

No. 19-1320

IN THE SUPREME COURT OF THE UNITED STATES

VERONICA M. JOHNSON,

Petitioner,

v.

ROCK SOLID JANITORIAL, INC AND
SELECTIVE INSURANCE CO. OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION

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June 29, 2020

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QUESTIONS PRESENTED

1. Whether a party may appeal to the Supreme Court of the United States an issue not raised before the trial or appellate courts?
2. Whether the circuit court's rulings on motions filed by Johnson in CL 16003713-01 and its failure to conduct a *de novo* proceeding of her appeal from general district court in GV16008237-00 violated the Constitution, including denying her demand for a jury trial and due process rights?

In accordance with U.S. Sup. Ct. R. 15(2), Respondents Rock Solid Janitorial, Inc. (Rock Solid) and Selective Insurance Co. of America (Selective) object to the consideration on Petition for a Writ of Certiorari to the Supreme Court of Virginia (Writ Petition) filed by Petitioner Veronica M. Johnson (Johnson) with this Court because the Writ Petition seeks orders from this Court on matters not raised in the trial court or on appeal to the Supreme Court of Virginia. No error can be assigned to a lower court on an issue for which it has not be confronted, considered and issued a decision.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to U.S. Sup. Ct. R. 29, Respondent Rock Solid Janitorial, Inc. is a privately-held corporation; it has no parent company. Respondent Selective Insurance Company of America is a wholly-owned subsidiary of Selective Insurance Group, Inc., a publicly-traded company (NASDAQ: SIGI). Selective Way Insurance Company is also a wholly-owned subsidiary of Selective Insurance Group, Inc. The only entity that owns more than a 10% interest in Selective Insurance Group, Inc., is BlackRock, Inc., a publicly-traded investment management firm (BlackRock). BlackRock purchased SIGI common shares in the ordinary course of its investment business and previously filed Schedules 13G/A with the U.S. Securities and Exchange Commission (SEC). On February 4, 2020, BlackRock filed a Schedule 13G/A reporting beneficial ownership as of December 31, 2019 of 11.7% of SIGI's common stock. In connection with purchasing SIGI common shares, BlackRock filed the necessary filings with insurance regulatory authorities. Based on those filings, BlackRock is deemed not to be a controlling person for the purposes of applicable insurance law. To the best of Respondents' knowledge, information and belief, there is no other corporation, unincorporated association, partnership or other business entity, not a party to this case, which has a financial outcome in this litigation.

STATEMENT OF RELATED PROCEEDINGS

Veronica M. Johnson v. Rock Solid Janitorial, Inc. et al., No. 171132, *petition for appeal granted, in part, and remanded* (Va. Sup. Ct. Feb. 28, 2018), *rehearing denied* (Va. Sup. Ct. May 11, 2018).

Veronica M. Johnson v. Rock Solid Janitorial, Inc. et al., No. CL 16003713-00 (Final Order) (Cir. Ct. Portsmouth May 1, 2017), *rehearing denied* (Cir. Ct. Portsmouth May 18, 2017).

Veronica M. Johnson v. Rock Solid Janitorial, Inc. et al., No. GV16008237-00, (Orders) (Gen. Dist. Ct. Dec. 6, 2016).

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Veronica M. Johnson v. Rock Solid Janitorial, Inc. et al., No. 190294, *petition for appeal denied* (Va. Sup. Ct. Aug. 28, 2019), *rehearing denied* (Va. Sup. Ct. Feb. 12, 2020).

Veronica M. Johnson v. Rock Solid Janitorial, Inc. et al., No. CL 16003713-01 (Final Order) (Cir. Ct. Portsmouth Dec. 31, 2018).

Veronica M. Johnson v. Rock Solid Janitorial, Inc. et al., No. CL 16003713-01 (Order) (Cir. Ct. Portsmouth Oct. 9, 2018).

STATEMENT OF THE CASE

Johnson initially filed suit against Rock Solid and Selective alleging entitlement to payment of medical benefits under an insurance policy issued to Rock Solid for an alleged incident occurring on June 30, 2015 in the Portsmouth City Courthouse and for which Johnson claims injuries. She also sought punitive damages against Selective claiming insurance bad faith in violation of Va. Code Ann. § 38.2-510(13) for its failure to pay such unpaid medical benefit entitlements to her. Throughout the course of this litigation, Johnson's actions have included, among others, reciting grossly inaccurate facts, filing unwarranted motions for sanctions against defense counsel and filing Federal Bureau of Investigation complaints, obstruction of justice claims, motions demanding judge recusals and writs of mandamus for those judges and judge designates that do not rule in her favor.

