STATE OF MICHIGAN
IN THE SUPREME COURT

INTERNATIONAL OUTDOOR, INC.,
Plaintiff/ Appellant

v.

SS MITX, LLC and LAMAR ADVERTISING OF MICHIGAN, INC.

Respondents/ Appellees.

and

LAMAR ADVERTISING OF MICHIGAN, INC., d/b/a THE LAMAR COMPANIES, and SS MITX, LLC, d/b/a SIMPLY SELF STORAGE
Plaintiffs/Appellees

v.

INTERNATIONAL OUTDOOR, INC.,
Defendant/Appellant

Case No. 166756

COA Case No. 359082
Consolidated with
COA Case No. 359811

Oakland County Circuit Court
Case No. 2016-155472-CB
Case No. 2016-155489-CB

ARAB AMERICAN CIVIL RIGHTS LEAGUE'S BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANT INTERNATIONAL OUTDOOR, INC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

UNITED STATES CONSTITUTION:

MICHIGAN CONSTITUTION:

OTHER MATERIALS:

INTERESTS OF *AMICUS CURIAE*

The Arab American Civil Rights League ("ACRL") is a 501(c)(3) non-profit organization, founded in 2011 to address the pressing needs within the Arab-American community for civil rights advocacy and protection. With a strong commitment to education and advocacy, the ACRL is dedicated to safeguarding the civil rights of Arab Americans. Through coalition-building, fostering understanding, and countering negative stereotypes, the organization works diligently to fulfill its mission. Led by distinguished attorneys and advocates, the ACRL remains firmly dedicated to ensuring the protection and preservation of the rights of the community.[1]

The mission of the ACRL is to protect and uphold the civil rights and liberties of all Arab Americans. The ACRL is dedicated to promoting awareness, challenging negative stereotypes, and fostering a more inclusive society. As a driving force, the ACRL unites and amplifies the demands of constituents to effect meaningful and positive change, working towards leveling the field for Arab Americans across the nation.[2]

Anti-Arab bias includes opposition to, dislike, fear, or hatred of Arab people.[3] According to Columbia University, while the Arab community has a long and rich history in the United States,

---

[1] Arab American Civil Rights League, *About ACRL*, Acrlmich.org/about-us, last visited March 27, 2024,.

Pursuant to MCR 7.312(H)(5), undersigned counsel for ACRL authored this brief. Neither undersigned counsel nor any other party made a monetary contribution to fund this brief. Randy Oram is a Board Member of the ACRL.

[2] *Id*.

[3] Columbia University Life, *Resources for Combating Anti-Arab Bias*, Universitylife.columbia.edu/content/resources-combating-anti-arab-bias, last visited March 27, 2024.

it has been a troubled history given the stereotypes, bias and discrimination that many Arabs and Arab Americans experience in this country.[4]

This case concerns the constitutional and civil rights of Arab American business owner Randy Oram, who owns Defendant/Appellant International Outdoor, Inc. ("IO"). Such constitutional and civil rights are indeed at the very core of ACRL's mission and practical expertise. When courts allow anti-Arab bias and negative stereotypes to affect outcomes, the fair and effective functioning of the justice system is undermined. In this case, there were significant instances of bias that directly affected the outcome of the litigation, effectively stripping Randy Oram of his due process rights. Witness Patrick Depa's racist and anti-Arab beliefs motivated him to produce an affidavit which was proven to be false. **(Exhibit A)**. Despite being proven false, the lower courts treated Depa's affidavit as factual thereby benefitting Lamar Advertising of Michigan, Inc ("Lamar") and SS MITX, LLC ("SS MITX").

> The ACRL works to accomplish its mission by achieving the following objectives:
>
> (a) Advocate, champion, and safeguard the constitutional and civil rights of Arab Americans, while ensuring justice and parity for all individuals;
>
> (b) Counter negative stereotypes and all forms of hatred towards Arab Americans by broadly educating the public about the constructive contributions that Arab Americans have historically made and continue to make to the United States of America;
>
> (c) Collaborate with federal, state, and local authorities to cultivate, formulate, and endorse progressive policies and effective governance;
>
> (d) Endeavor to ensure equitable representation in both government and the private sector, fostering an environment of inclusivity;
>
> (e) Vigilantly monitor, combat, and scrutinize defamatory content on the internet and other media platforms;
>
> (f) Serve as a vital link between the Arab American community and the media, ensuring accurate and comprehensive representation on matters concerning Arab American interests;

[4] *Id.*

(g) Foster cross-cultural and interfaith collaboration between the Arab American community and its neighboring communities, nurturing understanding and cooperation.

