No. 19-1395

IN THE
SUPREME COURT OF THE UNITED STATES

DISCOVER BANK

V,

RALEIGH ROGERS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

RALEIGH ROGERS
Pro se
314 Main Street NW
Lenoir, NC 28645
202 641 1146
wrgr6@earthlink.net
Petitioner

QUESTION PRESENTED

1. DOES "PRO SE" MEAN "NO SAY" OR ARE EVEN PRO SE LITIGANTS ELIGIBLE FOR RELIEF FROM JUDGMENT AND A NEW TRIAL PURSUANT NC §1A-1RULE 60(b)(3) WHEN COURTS IN NORTH CAROLINA ALLOW LICENSED OPPOSING COUNSEL TO COMMIT FRAUD, MISREPRESENTATION, AND MISCONDUCT?

PARTIES TO THE PROCEEDINGS

Raleigh Rogers, Petitioner

Discover Bank, Respondent

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CASES

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OPINION BELOW

The unpublished opinion of the North Carolina Court of Appeals is included as Appendix 1.

JURISDICTION

This Court has jurisdiction of this petition to review judgment of the North Carolina Supreme Court pursuant to Art. III, §§1,2;

The North Carolina Supreme Court had subject matter jurisdiction pursuant to N.C. G.S. § 7A-31.

STATEMENT OF THE CASE

Besides filing perjured, mutually exclusive affidavits[1] Plaintiff-Appellee took a document Defendant-Appellant had filed with his Answer (R p 30) See Appendix 3 at 14, altered it, selectively obscured it, and re-filed it with the court as if it were the original. (S R p 58). See Appendix 4 at 16. (Proof the altered document and the notarized, legible copy Defendant-Appellant had filed with his Answer are the same document is the twenty-three-digit identification number located at the lower right of each document. Because five of the twenty-three digits are letters, the probability the two documents are not the same document is greater than 10^{24} to one. For comparison, the estimated number of stars in the universe is only 10^{23}.)

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[1] The first Affidavit alleges Defendant-Appellant's unpaid purchases were $21,249.04 and unpaid Balance Transfers were $3,170.58 (R p 12). The second Affidavit alleges Defendant-Appellant's unpaid purchases were $2,756.18 and unpaid Balance Transfers were $19,543.04. (S R P2 ¶ 19). The difference is nearly 20k. Both can not be true. At least one is perjury

During trial, the Honorable Judge Killian claimed not to have a copy of the notarized, legible, solicitation (T v 1 p 9 L8) Defendant-Appellant had filed with his Answer (R p 30), which was later found in the Honorable Judge's chamber, at Defendant-Appellant's request (after furious search), by court clerks. During trial, Judge Killian referred to the "missing" document as "Exhibit 2", and it was proffered into evidence.

In the unpublished Appellate Opinion, Judge Zachary concluded the court was unable to ascertain whether prejudicial error occurred because Defendant-Appellant had not included "Exhibit 2" in the Record on Appeal. (Discover Bank v. Raleigh Rogers, unpublished opinion, (17 December 2019)) See, Appendix 1 at 8 ¶2. However, "Exhibit 2" was included in the Record on Appeal (R p 30), together with the altered, partially obscured version of "Exhibit 2" Plaintiff-Appellee had re-filed with the court as if it were the original. (S R p 58). See Appendix 3 and 4 at 14 and 16.

Defendant-Appellant noted Plaintiff-Appellee's fraud, misrepresentation, and misconduct in his Appellate Brief ("Statement of Facts"), and Defendant-Appellant cited NC §1A-1 Rule 60(b)(3) in the Conclusion to his Appellate Brief.

