No. 23-6805

In The

Supreme Court of the United States

Bharani Padmanabhan MD PhD

v.

Cambridge Health Alliance

PETITION FOR A WRIT OF CERTIORARI

TO THE MASSACHUSETTS SUPREME JUDICIAL COURT
(State Supreme Court Docket # FAR-29364)

February 12, 2024

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QUESTION PRESENTED

In *Fidelity & Deposit Co. v. United States*, 187 U.S. 315 (1902) the Court explained that granting summary judgment would not violate the right to trial by jury if the movant submitted in "precise and distinct terms the grounds of defence, "which must be such as would, if true, be sufficient to defeat the plaintiff's claim in whole or in part.""

If the movant's "grounds of defence" are obviously untrue, as in this case, was the grant of summary judgment repugnant to the United States Constitution's Seventh Amendment right to a trial by jury?

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PETITION FOR A WRIT OF CERTIORARI

Dr. Bharani Padmanabhan respectfully petitions for a writ of certiorari to review the judgment of the Massachusetts Supreme Judicial Court.

OPINIONS BELOW

The Massachusetts Supreme Judicial Court denied further appellate review of the Appeals Court decision, which makes it the final ruling of the state's highest court. The unpublished Appeals Court decision is at Bates 20 in the appendix and the trial court's grant of summary judgment is at Bates 35.

JURISDICTION

This Court has jurisdiction under 28 U.S. Code § 1257 because the case concerns the violation of the Seventh Amendment to the United States Constitution through defiance by a state court of 122 years of binding precedent.

STATEMENT

In 1995, Dr. Bharani Padmanabhan graduated *summa cum laude* at 25 after concurrently completing his MD and PhD (multiple sclerosis) degrees. In 2000, he completed his residency in neurology at Tufts, and followed that with three years of fellowship training in neuroimmunology at the Weiner Lab at Harvard's Brigham & Women's Hospital (where he was the first to identify CXCR6/CXCL16 as the most important markers for inflammation in multiple sclerosis), and an additional clinical year at the MS Clinic at the University of Massachusetts.

In 2004 he began the MS Service at a private neurology practice in Southern Massachusetts, where he cared for 751 MS patients by himself. In 2007, he was recruited to the neurology division at Cambridge Health Alliance in Everett, Massachusetts, a public safety-net hospital system that serves indigent and undocumented patients, and generates the cost numbers that the Commonwealth of Massachusetts submits to the federal government to procure federal dollars from the Medicaid budget. In 2008, petitioner conducted a prospective study directed by his neurology chief, Dr. Thomas Harter Glick, Harvard Professor of Neurology, to quantify the prevalence of medical errors in reports for brain MRI scans issued by the radiology department. They found that a majority of CHA's brain MRI scan reports had little or no correlation with the images of the scans themselves, and that the reports correlated almost exclusively with the patient's age, meaning the reports were generated blindly and generically, without a radiologist actually viewing the images. Many important and obvious findings on the images went unmentioned in the reports, including strokes, contrast-enhancing brain tumors, HIV and multiple sclerosis lesions.

Dr. Glick gently brought this to the attention of radiology chief Dr. Carol Hulka and sought a collegial meeting to discuss a quality improvement plan to reduce medical errors. At the time, Dr. Glick was unaware that the federal government had already threatened Dr. Hulka with daily monetary fines and exclusion from Medicare/Medicaid because she had performed mammograms on hundreds of women without calibrating the machine every morning, meaning the

scan reports were worthless. Worse, none of the women was brought back for rescanning so we have no idea how many breast cancers were missed at an earlier stage.

Within a year of informing Dr. Hulka of massive medical errors, Dr. Glick was forced to retire. CHA then 'summarily' suspended Dr. Padmanabhan's membership of the medical staff on November 9, 2010 on the claim of an imminent danger to patient safety (but did not implement it for another 48 hours during which he provided superlative care to another 30 patients) and perp-walked him out on November 11, 2010, two full days after a purported 'summary suspension' for imminent danger to patient safety. The 'summary suspension' decision was taken during a 29-minute meeting of the executive committee during which Dr. Padmanabhan was one of three physicians discussed. It was the first time that most members had even heard of Dr. Padmanabhan and there was no investigation or interview. During that one 29-minute meeting, the members robosigned the leadership's motion to terminate Dr. Padmanabhan from the medical staff.

The charge was that Dr. Padmanabhan did not know how to diagnose and treat multiple sclerosis, or treat chronic pain. This triggered the binding contract (Bylaws and Fair Hearing Plan) that governs the relationship between a physician, the medical staff, and the hospital, and allows only one Fair Hearing per suspension, not do-over after do-over.

