No. 18-982

In The
Supreme Court of the United States

BEVERLY L. HENNAGER
and LOUIS A. JENNINGS JR.,

Petitioners,

v.

KATHERINE R. DAUPHIN,

Respondent.

On Petition For Writ Of Mandamus
To The United States Court Of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF MANDAMUS

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Petitioners – pro se

QUESTIONS PRESENTED

I. Whether the enforcement of an appellant mandate affirming the plain, unambiguous language of a previous order compelling specific non-discretionary action should be sought by writ of mandamus or by appeal.

II. Whether by denying the writ of mandamus, the Fourth Circuit disregarded and thus sanctioned orders that conflicted with the constitutional rights of individuals to uncontested property and due process of the law.

III. Whether the Fourth Circuit itself made a determination that conflicted with the constitutional rights of individuals when:

a) it denied the motion of two general partners in a limited partnership, to be provided complete disclosure pursuant to RULPA Section 407 to determine if they received equal benefit in a sale, pursuant to RULPA Section 408;

b) it threatened sanctions and a pre-filing injunction against defendants who have never been plaintiffs.

PARTIES

Beverly L. Hennager
– *Petitioner*

Louis A. Jennings Jr.
– *Petitioner*

Katherine R. Dauphin
– *Respondent*

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PRIOR OPINIONS

The opinion whose review is sought is unpublished and is reproduced in the Appendix at App. 1-3. The District Court order sought to be enforced by writ of mandamus is reproduced in the Appendix at App. 4-6. The District Court orders at variance with the final order confirmed in the Mandate and in violation of the Petitioner's constitutional right to property and due process of the law, is reproduced at App. 7-9, App. 10-17 and App. 18-19.

JURISDICTION

Petitioners seek this Court's review of the judgement entered October 24, 2018 by the United States Court of Appeals for the Fourth Circuit, by a Petition for Writ of Mandamus pursuant to jurisdiction conferred by 28 U.S.C. § 1651(a). This petition is timely filed because it was mailed within the ninety days of October 24, 2018, the date a petition for mandamus was denied in the court below. Rules 13.1 and 29.2.

Jurisdictional basis for the Fourth Circuit is 28 U.S.C. § 1651(a) and Fed. R. App. P. 21(a), and for the District Court is 28 U.S.C. § 1331.

RULE 20 STATEMENT

This writ will be in aid of the Court's appellate jurisdiction.

The Fourth Circuit failed to enforce its mandate requiring the lower court to enforce its order to dissolve the partnership and distribute the remaining assets after resolution of challenges to the court's prior orders. Failure to enforce the mandate permitted the lower court to interpose obstructions to the affirmed order. The lower court made a new order to not dissolve the partnership and to make the distribution of its assets contingent upon relinquishing due process rights. Relief for failure to enforce a mandate, without variance, cannot be obtained by appeal.

The Fourth Circuit disregarded, and thus sanctioned, the interposed orders of the lower court that were conflicted with the constitutional rights of individuals, creating exceptional circumstances that warrant the exercise of the Court's discretionary powers.

When the Fourth Circuit denied the Petitioners their right to disclosure pursuant to RULPA Section 407, it created exceptional circumstances that warrant the exercise of the Court's discretionary powers to preserve individuals' constitutional rights to equal protection of the laws. The Constitution explicitly empowers the Supreme Court to issue a writ for the enforcement of fundamental rights.

The Fourth Circuit threatened a prefiling injunction to prohibit individuals who have never been plaintiffs, from attempting to bring any further action before that court, thus assuring adequate relief cannot be obtained in any other form or from any other court.

CONSTITUTIONAL PROVISIONS

Amendment V, United States Constitution in pertinent part provides:

> No person shall be deprived of life, liberty, or property, without due process of law.

Amendment XIV, Section 1, United States Constitution in pertinent part provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

STATUTES INVOLVED

Title 28, U.S.C., Section 455(a) states:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

Comes now, Petitioners Beverly Hennager and Louis Jennings Jr. to request the intervention of this court to enforce the March 7, 2018 Mandate of the Court affirming the June 16, 2017 Final Order of the

District Court, and to preserve their fundamental constitutional rights to uncontested property, due process of the law and equal protection under the law.

Although the Petitioners have never been plaintiffs, and were themselves ruthlessly attacked for over ten years, the district court found them "litigious" and conditioned a release of their uncontested property contingent upon waiving their due process rights. They appealed. The Fourth Circuit misapprehend the grounds of abuse of discretion and fraud on the court, dismissing the appeals for failure to present and argue the error of the court. The Fourth Circuit only affirmed the brief final order of the court, which provided for dissolution of the partnership and distribution of the remaining assets, countenanced upon resolution of legal challenges to the Court's prior orders.

