) without determining: (1) when actual injury from fraud first occurred; (2) when that was discoverable; (3) whether a reasonable inquiry was made, and if so, (4) whether it was productive or unproductive; (5) whether an unproductive inquiry was made that was utterly unreasonable, and (6) if so, whether all the elements of the cause of action could have reasonably been discovered during the term of the statute of limitations. The movant, First National, did not address any of these aspects of the discovery rule.

Summary Judgment Standards

The lower court also misconstrued the standards for granting summary judgment in that it: (1) chose not to base its judgment on incontrovertible

facts; (2) did not construe the factual inferences in favor of the non-moving party; (3) did not distinguish between evidentiary and judicial admissions; (4) did not require the movant to meet its burden of proof.

The lower court magistrate improperly redefined herself as a trial judge in the first few minutes of the July 18, 2017 evidentiary hearing (Tr. Page 248, 9-20) saying: "...when it's...a combined legal and factual issue of which there may be a dispute it's best for the Court to have an evidentiary hearing, evaluate the credibility of the witnesses and evaluate the evidence, the same as the Court would do at a trial..."

In contrast the United States Supreme Court stated in Reeves v. Sanderson, 530 U.S. 133, at 150-51 (2000) that "the court must draw all reasonable inferences in favor of the nonmoving party and it may not make credibility determinations, or weigh the evidence. 'Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.' Liberty Lobby, *supra*, at 255."

The Reeves opinion added: “Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe...That is, the court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'”

The standard under Alaska common law, although somewhat more lenient to the non-movant in certain respects, is very similar. *See, for example, Christensen v Alaska Sales and Service, Inc.* 335 P.3d 514 (Alaska 2014): “Alaska's summary judgment standard does not allow trial courts, on the limited evidence presented at the summary judgment stage, to make trial-like credibility determinations, conduct trial-like evidence weighing, or decide whether a non-moving party has proved its case.”

An important material issue, one on which this case turns, was the actual date of accrual. Here the movant did not prove when accrual actually occurred. It presented only the disputed inference that

Petitioners should have made an inquiry into the possibility of fraud. An inference does not satisfy the legal standard.

Furthermore, Petitioners provided substantial evidence under oath that they made a series of inquiries but did not find evidence of actual harm or fraudulent intent until 2012-2013. The movant did not provide any credible evidence contradicting Petitioners' description of their inquiries.

The failure of the movant to establish the date of accrual with anything more than an inference, in and of itself, shows that there was no legal basis for granting summary judgment based on limitations. Unfortunately, the Alaska Supreme Court failed to correct the lower court's errors and added others.

The Alaska Supreme Court

The Alaska Supreme Court exacerbated the injustice of the lower court by basing its opinion on a lengthy sequence of inaccurate factual claims, faulty inferences, and incomplete reasoning.

For example, on page 4, the state Supreme

Court represented that: “In July 2015, after Taffe and Lehner apparently abandoned their claim to set aside the foreclosure, the superior court dismissed Taffe and Lehner’s requests for declaratory relief regarding the foreclosure and ruled that their remedies were limited to damages.”

There is nothing in the record of this case showing the Superior Court dismissed the Petitioners' request for declaratory relief in July 2015. Furthermore, the basis for that relief did not depend solely on setting aside the foreclosure.

The state Supreme Court represented that: “In July 2016 the court granted First National summary judgment on most of Taffe and Lehner’s remaining claims.” There is no record showing the superior court granted summary judgment on Petitioners' “remaining claims” in July 2016.

The Alaska Supreme Court also represented that: “The court denied summary judgment on the contractual ambiguity claim, ruling that there was a genuine dispute whether the deed of trust was fully integrated, and on the fraud claim that First National misrepresented the terms of the 2008 deed

of trust.” The lower court actually granted summary judgment on the contract ambiguity claim and denied summary judgment with respect to fraud.

On page 6, pp. 1 the Supreme Court stated that: “The court specifically found that by early 2009, Taffe and Lehner should have realized that First National 'had a different view' of the agreement; they had questioned First National why a new deed of trust had not been issued.”

Having “a different view” of an agreement is not evidence of fraudulent misrepresentation, which requires malicious intent and other elements.

The Supreme Court also stated on page 6 that: “The court discounted as unreasonable Taffe and Lehner’s arguments that they had no reason to believe First National did not intend to reduce its collateral. The court found that Taffe and Lehner “had all the information they needed to move forward with the [fraud] claim . . . [by] February 1, 2010 . . .”

