

NO. 23-1129

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD ROCHE,
Petitioner,
v.

LARC, INC. (A/K/A LEE ASSOCIATION OF
REMARKABLE CITIZENS, INC., AND A/K/A
LEE ASSOCIATION OF RETARDED CITIZENS. INC.),
KEVIN LEWIS, VICKIE CHAPMAN, JANE MARSHALL,
DANIELLE JACOBS, PHYSICIANS' PRIMARY CARE OF
SOUTHWEST FLORIDA, P.L. (D/B/A PHYSICIANS'
PRIMARY CARE), JEANNE A. ABDOU, APRN, ROGER
O'HALLORAN, ESQ., GULF COAST MEDICAL CENTER,
LEE MEMORIAL HEALTH SYSTEM, AND CARLY
HALLER, R.N.
Respondents.

**On Petition for Writ of Certiorari to the
Supreme Court Of New Jersey**

**REPLY TO BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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May 24, 2024

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Defendant-respondents argument based upon Calder v. Jones, 465 U.S. 783 (1984), demonstrates that New Jersey wrongfully dismissed this matter. The Calder argument is based upon the logical fallacy of circular reasoning -- a "Catch- 22." In order to assert facts, they need to be properly before the Court. Basing a purported argument upon facts not properly before the Court demonstrates that the matter was improperly dismissed. At a minimum, petitioner-plaintiff's motion for jurisdictional discovery should have been granted. A plenary hearing as to special personal jurisdiction should then have been held. Notwithstanding New Jersey's budget crisis, the resultant in shortage of judges, ("Governor Murphy Applauds Senate for Confirming 12 New Superior Court Judges, Reducing Superior Court Vacancies to Under 40 for the First Time Since 2019.") which has resulted in its judiciary suspending trials in certain matters ("Statement of Chief Justice on Suspension of Civil and Matrimonial Trials in Vicinages Due to Vacancy Crisis"), consideration of petitioner-plaintiff's due process rights needed to occur. The New Jersey courts receive Federal funding ("Analysis of the New Jersey Budget – The Judiciary"). It was incumbent upon them to have a held a proper hearing. (*see generally* "State Justice Institute Grant Program," page 5 and 6, and South Dakota v. Dole, 483 U.S. 203 (1987).) A decision by caveat, which did not consider

the nature, intent, and effect of the communications by respondent-defendants goes counter to the case they now cite: Calder v. Jones, 465 U.S. 783 (1984). The New Jersey courts erred when they failed to consider petitioner-plaintiff's arguments regarding intentionally tortious acts, Hanson v. Denckla, 357 U.S. 235, 253 (1958), breach of contract, and intentional breaches of fiduciary duties due to him as caretaker of his disabled sister, as provided for at common law and under 42 US Code Sec. 12182 and 12203 (the Americans with Disabilities Act, hereinafter the "ADA").

Petitioner-Plaintiff managed his sister's care in Florida from New Jersey. This was known to all respondent-defendants, as demonstrated by the more than 20 documents annexed to his Complaint. The allegations include intentional torts and breaches of contract. (App 121 to 122.) These wrongful acts violated the canons of the professions that these respondent-defendants belonged to (e.g., attorney, nurse, and physician), and interfered with the petitioner-plaintiff's ability to manage his sister's care, violating the ADA. This resulted in years of unnecessary medical procedures, and directly caused her demise even though she was in manageable health.

The court below dismissed this matter by caveat. It gave no consideration to plaintiff-petitioner's argument, (App 79, 81 to 84), that special personal jurisdiction in New Jersey was proper due Hanson, Lebel v. Everglades Marina, Inc., 115 N.J. 317 (1989), and Christie v. Nat'l Inst. for Newman Studies, 258

