

No. _____

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

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IRON STONE REAL ESTATE FUND, I, L.P.,
IRON STONE REAL ESTATE GROUP, I LLC, and
ANDREW V. EISENSTEIN,

Petitioners,

v.

STEPHEN RATNER, AUDREY RATNER, and
DR. ROBERT OSTOYICH,

Respondents.

◆

**On Petition For Writ Of Certiorari
To The Superior Court Of Pennsylvania**

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PETITION FOR WRIT OF CERTIORARI

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BRETT A. BERMAN, ESQUIRE
Counsel of Record
ANDREW S. CONSOLE, ESQUIRE
FOX ROTHSCHILD LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103
(215) 299-2000
bberman@foxrothschild.com
aconsole@foxrothschild.com

QUESTION PRESENTED

Whether the procedural due process rights of a limited partner are violated when that limited partner is not named as a party in a direct action brought by another limited partner in which judicial dissolution of the limited partnership is sought and subsequently ordered.

PARTIES TO THE PROCEEDING

Petitioners, Iron Stone Real Estate Fund I, L.P., the limited partnership, Iron Stone Real Estate Group I, LLC, the general partner, and Andrew V. Eisenstein, the manager, were the defendants in the Court of Common Pleas of Philadelphia County proceedings, appellees in the Superior Court of Pennsylvania proceedings, and petitioners in the Supreme Court of Pennsylvania proceedings.

Respondents, Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich, three limited partners of Iron Stone Real Estate Fund I, L.P., were the plaintiffs in the Court of Common Pleas of Philadelphia County proceedings, appellants in the Superior Court of Pennsylvania proceedings, and respondents in the Supreme Court of Pennsylvania proceedings.

CORPORATE DISCLOSURE STATEMENT

Petitioners include Iron Stone Real Estate Fund I, L.P. and Iron Stone Real Estate Group I, LLC. There are no parent corporations or publicly held companies owning 10% or more of their stock.

LIST OF RELATED PROCEEDINGS

- Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich v. Iron Stone Real Estate Fund I, L.P., Iron Stone Real Estate Group I, LLC, and Andrew V. Eisenstein, No. 170301497, Court of Common

LIST OF RELATED PROCEEDINGS—Continued

Pleas of Philadelphia County. Opinion and Order entered on October 1, 2018.

- Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich v. Iron Stone Real Estate Fund I, L.P., Iron Stone Real Estate Group I, LLC, and Andrew V. Eisenstein, No. 170301497, Court of Common Pleas of Philadelphia County. Opinion entered on December 4, 2018.
- Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich v. Iron Stone Real Estate Fund I, L.P., Iron Stone Real Estate Group I, LLC, and Andrew V. Eisenstein, No. 3347 EDA 2018, Superior Court of Pennsylvania. Opinion and Order entered on May 29, 2019.
- Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich v. Iron Stone Real Estate Fund I, L.P., Iron Stone Real Estate Group I, LLC, and Andrew V. Eisenstein, No. 3347 EDA 2018, Superior Court of Pennsylvania. Order entered on July 31, 2019.
- Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich v. Iron Stone Real Estate Fund I, L.P., Iron Stone Real Estate Group I, LLC, and Andrew V. Eisenstein, No. 440 EAL 2019, Supreme Court of Pennsylvania. Order entered on February 4, 2020.
- Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich v. Iron Stone Real Estate Fund I, L.P., Iron Stone Real Estate Group I, LLC, and Andrew V. Eisenstein, No. 440 EAL 2019, Supreme Court of Pennsylvania. Order entered on March 6, 2020.

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PETITION FOR WRIT OF CERTIORARI

Iron Stone Real Estate Fund I, L.P. (“Iron Stone LP”), Iron Stone Real Estate Group I, LLC (“Iron Stone LLC”), and Andrew V. Eisenstein (collectively, “Petitioners” or “Defendants”) petition for a writ of certiorari to review the May 29, 2019 Opinion and Order of the Superior Court of Pennsylvania following the Supreme Court of Pennsylvania’s denial of Defendants’ petition for allowance of appeal and application for reconsideration of denial of allowance of appeal.