The lower court did not cite actual evidence or provide reasoning showing Petitioners “had all the information they needed to move forward with the [fraud] claim...[by] February 1, 2010.”

Both the Respondent and the lower court improperly relied on the inference that the use of a Change in Terms document (rather than a new Deed of Trust) required Petitioners to file an action based on fraud. The Petitioners did inquire but did not initially see evidence of the crucial elements of fraud.

At page 7, pp. 1, the Supreme Court claimed that: “Taffe and Lehner argue that the superior court legally erred by resolving at a pretrial evidentiary hearing the disputed facts about when the statute of limitations for their claims began to run. But we have stated on numerous occasions that superior courts should hold pretrial evidentiary hearings to resolve whether a statute of limitations has run.”

Taffe and Lehner did not argue that the lower court was prohibited from holding evidentiary hearings at which contested factual claims could be decided by incontrovertible evidence. They argued that the court could not resolve material factual disagreements and grant summary judgment by making credibility determinations and drawing inferences that tended to favor the movant.

The Supreme Court stated that: “Taffe and

Lehner also contend that at the evidentiary hearing the superior court violated their constitutional due process rights by limiting the proceeding's length, assuming the role of fact finder, not determining incontrovertible facts, restricting the hearing to the statutes of limitations, and denying their right to a jury trial. But Taffe and Lehner offer no specific facts to suggest that the hearing's length violated their due process rights, and their other arguments stand in direct opposition to our case law."

The Petitioners did not make their argument about the hearing's length in a vacuum. The state Supreme Court provided no basis for concluding that "their other arguments stand in direct opposition to our case law."

On Page 11 the state Supreme Court also stated: "Finally, as the court found, in February 2010 Taffe and Lehner were forced, under protest, to negotiate a loan extension and change of terms agreement including leaving the unsubdivided tracts covered by the deed of trust. The February 2010 agreement meant that Taffe and Lehner's title to the unsubdivided tracts remained clouded and they

would be forced to negotiate any future tract sales with First National. This is an appreciable injury.”

The state Supreme Court was entirely incorrect when it claimed that Petitioners were “forced” to “leave the unsubdivided tracts” covered by “the deed of trust” in 2010. There were no “unsubdivided tracts.” Unsubdivided tracts were and are prohibited by the applicable ordinances of the City of Homer, Alaska, where the project was located.

On Page 11 the state Supreme Court also stated: “The superior court found that in early 2009 Taffe and Lehner were aware of and complaining to First National that the unsubdivided tracts had not been released from the 2008 deed of trust. The failure to release the tracts meant that Taffe and Lehner’s title to the tracts was clouded, arguably an appreciable injury in and of itself.”

There was no proof of an “appreciable injury” in 2010. There was no “cloud” over title (ownership) until the foreclosure action in November 2012. Any prior damage claims would have been speculative. Plaintiffs provided the state Supreme Court with caselaw indicating speculative damages do not

qualify as the date of accrual nor do they start the running of the statute of limitations.

On page 12, pp. 3 the state Supreme Court acknowledged that Petitioners had made at least one inquiry as to whether there was any potential wrongdoing: “Taffe and Lehner contend that the superior court, despite determining when a reasonable person should have begun inquiring into the alleged fraud, never determined whether they made such inquiries. But the court found that they started inquiring in early 2009 whether First National intended to execute a new deed of trust, when they questioned why it had not been done.”

The controversy that concerned Petitioners in 2009 was resolved in September of that year by the sale of “Tract F” without the permission of the bank. Petitioners provided overwhelming documentation showing that First National's account was fictional.

Plaintiffs provided the state Supreme Court with evidence that they made six inquiries regarding First National's intent between 2009 and 2012. Plaintiffs argued that the statute of limitations was tolled by each of those actions and that the fraud was


continuous, which would also toll limitations.

Finally, on Page 14, pp. 2, lines 9-15 the Supreme Court incorrectly represented that “the superior court ultimately dismissed the fraud” claims. The lower court did not dismiss the fraud case; it relied on the presence of credible evidence of all the elements of fraud in order to rationalize dismissal based on limitations. Petitioners submit that a closer look at the Record will show that both courts were stunningly erratic and incorrect because of systemic bias.

X. Conclusion

Petitioners respectfully request that this Court issue a writ of certiorari to review the rulings of the Kenai Superior Court and the Alaska Supreme Court, Appellate Division.

Respectfully submitted on April 1, 2020



April 1, 2020

Thomas Taffe



April 1, 2020

Devony Lehner

APPENDIX