

No. _____

In the
Supreme Court of the United States

ROSE T. JAMES, et al.,

Petitioners,

v.

DOREEN CORINO, ESQ., AND

MARIE BRITTON,

Respondents.

On Petition For Writ of Certiorari To The
Supreme Court of New Jersey

PETITION FOR WRIT OF CERTIORARI

SUBMITTED BY:

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QUESTIONS PRESENTED

1. Whether petitioner was deprived of a protected property right and her state-created right to a jury trial in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?
2. Whether a judicial decision that eliminates or substantially changes established property rights is “arbitrary or irrational” under the Due Process Clause of the Fourteenth Amendment to the United States Constitution?
3. Whether substantive due process applies equally to prevent the arbitrary loss of protected property rights by means of arbitrary, capricious and irrational judicial decree?
4. Whether the First Amendment’s right of access to the courts, as applied to the States through the Due Process Clause of the Fourteenth Amendment, is infringed by a judicial decree that arbitrarily, capriciously and irrationally deprives a plaintiff of their state-created right to a jury trial as guaranteed by Article I, Paragraph 9, of the New Jersey Constitution?

PARTIES TO THE PROCEEDINGS

Petitioners, who were plaintiffs-appellants in the proceedings below, are: Rose T. James and Della Marie Di Pasquale. Della Marie Di Pasquale is not directly named in the caption because she did not participate in the appeals below and is not participating in this application.

Respondents, who were defendants-appellees in the proceedings below, are: Marie Britton and Doreen Corino.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Rose T. James respectfully submits this petition for a writ of certiorari.

OPINIONS BELOW

The opinion of the Superior Court of New Jersey, Appellate Division, decided December 12, 2016, is unpublished. Appx. 3a. The memorandum opinion of the Superior Court of New Jersey, Law Division, Cape May County, decided June 8, 2015, is unpublished. Appx. 8a.

JURISDICTION

The Supreme Court of New Jersey denied petitioner's petition for certification by order dated May 2, 2017, but not filed until May 5, 2017. Appx. 2a. Rehearing was denied by order dated July 5, 2017, but not filed until July 10, 2017. Appx. 1a. The jurisdiction of this Court is based on 28 U.S.C. § 1257(a) (authorizing review of final judgments or decrees rendered by the highest court of a State).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution; substantive due process as a limit on the deprivation of property by arbitrary, capricious and irrational judicial decision-making; and the First Amendment's right of access to the courts, as applied to the States through the Due Process Clause of the Fourteenth Amendment.

INTRODUCTION

This case revolves around the estate of Mary Di Pasquale (“Di Pasquale” or “Mary”) who died on September 10, 2012. Di Pasquale is an heir of the S&H Green Stamps fortune and her estate is believed to be worth several millions of dollars. Di Pasquale is survived by two daughters, petitioner Rose T. James (“James”) and co-respondent Marie Britton (“Britton”). The case has its origin in a complaint for fraud that James filed in the Law Division of the Superior Court of New Jersey. In her cause of action for fraud, James alleged that Britton and Britton’s attorney, co-respondent Doreen Corino, were liable for \$2.7 million in compensatory damages. The questions raised ask whether James’s cause of action for fraud was a protected property right and whether she was deprived of her state-created right to a jury trial on her cause of action for fraud as a result of an arbitrary, capricious and irrational judicial decree.

STATEMENT OF THE CASE

Though James always believed that Di Pasquale had a will, James had never actually seen a will (Appx. 56a). In January of 2012, nine months before Di Pasquale’s death on September 10, 2012, Britton told a niece, Vicki Donnelly, that she (Britton) had \$2 million in safe deposit boxes and that if James came looking for any inheritance from Di Pasquale, she was to be told “that it was all left to Mary’s grandchildren, and great grandchildren” (Appx. 69a; Appx. 93a).