**OPINIONS BELOW**

The Court of Common Pleas of Philadelphia County’s Opinion and Order entered on October 1, 2018, which granted Defendants’ motion for summary judgment and dismissed the amended complaint with prejudice in its entirety, is reproduced at App. 25-32. The Court of Common Pleas of Philadelphia County’s Opinion entered on December 4, 2018 denying the motion for reconsideration and affirming the October 1, 2018 Order is reproduced at App. 33-39.

The Superior Court of Pennsylvania’s Opinion and Order entered on May 29, 2019 is reported at 212 A.3d 70, which reversed, in part, the October 1, 2018 Order and Opinion of the Court of Common Pleas of Philadelphia County, and remanded the matter to the Court of Common Pleas of Philadelphia County to enter an order that Iron Stone LP shall wind up its activities and affairs in accordance with 15 Pa. C.S. § 8682. It is

reproduced at App. 1-23. The Superior Court of Pennsylvania's Order entered on July 31, 2019 denying Defendants' application for reargument is reproduced at App. 24.

The Supreme Court of Pennsylvania's Order entered on February 4, 2020 denying Defendants' petition for allowance of appeal is reported at 224 A.3d 368, and is reproduced at App. 40. The Supreme Court of Pennsylvania's Order entered on March 6, 2020 denying Defendants' application for reconsideration of denial of allowance of appeal is reproduced at App. 41.



JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a).

The Supreme Court of Pennsylvania entered an Order on February 4, 2020 denying Defendants' petition for allowance of appeal. App. 40. The Supreme Court of Pennsylvania denied a timely application for reconsideration in an Order entered on March 6, 2020. App. 41. On March 19, 2020, in light of the ongoing public health concerns relating to COVID-19, this Court entered an Order extending the deadlines to file a petition for writ of certiorari due on or after March 19, 2020 (which includes the subject petition) to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. One hundred fifty days

from March 6, 2020, the date the Pennsylvania Supreme Court denied reconsideration, is August 3, 2020.



CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV.



STATEMENT OF THE CASE

A. Factual Background

This action involves a dispute between Defendants, Iron Stone LP, Iron Stone LLC (the general partner), and Andrew Eisenstein, the manager of Iron Stone LLC, and three of its limited partners, Plaintiffs, Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich (collectively, “Respondents” or “Plaintiffs”). This action centers around an eight-year extension of Iron Stone LP, which Defendants maintain was approved by the required number of limited partners (at least 66.67%) pursuant to the Agreement of Limited Partnership of Iron Stone Real Estate Fund I, L.P. (the “Partnership Agreement”), and Plaintiffs’ opposition thereto.

Iron Stone LP was formed with the “primary purpose . . . to acquire, hold, maintain, operate, develop, sell, improve, lease, license, pledge, encumber, dispose

of and otherwise invest in, directly or indirectly, real estate and related assets,” and “to engage in other activities incidental or related thereto.” App. 2-3. Stephen Ratner and Audrey Ratner purchased two units out of 100 (a 2% ownership interest) of Iron Stone LP for \$200,000. Dr. Robert Ostoyich purchased one unit out of 100 (a 1% ownership interest) for \$100,000. There were 100 units purchased, so Iron Stone LP’s fund totaled \$10 million. App. 3.

Section 4 of the Partnership Agreement provides that the term of Iron Stone LP is “until December 31, 2013, unless earlier terminated in accordance with this Agreement or unless extended in the sole discretion of the General Partner for one or more of two additional consecutive periods of one year each.” Pursuant to this provision, Iron Stone LLC extended the term of Iron Stone LP to December 31, 2015. App. 3.

On April 25, 2016, a “Memorandum to Limited Partners” was sent to all of the limited partners that stated, in part: “We are writing to let you know about the next steps for Iron Stone Real Estate Fund I, L.P. (‘Fund’). The fund was established in March 2006 with the expectation that all investments would be sold and the partnership unwound by the end of 2015. But given the current status of Falls Center, the Fund’s largest remaining investment, we believe the correct course is to extend the term of the fund for an additional eight (8) years.” App. 4-5. After detailing the reasons why this extension was believed to be in the best interests of all of the limited partners, the “Memorandum to Limited Partners” concluded: “We understand that this

is a significant change to the plan we began with in 2006. But after managing the Fund's portfolio, and Falls Center in particular, through the 2008 economic crisis we have positioned the remainder of the portfolio for a positive outcome. We believe that staying the course is the smart way to go." App. 5.

