ORIGINAL

No. 23-7348

IN THE

SUPREME COURT OF THE UNITED STATES

Oksana Marinaro

Petitioner

VS.

Cheryl Eddy Benn, P.C.

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

Oksana Marinaro

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QUESTIONS PRESENTED

1). The XIV Amendment of the United States Constitution guarantees the due process of law. Can a retired judge preside over the case without an appointment required by a state statute?

2). The XIV Amendment of the United States Constitution guarantees the due process. Is a case moot if a party voluntarily pays the judgement from the appeal bond under the compulsion of the court order without knowing her rights and without a notice of hearing regarding the appeal bond distribution between the parties?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Cheryl Eddy Benn, P.C. v. Oksana Marinaro, No. CL21005619-00, Circuit Court for the City of Virginia Beach, Judgement entered October 7, 2022.

Oksana Marinaro v. Cheryl Eddy Benn P.C., No. CL21005450-00, Circuit Court for the City of Virginia Beach, Virginia, Judgement entered October 7, 2022.

Oksana Marinaro v. Cheryl Eddy Benn P.C., No. 1667-22-1, Court of Appeals of Virginia. Judgement entered April 28, 2023. Order Denying petition for rehearing entered May 11, 2023.

Oksana Marinaro v. Cheryl Eddy Benn P.C., No. 230389, Order refusing the petition for appeal entered October 31, 2023, and order denying the petition for rehearing entered January 31, 2024.

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OPINIONS BELOW

The opinion of the Court of Appeals of Virginia appears at Appendix A, page 2 – 5A to the petition and is unpublished. Its order denying the petition for rehearing appears at Appendix A, page 6A.

The refusal of the Supreme Court of Virginia to review the merits appears at Appendix C, page 41A; Its order denying a petition for rehearing appears at Appendix C, page 42A. All are unpublished.

JURISDICTION

The date on which the Supreme Court of Virginia decided my case was October 31 of 2023 . A copy of that decision appears at Appendix C, page 41A.

A timely petition for rehearing was thereafter denied on January 31, 2024, and a copy of the order denying rehearing appears at Appendix C, page 42A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The XIV Amendment of the United States Constitution, Section 1 (App. 74A)

Article 6 of the United States Constitution (App. 74A)

United States Constitution, Article III, Section 2, Clause 1 (App. 74A)

Virginia Code §17.1-105 (App. 74-75A)

Virginia Code §18.2-456 (A)(5) (App. 75A)

Virginia Code §16.1-107 (A) (App. 76A)

Rule 1:1B (a)(3)(F) of the Supreme Court of Virginia (App. 76A)

Part 6, Section II of the Rules of the Supreme Court of Virginia (App. 77A)

Rule 1.5 (a) of Virginia State BAR (App. 77A)

Rule 1.8 (e)(1) of Virginia State BAR (App. 78A)

STATEMENT OF THE CASE

This Petition will refer to Petitioner as "Marinaro", to respondent as "Benn", to Virginia Beach General District Court as "GDC", to Virginia Beach Circuit Court as "Trial Court", to Virginia Court of Appeals as "CAV", to the Supreme Court of Virginia as SCV, reference to pages in the appendices as (App.).

In May 2019, Marinaro retained Benn to represent her in a divorce action. The parties entered into a written retainer agreement that governed the terms of Benn's representation. The agreement set forth the hourly billing rates, terms, and condition of the representation, as well as cost reimbursement. Benn's attorney-client relationship with Marinaro ended a couple months or so later. Benn sent Marinaro invoices for work performed. After Marinaro failed to fully pay Benn's bills of $14,444, Benn filed a warrant in debt in the Virginia Beach General District Court (GDC) for the amount of $6,786.70, plus 6% interest, as well as cost and attorney fees, for "non-

payment for services rendered." While the matter was pending in the GDC, Marinaro filed a complaint challenging Benn's invoice for services provided with the Trial Court and asking to reduce the amount of Benn's fees from $14, 444 to $3,600.

