No. 21-856

In The

Supreme Court of the United States

REV. BARRY D. BILDER, *pro se*,

Petitioner,

v.

JANICE A. DYKSTRA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Contracts are composed of words. If words in contracts vary in their meanings, the contract is in peril of being void and unenforceable. Each word of a contract comprises a legal element which should be clear and unambiguous.

The question posed herein is in reference to the words used in contracts and agreements containing the phrase, "new fact;" and what qualifies as a "new fact."

The question presented is:

> In contracts, after signing an agreement, is the term, "new fact," applicable to a fact that is new and previously unknown to one party, or new and previously unknown to both (all) parties?

STATEMENT OF RELATED CASES

Bilder v. Dykstra, et al., No. CV-2015-670 "Quiet Title", District Court of Tulsa County, State of Oklahoma. Judgment entered February 28, 2019.

Bilder v. Dykstra, No. 1:19-cv-04999, U.S. District Court for the Northern District of Illinois. Judgment entered August 20, 2020.

Bilder v. Dykstra, No. 20-3062, U.S. Court of Appeals for the Seventh (7th) Circuit. Judgment entered July 22, 2021.

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The Order and Judgment of the 7th Circuit decided on July 22, 2021, and reprinted in the Appendix, (App. at 1-7).

The Order and Statement of the District Court, filed on October 7, 2020, and reprinted (App. at 26-29).

The Order and Statement of the District Court, filed on August 20, 2020, and reprinted (App. at 18-25).

The Order and Statement of the District Court, filed on December 6, 2019, and reprinted (App. at 8-17).

JURISDICTION

The 7th Circuit entered its Order and Judgment, on July 22, 2021. *Id.*

Petitioner was denied a Petition for Rehearing *En Banc* on August 20, 2021 (App. 30).

On November 5, 2021, this Court granted Petitioner an extension of time in which to file his Petition for Certiorari, making it due on December 10, 2021. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND U.S. SUPREME COURT CASES AT ISSUE

Fourteenth (14th) Amendment

Section 1

" . . . No State shall . . . 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."

U.S. Supreme Court Cases

U.S. v. Throckmorton, 98 U.S. 61, *"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments."*

Husky Int'l Elecs. Inc. v. Ritz, 136 S.Ct. 1581, 1586 (2016), *" . . . anything that counts as 'fraud' and is done with wrongful intent is 'actual fraud.'"*

STATEMENT

INTRODUCTION

In 2019, in a Quiet Title proceeding held in Tulsa County District Court, the Petitioner signed a settlement agreement with the Respondent. The Respondent withheld a document (hereinafter "1996 Letter") (App. 31) that should have been revealed in the Discovery phase of the Tulsa litigation. Respondent had been served a Subpoena and Motion to Compel Production of Documents, yet she withheld the 1996 Letter,

only to reveal it in the instant case, as an Exhibit in her Reply. The 1996 Letter is significant in that it proves the debt from the real estate loan, made to Petitioner from his father, had been forgiven.

The settlement agreement between the Petitioner and the Respondent used the phrase, "'new fact' may arise." The District Court and the 7th Circuit use the term, "new fact" in reference to the 1996 Letter, which Respondent produced in the instant case, eight months after the settlement agreement had been signed.

Despite the revelation of the sudden appearance of a document (1996 Letter) that should have been produced by the Respondent in the Tulsa litigation, the lower Courts held that the resulting settlement agreement was "valid and enforceable," because the phrase, "'new facts' may arise" precluded Petitioner from amending his Complaint for Fraud, under Rule 15.

Can a fact be a "new fact" if it was intentionally concealed by one party from the other party prior to signing a contract? If a fact is considered a "new fact", must it be new to one party or to all parties? If one party intentionally concealed the "new fact", would the resulting agreement be valid and enforceable?

When a contract (settlement agreement) states that, "new facts may arise", do such "new facts" need to be new and previously unknown to one party, or to all parties? Words used in contracts must be defined so that no ambiguity exists.

FACTS GIVING RISE TO THIS CASE

1. On January 5, 1994, John Bilder, the father of both Petitioner and Respondent, purchased real estate in Tulsa, Oklahoma for Petitioner. The cost of the real estate was fifty-thousand dollars ($50,000.00), which John Bilder loaned to Petitioner for the purchase. On January 6, 1994, Petitioner wrote a personal letter to his father, acknowledging the loan and thanking his father for purchasing the Tulsa property on his behalf (1:19-cv-04999, Doc. 30-1, pg. 13.)