In October of 2012, shortly after Di Pasquale's death on September 10, 2012, James contacted Di Pasquale's attorney, co-respondent Doreen Corino ("Corino") to determine whether Corino had ever prepared a will for Di Pasquale. In response, Corino said "she never prepared a will" for Di Pasquale and that Di Pasquale "gave everything away to the grandchildren before she died" (Appx. 39a-40a).

James then elicited the help of attorney Robert Garrett to determine whether there was a will. Corino told Garrett that "she did not prepare a will for" Di Pasquale and that Di Pasquale "gave everything away before she died" (Appx. 41a; Appx. 54a). When reporting this information to James, Garrett made an off-hand remark to James, saying "It looks like your sister got all the marbles" (Appx. 41a).

James testified that she had "been searching and trying to find the will. All these years without any knowledge of it" (Appx. 41a) and that she had "never seen my mother's will" (Appx. 56a).

By denying the existence of a will, the statements by Britton and Corino -- regarding the \$2 million in safe deposit boxes, the disposition of assets to the grandchildren and/or the suggestion that Britton "got all the marbles" -- were all designed to lead James to believe that Di Pasquale had disposed of her assets before her death.

On September 17, 2013, Britton probated Di Pasquale's will, which revealed for the first time that Corino had repeatedly lied when she denied

having prepared Di Pasquale's will, and that Britton and Corino had both made false and misleading statements regarding the disposition of Di Pasquale's assets prior to her death.

Though Di Pasquale's will was probated on September 17, 2013, it is undisputed that Britton failed to provide James notice of probate of Di Pasquale's will, contrary to New Jersey law.¹ As such, James was never given notice of probate and was not aware of the fact the Di Pasquale's will had been probated.

Despite being led to believe by both Britton and Corino that Di Pasquale died intestate, and that she had disposed of her assets before her death, James called the surrogate's office periodically to determine whether any will had been probated. It was during one of these calls in late January 2014 that James discovered that Di Pasquale's will had been probated by Britton.

Shortly after discovering that Di Pasquale's will had been probated, James traveled from her home in Florida to the surrogate's office in Cape

¹ New Jersey probate rules require that notice of probate be provided to both beneficiaries and next of kin. See R. 4:80-6 ("personal representative shall cause to be mailed to all beneficiaries under the will and to all persons designated by R. 4:80-1(a)(3), at their last known addresses, a notice in writing that the will has been probated, . . . Proof of mailing shall be filed with the Surrogate within 10 days thereof. If the names or addresses of any of those persons are not known, or cannot by reasonable inquiry be determined, then a notice of probate of the will shall be published in a newspaper of general circulation in the county naming or identifying those persons as having a possible interest in the probate estate."); and R. 4:80-1(a)(3) (designating spouse, heirs, and next of kin as persons entitled to notice of probate).

May County, New Jersey, to obtain a copy of the will. Only then did James learn that Di Pasquale's will contained the following exclusionary clause:

THIRD: For reasons best known to my daughter ROSE T. JAMES and my son, JOHN L. DI PASQUALE and in consideration for compensation made to them during my lifetime, I specifically exclude any distribution to either my daughter Rose T. James or my son, John L. Di Pasquale (Appx. 77a).²

On June 4, 2014, James arranged to have Di Pasquale's will examined at the surrogate's office in Cape May County by two prominent forensic document examiners, Robert Baier and Katherine Koppenhaver (Appx. 86a). Koppenhaver examined the will at the surrogate's office a second time on July 7, 2014. *Id.* Baier published his report on September 2, 2014 (Appx. 80a). Koppenhaver published her report on September 5, 2014 (Appx. 86a). James received Baier's report on September 12, 2014 (Appx. 70a, Complaint, p. 2, para. 5), and received Koppenhaver's report on September 15, 2014. *Id.*, p. 2, para. 6. Both document examiners concluded that there were substantial incongruities and irregularities that called into question the authenticity and reliability of page Q1 of the will, which contained the above referenced exclusionary clause.