The GDC entered judgment against Marinaro, and awarded Benn $6,512.72 in addition to $7,500 that was previously paid to Benn by Marinaro before the start of the litigation with 6% interest until the debt is paid, plus costs and attorney fees. Marinaro appealed to the Trial Court who consolidated Marinaro's appeal with her complaint that was pending in the Trial Court. The Trial Court granted judgment in Benn's favor, and awarded her $4,992.77, with 6% interest in addition to $7,500 already paid to Benn by Marinaro before the start of the litigation. (App. 22-23A).

During the hearing for entering the final order the Trial Court also unexpectedly entered a judgement order (App. 34A).

Marinaro appealed to the Virginia Court of Appeals. On April 28, 2023, the Virginia Court of Appeals on its own motion dismissed the case as moot based on the fact that Marinaro voluntarily agreed in the judgement order of the Trial Court that the appeal bond that was required to appeal from GDC to the Trial Court was distributed between the parties (App. 2 – 5A).

Marinaro timely filed a petition for rehearing arguing that the case was not moot (App. 7 – 20A). The petition was denied by the Virginia Court of Appeals (App. 6A).

Marinaro appealed to the Supreme Court of Virginia arguing that the case was not moot (App. 43 – 62A). The Supreme Court of Virginia refused Marinaro's petition for appeal (App. 41A).

Marinaro filed a timely petition for rehearing arguing that the trial judge as a retired judge did not have legal power to entertain the case (App. 63 – 72A). The Supreme Court of Virginia denied Marinaro's petition for rehearing (App. 42A).

REASONS FOR GRANTING THE PETITION

Question 1. The XIV Amendment of the United States Constitution guarantees the due process of law. Can a retired judge preside over the case without an appointment required by a state statute?

"Pro se submissions are reviewed with "special solicitude," and "must be construed liberally and interpreted to raise the strongest arguments that they suggest." Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474-75 (2d Cir. 2006).

The XIV Amendment of the United States Constitution guarantees that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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".

"The Constitution guarantees a fair trial through the Due Process Clauses", U.S. v. Gonzalez-Lopez, 548 U.S. 140, 146 (2006). Among those basic fair trial rights

that "can never be treated as harmless'" is a defendant's "right to an impartial adjudicator, be it judge or jury. Equally basic is a defendant's right to have all critical stages of a ... trial conducted by a person with jurisdiction to preside. Gomez v. United States, 490 U.S. 858, 876, 109 S. Ct. 2237 (1989).

Article 6 of the United States Constitution guarantees that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

In U.S. v. American-Foreign Ss. Corp., 363 U.S. 685, 691 (1960), this Court explained that a retired judge is without legal power to participate in en banc decision.

In Yovino v. Rizo, 139 S. Ct. 706, 709, 203 L. Ed. 2d 38 (2019), this Court explained again its holding in U.S. v. American-Foreign Ss. Corp. that "an 'active' judge is a judge who has not retired 'from regular active service,' " and "a case or controversy is 'determined' when it is decided. Because Judge Medina was not in regular active service when the opinion issued, he was "without power to participate" in the en banc decision."

In U.S. v. Scott, 260 F.3d 512 (6th Cir. 2001), the United States Court of Appeals held that a warrant signed by a retired judge who did not have any legal authority and in violation of state law to sign the warrant is void ab initio.

In State v. Nunez, 634 A.2d 1167, 1169-1171 (R.I. 1993), the Supreme Court of Rhode Island held that the warrant issued by a retired judge who was not assigned to the case pursuant to statutory requirements is void ab initio.

In this instant case, the trial was conducted and orders were issued and signed by the Retired Judge who was not appointed pursuant to the requirements of the Virginia Code and thus without the authority to do so.

Va. Code §17.1-105(a) does not permit to make a personal request for a retired judge to hear only a particular case, the retired judge can be requested only if a judge is unable to perform his entire duty of the term or part of the term and not because the judge denied to hear only one case. It is clear from the statute that the judge must not be able to go to work at all and perform his duty at all to request a retired judge, and it clearly states that a disabled judge, or another judge can make a personal request for a retired judge to perform the entire duty of the disabled judge. A disabled judge is the one who cannot go to work to perform his entire duty and only in that case he can make a personal request for a retired judge to perform the entire duty of the disabled judge. It also permits another judge to make a personal request for a retired judge to replace the disabled judge, because the disabled judge apparently may not be able to do so on his own if he has the severe health disability. The statute does not permit to make a personal request for a retired judge to replace the judge

who disqualified himself only for one case and who continues to go to work every day and perform his term duty.