This Court's review is needed to avoid the unjust and unnecessary consequences that ensue when anti-Arab bias and negative stereotypes are allowed to prevail in the courtroom.

INTRODUCTION AND SUMMARY OF ARGUMENT

IO is a family-owned billboard business. In 2009, SS MITX leased its Auburn Hills property to IO, which allowed IO to place a billboard on SS MITX's property. IO renewed the lease with SS MITX in December 2013. After that, SS MITX entered into a lease with Lamar. On Sunday, July 24, 2016, Randy Oram scanned the lease renewal from 2013 onto his computer so that he could send it to SS MITX, in order to establish that he had initial rights over Lamar. SS MITX responded and told Oram that the property could accommodate two billboards. Oram disagreed. The parties then sued each other in the Oakland County Circuit Court. IO sought damages for SS MITX's breach and for Lamar's tortious interference. Lamar sought a declaration that its lease was the only effective lease for the property and also moved for damages for IO's alleged tortious interference with the contract. SS MITX did not allege that IO failed to renew its lease.

A jury found that IO did send a renewal notice, that Lamar tortiously interfered with that lease, and that Lamar caused $405,000 in damages. After entry of judgment, this case was reassigned from Judge Wendy L. Potts to Judge Martha D. Anderson. Then, 364 days from entry of judgment, Lamar filed a motion for relief from judgment. In this Motion, Lamar presented the troubling affidavit of Patrick Depa. The Depa affidavit was littered with racially motivated lies targeting IO's owner Randy Oram. This false affidavit led to an evidentiary hearing, which led to a second trial. The Oakland County Circuit Court eventually held that Lamar's lease was valid and

IO's was not, and they also awarded Lamar attorney's fees. The Court of Appeals affirmed the circuit court's orders in 2023.

Thanks to this affidavit, Appellant IO was stripped of his due process rights. The allowance of a racially motivated witness served as the critical moment in this case, turning the entire merits against IO. Most concerning is the reality that much of Depa's statements were untruthful.

I. THIS COURT MUST ENSURE APPELLANT IS AFFORDED DUE PROCESS OF LAW.

A. Due Process Rights

Under our state and federal Constitutions, a person cannot be deprived of life, liberty, or property without due process of law.[5] Because this Court has held that the Supreme Court of Michigan is ultimately responsible for enforcing Michigan's constitution[6], this Court is undoubtedly responsible for enforcing due process of law, which is a core tenet of Michigan's constitution. Whether due process has been afforded is a question of law that is reviewed de novo. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 (2013). Just as in criminal and quasi-criminal cases, due process is an essential right in civil proceedings. *Hinky Dinky Supermarket, Inc. v. Dep't of Cmty. Health*, 261 Mich. App. 604 (2004). Michigan courts have long held that due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decision maker. *Id.* at 604, 606, 683.

[5] *See* Const. 1963, art. 1, § 17, and U.S. Const., Ams. 5 and 14.
[6] See *Mays v. Governor of Michigan*, 506 Mich. 157 (2020).

At stake here is whether Defendant/Appellant International Outdoor, Inc. has been afforded such due process throughout this case. The ACRL is of the belief that IO has not been afforded such due process due to the pervasive anti-Arab bias exhibited at critical moments in this case.

B. Bias Infringes on Due Process Rights.

Due process, a flexible concept, essentially requires fundamental fairness. *Okrie v. State of Mich.*, 306 Mich. App. 445 (2014). The definition of bias is prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair[7]. From these two sentences alone, it is clear that bias contravenes the objective of due process, which is fairness. The United States Supreme Court has held, "It is axiomatic that [a] fair trial in a fair tribunal is a basic requirement of due process." *Caperton v. AT Massey Coal Co., Inc.,* 556 U.S. 868 (2009). And as mentioned, in Michigan civil cases, due process generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decision maker. *Hinky Dinky Supermarket,* 261 Mich.App. at 604, 606, 683. When bias, especially racial bias, is allowed to permeate cases, these requirements are neglected. Such neglect occurred in this case.