Aligned with her usual tactics, the Writ Petition accuses defense counsel of repeatedly perpetrating fraud on the court and state court judges for allegedly altering orders, conducting "covert" and "strategically procedurally concocted" bench trials and making rulings and issuing decisions unsupported by any evidence in the record. *See generally* Writ Pet.

The Virginia Supreme Court's remand to the circuit court in CL 16003713-01, was limited to consideration of assignment No. 1 as set forth in Johnson's petition for appeal to the Virginia Supreme Court (No. 171132) with all remaining assignments of error refused. *See* Writ Pet. Appx. D. Despite Johnson's alteration of the pre-printed notice of appeal form, the Virginia Supreme Court found that because Johnson submitted a written notice of appeal that was timely received by the clerk of the general district court, the circuit court erred in holding that Johnson failed to perfect her appeal from the general district court to the circuit court. *Id.* In rendering its decision, the Virginia Supreme Court opined that:

Johnson served a warrant in debt upon Rock Solid Janitorial, Inc. and Selective Insurance Company of America and the matter proceeded to a hearing in the [general district court] of the City of Portsmouth. On the same day the general district court judge denied Johnson relief, Johnson tendered a written notice of appeal to the clerk of the general district.

Id.

Upon remand to the circuit court in CL 16003713-01, Johnson filed a Motion to Enter Judgment for Virginia Supreme Court Appeals Costs, a Motion to Enter Summary Judgment in this Case, a Motion to Enter an Order Declaring Plaintiff is Entitled to Jury Trial to Determine the Amount of Punitive Damages for Bad Faith Insurance Practices, a Motion to Enter Order Declaring Plaintiff is Entitled to an

Award of Sanctions and a Motion for Cameras in the Courtroom. Without waiving defenses that Johnson's motions were not properly before the Court, Respondents filed written oppositions to the motions. The parties appeared before the circuit court for oral argument on Johnson's motions on September 24, 2018. On October 9, 2018, the circuit court entered an order consistent with its findings and rulings rendered from the bench at the September 24, 2018 hearing. *See* Writ Pet. Appx. G. The order, *inter alia*, denied the Motion to Enter an Order Declaring Plaintiff is Entitled to Jury Trial to Determine the Amount of Punitive Damages for Bad Faith and dismissed with prejudice her claim for punitive damages for Bad Faith Insurance Practices finding that Johnson was not entitled to an award of punitive damages. *Id.* The order denied the Motion to Enter Order Declaring Plaintiff is Entitled to an Award of Sanctions and dismissed her claim for sanctions finding that Johnson was not entitled to an award of sanctions. *Id.* Because the circuit court dismissed with prejudice her claim for punitive damages and dismissed her claim for sanctions, the sole remaining claim before the circuit court was Johnson's contention that she was owed a debt in the sum of \$12,455.14 for unpaid Medical Benefits Entitlement.

On November 13, 2018, Respondents filed a Motion to Dismiss and Petition for Hearing on the Motion to Dismiss with the circuit court. The Motion to Dismiss sought dismissal with prejudice of CL 16003713-01 arguing Johnson lacked standing to pursue her claim against Respondents because she was neither a party to nor a third-party beneficiary of the insurance contract and further that even if Johnson had standing to bring her claim against Respondents, the case should be dismissed because Johnson had failed to bring all necessary parties before the circuit court and was now precluded from doing so. The circuit court heard the Motion to Dismiss on November 26, 2018 and entered a final order on December 31, 2018. *See* Writ Pet. Appx. A. The final order dismissed CL 16003713-01 with prejudice finding that Johnson did not have standing because she was not a beneficiary under Rock Solid's insurance policy; did not have a contract with Rock Solid's insurance company and thereby no privity of contract existed and further that she had suffered no loss or out-of-pocket expenses. *Id.* The circuit court also found that Johnson sued Rock Solid and Selective, jointly and severally, in general district court, GV16008237-00, that the general district court did not grant Johnson leave to amend her warrant in debt to name Selective Way Insurance Company and Selective Insurance Group, Inc. as additional parties and therefore Selective Way Insurance Company and Selective Insurance Group, Inc. were not before the circuit court. *Id.*

Johnson appealed the circuit court's final order to the Virginia Supreme Court, No. 190294, and filed her petition for appeal on March 7, 2019. On August 21, 2019, Johnson presented oral argument before the Virginia Supreme Court on her petition to appeal. On August 28, 2019, the Virginia Supreme Court denied Johnson's petition for appeal concluding there was no reversible error in the judgment complained of. *See* Writ Pet. Appx. B. Johnson filed a petition for rehearing with the Virginia

Supreme Court, which was denied for rehearing without comment on February 14, 2020. *See* Writ Pet. Appx. C.

