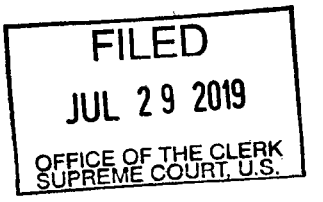
No. 19-476

IN THE

SUPREME COURT OF THE UNITED STATES



DR. USHA JAIN AND MANOHAR JAIN
Petitioners,

vs

.DAVID BARKER, MARY BETH VALLEY, MICHAEL FURBUSH and ROETZEL & ANDRESS, L.P.A.,
Respondents.

On Petition for Writ of Certiorari to the Fifth District Court of Appeals of State of Florida for Eleventh Circuit Florida

PETITION FOR WRIT OF CERTIORARI

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July 27, 2019

QUESTIONS PRESENTED

Can State officers in the trial court and appellate court act directly in conflict with well-established precedent set by the Supreme Court which recommends that pro se litigants be given leniency but in the instant two cases there was an abuse of power against pro se status?

Whether this Court should resolve the question of the Federal Law of the Constitution's prohibition against discrimination based on litigants' pro se status and color by the state officers who were not following the law. (e.g. Constitution, Florida Statutes etc.). These are issues of great public importance concerning the Constitutional rights of colored people, with far reaching implications to the public where people lose their houses and lifesavings.

This court needs to resolve a question of Federal law of fundamental due process. Can judicial officers violate fundamental due process by not holding the hearing per notice, stop a pro se litigant in the middle of the hearing and also prevent a meaningful hearing with a threat of the contempt of the court?

This Court should resolve the conflicting decision of the state court of last resort with other state courts of last resort and also conflicting decision of other states regarding mandatory pre suit mediation FS 720.311. This is a question of ***exceptional importance*** in order to prevent clogging of the docket with noncompliant suits?

Can state officer discriminate and retaliate pro se litigants by preventing the opportunity to file an appeal by not giving an order on reconsideration motion?

Can an attorney, a court officer, file a document with false statements with his signature during the representation in the official record of HOA file to fulfil the presuit notice requirement to file a lien and eventually foreclose the house? This is a question of great public importance because it challenges the public trust in the integrity of the judicial system of the United States of America.

Can state officers ignore FS Statutes 817.535 (recently enacted in 2013) where the filing of the false document in the official record of an HOA with an eye towards the foreclosure is permitted?

This Court needs to resolve a question: Can an attorney and state officers, be allowed to defy and defile FS Statutes 57.105 and 768.79 against pro se litigants by not following any rules which are required by FS? The above two FS are derogation of the common law and needs to be followed to the letter of the law. This Court need to affirm that filing of 57.105 and 768.79 in bad faith is also a reason for counter sanction.

Did the attorneys attempts to drive out the Pro Se Plaintiffs from the "legend golf community" of Isleworth of Tiger Woods and Bay Hill of Arnold Palmer in Florida on the basis of her race occur in violation of 42 U.S.C. §1981?

LIST OF THE PARTIES

All parties appear in the Caption of the case on the cover page.

Case No. 1

Dr Usha Jain and Manohar Jain,
Petitioners,
vs David Barker, Marv Beth Valley,
Michael Furbush and Roetzel and &
Andress L.P.A.
Respondents

Case No. 2

MANOHAR JAIN, and Dr. Usha Jain Petitioners
and .BAY HILL PROPERTY OWNERS
ASSOCIATION, INC.,

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

CASE NO.1 5D18-1215 01-22-2019 Dr. Usha Jain and Manohar Jain v. David Barker, Mary Beth Valley and Michael Furbush and Roetzel and Andress

The opinion of the state court of last resort to review the merits appears at Appendix A to the petition at page App.1 and App. 2 of Appendix

CASE NO 2 5D18-2033 02-26-2019 Bay Hill Property Owners Association, Inc. vs. .Dr. Usha Jain and Manohar Jain

The opinion of the state court of last resort to review the merits appears at Appendix C to the petition at page App.14 and App.15 of Appendix

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a) to review the final judgment of the Florida Fifth District Court of Appeal and seeking review of two similar cases pursuant to Rule 12.4.

Case no 1

The date on which the highest state court decided my case was January 22, 2019. A copy of that decision appears at Appendix A at page App. 2

A timely petition for rehearing was thereafter denied on the following date: February 27, 2019, and a copy of the order denying rehearing at Appendix A App.1

An extension of time to file the petition for the writ of certiorari granted to and including July 27, 2019 date on May 23, 2019 date in application number 18A1204

Case No. 2

The date on which the highest state court decided my case was February 26, 2019. A copy of that decision appears at Appendix C, at page App. 15.

A timely petition for rehearing was thereafter denied on the following date: April 03, 2019, and a copy of the order denying rehearing Appendix C at App.14.

