

**In the
SUPREME COURT OF THE UNITED STATES
DOCKET No. 17-6375**

**Metodi Donchev, Faith Doncheva (his wife)
Anton Donchev (his son) and Rocitsa
Doncheva (his daughter)**

v.

**Dennis DeSimone, (Homeowner), Jane Doe
DeSimone (Dennis DeSimone's wife) and
John Doe Responsible party, jointly, severally,
and in the alternative**

**PETITIONERS REPLY TO RESPONDANTS REPLY BRIEF
to PETITIONERS PETITION FOR A WRIT OF CERTIORARI**

**On direct appeal to the US Supreme Court
from the State Court
under statute, and a split in lower courts decisions
that are contrary to US SUPREME COURT case law
Ortiz v. Jordan
that affect and violate rights of all plaintiffs and
of all Citizens and all Workers in the United States**

**Petitions Reply Brief on the Merits
by:**

**Faith Doncheva
individual and executrix
(who prosecuted the 2005 and 2008 amended claims since 2009
and at the 2011 Jury trial with a unanimous jury verdict
in plaintiffs favor that the trial judge found is supported)**

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**PLAINTIFF/APPELLANTS RESPONSE TO
DEFENDANT/RESPONDANTS REPLY BRIEF**

To the Supreme Court Justices,

Please accept this letter response to respondents reply brief permitted by court rules.

Defendant/respondent improperly and without any support, purports that plaintiff/appellants have not shown any compelling reason written in Rule 10, to grant a Writ of Certiorari and relief plaintiffs/appellants request, that we are entitled to under Civil Constitutional and Statutory laws and court rules. Defendant/respondents further improperly purports that the US Supreme Court does not have jurisdiction to determine this appeal, or that Res Judicata should apply which is untrue.

Res Judicata does not apply to lower Appellate Opinions that are Contrary to the US Supreme Court ruling in Ortiz v. Jordan, because the lower courts in this case purported to review or reverse pre jury trial 2006 and 2007 summary judgment orders AFTER the 2011 jury trial and Unanimous Jury verdict in plaintiffs favor, which the US Supreme Court already determined in Ortiz v. Jordan that Appellate Courts do not have power or jurisdiction to do, after a jury finds a defendant negligent and liable, and courts do not have power or jurisdiction to reverse a denied summary judgment that was denied because there were genuine issues of material fact, that a jury already determined in plaintiffs favor. As the summary judgment rule and case laws write,

“ when there are Genuine Issues of Material Fact,
a court can only find that there are such issues, summary judgment
must be denied and the issues must be determined by a jury.”

Further as the involuntary dismissal court rule 4:37-2(b) has written:

ONLY AFTER plaintiffs announce to the court that all evidence on all matters is presented, can a defendant move for involuntary dismissal that based on the facts and law the plaintiffs have shown no right to relief, the rule has written though that if there is evidence and legitimate inferences therefrom that "COULD" lead to a judgment in plaintiffs favor THEN THE COURT SHALL DENY INVOLUNTARY DISMISSAL.

On July 29, 2010 in the trial court order Judge Morgan found that is the case that a jury could decide in plaintiffs favor on all of our claims including the Wrongful Death portions because he acknowledged he overlooked evidence regarding that part of our 2008 amended claim after his Nov. 2006 Death. In the order and written decision Judge Morgan wrote that by rule 4:37-2(b) the court could not involuntarily dismiss plaintiffs claims and re-instated the Wrongful Death portions and also ordered that all claims shall proceed to a jury trial because he found there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor on all claims against the homeowners. That order was not appealed.

On July 7, 2011 the jury did decide all issues in plaintiffs favor against the homeowner and determined the amount of damages up to the date of Metodi's death, the damages after death remain to be determined, and were only not determined on July 7 because the defendants counsel stated he was not prepared to question plaintiffs doctor, who came to trial to testify as defendants counsel demanded and as Judge Morgan ruled he had to. But when he came defendants counsel then stated he was not prepared to question him about the death, therefore the damages after death, remain to be determined.

On June 1 2011 prior to the jury trial Judge Morgan again denied summary judgment to the homeowner writing in his written decision (in plaintiffs appendix):

there were genuine issues of material fact, that although the defendants counsel claimed that as homeowner Dennis did not have duties that he breached or did not exercise control, the permit showed that he did have duties including to supervise as homeowner and he breached them and Dennis Testified that he did supervise, as homeowner as he had certified to the authorities in the construction permit Homeowner Certification that he as homeowner would do. The laws, the permit and pictures of the roof taken afterward and Dennis's testimony showed that the jury could decide (as they did) that Dennis the homeowner did have statutory duties that he breached. Judge Morgan stated the permit was what created a Genuine Issue and precluded granting Sum. Jud. to the homeowner.

Then in May 2015 even after the 2012 appeal, he again stated in his decision, there were Genuine Issues of Material Fact, that the Permit was what created Genuine Issues, and the permit is what led the jury to find the Homeowner negligent and liable. NON THE LESS on May 15th, he denied the relief and reentry of the judgment made by the jury, as requested, stating it was not what he did but what the appellate court did; AND he granted leave to file this appeal, stating he was looking to the higher courts for direction. Because he restated again plaintiffs have a good cause and a right to seek justice and the jury verdict is supported, and that plaintiffs have not done anything in bad faith.

On July 7, 2011 the jury determine unanimously 7-0 in plaintiffs favor that

- (1) The homeowner Dennis had duties and was individually negligent
- (2) that Dennis the Homeowners negligence was 100% the proximate cause of the roof collapse and damage to plaintiffs.
- (3) That Metodi the plaintiff was not negligent at all
- (4) and they determined the amount of damages up until the date of death.

Damages up to the date of death were entered in a judgment in Sept. 2011 totaling over \$724,000. with interest included to Sept. 2011.

