No. 18-1380

In The
Supreme Court of the United States

THOMAS P. GANNON, ESQ.,

Petitioner,

v.

RIVERWATCH CONDOMINIUM OWNERS ASSOCIATION, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE PARTIES

The Petitioner misstates the parties to this particular Petition. The Petition for Writ of Certiorari pertains only to an Order of the Third Circuit imposing counsel fees on the Plaintiff's attorney, Thomas P. Gannon. Therefore, only Thomas P. Gannon is a party to this Petition.

RULE 29.6 STATEMENT

Riverwatch Condominium Owners Association is a Pennsylvania non-profit corporation. It has no parent corporation and does not issue shares of stock.

COUNTER-STATEMENT OF THE CASE

This case has a very tortured history. On June 21, 2010, a verdict in the amount of $8,500 was entered against Daniel King and in favor of the Riverwatch Condominium Owners Association ("Riverwatch") in the Court of Common Pleas of Pennsylvania for violating the Rules of the condominium where Mr. King resided. His attorney, Thomas Gannon, failed to timely file post-trial motions so his appeal to the Pennsylvania appellate court was dismissed. Attorney Gannon then began a long series of frivolous filings including 48 separate appellate dockets to the Pennsylvania appellate courts, two separate complaints to the United States District Court for the Eastern District of Pennsylvania, two appeals to the United States Court of Appeals for the Third Circuit and one prior Petition for Writ of Certiorari to this Court (docketed at 17-589). All of the appeals were decided against Mr. King. The filings were so frivolous that Attorney Gannon has been suspended from the practice of law by Order of the Pennsylvania Supreme Court dated December 21, 2018 for his actions in this case. There are also similar proceedings in the Eastern District of Pennsylvania now pending seeking to suspend Attorney Gannon.

On March 20, 2018, Judge Baylson of the Eastern District of Pennsylvania issued an Order against Attorney Gannon compelling him to pay attorney's fees of $3,985 to Riverwatch for his vexatious conduct.

On May 22, 2018, Attorney Gannon filed an appeal of Judge Baylson's Order to the Third Circuit on behalf of his client, Daniel King, only. The Notice of Appeal stated, "*Notice is given that Daniel King, plaintiff, in the above named case hereby appeals to the United States Court of Appeals for the Third Circuit from judgement entered on March 20, 2018 by Judge Michael B. Baylson granting the defendant, Riverwatch Condominium Owners Association attorney's fees under 28 U.S.C. Section 1927*." Attorney Gannon never filed an appeal on behalf of himself.

On December 10, 2018, the Third Circuit dismissed the appeal filed by Attorney Gannon on behalf of his client because it lacked jurisdiction. The Notice of Appeal did not name Attorney Thomas Gannon as the appellant even though he was the aggrieved party.

ARGUMENT

There is nothing new or novel in this appeal. The law has been settled for years. Federal Rule of Appellate Procedure 3(c)(1)(A) requires an appeal to "specify the party or parties taking the appeal." Attorney Gannon named his client as the appellant even though the District Court entered an award of attorney's fees against the attorney and not the client. Therefore, Attorney Gannon should have named himself as the appellant. Clearly, his Notice of Appeal did not do this.

The failure to name the party taking the appeal is jurisdictional as determined by this Supreme Court in *Torres v. Oakland Scavenger Co.* wherein it was clearly stated, "The failure to name a party in a notice of appeal is more than an excusable 'informality'; it constitutes a failure of that party to appeal." (108 S.Ct. 2405, 2407, 101 L.Ed. 285, 290, 487 U.S. 312, 314 (1988)). This exact same fact pattern was before the Third Circuit in *Collier v. Marshall, Dennehey, Warner, Coleman & Goggin*, 977 F.3d 93 (3d Cir 1992) where an attorney appealed sanctions against only the attorney but the Notice of Appeal named the client. The Third Circuit dismissed the attorney's appeal on jurisdictional grounds.

This appeal is not saved by Federal Rule of Appellate Procedure 3(c)(4) which states, "*An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.*" The Notice of Appeal clearly states that Daniel King is the appellant, not Attorney Thomas Gannon. This Rule states that the intended party to the appeal must be gleaned from the "notice," not any other outside source. There is no other way to read the Notice of Appeal other than Daniel King is the Appellant.

Because Rule 3(c) is jurisdictional, Riverwatch could not grant jurisdiction by the filing of its Motion to Quash Appeal in the Third Circuit. Riverwatch did state in its motion that "Attorney Gannon filed an appeal." This statement is true. The attorney filed the

appeal. However, the attorney filed the appeal on behalf of his client, Daniel King, and not on behalf of himself.

CONCLUSION

For the reasons stated above, this Honorable Court is requested to deny Thomas Gannon's Petition for Writ of Certiorari.

Respectfully submitted,

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