On June 17, 1996, unbeknownst to Petitioner, John Bilder wrote a Letter to the Petitioner, forgiving him the loan for the Tulsa property, in the amount of fifty-thousand dollars. (App. 31). John Bilder died on December 1, 2001.

On July 2, 2015, Petitioner filed a Quiet Title action in Tulsa County District Court, Tulsa, Oklahoma (CV-2015-670, *Bilder v. Dykstra, et al.*), regarding the ownership of the Tulsa property. On December 5, 2016, Petitioner issued his "Deposition Subpoena Duces Tecum for Records" (20-3062, Supp. App. pg. 25-28) to Respondent, to which she produced probate documents of the Bilder estate. At the time, Respondent's production of those documents appeared to satisfy the Subpoena's request.

However, Respondent failed to comply with the Subpoena by concealing the 1996 Letter from the Tulsa District Court and the Petitioner. Petitioner and Respondent were parties to the resulting settlement agreement, in which the Respondent demanded payment for

the Tulsa real estate in exchange for her signature upon the Quit-Claim Deed. At the time of the signing of the settlement agreement, Petitioner had no knowledge of the loan forgiveness contained in the 1996 Letter. The 1996 Letter was held by Respondent who was the sole, independent Executor of John Bilder's estate. At the time of signing the settlement agreement, Petitioner assumed the payment to Respondent was to satisfy the original loan debt. As Petitioner's Affidavit states, if Petitioner had known of the existence of the 1996 Letter prior to signing the contract, he would have negotiated a different settlement agreement. (*Id.* Supp. App. pg. 18, #22).

2. On July 25, 2019, Petitioner initiated a lawsuit against the Respondent in the Illinois Northern District Court (1:19-cv-04999, Doc. 1); in the course of the Tulsa litigation, Petitioner found that his signatures had been forged on multiple probate documents.

During the course of the District Court litigation, Respondent produced a copy of the 1996 Letter as an Exhibit in her Reply (*Id.* Doc. 18-2, pg. 38); this was done eight months after the settlement agreement had been signed. (*Id.* Doc. 27, pg. 7). The 1996 Letter showed that the loan for the purchase price of the Tulsa real estate had been forgiven, and should have been produced in the Quiet Title action in response to the Subpoena. Petitioner requested Leave to file an Amended Complaint under FRCP Rule 15, based upon Respondent's concealment of the 1996 Letter. The Court held the settlement agreement precluded Petitioner

from bringing claims against Respondent because of the clause, "new facts may arise," and the Court's determination, "*The letter is a new fact. . . .*" (App. 22)

As memorialized in the Petitioner's "Third Affidavit" (20-3062, Doc. 11, Supp. App. pg. 22-23), Petitioner diligently pursued the production and discovery of all documents in Respondent's possession pertinent to the Tulsa real estate matter. The District Court confirmed that, "*The 1996 letter directly relates to the Oklahoma Litigation, as it involves interest in the property at issue in that case.*" (App. 22-23)

3. Petitioner filed his Appeal with the 7th Circuit on January 14, 2021, where he argued (20-3062, Doc. 10, pg. 41) that the 1996 Letter was a "new fact" only to the Petitioner, since Respondent possessed the Letter since their father wrote it in 1996. (1:19-cv-04999, Doc. 18-2, pg. 3, #12.) Petitioner argued against the lower Court's position that the settlement agreement is inviolable; that Petitioner's subsequent right to file an Amended Complaint for fraudulent concealment should have been allowed under FRCP Rule 15.

The 7th Circuit reaffirmed the lower Court's decision, quoting the phrase in the release, " . . . *new facts may arise and . . . he* [Petitioner] *waives any and all claims related to those new facts.*" (App. 4) Petitioner argues that at the time of the signing of the agreement, the Letter was not a "new fact" to Respondent but was only unknown to the Petitioner.

On July 22, 2021, the 7th Circuit issued its Panel Order denying review. (App. 1-7)

On August 20, 2021, the 7th Circuit denied Petitioner for Rehearing *En Banc.* (App. 30)

Petitioner filed a Motion for An Extension of Time in this Court, Docketed on November 4, 2021, and on November 5, 2021, this Court granted an Extension until December 10, 2021.

