

No. 17-7063

In the Supreme Court of the United States

Theresa A. Odejimi,
Petitioner

v.

Town of Windsor, New York
Respondent

Respondent's Brief in Opposition
to Petitioner's Petition for a Writ of Certiorari

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Questions Presented

Respondent denies that Petitioner presents any questions that should compel this Court to grant Petitioner's Petition for a Writ of Certiorari. Respondent further contends that the Supreme Court of the State of New York ruled correctly in dismissing Petitioner's personal injury Complaint, and the New York State Supreme Court Appellate Division and the Court of Appeals of the State of New York ruled correctly in denying Petitioner's Appeals.

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Cases:

Theresa Odejimi v. Town of Windsor, No. #2011-2394, (N.Y. Sup. Ct. June 11, 2015).

Theresa Odejimi v. Town of Windsor, No. #2011-2394, (N.Y. Sup. Ct. May 25, 2016).

THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent., No. # 523549, (N.Y. App. Div. Oct. 6, 2016).

THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent., No. # 523549, (N.Y. App. Div. Jan. 19, 2017).

THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent., No. # 523549, (N.Y. App. Div. Mar. 16, 2017).

Odejimi v. Town of Windsor, 29 N.Y.3d 1074, 79 N.E.3d 1124, 1124, reargument denied, 29 N.Y.3d 1117, 83 N.E.3d 849 (Sep. 12, 2017).

Furness, Withy & Co. v. Yang-Tsze Ins. Ass'n, 242 U.S. 430, 434, 37 S. Ct. 141, 142, 61 L. Ed. 409 (1917).

Statutes and Rules:

United States Code:

28 U.S.C. § 1257(a)

Sup. Ct. R.:

Rule 10, Rule 14, Rule 15

Opinions Below

By Decision & Order dated June 11, 2015, the New York State Supreme Court denied without prejudice Defendant's Motions for Summary Judgment, and granted Plaintiff leave to amend her Complaint and Bill of Particulars. Theresa Odejimi v. Town of Windsor, No. #2011-2394, (N.Y. Sup. Ct. June 11, 2016).

By Decision & Order dated May 25, 2016 and filed in the Broome County Clerk's Office on May 25, 2016, the New York State Supreme Court granted the Defendant's Motion for Summary Judgment dismissing the Plaintiff's Complaint against it, and denying Plaintiff's Motion to Proceed as a Poor Person. Theresa Odejimi v. Town of Windsor, No. #2011-2394, (N.Y. Sup. Ct. May 25, 2016).

Plaintiff/Appellant filed a Notice of Appeal to the New York State Supreme Court Appellate Division, Third Department. Respondent moved that court for an Order dismissing the Appellant's Appeal. In a Decision and Order on Motion of the Appellate Division, Third Department, decided and entered on October 6, 2016, the Respondent's Motion to Dismiss the Appeal was granted. As part of the court's Decision and Order, the Appellant's motion for Permission to Proceed as a Poor Person was denied. THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent., No. # 523549, (N.Y. App. Div. Oct. 6, 2016).

Plaintiff's subsequent Motion for Oral Reconsideration and for Further Relief was denied by Decision and Order of the Appellate Division, Third Department. THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent., No. # 523549, (N.Y. App. Div. Jan. 19, 2017).

Plaintiff's subsequent Motion for Reversible Error was denied by Decision and Order of the Appellate Division, Third Department. THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent., No. # 523549, (N.Y. App. Div. Mar. 16, 2017).

Plaintiff filed a Motion for Leave to Appeal in the Court of Appeals of the State of New York. The court dismissed the motion upon the ground that the court did not have jurisdiction to entertain it, and Plaintiff's Motion for Poor Person Relief was dismissed as academic on June 8, 2017. Odejimi v. Town of Windsor, 29 N.Y.3d 1074, 79 N.E.3d 1124, 1124, reargument denied, 29 N.Y.3d 1117, 83 N.E.3d 849 (September 12, 2017).

Statement of Jurisdiction

The Order of the Court of Appeals of the State of New York denying Petitioner's Appeal was entered on June 8, 2017. The Court of Appeals denied Petitioner's Motion for Reargument on September 12, 2017, and entered its Order on that day. Petitioner filed a Petition for a Writ of Certiorari on December 11, 2017, 91 days from the Court of Appeals' date of entry of its Order denying Petitioner's Motion for Reargument. Because December 10, 2017 was a Sunday, Petitioner's Petition is timely.

Petitioner incorrectly invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), in that the final judgment of the Court of Appeals of the State of New York did not draw into question the validity of any treaty or statute of the United States, or the validity of any statute of any State on the ground that such treaty or statute is repugnant to the Constitution of the United States. Nor was any title, right, privilege, or immunity specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

For the reasons stated above, Respondent respectfully requests this Court deny Petitioner's Petition for a Writ of Certiorari.