Johnson filed her Writ Petition with this Court on or about May 6, 2020. The Writ Petition includes three questions presented that attempt to challenge the circuit court's rulings in CL 16003713-01, appealed to the Virginia Supreme Court in No. 190294, raising for the first time alleged violations of the Constitution in the circuit court's denial of Johnson's demand for a jury trial and its failure to conduct a *de novo* proceeding of her appeal from the general district court.

ARGUMENT

The Court will grant a petition for a writ of *certiorari* “only for compelling reasons” and “not as a matter of right but of judicial discretion.” U.S. Sup. Ct. R. 10. Reasons deemed compelling enough for Court review typically arise from an irreconcilable conflict among the federal courts of appeal or between one of those courts and a state court of last resort on an “important federal question.” *Id.* It is “rarely granted when the asserted error consists of erroneous factual findings.” *Id.*

The keystones are “conflict” and an “important question of federal law,” neither of which are presented in the Writ Petition. The Writ Petition “presents” in its questions an alleged generalized violation of the Constitution and identifies the Seventh and Fourteenth Amendment as the constitutional and statutory provisions involved. The Writ Petition contains no factual basis or legal authority supporting such generalized allegations. No error can be assigned to a lower court for an issue with which it has not been confronted. Regardless of whether Johnson raised these constitutional challenges before the circuit court and the Virginia Supreme Court, her constitutional rights have not been impermissibly infringed.

REASONS WHY THE PETITION SHOULD BE DENIED

I. Johnson's claims of Seventh and Fourteenth Amendment violations are not preserved or properly presented to this Court for review.

Johnson is raising constitutional questions for the first time in her Writ Petition to this Court. The Supreme Court rarely addresses issues that the parties failed to raise below or that the courts below did not address. *See Clingman v. Beaver*, 544 U.S. 581, 598 (2005) (“We ordinarily do not consider claims neither raised nor decided below.”); *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 552, n.3 (1990) (“Applying our analysis ... to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's Discretion”); *United States v. Mendenhall*, 446 U.S. 544, 551 n.5 (1980) (Supreme Court considers matters “neither raised before nor decided by the courts below” only “in exceptional circumstances”).

Johnson filed her petition for appeal in No. 190294, in excess of 100 pages, on March 7, 2019 asserting eight assignments of errors, presented one question and raised numerous issues in her appeal to the Virginia Supreme Court, none of which involved or implicated the Seventh or Fourteenth Amendments. The eight asserted assignments of error constitute mere disagreements with the circuit court's grants of Respondents' motions and denials of Johnson's motions in CL 16003713-01. The presented question asks "why a big law firm like Williams Mullen is fighting so hard over a little remaining unpaid \$12,544.86 'no fault' Med Pay Entitlement to a 69 year old senior citizen following an 'unrefuted fall.'" Johnson's motion for rehearing and motion to supplement did not assert or offer support for violations of Seventh or Fourteenth Amendments. The Virginia Supreme Court denied all three motions.

Most telling is Johnson's inability to articulate, support and point this Court to any portion of the record or legal authority argued by her regarding alleged violations of the Seventh or Fourteenth Amendments. U.S. Sup. Ct. R. 14(1)(g)(i) mandates that a Writ Petition shall contain:

A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following: (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

Id. Johnson's Writ Petition fails to comply with the requirements of this rule, in effect confessing her inability to present a reviewable federal question, when, if ever, such was raised and factual and legal support in the record constituting a violation of the Constitution for consideration and review by this Court. *See Ellis v. Dixon*, 349 U.S. 458, 462–64 (1955) ("[W]e could not on this vague and empty record decide the constitutional issues sought to be presented. This Court has often refused to decide constitutional questions on an inadequate record.").