AT THE JURY TRIAL:

Defendants counsel WITHDREW the defense that

the Employee was barred from suing his employer, (under WC Law)

Because as defendant's counsel told the jury in 2011 and the judge in 2006 that the defendant in this case WAS NOT plaintiffs employer. (shown in transcripts in plaintiffs appendix). **THUS that defense WAS MOOT & could NOT be the subject in any appeal.**

The court rules for Sum. Jud. and involuntary dismissal 4:37-2(b) coincide with Constitutional rights to a jury trial.

The US Supreme Court does have jurisdiction to determine whether or not the lower courts complied with court rules, the Constitution and the US Supreme Courts ruling in Ortiz that already determined it is a violation of Constitutional rights to a jury trial and violations of court rules and departs from accepted and prescribed Civil procedure for an appellate court to purport to have jurisdiction or power that they do not have after a jury trial and verdict in plaintiffs favor. The Ortiz US Supreme Court said, an appellate court does not have jurisdiction or power to review or reverse Sum. Jud. after a jury trial & verdict in plaintiffs favor, thus any appellate opinion that purports to do so, is invalid, void and a nullity and cannot be used as a basis for anything; such an opinion cannot be used to vacate the judgment made by the jury, and cannot be used to involuntarily dismiss any of plaintiffs claims against the Homeowner in this case. There is evidence & legitimate inferences therefrom that not only COULD but already DID lead to a judgment in plaintiffs favor. Further since Defendants counsel was not prepared to question plaintiffs doctor about plaintiffs death, damages after death remain to be determined, and now punitive damages must also be determined because of defendant and his counsels improper conduct. Punitive damages must be considered as the act states NOT ONLY to punish defendant BUT ALSO TO DETER OTHERS from following Defendant and his counsel examples; Misrepresenting the status of an employee and material facts to the court and attempting to conceal the construction permit and deny the statutory duties that the Homeowner asserted under penalty of

perjury were his as homeowner. The punitive damages jury charge & Worker Comp.

Law 34:15-57 that it is crime in the 4th degree to misrepresent the status of an employee or material facts in an employees claims are copied below #12,13,19,20&22.

There are compelling reasons as written in all numbers 1 through 4 of rule 10, and additional compelling reasons written in our brief requesting this Writ that the US Supreme Court SHOULD GRANT, because the determination in this case is far reaching and necessary to protect and uphold, Constitutional, Statutory and Civil Rights of ALL PEOPLE in the United States and the Rights of the United States itself as well as the Jurisdiction of the US Supreme Court, to create and enforce those rights that protect the safety and welfare of all people and all workers in the United States when construction is done or when injured due to construction that WAS NOT DONE in accordance with applicable laws that were enacted through Congress and the Constitution to protect the safety, health and welfare of all people. The court cannot allow case law to be established that disregards the US Supreme Court decisions, or the Constitution, or plaintiffs rights, or case laws that allow Building Construction to be done WITHOUT a proper permit for the work or WITHOUT complying with applicable laws that were created through the Constitution, Congress & through the US Supreme Court to protect safety, health and welfare of ALL people. Responsible Parties on Construction permits MUST BE HELD responsible for failure to comply with the law as happened in case. It would be against public policy to allow the laws to be violated and in essence invalidated. The court cannot allow counsel to misrepresent facts to the court which is contempt and crime in the 4th degree as shown in laws copied below.

This requested Writ must be granted it is regarding this appealed of post jury trial final orders regarding the defendant, Homeowner Dennis, who IS NOT not the employer.

The NJ Appellate and Supreme Courts in 2017 denied the relief plaintiffs requested regarding the homeowner defendant/respondent Dennis and did not base their opinion on any facts, evidence or law in this case, but only based their opinions on the 2012 Appellate Opinion regarding plaintiffs corporate employer DND Inc. or DND's president in that capacity, who were not the defendants in this case. In the 2012 appeal that Defendant/respondent frivolously filed Mr. Thornton, defendant respondents counsel, knowingly falsely wrote in his 2011/2012 NOTICE OF APPEAL misrepresentations to the Appellate Courts writing falsely that the defendant was plaintiffs employer, thereby he obtained the 2012 opinion for THAT SUBJECT MATTER.

The subject in the 2011 Notice of Appeal in that appeal, was not the same subject matter as in this appeal. That 2012 opinion clearly had written they reviewed 2006 and 2007 summary judgments and derived facts from submissions with the Sum. Jud. from 2006; it had written they reviewed the Sum. Jud.'s DE NOVO which they had no jurisdiction or power to do, then in the footnotes of the last two pages of the opinion, the opinion has written that having found Sum. Jud. was improperly denied in 2006 or 2007 they did not reach the post 2011 JURY TRIAL ORDERS, THUS THEY DID NOT REVIEW ANY FINAL ORDERS IN THAT APPEAL, which are the only orders an appellate court has jurisdiction to review. Further the 2011 Notice of Appeal clearly has written :

"The defendant was plaintiffs employer" and the 2012 opinion clearly has written:

" the defendant was plaintiffs employer" thus THAT 2012 OPINION WAS based on the SUBJECT MATTER that the defendants counsel appealed and that subject was before the Appellate Court in 2012, (EVENTHOUGH the defendant WAS NOT PLAINTIFFS EMPLOYER AT ALL). as the transcripts in our brief and appendix show.

Transcripts (below # 8,9,10) show the defendants counsel admitted to the court in 2006 and MR. THORTON, defendants counsel, explained to the jury in 2011 THAT THE HOMEOWNER was the defendant and the defendant was not plaintiffs employer.

The Jury unanimously determined that the Defendant/respondent the homeowner was individually negligent. The HOMEOWNER IS THE SUBJECT MATTER IN THIS APPEAL that is regarding improper post jury trial orders and improper appellate opinions in this appeal that is for the subject matter regarding the Homeowner.

NOT ONLY did the lower courts in this case not have jurisdiction to write any orders or opinions regarding plaintiffs employer, DND Inc. or DND's President in that capacity, because they were not defendants at all and the 2011 jury verdict or judgment was not against those parties, but also the lower courts in this case or in any case, lack or lacked power or jurisdiction to disregard the precedent written in the US SUPREME COURTS ruling in Ortiz v, Jordan, by which all lower courts are bound.

