No. _____

In the
Supreme Court of the United States

JOSEPHINE M. TRIPODI AND GERI CARR TRIPODI,

Petitioners,

v.

NORTH COVENTRY TOWNSHIP,

Respondent.

On Petition for a Writ of Certiorari to the Pennsylvania Supreme Court

PETITION FOR A WRIT OF CERTIORARI

MICHAEL CONFUSIONE
Counsel of Record
HEGGE & CONFUSIONE, LLC
P.O. Box 366
Mullica Hill, NJ 08062-0366
(800) 790-1550
(888) 963-8864 (fax)
mc@heggelaw.com

Counsel for Petitioners

June 16, 2023

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

Does the Due Process Clause of the Fourteenth Amendment limit the power of a state court,

to order the compelled sale of a private person's real property as a penalty for civil contempt despite the person's repeated attempts to satisfy the alleged contempt?

to impose obligations and liabilities upon an intervening party who, in this case, neither owns nor has legal obligations for the real property in question?

PARTIES TO THE PROCEEDINGS

Petitioners Josephine M. Tripodi and Geri Carr Tripodi were the defendants in the Pennsylvania Court of Common Pleas, the appellants in the Pennsylvania Commonwealth Court, and the petitioners in the Pennsylvania Supreme Court. Respondent North Coventry Township was the plaintiff in the Pennsylvania Court of Common Pleas, the respondent in the Pennsylvania Commonwealth Court, and the respondent in the Pennsylvania Supreme Court.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings in any court that are directly related to this case except for *North Coventry Township v. Josephine Tripodi and Geri Carr*, currently pending in the Pennsylvania Commonwealth Court under Docket Nos. 1054 CD 2022, 1357 CD 2022, 248 CD 2023, and 453 CD 2023.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CASES

CONSTITUTION AND STATUTES

RULES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Josephine M. Tripodi and Geri Carr Tripodi petition this Court for a writ of certiorari to review the decisions of the Pennsylvania courts.

OPINIONS BELOW

The March 22, 2023 Order of the Pennsylvania Supreme Court denying Petition for Allowance of Appeal is unpublished and appears at Appendix A. The September 7, 2022 Memorandum Opinion of the Pennsylvania Commonwealth Court is unpublished and appears at Appendix B. The September 7, 2022 Order of the Pennsylvania Commonwealth Court is unpublished and appears at Appendix C. The September 8, 2020 Order of the Pennsylvania Court of Common Pleas for Chester County is unpublished and appears at Appendix D.

JURISDICTION

The Order denying Petition for Allowance of appeal was entered by the Pennsylvania Supreme Court on March 22, 2023. App. A. This Court's jurisdiction is invoked under 28 U.S.C.A. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law…"

STATEMENT OF THE CASE

This litigation is part of a long-standing dispute between North Coventry Township and Josephine Tripodi concerning 27 townhouse units that Josephine owns (Kline Place).

In October 2007, North Coventry Township lodged Kline Place with code violations. Josephine corrected the code violations, but the Township refused to return for reinspection within the 30-day time frame and, instead, filed a complaint against her in November 2007 alleging non-compliance with code violations.

In 2009, a Master was appointed by Pennsylvania's Court of Common Pleas (by August 26, 2009 Order) to oversee the property and reinspect the alleged code violations. The court ordered owner Josephine to establish a fund for the Master and Township to reinspect the code violations. Per the August 26, 2009 Order, the trial court judge established a fund for Josephine to pay $34,170.00 to the Master, and $12,411.96 to the Township, which Josephine paid along with a supersedeas totaling $55,898.35, penalties, late fees and interest. The trial court judge ordered Josephine to pay the Master for consultants and claimed future fees and costs as well. Josephine paid, pursuant to the 2009 Order, the fees for the Master and Township.

After Josephine paid for the fees and costs, she waited for the Master to "reinspect" her property and confirm compliance with the Township codes. This reinspection never happened. Instead, the matter continued to drag on for years – all the while Josephine

was deprived of the rights and benefits of her own private property. During this time period, Josephine conducted her own inspections and provided the trial court judge, the Master, and the Township documentation showing that her 2007 code violations had been corrected and that her property was safe for habitation. But Josephine's re-inspection reports were ignored.

