
United States Court of Appeals
for the
Federal Circuit

ANTHONY PISZEL,

Plaintiff-Appellant,

– v. –

UNITED STATES,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF FEDERAL CLAIMS
IN CASE NO. 1:14-CV-00691-LKG, LYDIA KAY GRIGGSBY, JUDGE

**MOTION ON BEHALF OF LOUISE RAFTER,
JOSEPHINE AND STEPHEN RATTIEN, AND
PERSHING SQUARE CAPITAL MANAGEMENT, L.P.
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF
IN SUPPORT OF NEITHER PARTY**

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CERTIFICATE OF INTEREST

Counsel for the amici curiae certifies the following:

1. The full name of every party or amicus represented by me is:

Louise Rafter, Stephen Rattien, Josephine Rattien, and Pershing Square Capital Management, L.P.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

The parties named above in (1) are the real parties in interest.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

Pershing Square Capital Management, L.P. does not have a parent company, and there are no publicly held companies that own 10 percent or more of the stock of Pershing Square Capital Management, L.P.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this Court are:

Gregory P. Joseph, Mara Leventhal, Sandra M. Lipsman, Christopher J. Stanley, Gregory O. Tuttle, Joseph Hage Aaronson LLC.

August 25, 2015

Date

/s/ Gregory P. Joseph

Gregory P. Joseph

cc: William E. Donnelly, Esq., James K. Goldfarb, Esq., Michael V. Rella, Esq., David A. Harrington, Esq.

Louise Rafter, Josephine and Stephen Rattien, and Pershing Square Capital Management, L.P. (“**Pershing Square**” and, collectively, “**Amici**”) hereby move pursuant to FED. R. APP. P. 29(b) for leave to file the accompanying Amicus Curiae Brief in Support of Neither Party (“**Amicus Brief**”) to address one narrow issue: whether the Court of Federal Claims properly relied on the flawed analysis set forth in *Perry Capital LLC v. Lew*, 70 F. Supp. 3d 208 (D.D.C. 2014) in dismissing Plaintiff-Appellant Anthony Pizsel’s (“**Appellant**”) takings claim under the Fifth Amendment. *See Pizsel v. United States*, 121 Fed. Cl. 793, 803-807 (2015) (the “**Opinion**”).¹

AMICI’S MOTION FOR LEAVE TO FILE A BRIEF SHOULD BE GRANTED

Pursuant to FED. R. APP. P. 29(b), a motion for leave to file an amicus brief must be accompanied by the proposed brief and must state “(1) the movant’s interest; and (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” While the grant of leave to file an amicus brief is discretionary, Courts have long recognized that “it is preferable to err on the side of granting leave” so “the merits panel will [not] be deprived of a resource that might have been of assistance.” *Neonatology Assocs., P.A. v.*

¹ Counsel for Appellant consented to the filing of a neutral amicus brief by Amici. Counsel for the United States withheld consent, necessitating this motion.

Comm’r of Internal Revenue, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.).

Accordingly, this Court routinely grants *amici* leave to file.²

As set forth below, the Amici here are interested in this appeal because its outcome may impact their pending lawsuit in the Court of Federal Claims. Moreover, because the Opinion’s reliance on *Perry* is relevant to the disposition of this appeal, Amici’s brief is “desirable” because it alerts the Court “to possible implications of the appeal” and seeks to ensure that its resolution does not “inadvertently stray into issues that need not be decided in this case.” *Id.* at 133-34. Leave to file the accompanying amicus brief is thus appropriate, and Amici respectfully request that it be granted.

A. AMICI HAVE A DIRECT INTEREST IN THIS APPEAL

Amici have a direct and distinct interest in the instant appeal as a result of their current lawsuit pending in the Court of Federal Claims. Amici are common shareholders of the Federal National Mortgage Association (“**Fannie**”) and the Federal Home Loan Mortgage Corporation (“**Freddie**,” and collectively, the “**Companies**”). Like Appellant, Amici have asserted a takings claim under the

² See, e.g., *Ladd v. United States*, 646 F.3d 910, 910 (Fed. Cir. 2011) (granting leave to file a brief amicus curiae); *GPX Int’l Tire Corp. v. United States*, 422 F. App’x 887 (Fed. Cir. 2011) (same); *Chrysler Corp. v. United States*, 604 F.3d 1378 (Fed. Cir. 2010) (same); *SKF USA, Inc. v. U.S. Customs & Border Prot.*, 583 F.3d 1340, 1341 (Fed. Cir. 2009) (same); *Casitas Mun. Water Dist. v. United States*, 556 F.3d 1329, 1330-31 (Fed. Cir. 2009) (same); *Wolfchild v. United States*, 260 F. App’x 261, 264 (Fed. Cir. 2007) (same).

