

No. 17-7132

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

REPLY BRIEF

SUBMITTED BY:

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PRELIMINARY STATEMENT

James filed a Fraud and Forgery Complaint and the defendants and the lower courts ignored the Fraud and Forgery Complaint and misapplied Garruto v. Cannici, 397 N.J. Super. 231, 936 A.2d 1015 (App. Div. 2007) and New Jersey probate rules in a matter where it is undisputed that defendants NEVER NOTIFIED JAMES OF PROBATE in an 8 million dollar estate.

Respondents do not deny that New Jersey guarantees the right to a jury trial for civil causes of action under Article I, Paragraph 9, of the New Jersey Constitution. Respondents do not deny that petitioner Rose James ("James") filed a civil cause of action for fraud in the Law Division. Appx. 68a. Attached to the Fraud and Forgery Complaint are two prominent Forensic Document Examiners Reports confirming the Fraud and Forgery committed by both defendants. Respondents do not deny that the complaint filed by James named the respondents as defendants in their individual capacities. Id. Respondents do not deny 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.

Respondents do not deny that New Jersey courts have held that there is a state-created right to a jury trial for a cause of action for fraud filed in the Law Division -- nor could they. See 500 Columbia Turnpike Assocs. v.

Haselmann, 275 N.J. Super. 166, 171, 645 A.2d 1210, 1213 (App. Div. 1994) (holding that a cause of action for fraud is a common law cause of action and that the right to trial by jury on such a claim is inviolate).

James has a state-created right to a jury trial for a civil cause of action for fraud under Article I, Paragraph 9, of the New Jersey Constitution.

Significantly, respondents do not deny that “a cause of action is a species of property protected by the . . . Due Process Clause[]” under this Court’s holding in Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982), and do not deny that a judicial decision that eliminates or substantially changes established property rights would be “arbitrary or irrational” under the Due Process Clause. Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection, 560 U.S. 702, 735, 737 (2010) (Justice Kennedy concurring in part and concurring in the judgment).

Instead, respondents assert that James fails to provide a compelling reason for reviewing her case, Respondents’ Brief, pp. 4-6, that the dismissal of her cause of action does not constitute a deprivation of due process, id., pp. 7-8, and that the dismissal of her civil cause of action was not arbitrary, capricious or irrational. Id., pp. 8-10. James vehemently disagrees with the respondents. James has a right to Due Process and her demand for a jury trial in a Fraud and Forgery Complaint to recover compensatory damages of 2.7 million dollars from Corino and Britton in their individual capacities.

Corino and Britton never answered the Fraud and Forgery Complaint that was filed in March of 2015. Instead both misapplied Garruto.

The trial court's decision to dismiss a Fraud and Forgery Complaint with prejudice under the guise that James's Fraud and Forgery Complaint falls into probate matters is arbitrary, capricious and irrational judicial decision making.

This web of deceit was created by the nefarious deceitful acts of Defendant Corino. She was notified by James and Attorney Robert Garrett in October of 2012 (just 3 weeks after DiPasquale died in September of 2012). Ms. Corino was untruthful and denied preparing DiPasquale's will in an 8 million dollar estate. The will surfaced years later with Corino having prepared it. This problem would never have occurred if Corino had been truthful and produced DiPasquale's will in 2012. Instead she plotted and schemed to cheat James out of 2.7 million dollars of her rightful property and caused irreparable family damage. Appx. 72a.

Certiorari should be granted to determine whether James was deprived of a protected property right by arbitrary and irrational judicial decision-making.

I. THERE ARE COMPELLING REASONS FOR GRANTING THE WRIT IN THIS CASE

Contrary to respondents' arguments, the decisions of the lower courts, which deprived James of a protected property right to maintain a civil cause of action for fraud, and deprived her of her state-created right to a jury trial

to determine the merits of her fraud claims, do raise important questions of federal law that have not been, but should be, settled by the Court.

In Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection, 560 U.S. 702 (2010), Justice Kennedy stated 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.

The doctrine espoused by Justice Kennedy raises “an important question of federal law that has not been, but should be, settled by the Court[.]” Sup. Ct. Rule 10(c).

Further, James’s case provides the necessary foundation for resolving the question raised by Justice Kennedy. Significantly, respondents do not deny that a civil cause of action is a species of property protected by the Due Process Clause, and do not deny that James had a state-created right to a jury trial on her fraud claim under Article I, Paragraph 9, of the New Jersey Constitution. Respondents also do not deny that the decision of the trial court dismissing James’s complaint deprived her of a state-created right to a jury trial to determine the merits of her fraud claims.

Respondents do not and cannot ignore the facts. James filed her complaint in the Law Division and specifically demanded a jury trial as was her right under Article I, Paragraph 9, of the New Jersey Constitution and established precedence, see 500 Columbia Turnpike Assocs. v. Haselmann, supra. In opposition to respondents' motion to dismiss, she argued that she had a right to file a civil complaint against the respondents in the Law Division alleging fraud, and that respondent's reliance on Garruto was misplaced. On appeal to the Appellate Division, she continued to assert that she had a right to file her fraud complaint in the Law Division, arguing that the trial court's reliance on Garruto to dismiss her complaint was arbitrary and unreasoned and an abuse of discretion. In her petition for allowance of appeal to the New Jersey Supreme Court, she argued that the Appellate Division's reliance on Garruto was just as arbitrary and unreasoned as the trial court's decision. As indicated above, the lower courts repeated failure to address whether James had an established right to a jury trial on her cause of action for fraud is arbitrary, capricious and irrational. As such, the Court should take this opportunity to determine whether James was deprived of a protected property right by arbitrary and irrational judicial decision-making.