REASONS FOR GRANTING THE PETITION

Standard of Review:

> "The court may relieve a party . . . from a final judgment, order or proceeding for: (3) fraud (whether intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." NC §1A-1 Rule 60(b)(3).
>
> "Fraud is extrinsic when it deprives the unsuccessful party of an opportunity to present his case to the court. If an unsuccessful party to an action has been prevented

> from fully participating therein, there has been no true adversary proceeding, and the judgment is open to attack at any time." Stokley v. Stokley, 30 N.C. App 351, 227 S.E. 2d 131 (1976).
>
> [T]he purpose of requiring the movant to present a meritorious defense in a Rule 60(b) motion is to establish that there is some possibility that the outcome of the proceeding would be different after a full hearing on the merits. This requirement contemplates that following the setting aside of a final judgment, there will be a new trial on the merits. Baker v. Baker, 115 N.C. App. 337, 340 (1994)

Defendant-Appellant, the unsuccessful party to the action, was prevented from fully participating therein because of fraud, misrepresentation, and misconduct committed by opposing counsel, which filed perjured, mutually-exclusive affidavits, as well as an obviously altered document (S R p 58) (See Appendix 4 at 16) with the court. Proof that Plaintiff-Appellee's fraud, misrepresentation, and misconduct influenced the outcome of Discover Bank v. Raleigh Rogers is that Judge Killian would not allow Defendant-Appellant to present his evidence or confront and/or cross-examine witnesses with the legible, unaltered solicitation, because it did not match the altered, mostly illegible copy Plaintiff-Appellee had filed. Furthermore, the Honorable Judge Killian claimed not to have a copy of the legible, unaltered copy Defendant-Appellant had filed with verification with his Answer (T v 1 p 9 L8), though it was later found by clerks in his chamber. Finally, Judge Zachary predicated his ruling on his erroneous conclusion that "Exhibit 2" had not been included in the Record on Appeal when it was, infact, included (R p 30). In the unpublished opinion, Judge Zachery wrote:

> In that the record on appeal does not contain Defendant's Exhibit 2, we are unable to ascertain whether prejudicial error occurred. (See Appendix 1 at 8 ¶2)

Understandably, Judge Zachary was confused by Plaintiff-Appellee's fraud, misrepresentation, and misconduct, because "Exhibit 2" is the very document Plaintiff-Appellee had altered, partially obscured, and re-filed with the court as if it were the original. Although Judge Zachary's mistake is, indeed, understandable, Judge Zachary's confusion, and mistaken ruling (like Judge Killian's confusion and mistaken ruling) proves that the outcome of the trial might have been different but for the fraud, misrepresentation, and misconduct committed by the opposing party.

Other arguments that augment Defendant-Appellant's meritorious defense of his NC §1A-1 Rule 60(b)(3) motion for a new trial are:

1. "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Goldberg v. Kelly 397 U.S. 254, 269 (1970)

In Goldberg v. Kelly, the Supreme Court ruled Due Process requires an opportunity to confront and cross-examine adverse witnesses about important facts. In Discover Bank v. Raleigh Rogers, Defendant-Appellant was denied an opportunity to confront and cross-examine adverse witnesses about important facts. Because Defendant-Appellant was denied an opportunity to confront and cross-examine adverse witnesses about important facts, Defendant-Appellant was denied Due Process. Because Defendant-Appellant was denied Due Process, Defendant-Appellant was denied full participation in the trial and no true adversary proceeding took place. Because no true

adversary proceeding took place, the final judgment should be set aside and a new trial on the merits scheduled.

2. Where "evidence consists of testimony of individuals who, in fact, might be perjurers. . . . This Court has been zealous to protect these rights [confrontation and cross-examination] from erosion." Greene v. McElroy, 360 U.S. 474, 496-97 (1959).

In Greene v. McElroy, the U.S. Supreme Court guaranteed confrontation and cross-examination against individuals who might have committed perjury. In Discover Bank v. Raleigh Rogers, the mutually exclusive affidavits filed by Plaintiff-Appellee cast a penumbra of perjury (both can not be true); however, Defendant-Appellant was denied an opportunity to confront or cross-examine either witness, neither of whom appeared at trial. Because Defendant-Appellant was denied an opportunity to confront or cross-examine witnesses who might be perjurers, Defendant-Appellee was denied Due Process. Because Defendant-Appellant was denied Due Process, Defendant-Appellant was denied full participation in the trial and no true adversary proceeding took place. Because no true adversary proceeding took place, the final judgment should be set aside and a new trial on the merits scheduled.