By 2017, with still no reinspection having been done by the Master or Township, the trial court judge ordered a third party, Yerkees, to reinspect Josephine's property with regard to the 2007 code violations, causing Josephine to have to pay additional fees for the Master and Township. The trial court judge entered an order authorizing additional fees and expenses for the Master and consultants, and entering judgment for $61,803.75 in fees the Master claimed, along with $34,093.65 in additional fees for the Township's attorney. (*N. Coventry Twp. v. Tripodi*, No. 851 C.D. 2017, 2018 WL 2470645, at *1–3 (Pa. Commw. Ct. June 4, 2018)).

Then, when the dispute over claimed non-compliance with municipal codes appeared to be resolved at last, the Township erected a new charge: that Josephine was delinquent in failing to inspect for and remediate mold allegedly found in 12 of the 27 vacant townhomes that, by that time, the Master (not Josephine) was overseeing. The Master advised the trial judge that the estimate for "damages" was $160,000 – then demanded more than twice that ($350,000) from Josephine. Defendants objected, stressing that there is no federal, state, or even local

municipal law governing mold inspection or remediation, and that even the EPA had only "guidelines" for mold cleanup that confirmed there were no special requirements to remediate mold, which can be handled by homeowners, custodians, and building managers alike. The judge imposed new obligations on Josephine and her daughter, too, threatening, "either you're going to come up with the funds, or I'm going to order the sale of the property and that sale will be a fire sale." Defendants appealed, but Pennsylvania's Commonwealth Court affirmed, and Pennsylvania's Supreme Court denied review.

The appeal in question here then took place, arising from a September 8, 2020 Order the trial court entered that (1) compelled the sale of Josephine's property as claimed "sanction" for prior orders – the "fire sale" the trial judge had threatened, and (2) imposed on daughter Geri sanctions and obligations despite that Geri does not own or have legal responsibility for her mother's property. Appx. D. In this September 8 Order, the trial judge acknowledged that he was imposing the penalty and ordering forced sale of Josephine's real property despite the $336,330.78 that the Tripodis had offered to pay to satisfy whatever outstanding monies were claimed owed. The judge stated,

> During the August 27, 2020 proceeding, Defendants offered to pay the amount of $336,330.78 to satisfy all outstanding monies owed which include the amount estimated by Lewis Environmental to remediate the mold issues at the Property. This is the first offer by

> Defendants to comply with any of the Court's prior orders over the last thirteen (13) years. However, the offer would not resolve the code compliance issues that have existed for the past thirteen (13) years. The Court is not inclined to again engage with Defendants in the same contemptuous and dilatory conduct for the next thirteen (13) years. In addition, Defendant, Geri Carr Tripodi, offered during the hearing to buy the Property. However, she was obligated to buy the Property by a February 26, 2009 Court ordered agreement with which she never complied. Her purchase of the Property would not resolve any of the remediation and code compliance issues that have existed for the last thirteen (13) years." [Ex D]

The trial judge acknowledged that his September 8 Order met neither the procedural or substantive requirements for civil contempt (*McMahon v. McMahon*, 706 A.2d 350 (Pa. Super. Ct. 1998)). But the judge said that his Order "imposes reasonable sanctions for eleven (11) years of contemptuous conduct commencing with the Court's first finding of contempt of August 26, 2009 (also finding Appellants in contempt of three (3) prior trial Court Orders); and the trial Court's Order of September 22, 2010 finding Appellants in contempt for her deliberate and willful refusal to obey prior Orders; and the Court's Order of April 25, 2017 and the finding of contempt on January 6, 2020 of the Court's July 9, 2019 Orders." The Order "compelled the involuntary sale of the Property in a reasonable commercial manner" and was proper, the trial judge said:

> Despite entering into those agreements to settle the litigation at that point, Appellants never complied with those agreements or the Court Orders. As a result, the trial Court issued another Order dated August 26, 2009 finding Appellants in contempt of three prior Orders as well as an additional Order of June 12, 2009, concluding then that the conduct of the Appellants required the sale of the Property in a reasonable commercial manner. The Township then filed its fifth contempt petition resulting in the trial Court issuing an Order on September 22, 2010 finding the Appellants "deliberate and willful refusal to obey the prior Orders" of the trial Court. Appellants response to all these Orders were non-compliance and unsuccessful appeals to the Commonwealth Court. In response to a status hearing, the trial Court eventually issued the Order of April 25, 2017 which entered judgments for monies owed by Appellants. The April 25, 2017 Order was followed by the undersigned's July 9, 2019 Orders. The trial Court found Appellants in contempt of the July 9, 2019 Orders from the bench on November 4, 2019 (however the transcript of that finding was filed of record on January 6, 2020). [Ex. D]

The Tripodis appealed, arguing to Pennsylvania's Commonwealth Court that the trial judge had disregarded the procedural and substantive requirements for contempt, abused his discretion in ordering the ultimate penalty of a compelled sale of Josephine's real property, and violated fundamental

tenets of due process, also, by imposing legal obligations upon daughter Geri Carr, who neither owned nor had legal responsibility for the property.

But the Commonwealth Court rejected defendants' arguments and affirmed the September 8 Order issued by the trial judge.

With regard to the forced sale of Josephine's real property, the Commonwealth Court said that the September 8 Order "did not contravene the substantive and procedural requirements for a contempt ruling against Appellants." "[D]ue process requires no more than notice of the violations alleged and an opportunity for explanation and defense," the court said. The Commonwealth Court cited the trial judge's statement that the Order "was entered to effect remediation of the [] Property which Appellants repeatedly failed to do and [sic] failed to cooperate with the Master and [the] Township to inspect and remediate." "Accordingly, the trial court did not abuse its discretion in compelling the Property's sale." Ex. B.

With regard to the imposition of sanctions and obligations on non-owner Geri, the Commonwealth Court noted its rejection of the prior argument in this regard (*North Coventry Township v. Tripodi* (Pa. Cmwlth. No. 1073 C.D. 2019, filed Mar. 9, 2021), *appeal denied* (Pa. No. 161 MAL 2021, filed Oct. 1, 2021)). "Here, this Court similarly holds that the trial court did not abuse its discretion by sanctioning Carr," noting, "[t]his holding is especially proper in light of the fact that Carr again proposed purchasing the Property at the August 27, 2020 hearing."

Petitioners sought review from Pennsylvania's Supreme Court but the Tripodis' Petition for Allowance of Appeal was denied on March 22, 2023.

REASONS FOR GRANTING THE PETITION

I. Does the Due Process Clause of the Fourteenth Amendment limit the power of a state court to order the compelled sale of a private person's real property as a penalty for civil contempt – when the judge refuses to accept the person's offers of payment to satisfy the contempt?

The Due Process Clause of the Fourteenth Amendment provides fewer protections to a civil contemnor than a criminal contemnor, *Turner v. Rogers*, 564 U.S. 431, 441, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011); *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 635, 108 S. Ct. 1423, 99 L. Ed. 2d 721 (1988), but it provides some important ones. As the Court has explained, it is specifically "[t]he conditional nature of the imprisonment" for civil contempt, which is "based entirely upon the contemnor's continued defiance," that "justifies holding civil contempt proceedings absent the safeguards" of criminal due process like "indictment and jury." *Shillitani v. United States*, 384 U.S. 364, 370–71, 86 S. Ct. 1531, 16 L. Ed. 2d 622 (1966). Therefore, "the justification for coercive imprisonment as applied to civil contempt depends upon the ability of the contemnor to comply with the court's order." *Shillitani*, 384 U.S. 364 (*citing Maggio v. Zeitz*, 333 U.S. 56, 76, 68 S. Ct. 401, 92 L. Ed. 476 (1948)). And when that rationale does not exist because the contemnor "has no ... opportunity to purge himself of

contempt," confinement of a civil contemnor violates due process. *Id*. Civil contemnors must "carry 'the keys of their prison in their own pockets.'" *Shillitani*, 384 U.S. 364 (*quoting In re Nevitt*, 117 F. 448, 461 (8th Cir. 1902)); *Topletz v. Skinner*, 7 F.4th 284 (5th Cir. 2021).