Rather than enforce the mandate affirming its own order, the district court ordered the partnership would not be dissolved and a full distribution was contingent upon releasing due process rights, including the right to appeal *future* orders of that court. The Defendants filed a Writ of Mandamus asking the Fourth Circuit to direct the Honorable Judge Liam O'Grady to enforce the March 7, 2018 Mandate affirming the June 16, 2017 Final Order.

The Fourth Circuit denied the writ of mandamus, finding enforcement of a mandate to be an appealable issue and the petitioners did not have a clear right to the relief sought. By denying their writ of mandamus to order the District Court to enforce the March 7, 2018

Mandate, the Fourth Circuit disregarded, and thus sanctioned, the lower courts abuse of discretion. In addition, the Fourth Circuit denied the Petitioner's right to disclosure and threatened them with a prefiling injunction if they sought any further action. For this reason, the Petitioners cannot obtain relief in any tribunal other than the United States Supreme Court. They have no other recourse but the U.S. Supreme Court to uphold their constitutional rights.

History of Legal Aggression

1. Petitioners Beverly Hennager ("Beverly") and Louis Jennings Jr. ("Louis"), are two of three general partners in the Kay Jennings Family Limited Partnership. The partnership owned and leased commercial real estate in Springfield Virginia. Fairfax County offered to expedite plan amendments and rezoning to allow redevelopment of the property with "tower buildings" (Special Master's May 13, 2016 Report with Recommendations sealed in Dkt. # 117).

2. Michael F. Jennings ("Michael") is a limited partner who owned and operated a Toyota Dealership on the partnership property from March 1994 until November 14, 2014. In 2005 Michael joined general partner Mary Dearden, in a lawsuit against the partnership seeking to transfer Dearden's general interests in the partnership to Michael. This lawsuit was dismissed because Section 7 of the 1985 Jennings Family Limited Partnership Agreement prohibits the sale,

transfer, assignment or disposal of general interest, even by operation of law.

3. In 2005, DAMN, LLC, a business owned and operated by Michael, purchased a parcel held in a long-term lease by the Partnership and then tried to raise the rent to the Partnership from $2,500 a month to $10,500 a month, with two million back rent. The Partnership challenged the rent increase, and the dispute was arbitrated as provided in the lease. Michael lost. **Kay Jennings Family Limited Partnership v. DAMN, LLC, 71 Va. Cir. 348, 2006 WL 2578366 (Va,. Cir. Ct Aug., 9, 2006).** Thereafter, Michael paid twice the rent to the partnership as he received from the partnership. Unless he could acquire the leasehold interests, when his lease with the Partnership expired in 2014, he would not have access to his parcel until the year, 2065.

4. Michael served a derivative action on the Partnership in 2006. The Court dismissed the derivative proceeding for lack of standing. Michael timely appealed. In 2008, the Virginia Supreme Court affirmed the lower Court's determination, finding Michael *"did not fairly and adequately represent the interests of the limited partners and the partnership in enforcing the right of the partnership" . . . "Furthermore, Michael's expressed desire to 'control the partnership and the land' can be viewed as antagonistic to the interests of the Partnership and other partners."* **2008 Jennings v. Kay Jennings Family Partnership, 275 V. 594, 603-04, 659, S.E. 2d 283, 289.** Michael continued the action against Louis Jennings Jr., who lost by default. In

the hearing for damages, Judge McWeeny found Michael's case lacked merit (only awarding one dollar) and warned him not to continue his aggression.

5. In 2009-10 Michael contested the only rent increase in the 20-year history of the lease. Michael was represented by Grayson Hanes, who was later retained by the Special Master to represent the Partnership. In 2012 Michael announced he was relocating his business but he would not drop an unenforceable second lease option to allow the Partnership to market. A dispute regarding the option was settled in 2013.

6. Katherine R. Dauphin is the third general partner. In 2013, Dauphin testified, "*Michael has repeatedly told me that he would like to own the property and he thinks he can. He would like to purchase the property for a cheap price. And so if he keeps us from being able to market the property, then we get to a point where we become stressed and have to sell at a lower price in order to be able to pay the bills that we have*". (Nov. 8, 2013 deposition provided in its entirety in Dkt. # 224; page 62).

7. On October 9, 2014, Dauphin expressed the intent to acquire the assets for herself, threatening: "*I offer to sell the partnership my general and limited shares in exchange for the balance of the DAMN lease and $100,000. If I continue to be a partner let me tell you what to expect. . . . I will not approve offering it for lease again . . . The partnership will continue to conduct its business without the assistance of any hired professionals*". (Dkt. # 205; exhibit 11).