Statement of Facts

This case arose out of the removal of snow on a public highway by the Town of Windsor, by its snowplow while engaged in highway work and maintenance, namely, snow removal that occurred on March 7, 2011, at 50 Williams Road in the Town of Windsor, County of Broome, State of New York. The Plaintiff, Theresa Odejimi, now known as Theresa Logan, alleged that she was parked to the side of Williams Road, about 8-10 feet onto her property and had been brushing, clearing, and shoveling snow from her parked vehicle, but stopped, when a snowplow driven by a Town of Windsor employee allegedly caused snow to come into contact with her, an allegation Respondent denies.

Defendant moved for summary judgment dismissing the complaint on the basis that Plaintiff has not sustained a causally related serious injury as defined by New York State Insurance Law § 1502(d), a prerequisite for bringing a claim in New York State arising out of a motor vehicle accident, including an accident involving a snowplow and pedestrian. The Supreme Court of New York State held that the Plaintiff failed to raise triable questions of fact as a matter of law as to whether she had sustained a causally related serious injury as defined by New York State Insurance law § 1502(d) and the Plaintiff's case was dismissed in its entirety. Petitioner then appealed

to the New York State Supreme Court, Appellate Division, which denied Petitioner's appeal. Petitioner appealed to the Court of Appeals of New York State, which denied her appeal.

Reasons for Denying the Petition

1. Petitioner has not asserted a compelling reason for the Court to grant the Petition

Rule 10 of the Rules of the Supreme Court of the United States lists three scenarios that are more likely to give rise to compelling reasons for the Court to grant a petition for a writ of certiorari. The first scenario concerns only United States courts of appeal, and is therefore inapplicable to the instant matter, a personal injury claim resolved by summary judgment in state court. The second scenario is when “a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.” U.S. Sup. Ct. R. 10. This scenario is also inapplicable to the instant matter, in which the Court of Appeals of the State of New York affirmed the trial court and Appellate Division in a controversy where no important federal question was raised. And the third scenario also involves “important question[s] of federal law” or “important federal questions,” *Id.*, neither of which were present in the instant matter. Lastly, Rule 10 provides that “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

The instant petition concerns allegedly erroneous findings of fact, and makes only bare recitals of several amendments to the United

States Constitution, without “[a] direct and concise argument amplifying the reasons relied on for allowance of the writ” as required by Rule 14 of the Rules of the Supreme Court of the United States. U.S. Sup. Ct. R. 14. The petition is facially deficient with respect to the guidelines of Rule 10.

For this reason, Responded respectfully requests that the Court deny Petitioner’s Petition for Writ of Certiorari.

2. Petitioner has failed to present points requiring the Court’s consideration with accuracy, brevity, and clarity.

The Petition is rife with violations of Rule 14 of the Supreme Court of the United States. The following is a representative, non-exclusive list of those violations:

Petitioner’s questions presented, in addition lacking the requisite national importance described in Rule 10 (see above), are not expressed concisely, contain unnecessary detail, are overlong, argumentative, and repetitive, in contravention U.S. Sup. Ct. R. 14 (1)(a). In addition, Petitioner’s questions presented and other assertions frequently lack clear meaning.

Petitioner’s table of contents is incomprehensible, in contravention of U.S. Sup. Ct. R. 14 (1)(c).

Petitioner omits an intelligible statement of the basis for jurisdiction in this Court, as required by U.S. Sup. Ct. R. 14 (1)(e).

Petitioner does not comply with the requirements of U.S. Sup. Ct. R. 14 (1)(f).

Petitioner's statement of the case is not concise, and fails to identify any federal questions sought to be reviewed, let alone when in the state court proceedings those questions were raised, the method and manner of their raising, the way in which they were passed on by the state courts, or any pertinent quotations of specific portions of the record where such questions might have appeared, as required by U.S. Sup. Ct. R. 14 (1)(g)(i).

Rule 14 provides, "[t]he failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition." U.S. Sup. Ct. R. 14. This rule is consistent with Court rulings denying petitions for writs of certiorari: "Unless [petitions] are carefully prepared, contain *appropriate* references to the record, and present with *studied accuracy, brevity, and clearness* whatever is essential to ready and adequate understanding of points requiring our attention, the rights of interested parties may be prejudiced and the court will be impeded in its efforts properly to dispose of the causes which constantly crowd its

docket.” Furness, Withy & Co. v. Yang-Tsze Ins. Ass'n, 242 U.S. 430, 434, 37 S. Ct. 141, 142, 61 L. Ed. 409 (1917).

The Petition meets neither the formal requirements of the Rules of the Supreme Court of the United States nor the formal requirements of the Court’s case law. These deficiencies of accuracy and clarity are pervasive, and will certainly prejudice the rights of the Respondent should this Petition be granted. For this reason, Respondent respectfully requests that the Court deny the Petition for a Writ of Certiorari.