Each limited partner was given a copy of the proposed amendment and a written consent form to sign and return, which allowed each limited partner to state whether he or she accepted or rejected the proposed amendment. App. 5. Out of the 100 units, limited partners owning 30.75 units agreed to the extension, and limited partners owning four units (including Plaintiffs) denied the extension. Limited partners owning 65.25 units did not respond and, therefore, were presumed to have consented to the extension in accordance with Paragraph 15(c) of the Partnership Agreement. Thus, far more than 66.67% of the limited partners that were required under Paragraph 15(a)(1) of the Partnership Agreement agreed to the extension. Thereafter, Iron Stone LLC, acting as the general partner, executed the proposed amendment and extended the term of Iron Stone LP eight years. App. 7.

In Plaintiffs' amended complaint, Count V sets forth a cause of action for dissolution against Iron Stone LP, based on allegations that "the Partnership's term has expired and any alleged extension thereof is void," and that the "Partnership must begin the process of dissolution and winding up so that the Partnership's assets can be orderly distributed to all of the limited partners, including the Plaintiffs, as

specifically required by the terms of the Partnership Agreement.”

B. Relevant Procedural History

On October 1, 2018, the Court of Common Pleas of Philadelphia County granted Defendants’ motion for summary judgment, denied Plaintiffs’ motion for summary judgment, and dismissed Plaintiffs’ amended complaint with prejudice in its entirety. App. 25. In its Opinion, the Court of Common Pleas found, in relevant part, that the term of Iron Stone LP was extended in accordance with the Partnership Agreement and, therefore, Plaintiffs’ breach of contract claim failed. In so finding, the Court of Common Pleas cited to the undisputed material fact that more than 66.67% of the limited partners consented to the extension in accordance with Paragraph 15.1(a) of the Partnership Agreement. App. 29-30. The Court of Common Pleas further found that “[s]ince the claims for dissolution and accounting are also derivative in nature and not personal to them, the claims for dissolution and accounting are dismissed.” App. 31.

While it did not need to be addressed by the Court of Common Pleas in reaching its decision to dismiss Plaintiffs’ amended complaint, Defendants raised the alternative argument in their motion for summary judgment that Plaintiffs’ dissolution claim should also be dismissed because Plaintiffs failed to join all of the limited partners to this action, who are necessary

parties because this is an action seeking dissolution of a limited partnership.

On May 29, 2019, a Panel of the Superior Court of Pennsylvania issued its Opinion and Order reversing, in part, the October 1, 2018 Order and Opinion of the Court of Common Pleas. App. 1-23. The Superior Court found, in relevant part, that the vote of the limited partners and the amendment to the Partnership Agreement to extend its duration was ineffective because the vote of the limited partners took place after December 31, 2015. Based upon these findings, the Superior Court remanded the matter to the Court of Common Pleas to enter an order that Iron Stone LP shall wind up its activities and affairs in accordance with 15 Pa. C.S. § 8682, which includes dissolution. App. 15-23.

In opposition to Plaintiffs' appeal to the Superior Court, as well as in their petition for allowance of appeal filed with the Pennsylvania Supreme Court, Defendants again raised the argument that Plaintiffs' dissolution claim should also be dismissed because Plaintiffs failed to join all of the limited partners to this action, who are necessary parties to an action seeking dissolution. However, neither the Pennsylvania Superior Court nor the Pennsylvania Supreme Court addressed this issue in any decision.



REASONS FOR GRANTING THE PETITION

The facts of this case raise an important and novel federal question that should be settled by this Court, which is whether the procedural due process rights of a limited partner are violated when that limited partner is not named as a party in a direct action brought by another limited partner in which judicial dissolution of the limited partnership is sought and subsequently ordered. The answer to this question will have serious and widespread ramifications impacting litigation involving all limited partnerships throughout the country, which would include defining the procedural due process protections afforded to limited partners to ensure that their respective property interests in their limited partnerships are adequately protected. Currently, it is unsettled whether a limited partner's property interest in his or her respective limited partnership can be materially and/or adversely affected based upon a judicial proceeding in which he or she may have no involvement, recourse, or an opportunity to be heard. This issue is ripe for the Court's review.