The US Supreme Court, granted Certiorari in Ortiz because constitutional rights to jury trials were endangered, that is an extremely compelling reason. The US

Supreme Court clearly decided that Appellate Courts have no jurisdiction or power to review or reverse Summary Judgment after a jury trial and verdict in plaintiffs favor.

It is a violation of plaintiffs constitutional, civil and statutory rights to a jury trial.

The US Supreme Court thus also currently does have jurisdiction to determine whether or not the lower courts violated the Supreme Law of the land, set forth in *Ortiz v. Jordan*

and to determine whether or not lower courts are bound by the US Supreme Courts decision, or whether they have power or authority to disregard the US Supreme Court.

The US Supreme Court does have jurisdiction make certain THAT LOWER COURTS comply with the constitutional rights as set forth in the US Supreme Courts own ruling

in *Ortiz v. Jordan*, and does have jurisdiction to determine whether or not NJ Appeal

Courts had jurisdiction to improperly review or purported to reverse pretrial 2006 or

2007 summary judgment order denials based only on 2006 submissions, after the 2011

jury trial & unanimous jury verdict in Plaintiff/appellants favor, which the US Supreme

Court already said the lower courts had no power or jurisdiction to do;

THUS Res Judicata CANNOT apply to the lower courts 2012 or subsequent 2017

opinions that purported to review and reverse pre jury trial 2006 or 2007 summary

judgments after a 2011 jury trial, that they did not have jurisdiction or power to do.

Therefore there are compelling reasons as written in rule 10, because the State Courts

opinion is contrary to & violates the holding of the US Supreme Court in *Ortiz v. Jordan*.

The lower court opinions violate plaintiffs/appellants Civil, Statutory and Constitutional

rights to a jury trial and recovery of damages under 42 USC 1983 that the jury on **July 7, 2011 unanimously determined, the defendant/respondent HOMEOWNER DENNIS' s negligence caused.** The US Supreme Court also has jurisdiction to **determine whether or not the lower courts disregarded NJ Supreme Lyon v. Barrett Court ruling(written below) that also said the court must protect employees rights to sue negligent third parties because it is consistent with the law, and that a homeowner does not share a Work Comp. immunity to suit of a corporate employer.**

Based on the facts and the law, and the US Supreme Courts decision in Ortiz,
this Writ must be granted not only to protect Constitutional, Statutory and Civil rights of
all plaintiffs in this case, but also to protect all workers and people in the US, to protect
Constitutional rights and the laws created through Congress, the Constitution and '
through the US Supreme Court to insure the safety, health and welfare of all people in
the US and to insure and protect the jurisdiction of the US Supreme Court to create and
enforce Law, the Constitution and the US Supreme Courts own rulings.

Plaintiffs appellants have shown compelling reasons shown under every number 1-4 of rule 10 and additional compelling reasons why this Writ and the relief requested by plaintiffs must be granted; further Res Judicata ONLY APPLIES to issues that the jury already determined. The judgment made by the jury must be re-entered as demanded with cost & interest to date, and a jury trial to determine remaining damages after death must be ordered, as well as to determine the amount for punitive damages.

The court should indite or convict defendants counsels of 4th degree crime and contempt.

Res Judicata cannot apply to 2017 or 2012 Appellate Opinions that purported to review & reverse 2006 or 2007 Sum. Jud. after the 2011 jury trial when the lower court did not have power or jurisdiction to do so. All orders based on those opinions must be vacated.

Faith Doncheva certifies that all of the following is true and is offered in support of my reply, TO PUT THIS APPEAL AND REQUEST FOR A WRIT IN CONTEXT:

Defendants counsel told the jury in 2011

“ it is very important that you keep in mind who is being sued, because the defendant is the homeowner,” “ who is not plaintiffs corporate employer”

None the less defendants counsel Mr. Thornton filed the 2011/2012 appeal falsely writing in his Notice of Appeal, that the defendant was plaintiffs employer, then **obtained the 2012 opinion FOR THAT SUBJECT MATTER;** The 2012 opinion has written “the defendant was plaintiffs employer” when defendants counsel knew that was not true. The 2017 App. Panel and all court orders after the 2012 opinion were based only on that 2012 opinion, that the App. Court had no power or jurisdiction to make.

It is necessary to recite THE FACTS, evidence and law below to show additional **compelling reasons, not only to Grant this Writ and the relief plaintiffs requested and are entitled to in this claim,** but to also convict or to indite and refer to a prosecutor for **prosecuting Crime in the Fourth Degree and contempt of court as described in the laws below by defendants counsel Mr. Thornton and Amanda Sawyer.**

1- There is no dispute as the Construction Permit shows, in 2002 Dennis the HOMEOWNER signed and certified to the authorities (the Department of Community Affairs Building and Construction office, as required by the International Building Codes set forth in NJAC 5:23) the duties that he Dennis, as HOMEOWNER assumed in Homeowners Certification in Lieu of Oath. (the permit was not discovered until after Metodi died in Nov. 2006, and after the 2006 and 2007 Sum. Jud. denials but the defendant knew it existed and knew he had the duties he signed were his as homeowner.)

2- The Construction Permit contained a Certification page completed and signed by the HOMEOWNER Dennis under penalty of perjury Titled, “ *Homeowner Certification In Lieu of Oath*” where Dennis checked “Box A,” which indicated that

“the house would be occupied by Dennis and he ”attested that all construction, plumbing or electrical work will be done, in whole or in part, by me or by subcontractors under my supervision, in accordance with all applicable laws.”

With regard to “Box A,” the permit stated:

I UNDERSTAND THAT BY MARKING BOX A, I ACKNOWLEDGE THAT I AM ASSUMING RESPONSIBILITY FOR THE WORK DONE ON SAID PROPERTY, THE CONDITION OF THE PROPERTY PRIOR TO, DURING, AND AFTER ANY WORK PERFORMED, AND FOR THE PERFORMANCE OF THE SUBCONTRACTORS I HIRE, EMPLOY, OR OTHERWISE CONTRACT OR WITH WHOM I MAKE AGREEMENTS TO PERFORM WORK. I AM VOLUNTARILY AND KNOWINGLY ASSUMING THIS RESPONSIBILITY.

