

No. 17-_____

In the
Supreme Court of the United States

LEILA ROBINSON LEWIS SMITH,

Petitioner

—v—

ASSOCIATED CREDIT UNION, INC.,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Georgia

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Did the Court(s) err in not providing findings of fact and conclusions of law in their orders as required as per Federal Rule 52?

2. Did the Court(s) err in accepting Appellee's overriding claim that Appellant's case is frivolous and thereby persisted in not finding for her contrary to facts involving 18 U.S. Code Chapter 63 and FDIC 1341 and with Federal Rule 11? (At the state court March 15, 2017 hearing, said court did find that the Appellee's case was frivolous as was evidenced in its finding for award of attorney's fees for Appellee-lacking substantial justification being a requirement for attorney's fees. Substantial justification actually is a strong point for Appellant's case.)

3. Did the State Court err when it did not consider Appellee breach of contract as ending said contract and also ending immunity? (T1-p.43-44)

4. Did State court err when, contrary to O.C.G.A. § 9-3-96, it did not use tolling requirement instead determining Complaint filing as being too late for intentional infliction of emotional distress time limitation? (Federal Concealment Doctrine)

5. Did the State Court err when it was dismissive of ACU 10-25-2011 letter as not meeting the standard of intentional infliction of emotional distress? William L. Prosser, Law of Torts 56 (4th ed. 1971)

6. Did the State Court err in assuming that Appellee had immunity from all claims and not considering ACU's admissions of knowledge of Appellant concerns about account security before account dis-

bursal? (T1-p.32, 24-25; p.34, 23-35) (R-60, Item 21)
(O.C.G.A. § 7-1-820)

7. Did the Georgia Supreme Court err when it denied Appellant's Motion for Reconsideration regarding the denial due to late filing when she had paid UPS extra for an early a.m. June 17, 2017 filing, and then the court's clerks misfiled it in with a 2016 previous filing.

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CITATIONS OF OPINIONS AND ORDERS

In the July 24, 2015 Gwinnett County State Court Order there were no opinions involving specific reasons for judgment of "Denied". However, at the July 10, 2015 Hearing, the Court provided reasons for his judicial decisions on said case. (14C04032) (T1-p.43, 21-23; p.44) (*See* p.11 herein.) (Also, *see* Orders provided.)

In the May 12, 2016 Order of the Court of Appeals of Georgia, Presiding Judge Ellington provided Rule 36. This was a complete mismatch with Appellant's litigation. (A16A0233)

The rest of the appeals were simply denials (Fed. 52) except for the final one In the Georgia Supreme Court which was a dismissal for late filing. Appellant filed a motion for Reconsideration explaining that it was not late but was a correction for the first filing which was filed on time, but the clerk filed it with the previous appeal which was denied thereby causing the remittitur to be mailed. (Chaos ensued.)



JURISDICTION STATEMENT

The reason the Supreme Court of the United States should consider this case is due to the Gwinnett County State Court having decided on issues of a Federal nature that have not been, but should be, settled by this Court. Also, said State Court decisions on said Federal issues conflict with Federal opinion

on such issues. The Supreme Court of Georgia Issued an Order Denying Reconsideration of a Denial of Petition for Certiorari was issued on February 5, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).



STATUTORY PROVISION TO REVIEW JUDGMENT OR ORDER

The lower courts seem to have departed from accepted judicial proceedings such that this Court's supervisory power is necessary. Due to extraordinary circumstances throughout this case the discretionary powers of this Court will likely be needed as evidenced above and supported by the included Orders which are missing the required statements of fact and conclusions of law and also not matching with Appellant's litigation. (Federal Rule 52) Such anemic Orders made it difficult for Appellant to argue the Courts' opinions since they didn't have any for the most part.