F.Supp. 3d 494 (D.N.J. 2017) The elective actions of these Florida parties brought them under the special jurisdiction of the New Jersey courts. If they did not conduct themselves in this intentionally wrongful manner, they would not be haled into New Jersey. Petitioner-plaintiff's sister would most likely be alive today. These were not mere fortuitous commercial contacts. The Appellate Division also chose not to address the issue of special jurisdiction *per Hanson*, yet it acknowledged that the Complaint asserted intentional torts. (App. 121 to 122.) Incredulously, by footnote, (App. 144 to 146), the Appellate Division stated it would not consider the text messages to New Jersey by the LARC respondent-defendants as the pleadings were not verified. Petitioner-plaintiff did not verify his Complaint as he did not seek interim relief. N.J. Ct. R. 1:4-7. As the allegations of the Complaint were substantiated by over 20 documentary exhibits, dismissal of this matter was, at a minimum, premature as jurisdictional discovery was requested. A plenary hearing could have been held after discovery. Per New Jersey's Entire Controversy Doctrine, N.J. Ct. R. 4:30A, as all respondent-defendants are alleged to have participated in the same nefarious enterprise, once jurisdiction in the state is found regarding one party, it is proper to join all respondent-defendants. Petitioner-plaintiff's due process right to be heard by the New Jersey courts were denied as a result of these errors.

I. RESPONDENT-DEFENDANTS' INEPT CIRCULAR ARGUMENT THAT FACTS MAY EXIST THAT ARE NOT COMPLIANT WITH THE TEST OF CALDOR V. JONES, INSTEAD DEMONSTRATES THAT THE ALLEGATIONS OF THE COMPLAINT WERE SUFFICIENT TO SUPPORT LONG ARM SPECIAL PERSONAL JURISDICTION DUE WRONGFUL INTENTIONAL ACTS PURSUANT TO HANSON.

Any assertion of purported fact by respondent-defendants is disingenuous. This matter was improperly dismissed for lack of personal jurisdiction upon motion by respondent-defendants. No Answers were filed. Respondent-defendants replied with motions to dismiss. Any contention of fact now raised demonstrates that the matter was improperly dismissed. In contrast, petitioner-plaintiff asserts that he has supported his allegations and special personal jurisdiction is proper. By ignoring the arguments based upon Hanson and such facts as the text messages by Kevin Lewis to plaintiff-petitioner in New Jersey, it is difficult not to conclude that the Superior Court of New Jersey engaged in erroneous reasoning and logical fallacies, all in violation of due process.

**A. THE INSTANT MATTER INVOLVES
INTENTIONAL WRONGFUL ACTS, NOT
MERE FORTUITOUS COMMERCIAL
CONTACT.**

The only substantive submissions filed by respondent-defendants were irrelevant affidavits stating that they were Floridians that did not do business in New Jersey. This reliance on case law from commercial matters reflects a fundamental misunderstanding of this matter. The Law Division of the Superior Court rejected motions for (a) jurisdictional discovery of documents in the possession of respondent-defendants that he was entitled to as personal representative of his late sister's estate, and (b) to amend his Complaint to conform technically to his pleadings with regard to the allegations of aiding and abetting, and conspiring to commit the alleged wrongful acts. The court below ruled that it need not consider any argument as there could be no jurisdiction in this matter, (App 79, 81 to 84), relying upon commercial matters like Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985). The Appellate Division also based its opinion on cases involving commercial matters. Baanyan Software Servs., Inc. v. Kuncha, 433 N.J.Super. 466 (App. Div. 2013). This matter does not involve mere fortuitous contacts from business activity; it involves intentional, directed tortious conduct. The Superior Court's reliance upon the commercial cases is distinguishable and erroneous.

The courts of New Jersey have previously found jurisdiction over out of state tortfeasors, Lebel, and

out-of-state criminal defendants, State v. Tringali, 451 N.J. Super. 18 (App. Div. 2017), who have never physically entered the state. (*See generally Beegel v. Park West Gallery, Park West At Sea*, 394 N.J. Super. 98, 114 - 127 (App. Div. 2007).) The intentional acts of these parties was found sufficient to establish jurisdiction. Petitioner-plaintiff clearly had an expectation that New Jersey would protect him. Is the logical fallacy of ableism being demonstrated in the instant matter? Is ableism, notwithstanding the contractual relationships and fiduciary duties regarding the treatment of a profoundly disabled person, the reason these causes of action were deemed not cognizable? Are the disabled only entitled to fractional civil rights? (*See generally Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866, 876 (D.D.C. 1972).)

