No. 20-125

In The
Supreme Court of the United States

IRON STONE REAL ESTATE FUND I, L.P.,
IRON STONE REAL ESTATE GROUP I, LLC,
and ANDREW V. EISENSTEIN,

Petitioners,

v.

STEPHEN RATNER, AUDREY RATNER,
and DR. ROBERT OSTOYICH,

Respondents.

On Petition For Writ Of Certiorari
To The Superior Court Of Pennsylvania

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PHILLIP D. BERGER, ESQUIRE
Counsel of Record
BERGER LAW GROUP, P.C.
919 Conestoga Road, Suite 114
Rosemont, PA 19010
(610) 668-0800; (610) 668-2800 (fax)
Email: Berger@BergerLawPC.com

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

1. Is the Fourteenth Amendment applicable to a breach of contract dispute, when there is no state action?

2. Have the Petitioners waived their right to argue that the procedural due process rights of a limited partner are violated when the limited partner is not named as a party in a direct action brought by another limited partner, and when the Petitioners had not previously raised this due process argument?

3. Has the filing of a direct action for breach of contract, dissolution of partnership and accounting by three limited partners based on their individual contracts with the Defendants, violated the procedural due process rights of the other limited partners who had notice of the filed action?

4. Does the Pennsylvania Superior Court's Opinion and Order conflict with prior Pennsylvania case law or the decisions of other circuits?

5. Does this matter present an important federal question?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioners claim that the Fourteenth Amendment to the United States Constitution is relevant to this dispute, being in relevant part: "or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. However, the Fourteenth Amendment of the Constitution has no relevance to this dispute and has not been violated by the Pennsylvania lower courts' decision. Moreover, no important Federal question is in any way involved in this dispute.

Rather, Respondents aver that the relevant statutory provisions related to this matter are found in the Pennsylvania Uniform Limited Partnership Act of 2016, 15 Pa.C.S. § 8611, *et seq.* (the "Limited Partnership Act").

The Limited Partnership Act provides, in relevant part:

- 15 Pa.C.S. § 8681(1) provides that "A limited partnership is dissolved, and its activities and affairs must be wound up," when "an event or circumstance that the partnership agreement states causes dissolution."
- 15 Pa.C.S. § 8615(c)(16) provides that a "partnership agreement may not do any of the following", which list includes "Vary the requirements to wind up the partnership's activities and affairs specified in section 8682(a)".

- 15 Pa.C.S. § 8682(a) provides that a "dissolved limited partnership shall wind up its activities and affairs and the partnership continues after dissolution only for the purpose of winding up".
- 15 Pa.C.S. § 8691(b) provides that a "partner may maintain a direct action against another partner or the limited partnership . . . to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement or this title, or arising independently of the partnership relationship".

COUNTERSTATEMENT

Petitioners Iron Stone Real Estate Fund, I., L.P. ("Iron Stone LP" or the "Limited Partnership"), Iron Stone Real Estate Group, I, LLC ("Iron Stone LLC" or the "General Partner"), and Andrew Eisenstein[1] ("Eisenstein") [collectively, the "Petitioners" or "Defendants"], improperly assert that this Court should consider whether a limited partner's Fourteenth Amendment right to procedural due process has been violated when that limited partner is not named as a party in a direct action brought by another limited partner in which judicial dissolution of the limited partnership is sought and subsequently ordered. Contrary to the Petitioners' contentions, the lower courts'

[1] Mr. Eisenstein is the managing member of Iron Stone LLC, which is the general partner of Iron Stone LP.

decisions are consistent with this Court's precedent and do not conflict with the decisions from other Circuits. The record reveals that the other limited partners received notice of the underlying action and chose not to participate in the litigation. Moreover, the Petitioners have never raised this argument before, resulting in the waiver of such a claim. Further, this matter raises no important federal question, but instead this matter is simply a direct breach of contract action brought by the Plaintiffs based on the separate individual contracts executed by and between the parties, and which written agreements matured on their own terms.

Petitioners have requested this Court's review of the Pennsylvania Superior Court's Opinion and Orders which required the underlying action to be remanded to the trial court for the dissolution of the matured Limited Partnership, and the Pennsylvania Supreme Court's further rejection of the Petitioners' Petition for Allowance of Appeal and their subsequent Application for Reconsideration. The Respondents respectfully request that this Court deny Petitioners' request for a writ of certiorari.

