

No. _____

IN THE
Supreme Court of the United States

Tamara Zivot,

Petitioner,

v.

Superior Court of California, Contra Costa County,
et al.

Respondents.

On Petition for a Writ of Certiorari to the Supreme
Court of California

PETITION FOR WRIT OF CERTIORARI

Tamara Zivot, *in pro per*
PO Box 23896
Pleasant Hill, California 94523
(510) 706-6217
tzivot@gmail.com

QUESTIONS PRESENTED FOR REVIEW

1. Is the constitutional guarantee of due process in order to confer personal jurisdiction over a defendant denied to a person when the evidence presented unequivocally establishes that full compliance with the statutory mandate for service of process was never required by the state court and when no defendant was served with service of process?

LIST OF PARTIES

Tamara Zivot is the defendant and appellant/petitioner.

Equity Residential, L.L.C. is the plaintiff in the California superior courts and appellate courts, below, and the Real Party in Interest.

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Petitioner Tamara Zivot respectfully petitions the Court to issue a writ of certiorari to the Supreme Court of the State of California in the case of Equity Residential, LLC v. Zivot/Moore (A154111), and shows the following:

OPINIONS BELOW

There are no official or unofficial reports of the opinions delivered in this case by other courts. Copies of the opinions of the Superior Court–Limited Jurisdiction Trial and Appellate Court, Court of Appeal and Supreme Court of the State of California are reproduced in the Appendices to this Petition.

JURISDICTION

The date of entry of the judgment of the Supreme Court of the State of California sought to be reviewed is June 20, 2018. There is no right to a rehearing or an order respecting a rehearing. The statutory provision conferring jurisdiction on this Court to review the judgement by writ of certiorari is 28 U.S.C./1257.

The United States Supreme Court will review decisions “rendered by the highest court of a State in which a decision could be had.” 28 U.S.C./1257. If the highest state court denies discretionary review, the United States Supreme Court has jurisdiction to review the decision of the intermediate court. *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8, 14 (1931).

A state court judgment finally disposing of a writ petition is a final judgment reviewable under 28 U.S.C./1257. See, *Madriga v. Superior Court*, 346 U.S. 556

(1954). In California writ proceedings, the California Supreme Court is the highest state court available. Thus, review is proper in the United States Supreme Court. CEB, California Civil Writ Practice, (2nd edition, update 1995)//12.15-12.16, pp. 471–472.

Review of a decision concerning a judicial order made in a case pending in the Superior Court–Limited Jurisdiction and challenged by mandate or prohibition is by a new writ filed in the next higher court, the Court of Appeal. *Heldt v. Municipal Court*, 163 Cal. App. 3d 532 (1985) ; *Andrus v. Municipal Court*, 143 Cal. App.3d 1041, 1046 (1983).

After a decision of the Court of Appeal becomes final as to that court concerning a writ case, a party may petition the California Supreme Court for review. The petition may be filed on summary denial of a writ petition. Review of a Court of Appeal decision concerning a writ petition is by a petition for review in the California Supreme Court. CEB, California Civil Writ Practice, *supra*, /1071, p. 437.

Review by the California Supreme Court is not limited to a decision of the Court of Appeal on the merits. The Supreme Court can also grant review of orders summarily denying writ petitions. See, California Rules of Court, Rule 28; Eisenberg, Horovitz & Wiener, CAL. PRAC. GUIDE: CIVIL APPEALS & WRITS (The Rutter Group 1995)/13.12, p. 13–2.

If the case was summarily denied in the court of appeal, the Supreme Court can grant review and transfer to the court of appeal with directions to issue an alternative writ. *Newman v. Superior Court*, 179 Cal. App.3d 377, 380 (1986).

Alternatively, the state Supreme Court can grant review and issue an alternative writ returnable before the California Supreme Court, in which case a return is filed. CEB, *California Civil Writ Practice* (2nd edition, update 1995)/1072, p. 437–438.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

U.S. Const. amend. XIV, /1, says at its pertinent part “nor shall any State deprive any person of life, liberty, or property, without due process of law.” The statutory notice under California law at issue in this case contravenes the requirements of the Fourteenth Amendment that Petitioner is not to be deprived of property rights without due process of law.

