

No. 23-106

Supreme Court, U.S.
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In The
Supreme Court of the United States

ALLAN J. NOWICKI and
JONATHAN A. NOWICKI,

Petitioners,

v.

CROWN FINANCIAL CORPORATION,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are the judgments entered in this case void because they were obtained by a fraud upon the court?
2. Have the Petitioners' rights to Due Process been violated because the Lower Court Judge did not recuse himself?

PARTIES TO THE PROCEEDING

Petitioners Allan J. Nowicki and Jonathan A. Nowicki were the Plaintiffs in the Bucks County Court of Common Pleas appearing at Case Number 2017-02778 and the Appellants in the Superior Court of Pennsylvania appearing at Case Number 2622 EDA 2021.

Respondent is Crown Financial Corporation.

RELATED CASES

Allan J. Nowicki v. Tinicum Township, et al., in the Bucks County Court of Common Pleas No. 2015-01776. (Judge Robert O. Baldi). Judgment entered October 22, 2019.

Allan J. Nowicki v. Tinicum Township, et al., in the Commonwealth Court of Pennsylvania No. 1749 C.D. 2019. Judgment entered December 8, 2020.

Allan J. Nowicki v. Tinicum Township, et al., in the Supreme Court of the United States No. 21-1101. Judgment entered June 14, 2021.

First Savings Bank of Perkasie v. Allan J. Nowicki, et al., in the Bucks County Court of Common Pleas No. 2013-07034 (eleven cases consolidated). Judgment entered June 14, 2016.

First Savings Bank of Perkasie v. Allan J. Nowicki, in the Bucks County Court of Common Pleas No. 2014-08862. (Judge O. Baldi). Judgment entered June 14, 2016.

RELATED CASES – Continued

Allan J. Nowicki v. First Savings Bank of Perkasie, in the Bucks County Court of Common Pleas No. 2015-01630. (Judge Robert O. Baldi). Judgment entered June 14, 2016.

Allan J. Nowicki v. The Estate of Sylvester Cook, in the Bucks County Court of Common Pleas No. 2018-01221. (Judge Robert O. Baldi). Judgment entered March 15, 2021.

Tinicum Township v. Allan J. Nowicki, in the Bucks County Court of Common Pleas No. 2018-06610 (consolidated with 2018-06609). (Judge Robert O. Baldi). Judgment entered November 30, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Allan J. Nowicki and Jonathan A. Nowicki petition this Court to issue a writ of certiorari to review the judgment of the Superior Court of Pennsylvania in the case titled *Allan J. Nowicki and Jonathan v. Crown Financial Corporation*, No. 2622 EDA 2021.

OPINIONS BELOW

The opinion of the Superior Court of Pennsylvania is reproduced at App. 1-5. The opinion of the Bucks County Court of Common Pleas is reproduced at App. 7-21. The Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal and is reproduced at App. 31. The opinions were not reported.

JURISDICTION

The Superior Court of Pennsylvania issued its judgment on August 31, 2022, App. 1-5. The Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal on May 2, 2023, App. 31. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

18 U.S.C. § 1621 – Perjury generally

Whoever –

- (1) having taken an oath of before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
- (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, to be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

28 U.S.C. § 453 – Oaths of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the

rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ____ under the Constitution and laws of the United States. So help me God.”

28 U.S.C. § 455 – Disqualification of justice, judge, or magistrate judge

- (a) Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;



INTRODUCTION

In August of 2016, Crown Financial Corporation, a publically traded company, entered into an Agreement of Sale to convey fifty-five (55) acres of valuable land located in Tinicum Township, Bucks County, Pennsylvania to Allan J. Nowicki and Jonathan A. Nowicki (father and son).

This case is the result of Crown Financial Corporation’s unilateral and unwarranted termination of the Agreement of Sale eight (8) days before the agreed upon settlement date. Crown Financial Corporation

conveyed the fifty-five (55) acres to Red Hill Barn, LLC, a limited liability company controlled by Attorney, Stuart Levene while the Agreement of Sale was in full force and effect.

STATEMENT OF THE CASE

On April 25, 2017 Allan J. Nowicki commenced an action against Crown Financial Corporation and others by filing a Writ of Summons. Subsequently, Allan J. Nowicki filed his original Complaint on June 7, 2017 and thereafter, filed a number of Amended Complaints. Jonathan A. Nowicki joined this suit as an additional Plaintiff.

At some point in time the Nowicki(s) determined that Crown Financial Corporation was the “bad actor” in the real estate transaction and voluntarily released all of the additional defendants. The Nowicki(s) also narrowed down their claims against Crown Financial Corporation to Breach of Contract together with the Implied Duty of Good Faith and Fair Dealing.

On August 27, 2020 the Nowicki(s) filed a Motion for Summary Judgment and on September 24, 2020 Crown Financial Corporation filed their Motion for Summary Judgment. On January 28, 2021 the Trial Court Denied both Plaintiffs’ and Defendant’s Motions for Summary Judgment.