Dennis also certified "that I will perform or supervise" the "Building" work on the house.

Dennis the Homeowner was listed as the "Principle Contractor" on the permit in 2002 that only permitted an addition to his main home under permit # 202-200 in 2002; the Principle contractor on the June 27, 2003 update to permit 202-200 for re-roofing his detached garage roof was ALSO the homeowner Dennis . Another page of the permit listed "HOME OWNER DENNIS" the "Responsible Person in Charge". (Pa006-022)

3- The applicable laws NJAC 5:23-2.14 required a permit for the work **be obtained in writing prior to commencing re-roofing** but the re-roofing update obtained in writing June 27, 2003 showed that Dennis did not have a permit update to permit re-roofing to **commence on June 16th, 2003** thus as NJAC 5:23-2.14 has written it was unlawful to commence re-roofing without first obtaining in writing a permit for the work.

4- The applicable laws IBC (International Building Code) 1510.2 for re-roofing and OSHA (Occupational Safety and Health Act, created through Congress to protect safety and health of all people) both required that:

(1) the strength and structural integrity of the roof and roof structure shall be determined prior to commencing re-roofing, (2) that the roof and roof structure shall have the requisite strength to support the weight that will be encountered during re-roofing, and (3) no employee shall be allowed to walk on a roof that will not support his weight. (Pa007,12,13,14)

5- Dennis testified he had been in construction over 37 years, that he had a NJ Contractors license himself, that he knew construction and the permit process well, that he knew a stop work order would have been issued if the building inspector discovered he commenced re-roofing without a permit for the work in writing, he knew that Metodi was not a roofer, knew that plaintiff Metodi's foreman with DND Inc was not at his home that morning, that he Dennis knew the underside of his own roof was concealed by insulation in the rafters of the ceiling below, that he Dennis did not check the roof for its integrity, that he Dennis could have hired an architect to have determined integrity or could have instructed the workers to remove the insulation and work on the roof from below but **HE DENNIS TESTIFIED HE DID NOT DO THAT and Dennis testified he knew that his roof had been leaking for months and would not be safe to walk on;** None the less DENNIS also testified, that when Metodi arrived at his home, that he DENNIS was the only one to give Metodi instruction and direction of what he was to do, to go on his Dennis's roof to strip shingles, (then within hours the middle of the roof where Metodi was standing collapsed and he fell through). (Pa068-77, Pa047-055)

6- Metodi Testified at a deposition prior to his death that was read at the jury trial. Metodi testified he was not a roofer, that he never did re-shingling roofs, that he was instructed by Dennis to go on the roof to strip shingles, that the roof did not look water stained or unstable on the upper side where he was and he could not see the underside because the underside was concealed by insulation in the garage ceiling below, that when he was stripping shingles, the roof beneath his feet collapsed and his whole body went through, sustaining multiple impacts and injuries, that led to surgeries, and infection.

7- Metodi, his wife Faith, his children and even Dennis testified, about his injuries and infection that caused his death and testified that before he fell through the roof, he was in excellent athletic acrobatic condition, as pictures in evidence also showed; his death certificate was in evidence showing death by the infection and the affidavit of plaintiffs plaintiffs doctor and his opinion is in the trial court record and written in the July 29, 2010 trial court order, from after he was qualified to testify in this case at a 104 hearing; That order was not appealed. In that order Judge Morgan re-instated the wrongful death parts of our claims that he acknowledged he improperly dismissed because he overlooked the evidence of the testimony and death certificate that showed Metodi died from infection from his injuries and fall through the roof.

8- Plaintiffs claims are against the homeowners of 149 Breakneck Road, Dennis his wife and the responsible party, their homeowner carrier, Providence, who supplied counsel Methfessel and Werbel to represent the homeowners, the defendants in this case are not plaintiffs employer DND Inc. located at 22 Greenwood Ave. Woodbury, and are not DND 's President in that capacity. The June 5, 2005 and 2008 amended claim after Metodi's Nov 2006 death, against the homeowners count 1 of 6 have written (Pa027) :

The Defendant Dennis DeSimone is the owner of 149 Breakneck Road, Sewell, NJ; the homeowner had a duty and obligation to keep his premises properly maintained; At the time and place Defendant Dennis ..was negligent in the supervisory, maintenance, repair and general safekeeping of the premises and allowed and/or permitted to exist certain hazardous and dangerous conditions/and/or/failed to warn about dangers known to exist or danger he should have known existed... Wherefore plaintiffs demand judgment against defendant individually, jointly, severally and in the alternatively for damages together with interest and cost of suit. DEMAND FOR JURY TRIAL Plaintiffs hereby demand a trial by a jury as to all issues in this case.

9-The transcripts from the 2011 jury trial show Defendants counsel told the jury: (Pa058)

D0266 Pg 109 Mr. Thornton (defense counsel): The employer of Mr. Donchev was DND Construction Co. DeSimone Construction. pg 108 The defendant in this case is the owner of the home. DND Construction Co. is not the defendant in this case. D 0267 pg 111 Mr. Donchev was part of a crew that finished what they had to do the prior week. There was nothing for them to do. The crew chief reported to Mr. DeSimone. Mr. DeSimone said well, as you know I HAVE ONGOING RENOVATIONS AT MY HOUSE bring them over to do roof work.

D0273 pg 123 line 25 Mr. Thornton (defendant counsel): Now we know that after the fall through the roof in June 2003, Mr. Donchev did suffer VARIOUS injuries. NO QUESTION ABOUT THAT. He had an abscess. He had various problems.

D 0278 pg 133 line 9-10 Mr. Thornton: the plaintiff will try to show that the fall led to inflammation, led to infection, led to pneumonia, led to death. D 0278 line 18 He died of infection. Pg 134 Line 12 Mr. Thornton: (defendants counsel): the ULTIMATE INFECTION THAT TOOK HIS LIFE.