3. Petitioner has made numerous misstatements of fact and law

Rule 15 of the Rules of the Supreme Court of the United States requires Respondent to point out in its opposing brief any misstatements of fact or law made by the Petitioner, or waive raising them subsequently.

A. Petitioner’s Questions Presented

Respondent objects to Question Presented (1) as unintelligible and irrelevant, and denies each and every allegation contained therein.

Respondent objects to Question Presented (2) as unintelligible and irrelevant. Without conceding the propriety of the question,

Respondent offers the following information: see “Opinions Below,” page 4-5, *supra*.

Respondent denies the allegations in Question Presented (3) that Attorney O’Brien ever made or attempted to make a medical diagnosis of Petitioner.

Respondent objects to Question Presented (4) as unintelligible, and to the extent that it presents an incorrect, incomplete, and conclusory statement of law concerning the tort of defamation. Further, Question Presented (4) suggests a cause of action not originally pled that this Court does not have jurisdiction to hear.

Respondent objects to Question Presented (5) as vague and irrelevant. Without conceding the question’s propriety, Respondent offers the following information: Respondents testified by affidavit that at all relevant times, they were traveling in the plow at a rate of 15 to 20 miles per hour.

Respondent objects to Question Presented (6) as vague and irrelevant.

Respondent objects to Question Presented (7) as irrelevant.

Respondent objects to Question Presented (8) as unintelligible, and denies each and every allegation contained therein.

Respondent denies each and every allegation contained in Question Presented (9).

Respondent objects to Question Presented (10) as vague. Without conceding the propriety of the question, Respondent also objects to the question to the extent it offers an erroneous legal conclusion concerning any alleged negligence on the part of Respondent, and as a misstatement of fact in its allegation that Mr. Story and Mr. Brinks left the scene of an accident.

Respondent denies each and every allegation contained in Question Presented (11).

Respondent objects to Question Presented (12) as vague. Without conceding the propriety of the question, Respondent denies any allegation that Respondent lied under oath and any allegation that Respondent obstructed justice. Respondent objects to the question to the extent that it offers an erroneous legal conclusion, and suggests a cause of action not originally pled that this Court does not have jurisdiction to hear.

Respondent objects to Question Presented (13) as unintelligible and irrelevant.

Respondent objects to Question Presented (14) as vague, and lacks sufficient information and belief to respond in any other way to Question Presented (14).

Respondent objects to Question Presented (15) as unintelligible and irrelevant, and lacks sufficient information and belief to respond in any other way to Question Presented (15).

Respondent objects to Question Presented (16) to the extent that it is conclusory and partially illegible.

B. Petitioner's Table of Authorities Cited

As discussed above, Petitioner has not met her burden to show how the Constitutional provisions listed in her Table of Authorities are relevant to her case, or at what point in the proceedings they were raised in the state courts below, or in what way they were raised.

Petitioner also includes factual allegations in her Table of Authorities Cited. Respondent lacks sufficient information and belief to respond to these factual allegations.

C. Petitioner's Statement of the Case

Respondent lacks sufficient information and belief to respond to the allegations contained in Paragraphs (1), (2), (6), and (7).

Respondent lacks sufficient information and belief to respond to the allegations contained in Paragraph (3), objects to Paragraph (3) as vague. Without conceding the propriety of the question, Respondent offers the following information: Respondent denies any allegation that

Respondent operated its snowplow at a high rate of speed on March 7, 2011.

Respondent denies the allegations contained in Paragraph (4) to the extent that they allege Respondent operated its snowplow at a high rate of speed on March 7, 2011, or that Respondent was speeding on this occasion. Respondent lacks sufficient information and belief to respond to any other factual allegations contained in Paragraph (4).

Respondent denies the allegations contained in Paragraph (5).

Respondent objects to Paragraph (8) as illegible.

D. Petitioner's Reasons for Granting the Petition

Respondent objects to Paragraphs (1), (4), and (6) as vague and unintelligible.

Respondent lacks sufficient information and belief to respond to Paragraph (2). Without admitting the statements contained therein, Respondent offers the following information: see "Opinions Below," page 4-5, *supra*.

Respondent lacks sufficient information and belief to respond to Paragraphs (5) and (7).

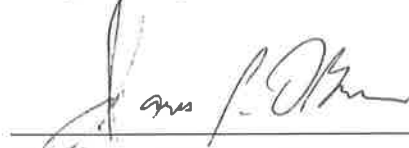
Respondent lacks sufficient information and belief to respond to Paragraph (8) and objects to Paragraph (8) to the extent that it is conclusory.

Conclusion

For the reasons stated above, Respondent respectfully requests this Court deny Petitioner's Petition for Writ of Certiorari.

January 8, 2018

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "James P. O'Brien", is written over a horizontal line.

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