The California statute at issue is Code of Civil Procedure/415.10. Code of Civil Procedure/415.10 fails to meet the minimum requirements of due process in that it is being interpreted by the California courts so as not to require compliance with its provisions so that the statute does not provide proper notice that a proceeding has been commenced against a party and that the action will deprive a party of her property.

Code of Civil Procedure/415.10 provides for service of a summons and complaint by personal service. The California courts, however, have interpreted the statute so as to find that a person has been personally served even though full compliance with the statutory provisions have not been met and the person has not actually been personally served. Code of Civil Procedure/415.10 provides as follows:

A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery.

The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective. West's Code Civ. Proc. /415.10.

STATEMENT OF THE CASE

A. The Superior Court-Limited Jurisdiction Proceedings Below

On March 20, 2018, Respondent Equity Residential, L.L.C. filed an unlawful detainer complaint in the Superior Court-Limited Jurisdiction of the State of California, Contra Costa County, Martinez against Petitioner herein, Tamara Zivot, Superior Court Case No: MS18-0173. The complaint was accompanied by a summons issued by the Clerk of the Superior Court, Contra Costa County, Martinez.

Upon learning of the action, on March 25, 2018, Petitioner filed a motion to quash service of the complaint and summons of said action referenced above. The federal questions to be reviewed by this Court were raised by Petitioner in the trial court. The motion to quash service included:

(1) Notice of Motion to Quash Service of Summons and Complaint;

(2) Memorandum of Points and Authorities In Support of Motion to Quash Service of Summons and Complaint;

(3) Declaration of Defendants Tamara Zivot and Raymond Moore in Support of Motion to Quash Service of Summons and Complaint.

On April 05, 2018, the Superior Court of Contra Costa County, Martinez denied the Motion to Quash. An Order was entered by the Superior Court of Contra Costa County, Martinez, denying the Motion to Quash. (Appendix A)

On April 10, 2018, Petitioner sought review of the trial court's order denying the motion to quash in the Appellate division of the Superior Court, Contra Costa County, Martinez in a Petition for Writ of Mandate, raising the same federal questions for review. The superior court appellate division summarily denied the Petition for Writ Of Mandate on April 12, 2018. (Appendix B)

B. The Court Of Appeal Proceedings Below

On April 20, 2018, Petitioner timely filed a Petition for Writ of Mandate, Prohibition or Other Appropriate Relief before the state First District Court of Appeal, Division Three. The federal questions to be reviewed were once again raised by Petitioners. The appellate court thereafter denied the petition without comment on April 26, 2018. (Appendix C)

C. The Proceedings Of The Supreme Court of California Below

On May 9, 2018, Petitioner timely filed and served a Petition for Review with the Supreme Court of California. The Petitioner raised the federal questions to be reviewed by this Court before the California Supreme Court. The Supreme Court of California subsequently denied the Petition for review on June 20, 2018. (Appendix D)

This Petition is timely filed and served. Petitioner raised in the court of first instance and to the highest appellate court, the federal questions sought to be reviewed. Unless the relief requested herein is granted, Petitioner will be irreparably harmed.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

A. The Present Decision Is In Conflict With Applicable Decisions Of This Court

In this action Respondent seek to impose liability on Petitioner and Petitioner is entitled to appear and defend. Jurisdiction over the Petitioner is necessary for the validity of any judgment over the person of Petitioner. *Pennoyer v. Neff*, 95 U.S. 714 (1877).

Personal jurisdiction over Petitioner depends upon due process, i.e., notice and opportunity for a hearing. Proper notice depends upon compliance with statutory jurisdictional requirements of process enacted by a state. But the constitutional guarantee of due process must be satisfied by (1) employing a

reasonable method of notice, and (2) giving a reasonable opportunity for a hearing. *Mullane v. Central Hanover Bank*, 339 U.S. 360 (1950).

The requirement is of proper notice or notification, and proper notice is not satisfied by actual knowledge without such notification. Hence, even though Petitioner may have knowledge of the action, there is no jurisdiction over her unless the statutory method of notification, i.e., the type of service is sufficient. See, Rest. 2d, Judgments/2, Comment d; Rest. 2d Conflict of Laws/25, Comment f.