An extension of time to file the petition for the writ of certiorari granted to and including August 31, 2019 date on June 20, 2019 date in application # 18A1340

CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution prohibits discrimination and depriving any citizens with the fundamental due process.

Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law....or equal protection under the law" Const. Amend. XIV

- A state court has decided an important question of federal law in a way that conflicts with relevant decisions of this Court.
- A state court has decided an important question of federal law that has not been, but should be, settled by this Court regarding discrimination and due process violation against pro se litigants of color with ethnicity.
- A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals regarding presuit mandatory mediation required before filing a claim.

Statement of the Case

Introduction

This case presents an important question of Federal law of discrimination and due process violation rights of naturalized citizens under the 14th Amendment to the Constitution of the United States of America (section one). The two cases are similar with same court, same Judge Weiss and both are HOA cases. Both of these houses are in wealthy, exclusive predominantly Caucasian golf neighborhoods. The two cases are also similar, in the plan of both opposing parties to expel, pro se petitioners of ethnic origin, by filing lien leading to foreclosure of the house.

The first case is where the petitioners live in Isleworth, Windermere, Florida, a wealthy exclusive, golf community with the legacy of Tiger Woods. The attorneys of the HOA filed an alleged false document in the record file of the homeowners to satisfy precedent requirement to foreclose the house and attorney fees FS 720.305.

The second case is where petitioners own a house (leased) in Bay Hill with the legacy of Arnold Palmer where the petitioners are Defendants. The covenant violations came after the house was leased to a black couple where the husband was disabled and used a wheelchair.

Both cases were represented by petitioners as pro se. In both cases there was discrimination and due process violation of the Constitutional rights because of the pro se status, color and ethnicity.

STATEMENTS OF THE FACTS OF CASE NO 2016-CA-7260-O

On August 16, 2015 the Plaintiff Jains pro se filed the case against the Defendants who are attorneys of the law firm. Defendants made an alleged false notification letter of fine with the defendant signature to satisfy the precedent requirement to collect the attorney fees per FS 720.305(2). Plaintiffs representing pro se brought a claim under common law fraud for the damages caused by filing an alleged false letter (document) with false statement of "via certified and return receipts requested" but could not produce the receipts to authenticate the document. This letter was a precedent requirement of written notification per FS 720.305(2) (b) for the fine to be enforceable. This letter was put in the file with an eye towards enforcement of fine, to file a lien, and thousands of dollars in attorney fees and eventually foreclosure of the house and expelling the Jains from the exclusive wealthy neighborhood of Tiger Woods and Arnold Palmer. The damages resulted directly from that enforcement letter (fabricated bogus) which had no authenticity and could not be proven. The Plaintiff Dr. Jain had to close her emergency center on many occasions and had to take a financial loss and also loss of reputation in the community.[1]

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[1] The Plaintiff Dr. Jain is a doctor in the walk in emergency center in the community and serves the community by serving seven days a week for 35 years. If the urgent walk in center is closed then no one can walk in and patient with emergencies and distressed patients would have to go somewhere else.

All the Defendants concealed and refused to provide the receipts for the certified letter even after multiple requests of Plaintiffs which was simply required for the authenticity of the document.

Judge Myers was assigned to the case but Mr. Wert filed a unilateral notice for the hearing without coordination and when the hearing happened the Jains were representing pro se. Judge Myers went off the record after the hearing and passed the **discriminatory remarks** to *pro se* Dr. Jain regarding her age and also **threatened to sanction** her. Plaintiff Dr. Jain was also insulted by the remarks of Judge Myers that he did not understand her English. because the complaint was simple for the damages caused by placing the alleged false document in the official record of homeowner file to satisfy the precedent requirement for the lien, foreclosure and then thousands of dollars in of attorney fees. Judge Myers insulted and discriminated Dr. Jain by going off the record after the hearing on October 27, 2016.

Judge Myers let Michael Furbush be represented by attorney Tom Wert and also represented as pro se. This is against the Fla. R. Judicial Administration as Defendant Michael Furbush cannot be represented by himself and also by an attorney Mr. Wert per Rule of **Judicial Admin. 2.505 subsection (e) (f)** and is done with malice motive to collect two attorney fees. Judge Myers ordered to amend the pleading and dismissed Michal Furbush with prejudice.

Judge Higbee

On June 5, 2017 Judge Higbee had hearing for the bundle of four motions including motion to dismiss and notice was provided for the regular hearing. Defendant Michael Furbush and attorney Mr. Wert introduced the evidence and Judge Higbee allowed them do that despite the objection by *Pro se* Plaintiff Dr. Jain. Defendants produced evidence **on spot in the regular hearing**, which unfairly hampered the presentation of the Plaintiffs' defense. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) Fraud is also where "unfairly hampered the presentation of opposing party's claim or defense." The Plaintiffs felt totally helpless because the hearing was UNCONSTITUTIONAL and a VIOLATION OF DUE PROCESS. The Plaintiffs felt the DISCRIMINATION was done because of their pro se status, age and ethnicity.