Dr. Padmanabhan prevailed at CHA's contractually-required January 2011 Fair Hearing. In February 2011, the Fair Hearing panel ruled that there was no

credible evidence to terminate Dr. Padmanabhan's membership of the medical staff or his employment at CHA. Because Dr. Padmanabhan won, CHA ignored this report, in breach of the binding contract, and sought a do-over with a second set of Panel members, which the binding contract does not allow. Dr. Padmanabhan demanded that the contractual terms be honored with a final decision on the Panel's findings as required, and informed CHA in October 2011 that the binding contract ensured that the suspension of his clinical privileges had contractually ended after six months as enforced by the Bylaws (May 2011), and that his clinical privileges had routinely lapsed in June 2011, seven (7) months after the hospital terminated his work visa in 2010. Instead of acknowledging the substandard quality of its MRI reports and care, and total lack of commitment to reducing medical errors, in November 2011, CHA issued a false termination letter dated one full year after the actual termination, and falsely uttered to the state's medical board and to the federal government that Dr. Padmanabhan had resigned in October 2011 in order to avoid a Fair Hearing and that no Fair Hearing was held.

Within three years of this, after settlement talks went nowhere, in November 2014, Dr. Padmanabhan filed suit. Norfolk Superior Court dismissed the complaint as time-barred. In March 2021, via a published full opinion, the Massachusetts Appeals Court reversed as to the false uttering cause and four counts related to that. *Padmanabhan v. City of Cambridge*, 99 Mass. App. Ct. 332 (Green CJ., 2021) The case was remanded to Norfolk Superior for discovery and trial by jury. CHA's attorney did not respond to Dr. Padmanabhan's email to begin discovery and so Dr.

Padmanabhan arranged a Litigation Control Conference to ensure court-ordered discovery and a timetable for a jury trial. At that Conference, CHA's attorney Brian Sullivan refused to begin discovery and declared "We respectfully disagree with the Appeals Court's decision and intend to file another motion to dismiss." A motion for summary judgment followed, accompanied by a "List of Undisputed Facts" which entirely omitted any mention of the January 2011 Fair Hearing at which Dr. Padmanabhan was exonerated, and instead claimed that Dr. Padmanabhan had resigned to avoid a Fair Hearing and so no Fair Hearing was held. This totally contradicted what this same attorney had admitted to Judge Edward Leibensperger in Middlesex Superior in August 2011 and who had even produced a full transcript of that January 2011 Fair Hearing. *Padmanabhan v. Cambridge*, MICV2011-02685 (Middlesex Sup., Aug. 4, 2011) to that court. And, again, in November 2020, during oral argument in the Appeals Court, CHA admitted that in January 2011 a Fair Hearing had been held, and claimed this was why the suit was time-barred. See video at 2:01:10 (https://www.youtube.com/watch?v=loUAcO66hh4) At 2:03:30 CHA implied that Justice Sookyoung Shin's grasp of English was suboptimal, a message received by both minorities.

In his timely opposition to the motion for summary judgment, Dr. Padmanabhan objected to summary judgment in the total absence of any discovery, disputed with documentary evidence CHA's false assertion that no Fair Hearing had ever been held, and explained that the missing paragraph regarding the January 2011 Fair Hearing could not be disputed within the List of Undisputed

Facts using the same paragraph number as it was... missing. The record was unequivocal that material facts remained in dispute.

The state judge declared that Massachusetts Rules of Civil Procedure 9A(b)(5)(iii)(A) did not allow a judge to consider disputed facts listed within the opposition brief if they were not submitted within the movant's List under the same paragraph number. The judge deemed the hospital's "fact" (*no fair hearing was ever held because the physician just voluntarily resigned to avoid one*) admitted as the fact of the case and granted summary judgment based on this one point. A different panel in the Appeals Court applied the abuse of discretion standard without *de novo* review of the entire evidentiary record, and summarily affirmed via unpublished decision the assertion of MRCP Rule 9A(b)(5)(iii)(A)'s primacy over the rest of the Rule 9A and even binding Supreme Court precedent.

The state supreme court was presented the entire evidentiary record in the lower courts, including irrefutable proof that CHA and its lawyer, Brian Sullivan, had intentionally concealed - for summary judgment - the material fact that a Fair Hearing had been held in January 2011 which exonerated Dr. Padmanabhan, and that CHA had actively engaged in conscious misrepresentations to the courts.

The state supreme court was also presented with a conflict in the lower courts where two judges in two cases (CHA, A-Tucard) had arrived at diametrically opposite decisions on summary judgment motions when two different movants (one in each case) had intentionally concealed material facts from their List of Undisputed Facts and then falsely claimed that no facts were in dispute. Ax. 54-58

The state supreme court declined further appellate review, chose to let the summary judgment grant stand, and affirmed the practice of granting summary judgment prior to any discovery and even when the evidentiary record shows material facts remain in dispute.