Moreover, no judge of the Trial Court disqualified himself in this instant case. The letter from the Chief Judge provides that only one judge disqualified himself but not in this case but in another case, Marinaro's divorce case, and then the latter randomly states that the retired judge will also preside in this instant case. (App. 35 – 36A).

Furthermore, Va. Code §17.1-105(a), requires that even if a retired judge was designated by a judge of a circuit court "The designation of such judge shall be entered in the civil order book of the court, and a copy thereof sent to the Chief Justice of the Supreme Court. The Chief Justice shall be notified forthwith at the time any disabled judge is able to return to his duties.", that has not been done and could not be done in this instant case as there was no judge in the Trial Court who was unable to perform his term duty or part of his term duty, all judges of the Trial Court continued to go to work and perform their duty.

Va. Code §17.1-105(b) permits a retired judge to be appointed by the Chief Justice of the Supreme Court of Virginia if all judges disqualify themselves in a particular case. In this instant there was no judge who disqualified himself.

Thus, when one judge of the Trial Court disqualified himself in a particular case, then the case must be heard by another active presiding judge of the same court, and a retired judge may not be appointed by a personal request of any active judge.

However, in this instant case there was not even one judge who disqualified himself in this matter.

The Retired Judge in this instant case who conducted the trial and issued orders, was a passer-by for this case. It was equivalent to any passer-by to enter a courthouse, a random courtroom, conduct a trial, and issue orders under the name of the United States.

It would be equivalent to Marinaro who is a mathematics teacher in Virginia, Norfolk Public Schools, who after her retirement enters the school building, a classroom, and enters the grades into the grade book for the students, which would possibly affect the students' grades and opportunity to graduate, and Marinaro would do so only because she still possessed her teaching license in spite of her retirement and previously worked in that school. What such actions would worth...

This question is of public importance, as now any passer-by can enter a courtroom and issue court orders under the name of the United States.

Question 2. The XIV Amendment of the United States Constitution guarantees the due process. Is a case moot if a party voluntarily pays the judgement from the appeal bond under the compulsion of the court order without knowing her rights and without a notice of hearing regarding the appeal bond distribution between the parties?

a). Payment of judgement does not render the case moot. The case is still live. The repayment can be enforced.

"Even in cases arising in the state courts, the question of mootness is a federal", North Carolina v. Rice 404 U.S. 244, 246 (1971) citing Henry v. Mississippi, 379 U.S. 443, 447 (1965).

The doctrine of mootness is based on the United States Constitution, Article III, Section 2, Clause 1.

Gravely v. Deeds, 185 Va. 662, 663-664 (1946):

"the payment of a judgment or decree entered in a civil action does not constitute a waiver of a right to review upon a writ of error or an appeal unless such payment was made in a compromise settlement or the judgment debtor agreed not to pursue an appeal at the time the payment was made. The reason advanced in support of this rule is that, if the judgment or decree was not satisfied, the judgment creditor could, and perhaps would, cause an execution to be issued and defendant's property seized to satisfy the judgment or decree".

If payment of judgement renders a case moot, then all litigants would have to go through the process of contempt of the court or garnishment, or lien in order to preserve their right for appeal. Pursuant to Rule 1:1B of the Supreme Court of Virginia, the Trial Court had jurisdiction to enforce its final judgement during pending appeal and punish for contempt that the Trial Court is authorized to do pursuant to Virginia Code §18.2-456 (A)(5).

Neither the United States Supreme Court nor Federal Courts, or appellate courts of other states support that the volunteer payment of judgement bars the

appeal. Those courts held that the volunteer payment of judgement under compulsion of the court order is not volunteer and does not bar the appeal especially in those cases where the judgement can be repaid. To waive the right for appeal, a debtor has to pay voluntarily and intentionally, with knowledge of the circumstances, and there has to be contemporaneous agreement not to appeal. In this instant case, Marinaro unconsciously agreed to the bond to be distributed under compulsion of the court order, she did not do it intentionally with the knowledge of circumstances, and there is no agreement between the parties not to appeal.