Federal

- 28 U.S.C. § 2101(c)
- 18 U.S. Code Chapter 63
- FDIC 1314
- Federal Concealment Doctrine;
- *Renee v. Duncan*, 686 F. 3d 1002, 1017 United States Court of Appeals (9th Circuit 2012)
- Fed. R. Civ. P. 52

- Fed. R. Civ. P. 11
- FDIC § 1341
- 18 U.S.C. § 13;



MATERIAL FACTS

Appellant, Leila Robinson Lewis Smith, seeks protection of the law pursuant to 28 U.S.C. § 2101(c) and Federal Rules 52 and 11. As such, she submits her Petition for Writ of Certiorari to The Supreme Court of the United States from the lower court, The Gwinnett County Georgia State Court. She is petitioning from said state court as that is the court where her case began due to some issues which were of a federal law nature. In addition, several of the said issues also were addressed in Georgia state law. Appellant also appealed in the Georgia Court of Appeals; second appeal therein was a discretionary appeal with sixteen exhibits (A17D0425); and the Supreme Court of Georgia, all unsuccessfully. Federal concerns support Appellant's case in multiple ways. (See table above.) Also, 2011-2013, initially Appellant was in probate court in DeKalb County Georgia where she was successful.

Appellee, Associated Credit Union, aka "ACU", has twenty-eight Locations in the Atlanta, Georgia metropolitan area and four locations In Augusta, Georgia. It is a corporation. Deposits in ACU are federally Insured up to \$200,000.00. (ACU website) Main Office address is 6251 Crooked Creek Road, Peachtree Corners, Georgia 30092.

Having fully litigated in the Gwinnett County State Court and realizing that Appellee had no facts without genuine issue, Appellant filed for summary judgement for the sake of efficiency realizing that Appellee should not be able to prevail. Appellant's case was full of genuine facts and supporting documentation yet did not prevail in said state court. (T1, p.43-44) Nor did she prevail in the Georgia Supreme Court, which instead of deciding on the case merits, it dismissed the case based on late filing. The case was not filed late. Rather, the court clerks filed the 2017 Writ for Certiorari with the 2016 filing which caused the remittitur to be mailed. To correct the court's error Appellant printed out another copy for filing as a different filing from the one of 2016 which she had told them to do in the first place. It was "lost" by UPS. A third filing was successful but was quite late by that time. However, it was a correction for the previous timely filing which was incorrectly filed by the Court's clerk. UPS turned in the missing document on the 28th. The Court just returned that to Appellant. She filed a motion for reconsideration which was denied.

Back to the remittitur, Supersedeas Bond is preferred by all of the Courts up and down the ladder, but Appellee preferred instead to first use the collection methods of a destructive nature against Appellant, *i.e.* FiFa, garnishments and removal of all of the funds in Appellant's three accounts in her bank. This is despite the fact Appellant had informed Appellee that she would be able to provide a check for the full amount. (Her credit score was 819.) Lastly, Appellee finally filed the Supersedeas Bond and Appellant

personally deposited a certified bank check into the State Court's registry in the amount of \$43,508.11.

Appellant is executrix of her father's estate as per his Will and court approval. The other two heirs worked together against Appellant and one of the heirs filed a Caveat against said Will. Appellee decided to take sides and involve itself so it worked in the favor of Decedent's second wife. The probate matter explains the catalyst of how this instant case against Appellee began. Appellant eventually filed suit after the following claims had occurred: fraud, cover-up, breach of contract, obstruction, and harassment, e.g. continuous vandalism of her house (mainly by second wife's family) which all involve intentional infliction of emotional distress which all added up to significant personal injury.

The impetus for the suit was a letter written by the then ACU Vice President of Operations for the second wife's son-in-law and her daughter. Decedent's death was July 28, 2011. Said letter was written on October 25, 2011. Said letter did not surface for Appellant for about a year and a half, May 22, 2013. The letter was written on Appellee's letter head stationery, inside address to said son-in-law and daughter, but it was addressed "To Whom It May Concern". The content of the letter was defensive on Appellee's part, and the letter was also for the purpose of discrediting Appellant. (R-60, Exhibit 2) Appellant was not copied. Later, May 22, 2013 it arrived at estate attorney's office who was representing Decedent's estate. It was accompanying a letter to him from the second attorney of the other heirs, Marion Ellington, Esq. He has since written a letter to Appellant which began that he

had heard that she lost her “frivolous” case. Appellant had not mentioned her case to the other heirs.