8. On December 31, 2014, six weeks after Michael moved his business to a new location, Dauphin brought a lawsuit against Beverly and Louis to dissolve the partnership. Referencing Section 7 of the 1994 First Amendment to the Partnership agreement requiring unanimity of the general partners to execute a contract, incur debt or represent the partnership, Dauphin alleged the partners were unable to agree on a new lease. Although not a party to Dauphin's lawsuit, Michael made an appearance as an "interested party".

August 10, 2015 Settlement

9. The Defendants counter-claims were stayed by the court such that they could only address the Plaintiffs bad faith actions if they lost the case. (Dkt. # 17). The lawsuit was settled in August of 2015, with a release of all claims. (Dkt. # 67). In conformance with achieving the maximum redevelopment value for the benefit of all the partners, a Court appointed Special Master, Paul Sheridan, was tasked with doing a: "*Thorough investigation and recommendation to the court, as expeditiously as possible, as to how to maximize the value of the partnership assets with due consideration as to lease, sale, or a combination thereof, taking into account the property's current, potential or future zoning, condition, and potential for redevelopment alone or in conjunction with neighboring landowners." (paragraph 2).*

10. Instead of hiring impartial consultants, the special master utilized the attorneys of the opposing

parties to act as his advisors, at their client's expense. Having accepted the responsibility to maximize the value of the assets, the counsel for Dauphin and Michael transferred numerous bids from their clients to purchase the assets for millions of dollars below the appraised value for automotive use. (Dkt. # 148-2; Dkt. # 346-5).

11. The attorneys falsely informed the Special Master all of the partners were in favor of selling the assets with automotive zoning, having never attempted to maximize potential redevelopment value. (Dkt. # 346; exhibit 8). The Defendants were denied requests and motions to release or replace their attorneys, who misrepresented their interests (Motion Dkt. # 85 denied in Dkt. # 93; Dkt. # 266, attachment B). Their attorneys falsely told the master they were in agreement to sell. (Dkt. # 266 – exhibit 14 & 15).

12. The Special Master listed three parcels for sale with CBRE on April 7, 2016. On May 13, the Master made his first report to the court with the recommendation to do what he had already done the previous month (sealed in Dkt. # 117).

13. The attorneys perpetuated a false report that the property had to be sold quickly because it was losing zoning for automotive use. (Dkt. 346 – exhibit 1, 8). An email from the county confirming the property had automotive proffers that do not expire was filed on September 7, 2016 (16-1907 – Dkt. 17 – exhibit 5; Dkt. # 205 – exhibit 17; Dkt. # 346 – exhibit 4) & Dkt. # 404 – exhibit 3). The attorneys continued to perpetuate the false reports (Dkt. # 286; # 298; Dkt. # 312; Dkt. # 401).

The false reports were accepted by the Court to establish the findings of fact for its orders to hasten the sale of the property and provide judicial protection to the attorneys (Dkt. #s 286, 298, 341-342).

14. December 13, 2016, the Court authorized the Special Master to "*execute the deed and all Closing Documents on the sale of the three parcels and to disburse funds received after closing*". (Dkt. # 226). Three parcels were sold to Leckner Nissan Three LLC, on December 15, 2016 for $900,000 below the appraised value for automotive use. Prior to closing with the partnership, Leckner Nissan Three privately arranged to sell five million dollars in shares to 39 undisclosed investors.

15. Michael's attorney reported his client was getting a letter of closure on EPA remediation of the DAMN property, when he had not completed the first phase of the project to determine the extent of the damages. (Dkt. # 121 – exhibit 19 & 29-39; Dkt. # 266 – 12 thru 18; CBRE 00042).

16. January 27, 2017, the Defendants made a motion for a distribution of the funds, acknowledging the judicial immunity of the Special Master and contractually agreeing not to contest the sales. "*Although Louis Jennings and Hennager may not be satisfied with the performance of one or more persons involved in these of the Three KJFLP Properties (and reserve such claims as they may have, if any, against any and all such persons) they do not and will not seek to rescind the sale or otherwise challenge the purchaser's title to any of the Three KJFLP Properties*". (Dkt. # 273, at 2).

17. March 27, 2017, the Court ordered adopting Magistrate Judge Buchanan's recommendation to transfer payment of the attorneys from the partners who retained them to the partnership. (Dkt. # 341-342). (Opposed by the Defendants in Dkt. #s 311, 319, 346).