An article in the Yale Law Journal found that courtroom actors will punish the decision to grant due process rights to an individual who they conclude is undeserving. The decision that an individual is undeserving is more likely to occur when that individual is a person of color, due to implicit racial bias[8]. This racial bias is no doubt extended to Arabs and Arab Americans. It has been shown time and time again that Arabs and Arab Americans experience stereotypes, bias and

[7] Cambridge Dictionary, *Bias*, Dictionary.cambridge.org/us/dictionary/english/bias, (last visited March 27, 2024).
[8] L. Song Richardson, *Systemic Triage: Implicit Racial Bias in the Criminal Courtroom,* 126 Yale L.J. 864, 864-892 (2017).

discrimination in this country[9]. This is exactly what happened in this case thanks to the racially motivated actions and statements of Patrick Depa.

II. THE LOWER COURTS DID NOT AFFORD APPELLANT DUE PROCESS OF LAW AND ALLOWED BIAS TO AFFECT THE OUTCOME.

A. Patrick Depa's Racist Beliefs Motivated Him to Produce a False Affidavit.

According to this Court, bias is a common-law term describing the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. *People v. Layher*, 464 Mich. 756 (2001). A "witness'[s] like, dislike, or fear of a party, or by the witness'[s] self-interest" may demonstrate bias. *Id.* "Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness'[s] testimony." *Id.* Further, "A witness's bias is always relevant" and a "defendant is entitled to have the jury consider any fact that may have influenced the witness' testimony." *People v. McGhee*, 268 Mich. App. 600 (2005). It is well established that a witness's bias is always relevant. *Powell v St John Hosp*, 241 Mich App 64 (2000).

Despite this long-standing principle, Depa's bias was made irrelevant in this case. This Court's review is needed to reverse this. Patrick Depa was a former contractor for IO. His employment lasted from 2010 to 2018. His employment contract was not renewed in 2018 due to Depa's racism, harassment of staff, drug abuse, and other factors. This non-renewal of employment combined with deeply held racist beliefs served as motivation to retaliate against IO by colluding

[9] Columbia University Life, *Resources for Combating Anti-Arab Bias*, Universitylife.columbia.edu/content/resources-combating-anti-arab-bias, last visited March 27, 2024.

with Lamar and SS MITX to submit fabrications about his former Arab employer, Latif Z "Randy" Oram.

1. Depa has a history of racist behavior towards Arabs and Arab Americans

The trial court and appellate record are filled with examples of Depa's racist tendencies and behaviors. The ACRL presents a portion of this well established record, cited hereto as **Exhibit A**. These remarks are filled with negative racial stereotypes and prejudice that demonstrate Depa's racial animosity. Depa's racial animosity is the most significant factor that led to Depa submitting his false affidavit.

Depa targeted Arabs and Arab Americans in his communications. IO's owner, Latif Z "Randy" Oram, is one such Arab American. By having such rooted racial motivations, it is likely that Depa constructed his affidavit accordingly. Below is a summary of such racially motivated statements, specifically targeted towards Arabs and Arab Americans. **(Exhibit A)**.

a) Sending emails with images referencing parts of America as "Dumbfuckistan," which takes the "stan" ending from "stan" countries in the Middle East, such as Afghanistan.

b) Sending emails which contain articles claiming that Arabs are violent and terrorists.

c) Sending emails disparaging Arab features, such as the nose.

In a reference to Oram specifically, Depa left a voicemail to IO employee Jim Faycurry stating, "You know, he's an S.O.B." As applied to this case, the Circuit Court denied IO's request to bring this voicemail as evidence of bias. The Court of Appeals affirmed this decision.

Today, in America, the stereotyping of Arabs is very prevalent. A general American view of Arabs is that they are backward, scheming, fanatic terrorists, who are dirty, dishonest, oversexed, and corrupt. Depa clearly held a similar view of Arabs, as these themes were present

in his emails. The proliferation of these kinds of stereotypes and defamatory content is exactly why the Arab American Civil Rights League exists. We ask that this Court help us in countering negative stereotypes and all forms of hatred towards Arab Americans.