This matter was initiated by the Respondents Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich (collectively, the "Respondents" or the "Plaintiffs") filing a Complaint against Petitioners on March 15, 2017, which Complaint was later amended pursuant to that certain Amended Complaint dated April 24, 2017. Following Defendants' preliminary objections to the Amended Complaint, the Trial Court issued an Order

wherein the Trial Court found that Plaintiffs (the Respondents herein) maintained an individual action for breach of contract, breach of fiduciary duty, accounting, and dissolution of partnership, being Counts I, III, IV and V of Plaintiffs' Amended Complaint against the Defendants.

At the core of this matter is the Defendants' attempt to retroactively extend an expired Limited Partnership, so that certain officers and related limited partners may continue to receive excessive management fees and administrative fees. The outrageous management fees and administrative fees being paid by the limited partnership (out of funds that should have been distributed to the limited partners) should have ceased in 2015, if the Defendants proceeded with the required dissolution of the limited partnership at the contractually mandated time.

By way of background, on February 28, 2006, Defendant Iron Stone LLC entered into separate individual contracts with each of the limited partners, including the Plaintiffs, pursuant to the terms and conditions of those certain Agreements of Limited Partnership (the "Partnership Agreements"). Pursuant to the Partnership Agreements, Defendant Iron Stone LLC was the general partner of Defendant Iron Stone LP, and Plaintiffs as personal investors were limited partners of Defendant Iron Stone LP. The purpose of the Limited Partnership was "to acquire, hold, maintain, operate, develop, sell, improve, lease, license,

pledge, encumber, dispose of and otherwise invest in, directly or indirectly, real estate and related assets".

The Plaintiffs each purchased shares in the Limited Partnership. Specifically, the Ratners purchased two (2) "units" of the Limited Partnership for a total of $200,000.00, while Dr. Ostoyich purchased one (1) "unit" of the Limited Partnership for $100,000.00. Accordingly, the Plaintiffs hold three (3) "units" out of 100 total "units" of the Limited Partnership. The Plaintiffs purchased these "units" when they were each at least 55 years old as part of their retirement and succession strategies. The Plaintiffs expected that they would receive the proceeds from this investment when they were beginning their retirements at age 65, being the end of the limited partnership's ten (10) year contractual term.

The Partnership Agreements specifically state in writing that the term of the Partnership is "until December 31, 2013, unless earlier terminated in accordance with this Agreement or unless extended in the sole discretion of the General Partner for one or more of two additional consecutive periods of one year each". Pursuant to the above cited provision, prior to the December 31, 2013 initial termination date, Defendant Iron Stone LLC as General Partner unilaterally extended the term of the Partnership Agreement for the two additional one-year periods, being from December 31, 2013 to December 31, 2015. Thus, pursuant to the express terms of the Partnership Agreement, the term of the Limited Partnership then ended on December 31, 2015 (the "Termination Date"), being the full

10-year contractual term of the Limited Partnership. *See* Partnership Agreement at Section 10.1(a)(iv) (which provides that the partnership shall be dissolved and its affairs wound up at the expiration of the term of the partnership, i.e. December 31, 2015).

On April 25, 2016, *more than ninety (90) days after the Termination Date* of the Limited Partnership, Iron Stone LLC's management distributed a "Memorandum to Limited Partners" wherein the Managing Member of Iron Stone LLC requested the written consent of the limited partners to extend the Limited Partnership, notwithstanding that the Limited Partnership had already matured and contractually was to have been unwound and dissolved by the end of 2015 (the "Extension Memorandum"). The Extension Memorandum requested that the Limited Partnership, which had already fully completed its term, be subsequently extended for an additional eight (8) year period. The Extension Memorandum requested that the limited partners either vote for or reject the extension of the Limited Partnership, which had terminated approximately four months earlier.