On May 20, 2021 Crown Financial Corporation filed a Renewed Motion for Summary Judgment and on June 16, 2021 the Nowicki(s) filed their Renewed Motion for Summary Judgment. Thereafter, the Honorable Robert O. Baldi, the trial court judge in this matter conducted a settlement conference between the parties. The settlement conference was not successful. On October 29, 2021 the Court heard oral argument on both Renewed Motions for Summary Judgment and on November 18, 2021 the trial court entered judgment on behalf of Crown Financial Corporation and against the Nowicki(s). See Appendix 21 and Appendix 28.

The Nowicki(s) filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration with the trial court. Both Motions were Denied. See Appendix 29.

On December 14, 2021 the Nowicki(s) filed their Notice of Appeal and thereafter filed their Concise Statement of Errors Complained of on Appeal. The Honorable Robert O. Baldi filed his Opinion on February 10, 2022. See Appendix 6.

The Nowicki(s) filed their Brief together with four hundred and ninety-five (495) pages of the Reproduced Record on April 4, 2022. The gist of the Nowicki(s) argument was that there were genuine issues of material fact that a jury needs to resolve in this matter. See *Krauss v. Trane U.S. Inc.*, 104 A3d 556, 562-03 (Pa. Super. 2014). That the checks accepted as absolute payment could rebut the presumption that the payment was conditional, a fact for a jury determination. See

Romaine v. Workers' Comp. Appeal Bd. (Bryn Mawr Chateau Nursing Home) (Pa. 2006). Together stating that the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania have held that “[s]ummary judgment is to be entered only in the clearest of cases where there is not the slightest doubt as to the absence of a triable issue of fact.” See *Wells Fargo Bank, N.A. v. Long*, 934 A.2d 76, 77 (Pa. Super. Ct. 2007); see also *Trowbridge v. Scranton Artificial Limb Co.*, 560 Pa. 640, 644, 747 A.2d 862, 864 (2000). Furthermore, the Trial Court Judge Robert O. Baldi should have recused himself.

The Superior Court of Pennsylvania heard oral argument on July 20, 2022 and rendered its Decision on August 31, 2022 affirming the lower court. See Appendix 1.

The Nowicki(s) filed a timely Application for Reargument Before the Court En Banc on September 14, 2022. The Application was denied on a technically for failing to include the docket number on the U.S. Postal Service Form 3817 and not deciding on the merits. See Appendix 6.

The Nowicki(s) were denied their Petition for Allowance of Appeal to the Supreme Court of Pennsylvania on May 2, 2023. See, Appendix 31.

REASONS FOR GRANTING THE PETITION

1. Review is necessary because the Superior Court of Pennsylvania's Opinion Affirming a fraudulent judgment conflicts with this Court's precedent and well settled law on frauds against the Court.
2. Review is necessary to promote public confidence in the impartiality of the Judicial Process.
3. Review of this case is of National Importance.

The Superior Court of Pennsylvania conducted oral argument on July 20, 2022 in the matter of *Allan J. Nowicki and Jonathan A. Nowicki, Appellants v. Crown Financial Corporation, Appellee*, No. 2622 EDA 2021.

Allan J. Nowicki, only, argued as an Appellant in this matter and Gregory F. Cirillo, Esquire argued on behalf of Crown Financial Corporation.

Gregory F. Cirillo, Esquire made statements to the panel of Judges that were not true and he knew that his statements were in fact false. The panel consisted of: the President Judge Panella, Nichols, J., and Colins, J.

The false statements made by Gregory F. Cirillo, Esquire were in violation of 42 Pa. C.S. § 2522. Oath of office stated "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity, as well to the court as to the client, that

I will use no falsehood, nor delay the cause of any person for lucre or malice.”

The false statements made by Gregory F. Cirillo, Esquire were in violation of 18 U.S.C. § 1621 – Perjury generally. “Whoever – (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true;” See *U.S. v. Wong*, 431 U.S. 174, 180 (1977) (Recognizing that perjury is never a protected option).

The false statements made by Gregory F. Cirillo, Esquire were in violation of 18 Pa. C.S. § 4902 – Perjury **(a) Offense defined.** – A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true. **(b) Materiality.** – Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given situation is a question of law.

The false statements made by Gregory F. Cirillo, Esquire were in violation of Pennsylvania Rules of Professional Conduct, Rule 3.3 Candor Toward the Tribunal and Rule 8.4 Misconduct (a), (b), (c), (d), (e), (f).

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in “fraud upon the court”. In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated “It is where the court or a member is corrupted or influenced or influence is attempted or where a judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted.”

In this instant matter it should be noted that Gregory F. Cirillo, Esquire is the son of the late Vincent A. Cirillo, past President Judge of the Superior Court of Pennsylvania.