Appellant’s knowledge of such a letter made Appellant realize why she had started having difficulty about the time of October or November of 2011 with people not willing to cooperate with Appellant regarding her executrix duties. Importantly, some significant entities she had protracted difficulty with were Decedent’s local U.S. Post Office (continued to forward Decedent’s mail to home of said son-in-law who was the main aggressor. Also, Appellee continued to mail Decedent’s bank statements to Decedent’s home address even though Appellant had informed it that his post office was forwarding his mail to said son-in-law (mail fraud). This was in spite of the fact that Appellant had supplied ACU with a copy of his Will, Power of Attorney, Death Certificate, Premarital Agreement, death certificate, one of her Letters Testamentary.); Also, the local Social Security Office refused to supply Appellant with any information. (Appellant had requested some Information she needed in doing Decedent’s 2011 taxes as all of his papers and documents had been removed from his house. [R-77]); She additionally had difficulty with both the IRS and Georgia Revenue Service. There were many others, but these are mentioned since they are all government entities. The said October 25, 2011 letter was devised as a scheme to obstruct Appellant’s ability to perform her executrix duties and to support its fraudulent disbursement of the funds in Decedent’s ACU checking account for the purpose of bill payment only. (R-60, Item 21) (*See* Appellant’s second filing of her appeal in the Georgia Court of Appeals [A16A0233]—the amended version of her

said appeal as she voluntarily amended her cites; *see* error section, fraud part, then account disbursal part.) (*See* Will, A17D0425, Exb. 6)

From the beginning, August 8, 2011, Appellant received disparate treatment from Appellee. Said 8/8/11 date was the first time Plaintiff personally expressed concern about the security of Decedent's (her father) account. She first requested that the account be put on "hold" as per advice of the probate court clerk. Appellant was rudely declined. The next week she tried a different ACU location and was told to come back in a week. The next week she was told the account was "frozen" (secure). Then on August 31, the second wife accompanied by her son-in-law entered the bank and said account was opened back up and said wife was given by said ACU Vice President of Operations more than half of the funds in said account designated for bill payment.

The Federal Courts, state courts, and probate courts concur on disbursal of deceased account which also is a multi-party account:

O.C.G.A. § 7-1-813(a) Rights of Survivorship: Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent, unless there is clear and convincing evidence of a different intention at the time the account is created.

Appellee contends that Decedent's first application to open an account has survivorship language. Said application was included in the affidavit of Vice President of Risk Management. (R-61, Exhibit 2) However, said application shows Decedent allegedly marked

"Delete Joint Owners". Neither of said parties, Appellant nor second wife, had been making any deposits into Decedent's said account before his death. Of course, after his death Appellant as executrix proceeded to do the usual necessary banking duties. Her name is on his checks with his name and remains so still. Second wife's name was not on said checks. Assuming that a disbursal was appropriate (actually not appropriate), it would have to be equal due to the circumstances, *i.e.* neither remaining party had made deposits in said checking account. (All of this is notwithstanding that there is an "x" in the box next to the words "Delete Joint Owners".)