18. April 7, 2017, the Court authorized the Special Master to enter into the assignment agreement for the Leasehold interests of DAMN, LLC, to DAMN, LLC, owned by limited partner Michael Jennings. (Dkt. # 352). The Court misapprehended the history of legal aggression brought solely by Plaintiff and Michael, writing, "*Defendants aver that Michael Jennings' relationship to the other parties is adversarial because he represents a party interested in purchasing the DAMN leasehold held by the partnership and was the adverse party in a derivative suit brought by the Partnership*". (page 7 of Dkt. # 342). (Michael brought the derivative action, not the partnership, and he was found adversarial to the partnership and other partners by the Virginia Supreme Court because of his expressed intent to acquire the assets.)

19. April 7, 2017, the Court ordered a partial distribution contingent upon each partner executing a consent order restricting the signer from initiating any lawsuits. "*The Court believes that considerable more money should be kept in reserve based on the litigious history of the parties*". The order provided the signer would not bring a lawsuit "*against any general or limited partner or any of the undersigned's present or former counsel retained in this matter with respect to the sale of the three partnership properties*". The waiver

also released "*any professional advisors retained by the Special Master for any acts undertaken prior to the signing of this consent order*".

2017 Appeals to the Fourth Circuit Court

20. Due to financial indigence, Louis signed the waiver. Beverly did not. Although they both appealed separately, pro se, their appeals were consolidated. The partnership never received a market analysis for the potential redevelopment value of its assets, which remains unknown. The Petitioners lost lease value with automotive use is over twenty million dollars.

21. June 16, 2017, the Court issued the FINAL order for purposes of appellate review.

> *"Because the partnership is no longer conducting any business, it is reasonable to wind up the partnership's affairs and dissolve the entity once its remaining cash assets are distributed to the partners. The Court has countenanced the distribution of this cash upon the resolution of outstanding legal challenges to the Court's prior orders.*

22. The Defendants challenged the June 16 order because it was Final for purposes of appellate review of the prior orders. The Defendants' appeals, Dkt. #s 17-1556, 17-1794 and 17-1850, were consolidated in 17-1556.

23. July 31, 2017, the Special Master submitted a previously undisclosed reconciliation indicating he wrote two checks totaling $800,000 to Independent

Trustees, Inc., a firm that holds money in escrow for 1031 exchanges. The master wrote a separate check for $250,000 to the Plaintiff's law firm for undisclosed purposes. November 8, 2017, the Court dismissed Beverly's motion for disclosure with instructions, *"all entities have no legal obligation to respond to Ms. Hennager's requests"*. (Dkt. # 451).

24. The Defendants challenged the Court's orders with grounds of abuse of discretion and fraud upon the Court. Their opening briefs referenced over 80 uncontested findings of fact from docket entries and over 30 citations to laws, case laws and rules.

25. In her opening brief, Appellee-Plaintiff recognized these issues under appeal:

> *"Whether the District Court abused its discretion, exceeded its authority, or denied Ms. Hennager due process when it ordered that the Partnership shall pay certain post settlement fees and costs incurred by each party and whether the Party's attorneys were conflicted from acting on behalf of the Partnership?*
>
> *Whether the District Court abused its discretion when it denied a stay regarding the disposition of the remaining Partnership real estate?*
>
> *Whether the District Court abused its discretion when it ordered that immediate distribution of Partnership funds was conditional?*
>
> *Whether the District Court denied Ms. Hennager due process when it denied her and her*

counsel's motions to terminate that representation?"

26. The Fourth Circuit filed its determination November 29, 2017, finding, *"Appellants have waived appellate review of the district court's dispositive holdings. See IGN – (Failure to present or argue assignments of error in opening appellate briefs constitutes a waiver of those issues'); Edwards – (holding that an appellant's failure to explain the reasons for his claims 'with citations to authorities and parts of the record on which appellant relies amounts to an abandonment of those claims').*

27. December 11, 2017, the Appellants petitioned the Court for rehearing and rehearing en banc (Dkt. # 40 of 17-1556) for misapprehension of the grounds of their appeals. February 13, 2018, the Fourth Circuit granted rehearing without oral argument, agreeing Pro Se litigants are not required to cite authorities but the citations and references to the docket provided in the Appellants briefs did not present or argue assignment of **error**. The Fourth Circuit affirmed only the FINAL June 16, 2017 order of the Court, *providing for distribution of the remaining assets of the partnership after resolution of legal challenges to the court's prior orders.*

March 7, 2018 Mandate Affirming June 16, 2017 Final Order

28. On March 7, 2018, the Mandate was filed. (Dkt. # 50 of 17-1556). On June 5, 2018, the 90 days

allowed to petition the U.S. Supreme Court expired, thus resolving legal challenges to the prior orders of the court.

