

II. Summary of facts as presented in litigants actual Petition for Certification before NJ Supreme Court; (Petition denied)

Petition No. 57,372 - Asarnow v. State of NJ, Superior Court of NJ

(Detailed facts and events follows the below petition.)

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1. Matter

The matter really demonstrates what can happen when an ordinary taxpayer seeking his property rights and who chooses not to pay to play is denied justice due to a lack of accountability in the judiciary.

Petitioner relies substantially on his Appellate Brief with original and amended complaints, and summarizes: Petitioner claims he has been denied meaningful access to the courts in 3 original matters as well as in his current effort to address this as a new matter. Petitioner has yet to receive one substantive bite at the apple where all laws are applied to him as to others on the real issues in question. Petitioner further claims this is not in error. This has resulted in such perverse, evil decisions as:

- Petitioner having to pay someone for the privilege of storing their car for them for three years though they admitted to knowing of the closing on the same commercial building previously owned and occupied by them, and removed two other vehicles, yet would neither remove the 3rd vehicle or pay any storage and failed to make formal demand until nine months later. (See Verified Complaint). As part

of his claims, petitioner sought quantum meruit or just compensation, a basic right afforded under the law yet denied him.

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- Denying plaintiff standing for even ordinary equitable relief to have zoning laws enforced on properties immediately adjacent to and across the street from his own commercial property. The trial court fails to adjudicate or render findings on almost all counts of the complaint and substitutes itself as jury. (Virtually all the judges assigned to the matter either come from the vicinity of Long Branch or appear to have some connection to Long Branch and its Sewerage Authority and their respective attorney's law firm and the Long Branch Mayor or to those looking out for Plaintiff's neighbor- see tort notice.) The Appellate Div. affirms that Plaintiff "has no standing to claim dereliction in the enforcement of ordinances" (VC, Pa90). Under the land use act, everyone knows that those within 200 feet of a property proposing certain improvements are automatically deemed to have standing to receive notice and comment/object

at zoning hearings without need for appraisals or other arbitrary impediments to prove standing. An appraisal which was later submitted and showed damages attributable to Long Branch's failure to enforce the zoning ordinances was nevertheless ignored by the trial court. Long Branch is an active participant in allowing the one neighbor to evade the permitting process for the illegal nonconforming use which continues to increase. The refusal to enforce is palpably unreasonable (no limitation of resources was ever argued by

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Long Branch) and therefore illegal and corrupt to all, it seems, but the NJ courts.

- The lower court ordering Plaintiff to pay \$3022.93 in costs in the Long Branch matter including Supreme Court and Appellate Div. Costs. As was pointed out to the court, this is contrary to current statutes wherein costs are to be applied for and garnered separately at each level, and the court therefore had no jurisdiction as to Supreme Court and Appellate div. costs. Also, as the parties had earlier executed a voluntary settlement which disposed of all issues

(including costs) so an appeal could proceed, the courts action was contrary to strong state policy to settle. Petitioner believes the trial judge, who professed experience in deciding many costs motions, was improperly using the occasion to exact revenge for personal reasons, that is for Plaintiff's criticism of and reporting to AOC of his fellow Monmouth judges. He still serves in Monmouth. Nevertheless, after 3 cost hearings at taxpayer's expense, Long Branch then withdraws the awarded costs in return for Plaintiff's promise not to sue for breach of contract or further appeal the costs Order.

In the current matter, the court self-servingly seeks to spin the matter as one of plaintiff simply being a dissatisfied litigant. "In two counts, Plaintiff's complaint alleged that State defendants deliberately wronged him by

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issuing adverse rulings in two civil lawsuits in which he was a party" (Appellate Div opinion)

Both lower and appellate div. improperly construe and seek to spin/cast the entire complaint as a 42 USCS sec 1983

and personal injury/tort claims matter so that it can apply a 2 year statute of limitation and thereafter find that the two years is exceeded based on a faulty accrual date for the non-discreet, evolving constitutional "injury".

Based upon this faulty procedural dismissal, it then denies Plaintiff the right to amend his complaint.

Plaintiff asserts a fair reading of the original Complaint (as argued, the complaint is to be read in the light most favorable to plaintiff, and plaintiff is master to decide the basis of his complaint, yet pro se plaintiff is being held to the highest standards and the court imputes the basis of the complaint, to attain the obviously predetermined goal of dismissal) shows both counts to be founded directly upon sections of the US and NJ constitutions with no mention of 42 USCS 1983. Alternative relief is pled in both counts, as encouraged by the Rules, and the First Count contains no reference whatsoever to the Tort Claims Act. Any damages sought clearly stem as consequence of the constitutional tort.