Under the still vital holding in *Pennoyer v. Neff*, *supra*, personal service of the defendant within the territorial jurisdiction of the state is the typical and preferred method. The California statute, Code of Civil Procedure / 415.10, specifies personal delivery as the primary method for sufficiency of notice in order to obtain personal jurisdiction over the defendant.

While personal service is the typical method of service and is sufficient, such statutory method should be held insufficient where the statute is not strictly construed and enforced so as to require actual personal service. See, *Mullane v. Central Hanover Bank & Trust, Co.*, *supra*. In accordance with the *Mullane* decision, service must be of the best type available under the circumstances. Allowing the statute for personal service, i.e., Code of Civil Procedure/415.10, to be construed liberally so as to result in personal service not being actually effected violates the due process clause of the Constitution. In complete compliance, instead of strict compliance, defeats the requirements under the due process clause that the

service must be of the best type available. *Mullane v. Central Hanover Bank & Trust, Co., supra.*

The constitutional guarantee of due process has been denied Petitioner. The requirements of proper notice demands strict compliance for personal service of Petitioner as the basis for jurisdiction over Petitioner. In the absence of strict compliance in effecting personal service, the California courts have no jurisdiction of the person of Petitioner. Compliance with the state statutory procedure of notice (process) is jurisdictional. No jurisdiction of the person is acquired by the court in the particular action without such compliance with the state statute. Strict compliance with the statutory method of personal service was essential to jurisdiction over Petitioner and violated constitutional due process. Such departure from strict compliance of personal service over Petitioner must be recognized and held invalid by this Court.

This case presents the important question of whether the statutory requirements for service of process must be fully complied with in order to obtain personal jurisdiction over a person. California case law is in conflict with decisions of this Court as to whether the statutes regarding service of process should be strictly construed or whether substantial compliance is all that is necessary to meet the service requirements. This Court should resolve this important issue regarding this fundamental issue of due process.

B. Important Questions Of Law Which Should Be Settled By This Court

This controversy questions the constitutional sufficiency of California's statute allowing for service of a summons and complaint and the interpretation of said statute by the California courts. Petitioner challenges the constitutionality of California's statute and interpretation thereof by the California courts under the Due Process Clause of the Fourteenth Amendment.

Due process requires the government to give notice to individuals of government actions which would deprive those individuals of a constitutionally protected life, liberty, or property interest. When a court (even in a case where no government agency is a party) considers terminating or impairing an individual's constitutionally cognizable life, liberty, or property interest, notice must be given to the individual whose interest is at stake in the proceeding.

The form of the notice and the procedure for delivery of the notice must be reasonably designed to insure that the interested parties in fact will learn of the proposed adjudicative action. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, *supra*.

The California statutory notice as interpreted by the California courts is inadequate because full compliance with its provisions are not being required and, therefore, the statute is not reasonably calculated to reach those who could easily be

informed by other means at hand. When notice is a person's due, process which is a mere gesture is not due process. *Mullane v. Central Hanover Bank & Trust Co.*, *supra*.

There are several conflicting decisions within the California courts regarding the interpretation of the service of process statutes. In *Bishop v. Silua* 234 Cal. App. 3d 1317 (1991), the appellate court held that when revising the service of process statutes in 1982, the legislature intended that the statutes regarding service should be strictly construed. Of equal significance, the court in *Bishop* held that the fact that the defendant knew of the lawsuit was not excuse for improper service. Similarly, in *Zirbes v. Stratton* 187 Cal. App. 3d 1407 (1986), the court found that a plaintiff must strictly comply with the statutory procedures that govern service of process.

Directly contrary to the holdings in *Bishop, supra*, and *Zirbes, supra*, other California courts have held that substantial compliance with the service requirements of the California Code of Civil Procedure is all that is required so as to confer personal jurisdiction. In reaching the holding that substantial compliance is sufficient, these California courts have placed great weight on the fact that a defendant has received actual notice of the actual even though service was defective. See, *Brein v. Bretchtel-Jochim Group, Inc.* 6 Cal. App. 4th 1387 (1992); *Khourie, Crew & Jeger v. Sabek, Inc.* 220 Cal. App. 3d 1009 (1990).