29. On March 7, 2018, Plaintiff filed Motion to Stay Claim for Dissolution citing she needed time *"to determine whether it is now reasonably practical to carry on the business in conformity with the partnership agreement. . . . A stay of Plaintiff's claims is genuinely necessary at this time, because if the claim is decided by this Court before Plaintiff has an opportunity to reevaluate, a multi-generational family business may be irretrievably lost"*. (Dkt. #483).

30. March 13, 2018, Louis filed a Motion for Distribution of Partnership's Remaining Assets with Dissolution, Pursuant to Paragraph 4 of the Settlement Agreement.

Obstructions to Enforcement of Judgment

31. On June 6, 2018, Magistrate Judge Buchanan: *"It is hereby ORDERED that, by June 22, 2018, each party may submit a proposed consent order for the Court to consider, which addresses the signer's consent to distribution of the Partnership's assets but which also provides language for a waiver of the right to appeal and a waiver of the right to sue any person, entity or agent of a person or entity involved in this lawsuit, including, but not limited to, the parties' current or former attorneys, real estate agents, purchasers, the judges assigned to this case, the Court, the Special Master, and any of the aforementioned persons' or entities agents. It*

is further ORDERED that the Court will not have oral argument on any submitted proposed consent orders, and the Court will instead take them under advisement before issuing a decision."

32. On June 12, Beverly and Louis filed their opening brief, petitioning the Fourth Circuit pursuant to the provisions of Section 1651, Title 28, United States Code, and Rule 21(a) of the Federal Rules of Appellate Procedure, for a writ of mandamus to be issued directing the Honorable Judge Liam O'Grady of the United States District Court for the Eastern District of Virginia, to enforce the entry of judgment without variance, of the District Court's June 16, 2017 order providing for the distribution of the partnership's remaining assets with dissolution of the partnership.

33. On July 6, Judge O'Grady ordered, *"The Court has reviewed the proposed Consent Order filed by Defendant Michael Jennings (Dkt. # 514, Attachment 1) and finds that it appropriately facilitates the distribution of assets pursuant to the Special Master's Reports of May 11, 2018 (Dkt. # 501) and this Court's Order of May 15, 2018 adopting the report and Recommendation of Judge Buchanan. The Court adopts the Proposed order as attached hereto.". . . . No party is required by the court to file a signed and notarized copy of the Distribution Order, and failure to file one will not affect any party's entitlement to the prompt distribution of the assets identified as 'Net Distribution' under each party's name on page five of the proposed Distribution Order"*. (Please note Michael is not a Defendant. He was not a party to the case.)

34. In addition to releasing all of the parties listed in the April 7, 2017 Order (that the Fourth Circuit did not address in the appeals), this waiver stated: *"The undersigned shall immediately dismiss any pending appeal or petition for any writ relating in a manner to these proceedings, and irrevocably waives any right to file any appeal in this proceeding"*. (Dkt. # 516).

35. The Defendants did not sign the waiver. On July 26, the distribution order was amended. *"Accordingly, Beverly L. Hennager and Louis A. Jennings have seven days from the date of this Order to file a waiver pursuant to the instructions in the Court's July 6, 2018 Order Dkt. 516. Failure to file a timely waiver will result in the withholding of $100,000 per partner for the Special Master Legal Fees ('Legal Escrow') account."* (Dkt. # 527). $100,000 was withheld from each of the Defendant's distributions, in addition to the $50,000 each held for additional expenses and legal fees, $450,000 each held for previous fees and expenses and over $200,000 legal fees claimed by Troutman Sanders law firm (for attempting to get a distribution and defending claims from the Plaintiff to hold Defendants responsible for costs of a non-live controversy). In addition, Louis was charged over $62,000 for paying the bills of the partnership.

36. On October 24, 2018, the Fourth Circuit panel filed their unpublished per curiam decision. In the opening sentence, the judges acknowledged, *"Beverly L. Hennager and Louis A. Jennings have filed a petition and an amended petition for writ of mandamus asking us to order the district court to enforce its final*

order and distribute the remaining assets of their former family partnership". In the following paragraphs, the Judges dismissed the petition, writing, *"Mandamus relief is a drastic remedy and should only be used in extraordinary circumstances. Kerr v. U.S. Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 334 F.3d 509, 516-17 (4th Cir. 2003). Mandamus may not be used as a substitute for appeal, however. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Petitioners have not established a clear right to the relief sought".*

37. The Fourth Circuit judges denied the petitioners' motion for disclosure and warned *"further filings in this court will result in the imposition of sanctions and quite possibly, a prefiling injunction against them."*

LEGAL ARGUMENT

Writ of Mandamus to Enforce Mandate

38. The Fourth Circuit Court's March 7, 2018 Mandate affirmed the District Court's June 16, 2017 FINAL Order, transferring jurisdiction back to the District Court for the enforcement of its order. The rule of mandate requires the lower court to act on the mandate of an appellate court without variance. See ***United States v. District Court*, 333 U.S. 258, 263 (1948)** to enforce obedience to court of appeals mandate.