B. Patrick Depa's May 30, 2019 Affidavit Was False.

On May 30th, 2019, Patrick Depa signed an affidavit which gave Lamar and SS MITX's attorneys an opening to try the case a second time. **(Exhibit B)**. The affidavit contains eighteen statements made under oath by Depa. The basis of the affidavit was that Oram had allegedly backdated the renewal. While under oath, Depa made false statements and knew the statements were false. By Depa's later statements, and the statements of other witnesses, it became clear that Depa's affidavit was false in many ways. These falsities rise to the level of perjury. Perjury is defined "as a willfully false statement regarding any matter of thing, if an oath is authorized or required." *People v. Lively*, 470 Mich 248 (2004).

Michigan Courts have previously held that filing a false affidavit in a lawsuit can constitute obstruction of justice. *People v Kissner*, 292 Mich App 526 (2011). This Court, in *People v. Ormsby,* 310 Mich. 291, 300, 17 N.W.2d 187 (1945), defined obstruction of justice as " 'impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein.' " In *People v. Coleman,* 350 Mich. 268, 274 (1957), this Court stated that obstruction of justice is "committed when the effort is made to thwart or impede the administration of justice."

Depa swore an oath certifying that all statements were true during the following events:

a) Depa affidavit, May 30, 2019
b) Depa Deposition Testimony, August 17, 2019
c) Depa Evidentiary Hearing Testimony, August 23, 2019

d) Depa Retrial Testimony, August 17, 2021

Notwithstanding these oaths, Depa committed perjury and lied under oath. Below are examples of this behavior as referenced by Depa's original affidavit statement.

Affidavit Statement #1: Depa stated under oath that "I am a former employee of International, Inc. I make this affidavit on the basis of my personal knowledge of the facts stated in this affidavit. If called upon to testify, I can and will confirm each of the statements made below." In reality, Depa did not have personal knowledge of the facts. At his deposition, Depa was asked: Question: "But, the facts you stated in the affidavit [Paragraph 6, specifically] you did not have personal knowledge of, right? [Answer] I do not have personal knowledge… [Question] You can't confirm all of the statements in your affidavit, right? [Answer] Well you just brought up another–six is inaccurate. [Question] Right, and that's not the only one, right? [Answer] Not sure. There's the Jim Faycurry one I missed–remembered, but gave the reason for that." (See Depa testimony, *Evd. Hrg., p 94 ln 7-19*). Clearly, Depa did not have such personal knowledge.

Affidavit Statement #5: Depa stated under oath, "I have personal knowledge that the lease renewal was not sent in December 2013. I know this because I observed Randy Oram Type the letter in question on the computer in his office, print it and sign it. This occurred in or about late July 2016. Mr. Oram backdated the letter to 2013 so that he could falsely claim that the 2009 lease had been renewed on time." In reality, Depa did not observe Oram type the letter and could not have witnessed Oram scanning the letter because he was not in the office the day it was scanned. Further, throughout the evidentiary hearing Depa claimed that he witnessed Oram "scan" the letter. Though IO did not have Defendants' forensic expert at the time of the evidentiary hearing, the forensic report indicated that the only version of the renewal letter on IO's IT system was a scanned version from July 24, 2016. July 24, 2016 was a Sunday and Depa's timecard report confirmed

Depa was not at the office on that date. Depa was asked "Did you see Mr. Oram scan [the renewal letter] in July 2016" He answered, "No, I did not." (See Depa testimony, *Re-Trial, page 101, ln 23-24.*).

Affidavit Statement #6: "The computer Mr. Oram used to create the letter was still in his office when I left employment with International Outdoor in 2018." However, Depa could never make such a statement because Depa admitted he did not have any personal knowledge of Mr. Orams computer status. Depa was asked "You don't have any idea whether the computer that was in Mr. Oram's office when you left employment was the same computer as in 2016, two years earlier, right? [Answer] Correct [Mr. Oram] could have changed it, or he could not have.. [Question] so.. Paragraph 6 of your affidavit is inaccurate? [Answer] It's inaccurate, yes." (See Depa testimony, *Evd. Hrg., p 93 ln 6-15*). This lie was important because Judge Anderson relied on the truth of these statements to order a forensic audit. The audit confirmed IO's claim that it was not in possession of the computer used to create the letter.

