

05398 _____ JUD : HOUSE JOINT RESOLUTION NO. 71
 : CLAIMS COMMISSIONER NO. 23163
 :
DOROTHY A SMULLEY
CLAIMANT
v. :
STATE OF CONNECTICUT : MARCH 23, 2015
RESPONDENT : TESTIMONY OF MARCH 25, 2015

**CLAIMANT'S MOTION
FOR RECONSIDERATION OF DISMISSAL
AND JUDGMENT**

Claimant Dorothy A Smulley moves for reconsideration of the Claims Commissioner's dismissal of her action. Upon information and belief, the Commissioner incorrectly ruled on claimant's case by dismissing her action.

I. INTRODUCTION

Claimant is a resident of Stratford, Connecticut, and have been for more than 30 years. Claimant's principal residence is located in a community ownership interest association. In 2009 I suffered extensive interior water damage in excess of \$34,000 to claimant condominium unit caused by the association's defective roof. The association provided less than \$5,700 to pay for claimant repairs because the association failed to maintain adequate insurance. Claimant own insurance paid approximately \$6,000. The association failed to reconsider providing additional funds for repairs irrespective of their responsibility to do so. Because of the association's failure to provide additional funds, claimant husband and I decided to file a small claim for those additional funds instead of filing a lawsuit in Superior Court because of the time and expense to do so.

II. FACTUAL AND PROCEDURAL HISTORY

1. As a self-represented party, claimant filed a claim for additional funds, \$5,000, the statutory limit. After a fully contested hearing on the merits, Magistrate Rudnik ordered judgment in claimant's for \$5,000 plus costs. Prior to final judgment being rendered, defense counsel asked for a continuance alleging his intent to settle the matter outside court. Defense counsel lied. Defense counsel telephoned the clerk at centralized Small Claims. Claimant's judicial docket case file was coded inactive.

2. After many months and claimant numerous conversations with the clerk, the clerk agreed to set up a second hearing and did so with another magistrate, Susan Monks. Magistrate Monks decided she would hear claimant case as if never heard before. Magistrate Monks destroyed the paper file and decision left by Magistrate Rudnik. Magistrate Monks ordered judgment in claimant favor. The association defaulted. I obtained a bank execution from the Small Claims Clerk. I turned the matter over to the State Marshall for service. Defense counsel telephoned the Clerk. The clerk telephoned the State Marshall. Service of the bank execution did not proceed.

3. Magistrate Monks scheduled a third hearing. Defense counsel said claimant \$5,700 insurance loss proceeds check belonged to the association. Defense counsel said claimant agreed to accept the \$5,700 check as a settlement. Magistrate Monks agreed. Claimant protested because no evidence existed for defense counsel's false testimony. Magistrate Monks asked defense counsel for evidence. Defense counsel said he forgot to bring the paper which had claimant's signature. Magistrate Monks agreed with defense counsel. Defense counsel said judgment should be found for the association. Magistrate Monks agreed and issued an order garnishing claimant's insurance loss proceeds check

and ordered claimant pay the association the full \$5,700. Defense Counsel said claimant should pay his legal fees. Magistrate Monks agreed and issued an order claimant was to pay defense counsel \$515.98.

4. Magistrate Monks issued her decision January 7, 2012. Defense counsel telephoned Magistrate Monks. Magistrate Monks issued another decision January 13, 2013. Claimant filed a motion to open judgment. Magistrate Monks denied claimant's motion. Claimant filed a motion for Magistrate Monks' disqualification. Magistrate Monks denied claimant's motion. Claimant filed for reconsideration claiming exemption rights. Magistrate Monks denied claimant's motion.

5. Defense counsel telephoned the Clerk's office. The Clerk issued a notice the association made satisfaction of judgment when no such satisfaction had been filed by claimant. As of December 16, 2012, small claims docket SCC 384121 was purged from the state judicial branch case list.

6. Claimant filed a writ of error with the Appellate arguing exemption rights and violation of due process rights. Defense counsel said claimant was seeking, 'a second bite of the apple.' The Appellate dismissed claimant's appeal without articulation.