39. The June 15, 2017 Order is clear and specific. It provides, "*Because the partnership is no longer conducting any business, it is reasonable to wind up the partnership's affairs and dissolve the entity once its remaining cash assets are distributed to the partners. The Court has countenanced the distribution of this cash upon the resolution of outstanding legal challenges to the Court's prior orders.* Clearly, the legal challenges to the district court's prior orders were resolved when the deadline to appeal those orders to the U.S. Supreme Court expired on June 5, 2018. Dissolution and distribution are a purely ministerial duty that does not require discretionary decisions.

40. The Fourth circuit found no obstacles to the Petitioners' immediate entitlement to funds.

1985 Jennings Family Limited Partnership Agreement provides,

> *Section 5. Profits and Losses. (a)(ii) Any partnership gain arising from a sale or other disposition of any portion of the Property shall be allocated as follows: First, an amount of such gain equal to the aggregate negative Capital Accounts (as reflected on the books of the Partnership immediately prior to such sale or other disposition or Capital Transaction, as the case may be) of all partners who have such negative Capital Accounts shall be allocated among such partners in proportion to their respective negative Capital Accounts. Any remaining portion of such gain shall be allocated among all partners in proportion to their respective Partnership Interests.*
>
> *Section 6. Distributions to Partners. (a) The net cash flow of the Partnership shall be distributed to the Partners annually in proportion to their partnership interests no later than 90 days after the close of the Partnerships tax year.*

RULPA Section 508 RIGHT TO DISTRIBUTION. When a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to a creditor of the limited partnership with respect to the distribution.

41. Rather than address the question of whether Judge O'Grady was required to enforce the Mandate affirming his order, the Fourth Circuit denied the

petition, writing, "*Mandamus may not be used as a substitute for appeal*", and "*Petitioners have not established a clear right to the relief sought*". For this reason, the primary questions became whether enforcing a mandate should be done by appeal and whether the petitioners have a right to the relief sought.

42. Writ of mandamus is appropriate for the purpose of enforcing a mandate or to keep a court from interposing unauthorized obstructions to the enforcement of the judgment of a higher court. Enforcing a mandate cannot be done by appeal because the mandate is the final determination of appeal.

"A high function of mandamus is to keep a lower tribunal from interposing unauthorized obstructions to enforcement of a judgment of a higher court". *United States v. District Court*, 334 U.S. 258 (1948).

Writ of Mandamus to Remedy Defects of Justice

43. Writ of Mandamus is appropriate to remedy defects in justice when an illegal or unconstitutional order has been made. The Constitution explicitly empowers the Supreme Court to issue a writ for the enforcement of fundamental rights.

By Dismissing the Writ of Mandamus, the Fourth Circuit Sanctioned Illegal Orders

44. By dismissing the Writ of Mandamus, the Fourth Circuit disregarded and thus sanctioned orders

of the lower court that were conflicted with the constitutional rights of individuals. Judge O'Grady interposed conditions upon the distribution order to make the defendant's constitutional rights to uncontested property contingent upon relinquishing the constitutional right to due process of the law to bring litigation.

Amendment V. United States Constitution provides, "No person shall be deprived of life, liberty or property without due process of law."

45. The mandate did not confer authority on Judge O'Grady to alter his final order such that the distribution of the assets would be countenanced upon resolution of possible challenges to the Court's FUTURE Order. Judge O'Grady's order to waive the right to challenge future orders of his court, confers unbridled authority upon himself that cannot be challenged in any tribunal. Such an Order is abuse of discretion taken to the level of being at war with the constitution itself.

46. The Fourth Circuit judges misapprehended the purpose of the writ of mandamus to enforce the mandate to dissolve what they referenced as the "*former family partnership*". The partnership is not "former" because it continues to exist. Judge O'Grady ordered the partnership would not be dissolved, withholding $250,000 to pay the special master for at least three more years.

47. It was brought to the Court's attention that the 2005 Second Amendment to the partnership agreement provided: *FIFTH: Section 9(a) of the partnership Agreement is changed to read as follows: (a) A General Partner shall not sell transfer, assign, pledge or otherwise dispose of all or any part of such partner's general partnership interest whether voluntary, involuntary or by operation of law without the unanimous written consent of the General Partners."* After having brought the lawsuit to dissolve as well as numerous motions and requests after settlement to dissolve, the Plaintiff abruptly changed her mind. By denying the writ, the Fourth Circuit did not have to address whether the partnership can be dissolved, without the unanimous agreement of the general partners to dispose of the general interests.