3. "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts. . . . Marshall v. Jerrico 446 U.S. 238, 242 (1980); Schweiker v. McClure, 456 U.S. 188, 195 (1982).

In Marshall v. Jerrico, Justice Thurgood Marshall, in a unanimous Supreme Court decision, ruled Due Process guaranteed property would not be taken on the basis of an

erroneous or distorted conception of the facts. In Discover Bank v. Raleigh Rogers, mutually exclusive affidavits (compare R p 12 with S R p 2 ¶19) and evidence Plaintiff-Appellee lifted from Defendant-Appellant's Answer, altered, obscured, then re-filed as if it were the original, guaranteed an erroneous, distorted conception of the facts. Because the trial court ruling precipitated from an erroneous, distorted conception of the facts, Defendant-Appellant was denied Due Process. Because Defendant-Appellant was denied Due Process, Defendant-Appellant was denied full participation in the trial and no true adversary proceeding took place. Because no true adversary proceeding took place, the final judgment should be set aside and a new trial on the merits scheduled.

North Carolina's Supreme Court boosted:

> Even were the two provisions identical, we have the authority to construe our own constitution differently from the construction by the United States Supreme Court of the Federal Constitution, as long as our citizens are thereby accorded no lesser rights than they are guaranteed by the parallel federal provision. State v. Carter 322 NC 709; 370 SE 2d 553 (1988).

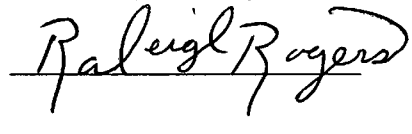
Therefore, it follows that if courts in North Carolina denied Defendant-Appellant Due Process by Federal Standards, North Carolina courts also denied Defendant-Appellant Due Process by state standards, which can be greater but not lesser than Federal Standards. It further follows that since Defendant-Appellant was denied Due Process, no true adversary proceeding took place. Ergo, pursuant to NC §1A-1 Rule 60(b)(3), Stokley, and Baker, Defendant-Appellant should be relieved from judgment and granted a new trial on the merits.

CONCLUSION

Besides filing mutually exclusive affidavits, Plaintiff-Appellee altered, obscured, and re-filed a critical piece of evidence originally filed by Defendant-Appellant with his Answer. As a result of Plaintiff-Appellee's fraud, misrepresentation, and misconduct: one, Defendant-Appellant was denied an opportunity to confront and cross-examine adverse witnesses; two, Defendant-Appellant was denied an opportunity to confront or cross-examine witnesses who might be perjurers; and three, the trial court ruling precipitated from an erroneous, distorted conception of the facts. As a result of Plaintiff-Appellee's fraud, misrepresentation, and misconduct, no true adversary proceeding took place. Pursuant to NC §1A-1 Rule 60(b)(3), fraud, misrepresentation, or misconduct by an opposing party are grounds for relieving a party from a final judgment. Pursuant to Stokley v. Stokley, an unsuccessful party who has been prevented from fully participating in a court action can attack the judgment at anytime. Pursuant to Baker v. Baker, setting aside a final judgment contemplates a new trial on the merits.

Because proof of fraud, misrepresentation, and misconduct can be found in the mutually exclusive affidavits filed by Plaintiff-Appellee (compare R p 12 with S R p 2 ¶19), as well as in the document Plaintiff-Appellee lifted from Defendant-Appellant's Answer, altered, obscured, then re-filed as if it were the original (compare R p 30 with S R p 58), Defendant-Appellant prays the Supreme Court of the United States will reverse and remand Discover Bank v. Raleigh Rogers to the trial court for a new trial.

Respectfully,



Raleigh Rogers. Pro se
314 Main Street NW
Lenoir, NC 28645
(202) 641-1164
wrgr6@earthlink.net
Petitioner