In deciding whether to grant review, this Court looks to determine whether there are conflicting decisions which should be resolved in order to provide guidance

to the state courts. The instant case presents an ideal vehicle for resolving the conflicting decisions with regard to an important issue of due process. As set forth below, the evidence is in conflict as to whether Petitioner was ever even served or properly served with the summons and complaint. The issue which requires resolution in this proceeding is whether full compliance or substantial compliance is necessary for service of process and as a matter of due process. Due process requires the government to give proper notice to individuals of government actions which would deprive those individuals of a constitutionally protected life, liberty, or property interest. The notice that must be given to the individual whose interest is at stake in the proceeding requires that the legislative requirements for service of process should be strictly construed. Nevertheless, conflicting decisions exist whether substantial compliance is sufficient as a matter of due process so as to confer jurisdiction over an individual.

The Petition also presents issues which regularly recur. There is a critical need for guidance to the trial courts regarding the requirements of service of process in proceedings and whether strict compliance or substantial compliance is the standard to be applied by the trial courts to meet the service of process requirements for due process under the Constitution and for jurisdiction over a defendant.

The decision of the California Supreme Court is contrary to what should be firmly declared as the governing law that service of process must be properly performed and the requirements for service of process strictly complied with in

order to obtain jurisdiction over a party as a matter of due process under the Constitution of the United States. This Court should grant review so that these important questions of law are resolved and announced to the California courts. Strict compliance with the statutes governing service of process should be controlling law of the State of California as a matter of due process under the U.S. Constitution and the conflicting decisions resolved as to this issue.

LEGAL ARGUMENT

1. Affidavits Devoid of Averments of Facts Showing That Due Diligence Was Exercised to Make Service Are Insufficient

The efforts of Respondent for service of the summons and complaint fell far short of the legal requirements for service of process and, accordingly, Petitioner moved to quash this defective service of process in the Superior Court of Contra Costa, Martinez.

First, there has been no personal service upon Petitioner. Second, there has been no valid substituted service on Petitioner. Thirdly, there has been no other kind of proper service of the complaint as authorized by California law for service of process. As established by the declarations of Tamara Zivot and Raymond Moore that were filed with the Superior Court of Contra Costa, Martinez, none of the individuals named as defendants in the complaint (including Petitioner herein), have been properly served with the Complaint. The motion to quash should have been granted by the Superior Court of Contra Costa, Martinez.

A challenge to personal jurisdiction constitutes a special appearance and may be based on improper service of process. The improper service of process may be a defect in the method of service. *Stamps v. Superior Court* 14 Cal. App. 3d 108 (1971). A motion to quash may also be made by failure to serve the complaint and summons altogether. *Wilson v. Eddy* 2 Cal. App. 3d 613 (1969).

In the underlying proceeding, there was a failure to serve the complaint altogether or the complaint was not properly served on any of the defendants. As set forth in the declarations submitted to the Superior Court of Contra Costa, Martinez by all named defendants, in support of the motion to quash, Respondent failed to effect proper service of the summons and complaint on each of the defendants, including Petitioner herein.

With regard to service or mailing of the summons and complaint upon Petitioner, her declaration in support of the motion to quash establishes that she never even received a copy of the Summons and Complaint by any manner for service of process of a summons, i.e. personal service, substituted service, etc. Indeed, there has never been an attempt to provide notice of the underlying proceeding to Petitioner even by regular mail at her place of residence. There has been a total failure on behalf of Respondent to attempt to effect service of process upon Petitioner in any of the required manners for service of process or even providing notice by regular mail of the complaint at her place of residence. As the declaration of Petitioner sets forth, she was never personally served, served by substituted service or served in any of the other manners for service of process. The

declaration of Petitioner also states that she has never even received a copy of the complaint at her place of residence by regular mail. (Declaration of Tamara Zivot submitted in support of motion to quash.)

The motion to quash should have been granted as Petitioner was never properly served in any manner, including even by substituted service, with the summons and complaint.

The declaration of the process server, M. Rodriguez, confirms that Petitioner was never personally served with the summons and complaint. Nor was personal service ever attempted. "It is well-established that the affidavit submitted under section 415.50 must establish reasonable diligence by 'probative facts' based on personal knowledge. [[Citations] The affidavit here was not sufficient." *Olvera v. Olvera*, 232 Cal.App.3d 32, 42.