II. THE DISMISSAL OF PETITIONER'S CAUSE OF ACTION DOES VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

In their opposition brief, respondents begin by acknowledging that access to the courts is protected by the Due Process Clause of the Fourteenth

Amendment, but then claim that “Petitioner fails to show a deprivation of that property interest, or that such deprivation was without appropriate process due.” Respondent’s Brief, p. 7.

Curiously, respondents do not deny that James had a protected property interest in her cause of action for fraud to recover 2.7 million dollars in compensatory damages. See Logan v. Zimmerman Brush Co., *supra*, 455 U.S. at 428 (holding that “a cause of action is a species of property protected by the . . . Due Process Clause.”).

Though respondents argue vigorously that the lower court decisions should be upheld as a matter of interpretation of state law, they do not deny that the trial court’s application of Garruto to bar James’s cause of action for fraud violated what state law had previously been held to be inviolate; *i.e.*, her right to a jury trial under Article I, Paragraph 9, of the New Jersey Constitution. See 500 Columbia Turnpike Assocs. v. Haselmann, *supra*, 275 N.J. Super. at 171, 645 A.2d at 1213 (holding that a cause of action for fraud is a common law cause of action and that the right to trial by jury on such a claim is inviolate).

If James had a protected property interest in her cause of action for fraud, and a state-created right to a jury trial to vindicate that property interest, then there must be a compelling reason for barring her right of access to the courts to vindicate that property interest. Logan v. Zimmerman Brush Co., *supra*, 455 U.S. at 430 n. 4 (government may not deprive someone

of access to the courts unless the balance of state and private interests favor the government scheme). There was no compelling reason offered by the lower courts in James's case.

Here, the balance of state and private interests clearly favored upholding James's state-created right to a jury trial for her fraud claim. The state's interest in preserving the common law right to a jury trial for civil causes of action was enshrined in Article I, Paragraph 9, of the New Jersey Constitution, and the private interest in preserving the right to jury trial for fraud was reaffirmed by the court in 500 Columbia Turnpike Assocs. v. Haselmann, supra.

Because the balance of state and private interests is in favor of preserving the right to a jury trial for fraud claims, there can be no doubt that the judicial decision that arbitrarily and irrationally applied Garruto to bar James's cause of action for fraud effectively deprived her of her First Amendment right of access to the courts.

III. THE DISMISSAL OF PETITIONER'S CAUSE OF ACTION FOR FRAUD WAS ARBITRARY, CAPRICIOUS AND IRRATIONAL

Respondents argue that the lower court decisions did not violate James's right to substantive due process because the decisions were legally and factually sound. Respondents' Brief, p. 8. Respondents recite at length the facts relied on by the lower courts in misapplying Garruto, but fail to address, just as the lower courts failed to address, the issue of whether James

had a countervailing state-created right to a jury trial on her cause of action for fraud. In fact, respondents fail to address anywhere in their brief, just as the lower courts failed to address anywhere in their opinions, the law governing the disposition of James's cause of action for fraud. No mention is made of the jury trial demand in James's complaint. No mention is made of the right to a jury trial for civil causes of action guaranteed by Article I, Paragraph 9, of the New Jersey Constitution. No mention is made of the Appellate Division's decision in 500 Columbia Turnpike Assocs. v. Haselmann, supra, 275 N.J. Super. at 171, 645 A.2d at 1213 (holding that a cause of action for fraud is a common law cause of action and that the right to trial by jury on such a claim is inviolate).

Moreover, though respondents continue to argue in favor of upholding the lower court decisions, nowhere in their brief have they actually denied the claims made by James in her petition. Respondents do not deny that New Jersey guarantees the right to a jury trial for civil causes of action under Article I, Paragraph 9, of the New Jersey Constitution. Respondents do not deny that James filed a civil cause of action for fraud in the Law Division. Appx. 68a. Respondents do not deny that the complaint filed by James named the respondents as defendants in their individual capacities. Id. Respondents do not deny 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.

Respondents do not deny that New Jersey courts have held that there is a state-created right to a jury trial for a cause of action for fraud filed in the Law Division. 500 Columbia Turnpike Assocs. v. Haselmann, *supra*.

As previously stated, the lower courts repeated failure to address whether James had an established right to a jury trial on her cause of action for Fraud is arbitrary and irrational judicial decision-making.

James had a protected property interest in filing a complaint for fraud in the Law Division in order to recover 2.7 million dollars in compensatory damages from respondents in their individual capacities. Not only did the lower court decisions dismissing the complaint arbitrarily and irrationally deprive James of her protected property interest, it also deprived James of her First Amendment right of access to the courts by depriving her of her state-created right to a jury trial.

CONCLUSION

As noted by Justice Kennedy, “a judicial decision that eliminates or substantially changes established property rights . . . is ‘arbitrary or irrational’ under the Due Process Clause.” Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection, *supra*, 560 U.S. at 737. As such, the Court should take this opportunity to determine whether

James was deprived of a protected property right by arbitrary and irrational judicial decision-making in violation of her substantive due process rights as protected by the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Rose T. James".

Rose T. James
In Properia Persona