The disbursal went "sideways". Appellee decided to give the deposit from the Fulton County Retirement Fund, which was awaiting reclamation, to said second wife. Said Vice President of Operations admits giving said deposit to said wife in her affidavit. (R-60, Item 10) However, on site on September 1, 2011, Appellant was informed that second wife was given more than \$2,000.00 more than Appellant. She was also informed that she was given the Fulton County monthly deposit in the amount of \$2,066.22 so she had to reimburse that amount to Fulton County Pension Fund. Appellant argued that since second wife was given more than \$2,000.00 more than Appellant, then it would be second wife who was given the money. Since Fulton County was not at all at fault, Appellant paid the \$2,066.22 on October 4, 2011 and used a check from Decedent's above-described checking account. Said check was processed on October 7, 2011. (*See* Exhibit 8 in her second Appeal in Georgia Court of Appeals. A17D0425) This all meant that said wife got more than \$4,000.00 more than Appellant. Also, said wife

inadvertently got part of Decedent's Social Security deposit instead of all which was the apparent intent as it too was awaiting reclamation. Her part of the disbursement was put in another separate account in ACU so any of this money could have been returned to Decedent's said account for correction. However, cover-up ensued instead through additional money movement and math manipulations on computer to make the numbers work out. (*Ibid.* Exhibit 7, multiple pages) (*See* second copy of first Appeal with corrected cites, Fraud section, account disbursement part.) (Also, T1, p.16, 1-16)

When Associated Credit Union became incorporated it had to begin following banking laws and rules instead of credit union laws and rules. Georgia Code O.C.G.A. § 7-1-820:

Payment made pursuant to Code Section 7-1-816, 7-1-817, or 7-1-819 discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted.

Appellant had provided only verbal notice. However, Appellee, ACU, had both verbally and in writing multiple times admitted knowledge of Appellant's security concerns regarding her father's (Decedent) ACU

checking account. (T1-p.32, 24-25, "She was saying I need this for my dad's estate."; p.34, 23-25, "She came in . . . as executrix, I have to pay bills from my dad's estate.") (R-60, Item 21)



REASONS FOR GRANTING THE PETITION

It is axiomatic that with said admissions by Appellee of knowledge of Appellant's concerns about the security of her father's (Decedent) bill payment account and with its persistence to still proceed to disburse funds of said bill payment account unequally, the protection of immunity would not extend to Appellee ACU due to such circumstances and especially considering the fraud involved in the disbursal which would have caused breach of contract.

Indeed, both Appellee and Appellant are under contract to follow banking policies, procedures, standards, regulations, rules, and any laws. (R-2, Exhibit in Appellant Summons and Complaint filed July 30, 2014, p.13 of small white booklet of ACU Account Agreements and Disclosures) Clearly, Appellee has breached its own contract multiple times. (18 U.S. Code Chapter 63; FDIC 1341 Frauds and Swindles) When a financial institution enters into a contract it implicitly waives its immunity and consents to being sued if it breaches said contract.

In the end Gwinnett County Georgia State Court found: "... ACU is entitled to summary judgment on the contract claim, because statutorily they are immune. They have no liability in this case." T-1-p.43, 21-23)

Also, the said Court opined: “As far as the alleged intentional infliction of emotional distress there’s a two-year statute of limitations on that. The disbursement was made October 31, 2011 . . . I’m using a year and a day rule. The case was filed July 30, 2014. . . If you go on the letters, the first letter was written October 25, 2011. That would put statute of limitations, again, October of 2013, well before the case was filed. . . . The second letter, December 4, 2013, was ACU’s response to inquiries made by you and I don’t find anything in that letter would rise to the standards set by the court for intentional infliction of emotional distress.” (T1-p.44) (Amended Appeal, Error section, Fraud part, A16A0233—the Court did not use tolling.)

“And the punitive damage claims are derivative of the underlying claims, so there’s no basis for those.” (*Ibid*, 16-17)

Regarding time limitations, the Court said that Georgia’s statute on intentional infliction of emotional distress is two years: (T-44, 1-3) The said October 25, 2011 letter surfaced dated May 22, 2013, and Appellant filed suit in July 2014—less than two years with tolling.