In the instant case, the process server M. Rodriguez swears she was duly diligent in attempting to personally serve the summons and complaint on Petitioner, and thereafter made substituted service upon a Jane Doe. This allegation is untrue and unjustly led to the ruling the trial court made in error. There was no declaration of reasonable diligence attached to the proof of service or any where in the case file or on record for Case No. MS18-0173. Affidavits devoid of averments of facts showing that due diligence was exercised to make service have consistently been held to be insufficient. *Batte v. Bandy*, 165 Cal. App. 2d 527, 534 (1958); See also *In re Automobile Antitrust Cases I & II*, 135 Cal. App. 4th 100, 110

(2005) [declarations must offer evidentiary facts, not mere assertions of ultimate facts]. Accordingly, Plaintiff's attempt falls flat.

On its face, the Proof of Service, with no attached declaration of due diligence, show that plaintiff failed to make any attempt at personal service and therefore the requirements for substitute service were not met and a false proof of service was filed allowing jurisdiction to be obtained.

As the server, M Rodriguez was a registered process server with Sacramento County at the time of service, it can be reasonably presumed that she was well aware of the requirements for substitute service and the facts necessary to properly effect substitute service. As a result, her failure to declare those facts under penalty of perjury, as a registered process server, is further proof of the improper and defective service of the summons and complaint and the complete disregard for Petitioner's due process rights.

2. Substitute Service Was Defective as It Was Not Made Upon a Competent Member of The Household.

Even if service had been made upon Petitioner's "dwelling place or usual place of abode," pursuant to Section 415.20, such service must also be made upon a "competent member of the household." However, no facts are set forth on the Proof of Service to establish that service was made on such person. The Proof of Service describes the person served as "Jane Doe" and continues to give a physical description.

There are no facts provided to determine Jane Doe's identity or the nature of

why she was at the address served. There are no facts to establish Jane Doe's connection to the property at all, and no facts that would allow one to ascertain such. There is no statement that Jane Doe was a co-occupant and/or person in charge, and does not establish that "Jane Doe" was a competent member of the household. Simply put, this occurred because she made assumptions, rather than a careful and effective inquiry about "Jane Doe" or her status or capacity. As a result, she had no such detail to put into the Proof of Service.

Therefore, the Proof of Service was invalid on its face and should not have been accepted by the trial court. Thus, the subsequent denial of the motion to quash was invalid on the face of the record and the trial court erred in failing to grant the Petitioner's motion.

Here, Rodriguez's affidavits fail to specify how or why she believed Jane Doe was a competent member of Petitioner's household or in charge of Petitioner's household, business or mailing address.

The lack of evidence showing compliance with these requirements for the service on "Jane Doe" is also fatal, since there was no evidence before the trial court regarding Jane Doe's status as a member of his household, or whether she was in control of anything. (See Petitioner's Writ of Mandate, pp.6-20)

As established by the declaration of the process server, service of process was never performed in accordance with the requirements of the Code of Civil Procedure upon Petitioner. The process server acknowledges that she never personally gave the summons and complaint to Petitioner so that there would be personal service of

the summons and complaint. The process server also concedes that she never gave a copy of the summons and complaint to any identified occupant of the premises and then thereafter mailed a copy of the summons and complaint to Petitioner so that there was substituted service of the summons and complaint.

The fact that some unknown person on an unknown date left the papers at the door is not sufficient for personal service or substituted service. In *Sternbeck v. Buck* 148 Cal. App. 2d 829 (1957), the process server handed the papers to Sternbeck's wife while Sternbeck was standing less than 100 yards away. The court ruled that the papers were not served according to the requirements of the Code of Civil Procedure. Whether or not the defendant receives the summons and complaint through some other means than lawful service is irrelevant.

Here in this case, however, service is disputed. The declaration of Petitioner specifically states that she nor anyone in her household was served with legal process or a copy of the summons and complaint in this proceeding. The declaration of Petitioner directly contradicts the declaration of the process server. The declaration of Petitioner goes on to say that she only learned of this action because a copy of the summons and complaint was left outside the door to the unit.