Each of the three Plaintiffs voted to reject the extension of the Limited Partnership, because, among other reasons, the three Plaintiffs were of retirement age as of December 31, 2015 and did not want to wait an additional 8 years to recoup their investment. Further, the Limited Partnership had already terminated pursuant to the express term of the Partnership Agreements they each individually signed, because no additional consideration was being provided to them, and

because the Defendants' request for an extension of the Limited Partnership following its termination was improper. Further, each of the Plaintiffs had initially purchased their "units" in the Limited Partnership with the specific understanding that it would be wound up by December 31, 2015, whereby they would receive their 9% priority return, plus be repaid their capital investment and such other sums representing their limited partner's pro rata interest in the Limited Partnership's assets. Further, Plaintiffs had no assurances that Defendants would not then seek yet another extension after that additional 8-year period had expired.

Defendants claim that over 66% of the limited partners voted to extend or abstained from voting to subsequently extend the Limited Partnership for an additional eight (8) year period. However, only 34.75% of the limited partners actually returned ballots agreeing to extend the Limited Partnership, and thus 65.25% of the limited partners either did not vote to extend, or voted against the extension.

Defendants improperly claim that the term of the Limited Partnership was extended through December 31, 2023. Plaintiffs vehemently deny that the Limited Partnership had been properly extended.

Plaintiffs made a demand on the Defendants for payment of the value of their "units," for an accounting of the value of their "units", and/or for the proper dissolution of the Limited Partnership; however, the Defendants failed and refused to comply with Plaintiffs'

requests. Defendants' refusal forced Plaintiffs to file this action.

During discovery in the trial court, it became apparent that according to the Limited Partnership's consolidated financial statements, there is undocumented millions of dollars provided by the Limited Partnership to "Related Parties". All loans to these "Related Parties" were apparently provided interest free and continued after the Limited Partnership had matured. Further, the financial documents provided in discovery show that the General Partner and certain officers and related limited partners have been receiving millions of dollars in Administrative Fees, in addition to Management Fees, from the matured Limited Partnership.

The consolidated financial statements evidence that after the Partnership Agreement matured, wherein Plaintiffs were to be paid the value of their "units," that Defendants through its management continued to transfer Limited Partnership monies to Related Parties interest free, and/or continued to collect millions of dollars in Administrative Fees and Management Fees.

After extensive discovery and discovery disputes, on July 16, 2018, the parties each filed their respective Motions for Summary Judgment. On October 1, 2018, the Trial Court entered an Order denying the Plaintiffs' Motion for Summary Judgment, granting the Defendants' Motion for Summary Judgment, and dismissing Plaintiffs' filed action with prejudice. On

October 9, 2018, Plaintiffs filed a Motion for Reconsideration of the Trial Court's October 1, 2018 Order, which Motion was subsequently denied by the Trial Court. On October 26, 2018, the Plaintiffs filed a Notice of Appeal.

On January 4, 2019, Plaintiffs filed their Appellate Brief with the Pennsylvania Superior Court of Pennsylvania. Plaintiffs' Brief presented, *inter alia*, the following grounds for appeal: that the trial court committed an error of law by finding that the expired partnership agreement was properly extended by a vote that was not requested by Defendants until months after the contract had already expired.

Following oral argument, on May 29, 2019, the Pennsylvania Superior Court entered a well-reasoned Opinion (the "Superior Court Opinion"), in which the Pennsylvania Superior Court found that the Defendants improperly extended the Limited Partnership, and that the Trial Court improperly dismissed Plaintiffs' claims for dissolution of the Limited Partnership and for an accounting, and remanded the matter to the Trial Court to order the dissolution of the Limited Partnership (and an accounting) in accordance with the Pennsylvania Uniform Limited Partnership Act of 2016 (the "Limited Partnership Act").

The Pennsylvania Superior Court's Opinion is supported by case law and by applicable Pennsylvania statutes. However, despite the clear propriety of the Pennsylvania Superior Court's Opinion, the Defendants filed a meritless Application for Reargument to

the Pennsylvania Superior Court (the "Application"). On June 12, 2019, the Pennsylvania Superior Court entered an Order denying the Defendants' request for reargument, per curiam.