Affidavit Statement #11: "The Simply Self Storage Auburn Hills lease file stayed in a drawer and was never brought out or spoken about again until January or February 2016. Around this time, a new employee, James Faycurry, was hired. James had come to International Outdoor from Adams Outdoor, a competitor, and he advised us that changes in the law had made erecting a sign in Auburn Hills more feasible than it had been in the past." In reality, James Faycurry could not have been the trigger to bring the Auburn Hills file from the drawer because he did not join IO until February 2017, or after the complaint was filed. Faycurry testified: Question: Now there's also testimony - well scratch that - strike that, I'm sorry. When did you start your tenure at International Outdoor? Answer: I believe it was probably February of 2017. Question: Okay, and

if there was any testimony that you had started at International Outdoor earlier, say in early 2016, that would be incorrect? Answer: That's correct. (Se Faycurry testimony, *Evd. Hrg.*).

Affidavit Statement #17: "Mr. Oram never claimed to us at this time that he wrote a renewal letter: rather, he stated only that he hoped Alan White had done so. Mr. Oram made us double and triple check, and no renewal letter was found. When I later spoke to Alan White about this, he confirmed that he never sent a renewal letter. [Alan] explained that there was no reason to do so because Randy Oram had decided not to move forward with the Auburn Hills site.". This is yet another misrepresentation. IO employee Alan White never advised Depa that Oram chose not to move forward with the Auburn Hills site. Alan White was asked: [Question] "And Mr. Depa said not only did you confirm that no renewal letter was sent, but you also, quote "explained that there was no reason to do so because Randy Oram had decided not to move forward with the Auburn Hills site." Did that conversation happen?" Answer: Not at all. [Question]: "Did Randy Oram ever tell you that he had decided not to move forward with the Auburn Hills site?" [Answer]: "No, I don't recall him saying that about any site. And knowing the value of that site to his company, he would never have said that about Auburn Hills. And we worked a decade on it." (See Alan White testimony, *Evd. Hrg., pg 179, ln 14-25.*)

It is clear from just the few statements reviewed here that the affidavit was chalk-full of perjurious lies that were later discredited. "The reviewing court considers affidavits, pleadings, depositions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Zaher v Miotke*, 300 Mich App 132, 139-140 (2013). Despite this, the Michigan's Court of Appeals affirmed the trial court's findings, making

it clear that they did not consider affidavits in the light most favorable to the nonmoving party, as the nonmoving party, IO, established the affidavit was false. This Court's consideration of the affidavit in the light most favorable to the nonmoving party is now needed.

C. The Lower Courts Failed to Scrutinize Depa's False Affidavit

As stated above, it was Depa's clear bias against IO owner Randy Oram that motivated him to produce a false testimony and affidavit. Just one day before the anniversary of IO's judgment, where it was determined that IO had superior rights, Lamar and SS MITX sought a new trial by filing a motion for relief from judgment. This motion included Depa's false affidavit as its main exhibit. One glaring problem existed: Lamar and SS MITX knew about Depa during the first trial and did not speak with him[10]. However, after its initial loss at the trial court, Lamar and SS MITX realized Depa had something valuable: a hatred towards Oram. Lamar and SS MITX capitalized on this hatred and got Depa to testify against Oram that he had backdated the letter.

Michigan courts are aware that witnesses, in addition to other participants in the litigation, can together taint the verdict of a case. Tainted verdicts need not be allowed to stand simply because a lawyer or judge or both failed to protect the interests of the prejudiced party by timely action. *Reetz v. Kinsman Marine Transit Co.,* 416 Mich. 97, 102–103(1982). Below is a selection of examples that, combined with Depa's false affidavit, led to a tainted verdict to the detriment of IO.

1. Lamar and SS MITX were allowed to provide expert testimony during the evidentiary hearing while International was not.