10- The Sept. 8, 2006 transcripts show defendants counsel admitted the defendant is not plaintiffs corporate employer and that the Worker Compensation Bar may only be applicable to the corporate employer, who WAS NOT THE DEFENDANT in this case, The transcripts have written as follows:

"2006 summary judgment ARGUMENT Ms. Schlisserman(defendants counsel): I believe that the distinction here, first of all, is that this Mr. DeSimone (the defendant) is acting as the homeowner here. He is not acting as the principle of this company. He —the testimony is clear in the deposition and the evidence is clear and actually, Plaintiff admits it, that he was being—its—he's acting as an individual. The complaint is specifically marked as being that as being sued as a property owner, NOT as a general contractor, not as a principle in his corporation. His corporation IS NOT BEING SUED. IN FACT,

If it was, It would be subject to the Worker Compensation Barr. "

"THE COURT: Do I know for sure, and I want to make sure for the RECORD that I am right on this, that this fellow is employed by a DeSimone INC.?

Is mean, it is a corporation that employs this guy?

Ms. Schlisserman: Right.

Mr. Green burg (counsel for the plaintiff) : yes Your Honor. "

"The COURT: Okay. And so, Dennis DeSimone is an individual.

He owns the property but he also is the principle of DeSimone Incorporation and its DeSimone Inc. for whom the plaintiff works and for whom the workman's compensation bar would apply. Okay, Okay, Mr. Greenburg?"

"Mr. Greenburg: Your Honor, it obviously goes without saying that I think you framed the issue, as we see it. One of the cases that — I don't think there is any question that, given a particular factual circumstance and in this case, giving us the inference or

favorable inference from the fact. It's clear that in this context, in this very limited context, Mr. DeSimone was, in fact, wearing two hats. And the issue as a matter of law, of control is set by the fact that, as your Honor quite correctly pointed out, he noted specifically the work that he wanted done. He specifically assigned a particular individual to do that work. And that are at least signs, symptoms if you will, of control, which is the issue that all of these cases talk about and that matter in terms of the potential landowner liability."

11- The testimony of Dennis included the following:

D 0823 pg 302 Q. Was Mr. Donchev a roofer. A. DEFENDANT Mr. DeSimone:

He was NOT A ROOFER. Q. Was DeSimone Construction Company, did they have a relationship with roofing contractors? A. yes. Q. Do you normally get roofing companies to do the roofing work? A. Yes. D 0815 pg 287 Line 21-25

Q. This is the pictures of the roof taken after wards is that correct?

Mr. DeSimone (defendant) A. I believe so Q. Is there anything that Mr. Donchev did to make these water stains or the condition of the roof deteriorated like that? Is there anything he did to make it that way? A. No

Q. Would you agree that it was in that condition before he ever came to your house that day? A. I would agree... Q. And you agree there was insulation in the rafters underneath?

A. Yes there was insulation. A. The batting was falling down in that corner because it had gotten wet. Q. If you had instructed them to remove the insulation and see what it was like underneath do you think this could have been discovered before anyone got on that roof?

A. I just knew I gave them instructions what they were to do.

Q. And you were the one who gave them instructions? A. Yes.

DA 0317 D 0322 pg 220 Line 8-10: Q. And you were responsible as the owner for the condition of your premise Mr. DeSimone (Defendant Homeowner) A. YES.

D0317 Pg 210 line 7 Q. Did you have ... Was there a permit in writing for this, for permitting the roof work to be done? A. I didn't... to do this, permitting for the shingle work. Q. Okay, the shingle work, is that what you were doing on your roof? A. yes.

Q. Then you were replacing the shingles? A. Yes.

Q. And that's what you planned to do? A. That was the plan.

D0334 Pg. 245 line 21-25 A. I had genuine concerns about the integrity.. because of the wet condition D 0335 pg 247 line 14-18 A. The batting (the insulation) was falling down IN THE CORNER.

Q. Under construction.. under the NJ CODES which you said you would abide by, under chapter 15 in the building sub codes specifically for re-roofing and 1510.2, it talks about structural and construction loads, " The structural and construction loads", these are the regulations that you are required to abide by and it says: " the structural roof components shall be capable of supporting the roof covering system and materials and equipment loads that will be encountered during installation of the roof covering system" Do you think if a person fell though was it capable?

A. (Mr. DeSimone defendant homeowner) A. AGAIN, THE PLYWOOD WAS DETERIORATED BECAUSE IT WAS WET. IT WOULD NOT BE SAFE TO WALK ON. A. ...well if he fell through then it wasn't capable.

Q. Did you ever check the structure to see if it would be capable of supporting the weight? Mr. DeSimone Defendant A. No I didn't check the structure.

Metodi's Testimony included the following:

D 0400 Pg 114 Line 20-24 Q. Do you remember Dennis telling you specifically that there was a soft spot in the roof? A. No.

Q. Do you remember Dennis saying there was any rotted wood? A. No.

Line 23-24 A. he said there was "A" leak but that doesn't mean it's rotted or....

D0404pg. 122 line 8 A. I was just helping stripping shingles.

Plaintiffs wife's testimony at trial about the plaintiff injuries, infection and death caused by the multi drug resistant bacterial infection that began when he fell through the roof,
D 0455 pgs

Pg 0475 Pg 265 line 9-11 Q. Did he have any other falls or accidents that would fracture ribs or a shoulder injury? A. No.

Pg. 0476 line 20-25 Line 1-16 What shoulder and ribs had injuries?