On August 30, 2019, while the Defendants continued to collect millions of dollars in management fees and in administrative fees, and while the Defendants improperly stopped making all required quarterly disbursements to the Plaintiffs and stopped sending quarterly reports to the Plaintiffs, Defendants then filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. However, as Defendants presented no compelling reasons whatsoever to have this matter heard by the Pennsylvania Supreme Court, the Defendants' Petition was denied in its entirety pursuant to the Pennsylvania Supreme Court's Order dated February 4, 2020. The Defendants then filed an Application for Reconsideration to the Pennsylvania Supreme Court. Defendants' Application for Reconsideration was then denied pursuant to an Order dated March 6, 2020. This petition from Defendants/Petitioners has followed.

REASONS FOR DENYING THE PETITION

The Pennsylvania Superior Court properly reversed the Trial Court's decision dismissing Respondents' claim for dissolution of the Limited Partnership and remanded the matter to the trial court to order the dissolution of the limited partnership in accordance

with the Pennsylvania Uniform Limited Partnership Act. The decisions of the Pennsylvania Superior Court, as affirmed by the Pennsylvania Supreme Court, do not conflict with decisions of this Court, or of any Pennsylvania Court, but rather follow precedent in the area of limited partnership law and contract law. Moreover, there is no important federal question being presented to this Court, as this is simply a breach of contract action based on separate contracts executed by and between the parties, which matured on their own terms. Further, the Petitioners have waived the right to allege any violation of due process due to their failure to raise this defense in any lower court. Accordingly, Petitioners have not carried their burden of demonstrating any "compelling reason" for the Petition for Writ of Certiorari to be granted. *See* Sup. Ct. R. 10.

I. Fourteenth Amendment Not Applicable To This Breach Of Contract Action

The Fourteenth Amendment to the U.S. Constitution provides "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

However, when a court merely approves of or acquiesces in the initiatives of a private contracting party, there is *no state action*. (emphasis added). *Blum v. Yaretsky*, 457 U.S. 991, 1004, 102 S. Ct. 2777 (1982). Thus, state enforcement of a contract between two private parties is not a state action. *Id.*

In this matter, the Superior Court found that Plaintiffs may enforce their individual contractual rights directly against the Defendants. Specifically, the Superior Court properly found that the only remedy available to the Plaintiffs to make them whole under their individual contracts with the Defendants is the dissolution of the Limited Partnership and the distribution of the Limited Partnership's assets to the limited partners. Such a ruling by the state court, which ruling merely enforces the rights of the contracting parties, is simply not a state action. *Id*.

Therefore, despite Defendants' claims, the Fourteenth Amendment and its due process protections simply do not apply to this matter.

II. The Petitioners Have Waived Any Due Process Defense

The Defendants did not raise the defense of violation of due process during the proceedings in any lower court. Rather, the Defendants/Petitioners have raised this alleged defense for the first time in their Petition for Writ of Certiorari. Failure to raise this alleged defense results in the waiver of said defense.

Generally, pursuant to Pa.R.A.P. 302(a), "issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pennsylvania courts have long held that "[a] claim which has not been raised before the trial court cannot be raised for the first time on appeal." *Commonwealth v. Lopata*, 2000 PA Super 163, 754 A.2d 685, 689 (Pa. Super. 2000)

(citing *Commonwealth v. Gordon*, 364 Pa. Super. 521, 528 A.2d 631 (Pa. Super. 1987)); *see also Commonwealth v. Ryan*, 2006 PA Super 290, 909 A.2d 839, 845 (Pa. Super. 2006) (noting that "[a] theory of error different from that presented to the trial jurist is waived on appeal, even if both theories support the same basic allegation of error which gives rise to the claim for relief."). Thus, only claims properly presented in the lower court are preserved for appeal.

Indeed, even issues of constitutional dimension cannot be raised for the first time on appeal. *Commonwealth v. Strunk*, 2008 PA Super 149, 953 A.2d 577, 579 (Pa. Super. 2008). "[A] party may not remain silent and afterwards complain of matters which, if erroneous, the court would have corrected." *Id*. (citations omitted).

