

No. 19. 210

Supreme Court, U.S.
FILED

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In The
Supreme Court of the United States

LIZETTE OLAECHEA aka LIZETTE SIMMONDS,

Petitioner,

v.

GRACE OLAECHEA,

Respondent.

**On Petition For A Writ Of Certiorari
To The Third District Court Of Appeals,
State Of Florida**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the lower Courts disregarded the Fourteenth Amendment of the U.S. Constitution and erred by not declaring a judgment void, wherein the Court lacked personal jurisdiction over an indispensable party that was not named nor joined to the proceedings; and depriving said individual's Constitutional rights to due process. Consequently, creating inconsistency with previous decisions of the U.S. Supreme Court, Florida Supreme Court and other District Courts.

PARTIES TO THE PROCEEDINGS

Petitioner is Lizette Olachea aka Lizette Simmonds.

Respondent is Grace Olachea.

RULE 29.6 STATEMENT

Petitioner, Lizette Olachea aka Lizette Simmonds is not a business organization but rather a natural individual.

LIST OF RELATED CASES

Grace Olachea vs. Lizette Olachea aka Lizette Simmonds, Circuit Court of the Eleventh Judicial Circuit, 2015-027596-CA-01. Final Judgment entered on February 22, 2018.

Lizette Olachea vs. Grace Olachea, Third District Court of Appeal, 3D18-1117. Opinion entered on November 21, 2018.

Lizette Olachea vs. Grace Olachea, Supreme Court of Florida, SC18-2096. Decision to decline hearing entered on May 30, 2019.

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**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT**

Petitioner, Lizette Olachea aka Lizette Simmonds, petitions this Honorable Court for a Writ of Certiorari to review the judgment of the Third District Court of Appeals and the Eleventh Judicial Circuit in and for Miami-Dade County.

OPINIONS BELOW

The opinion of the Third District Court of Appeals was entered on November 21, 2018.

JURISDICTION

The Florida Supreme Court decision to decline jurisdiction entered May 30, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

**RELEVANT CONSTITUTIONAL PROVISION
AND FEDERAL AND STATE RULES
OF CIVIL PROCEDURE**

The Fourteenth Amendment, Section 1 of the U.S. Constitution states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.

Further, pursuant to Fed. R.C.P. – Rule 19 and Fla. R.C.P. § 1.120, the Court must have jurisdiction over an individual and must join a necessary party to an action.

Federal Rules of Civil Procedure – Rule 19. Required Joinder of Parties

(a) Persons Required to be Joined if Feasible

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Florida Rules of Civil Procedure – Section 1.210
Parties

(a) Parties Generally. Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and anyone who refuses to join may for such reason be made a defendant.



STATEMENT OF THE CASE

I. THE UNDERLYING EVENTS

This is an action for monies that were held in a joint bank account titled in the name of Petitioner and Respondent only, and gifted to Petitioner by Respondent in the year 2013.

II. THE DISTRICT COURT PROCEEDINGS

On November 27, 2015, Respondent filed suit against Petitioner, as the only named defendant in the lower Court for return of the gifted monies only. A bench trial was held on February 16, 2018, Petitioner was Pro Se and Respondent was represented by counsel. A Final Judgment was prepared by Respondent's counsel and submitted to the trial Court without affording Petitioner an equal opportunity to review the final judgment.

On February 22, 2018, the Final Judgment was entered in favor of Respondent. Upon receipt of the final judgment, Petitioner learned that an equitable lien was imposed on the real property that is owned and titled in the name of Gabor Simmonds and Lizette Simmonds, husband and wife, as joint tenancy by the entirety. (In Florida, property held as husband and wife is considered tenancy by the entirety.) However, Mr. Gabor Simmonds was not at any time joined to the instant action in the lower court by Respondent. This was the first time an equitable lien was mentioned in any Court document. Even though Respondent's counsel knew throughout the entire pendency of the

case that Petitioner owned the property with her spouse.

Importantly, there is an essential characteristic of property held as tenancy by the entirety as stated in *Ashwood v. Patterson*, 49 So. 2d 848, 849 (Fla. 1951), “. . . each spouse is seized of the whole as opposed to a devisable part. In essence, it cannot be divided because neither party owns it whole.”