7. Claimant filed a claim with the Claims Commissioner. The state's assistant Attorney General said claimant was seeking 'a second bite of the apple.' The Claims Commissioner dismissed claimant claim.

8. Claimant filed for review by this Judiciary Committee. This Committee confirmed the Claims Commissioner's dismissal.

II. LEGAL GROUNDS

1. The Judicial Department of the state has the duty and power to put in place an effective administration of justice. CGS § 51-1a ¹.

Those duties include, (a) examine the administrative methods and systems employed in the Judicial Department and its constituent courts; (b) implement programs for the fair and prompt disposition of cases; (c) develop education programs for judges, magistrates and other personnel of the Judicial Department; (d) supervise administrative methods employed in clerks' offices. CGS § 51-9 ².

2. The rules of procedure mandate judges of Superior Court to make orders and rules necessary for hearing and determination of small claims including suitable forms of procedure. CGS 51-15(a) ³.

3. Judges of Superior Court are mandated to adopt orders and rules for the hearing and determination of small claims in accordance with CGS 51-193t ⁴.
CGS 51-15(b) ⁵.

III. THE STATE JUDICIAL BRANCH ACTED IN EXCESS OF ITS STATUTORY AUTHORITY.

1. Magistrate Monks permitted defense counsel to mandate proceedings and outcome in violation of Practice Book § 24-19 ⁶ which deprived claimant of notice and her right to a respond on the record.

2. Magistrate Monks removed and destroyed Magistrate Rudnik's paper decision from the court file which favored plaintiff including evidence of the continuance and claimant's estimates and receipts of damages.

3. Magistrate Monks conducted a second and third trial de novo instead of limiting those proceedings to a review of the record.

4. Magistrate Monks unlawfully garnished, in full, claimant's insurance company loss proceeds of \$5,700 in violation of claimant's exemption rights. CGS § 52-352b(q)(t) ⁷

5. Magistrate Monks exceeded the Small Claims session jurisdictional limit of \$5,000 thereby awarding an impermissible and unlawful deficiency judgment. CGS § 51-15(d) ⁸; P.B. § 24-2 ⁹.

6. Claimant had no notice Magistrate Monks would garnish claimant's insurance company loss proceeds which effectively denied claimant her right to notice and a fair hearing on her claim of exemption.

7. Magistrate Monks unlawfully awarded attorneys fees of \$515.98 not claimed.

IV. THE STATE JUDICIAL BRANCH VIOLATED CLAIMANT DUE PROCESS RIGHTS.

A fundamental tenet of due process of law is, a person, whose property rights will be affected by a court's decision, is entitled to be heard at a meaningful time and in a meaningful manner. U.S. Constitution, 5th ¹⁰ and 14th ¹¹ amendments; Connecticut constitution Article First § 10 ¹².

The state judicial branch assigned Magistrate Monks, a novice and inexperienced adjudicator unfamiliar with law beyond real estate. Magistrate Monks' inexperience opened the door for defense counsel to dictate procedure and the adjudication of claimant's claim. Defense counsel did so knowing the doctrine of absolute immunity ¹³ provided a protective shield from third-party liability. Claimant was self-represented.

Claimant does not qualify for the right of absolute immunity. The judicial branch created a due process conflict when it knew or should have known in the exercise of reasonable care, novice, inexperienced magistrates are appetizers on which defense counsels feed. Thus, the affect on due process creates questions of significant public importance.

Magistrate Monks failed to recognize defense counsel's unlawful interference with judicial adjudication and ministrations. If Magistrate Monks did so, she failed to give consideration to claimant's self-represented status, a status which is victimized by defense counsel's absolute immunity to commit fraud and withhold evidence in a judicial proceeding. The unlawful garnishment of claimant's insurance loss proceeds check without notice or hearing, the unlawful rendering satisfaction of claimant's judgment was unsupported by the factual record. Yet and because the unsupported actions were made by an attorney, Magistrate Monks chose to allow the unlawful actions to stand irrespective of the prejudicial and fatal consequences to the claimant. Attorney absolute immunity is a bar to due process rights when one party is self-represented and the other, counsel represented. Well over 99% of all small claims have this balance of unequal power.