Defendants were required to raise any claimed Fourteenth Amendment violation of due process defenses (which alleged defenses are not even applicable to this matter) in the prior proceedings. The Defendants are not permitted to raise this defense for the first time in their Writ of Certiorari. Since a due process claim was not clearly raised in the lower courts, this Court need not reach it for the first time on appeal. *See* Pa.R.A.P. 302(a). As courts have noted in the past, the courts must look beyond the due process label to a more meaningful level of specificity. *See Duncan v. Henry*, 513 U.S. 364, 366, 130 L. Ed. 2d 865, 115 S. Ct. 887 (1995) (noting that the petitioner's failure to raise a particular due process argument in state court "is especially pronounced in that [the petitioner] did specifically raise a due process objection before the

state court based on a different claim. . . . Mere similarity of claims is insufficient to exhaust."); *Riggins v. McGinnis*, 50 F.3d 492, 494 (7th Cir. 1995) (noting that due process is "such a ductile concept that phrase-dropping is the equivalent of no argument at all"). "[I]ssues must be raised in lower courts in order to be preserved as potential grounds of decision in higher courts. . . . does not demand the incantation of particular words; rather, it requires that the lower court be fairly put on notice as to the substance of the issue." *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469, 120 S. Ct. 1579 (2000).

Therefore, as the Petitioners did not previously raise the violation of due process defense as an alleged violation of the Fourteenth Amendment in any lower court, the Defendants should be deemed to have waived their purported defense, and their Petition for Writ of Certiorari must be denied.

III. While Due Process Does Not Require Actual Notice, The Other Limited Partners Did Receive Actual Notice Of This Action

To the extent that the Petitioners' defense related to due process rights has not been waived, the record clearly establishes that the other limited partners had actual notice of the underlying action.

"Before a State may take property . . . the Due Process Clause . . . requires the government to provide the owner 'notice and opportunity for a hearing appropriate to the nature of the case.'" *Jones v. Flowers*, 574

U.S. 220, 223 (2006) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)).

The essential elements of "due process of law," as guaranteed by the Fourteenth Amendment of the Federal Constitution, are appropriate notice of the judicial action and adequate opportunity to be heard. *Blackmer v. United States*, 284 U.S. 421, 52 S. Ct. 252, 76 L. Ed. 375 (1932). Due process in judicial proceedings implies action in conformity with the general law, based upon evidence, and after a full hearing upon notice to the parties affected and opportunity to be heard. *Snyder v. Massachusetts*, 291 U.S. 97, 54 S. Ct. 330, 78 L. Ed. 674 (1933). Judgment without such citation and opportunity to be heard lacks the very attributes of a judicial determination. *Snyder v. Massachusetts*, 291 U.S. 97, 54 S. Ct. 330, 78 L. Ed. 674 (1933).

Due process does not, however, require actual notice of the proceedings. *Dusenbery v. United States*, 534 U.S. 161, 170 (2002). Instead, any method of providing notice that is "reasonably certain to inform those affected" may be used. *Mullane*, 339 U.S. at 315.

In this matter, the limited partners who were not named as parties in this direct contract action received actual notice of the action on numerous occasions. On March 13, 2018, Plaintiffs served subpoenas on all of the other limited partners requesting that these limited partners participate in depositions related to the expiration of the Limited Partnership. While all of the limited partners were subpoenaed to testify, twelve of

the limited partners actually provided testimony on April 2, 2018.

Further, the Defendant Limited Partnership has provided updates to the limited partners as to the status of this underlying litigation in its quarterly reports. As the other limited partners received notice at all stages of the underlying action and had every opportunity to participate in the proceedings, the fact that the other limited partners were never a named party in the proceedings did not violate due process. *See In re San Vicente Med. Partners, Ltd.*, 962 F.2d 1402, 1407-08 (9th Cir. 1992). The other limited partners received the same notice and opportunity to be heard as they would have received as named parties to the underlying action, which satisfies due process. *United States v. Arizona Fuels Corp*., 739 F.2d 455, 459 (9th Cir. 1984) (non-party received due process in receivership proceeding because the non-party was involved in the receivership action) (citing *American Brake Shoe & Foundry Co. v. New York Ry*., 10 F.2d 920, 921 (2d Cir. 1926)).

