

No. 24-609

12/2/2024

IN THE
Supreme Court of the United States

JAMES L. MARTIN,

Petitioner,

v.

DAVID H. NIXON,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF DELAWARE**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the Fifth Amendment Takings Clause and the Fourteenth Amendment Due Process Clause protect a civil judgment creditor, in a state court, from escheat where the judgment debtor demands a satisfaction and release of claim prior to payment?

RELATED PROCEEDING

Martin v. Hudson, et. al., N21C-12-195 VLM, Superior Court of Delaware, legal malpractice case pending against the law firm and successor attorney unable to continue representing the petitioner following the death of his attorney in the matter *sub judice*.

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OPINIONS AND ORDERS IN THE COURT BELOW

In an Order filed on 6-21-2024, at 1a - 2a, the Supreme Court of Delaware affirmed the Opinion and the Orders from the Superior Court, at 3a - 11a. In an Order filed on 7-9-2024, at 12a - 13a, the Court denied the Motion for Rehearing *en banc*. Justice Alito granted a sixty-day extension application, to 12-6-2024, although he is not eligible to rule on the merits.

STATEMENT OF THIS COURT'S JURISDICTION

This Court's jurisdiction for review is at 28 U.S.C. Sec. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 5 . . . nor shall private property be taken for public use, without just compensation.

Amendment 14, Sec. 1 . . . nor shall any state deprive any person of . . . property, without due process of law; nor deny . . . the equal protection of the laws.

STATEMENT OF CASE

Stage in proceedings where the federal questions were raised and preserved. The federal questions about the Due Process and the Takings Clause were raised and preserved in the court below on 11-29-2023, when Martin's Supplementary Answer to Defendant's [Nixon's] Motion to Satisfy Judgment was filed:

The defendant was a solvent judgment debtor, but through his persistent refusal to issue

payment, violated plaintiff's due process right to be paid the verdict award with the cooperation of the judiciary's order to escheat the verdict award.

The defendant moved to satisfy a judgment without first paying the judgment; as a result, the order to escheat the unsatisfied judgment to the State violates plaintiff's right against taking private property for public use without compensation.

Facts. Shortly before a jury trial was scheduled in this personal injury case, petitioner Martin's attorney who was prepaid in full died without an eligible successor in 2019. Martin could not find another attorney because his late counsel failed to adequately prepare the case. Martin proceeded *pro se* to a jury award after a second trial. The award was entered with the Prothonotary as a money judgment.

Even though the case was to remain closed, and even though respondent Nixon did not file a Motion to Reopen, he filed a Motion to Satisfy Judgment on 10-31-2023. The Motion was based on Nixon's demand issued by letter dated 9-21-2023 that reads: "... I will mail you the check upon receipt of proof that the Prothonotary has satisfied the judgment as you directed," and also says: "However, no payment will be made to you until such time as the judgment is satisfied."

The next day, on 11-1-2023, the trial court granted Nixon's Motion that reads: "Said check will be delivered to the Plaintiff by appropriate means within three (3)

weeks of this Order." 8a - 9a. In addition, the trial judge amended the proposed Order, at 10a, to read:

If Plaintiff does not accept receipt of the payment within 3 weeks, Defendant may withhold \$783 representing Defendant's costs in securing this resolution. At that time, Defendant may pay the residuum in to the Prothonotary's office after which time Defendant will not be responsible for further post judgment interest. The amount held by the Prothonotary will be held without interest until such time as it may excheat to the State. SO ORDERED.

Martin filed an answer to the motion within the ten (10) day deadline, on 11-13-2023, to recite the statutory process for satisfying a judgment: Payment by check, a common means of paying a judgment, may require a business day or longer for the funds to clear the bank, at which time the judgment creditor's obligation arises to authorize the Prothonotary to satisfy the judgment, and to release the claim. The sequence is payment first, deposited funds (if issued by check) cleared in a bank second, and satisfaction of judgment third. Martin was not paid, contrary to Nixon's Motion.

On 11-15-2023, Martin emailed opposing counsel the name of the courier who agreed to pick up the check at opposing counsel's office. On 11-15-2023, counsel Kafader emailed Martin:

Jim—The court entered its Order without argument. I will not give the check to you, a courier or anyone else until the judgement is

satisfied in one way or other. If you don't like my position in this matter, You can take it up with Judge Butler. If this is not resolved by the 22nd, the check goes back to State Farm and a replacement check for the net amount goes to the Prothonotary In any event, do not send a courier here, until this matter is resolved by way of you satisfying the judgment.—Ed

Kafader's receptionist emailed Martin a scan of the check from State Farm Insurance, made payable to Martin for the judgment. According to Martin's primary bank, Wells Fargo, Nixon's scanned email of the check to Martin was not negotiable "payment." Martin's printed scan of the State Farm check was adequate for M&T Bank to negotiate. Opposing counsel's email on 11-20-2023 was to "ensure that the check [scanned from email and already cashed] is delivered by one method or another as soon as possible." Later the same day, Martin's responsive email reads: "Last week, I received the State Farm check [emailed] to me [from your staff], then deposited it in my bank account after endorsing it."

REASONS FOR GRANTING THIS WRIT

The Takings Clause and the Due Process Clause protect a civil judgment creditor, in a state court, from escheat where the judgment debtor demands a satisfaction and release of claim prior to payment.