In contrast, Petitioner-plaintiff's rights were deemed significant enough that respondent-defendant Carly Heller fraudulently induced petitioner-plaintiff to sign a medical consent form. This was for an intrusive procedure, which, it was agreed, would only be done in an emergency if he was not available. Why did Carly Heller then immediately schedule this procedure, contrary to the advice of the hospital doctors and directives of petitioner-plaintiff? Heller then remained silent of this in telephone conversations with petitioner-plaintiff when he inquired about his sister. This supports the allegation that the Gulf Coast Hospital respondent-defendants had joined in the nefarious enterprise of the LARC respondent-defendants. This occurred after

petitioner-plaintiff had fired the LARC. Respondent-defendants attempt to apply the reasoning of the Caldor decision fails. Carly Haller is alleged to have committed intentional acts directed at petitioner-plaintiff while in New Jersey so as to undermine the management of his sister's care while he was in another state.

Like Haller, the other respondent-defendants, as healthcare professionals and as an attorney, owed fiduciary duties to the caretaker of a disabled person. This is both at common law and, as raised on appeal, per the ADA.. This includes the conduct of Jeanne Abdou, a Physicians Primary Care party, that chose to initiate telephone conversations with the petitioner-plaintiff, ostensibly to "confirm the passing of his sister" after he had telefaxed a letter to LARC advising this. Abdou was specifically advised that a privacy order was in effect. Plaintiff-petitioner engaged council to do this during his sister's final illness as the conduct of respondent-defendants was untenable. He was spending time and effort dealing with their aberrant behavior rather than managing his sister's care. Gulf Coast Hospital medical staff recommended that he directly fire and bar these parties from the facility and engage counsel. As part of Physicians Primary Care, Jeanne Abdou could have confirmed Laura Susan Roche's passing on the Florida Department of Health's Electronic Death Registration System (see generally <https://www.floridahealth.gov/certificates/certificates/EDRS/index.html>). Instead, she chose to continue to join in the nefarious enterprise surrounding the

demise of Laura Susan Roche by intentionally targeting petitioner-plaintiff in New Jersey.

Respondent-defendant Roger O'Halloran, is alleged to have violated R. Regul. FL. Bar 4-1.14, F. S. §733.107(1) and (2), and In Re: Estate of Carpenter, 253 So.2d 697 (Fla. 1971), with his involvement in Laura Susan Roche's Will that named a LARC individual as executrix. He also assisted in a "Wish List," a notarized affidavit, "executed" by Ms. Roche, where she purportedly expressed a desire to remain in the care of LARC and not have petitioner-plaintiff "compel" her to move to New Jersey. The New Jersey courts incredulous dismissal of O'Halloran with prejudice was plain error in light of these allegations. Did O'Halloran benefit from the logical fallacies of "no true Scotsman" or false authority?

The pleadings in this matter complied with the Well Plead Complaint rule. Caterpillar v. Williams, 482 U.S. 386, 392 (1987). By asserting intentional acts, petitioner-plaintiff complied with standards that entitled him to a choice of forum. In light of Lebel and other New Jersey cases, where New Jersey expansively applied long arm jurisdiction, petitioner-plaintiff's expectations for due process were foreclosed. Petitioner-plaintiff was also denied choice of forum. No inquiry was made regarding non-action by local police or local bar ethics committees in an inquiry as to the appropriate forum. No examination of the rights of surviving siblings in different jurisdictions was made. By abrogating these responsibilities, the Superior Court of New Jersey failed to protect its citizens and residents. Instead, it

allowed out-of-state wrongdoers to arbitrage the rules of the different jurisdictions to their unscrupulous advantage.

The state of New Jersey's failure to fund its judiciary, the resultant lack of sitting Superior Court of New Jersey judges, ("Governor Murphy Applauds Senate ..."), and the Chief Justice of that state ordering that trials of certain matters not be held due to these shortcomings ("Statement of Chief Justice ...") should not impact the proper application of the law. Short term judicial administrative constraints cannot be allowed to impede a state's duty to protect its citizens and residents. By not giving consideration to litigant civil rights, as a recipient of federal funds, ("Analysis of the New Jersey Budget – The Judiciary"), the New Jersey court's failure to consider petitioner-plaintiff's due process rights is all the more egregious. (See generally "State Justice Institute Grant Program.") It was plain error to not consider the arguments based upon Hanson, to ignore the text messages, to deny jurisdictional discovery, and to not allow the Complaint to be amended.