It is well-settled "that property cannot be subjected to a court's judgment unless reasonable and appropriate efforts have been made to give the property owners actual notice of the action." *Shaffer v. Heitner*, 433 U.S. 186, 206 (1977). The Fourteenth Amendment to the United States Constitution requires that property owners receive procedural due process in the form of notice and an opportunity to be heard. *Goss v. Lopez*, 419 U.S. 565, 577-79 (1975); *Mathews v. Eldridge*, 424

U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”); *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972) (“The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount.”).

“The Fourteenth Amendment’s procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. These interests—property interests—may take many forms.” *Roth*, 408 U.S. at 576. Property interests protected by the Fourteenth Amendment include a limited partner’s property interest in a limited partnership. See *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972) (“Fourteenth Amendment’s protection of ‘property’ . . . has been read broadly to extend protection to any significant property interest[.]”); 15 Pa. C.S. § 8631(d) (“The interest of a limited partner in a limited partnership is personal property.”).

In accordance with the above, it has been held by some federal and state courts that all limited partners are necessary or indispensable parties to an action in which dissolution (or an accounting) of the limited partnership is sought. See, e.g., *Delta Fin. Corp. v. Paul D. Comanduras & Assocs.*, 973 F.2d 301, 306 (4th Cir. 1992) (“in a suit between certain partners over partnership assets or obligations in which the effect, as here, will be a dissolution and liquidation of the

partnership, all partners are necessary parties and must be joined if feasible”); *Stainton v. Tarantino*, 637 F. Supp. 1051, 1072 (E.D. Pa. 1986) (“Ordinarily, all the partners are not only proper but are also necessary parties to an action for dissolution.”); *Goodwin v. MAC Res. Inc.*, 149 A.D.2d 666, 667 (N.Y. App. Div. 1989) (“With respect to the plaintiffs’ third and fourth causes of action for an accounting and an injunction, these may not be maintained without the joinder of all the limited partners. Generally, all partners are necessary parties in an action for a partnership accounting, particularly where the action is not brought in a representative capacity.”).

However, the issue of whether the procedural due process rights of a limited partner are violated when that limited partner is not named as a party in a direct action brought by another limited partner in which judicial dissolution of the limited partnership is sought and subsequently ordered has not been addressed by any court. As a result, Defendants implore the Court to take up this important and novel constitutional issue to definitively answer this question. Without a clear answer, a limited partner’s property interest in a limited partnership may be materially and/or adversely affected by a court order without any involvement, recourse, or a meaningful opportunity to be heard.

The significance of this issue is highlighted by the underlying facts of this case, where three limited partners holding a 3% ownership interest seek the immediate dissolution of Iron Stone LP against the wishes of the remaining limited partners. Complications and

further disputes are sure to arise due to the nature of Iron Stone LP's assets, which includes commercial property with various tenants occupying the space in accordance with their respective lease agreements. If Iron Stone LP must sell all of its assets and dissolve, it would, *inter alia*, likely require Iron Stone LP to find some unknown buyer to purchase this large commercial property, and sell at an inopportune time at what would assuredly be below fair-market price. As a result, the forced sale of all of Iron Stone LP's assets and dissolution would be to the severe financial detriment of the remaining limited partners owning a 97% interest, which was ordered in a judicial proceeding in which they had no involvement, recourse, or an opportunity to be heard. This is a prime example of why the Court should take up this novel constitutional issue as to whether the procedural due process rights of a limited partner are violated when that limited partner is not named as a party in a direct action in which judicial dissolution is sought and subsequently ordered.



CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari.

Respectfully submitted,

BRETT A. BERMAN, ESQUIRE

Counsel of Record

ANDREW S. CONSOLE, ESQUIRE

FOX ROTHSCHILD LLP

2000 Market Street, 20th Floor

Philadelphia, PA 19103

(215) 299-2000

bberman@foxrothschild.com

aconsole@foxrothschild.com