[10] During discovery, IO submitted a response that listed Patrick Depa as someone who provided information relevant to Lamar's discovery requests. Thus, Lamar knew about Depa and his relationship to this case on or about February 2017.

After Depa produced a false affidavit, Judge Anderson ordered an evidentiary hearing and entered a protective order allowing Lamar to access IO's computers. This was based on Depa's false statement cited above, discussing his knowledge of Oram's computer. The order allowed Lamar's expert to examine the computer in Oram's office and any servers connected to that computer. IO argued that the order was too broad and failed to protect material subject to the attorney-client privilege, but to no avail. Judge Anderson also denied IO from providing its own expert testimony.

Had IO been able to provide its own expert during the evidentiary hearing, the flaws in Lamar's expert's testimony would have been revealed. For example, during this second trial IO was allowed to have its own expert. IO's expert, forensic analyst Larry Dalman, found several flaws in Lamar's expert's research. Next to the 2016 scan of the renewal letter, Dalman found a check and a cover letter, also scanned in 2016. Next, Lamar's expert testified that he found no evidence to support anyone's claims, including Depa's. This expert also asserted that the drive it received was not Oram's computer from 2016-2018, the only relevant timeframe under the trial court's order. But Lamar's expert nonetheless acknowledged that the computer had been "restaged"—that is, rewritten with a new operating system—on May 5, 2019. That was after the first trial and before IO had any inkling that Depa was making his false claims. Clearly, if IO's witness would have been given an opportunity to provide testimony during the evidentiary hearing, the outcome would have changed.

2. Lamar and SS MITX were given ample time to prepare for the evidentiary hearing and second trial while IO was not.

Although Lamar's expert report was required to be produced per the court's protective order, IO had received no information by August 20, 2019—three days before the evidentiary

hearing. When IO sought information from Lamar under the Court's protective order, Lamar's attorney responded that IO would learn at [the evidentiary hearing] what its expert had uncovered. IO filed an emergency motion to strike Lamar's experts, which Judge Anderson denied. The delay in obtaining Lamar's expert's report had a detrimental impact on IO's defense. Had IO received this expert report before Depa testified, IO would have had evidence that it was impossible for Depa to have seen Oram "scan" the renewal.

Further, after the evidentiary hearing, Judge Anderson set retrial for November 8, 2021. However, on June 22, 2021, Judge Anderson issued a *sua sponte* order moving trial July 27, 2021. IO filed a motion asking the court to return the case to its original date. Judge Anderson moved the trial to August 13, 2021. IO was not prepared to have three months less than originally planned to prepare for the retrial. Again, IO was denied time to prepare.

3. Lamar and SS MITX were allowed to conduct extensive discovery while IO was not.

After Depa produced the false affidavit and an evidentiary hearing was scheduled, IO filed a motion to clarify the scope of discovery and inquire into Patrick Depa's statements. Judge Anderson denied this motion. When a new trial was scheduled, IO moved to submit new witness lists and conduct discovery over 60 days before the second trial. Judge Anderson also denied this motion, only allowing IO to conduct limited discovery. This left IO unable to conduct discovery into Depa's credibility. However, Lamar and SS MITX were granted extensive discovery.

4. Lamar and SS MITX did not conduct proper diligence into Depa's statements.

In *Stallworth v Hazel,* 167 Mich App 345, 355 (1988), the appellate court held that when a party seeks a new trial based on allegations of fraud, the party must have exercised due diligence

in their finding of fraud. Here however, the lower courts declined to follow *Stallworth,* holding that fraud can be found without conducting due diligence. Lamar and SS MITX were granted this new trial without completing their diligence in a timely manner. As stated above, Lamar and SS MITX originally ignored Depa's availability and only sought his testimony after the initial judgement in favor of IO. Such dilatory motives evidence the fact that Lamar and SS MITX did not conduct the requisite diligence required for a new trial under *Stallworth*.