ARGUMENTS AND REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

The term, "new fact", as it relates to contract law, and exemplified in the instant case, is ambiguous; is a fact "new" if a party already knew it prior to signing the contract?

The lower Court used the term, "new fact" to refer to anything "new" that would arise after the signing of a contract. The lower Court does not delineate between a fact that is "new" to one party, or a fact that is "new" to all parties. Significantly, the term, "new fact" does not appear in Black's Law Dictionary (11th Ed.); Bouvier's "Walters Kluwer" 2012 Desk Edition; or the Modern Dictionary for the Legal Profession, 4th Ed., 2008, leaving the term "new fact" ambiguous. However, Stroud's Judicial Dictionary (8th Ed., 2012) does contain reference to a Coroner's Act of 1988, "*evidence will qualify as new if . . . it was not available at the time of the original inquest.*"

The Petitioner performed due diligence by issuing a Subpoena Duces Tecum to the Respondent to produce documents in her possession relating to the Tulsa real

estate, in the Quiet Title action. The 1996 Letter was not produced until Respondent revealed the document to the District Court, eight months after the settlement agreement had been signed. (1:19-cv-04999, Doc. 18-2, pg. 38). It is a matter of record that the Respondent, as she states in her Affidavit, had knowledge of the 1996 Letter prior to entering the settlement agreement with the Petitioner. Yet, the Court refers to the 1996 Letter as "a new fact." Obviously, the 1996 Letter was not a "new fact" to Respondent; it was, however, a new and previously unknown fact to Petitioner.

Bouvier Law Dictionary (2012 Ed., pg. 1831) defines the word, "new" as, "*something not known before.*" Applying this meaning, the Petitioner respectfully argues that the lower Court erred in describing the 1996 Letter as a "new fact" since the Letter was withheld by the Respondent, during settlement negotiations.

In its Order, the District Court held, "*The existence of the letter is a new fact that was discovered after entering into the settlement agreement. Bilder acknowledged in the settlement agreement that new facts may arise and that he waives any and all claims related to those new facts.*" (App. 4) However, the District Court fell victim to the ambiguity of the term, "new fact" when it implied by the above statement that both parties had discovered the "new fact" after entering into the settlement agreement.

In *Marbury v. Madison*, 5 U.S. 137, 177 (1803), Justice Marshall writes, "*It is emphatically the province and duty of the judicial department to say what the law is . . . Those who apply the rule to particular cases must of necessity expound and interpret that rule*," and "*say what the law is.*"

Unless words used in the law are defined, no one can say with certainty what the law is.

From author Sanford Schane's*, "Ambiguity and Misunderstanding in the Law" ("Language and the Law", Continuum International Publishing Group, Ltd., 2006, Ch. 1),

> "'*The law is a profession of words.*' [1] *By means of words contracts are . . . not always clear and unequivocal . . . capable of being understood in more ways than one . . . the parties . . . may end up in litigation and ask the court to come up with its interpretation . . . when this kind of situation arises, the contract . . . contains 'ambiguity.'*"

Is the term "new fact" ambiguous, when it could refer to a fact being "new" to only one party, or "new" to both (all) parties?

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[1] This is the opening sentence in David Mellinkoff's monumental work, *The Language of the Law*, Little, Brown & Co., Boston: 1963.

The lower Court's application of the term, "new fact" is in conflict with the "good faith" doctrine; good faith is only satisfied if the "new fact" is new to all parties after the contract is signed.

Respondent acted in bad faith when she failed to produce the 1996 Letter in compliance with Petitioner's Subpoena in the course of the Tulsa litigation, and instead, concealed the 1996 Letter from settlement negotiations. The lower Courts have not addressed the Petitioner's argument that Respondent violated the Subpoena. The lower Courts instead refer to the 1996 Letter as a "new fact," which precludes the Petitioner from bringing a fraud claim. The settlement agreement, upon which the lower Court based its Summary Judgment, is flawed in that the agreement itself is based in fraud and lack of good faith.