&#To prop up its contrived dismissal, both courts rely

solely upon personal injury/tort claims and 42 USCS 1983

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cases, though irrelevant to the matter at hand. Strauss v. State , a recognized exception to the Tort Claims Act involving constitutional tort, and a case relied upon by Plaintiff, is similarly turned into and improperly interpreted as a tort claims matter by the trial court. As the court dismisses based upon a non-applicable statute of limitations, this raises the larger issue of the statute of limitations to be applied to matters founded directly upon the NJ and US Constitutions. This has not been decided by the US or NJ Supreme Courts. Plaintiff's tort notice and writings to AOC give an idea of how the corruption may be occurring though the fact that it is occurring at all and being allowed and upheld by the higher courts is sufficient for a constitutional claim. Lastly, plaintiff contends (see VC) the denial of meaningful access is purposeful and not in error and that a reasonable jury could find such if allowed. Plaintiff wonders if this is one of the fruits of

liberty, freedom from tyranny and rule of law our President speaks of and which our soldiers are fighting to secure via Iraq and elsewhere. Ironically, Petitioner surmises he would receive a fairer disposition, with full respect paid to basic property rights, in Iraq, Iran or Cuba than he has in this venue and will post this petition on his website as an example of the time being right for elections for NJ judges.

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2. Questions Presented

Petitioner relies substantially on the main and sub-points contained in the Legal Argument of his Appellate Brief and incorporates them herein, without repeating, as the questions presented for consideration. Petitioner adds that several factors can be used to distinguish his matter from others without merit, among them, at what point does the denial of relief become purposeful and not honest error. Should certification and oral argument be granted, Petitioner would be pleased to elaborate on these to ease the Court's concerns about a possible onslaught of similar claims.

3. Errors

Petitioner refers to sections 1 and 2 of his petition and incorporates them herein, without repeating. Petitioner adds that the main error is in the misconstruing of Plaintiff's entire cause of action so to reach the predetermined goal of dismissal. The sole, lonesome case submitted by the Appellate Div. to prop up its decision is yet another 1983 action taken in Federal court in distant Oklahoma wherein judges and the State and its certain organs are named parties and are immune for reasons given therein and in Plaintiff's Appellate Brief. Since Plaintiff has not brought similar action and has named no judges and is in State Court, the case is respectfully, invalid and

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irrelevant. As with the trial court, the Appellate Div. has failed to offer one controlling case founded directly upon the US or NJ Constitutions which applies a 2 year statute of limitations and which calculates the accrual period in the same manner as a personal injury matter.

4. Reasons for Granting Certification

1. Plaintiff's matter is founded directly upon the US and NJ constitutions. The S/L applied in this matter denies justice. (See Appellate Div. Brief)

2. The S/L, if any to be applied in matters founded directly upon the US and NJ constitutions is unsettled and should be resolved to prevent further denial of justice and to enable accountability of the state and its judiciary for good cause shown.

3. The courts supervisory function is needed to correct the obvious denial of justice in the within and future matters. Petitioner only hopes that the Supreme Court Clerk's office, which can screen and reject petitions and certify Orders on behalf of the Court is immune from influence by the same dark forces which seek to undermine his due process rights and that the court will actually see and review the papers.

4. The court's construing of Plaintiff's cause of action conflicts with that of the US and NJ Supreme Courts which recognize constitutional claims founded directly upon the US

and NJ Constitutions.

5. The decisions, left unremedied, and which appear unfair, unjust and corrupt on their face, will stain the reputation and credibility of this court which claims on its website to be a model state court.

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5. Comments on the Appellate Div. Opinion

Petitioner refers to section 1-3 of his petition and adds:

Based upon his previous experiences, petitioner surmises the appeal was not randomly assigned but rather so the desired end result of dismissal could be assured. Plaintiff asked the clerk upon filing but was not given information about the procedure used to assign the appeal. Petitioner would have liked to see a lottery type cage with numbers for each panel/part contained therein and with the selection/assignment to be made in his presence. Since Petitioner made these same arguments in the trial level as to this not being a 1983 or an exclusively Tort claim action, and they were ignored by the Appellate Div., a reasonable person can assume it too was not really done in

error, but was purposeful.

6. Conclusion

Based upon the evidence of record and for the foregoing reasons, petitioner hereby respectfully requests the court to grant his Petition and oral argument.

Respectfully Submitted,

Dated; January 25, 2005

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