

No. 18-1462

IN THE SUPREME COURT OF THE UNITED STATES

_ Nadejda L Rozanova, Denis Klimov

PETTITIONERS and APPELANTS

vs.

RESPONDENT: Rafael S Uribe

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA

COURT OF APPEAL, SIXTH APPELLATE DISTRICT

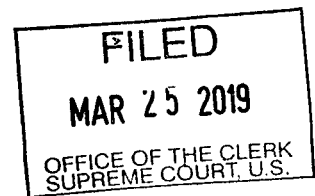
Petitioners in Propria Persona

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QUESTION PRESENTED

Pursuant to Rule 10(c):” a state court....has decided an important federal question in a way that conflicts with relevant decisions of this Court.” In U.S. Supreme Court case of Grannis v.Ordean (1914) 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 [234 U.S. 385] the Court stated, “The fundamental requisite of due process of law is the opportunity to be hear...“from which relevant and probative evidence has been omitted is not a fair hearing.” In petitioners’ case Courts (Superior and Appellate) decided that they allowed disrupting Due Process (guaranteed by 14 Amendment and decision of this Court) by omitting numerous (more than 18) relative and probative facts and laws. Courts did not argue or contradicts presented facts and laws, as if they did not hear them. They just omitted them and use only facts and laws which support Courts’ legal theory. It striped petitioners from opportunity to be heard. Thus by 14 Amendment and this Court ruling in Grannis it has not been a fair hearing. It looks that omission became a common practice in California Courts since both Superior and Appellate Court use it. And this Court should stop this unconstitutional practice. Omitted facts and laws will be presented bellow in details.

List of Parties

All parties appear on the cover page.

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TABLE OF AUTHORITIES

Grannis v. Ordean (1914) 234 U.S. 385, 34 i,8,9

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In re Marriage of Ananeh-Firempong 11

(1990) 219 Cal. App.3d 272, 282

(Rankin v. DeBare, 1928, 20.5 Cal. 639 p. 9

641.;

Kafka v. Bozio (1 923) 191 Cal. 746, 7.50- 9

7.51 /218 P. 753, 29 A.L. R. 8331

Harrison v. Welch (2004) 11 6 Cal. ap.p. 10

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Dolske v. Gormley (1962) 58 Cal.2d 513, 11

25 Cal.Rptr. 270, 375 P.2d 174

Richardson v. Franc (January 27, 2015, 13

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STATUTES AND RULES:

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OTHER

Campbell Law Review Volume 39 Issue 2, 12

Spring 2017 Article 4, The Law Is What It

Is, But Is It Equitable

Appellants Brief-A.B.; Appellants Reply Brief -A.R.B.; Statement of Decision-
S.D.; Petition for California Supreme Court-P.C.S.C., Petition for Rehearing to
Appellate Court-P.f.R.

OPINION BELOW

The unpublished opinion of the California Court of Appeal was issued on 10/16/18 (Appendix A). Order denied timely filed petition for rehearing issued 11/06/18 (Appendix B). The California Supreme Court's order denying review issued 01/02/19 (Appendix C). Judgment 09/08/2016 Appendix D. Appendix E First Superior Court Order denying Motion to vacate judgment (signed 10/21/2016). Appendix F Second Superior Court Order denying Motion to vacate judgment (signed 10/21/2016)

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal for which petitioner seeks review was issued on 10/16/18. Rehearing was denied 11/06/18. The California Supreme Court order denying petitioner's timely petition for discretionary review was filed on January 2, 2019. This petition is filed within 90 days of the California Supreme Court's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, United States Constitution, Amendment 14 No state . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The California statutory provisions and court rules: California Code of Civil Procedure (CCP) 338 (b): Within three years: (b) An action for trespass upon or injury to real property;

California Code of Civil Procedure 634 When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the

omission or ambiguity was brought to the attention of the trial court...it shall not be inferred on appealthat the trial court decided in favor of the prevailing party as to those facts or on that issue.

California Civil Code CCC §1104 property transfer creates easement there "such property was obviously and permanently used".

California Civil Code 3512 One must not change his purpose to the injury of another.

California Civil Code (CCC) 3527 The law helps the vigilant, before those who sleep on their rights.

CCC 3524:"Between those who are equally in the right, or equally in the wrong, the law does not interpose."