For instance, in *Shillitani*, 384 U.S. at 371, the Court held that, after a grand jury proceeding had concluded, it violated due process to continue to hold two civil contemnors who had been jailed for refusing to testify before the grand jury. *Shillitani*, 384 U.S. 364. "Once the grand jury ceases to function," "the rationale for civil contempt vanishes, and the contemnor has to be released." *Id*. at 372.

That is the case with regard to the Tripodis, because, however the September 8 Order is characterized, it forces an involuntary sale of Josephine's property regardless of what she does to comply with the court orders. The state trial court judge acknowledged that he was imposing the penalty and ordering forced sale of Josephine's property despite the $336,330.78 payment that the Tripodis had offered to satisfy whatever outstanding monies were claimed owed:

> During the August 27, 2020 proceeding, Defendants offered to pay the amount of $336,330.78 to satisfy all outstanding monies owed which include the amount estimated by Lewis Environmental to remediate the mold issues at the Property. This is the first offer by Defendants to comply with any of the Court's prior orders over the last thirteen (13) years.

> However, the offer would not resolve the code compliance issues that have existed for the past thirteen (13) years. The Court is not inclined to again engage with Defendants in the same contemptuous and dilatory conduct for the next thirteen (13) years. In addition, Defendant, Geri Carr Tripodi, offered during the hearing to buy the Property. However, she was obligated to buy the Property by a February 26, 2009 Court ordered agreement with which she never complied. Her purchase of the Property would not resolve any of the remediation and code compliance issues that have existed for the last thirteen (13) years.

The Court should grant Certiorari here to clarify that the state trial court order violates due process because, the record shows, it is now "impossible" for the alleged contemnor to purge the contempt, *cf. Turner*, 564 U.S. at 441–42 (noting civil contempt differs from criminal contempt in that it seeks only to "coerc[e] the defendant to do" what a court had previously ordered him to do, and that "[a] court may not impose punishment "in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order") (*quoting Hicks on Behalf of Feiock*, 485 U.S. at 638).

It is no answer, this Court should clarify, for a state judge to simply label his order as something other than a penalty for contempt. The September 8, 2020 Order expressly references that it was being issued after "having found Defendants to be in civil contempt of the Court's Orders of July 9, 2019 and Defendants

remaining adamant in refusing to comply with Orders of this Court, including this Court's Order of August 26, 2009, …" The Court should clarify that federal due process at a minimum requires compliance with state law requirements for civil contempt, which the state trial judge did not follow in issuing the September 8 Order -- (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed;] (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent. *Epstein v. Saul Ewing, LLP*, 2010 PA Super 190, 7 A.3d 303, 318 (2010); *Lachat v. Hinchcliffe*, 769 A.2d 481, 489 (Pa. Super. Ct. 2001). The state court judge did not even cite a standard for contempt or assess the required mental intent of each party being charged. The judge simply pronounced both defendants to be in contempt.

The Court should clarify that a state court's failure to follow its own state's procedural and substantive requirements for civil contempt violates the contemunor's due process rights under the Fourteenth Amendment, *see*, *e.g.*, *Hart v. Hart*, 278 So. 3d 193, 193–94 (Fla. Dist. Ct. App. 2019) (ruling lower court's failure to comply with the requirements of Florida law on civil contempt "results in a violation of the opposing party's due process rights"). If the purpose of civil contempt is to compel performance of court orders, due process requirements must apply to the penalty for contempt as well.