The Fourth Circuit Denied Petitioners' Equal Protection of the Law

48. The Fourth Circuit Judges denied the Petitioners' motion for disclosure pursuant to the Revised Uniform Limited Partnership Act Section 407.

Amendment XIV, Section 1. United States Constitution provides, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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 law."

REVISED UNIFORM LIMITED PARTNERSHIP ACT

Section 407. RIGHT OF GENERAL PARTNER AND FORMER GENERAL PARTNER TO INFORMATION.

Each partner and the partnership shall furnish to a partner (1) Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and (2) On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

The Mandamus Act Grants the court authority "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff". 28 U.S.C. § 1361

49. The Petitioners have a clear and indisputable right to the relief sought pursuant to article XIV which provides no person shall be deprived of equal protection of the law. A writ of mandamus is appropriate in the event that the Petitioner has been denied discovery or has been denied a judicially-enforceable and legally protected right by the respondent that has a legal duty to act and yet abstained from acting.

50. The Petitioners have sought disclosure through every means available. September 8, 2016, the Defendants-Petitioners filed Motion to Compel Production of Document, Communication and Case files (Dkt. # 193) which was denied by Judge Buchanan. *"The defendants are not entitled to discovery and defendants will receive documents as the Court deems appropriate"*. The Defendants – Petitioners wrote letters seeking disclosure regarding: a) exchanges or purchases of shares in Leckner Nissan Three LLC, by any partner, attorney, party working on behalf of the partnership, or any of their family members or associates; b) the reorganization of the partnership for the purpose of allowing legal 1031 exchanges; and c) the accounting ledger prepared for the partnership by the CPA, David Legge. On August 28, 2017, Beverly filed a "Motion to Compel Disclosure Pursuant to VA Code 50-73.101 (Dkt. # 443), which was denied by the court on November 8, 2017. (Dkt. # 451).

51. November 17, 2017, Beverly filed Motion to Compel Disclosure in Appeal No. 17-1556 (Dkt. # 32), which was denied February 13, 2018 (Dkt. # 47). Document 20 of 18-1671 is the last Motion for Disclosure, denied by the Appellate Court with the threat of a pre-filing injunction to prevent any further attempts.

52. It should be apparent that if the objective of the Court's orders was meant to prevent future litigation, such a risk would be greatly reduced if disclosure were provided to alleviate the concerns of the Petitioners that they were denied equal benefit Pursuant to RULPA Section 408.

53. Failure to enforce the duty of full and complete disclosure is a risk to our public legal system because it allows concealment of material fact. This will set precedence for future abuses of the judicial system whereby wealthy and powerful partners disrupt the business of the partnership for the purpose of forcing a below value sale, and then re-purchase the assets while hiding behind a corporate veil, with orders providing judicial immunity.

The Fourth Circuit Denied the Petitioners Constitutional Right to Due Process of Law

54. The Duty of Care requires partners to act in good faith and without any conflict of interest when making business decisions for the partnership. Partners are required to fully disclose any information relating to the partnership and its business including potential conflicts of interests where they could

personally benefit from a transaction connected to the partnership. If a sale occurs without full disclosure, any partner harmed has the legal right to sue to obtain their fair share of the benefits that they should have received.

RULPA Section 408 General Standards of Partner's Conduct

A Partner's duty of care to the partnership and other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or knowing violation of law. A Partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

Va. Code Ann. 40-73.29 provides that a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners, to the partnership and other partners. Thus, the standard governing the fiduciary duties of general partners in Virginia's Uniform Partnership Act (Chapter 2.2 of Title 50 of the Code) apply to general partners in a limited partnership as well.

Va. Code Ann. 50-73.95 holds a general partner liable for loss or injury caused to a person as

a result of a wrongful act or omission, or other actionable conduct, or a partner acting in the ordinary course of business of the partnership or with the authority of the partnership.

Section 11(a) of the KJFLP Agreement provides for the liability of a partner to other member of the Partnership in case of dishonest conduct. (This section does not distinguish between general or limited partner.)

CANON 3(B)(5) provides a judge should take appropriate action upon learning of reliable evidence indicating the likelihood that another judge's conduct contravened this Code or a lawyer violated applicable Rule of Professional Conduct.

CANON 1. A judge should uphold the integrity and independence of the Judiciary. Although judges should be independent they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of the Code diminishes public confidence in the judiciary and injures our system of government under the law.

Banned from Bringing Action Before Any Court Other Than the U.S. Supreme Court.