To the extent that any of the limited partners were not aware of the underlying action (which is very unlikely), the Limited Partnership (via its Manager and its General Partner Iron Stone LLC) had a fiduciary duty to update its limited partners of the status of all litigation effecting the limited partners. While Plaintiffs received the quarterly reports from the Defendant Limited Partnership up until the second quarter of 2019, once the Superior Court Opinion which found against the Defendants was issued, the Defendants

stopped providing any information about the Limited Partnership to the Plaintiffs. The Defendants also had improperly stopped providing any quarterly distributions to the Plaintiffs. Thus, due to the Defendants' actions, Plaintiffs cannot confirm that the management of the Limited Partnership continued to provide the status of this litigation to the other limited partners after the second quarter of 2019. However, if the Limited Partnership did not provide continuing updates about the underlying action to the other limited partners (including that the Superior Court had found that the matured partnership was to be dissolved and wound up), said actions were a breach of the fiduciary duty owed by the Defendants/Petitioners to those other limited partners.

Moreover, with regard to the other limited partners' ability to understand their rights to participate in this action if they so desired, it should be noted that these limited partners are accredited investors, who as part of their investment certified that they had a net worth of at least $1,000,000 (excluding the value of one's primary residence), or that they had income at least $200,000 each year for the last two years. These other limited partners are not unsophisticated individuals, but are individuals used to dealing with complicated business deals, and should have understood their rights to participate in a legal action, and/or these other limited partners could have contacted their attorneys about their rights and remedies, if any.

Should this Honorable Court determine that the Petitioners' defense related to due process rights has

not been waived[2], the record clearly establishes that the other limited partners had actual notice of the underlying action. Therefore, as the other limited partners' due process rights were not violated in any manner, Respondents respectfully request that the Petitioners' Writ of Certiorari be denied.

IV. The Lower Court's Orders Are Consistent With Prior Case Law And Statutes

The Pennsylvania Superior Court's Opinion and Orders, which require that this matter be remanded to the trial court for the dissolution of the Limited Partnership, are consistent with prior case law and the relevant statutes.

At the core of this matter is the Defendants' attempt to retroactively extend an expired Limited Partnership, for the benefit of the managing member and certain other partners who continue to receive excessive management fees and administrative fees, rather than to proceed with the required dissolution of the Limited Partnership at its contractually required date. That is where the inquiry ends—there was no valid extension of the expired Limited Partnership as the requested vote to extend was not even sought by the managing member until approximately 4 months after the Limited Partnership matured on its own

[2] As stated above, not only have the Defendants waived their right to assert a Fourteenth Amendment due process defense, but no state action is involved in this matter. Accordingly, the Fourteenth Amendment does not apply to this matter.

contractual terms. Accordingly, the Defendants violated their contractual (and fiduciary) duties to the Plaintiffs pursuant to the specific provisions in the Partnership Agreements and under the relevant statutes by not dissolving and winding up the Limited Partnership, as specifically required by the written agreement. The Pennsylvania Superior Court properly recognized these facts and found that as a matter of law, the Limited Partnership needed to be immediately dissolved and wound up, as required by the written agreement.

The Pennsylvania Superior Court properly found that a limited partnership is governed by both the terms of the written Partnership Agreement as well as the Pennsylvania statutes regarding limited partnerships. While a Partnership Agreement can vary the statutory provision(s) of the Pennsylvania Uniform Limited Partnership Act (the "Limited Partnership Act") relating to the perpetual nature of a limited partnership, the agreement may subject the Limited Partnership to a definite term. 15 Pa.C.S. § 8615. *See* 15 Pa.C.S.A. § 8611; 15 Pa.C.S. § 8616.

Moreover, the Pennsylvania Superior Court properly found that there are some provisions of the Limited Partnership Act that a partnership agreement may not vary, including most importantly, 15 Pa.C.S. § 8615(c)(16), which provides that a partnership agreement may not "[v]ary the requirements to wind up the partnership's activities and affairs specified in section 8682(a), (b)(1), (d) and (e) (relating to winding up and filing of certificates)." 15 Pa.C.S. § 8682(a) ("[a]

dissolved limited partnership shall wind up its activities and affairs and the partnership continues after dissolution only for the purpose of winding up.").

Thus, the Pennsylvania Superior Court properly found that the Pennsylvania Limited Partnership Act does not provide for the rescission of the Partnership Agreement's specific dissolution requirements. Further, the Pennsylvania Superior Court found that pursuant to 15 Pa.C.S. § 8681(1), when "an event or circumstance that the partnership agreement states causes dissolution", "[a] limited partnership is dissolved, and its activities and affairs must be wound up".