Leaving a copy of the summons and complaint outside Petitioner's door is not sufficient personal service or substituted service. In a significant reversal from the usual California motion procedure, the moving party on a motion to quash service does not have the burden of establishing lack of personal jurisdiction. Rather, it is the plaintiff in opposing the motion who has the burden of establishing the

existence of jurisdiction by a preponderance of the evidence. *Magnecomp Corp. v. Athene Co.* 209 Cal. App. 3d 526 (1989). In this case, Respondent failed to meet its burden of proof of establishing that service was accomplished upon Petitioner as the declaration of the process server is directly contradicted by the declaration of Petitioner. Respondent having failed to carry its burden of proof, the motion to quash should have been granted by the Superior Court of Contra Costa, Martinez.

The declarations of the defendants establish by competent and credible evidence that they were not served personally or by substituted service with the summons and complaint. The declaration of the process server who was to have effected service of process upon the Petitioner establishes the exact opposite. Proper service was not completed upon either defendant. The Respondent has failed to carry its burden of proof. Respondent did not effect proper personal service or substituted service on the Petitioner. Respondent failed to effect proper service on any of the persons entitled to receive service of the summons and complaint. The lower courts should be reversed.

The proof of service on its face indicates that the process server did not comply with the rules governing service. It shows personal service upon a "Jane Doe" and describes her with a description that does not fit any member of the household.

The proof of service was therefore untruthful. Alternatively, the proof of service does not show personal service upon defendant by leaving a copy with someone other than defendant together with some indication that such person was

authorized to accept service on defendant's behalf. The proof of service therefore cannot be construed as attesting to authorized-agent personal service. In the absence of evidence from the process server, the uncontradicted evidence is that the process server did not personally serve defendant. Plaintiff therefore did not carry its burden of proving the facts requisite to an effective service.

American Express Centurion Bank v. Zara, 199 Cal.App.4th 383, 131 390 (2011).

Here, the record does not show partial or colorable compliance with the statutory requirements. The alleged "service" was void on the grounds that the proof of service failed to identify Petitioner on its face in that it says she is 5'8', 165 pounds (Petitioner is 5'6", 140 pounds), she has brown hair (petitioner has purple and blue hair), stated she was 60, when in fact she is in her early fifties.

Plaintiff here served the wrong person (if it served anyone at all). Before the hearing on the Motion to Quash on April 5, 2018, M.Rodriguez, needed to ask the court Bailiff whom Petitioner was because she did not know what Petitioner looked like. She did this in front of an entire courtroom of people. Petitioner introduced herself to the process server because Petitioner did not know who she was either and thought she was a court clerk.

Moreover, this case involves no mere technical defect in service. It presents the nuance that jurisdiction over defendant was obtained by a false proof of service. *County of San Diego v. Gorham*, 186 Cal.App.4th 1215 (2010); *Zara*, supra, 199 CA4th at 393.

Here, as in *Gorham*, there is no explanation for the false proof of service

and, thus, fundamental jurisdiction over defendant was obtained through an intentional fraud on the court. In short, the uncontradicted evidence is that plaintiff failed to comply substantially with the personal service statutes, even construing the statutes liberally. *Davis v. Allstate Ins. Co.*, 217 Cal.App.3d 1229, 1232 (1989).

It is established case law that actual notice of the proceeding does not cure the defects of failure to serve or improper service. The statutory requirement for service of a petition must be fully complied with in order to obtain personal jurisdiction over the Petitioner. Jurisdiction does not result from mere knowledge of the proceeding but from proper service of process. *Independent Bankers Trust Co. v. Superior Court* 138 Cal. App. 3d 238 (1982); *Sullivan v. Sullivan* 256 Cal. App. 2d 301, 304 (1967); *Pousson v. Superior Court* 165 Cal. App. 2d 750, 752 (1958).

Also, when revising the applicable statutes in 1982, it should be noted the legislature intended that the statutes regarding service should be strictly construed. *Bishop v. Silua* 234 Cal.App. 3d 1317 (1991).

In *Bishop* the court stated that in revising these statutes governing service, the Law Revision Commission stated that excuses for noncompliance must be strictly construed. Equally significant, the court held that the fact that the defendant knew of the lawsuit was no excuse for improper service. Similarly, in *Zirbes, supra*, the court held that a Plaintiff must *strictly comply* with the statutory procedures for service of process.