A. It was the right ones, all his injuries were down the right side. Even the deep vein thrombosis .. in his leg..

Q. What side of his neck had the large gash? A. It was the right side.

Q. What side of his spine had the fractures and ligament injury? A. The right side

Q. In Metodi's deposition and what you wrote for him what foot went through first?

A. The right one. Pg 0600 pg 234 line 7, 14-20

Q. When he fell through the roof.... And then he was hospitalized and had surgery on his groin area ? A. It wasn't just his groin area.. They actually cut the side of his bladder. They went in with a cystoscopy and they, he had a hematoma in his abdomen. And they put a catheter up inside his bladder and blew it up to push the infection out and drain it inside his abdomen...Pg. 0479 line 22-25 Q. So in February 04 Why was the appointment set up? A. Because he was still having pain and urinary inability and inability to have an erection. Pg 0466 line 7-16 Q. Were you trained at the hospital to care for him? A. yes they had to.. I had to sign a certification. They explained to me he had cellulitis .. I had to look out for infection....I had to look because he really couldn't see the wounds at all because it was on his scrotum Q. What did you tell the orthopedist?

A. Like Meto said, I told him that Meto fell through the roof and he was falling backwards, he caught himself on the rafter. He was falling head first towards the floor below and he clutched onto a rafter under his armpit and that's - he had these scars on the sides of his chest and he had them here and on the back, as you see here in the pictures. D 0495 Q. What did you tell them? A. I told them that, as I said before, when we got there I told them that ever since he fell through the roof, he had constant signs of infection in his blood and he developed blood clots... Q. Did they check for infection? A. Yes, they did. Q. Was he then treated for infection and Pneumonia ? A. Yes that's what

he was treated for. Q. Did Dr. Krueger ever treat Mr. Donchev? A. yes he was the one who prescribed the Doxycycline the night before my husband died. Pg D 0434 line 14, 19-21 A. After he died they actually accidentally sent to my home my husband's lung... And when I opened it, I went and got surgical gloves because I knew he had bad bacteria when he died and it was multi- drug resistant bacteria and I was afraid I would get it. Pg 0446 Line 4, 12-13 after he fell through the roof our life changed... our life changed from doing things to going to doctors all the time. Pg 490 Q. Do you recognize this document? A. yes it's the death certificate. A. The cause of death Bacterial Pneumonia. Evidence P-22

12-Case laws have written:

' the duty of care by an occupier of land to his invitee is to use reasonable care to make the premises safe, and this includes the duty to make a reasonable inspection to discover defective conditions" Stark v. Great Atlantic & Tea co. 102 NJ..694 (e.A 1926) Restatement of Torts

Jury Charge 5.20F:

Where a hazardous condition is due to construction not in accord with applicable standards IT IS NOT NESSESARY to prove the owner had actual knowledge of the defect or would have become aware of the defect had he personally made inspection. In such cases the owner IS LIABLE for failing to provide a safe workplace for the use of the invitee. Brody v. Albert 17 NJ at 389. It may be possible to reconcile this position with the REQUIREMENT of constructive notice of an unsafe condition saying the owner of the premises IS CHARGEABLE with knowledge of such hazardous condition as A REASONABLE INSPECTION BY AN APPROPRIATE EXPERT WOULD REVEAL See Restatement of Torts 2D 343(1965)

13-Jury Charge 8.60 Notes to the Judge:

Punitive damages may be awarded if compensatory damages have been awarded.

If you find that the defendant has failed to have the proper permits in place, failed to have preliminary inspection done which would have protected plaintiff from the hazardous condition that caused his injuries and death, YOU MUST CONSIDER whether or not to award punitive damages. ...because you have found that the defendant has failed to have a construction permit in place prior to commencing the work which would have led to preliminary inspections that would have warned and or protected the plaintiff from the hazard that cause the plaintiffs injuries or death...

5.5 PUNITIVE DAMAGES

If you find for the plaintiff, you may, but are not required to, award punitive damages.

The purposes of punitive damages are to punish a defendant and to deter similar acts in the future. Punitive damages may not be awarded to compensate a plaintiff.

The plaintiff has the burden of proving by [a preponderance of the evidence] that punitive damages should be awarded and, if so, the amount of any such damages.

You may award punitive damages only if you find that the defendant's conduct that harmed the plaintiff was malicious, oppressive or in reckless disregard of the plaintiff's rights.... Conduct is in reckless disregard of the plaintiff's rights if, under the circumstances, it reflects complete indifference to the plaintiff's safety or rights, or if the defendant acts in the face of a perceived risk that its actions will violate the plaintiff's rights under federal law. An act or omission is oppressive if the defendant injures or damages or otherwise violates the rights of the plaintiff with unnecessary harshness or severity, such as by misusing or abusing authority or power or by taking advantage of some weakness or disability or misfortune of the plaintiff.

14- Defendants counsel admits and does not deny as written in plaintiffs brief that on July 7, 2011 the jury determined unanimously in plaintiffs favor that the Homeowner Dennis was individually negligent, that he had duties that he breached as homeowner as Defendants counsel told them they had to decide.

15- Defendants counsel clearly knew and told the 2011 jury and told Judge Morgan in 2006 that the defendant in this case IS NOT PLAINTIFFS EMPLOYER, and knew that the Defendant clearly had duties as written in the construction permit, YET in Sept. 2011 Mr. Thornton filed a NOTICE OF APPEAL knowingly falsely writing in the Notice that the "DEFENDANT WAS PLAINTIFFS EMPLOYER" and purported that Defendant did not have duties as homeowner, when he clearly knew he did. (see Notice in plaintiffs appendix)

16- Based on defendants counsels misrepresentation of the status of Metodi, and material facts, the 2012 Appellate court ALSO WROTE in the 2012 and 2017 opinions,

" THE DEFENDANT IS PLAINTIFFS EMPLOYER "

Thus THAT WAS THE ONLY SUBJECT MATTER ON APPEAL, in 2011-2012...and despite that plaintiffs attempted from 2012-2015 to have the Appellate Court make an opinion for the correct defendant the Clerk of the court, stated they did not have jurisdiction of that subject matter for the homeowner, that there was no appeal at that time

for the Homeowner and jurisdiction for that subject matter never left the trial court; thus plaintiffs were directed by the clerk of the court to make motions regarding the HOMEOWNER to the trial court, which we did, but all subsequent decisions and opinions were based ONLY on the 2012 Appellate Opinion, that the Appellate Court had no jurisdiction or power to make, and were not based on any facts or evidence in this case.