The Superior Court of Pennsylvania filed its’ Opinion on August 31, 2022. See Appendix 1. The Appellants were entitled to and the Court was required to review to the extent necessary to resolve the legal question *plenary* and the review is *de novo*. See *Chanceford Aviation Properties, L.L.P. v. Chanceford Tp. Bd. of Supervisors*, 592 Pa. 100, 107, 923 A.2d 1099, 1103 (2007). The Superior Court did not review the record to determine the facts in this case. See Opinion, Appendix 1 at page 1, second ¶ **“We adopt the trial court’s summary of the facts and procedural history underlying this matter”**. Furthermore, the Superior Court affirmed on the basis of the trial court’s analysis of this issue and not by their own

determination. See page 3, second ¶ “**Here, following our review of the parties briefs, the relevant law, and the trial court’s opinion, we affirm on the basis of the trial court’s analysis of this issue.**”

The Bucks County Court of Common Pleas provided the Superior Court of Pennsylvania with the entire record consisting of nine (9) parts with 3 volumes, including the records of testimony, the docket which included 433 entries. The Appellants provided their Brief and the Reproduced Record consisting of 495 pages of evidence. The Superior Court of Pennsylvania ignored the record and evidence.

In the Bucks County Court of Common Pleas, *Allan J. Nowicki and Jonathan A. Nowicki v. Crown Financial Corporation*, No. 2017-02778, Crown Financial Corporation filed their Renewed Motion for Summary Judgment on May 20, 2021 which contained false and misleading statements. Crown Financial Corporation signed the Verification to the Renewed Motion for Summary Judgment in violation of 18 Pa. C.S. § 4904 – Unsworn falsification to authorities.

The Attorneys for Crown Financial Corporation: Dilworth Paxson LLP, Gregory F. Cirillo, Esquire, Claire Blewitt Ghormoz, Esquire, Timothy J. Ford, Esquire prepared the Renewed Motion for Summary Judgment which contained false and misleading statements in violation of 42 Pa. C.S. § 2522. Oath of Office, 18 U.S.C. § 1621 – Perjury generally, 18 Pa. C.S. § 4902 – Perjury, Professional Rules of Professional Conduct,

Rule 3.3 Candor Toward the Tribunal and Rule 8.4 Misconduct (a), (b), (c), (d), (e), (f).

A judge is an officer of the court as well as are all attorneys. A judge is not the court. See *People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

The actions of Crown Financial Corporation combined with its Attorneys and the Honorable Robert O. Baldi have committed a “Fraud upon the court” which resulted in financial damages to the Nowicki(s).

“Fraud upon the court” has been defined by the 7th Circuit Court of Appeals to “embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Kenner v. C.I.R.*, 387 F.3d 689 (1968); *Moore’s Federal Practice*, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated “a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.”

The Honorable Robert O. Baldi, the trial judge in this matter conducted a settlement conference between the parties. The trial judge was made aware of facts that should have been submitted to a jury. The Honorable Robert O. Baldi should have recused himself *sua sponte*. See 28 U.S.C. § 453 – Oaths of justices and judges and 28 U.S.C. § 455 – Disqualification of justice, judge, or magistrate judge.

Furthermore, Judge Baldi was the trial judge in a number of other law suits filed in the Bucks County Court of Common Pleas with regard to Allan J. Nowicki. See Related Cases appearing on page ii of the index to this Petition.

After protracted litigation between First Savings Bank of Perkasie and Allan J. Nowicki the parties entered into a Settlement Agreement ending all litigation.

First Savings Bank of Perkasie announced a merger with First Federal Savings and Loan of Bucks County which combined both banks under the new name of Penn Community Bank.

Judge Robert O. Baldi was a member of the Board of Directors of First Federal Savings and Loan of Bucks County. Judge Baldi had a conflict of interest as to Allan J. Nowicki and had a duty and obligation to recuse himself from any cases that Allan J. Nowicki was a party to, he did not do so. Judge Baldi has shown bias against Allan J. Nowicki. Courts have held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeborg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v. Balistreri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. § 455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the

impartiality of the judicial process.”). In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the Court stated that “It is important that the litigant not only actually receive justice, but rather that he believes that he has received justice.” “Justice must satisfy the appearance of justice”, In *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).

In 1994 the U.S. Supreme Court held that “Disqualification is required if an objective observer would entertain reasonable questions about the judge’s impartiality. If a judge’s attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified.” *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994).

In *Taylor v. O’Grady*, 888 F.2d 1189 (1989) stating “the judge is obligated to to recuse herself *sua sponte*”. Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) (“The right to a tribunal free from bias or prejudice is biased, not on section 144, but on the Due Process Clause.”).

In *United States v. Throckmorton*, 98 U.S. 61 (1878), this Court held that “There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents and even judgments.”

CONCLUSION

For the foregoing reasons, Petitioners, Allan J. Nowicki and Jonathan A. Nowicki pray and respectfully request this Honorable Court to grant a writ of certiorari.

Respectfully submitted,

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