A court is not supposed to use contempt to punish a civil litigant beyond what is necessary to compel compliance with the court order or as pretext to obtain

something else – which is exactly what state court judge Mahon did, since his September 8 Order compelled the very "fire sale" of Josephine's property that the judge had previously threatened. Ordering a forced sale of property that Josephine has owned for so many years is particularly suspicious in light of record evidence indicating how the "code" and "mold" charges against Josephine began in the first place:

1. In July 2007, a Township representative verbally advised Josephine Tripodi to sell Kline Place to the Township or she would get code violations.

2. Tripodi did not sell Kline Place.

3. October 2007, Tripodi got code violations for Kline Place.

The Court should grant Certiorari to address these state court rulings in the context of Josephine Tripodi's due process rights under the Fourteenth Amendment.

II. Does the Due Process Clause of the Fourteenth Amendment limit the power of a state court to impose obligations and liabilities upon an intervening party who, in this case, neither owns nor has any legal obligations for the property in question?

As noted, Josephine Tripodi owns the property. Her daughter, Geri Carr, does not own the property and has no legal responsibility for it. Her only responsibility is a moral one to her aging mother.

Despite that, the state courts imposed the same legal obligations and liabilities on Geri Carr as against

her mother – ordering Geri to pay $500,000 for mold inspection and remediation and other costs and fees claimed by the Township over the property, and to provide personal financial information to the Master.

The state courts said that all of this was permissible because Geri sought permissive intervention in this civil action. But this was at the court's direction, and only because Geri was proposing to buy her mother's property – something that has not occurred.

The Court should grant Certiorari to address this important area of law affecting countless numbers of litigants. The Court should clarify that imposing these obligations violates Ms. Carr's due process rights. That Ms. Carr offered to buy her mother's property did not transform her into an owner or impose upon her the same legal obligations that the property owner has.

The Court should clarify that permissive intervention in a civil lawsuit, also, does not transform a non-party into a party with the same obligations and liabilities. Under Fed. R. Civ. P. 24, for instance, a party has the *right* to intervene in a civil action, but that does not mean that the party also acquires the same obligations and liabilities.

The Court should address whether the Due Process Clause of the Fourteenth Amendment limits a state court's ability to impose obligations and liabilities on an intervening party, as the Pennsylvania courts have imposed on Geri Carr. The Court should hold that the Due Process Clause prohibits a state court from enforcing such obligations upon a non-owner of

property who has merely permissively intervened in a civil lawsuit.

This area of law is unclear. In *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), the Court addressed a federal district court's inherent power to impose financial sanctions for abuses of the judicial process against a non-party who was the sole shareholder and director of a company named as the defendant in the action. But there the district court said that the non-party had engaged in tactics to prevent consummation of the sale and acted in bad faith conduct to interfere with actions against the company he solely owned. That ruling does not extend to a situation like Geri Carr's, the Court should clarify, *cf. Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 971 (11th Cir. 2012) ("[C]ourts that have considered the issue generally agree that this sanction power extends to a person outside the territorial limits of the court that issued the injunctive order, provided that the person had actual notice of the order and acted in concert with the party explicitly enjoined"); *Waffenschmidt v. MacKay*, 763 F.2d 711, 717–721 (5th Cir. 1985); *ClearOne Commc'ns, Inc. v. Bowers*, 651 F.3d 1200, 1215–16 (10th Cir. 2011); *S.E.C. v. Homa*, 514 F.3d 661, 673 (7th Cir. 2008); § 2956 Persons Bound by an Injunction or Restraining Order, § 2956 Persons Bound by an Injunction or Restraining Order, 11A Fed. Prac. & Proc. Civ. § 2956 (3d ed.) (noting court ordinarily lacks power to issue order against nonparty absent "*in personam* jurisdiction" and "only significant exception to this rule involves nonparties who have actual notice of an injunction and are guilty

of aiding or abetting or acting in concert with a named defendant").

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

MICHAEL CONFUSIONE
Counsel of Record
HEGGE & CONFUSIONE, LLC
P.O. Box 366
Mullica Hill, NJ 08062-0366
(800) 790-1550
(888) 963-8864 (fax)
mc@heggelaw.com

Counsel for Petitioners

Dated: June 16, 2023