REASONS FOR GRANTING THIS PETITION

1. *Fidelity* requires that the movant's "grounds of defence" must be "true" for summary judgment to pass constitutional muster

This Court explained in *Fidelity & Deposit Co. v. United States*, 187 U.S. 315 (1902) that the movant must submit in "precise and distinct terms the grounds of defence, "which must be such as would, if true, be sufficient to defeat the plaintiff's claim in whole or in part."" "[I]f true" is an integral part of this Court's allowance of summary judgment. Summary judgment would not deny Dr. Padmanabhan's right to trial by jury only if CHA's "grounds of defence" is "true." The evidentiary record in this case is clear and convincing that CHA's "grounds of defence" is not "true" as a Fair Hearing was held on the record, the Panel ruled on the record that there was no credible evidence to support Dr. Padmanabhan's termination, CHA's lawyer Brian Sullivan admitted this fact on the record to Judge Leibensperger in Middlesex Superior Court (2011), CHA's lawyer Rebecca Cobb admitted to this fact on the record (and on YouTube) in the Appeals Court (2020), and after all that, suddenly, CHA's lawyer Brian Sullivan falsely asserted in the 2021 summary judgment motion that the Fair Hearing was not held because Dr. Padmanabhan voluntarily resigned in order to avoid one. Also, CHA's second termination letter

dated November 2011 is as fake as a three-dollar bill.

For any summary judgment decision to pass constitutional muster, the movant's "grounds of defence" must be "true." The conclusion, on the record available to this Court, is undeniable that Dr. Padmanabhan's right to trial by jury was denied because CHA's "grounds of defence" is not true and thus insufficient to avoid discovery and trial by jury.

A right is a right. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), *Caetano v. Massachusetts*, 577 U.S. 411 (2016), *McCullen v. Coakley*, 573 U.S. 464 (2014), *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)

For this reason, this Court ruled against the movants in *Scott v. Harris*, 550 U.S. 372 (2007) and in *Tolan v. Cotton*, 572 U.S. 650 (2014). For this same reason, certiorari must be granted in this case and the lower court's decision reversed.

The Massachusetts courts disregarded Supreme Court precedent which chooses substance over form and requires a comprehensive view of the evidentiary record on summary judgment in order to ensure that the movant's "grounds of defence" is "true" and ensure the nonmovant's right to a trial by jury.

The Massachusetts practice is counter to this Court's view of the role of the summary judgment process. "Where, as here, the record blatantly contradicts the plaintiff's version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion. Pp. 1774-1776." *Scott v. Harris*, 550 U.S. 372 (2007), *Tolan v. Cotton*, 572 U.S. 650 (2014) The focus is always on what a jury would find, because

trial by jury is a right. A right is a right. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022)

In *Fidelity* this Court allowed the practice of summary judgment in order to protect *plaintiffs* and "preserve the court from frivolous defences and to defeat attempts to use formal pleading as means to delay the recovery of just demands." Helping *defendants* avoid discovery and trial by jury at any cost and by any means is not the role prescribed by this Court to state courts. This case is the strongest example of using an intentionally-false summary judgment motion to prevent discovery and deny the recovery of just demands. Defiance of 120 years of this Court's teachings is clear.

The end result of the Massachusetts court refusing to accept clear evidence in the opposition brief - that material facts remain in dispute - is the denial of Dr. Padmanabhan's right to trial by jury, a right that is a foundational principle of the United States and sets it apart from many others such as the Socialist Commonwealth of India.

2. Courts must not grant summary judgment when the record shows active concealment of material facts

This court has repeatedly declared that courts shall not reward fraud. "Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the

good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas Glass Co. v Hartford-Empire Co.*, 322 U.S. 238 (1944) The defendant in this case won summary judgment through its lawyer uttering consciously false statements of fact that directly contradicted his own previous statements of fact in court. *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) This is evident. The exercise of *certiorari* by this Court is thus an essential "public welfare demand." The judgment must be reversed.

CONCLUSION

This petition for certiorari must be granted. There remains a real need for this Court to remind lower courts that the "grounds of defence" must be "true" for summary judgment to be constitutional.

Respectfully submitted,

February 12, 2024

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CERTIFICATE OF COMPLIANCE

Petitioner certifies that he served a copy of this petition and appendix upon the defendant via counsel Brian Sullivan (and Michael Maxey) via email. The petition contains 2500 words. A notarized affidavit has been submitted.

February 12, 2024

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