For example, Baier and Koppenhaver are in agreement that the initials appearing on page Q1 of the will were not written by Mary (Appx.

² Di Pasquale's son, John L. Di Pasquale, is deceased. John's wife, Della Maria Di Pasquale ("Della"), is a named plaintiff in the case; however, as indicated in the Parties to the Proceedings, Della did not participate in any appeals.

81a; Appx. 88a). Both experts are in further agreement that there is a discrepancy between pages Q1 and Q2 of the will because they are not continuous; finding that page Q1 of the will, which listed the sections to be covered as “First”, “Second” and Third” is incongruent with page 2 which begins with section “Sixth” (Appx. 81a; Appx. 87a).⁴

Additionally, Baier found that the “Third” section of the will, which excluded James from any distribution, to be markedly inconsistent in style, noting that all sections of the will begin with the words “I hereby” except the “Third” section of the will that excludes James, which begins with “For reasons best” (Appx. 81a).

Both experts also found that the probate files contained a document marked “Original Will” along with copies of Di Pasquale’s will which are “different” (Appx. 82a; Appx. 86a).⁵ A significant difference is that one version of the will has page numbers on the bottom of each page, but the other version does not. Id. According to Koppenhaver, the page numbers “had to have been added after the Will was signed” (Appx. 86a) (emphasis added).

Significantly, Baier concluded that “the initials of Mary Di Pasquale on questioned document Q1 were not written by Mary Di Pasquale they were

⁴ As noted by Koppenhaver, the will prepared for Ms. Dafler contained continuous numbered paragraphs (Appx. 87a), making the omissions in Di Pasquale’s will all the more glaring because both wills were prepared by co-respondent Corino.

⁵ Baier stated that “there was more than one different signed copy of Mary Di Pasquale’s will” in the file of co-respondent Corino (Appx. 82a).

written by a different author (Appx. 81a). At this point, James had reason to believe that the exclusionary clause in Di Pasquale's will was a forgery.

On March 19, 2015, James filed a pro se complaint in the Law Division of the Superior Court of New Jersey, Cape May County (Appx. 68a to Appx. 95a), seeking a jury trial and compensatory damages in the amount of \$2.7 million for "fraud and forgery" (Appx. 72a, Complaint, para. 3).⁵

It is significant to note that James filed her complaint, not against the estate of Mary Di Pasquale, but against Britton and Corino in their individual capacities.⁶ It is also of vital importance to note that James's complaint included the following jury trial demand:

JURY DEMAND

The plaintiff demands trial by jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:31-1(a). Appx. 72a.

⁵ The complaint also alleged that the will prepared by Corino for Di Pasquale's sister, Teresa A. Dafler, "is null and void because it was illegally and improperly prepared by inserting a prohibited conflict of interest provision in violation of New Jersey law" (Appx. 69a, Complaint, para. 1). Additionally, the complaint alleged that Di Pasquale was a rightful heir to Dafler's estate at the time of Dafler's death on June 8, 2011, but that Britton deliberately delayed probate of Dafler's will until April 3, 2013 (Appx. 70a, Complaint, para. 7), almost 7 months after Di Pasquale's death on September 10, 2012, id., thereby depriving Di Pasquale of any inheritance in her lifetime, and further diminishing the value of Di Pasquale's estate and James's share thereof.

⁶ In New Jersey, a complaint against the estate would have been titled: "In the Matter of the Estate of Mary Di Pasquale, Deceased." See R. 4:83-3. Thus, the caption of the complaint itself demonstrates that James was not seeking to recover compensatory damages from Di Pasquale's estate, which had already been probated, but from Britton and Corino in their individual capacities for fraud.