CCC 3520 No one should suffer by the act of another.

The fact that issues are constitutional mentioned in:

Appellants Reply brief.,P.17,L.15-26; P.18,L.20-25; P.19,L.1-2; Appellants petition for rehearing P.12,L.6-10; P.13,L.1-3; P.13,L.10-23; P.25,L.3-14; P.30,L.11; P.45,L.14-26; P.46,L.1-2; P.46,L.22,25; P.48,L.21-26; P.49,L.1-3; Petition for review in CA Supreme Court P.6,L.8-10;P.10,L.8-14; P.11,L.2-5;P.11,L.19-21;P.17,L.16-19; P.23,L.3-4; P.23,L.14-18

STATEMENT OF CASE

1)Dispute is about structural easement for part of more than 10 years old permanent parking structure. It is part of the retaining wall and part of asphalt/concrete pavement. It is encroaching on 63 sq ft of respondent's property. It is about 200 ft from his house/ parking space on the edge of unimproved forest. (A.B.P.11,L.10-28,P.12,L.1-28,P.13,L.1-3.).

2) Nobody knows who and when built it, but in 1995 it was already there i.e. statute of limitation CCP 338(b) on trespass of this structure started no later than 1998 (A.B.P.11,L.10-28,P.12,L.1-28,P.13,L.1-3.).

3) Petitioners bought the property in August 2009.

4) Fence (built by respondent), which leaves this small part on their property, made them believe that it is their property. Only during signing the contract to buy, respondent told to petitioner Klimov and his realtor that lands under this part belongs to him, but he allow them to use it. Respondent did not specify condition or time of use (A.B.P.13,L.1-28).

5) Fall 2009 respondent finished the fence between the properties and let his animals (goats, horses, and donkey) to this part of his yard. This part is adjusted to petitioners' front yard and about 20 ft from the house. Smell from manure, dead animals, dust, etc goes in their windows. Soil, beaten to dust, by animals started to sediment to their front yard.

6) Petitioners asked respondent to clean up after animals and prevent erosion and sedimentation of the soil to their yard. Respondent refused and threatened to cut the part of their car which standing in this disputed part of parking structure. Petitioners finally filed Complaints about erosion and health hazard with the County (A.B.,P.10-20).

7) Spring 2012, the same day, when health inspector was there, respondent broke petitioners' fence and tried to put his own fence to incorporate this disputed part (A.B.,P.10-20)

8) March 2013, after numerous times when respondent broke the fence (and not just in disputed area,) petitioners filed the Complaint to the Court for equitable\prescriptive easement \agreed boundary on this part to protect their property. This part is important

for petitioners because it has the part of the longer retaining wall and, if it will be taken and demolishing, petitioners will need to rebuild the whole retaining wall and parking space (A.B.,P.10-20).

9) May 2013 Respondent filed Cross Complaint claiming trespass and injunctive relief. It based on mostly false statements. These statements he changed later in other documents, but never amended Cross Complaint A.B.,P.10-20),

10) This claim has been barred by California statutory law on statute of limitation for trespass of permanent structure (CCP 338(b) which went into effect before 1998 (A.B.P.22,L.16-28).

11) Petitioners filed Offer to compromise pursuant CCP 998 (9/18/2013) offering him \$1000 for this small part (the market price of which was about \$135). Respondent declined it (A.B.P.57,L.14-17).

12) Respondent stipulated that he wants disputed part as retaliation not necessity (A.B.P.28,L.25-28,P.29,L.1-5)

12) Superior Court granted this, barred by statute of limitation, claim in 2016. Court did not present any legal basis how it can undo statute of limitation which already is in effect (A.B.P.32,51,56). Judgment (App.D) allows to remove this old permanent structure protected by statute of limitation (A.B.,P.22,L.1-4).

12) Petitioners timely filed Objection to ambiguities and omissions in statement of decision. Superior Court did not answer it. Thus, by California Code of Civil Procedure 634 "it shall not be inferred on appeal.....that the trial court decided in favor of the prevailing party...." (A.B.,P.13,L.21-24,P.16,L.1-12,P.57,L.1-4). But Appellate Court omitted this law and proceeded as if it does not exist (App. A.).

13) The California Court of Appeal rejected petitioner's arguments on the merits and affirmed Superior court decision in 2018 (App.A).