Since mere knowledge of a proceeding does not confer jurisdiction, this Court should reverse the lower courts and order that the motion to quash be granted on behalf of the Petitioner. The right to lawful service as prerequisite for any action or proceeding has been upheld by numerous court decisions. Respondent should be required to meet the minimum requirement of the Code of Civil Procedure in order to pursue its action against the Petitioner. See *Evartt v. Superior Court* 89 Cal. App. 3d 795 (1979). The failure of Respondent to abide by the Code of Civil Procedure is evident from the declaration submitted in the trial court by the process server. Additionally, the process server never supplied proof of due diligence for attempting personal service. Since there has been improper service, the trial court lacks jurisdiction over the Petitioner.

Since there was a failure to effect proper service, the lower courts abused their discretion in failing to grant Petitioner's motion to quash. Accordingly, the lower courts decisions denying Petitioner's motion to quash must be reversed.

In *Mullane v. Central Hanover Bank & Trust, Co.*, 339 U.S. 306, 314 (1950), this Court said concerning protection provided by the Due Process Clause of the Fourteenth Amendment: "The statutory notice to known beneficiaries is inadequate not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hands."

This portion of the *Mullane* decision is directly opposite to the decision in the present case. The decision of the California Supreme Court violates due process rights protected by the Fourteenth Amendment.

This Court has previously held that the state must give notice by personal service to both the owner and possessor of real property before allowing a forfeiture of one's rights, such as conducting a sale of the property for nonpayment of taxes, or a condemnation proceeding when the name of the owner is known, or easily ascertainable. *Mennonite Board of Missions v. Adams*, 103 S. Ct. 97 (1983); *Schroeder v. New York*, 371 U.S. 208 (1962); *Walker v. Hutchinson*, 352 U.S. 112 (1956).

The framers of the Constitution intended that its principles would apply equally throughout the nation. James Madison in presenting to the first Congress a Bill of Rights, which included the Due Process Clause of the Fifth Amendment, assigned as one of the principal purposes of his amendments obtaining an equality of those rights for persons in all of the states. 1 Annals of Cong. 439 (Joseph Gales ed., 1789). The proponents of the Fourteenth Amendment recognized that its Due Process Clause was taken from the Fifth Amendment and presented as one of its purposes that "all shall be protected alike in life, liberty and property." Remarks of Senator Jacob Howard, Cong. Globe, 39th Cong., 1st Sess. 1089 (1866).

Under the present conflict among the decisions of the appeals courts and the Supreme Court of California, constitutional rights are not being protected alike for all persons in the several states. Rather those rights depend upon the location of

residence and the state setting the controlling precedent for the state in which the person resides. Unequal application of the constitution can only engender disrespect for the rule of law and the judicial process.

A primary function of the Supreme Court, as envisioned by the founders of the republic, was as a superintending power to secure uniformity in the exposition of the Constitution, laws and treaties of the United States. Remarks of James Madison as reprinted in 3 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 532 (1836), (hereafter, Elliot, Debates) and remarks of Edmund Pendleton, president of the Convention of the Commonwealth of Virginia, on the adoption of the federal constitution, reprinted at 3 Elliot, Debates 518–19. James Iredell, speaking at the North Carolina convention, observed:

The propriety of having a Supreme Court in every government must be obvious to every man of reflection. There can be no other way of securing the administration of justice uniformly in the in the several states. There might be, otherwise, as many different adjudications on the same subject as there are states. 4, Elliot, Debates 147.

The California statutory notice is inadequate because unless personal service is actually accomplished in full compliance with the statute, the notice is not reasonably calculated to reach those who could easily be informed by other means at hand. When notice is a person's due, process which is a mere gesture is not due process. *Mullane v. Central Hanover Bank & Trust Co.*, *supra*.

The Respondent should be required to meet the minimum requirements of procedural due process in order to pursue its action against Petitioner. *Mullane v. Central Hanover Bank & Trust Co., supra.*

CONCLUSION

For all of the reasons set forth herein, review and relief should now be granted in order to address the important questions presented. In order to obtain uniformity in the construction of the constitution and to obtain equality for persons in the several states in the rights and protections secured by the constitution, Petitioner prays that this Court issue its writ of certiorari and accept jurisdiction over this case.

June 24, 2018

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Zivot', is written over a horizontal line.

Tamara Zivot, Petitioner, *in pro per*