The term, "Good faith" is defined as, "*A state of mind consisting of (1) honesty . . . (2) faithfulness to one's duty or obligation . . . (4) absence of intent to defraud or to seek unconscionable advantage . . .* " (Black's Law Dictionary, 11th Ed., pg. 836). In the instant case, Respondent defrauded the Petitioner, concealing the Letter which concealment gave the Respondent an "unconscionable advantage." Petitioner assumed that all pertinent documents had been produced by Respondent in compliance with the Subpoena. It is well settled that, "[e]*very contract imposes*

upon each party a duty of good faith and fair dealings . . . ," Restatement (Second) of Contracts §205 (1981). See also *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 NY 2d 144, 153 (2002).

The District Court ruled, "*The existence of the letter is a new fact that was discovered after entering into the settlement agreement*" (Emphasis added) (App. 4). The Court failed to see that the 1996 Letter was only "new" and unknown to the Petitioner but was previously known to the Respondent before the contract was signed.

Good faith could only be satisfied if the "new fact" was new to all parties.

The lower Court's application of the term, "new facts", is in conflict with the "clean hands" doctrine when the Court failed to recognize respondent's obligation to comply with the subpoena and produce the 1996 letter during settlement negotiations.

Under the clean hands doctrine, " . . . *equity will not grant relief to a party . . . if such party . . . has violated . . . good faith or other equitable principle." Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483, 486. "*One seeking equitable relief cannot take advantage of one's own wrong." Fair Automotive Repair, Inc. v. Car-X Service Systems, Inc.*, 2 Dist., 128 Ill.App.3d 763, 84 Ill.Dec. 25, 471 N.E.2d 554, 558.

The clean hands doctrine is based on the maxim of equity that states that one "who comes into equity must come with clean hands," and was developed to

"protect the Court against the odium that would follow its interference to enable a party to profit by his own wrong-doing" N. Pac. Lumber Co. v. Oliver, 596 P.2d 931, 939-40 (Or. 1979) (quoting McClintoc, Handbook of the Principles of Equity, supra note 76, at 63. That maxim " *. . . is not applied by way of punishment . . . but . . . 'for the advancement of right and justice.'*" *Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383, 387 (1944) (internal quote, *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245, 54 S.Ct. 146, 148. That maxim also, " *. . . closes the door of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief . . . it does require that they shall have acted without fraud or deceit as to the matter in issue . . . to warrant invocation of the maxim." Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 814.

The District Court found, "*The 1996 letter is newly discovered evidence that was contemplated at the time the settlement agreement was executed. Accordingly, we again find the settlement agreement valid and enforceable.*" (App. 24) Petitioner respectfully disagrees with the lower Court and argues that the "newly discovered evidence" was not "contemplated at the time the settlement agreement was executed" by both parties; instead, it was only "contemplated" by the Respondent, who fraudulently concealed it from the Petitioner and from the Tulsa District Court at the time the settlement agreement was executed. The word, "contemplate" means, " *. . . to view or consider with continued attention; to regard thoughtfully . . .* " Black's Law Dictionary, 6th Ed., pg. 318. The lower Court, in its use of the term, "contemplate" must surely intend the

contemplation of the same facts by both parties; it could not mean for one party to conceal Subpoenaed facts from the other party, thus allowing only one party to "contemplate" its contents, prior to signing the contract.

The "Clean Hands" doctrine can be satisfied by defining "new fact" as being "new" to all parties at the time of the signing of the settlement agreement. Otherwise, concealing a Subpoenaed material fact, only to reveal it after the agreement is signed and defining it as a "new fact" is repulsive to the Clean Hands doctrine and should void the resulting settlement agreement upon which the lower Court based its Summary Judgment.

The lower Court's application of the term, "new fact" conflicts with the binding precedence of this Court, regarding the Constitution's Fourteenth Amendment of Due Process and Equal Protection which necessitates that a "new fact" be new to all parties after a contract has been signed.

The 7th Circuit ruled (App. 5-6), " . . . *Bilder did not say why Dykstra was obliged to produce the letter, how she misrepresented that she had met the obligation, or how her representation (or omission) compelled him to settle, he failed to state a claim that the settlement was invalid for fraud.* See *Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 737 (7th Cir. 2014)." This ruling was made in spite of the Petitioner's Subpoena and Motion to Compel, imparting the notion that the Respondent can choose when she will comply

with or ignore a Subpoena. This flies in the face of American jurisprudence, particularly the Fourteenth Amendment, "Due Process."