Therefore, in this matter, the Partnership Agreement expressly provides that the Limited Partnership shall be dissolved and its affairs wound up at the expiration of the term of the Partnership, i.e. December 31, 2015. Thus, as the Limited Partnership contractually went into dissolution effective January 1, 2016, the Limited Partnership only existed for the purpose of winding up.

As the Pennsylvania Superior Court properly found that the Defendants' subsequent attempt to retroactively extend a matured Limited Partnership (which was to be dissolved pursuant to its express terms) was not effective, the Pennsylvania Superior Court's inquiry into this issue was satisfied. The Pennsylvania Superior Court's Opinion properly and fully analyzed the relevant law and found that the matured

Limited Partnership must be dissolved as a matter of law.

Contrary to the Defendants' claims, the Pennsylvania Superior Court's Opinion clearly does not alter the composition of direct versus derivative claims in Pennsylvania. The Pennsylvania Superior Court's Opinion clarifies and confirms that a limited partnership must be dissolved upon its maturity pursuant to the specific terms found in the partnership agreement and pursuant to the applicable terms of the Limited Partnership Act.

Further, the Pennsylvania Superior Court recognizes that the contractual rights of a plaintiff, who individually invested and individually purchased "units" in a limited partnership, include the right to enforce such contractual terms directly. *See* 15 Pa.C.S. § 8691(b) (which provides that a "partner may maintain a direct action against another partner or the limited partnership . . . to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement or this title or arising independently of the partnership relationship"). The contractual terms of the Partnership Agreements signed by the Plaintiffs include the requirement of dissolution at the 10-year maturity date.

While nothing in the Pennsylvania Superior Court's Opinion would allow improper direct actions to be brought by individual limited partners over any particular management issue, the issued Opinion protects the direct contractual rights of limited partners to compel the distributions required by the limited

partnership agreement, and to compel the dissolution of the limited partnership upon its maturity. *See* J. William Callison & Maureen A. Sullivan, *Partnership Law and Practice: General and Limited Partnerships* §28:3 *supra*; *see also* 15 Pa.C.S. § 8682.

As the Pennsylvania Superior Court's Opinion and Orders do not conflict with prior case law, and as the Pennsylvania Superior Court and the Pennsylvania Supreme Court rigorously evaluated the relevant Pennsylvania statutes and case law, the Defendants' Petition for Writ of Certiorari must be denied.

V. The Petitioners Raise No Other Federal Issues

Finally, the Defendants' Petition raises no actual federal issues that would require this matter to be heard by the Supreme Court.

> Supreme Court Rule 10 provides as follows:
>
> > The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
> >
> > . . .
> >
> > (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
> >
> > . . .
>
> Sup. Ct. R. 10.

In this matter, Plaintiffs have already detailed above that the Pennsylvania Superior Court's Opinion does not conflict with prior case law as required in paragraph (b). Moreover, it is clear that there is no important question of federal law at issue. Rather, this matter only concerns the basic contractual rights of individual Pennsylvania limited partners, and the Pennsylvania Superior Court's interpretation of the Pennsylvania Uniform Limited Partnership Act. There is simply no federal law or question at issue in this matter. Accordingly, as there is no important federal question at issue, the Defendants' Petition for Writ of Certiorari must be denied.

CONCLUSION

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. In determining whether to grant a petition, this Court considers questions such as whether the lower courts have entered a decision on an important matter which conflicts with a decision of another circuit, a state court of last resort, or with this Court. Sup. Ct. R. 10(a), (c). However, a petition "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

Petitioners do not cite any case which is in conflict with the Pennsylvania Superior Court's holding.

Moreover, the Petitioners do not even assert any errors in that Court's factual findings.

For all the foregoing reasons, and as the Petitioners have not presented any compelling reasons that require this Supreme Court to hear an appeal of this matter, Defendants' Petition for Writ of Certiorari must be denied in its entirety.

Respectfully submitted,

BERGER LAW GROUP, P.C.

PHILLIP D. BERGER, ESQ.
Attorneys for Plaintiffs/Respondents

Dated: 9/1/20