According to O.C.G.A. § 9-3-96: Tolling of limitations for fraud of defendant. If the Defendant or those under whom he claims are guilty of a fraud by which the Plaintiff has been debarred or deterred from bringing an action the period of limitation shall run only from the time of the discovery of the fraud. (Also, Federal Concealment Doctrine)

Intentional infliction of emotional distress claims protect against “conduct exceeding all bounds usually tolerated by decent society, of a nature which is

especially calculated to cause, and does cause, mental distress of a very serious kind.” William L. Prosser, *Law of Torts* 56 (4th ed. 1971)

Appellant’s emotional distress symptoms have been insomnia, sleep walking, periods of uncontrolled crying, a persistent feeling of upsetness, and occasional chest pains. She had a serious chest pain late July 2013 while visiting her son who lives in Sweden. She delayed seeing her physician as upon returning she and the attorney for her father’s estate were preparing for an upcoming mediation at the Gwinnett Court complex in late August. She did call and make the appointment. Her physician did a general cardiogram which was fine, but she said that Appellant had to see a cardiologist. She called and got an appointment for November 1, 2013. The cardiologist said that she had to have full testing so she spent another whole day being tested. Results as stated in the affidavit of said cardiologist eliminated a heart issue, and acid reflux, but did not eliminate stress as the cause of the symptoms. (R-75) She still has occasional chest pains. However, after going through Appellee’s collection activity against Appellant, and also the September 5, 2017 Court date on the FiFa filed by Appellee she went to her physician who did a full panel of blood testing. Her red blood cell score was 20—exceedingly high. She had to go on high dose aspirin to keep from having a heart attack or stroke. She was tested further for the disorders associated with high blood cell counts and came up completely negative. One cause of high red blood cell production is stress. High red blood cell count causes blood clots to form. Appellant is now on low dose aspirin and much improved.

Appellee's main complaint regarding Appellant's litigation is that it is frivolous. The term "frivolous" is one of a number of actions which fall under the label of misconduct which would show a lacking in the requirement of substantial justification which is necessary for a case to be valid. While "frivolous" is used by Appellee most frequently, it also uses such descriptors as "groundless", "lacking merit", "baseless", "absent of justiciable issue of law", and that her "case was brought for delay" (Appellate Courts for the latter). One of the few high points for Appellant is the recent Georgia Supreme Court denial of Appellee's recent motion for sanctions against Appellant due to its "frivolous" allegation. (*See* said court docket S17C1844.) Appellant's case indeed speaks for itself.

A legal definition for "frivolous" is a position that is baseless in that it does not deny, contest, prove, or controvert anything, or an appeal which contains not a single arguable basis (by any stretch of the imagination) for the appeal. (Legal Dictionary—Law/.com)

The Court has "interpreted the term 'substantial justification' as describing a position that has a reasonable basis both in law and fact." *Renee v. Duncan*, 686 F.3d 1002, 1017 United States Court of Appeals (9th Cir. 2012)

Federal Rule 11 is adamantly against the abusive litigation labeled "frivolous". However, parties on a case can use rules and laws for false accusations against an innocent victim party on a case. Indeed, Appellee's litigation is replete with repeated accusation of frivolous litigation against Appellant. Federal Rule 11 and O.C.G.A. § 9-15-14 are for the support of the following of the ethical judicial process stan-

dards. They are not for the use as weapons by way of false accusations of "frivolous litigation" against the victim party with a strong case. Appellant's entire litigation has been a good faith effort seeking of the protection of the law. Her case has strong reasonable support both in law and fact. Appellee's litigation is much laced with ad hominem argument and Georgia Code 9-15-14 against Appellant to vilify her and support its case. Appellant pursuant to O.C.G.A. § 9-15-14 and Federal Rule 11 believes that it is Appellee who has the frivolous case.

The fact that Appellant indicated in her 2013 notification letter that she was amenable to settlement to avoid unnecessary work, stress, and monetary expenditure belies the accusation of "frivolous". Appellee's response was that of cover-up. (Georgia Court of Appeals, Discretionary Appeal, A17D0425, Exhibit 16) Also, before filing her summary judgment she suggested settlement to Appellee through its attorney and requested that Appellee make an offer. Appellee did not make an offer thereby showing no interest in settlement.

Respectfully submitted,

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