On March 20, 2018, Petitioner’s Appellate Counsel filed an Amended Motion for Rehearing with the lower Court informing them that Gabor Simmonds was a necessary and indispensable party to any action imposing a lien on his real property. See *Marson v. Cominsky*, 341 So. 2d 1040 (Fla 4th DCA 1977) (both owners of property are indispensable parties to claim of lien against real property); see also *Citibank, N.A. v. Villanueva*, 174 So. 3d 612 (Fla. 4th DCA 2015) (fee title holder is an indispensable party to an action to foreclose a lien on the property). On May 15, 2018, the lower Court declined to correct said violation, by denying the Motion for Rehearing.

III. THE APPELLATE AND FLORIDA SUPREME COURT PROCEEDINGS

Petitioner’s Appellate Counsel timely appealed the judgment to the Third District Court of Appeals. The panel erred by citing an inapplicable case: *Palm Beach Sav. & Loan Ass’n v. Fishbein*, 619 So. 2d 267, 270-71 (Fla. 1993) for the following reasons:

(1) The Fishbein's property was owned as tenants in common, unlike the Simmonds' property which is owned as joint tenants by the entirety; and

(2) The Fishbein case originates from a foreclosure suit wherein all indispensable parties were named and joined. However, in the case of Grace Olaechea vs. Lizette Olaechea aka Lizette Simmonds the only named parties were Petitioner and Respondent during the entire proceedings. The Third District Court of Appeals' opinion confirms that Gabor Simmonds was not a party to the action, and the opinion states the following:

"We note that because Mr. Simmonds was neither a party to the proceedings in the lower court, nor a participant in this appeal, our decision is without prejudice to – and we express no opinion regarding – any defense Mr. Simmonds might assert to any subsequent foreclosure proceedings on the subject equitable lien."

The Third District Court erred and shows inconsistency with matters relating to indispensable parties that are not joined in an action when the Court lacks personal jurisdiction of the party and is a violation of an individual's Constitutional rights for due process under the Fourteenth Amendment of the U.S. Constitution.

On May 30, 2019, the Florida Supreme Court declined to hear the case.



REASONS FOR GRANTING THE WRIT

The decision of the Third District Court of Appeals is contrary to the U.S. Constitution of the Fourteenth Amendment due process rights and U.S. Supreme Court rulings, which states that “no man shall be condemned in his person or property without notice, and an opportunity to be heard in his defence, is a maxim of universal application. . . .” *Earle v. McVeigh*, 91 U.S. 503, 23 L. Ed. 398 (1876).

I. THE QUESTION PRESENTED IS OF FUNDAMENTAL IMPORTANCE AND NATIONAL IMPORTANCE THAT WARRANTS THIS COURT’S REVIEW.

The decision by the Third District Court of Appeals, delineates from Supreme Court holding and creates inconsistency throughout the Courts that without proper jurisdiction, a court cannot proceed at all and can only note the jurisdictional defect and dismiss the suit. *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997).

II. THE OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE U.S. SUPREME COURT, FOURTH, SIXTH AND FIRST CIRCUITS

Conflict arises with the Fourth District Court of Appeal’s decision in *Marson v. Comisky*, 341 So. 2d 1040 (Fla. 4th DCA 1977), which held that both owners of property are indispensable parties to claim of lien

against real property and both should have been joined in the suit.

Hence, an order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1877); *Thompson v. Whitman*, 18 Wall 457, 21 L. Ed. 897 (1873); *Windsor v. McVeigh*, 93 U.S. 274, 23 L. Ed. 914 (1876); *McDonald v. Mabee*, 243 U.S. 90, 37 S. Ct. 343, 61 L. Ed. 608 (1917).

Therefore, a void judgment is no judgment at all and is without legal effect, and a Court must vacate any judgment entered in excess of its jurisdiction. *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974).

As stated in *Shields v. Barrow*, 58 U.S. 130 (1854), neither the act of Congress of 1839, 5 Stat. 321, § 1, nor the 47th rule for the equity practice of the circuit courts enables a circuit court to make a decree in equity in the absence of an indispensable party whose rights must necessarily be affected by such decree.

Because Gabor Simmonds was at no time joined in this lawsuit, he was not afforded the opportunity to a full and fair hearing depriving him of his Constitutional right to due process under the Fourteenth Amendment of the U.S. Constitution and that neither the Third District Court of Appeals or the Lower Court had personal jurisdiction over him. Any judgment entered in excess of its jurisdiction must be vacated. *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972).

The aforesaid inconsistencies respectfully require this Honorable Court's resolution.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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