17- Defendant falsely also purports that RES JUDICATA applies to 2012 Opinions subsequent orders based on that 2012 opinion that the lower courts did not have the power or jurisdiction to make after the 2011 Jury trial and verdict in plaintiffs favor.

18- By the Constitution, Statutes and Court rules RES JUDICATA ONLY APPLIES to the jury verdict in this case against the HOMEOWNER, that the trial judge who heard and saw the trial found is supported; the judgment made by the jury against the Homeowner, in plaintiffs favor, MUST be entered by the court, there is no discretion. The Court cannot substitute its opinion for the jury verdict, that is contrary to the Constitutional right to a jury trial and departs so far from accepted practice that Judicial intervention by the US Supreme Court is necessary.

This principle is enshrined in the Seventh Amendment to the United States Constitution, which provides that
"...no fact tried by a jury, shall be otherwise re-examined
in any Court of the United States, "

19-NJ Court rule 4:46-3(a) also coincides with the Constitution providing:

"Upon trial of the action the facts so specified shall be deemed established."

Rule 4:46-5 (b) Affidavits Made in Bad Faith. If the court is satisfied, at any time, that any of the affidavits submitted pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses resulting from the filing of the affidavits, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

The US Supreme Court should find Defendants Counsel Edward Thornton and Amanda Sawyer guilty of contempt & crime in the 4th degree as written in WC Law 34:15-57.

20-Worker Compensation Act.

34:15-40. Liability of third party.

Where a third person (The Homeowner in this case) is liable to the employee (Of DND Inc.) or his dependents for an injury or death, the existence of a right of compensation from the employer (DND Inc.) or insurance carrier (Liberty Mutual) under this statute **shall not operate as a bar to the action of the employee (Metodi's estate) or his dependents (Faith, Anton and Rocitsa) , NOR BE REGARDED as establishing a measure of damage therein.**

34:15-69.2. Order discharging employer; filing; effect as to third party ...

The employee or the dependents of the employee or the personal representatives thereof shall have no further recourse.....against such employer (DND Inc.) , but shall have and retain all their rights against such third party ...(THE HOMEOWNERS) .

21- NJ Supreme Court Lyon v Barrett^{89 N.J. 294 (1982) 445 A.2d 1153 said:}

The opinion of the Court was delivered by POLLOCK, J.

^[89 N.J. 298]
Plaintiff Wendi Lee Lyon, a legal secretary, fell and sustained injuries while employed by Leo J. Barrett, P.A., a professional law corporation owned by defendant, Leo J. Barrett. The injury occurred in a building owned by Barrett individually and rented by him to his corporation and other tenants. Lyon received workers' compensation benefits from Leo J. Barrett, P.A. Thereafter, she instituted a third party negligence action pursuant to *N.J.S.A. 34:15-40* against Barrett individually. The issue is whether an employee who has recovered a workers' compensation award against a corporate employer may maintain such a negligence action for the same injuries against the individual who is the sole shareholder of the corporation.

The trial court granted Barrett's motion for summary judgment on the ground that Lyon's election to receive workers' compensation benefits barred her negligence action. The Appellate Division affirmed. We granted certification,^{87 N.J. 417(1981)} (erroneously reported as "certification denied"), and we now reverse and remand the matter for trial.

The opinion of the Court was delivered by POLLOCK, J.

^[89 N.J. 298]
^[89 N.J. 300]
Our analysis begins with the basic premise that a corporation is an entity separate from its stockholders. In the absence of fraud or injustice, courts generally will not pierce the corporate veil to impose liability on the corporate principals. *Frank v. Frank's, Inc.*, ^{9 N.J. 218, 224 (1952)}; see, e.g., *Kugler v. Koscot Interplanetary, Inc.*, ^{120 N.J.Super. 216, 253-54 (Ch.Div. 1972)}; *Yacker v. Weiner*, ^{109 N.J.Super. 351, 356 (Ch.Div. 1970)}, *aff'd o.b.*, ^{114 N.J.Super. 526 (App.Div. 1971)}.

Conversely, one who accepts the benefits of incorporation must also accept the burdens that flow from the use of a corporate structure. *General Public Loan Corp. v. Director, Div. of Taxation*, ^{13 N.J. 393, 400-01 (1953)}

Similarly, other jurisdictions have restricted the immunity accorded by the workers' compensation laws to the entity that is the immediate employer of the injured worker. *Boggs v. Blue Diamond Coal Co.*, ^{590 F.2d 655}

(^{6 Cir.}), *cert. denied*, ^{444 U.S. 836, 100 S.Ct. 71, 62 L.Ed.2d 47 (1979)},

III

In this case, Lyon's employer was the corporation, Leo J. Barrett, P.A. By incorporating, Leo J. Barrett individually immunized himself from liability for obligations incurred by the corporation,

[89 N.J. 305]

Having obtained this immunity, however, Barrett cannot avoid being a "third person" amenable to suit under N.J.S.A. 34:15-40 for his individual acts of negligence. Barrett, as a landlord, has the same liability for injuries suffered by the employees of one tenant, even his own professional corporation, as for injuries suffered by the employees of any other tenant...he is as much a third person in relation to Wendi Lyon as he is to any other tenant and its employees.

Good reason exists for preserving the right of an injured worker to sue a third person to the maximum extent that such actions are consistent with workers' compensation laws. The fixed dollar ceiling on benefits under the workers' compensation laws are the result of a trade-off of certain liability of the employer for reduced awards for the employee. Injured workers are entitled not only to recovery against employers under workers' compensation laws, but also against third parties under tort law. 2A Larson, *Workmen's Compensation Law*, § 72.50 at 14-95 (1976).

We hold that Lyon's complaint against Barrett is not barred by her recovery of workers' compensation benefits from Leo J. Barrett, P.A. We reverse the judgment of the Appellate Division and remand the matter to the Law Division for trial.

For reversal and remandment — Justices PASHMAN, CLIFFORD, SCHREIBER, HANDLER, POLLOCK and O'HERN — 6. *For affirmance* — None.