New Jersey guarantees the right to a civil jury trial for a cause of action for fraud under Article 1, Paragraph 9, of the New Jersey Constitution. 500 Columbia Turnpike Assocs. v. Haselmann, 275 N.J. Super. 166, 171, 645 A.2d 1210, 1213 (App. Div. 1994) (holding that fraud is a common law cause of action and that the right to a jury trial under Article I, Paragraph 9, of the New Jersey Constitution is inviolate). Further, New Jersey has a 6-year statute of limitations for fraud claims. N.J.S.A. 2A:14-1. Thus, James's complaint for fraud, which accrued on September 12, 2014 when James received Baier's expert report, and was filed on March 19, 2015, was well within the 6-year statute of limitations for fraud.

Britton and Corino never filed answers to the complaint. Instead, both respondents filed motions to dismiss on procedural grounds. Though Britton failed to provide notice of probate, Britton nevertheless claimed that James failed to challenge probate within the time prescribed by R. 4:85-1, and further claimed that her complaint for fraud, which was filed in the Law Division, was barred by the Appellate Division's holding in Garruto v. Cannici, 397 N.J. Super. 231, 936 A.2d 1015 (App. Div. 2007) (brothers, who were provided notice of probate, but who failed to timely contest probate of testator's will, were barred from filing tort claim in the law division).

James opposed the motion to dismiss, arguing that Garruto v. Cannici, supra, did not apply to bar her claim for damages for fraud because, unlike

the plaintiffs in Garruto v. Cannici, supra, James was never provided notice of probate.

James argued that timely notice of probate was an indispensable predicate to the court's holding in Garruto v. Cannici:

[W]e now determine that, although an independent cause of action for tortious interference with an expected inheritance may be recognized in other circumstances, it is barred when, as here, plaintiffs have failed to pursue their adequate remedy in probate proceedings of which they received timely notice.

Garruto, supra, 397 N.J. Super. at 240 (emphasis added).

Further, the complaint filed by James repeatedly alleged that she never received notice of probate of Di Pasquale's will:

Once again, Defendant Marie Britton, who was the Executrix of Mary Di Pasquale's Estate, delayed filing her will with the Probate office in Cape May County, New Jersey for about one year before filing the Probate paper work in the Cape May County's Surrogate's Office on 17 September 2013.

Defendant, Marie Britton, was intentionally deceitful and acted with a willful disregard of the State of New Jersey probate law by failing to notify Plaintiffs of her filing Probate on both Wills.

Defendant, Marie Britton, never gave proper notice as required by New Jersey Probate Law of the Probate filings to Plaintiffs, Rose T. James & Della Marie Di Pasquale, therefore denying Plaintiffs their legal right to contest both Wills within the Statute of Limitations according to the State of New Jersey Probate Law.

Appx. 70a to Appx. 72a, Complaint, para. 7.

2. Plaintiffs, Rose T. James and Della Marie Di Pasquale were never notified of Probate, therefore, denying their legal right under New Jersey Probate Laws to contest both wills

within the legal statute time limit specified in New Jersey Probate Law.

Appx. 72a, Complaint, para. 3, subsection 2.⁸

On June 8, 2015, the trial court granted respondents' motion to dismiss James's cause of action for fraud with prejudice (Appx. 8a). In its Memorandum of Decision on Motion, the trial court concluded that James's complaint was barred by R. 4:85-1 and Garruto v. Cannici, supra (Appx. 22a).

As set forth more fully below, the trial court's decision to dismiss James's cause of action for fraud with prejudice is arbitrary and irrational. Not only did the trial court misapply Garruto, the trial court never addressed the issue of whether James had a state-created right to a jury trial to recover compensatory damages on her cause of action for fraud. Instead, the trial court addressed the matter as though James had filed an equitable action to contest probate of the will, finding that Di Pasquale's will was probated on September 17, 2013, and that James, who lived out-of-state, had 6-months, until March 17, 2014, to contest probate of the will. Id.

