

## MSC Order List: October 26, 2011

[27. October 2011 By Julie Lam](#)

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On October 26, 2011, the Michigan Supreme Court granted the application for leave to appeal in *In re Mortimore Estate, No. 143307*, to address "what standards apply and what factors a court should consider in determining whether a transaction was the product of undue influence where there is a fiduciary relationship between the parties."

The Court directed the Clerk to schedule oral argument on whether to grant the application or take other action in *Hill v. Sears Roebuck & Co, No. 143329*. At oral argument, the parties shall address: (1) whether the defendant installers of the electrical appliance had a duty to plaintiffs with respect to the uncapped gas line in their home that was separate and distinct from their contractual duty to properly and safely install the appliance; (2) whether the defendant installers created a new dangerous condition with respect to the uncapped gas line, or made an existing dangerous condition more hazardous; and (3) whether other defendants breached any duty owed to the plaintiffs.

In *Scott v. Director of Elections, No. 143878*, the Court granted the motions for immediate consideration and motion to intervene, and denied the motions for reconsideration of the Court's October 20, 2011 order. The Court stated that: "The ultimate question here is whether signatures gathered on a recall petition are invalid if collected before a circuit court appeal of a ruling on the clarity of a petition is decided. MCL 168.952(7)." The Court noted that given the absence of express language in the statute indicating one way or the other, plaintiff's construction that no signatures collected before the circuit court's decision are valid "is at the very least debatable."

However, the Court emphasized that the granting of an injunction constitutes an extraordinary judicial power, and to halt an election by an injunction is an even more extraordinary action. The Court determined that the circuit court's original decision correctly concluded that plaintiff had not shown a likelihood of success on his claim, under the standards for determining whether to grant an injunction, to prevent the recall election, and that plaintiff cites to no authority for the proposition that the Michigan Supreme Court is authorized to "adjourn" an election.

The Michigan Supreme Court denied six applications for leave to appeal. Justices Cavanagh and Marilyn Kelly would grant the application in *People v. McGhee, No. 142871*. The Court issued a housekeeping order granting motions to file briefs *amicus curiae* and denying a motion for leave to participate in oral argument in *Residential Funding Co, LLC v. Saurman, Nos. 143178-9*.