**II. THE ERRONEOUS APPLICATION OF
THE NEW JERSEY COURT RULES, AND
THE DENIAL OF JURISDICTIONAL
DISCOVERY BY THE SUPERIOR COURT
ARE EGREGIOUS VIOLATIONS OF
PETITIONER-PLAINTIFF'S RIGHT TO
DUE PROCESS.**

New Jersey has denied petitioner-plaintiff his due process right to access to their court system, pursuant to the 14th Amendment and New Jersey Constitution, by denying special personal jurisdiction. New Jersey rejected motions for (a) jurisdictional discovery of documents in the possession of respondent-defendants that petitioner-plaintiff was entitled to as personal representative of his late sister's estate, and (b) to amend the Complaint. The court below, by caveat, ruled that there could never be New Jersey jurisdiction. (App 79, 81 to 84.) No hearing of the arguments occurred. Traditionally, the weighing of the competing concerns of a plaintiff's due process concerns with respect to the defendant's is done so that there can be a full examination of these rights. (R. D. Rees, *Plaintiff Due Process Rights in Assertions of Personal Jurisdiction*, 78 N.Y.U. L. Rev. 405, 425 (April 2003). By failing to consider petitioner-plaintiff's arguments regarding Hanson, New Jersey failed to consider his expectations and due process rights. By engaging in this reasoning, New Jersey failed to abide by its own court rules. In the illogical guise of due process concerns for intentional

tortfeasors, New Jersey failed to protect its own citizens and residents.

The denial of jurisdictional discovery is egregious as petitioner-plaintiff was requesting documents he was entitled to as personal representative of his sister's estate: nurse's notes from the hospital stay, and the provocative "Wish List" prepared by attorney O'Halloran. New Jersey law holds that jurisdictional discovery should be liberally granted. Rippon v. Smigel, 449 N.J. Super. 344, 359 (App. Div. 2017). Also, the state's court rules, N.J. Ct. R. 4:5-7, provide that pleadings should be liberally construed. Petitioner-plaintiff was denied the ability to correct pleadings. N.J. Ct. R. 4:9-1, -2, and -3. The New Jersey courts conducted themselves as if this were the 1820's, where a viable matter would be barred due to the submission of an incorrect writ: one in law rather than in equity!

In denying special personal jurisdiction, the Superior Court, through judicial artifice, deemed that the Florida parties would have been "unfairly surprised" by being haled into court in New Jersey. This was erroneous. Florida statute 48.193(6) provides for jurisdiction if a person commits a tortious act "[c]ausing injury to persons or property within this state arising out of an act or omission by the defendant outside this state" The Florida courts have applied this to telephone calls. Wendt v. Horowitz, 822 So. 2d 1252, 1260 (Fla. 2002). In ruling by caveat, the Superior Court of New Jersey denied due process to plaintiff-petitioner through legal fiction, improperly created, which in an Orwellian Animal Farm like

manner, gave greater due process rights to the Floridians than they would have been granted by their own state.

By now asserting that possible factual issues may exist regarding the test earmarked in Calder, respondent-defendants demonstrate that the allegation of intentional tortious acts by them were such that the Complaint raised sufficient allegations that Hanson was complied with. As such, the dismissal of the instant matter was in error. The electronic communications at issue in this matter were purposeful. They were not mere incidental commercial contacts. Additionally, respondent-defendants violated agreements and fiduciary duties owed to petitioner-plaintiff which inhibited his ability to manage his sister's care in Florida from New Jersey. Without reason, the Courts of New Jersey are applying the standards regarding electronic communications differently in this civil matter than it does in criminal matters. Pursuant to South Dakota v. Wayfair, Inc., 585 U.S. ___, 138 S. Ct. 2080 (2018), these interstate communications would have been material enough to create a nexus for taxation. The question therefore presented is whether or not they are sufficient to create special personal jurisdiction. Furthermore, different states are applying long arm jurisdiction to intentionally tortious interstate telecommunication differently. The U.S. District Court for New Jersey and the New Jersey Superior Court, as a result of the decision in this matter, may now be applying the standards differently.

CONCLUSION

Petitioner-plaintiff Richard A. Roche respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

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