Because James had a state-created right to a jury trial to recover \$2.7 million in compensatory damages on her cause of action for fraud, the trial

⁸ Though James's name is among those listed as next of kin in the application for probate of Daffler's will (Appx 94a), the record is devoid of the required "proof of mailing" necessary to show that Britton actually provided James notice of probate of Daffler's will. See R. 4:80-6 (requiring "proof of mailing" to be filed with the surrogate). In fact, the application for probate of Daffler's will lists James's address as "Unknown, FL", further supporting the claim of lack of notice of probate. As previously indicated, the record is totally devoid of any information which might infer compliance with the notice provisions of R. 4:80-6 as it relates to the probate of Di Pasquale's will, and respondents have never offered any evidence to the contrary.

court's order dismissing her fraud complaint with prejudice is arbitrary and irrational, depriving James of her protected property right in violation of substantive due process, contrary to the Fourteenth Amendment to the United States Constitution.

On December 12, 2016, the Appellate Division affirmed the trial court's order of dismissal substantially for the reasons expressed by the trial court (Appx. 5a to 7a). Once again, the Appellate Division misapplied Garruto. Further, the Appellate Division never addressed the issue of whether James had a state-created right to a jury trial to recover compensatory damages on her cause of action for fraud, rendering the decision of the Appellate Division arbitrary and irrational.

Petition for certification to the Supreme Court of New Jersey was denied by order filed on May 5, 2017 (Appx. 2a). The Supreme Court of New Jersey denied rehearing by order filed on July 10, 2017 (Appx. 1a). The Supreme Court of New Jersey also failed to address the lack of notice of probate and the issue of whether James had a state-created right to a jury trial to recover compensatory damages on her cause of action for fraud.

REASONS FOR GRANTING THE PETITION

James had a state-created right to a jury trial on her cause of action for fraud. A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. As such, James was entitled to an adjudication "appropriate to the nature of her case." Here, however,

James was deprived of her right to a jury trial. As such, the hearing afforded James was not an adjudication “appropriate to the nature of the case” but was instead a pretext for depriving James of her state-created right to a jury trial to recover damages on her cause of action for fraud.

Certiorari should be granted to determine whether James was deprived of a protected property right and her state-created right to a jury trial in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Certiorari should also be granted to determine whether substantive due process, traditionally applied to limit legislative or executive power, applies equally to prevent the loss of protected property rights by means of arbitrary, capricious and irrational judicial decree. The trial court’s misapplication of the decision in Garruto v. Cannici, *supra*, is arbitrary, capricious and irrational, in part, because Garruto had never previously been applied in a case where notice of probate is so clearly lacking, and certainly never applied to deprive a plaintiff of his or her state-created right to a jury trial as guaranteed by Article 1, Paragraph 9, of the New Jersey Constitution.

As opined by Justice Kennedy, a judicial decision that eliminates or substantially changes established property rights is “arbitrary or irrational” under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Stop the Beach Renourishment, Inc. v. Florida

Department of Environmental Protection, 560 U.S. 702, 737 (2010) (Justice Kennedy, concurring). The Court should take this opportunity to address the doctrine espoused by Justice Kennedy to determine whether James was deprived of a protected property right by arbitrary and irrational judicial decision-making.

The Court should also grant certiorari to determine whether the trial court's decision depriving James of her state-created right to a jury trial effectively deprived James of her First Amendment right of access to the courts, as applied to the States through the Due Process Clause of the Fourteenth Amendment.

I. PETITIONER WAS DEPRIVED OF A PROTECTED PROPERTY RIGHT AND HER STATE-CREATED RIGHT TO A JURY TRIAL IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Under Article I, Paragraph 9, of the New Jersey Constitution, James had a state-created right to a jury trial to recover \$2.7 million in compensatory damages on her cause of action for fraud. 500 Columbia Turnpike Assocs. v. Haselmann, *supra* (holding that fraud is a common law cause of action and that the right to trial by jury under Article I, Paragraph 9, of the New Jersey Constitution is inviolate). A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982). As such, James was entitled to an adjudication "appropriate to the nature of the case."