The term, "fraudulent concealment" is defined in The Wolters Kluwer Bouvier Law Dictionary, Vol. 1, pg. 509 (2012) as, "*Harm caused by concealing of a fact that one has a duty to disclose . . . the essential question is whether the plaintiff would not have . . . acted differently had the defendant not engaged in concealment.*"

In the Order (App. 5), the 7th Circuit states, "*Bilder alleged only that he would have somehow used his father's letter if Dykstra had produced it in the Oklahoma litigation.*" The 7th Circuit appears to ignore Petitioner's Second Affidavit which states "*Had I known about or received the '1996 Letter', I would certainly have used it during litigation in the Quiet Title action. If the $50,000.00 loan is forgiven, as the '1996 Letter' states, I would never have given Janice Dykstra one penny.*" (20-3062, Supp Appx, pg. 18, ¶ 22).

The issuance of Subpoenas is a recognized method of Due Process. Without a party obeying a Subpoena or a subsequent Motion to Compel Documents, as in the instant case, the very essence of the 14th Amendment is lost, or at best, obscured. When the court system itself overlooks such behavior, then the Constitutional guarantee of Due Process is destroyed. When the 7th Circuit asked the Petitioner on what grounds the Respondent was "obliged" to have produced the 1996 Letter, it is as if the Court itself had dismissed the guarantees of the 14th Amendment. Petitioner did due

diligence in his attempts to follow Due Process by issuing the Subpoena Duces Tecum to the Respondent; yet the 7th Circuit seemed unconcerned that the Respondent failed to produce the Letter, and even appeared annoyed with the Petitioner, asking him under what obligation did the Respondent need to produce the Letter, prior to the signing of the contract.

Under the Equal Protection clause of the Fourteenth Amendment, the Courts must defend equally the rights of both the Petitioner and Respondent. Instead, the Petitioner is questioned by the 7th Circuit for expecting the Respondent to truthfully produce all documents in her possession relating to the Tulsa real estate, thusly: "*Because Bilder did not say why Dykstra was obliged to produce the letter, how she misrepresented that she had met the obligation, or how her representation (or omission) compelled him to settle . . . he failed to state a claim that the settlement was invalid for fraud.*" (App. 5)

The 7th Circuit held, "*Settlement agreements would not be worth much if the parties could later argue that they were voidable for fraud based on standard discovery disputes.*" (App. 5) Petitioner observes that in the instant case, the concealment of a key document by the Respondent is not a "standard discovery dispute" but a means of perpetrating a fraud. The 7th Circuit Court's interpretation removes Respondent's active and intentional fraudulent concealment of a material fact, the 1996 Letter, and places the blame of non-production of the Letter on a failure of the discovery process. The instant case does not involve a

"standard discovery dispute" but involves intentional concealment of a material fact by Respondent, in order to deceive Petitioner into entering a tainted settlement agreement.

Petitioner posits a question to this Court: of what use, and value are legal instruments, such a Subpoena and Motion to Compel, if the receiving party can simply conceal documents with impunity? The party withholding the document can then, as in the instant case, use the language of the settlement agreement as a means to disguise fraud.

The lower Court's application of the term, "new fact" prevented Petitioner from amending his Complaint for fraud, under Federal Rules of Civil Procedure, Rule 9.

The 7th Circuit quotes *Camasta*, "(*Rule 9(b) requires a plaintiff to allege the content of a misrepresentation and how it was communicated*)." (App. 6)

FRCP Rule 9(b) states, " . . . *In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.*"

Rule 9(c), "*Conditions and Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.*"

In the present case, Rules 9(b) and (c) are satisfied, since Petitioner has elucidated "with particularity" the fraud and the conditions precedent to the fraud, in the following court documents: (1:19-cv-04999: Doc. 30, Doc. 54, Doc. 67, Doc. 77, and Doc. 83).

The 7th Circuit held, " . . . *Bilder's allegations did not state a fraud claim.*" (App. 5) How can it be construed that Petitioner did not state a fraud claim when he repeatedly raised the issue of Respondent's intentional concealment of the 1996 Letter during settlement negotiations in the pleadings above?

The lower Court's application of the term "new fact" conflicts with the binding precedence of this Court, regarding fraud; as in *U.S. v. Throckmorton*, 98 U.S. 61. The Court failed to consider respondent's fraudulent concealment of the 1996 letter as fraud, calling it instead a "new fact".