Fifth Amendment — theirs, against the Federal Housing Finance Agency (“**FHFA**”) and the Department of Treasury (“**Treasury**,” and collectively, the “**Government**”) — in connection with FHFA’s conservatorship of the Companies in the United States Court of Federal Claims. *See Verified Complaint, Louise Rafter, et al. v. United States*, No. 1:14-cv-00740-MMS (Fed. Cl. Aug. 14, 2014), ECF No. 1 (the “**Rafter Complaint**”).

The *Rafter* Complaint challenges the Government’s unlawful appropriation of hundreds of billions of dollars amounting to the entire net worth of the Companies by means of an August 2012 amendment to a senior preferred stock purchase agreement between each Company and Treasury, which imposed quarterly dividends that stripped the Companies of their entire net worth (the “**Net Worth Sweep Dividends**”). To the extent the Opinion relied on the D.C. District Court’s decision in *Perry* — which (i) erroneously rejected, in dicta, a Fifth Amendment takings claim challenging the same Net Worth Sweep Dividends, and (ii) misconstrued and misapplied this Court’s holdings in *Golden Pacific Bancorp v. United States*, 15 F.3d 1066 (Fed. Cir. 1994), and *California Housing Securities, Inc. v. United States*, 959 F.2d 955 (Fed. Cir. 1992) — Amici have a substantial interest in bringing the Opinion’s improper and unnecessary reliance on *Perry* to this Court’s attention. *See Pinney Dock & Transp. Co. v. Penn Cent. Corp.*, 838 F.2d 1445, 1454 n.11 (6th Cir. 1988) (leave to file amicus curiae briefs granted

“[b]ecause of ... the possibility that the interest of amicus could be affected by the outcome of this case”). *See also Neonatology Assocs.*, 293 F.3d at 132 (“The criterion of desirability set out in Rule 29(b)(2) is open-ended, but a broad reading is prudent.”).

B. AMICI’S BRIEF IS RELEVANT AND DESIRABLE

Amici further respectfully submit that their accompanying amicus brief is relevant because it addresses the propriety of the Opinion’s reliance on non-controlling dicta in *Perry* misconstruing this Court’s precedents. *See generally* Amicus Brief. The Amicus Brief will assist the Court, and is thus desirable, because:

- It alerts the merits panel “to possible implications of the appeal” in other contexts not before the Court, including Amici’s pending lawsuit. *See Neonatology Assocs.*, 293 F.3d at 133 (a brief is “relevant and desirable” when “it alerts the merits panel to possible implications of the appeal”).
- It addresses important and complex constitutional issues concerning the application of the Takings Clause. *See Pinney Dock*, 838 F.2d at 1454 n.11 (granting leave to file amicus in part “[b]ecause of the complexity of this case”).
- It is not duplicative of arguments presented by Plaintiff-Appellant Anthony Pizel (*compare* Appellant’s Brief p. 37-38 and n. 9 *with* Amicus Brief, *generally*), and it is not likely to duplicate arguments to be presented by Defendant-Appellee the United States. As such, Amici advance unique perspectives and analyses that may assist the Court.

CONCLUSION

For the foregoing reasons, Amici respectfully request that the Court grant their motion for leave to file the accompanying brief in this appeal.

Dated: August 25, 2015

Respectfully submitted,

JOSEPH HAGE AARONSON, LLC

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**United States Court of Appeals
for the Federal Circuit**

CERTIFICATE OF SERVICE

Anthony Pizsel v. United States, No. 2015-5100

I, Robyn Cocho, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by JOSEPH HAGE AARONSON LLC, Attorneys for Amici Curiae to print this document. I am an employee of Counsel Press.

On **August 25, 2015**, Counsel for Appellant has authorized me to electronically file the foregoing **Motion on Behalf of Amici Curiae Louise Rafter, Josephine and Stephen Rattien, and Pershing Square Capital Management, L.P. for Leave to File an Amicus Curiae Brief in Support of Neither Party** with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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In additional, all *Amici Curiae* filings in this case have been served via the courts CM/ECF system.

/s/ Robyn Cocho
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