Dakota County v. Glidden,113 U.S. 222, 224 (1885):

"There can be no question that a debtor against whom a judgment for money is recovered may pay that judgment and bring a writ of error to reverse it, and if reversed can recover back his money...the defendant has merely submitted to perform the judgment of the court and has not thereby lost his right to seek a reversal of that judgment by writ of error or appeal".

Mancusi v. Stubbs, 408 U.S. 204, 207 (1972) (see discussion about mootness and reliance on Dakota as a binding authority).

Miga v. Jensen, 299 S.W.3d 98, 104 (Tex. 2009):

"Nor is the restitution claim of the judgment debtor barred by the doctrine of "voluntary payment" if the debtor elects to pay a judgment that he or she regards as invalid, without waiting for the issuance or levy of execution. On the contrary, any payment made in response to a judgment is treated as a payment made under

compulsion, at least for the purpose of permitting the judgment debtor to avoid the consequences that would flow from regarding the payment as "voluntary.".

Heigtvedt v. Prybil, 223 N.W.2d 186, 188-189 (1974):

"Payment of a judgment under compulsion does not amount to waiver of the right to appeal. Waiver is the voluntary relinquishment of a known right. Payment is not voluntary when it is made under compulsion of court order. To constitute waiver of the right to appeal, the judgment would have to be paid by the judgment debtor voluntarily and intentionally, with knowledge of the circumstances".

Progressive Direct Ins. Co. v. Stuivenga, 364 Mont. 390, 406 (2012):

"the fundamental principle that a defeated party's compliance with the judgment renders the appeal moot only where the compliance makes the granting of effective relief by the appellate court impossible".

Amicorp v. General Steel Domestic Sales, 284 F. App'x 527, 529 (10th Cir. 2008):

"The usual rule ... is that payment of a judgment does not foreclose an appeal. Unless there is some contemporaneous agreement not to appeal, implicit in a compromise of the claim after judgment, and so long as upon reversal, restitution can be enforced, payment of the judgment does not make the controversy moot".

Desire, LLC v. Manna Textiles, Inc., 986 F.3d 1253, 1259 (9th Cir. 2021):

"Payment of a judgment does not foreclose an appeal. An exception to that rule exists where "there is some contemporaneous agreement not to appeal, implicit in a compromise of the claim after judgment." (internal quotations are omitted).

Smith v. Martin, 336 F.2d 142, 143-144 (10th Cir. 1964): "payment of a judgment does not bar an appeal therefrom when repayment may be enforced".

Milicevic v. Fletcher Jones Imports, Ltd., 402 F.3d 912, 915 (9th Cir. 2005):

"The usual rule ... is that payment of a judgment does not foreclose an appeal. Unless there is some contemporaneous agreement not to appeal, implicit in a compromise of the claim after judgment, and so long as, upon reversal, restitution can be enforced, payment of the judgment does not make the controversy moot".

Mission Product Holdings, Inc. v. Tempnology, LLC, 139 S. Ct. 1652, 1660 (2019):

"[A] case is not moot so long as a claim for monetary relief survives". Ultimate recovery on that demand may be uncertain or even unlikely for any number of reasons, in this case as in others. But that is of no moment. If there is any chance of money changing hands, Mission's suit remains live".

Adarand Constructors, Inc. v. Rodney Slater, 528 U.S. 216, 224, 120 S. Ct. 722 (2000):

"It is no small matter to deprive a litigant of the rewards of its efforts, particularly in a case that has been litigated up to this Court and back down again. Such action on grounds of mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought".

Colorado v. Spring, 479 U.S. 564, 573 (1987):

"First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the `totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the rights have been waived".

A case does not necessarily become moot simply because intervening events make it impossible for a court to issue the exact form of relief that the party requests. As long as the court retains the ability to fashion some form of meaningful relief, then that is sufficient to prevent the case from being moot. To illustrate, if there is any chance of money changing hands as a result of the lawsuit, then the suit remains live. Similarly, even if it is uncertain that the relief granted by the court will ultimately have any meaningful practical impact on the party, that does not itself render the case moot.

