

No. _____

In The
Supreme Court Of The United States

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EITAN SOBEL
Pro Se Petitioner

v.

THE CITY OF RUTLAND
Respondent

◆

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VERMONT

◆

**PETITION FOR A WRIT OF CERTIORARI
WITH APPENDIX**

◆

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QUESTIONS PRESENTED

Can an appeal court bypass our basic right to cross-examine and to confront a testimony by throwing out a testimony that if was confronted, likely would have backfired and could have changed the verdict?

There are established limitations to our right to cross-examine and to confront a testimony. Is an appeal judge decision to uphold a lower court verdict a justified new power of the courts to circumvent our basic right to cross-examine and to confront a testimony that was presented at the lower court?

Furthermore, can an appeal court produce an "alternate judgment" that does not rely on a key witness of the lower court, asserting that the Plaintiff "did not meet the burden of proof" while the Plaintiff was unconstitutionally denied his right to confront the key witness and lost his last and only opportunity to meet the burden of proof?

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INTRODUCTION

Pro se Petitioner, Eitan Sobel, respectfully petition this Court for a Writ of Certiorari to review the judgment of the small claim court of Rutland City, that was appealed and denied by the superior court of Rutland County, Vermont and was rejected by the supreme court of Vermont.

OPINION BELOW

On August 31, 2017, the pro se Petitioner filed a small claim court action against the City of Rutland seeking compensation for damages occurred as a result of sewer backflow into the petitioner's basement. The small claim court ruled for the Defendant and the verdict is included in the appendix. (App. 1)

The pro se Petitioner filed in a timely manner an appeal with the superior court of Rutland County, Vermont. The appeal was rejected on March 15, 2018. (App. 6)

A motion to reconsider was sent to the superior court and was rejected on March 20, 2018. (App. 8)

The pro se Petitioner filed an appeal to the supreme court of Vermont and was rejected as "no appeal as of right exists to the supreme court" on April 18, 2018. (App. 9)

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the Vermont Superior Court pursuant to 28 U.S.C. § 1257(a) as The Vermont Supreme Court has declined to review the case.

STATEMENT OF THE CASE

On January 5th, 2017, a sewer backflow flooded the Plaintiff's basement. The street sewer line is directly connected to the local hospital sewer line and to several nursing homes. The basement of the Plaintiff was filled with sewer and feces of patients from the hospital and other facilities. The Plaintiff had to clean his basement and was exposed to a significant health hazard. The muddy water in the basement eroded the foundations of the house and a sink hole was found under the porch. The water content could have damaged the new furnace that was just installed in the house. The risk of electrical hazard was high and the opinion of the fire department was that the house should be evacuated until deemed safe. The furnace was turned off by the fire department and as a result of the freezing weather, multiple pipes burst in the house. The City of Rutland was unwilling to compensate the Plaintiff for any of the damages. The Plaintiff learned that the City had never inspected the sewer lines on his street and had not followed the EPA guidelines and recommendations.

A small claims court was filed and a hearing took place on August 31, 2017. The Plaintiff maintained, based on his Internet research, that the City has an obligation to routinely inspect sewer and water lines. "No inspection at all" is not a valid "maintenance program" and should be considered negligence. The pro se attempted to present whatever he had found about this topic, including EPA recommendations and guidelines, data, results and experience of other municipalities that followed

the standards and a precedent from another state court. Unfortunately, the judge of the small claim court refused to review the evidence, which she considered the Plaintiff's own opinion, since the Plaintiff is not an expert witness.

The attorney hired by the City suggested to the judge that the Plaintiff "did not meet the burden of proof" and further suggested that the Plaintiff should have presented an expert witness to show "cause and effect".

The judge of the small claim court did not accept the Defendant's "suggestions" and she asked to call Mr. Jeffrey Wennberg, the public works commissioner of the City of Rutland, who was present in the court room. To clarify the "maintenance plan" of the City.

Mr. Jeffrey Wennberg is an expert witness as he has both technical and regulatory expertise specific to the responsibilities of municipalities to maintain water and sewer lines. The attorney hired by the City was the first to question Mr. Jeffrey Wennberg, who stated that the "maintenance plan" of the City is to inspect only lines that had clogged in the past. Once the City is made aware of a problem, the sewer line would be inspected on a yearly basis. At this point, the judge expressed satisfaction with the "maintenance plan" and soon after announced a verdict for the Defendant. The judge defended the "maintenance plan" as a valid plan and did not listen to any further arguments that challenged the witness.

The Plaintiff appealed to the Superior Court of Rutland based on his constitutional right to cross-examine and confront a witness. The appeal judge agreed that not allowing to confront the expert witness was indeed a "fair critique" and an "error" of the lower court. However, the appeal judge did not agree this error was enough to appeal the verdict. The appeal judge speculated that the Plaintiff "completed that evidence and gave no indication of his intent to call Mr. Jeffrey Wennberg or anyone else as his witness". The appeal judge further quoted that "Error will not result in reversal, if the record before us discloses any legal ground which would justify the result".

