

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-3972

In Re:
Rudolph Vegliante, Jr.

Debtor

Rudolph Vegliante, Jr.,

Appellant

v.

STATE OF NEW JERSEY, DEPARTMENT
OF TREASURY, DIVISION OF TAXATION

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 01-cv-00788)
District Judge: Honorable James M. Munley

Argued June 27, 2002

Before: AMBRO and STAPLETON, Circuit Judges
O'NEILL*, District Judge

(Filed: July 30, 2002)

* Honorable Thomas N. O'Neill, Senior United States District Court Judge for the Eastern District of Pennsylvania, sitting by designation.

Brett J. Riegel, Esquire (Argued)
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Attorney General of New Jersey
Patrick DeAlmeida
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Tracey E. Richardson (Argued)
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Transcribed by: Geraldine C. Laws, CET

(Proceedings recorded by electronic sound recording;
transcript prepared by AAERT-certified transcriber.)

(The following bench opinion was delivered in open court:)

BENCH OPINION

AMBRO, Circuit Judge

(The following bench opinion was delivered in open court:)

THE HONORABLE JUDGE AMBRO: The Supreme Court stated in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72-73 (1996), that "the 11th Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction." In *In Re: Sacred Heart Hospital of Norristown*, 133 F.3d 237 (3d Cir. 1998), we observed that "since *Seminole Tribe*, Section 5 of the 14th Amendment has been the sole basis for Congress to abrogate the States' immunity under the 11th Amendment." *Id.* at 242 (quoting *College Savings Bank v. Florida Prepaid Post-Secondary Education Expense Board*, 131 F.3d 353, 358 (3d Cir.1997)). We held in *Sacred Heart* that the bankruptcy clause is not a valid source of abrogation power. *Sacred Heart*, 133 F.3d at 243.

In this case, Vegliante asks us to allow him to pursue an adversary proceeding in bankruptcy against the State of New Jersey. The adversary proceeding at issue is plainly a suit within the meaning of the 11th Amendment. *Missouri v. Fiske*, 290 U.S. 18, 26 (1993) (quoting *Cullens v. Virginia*, 19 U.S. 264 (1821)). The State of New Jersey received a summons requiring it to appear in court or face a default judgment against it. That qualifies as a suit. See *id.*

Vegliante seeks to prosecute a suit against the State of New Jersey without its consent. We cannot oblige that request in light of *Sacred Heart's* ruling on state sovereign immunity. Therefore, the District Court's order is affirmed.

TO THE CLERK:

Please file the foregoing Bench Opinion.

By the Court,

/s/ Thomas L. Ambro
Circuit Judge