In this matter, the balance of unequal power created by Magistrate Monks, denied claimant her due process rights of final judgment of \$5,000, denied the execution of the judgment and denied claimant's insurance loss proceeds of \$5,700, a statutory exemption. Magistrate Monks did this without notice and without hearing. The state judicial branch's inadequate screening and appointment procedures for new magistrates resulted in the excesses of Magistrate Monks' authority. The excesses represent unreasonable measures unduly harsh and prejudicial and violated claimant's due process rights.

IV. RELIEF REQUESTED

The collective excesses and failures by the state judicial branch present an issue of law and fact for which the state is liable.

WHEREFORE, claimant respectfully moves for reconsideration of the Claims Commissioner's dismissal and respectfully moves for judgment authorizing claimant to file a suit against the state as would be just and equitable.

OR, IN THE ALTERNATIVE,

Claimant respectfully moves for reconsideration of the Claims Commissioner's dismissal and respectfully moves for a monetary judgment in the amount of \$11,921.25 which represents claimant's \$5,000 judgment, her \$5,700 insurance loss proceeds exemption plus cost of \$1,231.25.

PLAINTIFF


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FOOTNOTES

- ¹ CGS § 51-1a provides in relevant part, "The Judicial Department of the state shall consist of the ...Superior Court... For purposes of the general statutes, "Judicial Branch" means the Judicial Department."
- ² CGS § 51-9(6) provides in relevant part, "Examine the administrative methods and systems employed in the Judicial Department and its constituent courts..."
- ³ CGS 51-15(a) provides in relevant part, "...the judges of the Superior Court shall make such orders and rules as they deem necessary...for the hearing and determination of small claims..."
- ⁴ CGS 51-193t provides in relevant part, "...the hearing and determination of small claims matters may be assigned to magistrates..."
- ⁵ CGS 51-15(b) provides in relevant part, "The judges of the Superior Court shall adopt orders and rules for the hearing and determination of small claims..."
- ⁶ PB § 24-19 provides in relevant part, "The defendant or representative may claim any setoff or counterclaim... Such written setoff or counterclaim may be filed at any time on or before the answer date or upon the granting of motion to open. Upon the making of such claim by the defendant, the clerk shall give notice to the plaintiff by first class mail, of the setoff or counterclaim and shall notify the parties of the new answer date..."
- ⁷ CGS § 52-352b provides in relevant part, "The following property of any natural person shall be exempt :(q) All moneys due the exemptioner from any insurance company on any insurance policy issued on exempt property, to the same extent that the property was exempt... (t) The homestead of the exemptioner..."
- ⁸ CGS § 51-15(d) provides in relevant part, "The procedure for the hearing and determination of small claims...by the judges of the Superior Court shall be used in all small claims sessions of the court..."
- ⁹ PB § 24-2 provides in relevant part, "In no case shall the damages claimed exceed the jurisdictional monetary limit fixed by statute, including attorney's fees and other costs of collection..."
- ¹⁰ US Constitution, Fifth Amendment provides in relevant part, "[N]or shall any person... be deprived of life, liberty or property without due process of law..."
- ¹¹ US Constitution, Fourteenth 14th Amendment provides in relevant part, "[N]or shall any State deprive any person of life, liberty or property without due process of law..."

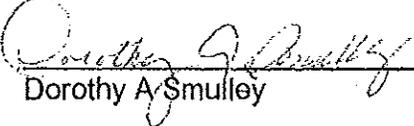
¹² Connecticut constitution Article First § 10 provides in relevant part, "All courts shall be open, and every person for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

¹³ *Simms v Seaman*, 69 A.3d 880, 308 Conn.523 (2013).

CERTIFICATION OF SERVICE

I certify a copy of the foregoing was mailed or electronically delivered today to:

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Dorothy A Smulley