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) (an adjudication that deprives one of life, liberty or property must be preceded by notice and opportunity for hearing appropriate to the nature of the case).

The hearing appropriate to the nature of James's fraud case was established by Article I, Paragraph 9, of the New Jersey Constitution, as further settled by prior precedent in 500 Columbia Turnpike Assocs. v. Haselmann, *supra*. Because James was denied her state-created right to a jury trial, James was denied an adjudication "appropriate to the nature of the case."

Certiorari should be granted to determine whether James was deprived of a protected property right and her state-created right to a jury trial in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

II. THE TRIAL COURT'S DECISION ARBITRARILY AND IRRATIONALLY ELIMINATED AN ESTABLISHED PROPERTY RIGHT IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

In Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection, *supra*, Justice Kennedy concluded that "[i]f a judicial decision, as opposed to an act of the executive or the legislature, eliminates an established property right, the judgment could be set aside as a deprivation of property without due process of law[,] *id.*, 560 U.S. at 735, and that "[t]he Court would be on strong footing in ruling that a judicial decision

that eliminates or substantially changes established property rights . . . is ‘arbitrary or irrational’ under the Due Process Clause.” Id. at 737.

Here, the trial court’s decision depriving James of her stated-created right to a jury trial to recover \$2.7 million in compensatory damages on her cause of action for fraud is an arbitrary and irrational deprivation of a protected property right.

The following demonstrates just how arbitrary and irrational the trial court’s order of dismissal is: First and foremost, the Appellate Division in Garruto did not decide whether Garruto had a right to a jury trial under Article I, Paragraph 9, of the New Jersey Constitution on his claim of fraud in the inducement, and no New Jersey case had ever held that there was a right to a jury trial for fraud in the inducement. In contrast, James did have a right to a jury trial on her claim for legal fraud. 500 Columbia Turnpike Assocs. v. Haselmann, supra. Thus, the issue here, as it relates to the right to a jury trial, was never addressed by the Garruto court. The trial court’s misapplication of Garruto to deprive James of her state-created right to a jury trial is clearly arbitrary and irrational.

Second, the trial court misapplied the holding in Garruto. In Garruto, the Appellate Division barred a lawsuit by two brothers who were given timely notice of probate, but who failed to timely contest probate of the testator’s will. Garruto v. Cannici, supra, 397 N.J. Super. at 240 (“plaintiffs have failed to pursue their adequate remedy in probate proceedings of which

they received timely notice.") (emphasis added). Notice of probate was a necessary predicate to the court's holding in Garruto. Here, James was never provided notice of probate, let alone timely notice of probate. Once again, the trial court's misapplication of Garruto to deprive James of her state-created right to a jury trial was arbitrary and irrational.⁹

Third, the trial court also misapplied the holding in Garruto when it concluded that James's lawsuit in the Law Division for fraud was an impermissible collateral attack on probate. This is because James's complaint for fraud was not a collateral attack on probate. As indicated supra at page 7 and footnote 7, James never sued Di Pasquale's estate. To the contrary, James filed her cause of action for fraud in the Law Division of the Superior Court of New Jersey seeking a jury trial and \$2.7 million in

⁹ There is no genuine material dispute of fact regarding the lack of notice of probate in James's case. Britton never provided the required notice of probate, and the trial court and Appellate Division never found otherwise. Instead, the Appellate Division substituted the notice requirement for a theory of constructive notice, saying "plaintiff had consulted counsel about the wills before they were offered for probate and was 'aware, to some degree, of the wills dispositions' and was thus on notice of a potential forgery" (Appx. 5a-6a). First, it is impossible for James to have been aware, prior to probate, of a potential forgery of the wills. As the transcript of James's testimony shows, Britton and Corino both denied that there was will. See Appx. 39a to 42a, Transcript 5/29/15 Hearing, p. 15, line 22 to p. 16, line 1; p. 17, lines 4-12; and p. 18, lines 6-22. Those false and misleading representations, which were made to James and to the attorney that James consulted, are at the heart of her fraud claim. One cannot form an awareness of a potential forgery of a will that one has never seen and the very existence of is denied. In fact, it was not until January 2014 when James called the Cape May County surrogate's office that the existence of the will first came to light. James did not actually see the will until sometime later when she traveled from Florida to New Jersey to inspect the surrogate's file, and the forgery of the will was not established until James received Baier's expert report on September 12, 2014. Further, even constructive notice requires a good-faith effort on the part of the party responsible for providing notice. Here, Britton and Corino conspired to probate the will without notice in order to run out the clock. In such a case, the doctrine of constructive notice is inapplicable.