THUS The defendant homeowner in this case as defendants counsel admitted in 2006 does not share immunity to suit under Worker Compensation Law and is the third party sue able, who the jury found was negligent. It would be contrary to the STATE NJ Supreme Court precedent set in Lyons to allow the homeowner to share immunity of the corporation DND Inc. , the court cannot grant summary judgment on the ground of a qualified immunity under worker compensation law, to the homeowner who is the defendant in this case. Further because defendants counsel WITHDREW THE EMPLOYEE BARRED FROM SUING HIS EMPLOYER DEFENSE at the 2011 jury trial that subject WAS MOOT and COULD NOT BE APPEALED or decided in an appellate opinion at all, the defendant homeowner who the jury found was negligent, was not plaintiffs employer.

A compelling reason to grant a Writ by the US Supreme Court in rule 10 is also that the opinion of the lower courts is contrary to an opinion in the states Supreme Court; and the 2012 and 2017 opinions that purport to reverse the trial court denial of summary judgment to the landowner in this case, is contrary to the NJ Supreme Courts ruling in Lyons, and contrary to public policy and the law.

22–NJSA 2A:15–97. Deduction of duplicate benefits

2A:15–97. Deduction of duplicate benefits In any civil action brought for personal injury or death, if a plaintiff receives or is entitled to receive benefits for the injuries allegedly incurred from any other source other than a joint tortfeasor, the benefits,

OTHER THAN WORKERS' COMPENSATION BENEFITS or the proceeds from a life insurance policy, shall be disclosed to the court and the amount thereof which duplicates any benefit contained in the award shall be deducted from any award recovered by the plaintiff, less any premium paid to an insurer directly by the plaintiff or by any member of the plaintiff's family on behalf of the plaintiff for the policy period during which the benefits are payable. Any party to the action shall be permitted to introduce evidence regarding any of the matters described in this act.

34:15–57.4. Workers' compensation fraud; criminal and civil penalties.

1.a. A person **SHALL BE GUILTY OF A CRIME OF THE FOURTH DEGREE** if the person purposely or knowingly:

(2) **Makes a false or misleading statement, representation or submission, including a mis-classification of employees,** or engages in a deceptive leasing practice for the purpose of evading the full payment of benefits; or (3) Coerces, solicits or encourages, or employs or contracts with a person to coerce, solicit or encourage, **any individual to make a false or misleading statement, representation or submission concerning any fact that is material to a claim** for benefits or the payment ... or of evading the full payment of the benefits...

b. Any person who wrongfully... evades the full payment .. by means of a violation of the provisions of subsection a. of this section **shall be civilly liable to any person injured by the violation for damages** and all reasonable costs and attorney fees of the injured person(s).

d. Nothing in this section shall preclude, **if the evidence so warrants, INDICTMENT AND CONVICTION for a violation** of any provision of chapter 20, 21 or 28 of Title 2C of the New Jersey Statutes or any other law. For the purpose of this section, "purposely," "knowingly" and "purposely or knowingly" have the same meaning as is provided in chapter 2 of Title 2C of the New Jersey Statutes.

2. This act shall take effect immediately

Amanda Sawyer and Edward Thornton are guilty of crime pursuant to 34:15–57 and contempt.

Subsequent to the 2012 appellate opinion that improperly purported in 2012 to review and reverse 2006 or 2007 summary judgments denied to the defendant , and purported to review and reverse them after the 2011 jury trial a verdict in plaintiffs favor, which the US Supreme Court in *Ortiz v. Jordan* stated that appellate courts have no power or jurisdiction to do, thus the trial and 2017 Appellate Div. and the NJ Supreme Court were not supposed to sit idol and let injustice prevail and manifest.

The trial court Judge Morgan even after the 2012 Appellate opinion still he recited in May 2015 that there were Genuine Issues of Material Fact that precluded granting Sum. Jud. to the homeowner, that the construction permit was what created the Genuine Issue and was what led the jury to determine the Homeowner Dennis was individually negligent as homeowner, yet he improperly failed to comply with the Sum. Jud. standard and the president determined by the US Supreme Ortiz Court. He should have or the 2017 Appellate or NJ Supreme Courts should have determined that the trial judge should have still found that Sum. Jud. cannot be granted to DND Inc. or DND 'S President because they were not the defendants and were not who the jury determined were negligent, Judge Morgan or the 2017 lower Appeal Courts should have determined that the US Supreme Court Ortiz decision must be complied with, thus summary judgment could not be granted to the homeowner after the jury trial and after the jury determined the Homeowner was negligent, Judge Morgan or the lower Appeal Courts should have imposed sanctions against defendants counsel for misrepresenting material facts and the status of an employee to Appeal Courts knowingly in bad faith and to cause intentional delay and contempt of court. They should have found that the judgment made by the jury against the homeowner that Judge Morgan found is supported must be re-entered by the court with cost and interest to date, and should have ordered a date specific for the jury trial that the July 29, 2010 order already ordered would take place to determine the damages after death, and the courts should have found that the court does not have authority to enter a courts opinion in place of a jury verdict.

As Justice Long wrote in *Lombardi v. Masso* a court is not supposed to sit idol to let injustice prevail & must still comply with standards even if an appellate opinion did not, (and in this case must comply with the US Supreme Court case law, that binds all courts.)

The US Supreme court must Grant this Writ and relief requested in the interest of justice and also (as statutes allow) punish defendant & his counsel and deter others from following their examples of criminally commencing construction without complying with the law, for misrepresenting material facts and the status of an employee and knowingly misleading the courts and justices in an effort to evade paying just compensation, that the jury already determined defendants negligence caused.

The US Supreme Court must also deny defendants counsels request for cost, the defendant Homeowner is not the prevailing party, the jury unanimously determined the defendant homeowner was negligent and liable on July 7, 2011; and also determined that plaintiff Metodi was not contributory negligent at all.

I certify that all statements made herein are true and if they are intentionally not that I may be subject to punishment.

Faith Doncheva 11-16-17

Faith Doncheva

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