5. The Circuit Court did not have jurisdiction to hear Lamar and SS MITX's Motion to Remand for an Evidentiary Hearing.

Lamar and SS MITX appealed the judgment from the first trial. Then they filed their new-trial motion while that appeal was still pending. The Circuit Court didn't acknowledge that the appeal deprived the Circuit Court of jurisdiction to hear Lamar and SS MITX's new-trial motion. It even denied IO's motion to dismiss for lack of jurisdiction. When IO raised this issue with the Court of Appeals itself, the panel concluded that the Circuit Court did, indeed, lack jurisdiction while the case was on appeal. But it suggested that Lamar and SS MITX might file a motion to remand for an evidentiary hearing. Lamar filed that motion and, on August 15, 2019, the Court of Appeals remanded the case for an evidentiary hearing.

6. Lamar and SS MITX were able to obtain a new trial without finding fraud.

In a civil case, a party must prove fraud with "clear and convincing evidence." *Kiefer v Kiefer*, 212 Mich App 176 (1995); In *re Martin*, 450 Mich 204, 227 (1995). Evidence is clear and convincing only when it "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Id* at 227. The Circuit Court did not have the requisite record to

make such a finding. Instead, the circuit ordered a new trial because it gave weight to Depa's statements for rebuttal purposes with respect to Oram, and because it found IO's apparent lack of candor. With this record, the circuit court abused its discretion by granting a new trial. So did the appellate court in affirming this award.

CONCLUSION

This Court's power to oversee the lower courts in their abuse of discretion is precisely what is required in this appeal. Unfortunately, bias was allowed to permeate the case and take away IO's due process rights. Said bias culminated in the grant of a new trial based upon a racially motivated witness who produced statements that were unequivocally false. This Court has a responsibility to ensure IO is not stripped of its due process rights, especially in the event of false, racially biased statements made under oath.[11] When bias is allowed in a case, due process is violated.[12] The ACRL respectfully requests that this Honorable Court enter the relief sought by International Outdoor, Inc.

Respectfully Submitted,

/s/ Kassem M. Dakhlallah
Kassem M. Dakhlallah (P70842)
6050 Greenfield Rd., Ste., 201
Dearborn, MI 48126
(313) 551-3038
kd@hdalawgroup.com
Counsel for Amicus Curiae ACRL

Dated: April 8, 2024

[11] See *Mays v. Governor of Michigan*, 506 Mich. 157 (2020), which found that the Supreme Court of Michigan is responsible for enforcing the State's constitution, and due process is in the constitution under Art. 1, § 17

[12] *See Caperton v. AT Massey Coal Co., Inc.,* 556 U.S. 868, 876 (2009)

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.212(B)(1). I certify that this document contains 4947 countable words. The document is set in Times New Roman, and the text is in 12-point type with 18-point line spacing and 12 points of spacing between paragraphs.

Respectfully Submitted,

/s/ Kassem M. Dakhlallah
Kassem M. Dakhlallah (P70842)
6050 Greenfield Rd., Ste., 201
Dearborn, MI 48126
(313) 551-3038
kd@hdalawgroup.com
Counsel for Amicus Curiae ACRL

Dated: April 8, 2024

STATE OF MICHIGAN
IN THE SUPREME COURT

INTERNATIONAL OUTDOOR, INC.,
Plaintiff/ Appellant

v.

SS MITX, LLC and LAMAR ADVERTISING OF MICHIGAN, INC.

Respondents/ Appellees.

Case No. 166756

COA Case No. 359082
Consolidated with
COA Case No. 359811

Oakland County Circuit Court
Case No. 2016-155472-CB
Case No. 2016-155489-CB

and

LAMAR ADVERTISING OF MICHIGAN, INC.,
d/b/a THE LAMAR COMPANIES, and SS MITX, LLC,
d/b/a SIMPLY SELF STORAGE
Plaintiffs/Appellees

v.

INTERNATIONAL OUTDOOR, INC.,
Defendant/Appellant

ARAB AMERICAN CIVIL RIGHTS LEAGUE'S BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANT INTERNATIONAL OUTDOOR, INC.

CERTIFICATE OF SERVICE

I, Tarik D. Turfe, hereby certify that on April 8, 2024, I caused an electronic copy of the Arab American Civil Rights League's Brief as Amicus Curiae in Support of Appellant International Outdoor, Inc. to be served upon each counsel of record to the above captioned matter, via the Michigan Supreme Court's MiFile system.

Respectfully Submitted,

/s/ Tarik D. Turfe
Tarik D. Turfe (P83690)