Additionally, the orders issued by the circuit court in CL 16003713-01 are void of any evidence of constitutional objections raised or issues presented by Johnson for consideration and ruling by the circuit court. As previously stated, this Court takes a dim view of constitutional claims, which surface for the first time in a Writ Petition. *See E.E.O.C. v. Fed. Labor Auth.*, 476 U.S. 19, 24 (1986) (refusing to address claim of federal agency which was not raised either at the administrative level or on appeal). In *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390 (2015), this Court ruled that because the party's argument was never presented to the lower court it was therefore forfeited. *OBB Personenverkehr AG*, 136 S. Ct. at 397. In making such decision, the Court noted that "[w]e consider only the relevant conduct as defined in the district court." *Id.*

Johnson offers no excuse for her failure to raise any constitutional concerns for consideration and decision with either the circuit court in CL 16003713-01 or on appeal to the Virginia Supreme Court in No. 190294, or argument of any kind to encourage this Court to abandon its usual practice and consider an issue raised for the first time in the Writ Petition. Simply put, Johnson's generalized statement that the rulings of the circuit court and Virginia Supreme Court have impermissibly denied her Seventh Amendment right to trial by jury and violated her Fourteenth Amendment right to due process without having raised such constitution violations in these courts, should be forfeited and not considered by this Court for the first time on review.

II. The Seventh Amendment is not implicated in this case.

Even if Johnson had advanced or could articulate a Seventh Amendment argument for consideration and decision by the state courts, there is no basis for the grant of the Writ Petition.

Johnson's argument to this Court that the circuit court's dismissal of CL 16003713-01 on respondents' Motion to Dismiss rather than proceeding to a jury trial upon remand amounted to an impermissible infringement upon the right to a jury trial as guaranteed by the Seventh Amendment of the Constitution is wholly without merit or support. As an initial note, the Seventh Amendment only applies to proceedings in courts of the United States and does not govern or regulate those trials that take place in state courts. *See McDonald v. Chicago*, 561 U.S. 742 (2010).

Johnson does not cite or reference to and Respondents are not aware of any law or authority for the proposition that a proper grant of a motion to dismiss can in any way infringe on the losing party's right to a trial by jury. The Supreme Court of Virginia Rules of Civil Procedure allow for motions to dismiss to be adjudicated. Va. Sup. Ct. R. 3:8 specifically classifies a motion to dismiss as a pleading. "A demurrer, plea, motion to dismiss, and ... shall each be deemed a pleading in response for the count or counts addressed therein." Va. Sup. Ct. R. 3:8. The Virginia rule akin to Fed. R. of Civ. P. 12(b) succinctly illustrates the reasons for which a litigant may file

a motion to dismiss including, but not limited to, failure to state a claim upon which relief can be granted and failure to join a proper or necessary party. *See* Fed. R. Civ. P. 12(b).

The final order issued in CL 16003713-01 sets forth in detail the facts considered by the circuit court and its legal basis for granting the motion to dismiss. *See* Writ Pet. Appx. A. In denying Johnson's petition for appeal, the Virginia Supreme Court concluded there was no reversible error in the judgment complained of based "upon review of the record and consideration of the arguments submitted in support of the granting of an appeal." *See* Writ Pet. Appx. B. "On consideration of the petition of the appellant to set aside the judgment rendered herein on August 24, 2019 and grant a rehearing thereof, the prayer of the said petition is denied." *See* Writ Pet. Appx. C.

III. The Fourteenth Amendment is not implicated in this case.

Similarly, even if Johnson had advanced or could articulate a Fourteenth Amendment argument for consideration and decision by the state courts, there is no basis for the grant of the Writ Petition.

The Writ Petition's bald assertion that the final order issued in CL 16003713-01 shows that this matter was not a *de novo* proceeding as required by statute, Va. Code § 16.1-106, constituting violation of Fourteenth Amendment due process is likewise without merit or support. The Virginia Supreme Court's remand to the circuit court in CL 16003713-01 was limited to consideration of assignment No. 1. *See* Writ Pet. Appx. D. The remand order included findings of fact, among them, that Johnson served the warrant in debt upon Rock Solid and Selective and the matter proceeded to a hearing in the general district court. *Id.* The Virginia Supreme Court noted that the case "is remanded to the circuit court for proceedings consistent with this order." *Id.* The circuit court in CL 16003713-01 proceeded accordingly.

Johnson offers no evidence, arguments or brief in support for her contention that her rights guaranteed to her by the Fourteenth Amendment of the Constitution were violated. The Writ Petition puts forward no new evidence, demonstrates no legal error on the part of the circuit court or the Virginia Supreme Court, nor presents any compelling issue or conflicts among the courts that would support a grant of the Writ Petition.

CONCLUSION

The Writ Petition should be denied.

June 29, 2020

Respectfully submitted,

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