Marinaro is entitled to the judgement to be paid back to her on remand by Benn who is an attorney. Rule 1.5 of Virginia State BAR rules of professional conduct requires fees for legal services to be reasonable, and Rule 1.8 (e)(1) of Virginia State BAR requires the repayment of overcharged fees to the client that a lawyer advanced from the client. These rules are incorporated in Part 6, Section II of the Rules of the Supreme Court of Virginia. In any case, there is nothing that can prevent Benn from

repayment to Marinaro of excessive fees awarded to Benn by the Trial Court. Thus, the matter is still live, the money changing hands is still live, the monetary relief survives, thus, the case is not moot. There is no record that indicates that Marinaro with full awareness abandoned her right for appeal, vise versa, at the time of entering the Judgement Order, Marinaro objected to the Final Order, both orders were entered during the same hearing on October 7, 2022, and, thus, it is clear from the record that Marinaro intended to appeal (App. 22 – 33A, 34A).

Additionally, there is no compromise settlement in this case as required in order to render the case moot.

The Virginia Court of Appeals defined "compromised settlement" as:

"The plain meaning of a "compromise" is "the result or embodiment of concession or adjustment. Settlement "means "satisfaction of a claim by agreement often with less than full payment. See also: Compromise Settlement, Black's Law Dictionary (10th ed. 2014) (defining "compromise settlement" as "an agreement between two or more persons to settle matters in dispute between them; an agreement for the settlement of a real or supposed claim in which each party surrenders something in concession to the other")", (internal quotations are omitted) Williams v. Capital Hospice, 66 Va. App. 161, 172 (2016).

There is no compromise settlement in this instant case where parties voluntary surrender something in concession to the other. As such, there was no negotiation or concessions to resolve the claim. Further, the parties did not reach an agreement;

instead, the Trial Court issued a binding decision. At the time of entering the Judgement Order, Marinaro objected to the judgement (App. 24-33A).

b). Marinaro's due process rights were violated at the time the Trial Court entered the Judgement Order.

The Fourteenth Amendment of the United States Constitution guarantees the procedural due process rights. Marinaro was not notified and did not receive any notice that the matter of bond distribution would be heard on October 7, 2022, but only a notice of hearing with the proposed final order for entering that final order (App. 37 – 39A).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonable to convey the required information, . . . and it must afford a reasonable time for those interested to make their appearance, . . . The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements", Crystal Oil Co. v. Dotson, 12 Va. App. 1014, 1018 (1991).

In Dohany v. Rogers, 281 U.S. 362, 368 (1930), the Supreme Court of The United States held that "the due process requirements are satisfied if a party "has reasonable notice and reasonable opportunity to be heard and to present his claim or

defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it".

Dusenbery v. United States, 534 U.S. 161, 167, 534 U.S. 161 (2002):

"The Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person of property without "due process of law." From these "cryptic and abstract words," we have determined that individuals whose property interests are at stake are entitled to notice". (internal quotations are omitted)

Goldberg v. Kelly, 397 U.S. 254, 267-268, 397 U.S. 254 (1970):

"The hearing must be "at a meaningful time and in a meaningful manner." In the present context these principles require that a recipient have timely and adequate notice" (internal quotations are omitted).

Civil cases are generally governed by explicit guarantees of procedural rights. Among those rights is the constitutional right to procedural due process, which has been broadly construed to protect the individual so that statutes, regulations, and enforcement actions must ensure that no one is deprived of "life, liberty, or property" without a fair opportunity to affect the judgment or result.

Even though Marinaro was present at the hearing, she did not receive the reasonable or any notice of the hearing on the bond distribution, was unaware that the bond distribution matter would be heard and considered by the Trial Court, and, thus, the opportunity to be heard was not meaningful, fair, and reasonable as

Marinaro was not prepared and could not prepare for the hearing to protect her rights "due regard being had to the nature of the proceeding and the character of the rights which may be affected by it", Dohany v. Rogers, 281 U.S. 362, 368 (1930).

c). Marinaro's signing of the Judgement Order constitutes procedural and substantive unconscionability.