14) Petition for rehearing has been denied (App.B)

15) Petition for discretionary review by California Supreme Court has been denied (App. C).

REASONS FOR GRANTING THE PETITION

Review Is Warranted Because the Decision Conflicts With This Court's Holding in Grannis

As it has been shown above, Due process has been disrupted by not hearing and omitting the facts and laws. This contradicts 14 Amendment and U.S. Supreme Court case of Grannis v.Ordean (1914) 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 [234 U.S. 385] By standards of this decision petitioner case did not have a fair hearing. And Due process has been disrupted. California Courts did not contradict laws presented by Petitioners, did not present other laws. They simply omitted the facts and laws as if they do not hear them. Without these omissions petitioners had been entitled to all cause of actions by law.

Facts and Laws Omitted by Superior and Appellate Courts:

1) Omission of California Code of Civil Procedure statute of limitation on trespass of permanent encroachment 338(b) (3 years). Moreover Statute of limitation is the part of Due process. Omission of case laws Rankin v. DeBare, 1928, 20.5 Cal. 639- p. 641.; Kafka v. Bozio (1 923) 191 Cal. 746, 7.50-7.51 /218 P. 753, 29 A.L. R. 8331; Harrison v. Welch (2004) 11 6 Cal. ap.p. 4th1084,1087, 1094-1 095 which shows that for permanent structure "the statute of limitations runs from the time of the original entry. "I.e from the time when encroachment has been built (before 1998), Thus Cross Complaint's claim

filed in 2013 is time barred (A.B.P.L.1-28),A.B.P.22,L.16-27,P.23,L.1-19,P.42,L.1-5,P.53,L.1-

2) Omission of the fact that matter in the case is about structural encroachment that trespassed and its removal which are barred by statute of limitation. Argument that permission given in 2009 can not undo statute of limitation which started before 1998 has been omitted.

3) Omission of legal basic for Court's decision. Superior Court and Appellate Court omitted any legal basic why permission, given in 2009, can undo the statute of limitation which started before 1998. But California Appellate Court 2 District held that:" failure to provide.... legal basis for its decision on a principal, controverted issue comprises reversible error." In re Marriage of Ananeh-Firempong (1990) 219 Cal. App.3d 272, 282. Thus Appellate Court 6 District's omitted that their decision (to affirm Superior Court's decision made without legal basic) is in conflict with Appellate Court 2 district's decision (P.C.S.C.,P.18,L.18-28,P.19,L.1,2).

5) Omission of statutory law CCP 634 (without any legal basic), though all requirements to apply this law were in place. (A.B.P.16,L.1-21)

6) Omission of California Supreme Court decision in *Dolske v. Gormley (1962) 58 Cal.2d 513, 25 Cal.Rptr. 270, 375 P.2d 174* for equitable easement doctrine. This case law shows that Petitioners will have irreparable hardship from removing this permanent structure. While Trial Court did not find any hardship for Respondent, if this permanent encroachment will be allowed to stay. Respondent even testified that he can do without it (2RT.P.349;A.B.P.25,L.1-28;P.26, L.1-28;A.R.B.P.19, L.1-17,P.20,L.1-6). And respondent stipulated that he wants this part and retaliation not necessity (A.B.,P.12,13,22,28,42,45,55). Thus pursuant Dolske petitioners were entitled to the

equitable easement. Only by omitting this case law Courts were able to deny equitable easement to petitioners. Thus it shows the need to “secure uniformity” of the cases. Moreover this uniformity is important not only for California but for uniformity in other states as well. Recent review focuses on the equitable hardship doctrine, which is commonly invoked by many jurisdictions in encroachment cases.” Campbell Law Review Volume 39 Issue 2, Spring 2017 Article 4, The Law Is What It Is, But Is It Equitable: It shows that in many cases from various jurisdictions courts applied the relative hardship doctrine and denied injunctive relief based on the equities between the parties.