compensatory damages from Britton and Corino in their individual capacities. Clearly, James's complaint for fraud was not a collateral attack on probate, and the misapplication of Garruto to deprive James of her right to a jury trial to recover \$2.7 million in damages on her fraud claim is arbitrary and irrational.

Fourth, the trial court never addressed whether James had a protected property right to recover \$2.7 million in damages on her cause of action for fraud, and, most importantly for purposes of constitutional analysis, never addressed whether James had a state-create right to a jury trial to vindicate that protected property right. Because James had a protected property right to recover damages on her cause of action for fraud, and a state-created right to a jury trial, she was entitled to a ruling that addressed the specific property rights at stake before being deprived of those property rights. The absence of any such analysis renders the decisions of the trial court and the Appellate Division arbitrary and irrational. The state court decisions effectively eliminated an established property right. As such, the judgments of the state courts should be set aside as a deprivation of property without due process of law.

Though substantive due process has traditionally been applied to limit legislative or executive power, it should apply equally to prevent the loss of protected property rights by means of arbitrary, capricious and irrational judicial decree. The Court should take this opportunity to address the

doctrine espoused by Justice Kennedy to determine whether James was deprived of a protected property right by arbitrary and irrational judicial decision-making.

III. PETITIONER WAS DEPRIVED OF HER FIRST AMENDMENT RIGHT OF ACCESS TO THE COURTS

In Logan v. Zimmerman Brush Co., supra, the Court held that “a cause of action is a species of property protected by the . . . Due Process Clause.” Having made access to the courts the traditional forum for litigating such a cause of action, the Court went on to say that the government “may not deprive someone of that access unless the balance of state and private interests favor the government scheme.” Id., 455 U.S. at 430 n. 4.

Though traditionally viewed as a restraint on government conduct that infringes on the right of access to the courts, an infringement of the right of access by judicial decree is no different in its effect.

Here, the state’s interest in preserving the common law right to a jury trial for a cause of action for fraud was enshrined in Article I, Paragraph 9, of the New Jersey Constitution, and the private interest in preserving that right was reaffirmed by the court in 500 Columbia Turnpike Assocs. v. Haselmann, supra. Thus, the “government scheme” is in favor of preserving the right to a jury trial for a cause of action for fraud. 500 Columbia Turnpike Assocs. v. Haselmann, supra, 275 N.J. Super. at 171, 645 A.2d at

1213 (fraud is a common law cause of action and the right to a trial by jury under Article I, Paragraph 9, of the New Jersey Constitution is inviolate).

There can be no doubt that the trial court's application of Garruto to bar James's cause of action for fraud violated what had previously been held to be inviolate. As such, James was effectively deprived of her First Amendment right of access to the courts to recover \$2.7 million in damages on her cause of action for fraud.

CONCLUSION

James had a protected property right in filing a cause of action for fraud in the Law Division in order to recover \$2.7 million in compensatory damages against Britton and Corino in their individual capacities. Not only did the trial court's decision dismissing the fraud complaint with prejudice arbitrarily and irrationally deprive James of her protected property right, it also denied James access to the court by depriving her of her state-created right to a jury trial. For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



Rose T. James
In Propria Persona