In Chaplain v. Chaplain, 54 Va. App. 762 (2009), where a wife signed a premarital agreement while English was not her native language, she was not provided the document ahead of time, she was not given time to review it, she did not have an attorney to advise her, the document was not explained to her, she was not provided a copy of the document. The Court of Appeals of Virginia held that the premarital agreement was signed unconsciously and was unenforceable. No different in this case, the notice of hearing on bond distribution or proposed Judgement Order was not provided to Marinaro ahead of time, she was not given time to review the order, she did not have an attorney to advise her, she was not given time to find an attorney for advice, she was not provided a copy of the order, she was not given time to even find out on her own whether agreement to such order can affect her rights to appeal as Marinaro was not provided a notice of hearing regarding the bond distribution and was unaware that the matter would be heard and considered by the Trial Court. It constitutes procedural unconscionability.

It also constitutes substantive unconscionability. As The Virginia Court of Appeals noted in Chaplain, *id.* at 773 "Historically, a bargain was unconscionable in an action at law if it was "`such as no man in his senses and not under delusion would

make on the one hand, and as no honest and fair man would accept on the other." How Marinaro could make an agreement and accept that she agreed to pay the amount of judgement to the opposing party and waive her right to appeal while at the same time she objected to the amount of judgement and did not agree with the judgement with certainty that clearly shows that Marinaro was determined to appeal and did not intend to agree to the bond distribution (App. 24 – 33A).

American Airlines, Inc. v. Wolens, 513 U.S. 219, 249 (1995):

"a determination that a contract is "unconscionable" may in fact be a determination that one party did not intend to agree to the terms of the contract. Thus, the unconscionability doctrine, far from being a purely "policy-oriented" doctrine that courts impose over the will of the parties, instead demonstrates that state public policy cannot easily be separated from the methods by which courts are to decide what the parties "intended."

Furthermore, Marinaro is entitled to the judgement to be paid back to her by Benn or by means of restitution on remand. In Reid v. Reid, 14 Va. App. 505, 505, 419 S.E.2d 398 (1992), the Virginia Court of Appeals held:

"It has long been the rule in Virginia that if, pending an appeal, the appellant has paid the judgment that is being appealed, the appellant, upon reversal of the judgment, is entitled to restitution of the money so paid. When the trial judge's decree is reversed, vacated or set aside due to error, it is a nullity and may give rise to the remedy of restitution".

Not only Benn can pay back to Marinaro on remand by restitution, but she is also obligated to do so by the Rules of Professional Conduct of Virginia State BAR, Rule 1.8 (e)(1) of Virginia State BAR.

d). Benn's behavior can reasonably be expected to reoccur.

Adarand Constructors, Inc. v . Rodney Slater, 528 U.S. 216, 222, 120 S. Ct. 722 (2000): "Voluntary cessation of challenged conduct moots a case, however, only if it is " absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur".

In Adarand, that challenged the Department of Transportation certificate, the Supreme Court of the United States held: "It is also far from clear that there will be no third-party or DOT challenge to petitioner's certification". *id.* at 217.

Knox v. Serv. Employees int'l Union, 567 U.S. 298, 307, 132 S. Ct. 2277 (2012): "The voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed".

In Knox that challenged the Service Employees International Union collected fees, the Supreme Court of the United States held: "And here, since the union continues to defend the legality of the Political Fight–Back fee, it is not clear why the union would necessarily refrain from collecting similar fees in the future". *id.* at 307

No different from this case, the behavior of Benn can reoccur, and she can continue to collect unreasonable fees from her clients as well as there is no guarantee

that there will be no third party who will challenge the reasonableness of Benn's fees. "The basis for a contract action is the parties' agreement; to succeed under the state Act, one need not show an agreement, but must show an unfair or deceptive practice", American Airlines, Inc. v. Wolens, 513 U.S. 219, 220 (1995).

This question is of public importance, the Virginia Court of Appeals decision contradicts the decisions of this Court, Federal Cours, and the Appellate Courts of other states. Litigants can lose their right for justice while being fully entitled to such a right.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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