Although the trial court's order at 11a refers to the money judgment having been paid, the effort to escheat the judgment falls within the exception to the mootness rule. The recited issue is "capable of repetition, yet evading review," referenced in *FEC v. Wis. Right to Life*, 551 US

449, 462 (2007). The judgment of a state court whereby property is intended to be taken for the state or under its direction for public use without compensation violates the Takings Clause and applies to the states by virtue of the Due Process Clause under long-standing precedent. *Chicago B. & Q. RR v. City of Chicago*, 166 US 226 (1987).

A Delaware money judgment is subject to the terms at 10 Del. Sec. 4751, entitled "Time for entry; penalty for failure to satisfy; jurisdiction,"

- (a) Every person to whom a sum is due by judgment, who receives satisfaction of the same, shall forthwith cause such satisfaction to be entered upon the record of the judgment.

As described in Martin's 11-15-2023 email to Nixon's counsel's staff, in addition to the courier's name:

The check is to be received, deposited, and cleared; then I authorize satisfaction on the attached form and file it with the Prothonotary, who satisfies the judgment. The demand for satisfaction of judgment without first paying it, is not a lawful demand.

The extensive communications show Nixon's efforts to impose terms and conditions that are not included with a *pro forma* satisfaction. Even if Nixon had paid the judgment in full, and even if Martin failed to satisfy the judgment within a reasonable time, which is what the trial court's orders suggest, 10 Del. Sec. 4751(b) governs the fine:

(b) Whoever being the holder of a judgment wilfully fails to satisfy a judgment upon the record as required by subsection (a) of this section, shall be fined not more than \$500 for each such failure.

In many states, the statutes governing timely satisfaction of judgments allow judgment creditors between fifteen and thirty days to authorize satisfactions. The Delaware statute requires a paid judgment creditor to "forthwith" satisfy the judgment. Martin satisfied the judgment about a day after he was able to find a bank where he could endorse the back of an emailed, scanned State Farm check, printed on regular copy paper (not the original check), and deposit it in his account. Wells Fargo refused the check, because their banking standards required the original check. Most of the banks honor the Wells Fargo model, so that Nixon's form of payment, unintentionally emailed to Martin, did not satisfy the requirement of payment. Martin could not find any cases about whether a judgment debtor has any standing to seek relief without first tendering a conventional payment; an emailed scan of a check, not intended to be payment but rather intended to disclose possession of a paper check that is being withheld, does not meet the standard for "payment." Mobile banking applications have set limits on the amount of a check that may be photographed and deposited remotely, and the amount at issue here far exceeds the threshold amount.

After the Reply Brief was filed, the Centers for Medicare and Medicaid Services issued a subrogation demand on Martin, based on medical treatment his surgeon prescribed that resulted exclusively from the

crash on 10-10-2015. Dr. Getz updated his report to specify:

I previously summarized his surgery and postop rehab around the time of his initial injury. I would like to clarify that two MRIs did not show any interval change to the patient's rotator cuff between 2015 and 2019 and his residual shoulder dysfunction is a result of his initial injury and the inherent damage associated with it.

Dr. Getz testified during a videotaped deposition that all treatment he prescribed was causally related to the crash in 2015, consistent with his prior report. Nixon decided not to conduct an independent medical evaluation of Martin, and although Nixon offered no testimony or evidence to contradict Dr. Getz's testimony, the trial judge disregarded the testimony from Dr. Getz, and excluded treatment after 2016 as unrelated to the crash on 10-10-2015.

The issue about timeliness is decisively foreclosed under the recent ruling in *Kemp v. US*, 596 US 528 (2022), where a judge's error of law was subject to a one-year statute of limitations. As with Delaware's Rule 60, Fed. R. Civ. P. 60(b)(1) allows judgments to be reopened for "mistake, inadvertence, surprise or excusable neglect," as long as the motion is filed "within a reasonable time," and, at most, one year after the entry of the order under review. The *Kemp* ruling includes guidance about when a case is deemed closed for Rule 60 time limitations. The closing date is when the time for taking the next step in litigation expires. In the context of the petition at bar,

the closing was 9-11-2023, when the sixty-day extension order at Application No. 22A1124 to seek certiorari review expired. The next month, in October, the reasons to move to reopen arose during a deposition, and before the end of that month, Martin filed the Motion. The trial court issued the decision at 3a - 7a at the end of October. As a result, timeliness is not at issue, regardless of what provision in Rule 60 is relied on, despite the contrary order dated 10-31-2023.

The trial judge lifted a stay by Order dated 10-22-2024 in parallel litigation against the law firm where petitioner's attorney died, after a hearing. The ruling in *Coinbase, Inc. v. Bielski*, 599 US ___ (2023) resolved the question about a stay under these circumstances on 6-23-2023, and superseded the four-factor criteria for a discretionary stay. See *Martin v. Hudson, et. al.*, No. 21C-12-195-VLM. This Court should reinstate the stay until the subrogation and the related issues are resolved in view of the time restriction to seek appellate review of this decision before the state court of last resort.

CONCLUSION

Certiorari should be granted in view of the lower court's departure from conventional standards governing prior payment of a judgment before a debtor has standing to seek a satisfaction. The case should be summarily reversed on the merits and remanded in accord with Rule 16.1 for a new trial, or briefed on the merits after a stay is reinstated in the parallel case.

Respectfully submitted,

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