In a motion to reconsider, the Plaintiff criticized the decision: "How can I prove my case if I was denied questioning Mr. Jeffrey Wennberg, directly or indirectly?" The fact is that during the small claim court hearing, the Plaintiff showed that he was interested in confronting Mr. Jeffrey Wennberg, thereby, bringing his evidence to light (e.g. EPA recommendations, standards and guidelines) The expert witness, Mr. Jeffrey Wennberg, should have explained why the City does not follow regulations, guidelines and standards of the EPA. In addition, it should be mentioned that potentially, cross-examining and confronting the key expert witness, Mr. Jeffrey Wennberg, could have revealed additional facts and evidence that could have altered the verdict of the small claim court.

The appeal Judge, yet again, rejected the Plaintiff's Motion to Reconsider. The appeal judge felt that the Plaintiff had "ample opportunity" to

present his evidence. "Thus, the trial court could properly have granted judgment at the close of Plaintiff's evidence".

In essence, the appeal judge basically tossed the expert witness testimony from the small claim court hearing and produced an "alternate judgment" based on a curtail version of the original court hearing.

The Plaintiff appealed again to the supreme court of Vermont but the case was rejected on April 18, 2018.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1. Review Is Warranted Because The Verdict Is Wrong For The People Of Vermont

Although the case was initially presented to a small claim court, it has a significant public interest. The verdict may have significant human health and environmental impacts. The EPA predicts that every sewer system will eventually fail as a result of blockages, structural, mechanical, electrical failures, collapsed or broken sewer pipes, insufficient conveyance capacity and vandalism. Therefore, guidelines, recommendation and standards were set by the EPA and multiple municipalities outside of Vermont are following the standards and reporting favorable outcomes and cost saving.

The verdict send a signal to municipalities in Vermont that they do not have to follow the

standards and that they have no responsibility for the inevitable failure of their sewer system, which they never inspected. The authorities in charge of maintaining the sewer system are essentially protected by the Vermont courts. The verdict could result in increased risk of contamination of private and public properties, could pollute the environment of Vermont, could contaminate our drinking water and might result in public and individuals' health hazards, epidemics and loss of life. Granting the writ would signal to the courts of Vermont and to courts of other states that the supreme court expects municipalities to follow guidelines and recommendations of the EPA and to put public and individuals safety first.

2. Review Is Warranted Because The Appeal Judge and The Small Claim Court Judge Differed About The Necessity Of Mr. Jeffrey Wennberg's Testimony.

The small claim court judge and the appeal judge differed about the necessity of Mr. Jeffrey Wennberg's testimony.

The lower court did not agree during the hearing that a verdict could be made based on "not meeting the burden of proof" alone. Therefore, the judge requested the testimony of Mr. Jeffrey Wennberg and ultimately, the lower court based its final verdict on this testimony. The appeal court judge realized that the Plaintiff was denied his basic right to cross-examine the key witness. The appeal judge agreed that it was a "fair critique" and an

"error" of the lower court. Ironically, the appeal judge decided to retrospectively throw out this central testimony that deemed to be necessary by the small claim court and was already an integral part of the small claim court file, in order to uphold a decision of the small claim court that was actually based on the same testimony that he had threw out.

Furthermore, how can the appeal court assert that the Plaintiff "did not meet the burden of proof" as a basis of his "alternate judgment", while the judge in the small claim court refused over and over again to review the evidence prepared by the Plaintiff (e.g. EPA recommendations, standards, guidelines and other data and experience of other municipalities)?

Notwithstanding the pro se Plaintiff's mistake of not bringing his own expert witness, confronting the expert witness, Mr. Jeffrey Wennberg, with those guidelines and recommendations was the last and the only opportunity of the Plaintiff to prove the court that the City acted negligently.

3. Review Is Warranted Because The Court Assumed A New Power To Bypass The Constitutional Right To Cross-Examine And To Confront A Witness.

Traditionally, judges imposed limits on cross-examination based on concerns about harassment, prejudice, repetition, irrelevance, confusion and witness' safety. However, in this case the appeal judge imposed a novel limit on the right to cross-

examine and confront a witness. The appeal judge assumed a new power to retrospectively ignore or toss a testimony that was already presented to the lower court and that potentially could backfire. Such power might render our right to cross-examine and to confront a witness meaningless.

It is inconceivable to throw a testimony that backfired from the court proceedings and it is unconstitutional to prevent a testimony from backfiring by not allowing to confront the testimony.

CONCLUSION

The case presented to the supreme court of the United State is consequential to the people of Vermont and to our constitutional rights. The authorities responsible for sewer lines maintenance in the City of Rutland deflated the meaning of "maintenance plans". The authorities betrayed and risked the public that they are supposed to serve. The authorities ignored the EPA recommendations, standards and guidelines.

The pro se Plaintiff had the right to confront the witness and to bring to light his evidence (e.g. EPA recommendations, standards and guidelines) and possible to expose other facts and additional evidence that could have changed the final verdict. The right of the people to cross-examine and confront testimonies and evidence should be guarded as one of our most precious and valuable foundation of our society. The supreme court is called to intervene in this case and grant the writ of certiorari.