There is no tolerance of fraud in contract law, as exemplified in *United States v. Throckmorton*, 98 U.S. 61, ¶ 1, which states, "*There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.*" Settlement agreements are contracts. The 7th Circuit held that the settlement agreement in question was a contract [" . . . *the validity of the settlement (which we interpret like any other contract)* . . . " (App. 6) *Throckmorton* is known for its general doctrine that "Fraud vitiates contracts". The term "vitiates" is defined as, "*To impair, to make void or voidable . . . the legal efficacy and binding force of . . . an instrument; as when it is said that*

fraud vitiates a contract." Black's Law Dictionary, 6th Ed., pg. 1572.

In the instant case, it is thread-bare logic to assume that a settlement agreement is valid if one party fraudulently conceals a material fact from the other party prior to the signing of the contract.

"*Fraud vitiates every transaction and all contracts . . . fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments.*" 37 Am. Jur. 2d, at Section 8.

The lower Court's application of the term, "new fact" conflicts with the binding precedence of this Court, as in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 1586 (2016), where there is intent to defraud.

Fraud was understood as early as Roman times to include "*any cunning, deception, or artifice, used to circumvent, cheat, or deceive another*," Joseph Story, Commentaries on Equity, Jurisprudence §186, at 219 (6th Ed. 1953). " . . . *An intent to defraud at common law was an '[i]ntent to [d]eceive.*' W. Page Keeton et al., Prosser and Keeton on the Law of Torts §107, at 741 (5th Ed. 1984) (Prosser on Torts) (emphasis omitted) (explaining that the requisite mental element of 'the intent to deceive, to mislead, to convey a false impression'). In other words, the intent required to establish an action for fraud was 'intent' to induce the plaintiff

to act, or to refrain from action in reliance upon the misrepresentation' *Id.* §105, at 728; See Restatement (Second) of Torts §525 (1976) ("*One who fraudulently makes a misrepresentation * * * for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit*"); C.G. Addison, Wrongs and Their Remedies; A Treatise on the Law of Torts §1174, at 1004 (4th Ed. 1876) (Addison on Torts). See also 37 Am. Jur. 2d Fraud and Deceit §109, at 146-148 (2013) (Describing "*fraudulent intent*" as "*an intent to deceive or mislead*"); 37 C.J.S. Fraud §42, at 225 (2008) (Explaining that "*an essential element of fraud is that there must be a fraudulent intent, an intent to deceive, or the equivalent thereof,*" and equating such intent with "[a] *specific intent to defraud.*") (Footnotes omitted)."

The main theme of fraud has always been deception or trickery. The Opinion in *Husky* explains, "'*Actual fraud' has two parts: actual and fraud. The word 'actual' has a simple meaning in the context of common-law fraud: It denotes any fraud that 'involv[es] moral turpitude or intentional wrong.' Neal v. Clark*, 95 U.S. 704, 709 (1878). '*Actual' fraud stands in contrast to implied fraud or fraud 'in law,' which describe acts of deception that 'may exist without the imputation of bad faith or immorality.' Ibid.*" In the instant case, the Respondent's intention is clear: to conceal the 1996 Letter from settlement negotiations in order to perpetrate an actual fraud.

The instant case is a classic example of the maxim of *Husky*: " . . . *anything that counts as 'fraud' and is done with wrongful intent is 'actual fraud.'" Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 1586 (2016).

The issue at hand goes well beyond the scope of the instant case, since many settlement agreements include the phrase, "new facts" may arise. The lower Court embraces the term, "new fact" to refer to a document that clearly was not a "new fact" to one of the parties, prior to signing. Respondent intentionally concealed a document during settlement, thus wrongfully gaining an unfair advantage in negotiations. Any such agreement cannot be valid and enforceable.

CONCLUSION

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

Dated: December 7, 2021

Respectfully submitted,

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NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 8, 2021*
Decided July 22, 2021

Before

WILLIAM J. BAUER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 20-3062

BARRY D. BILDER, *Plaintiff-Appellant,*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
v.	No. 19 C 4999
JANICE A. DYKSTRA, *Defendant-Appellee.*	Charles P. Kocoras, *Judge.*

ORDER

Reverend Barry Bilder sued his sister, Janice Dykstra, alleging that she forged his signature to

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).