7) Omission of the facts for irrevocable license (estoppel) doctrine: the facts is that situation in Richardson v. Franc (January 27, 2015, A137815) Cal.App.4th [A](Richardson) is absolutely similar to Petitioner’s case, because they and their predecessors spent substantial amount of money on the improvements: predecessors on building these improvements and Petitioners on buying these improvements. They are accessory structures included in the purchasing contract (P.f.R..P.8,35-37). And more than 17 years (from before 1995 to 2012) neither the defendant nor his predecessors had objected. Appellate Court (App. A,) stated that this case “are not controlling here” while citing, in fact, similarities not differences in the cases:” because the plaintiffs and their predecessors had incurred “substantial expenditures in the easement area...” and because, over the course of 20 years, neither the defendants nor their predecessors had objected.” Thus, only omitting of facts, which are similar to Richardson case Appellate Court has been able to deny irrevocable license doctrine.

8) Omission of Petitioners’ discussion about their entitlement for set-off compensation pursuant CCP 741 (compensation after removal of permanent structure for good faith improver). (A.B.P.51,52,57;A.R.B.P.50,51; P.f.R.P.11,39).

9) Omission of the case laws which establishing prescriptive easement :

a) that prescriptive easement can be established even by use of the tenants

b)that if all of the elements to obtain an easement by prescription have been met, later permission will not extinguish the easement.

Thus respondent's permission to petitioners can not preclude prescriptive easement which has been established before (P.f.R.,p.35,L.3-13).

c) The most important fact has been omitted that it is not persons who used respondent's property. The property has been used by permanent structure. This structure is the property of petitioners' house owners. And this structure is using respondent's property no matter if anyone using this structure. Thus, if these facts and laws were not omitted, petitioners were entitled to the prescriptive easement (A.B.,P.33-34;A.R.B.,P.23, A.P.R.,P.17-18).

10) Omission of the fact that Petitioners presented legal description of the disputed region necessary for declaratory relief. (A.R.B.P.31).

11) Courts omitted Fixtures Doctrine's discussion presented by Petitioners. There several case laws have been cited which show that this permanent parking structure can become fixture and personal property chattel only for appellant's property(A.B.,P.30-32;A.R.B.P.54,L.9-26). Thus respondent can not permit them to use their own property and can not permit the structure to use his land, because the statute of limitation for structure was already in effect.

12) Omission of statutory law for implied easement pursuant California Civil Code (CCC) 1104 and case laws timely presented by appellants. CCC §1104 stated that with property transfer creates easement there "such property was obviously and permanently used". Thus pursuant to this Code and case laws also omitted petitioners entitled to

implied easement and \or the easement by implied grant (A.B.p.39,L.4-28,P.40,L.1-4;A.R.B.P.34,L.21-28,P.35,L.1-14).

13) Omission of California Civil Code (CCC) 3527. Respondent did slept on his right-he did not file Complaint in 2004 when he bought the property, or did not fence this area when he has been building the fence in 2008, but left this area on the petitioners' side (A.B.,P.40,L.5-28,P.41,L.1-22)

14) Omission of CCC 3512 Respondent changed his purpose i for retaliation i.e. for injury (A.B.P.42,L.6-20).

15) Omission of discussion on CCC 3524. Respondent encroaching on community road, so this code and doctrine of clean hands should be applied (A.B.P.43,L.4-20).

16) Omission of fact that Cross Complaint has been barred by judicial estoppel, because almost all statements from it were changed in other pleadings. This doctrine prevents a litigant from taking two mutually incompatible positions at different times where permitting him to do so would inflict prejudice on his adversary. (A.B.P.43,L.21-28,P.44,L.1-21,P.29-30, 44)).

17) Omission of discussion on CCC 3520. It has been shown that respondent made this area his blackmailing tool by fencing it off to petitioners property and permitting to use it until petitioners obey him(i.e. did not report his violations to County). And revoke his permission as retaliation after they stopped to obey him. (A.B.,P.44,L.24-28,P.45,L.2-18)

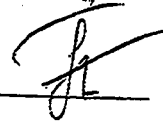
18) Omission of the respondents' numerous perjuries and false statements under oath. It shows that law did not protect respondent and petitioners equally- he has been allowed to lie to injure their case (A.B.,P.46,L.16-18,P.47,L.1-8).

CONCLUSION

For the foregoing reasons, petitioners requests that this Court grant the petition for certiorari, vacating the judgment of the California Court of Appeal, and remanding the case for further proceedings.

Respectfully submitted,

Dr. Nadejda Rozanova in pro per



Mr. Denis Klimov in pro per



signed 03/21/2019