55. The Fourth Circuit's threat to bring sanctions and apply a prefiling injunction against the

Petitioners if they attempt to bring any further action is abuse of discretion because it is a violation of due process rights.

> **The constitution guarantees due process of law and access to the court. U.S. Constitution Amendment XIV Section 1. "The due process clause requires that every man shall have protection of his day in court". *Traus v. Corrigan*, 257 U.S. 312, 332, 66 L. Ed. 254, 42 S. Ct. 124 (1921). The Supreme Court has explained that the constitution protection afforded by access to the court is "the right" (at 9) "conservative of all other rights and lies at the foundation of orderly government". *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148, 52 L. Ed. 143, 28 S. Ct. 34, 6 Ohio L. Reb. 498 (1907)**
>
> **E.g., *American Civil Liberties Union, Inc. v. Wicomico County*, 999 F.2d 780, 785 (4th Cir. 1993). "The filing of a lawsuit carries significant constitutional protections, implicating the First Amendment right to petition the government for redress of grievances, and the right of access to courts".**

56. The Petitioners do not meet the requirements that determine whether a prefiling injunction is warranted.

> **In determining whether a prefiling injunction is substantively warranted, a court must weigh all the relevant**

> **circumstances, including (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's [**10] filings; and (4) the adequacy of alternative sanctions. See, e.g., *Safir v. United States Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986).**
>
> **Indeed, "use of such measures against a pro se plaintiff should be approached with particular caution" and should "remain very much the exception to the general rule of free access to the courts". *Pavilonis v. King*, 626 F.2d 1075, 1079 (1st Cir. 1980).**

57. The Petitioners have never been plaintiffs in any legal action in the partnership.

58. The Defendants were unable to correct the Plaintiff's falsification of the record and the allegations were accepted by the Court, becoming the grounds for its orders. The District Court referenced the "*litigious history of the partners*" as grounds for the order requiring waivers of due process rights, when clearly the Petitioners, being "*defendants*", have no history of litigious aggression. The Court accepted the Plaintiff's claim that the partners were unable to agree on a contract so the partnership had to be dissolved. The Plaintiff's 2015 deposition was submitted

to the court, in which she admitted the Defendants had executed two contracts even though her attorney sabotaged one of those contracts by submitting it three times for execution with the wrong address and no legal description or parcel number (Dkt. # 128-7).

59. The Fourth Circuit reassigned the grounds of Fraud Upon the Court, dismissing their appeals for failure to present the error of the court. Thus, Fraud Upon the Court has never been heard in any tribunal through no fault of the Defendants-Petitioners.

60. Given the Fourth Circuit has barred the Petitioners from any Court beneath the United States Supreme Court, no adequate remedy exists to resolve the Respondents' refusal to correct and preserve the Petitioners' constitutional rights.

CONCLUSION

Both the District Court and the Fourth Circuit Court acted in manner inconsistent with due process of the law. Such Orders and Determinations are VOID.

> **The U.S. Supreme Court ruled if a court is "without authority, its judgments and order are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all personal concerned in executing such judgments or sentences, are considered, in**

> **law, as trespassers". *Eliot v. Pierson*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).**
>
> **A judgment is void under Rule 60(b) if "the court that rendered it lacked jurisdiction of the subject matter or if it acted in a manner inconsistent with due process of law". *Schwartz v. United States*, 976 F.3d 213, 217 (4th Cir. 1992).**

Petitioners seek a declaratory judgment from the Court declaring the post March 7, 2018 orders of the Federal District Court to be without authority, inconsistent with due process of the law and therefore, VOID.

By this action, Petitioners ask the Court to issue a writ of mandamus directing the Fourth Circuit Court to direct the Federal District Court for the Eastern District of Virginia to enforce the March 7, 2018 Mandate affirming the June 16, 2017 order to dissolve the Kay Jennings Family Partnership and distribute all of the remaining assets immediately.

Petitioners seek a declaratory judgment to recover a complete distribution of their percentage of the cash acquired from the sale of the partnership assets, in accordance with Sections 5 and 6 of the KJFLP Partnership agreement.

The Petitioners seek a declaratory judgment from the Court to be provided complete disclosure of all previously sought partnership affairs and business, pursuant to RULPA Section 407 and the protection offered

by RULPA Section 408 providing all partners must receive equal benefit.

The Petitioners seek a declaratory judgment from the Court preserving their right to due process of the law to bring future legal action, including but not limited to, a motion by FRCP 60(d)(3) to address fraud upon the court. The Petitioners seek the recusal of all of the former and present judges presiding over this case. The Petitioners seek any further relief the Court finds reasonable and necessary.

Respectfully submitted,

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