UNDER THE LAW, notice of an evidentiary hearing is required and it violates due process for an evidentiary hearing to take place without putting all parties on NOTICE specially a pro se party Defendant Mr. Furbush and Mr. Wert had perpetrated a "fraud upon the court" by interjecting material unlawfully into the hearing to subvert the integrity of the court itself. The Plaintiff had IRREPARABLE HARM due to lack of evidence to support their defense in the record which could not be remedied in the appeal.

The order of Judge Higbee was partial, prejudicial and influenced by unilateral evidence presented by the Defendants only. The order of Judge Higbee

caused material injury to the pro se Plaintiffs by granting the sanctions.

Judge Higbee discriminated the old professional *pro se* litigants of ethnic origin by refusing to invalidate the unlawful hearing. Judge had to be recused for doing the discrimination, due process violation against the US Constitution of *Pro se* Plaintiff Jains.

The evidentiary hearing cannot be mixed with the Motion to dismiss hearing, where it should be within the four corners of the complaint but it was tainted by the introduction of the evidence by Mr. Wert and Mr. Furbush.

Judge Higbee also allowed double representation of Michael Furbush by an attorney, Mr. Wert, and also Michael Furbush represented himself as pro se. This is against the Fla. R. Jud. Admin. 2.505, (e) (f). It was prejudicial to the plaintiffs and caused material injury to the Plaintiffs.

Due process is a federal law of the Constitutional rights bestowed on the citizens by the Fourteenth Amendment to the US Constitution. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. *Davis v. Wechsler* 263 U.S. 22, 24 (1923).On July 10, 2017.

The pro se Plaintiffs filed the Fraud upon the court on July 10/ 2017 which was never heard ***even when it was noticed to be heard.*** The resulting material injury to Plaintiffs is tremendous due to the absence of due process being afforded.

Judge Higbee retaliated pro se Plaintiffs in the case number 2017- CA-009984-O in which Judge Higbee never ruled on the motion of rehearing of JWALA filed on November 6, 2018 for two months and thereby causing the impediment of filing of a notice of appeal.

JUDGE WHITE

Judge White, was assigned after recusal of Judge Higbee, Judge White also agreed that under the law the notice of evidentiary hearing is required to present the evidence. On October 3, 2017 the hearing was conducted and Judge White reversed the sanctions by stating;

> "*Under the law, a notice of evidentiary hearing is required and* ***it violates due process for an evidentiary hearing to take place without putting all parties on notice.*** *There is nothing on the face of this record that would allow the court to conclude that it was proper for Judge Higbee to conduct an evidentiary hearing when she did. It's also undisputed that an evidentiary hearing in fact was conducted because reviewing the minutes on the record on the hearing on the motion for sanctions it is clear that Judge Higbee took evidence, and her order states that based on the evidence she made her ruling."*

Judge White did not hear the motion for fraud upon the court which could have led the dismissal of the entire case. Hazel- Atlas infra

JUDGE WEISS

Judge Weiss held the hearing on motion to dismiss and made the judgment FINAL **without looking at the motion for fraud upon the court which was filed well in advance six months ago on July 10 2017.** Judge Weiss abruptly stopped Dr. Jain after five minutes who was representing herself pro se. Judge Weiss would not let pro se Plaintiff Dr. Jain talk about the unlawful actions of Judge Higbee, and it seems related to her ethnic origin and her female gender. This is another incident of pro se discrimination and violation of federal law of the Constitutional rights of the pro se litigant.

Judge Weiss totally disregarded the complaint, which was filed by pro se litigants under common fraud, which is a cause of action when all of the elements are satisfied. FS 817.535 was mentioned in the complaint clearly along with elements of actionable fraud.

Judge Weiss simply gave the decision that the complaint was conclusory and refused to give any amendment, completely ignoring FS 817.535.

Judge Weiss also ignored the violations by Mr. Wert and Mr. Furbush in not following the judicial rules (double representation 2.505(e)(f) and filing perjurious statements 2.515), rule of professional conduct (3.7 and 3.4). They also violated the admin rule by not conferring with pro se litigants for multiple hearings, along with defying and defiling FS 57.105 and 768.79.

APPEALS COURT

The decision of denial of the amendment by Dr. Judge Weiss was appealed by pro se litigant for violation of due process and discrimination. The amendment was heard only one time by Judge Higbee who accepted evidence in the regular hearing, which tainted the Plaintiffs Jains motion to dismiss. Judge Weiss, new to the case, retaliated by not providing fair due process and not allowing the Plaintiffs to explain the tainting of the motion to dismiss by Judge Higbee. Appellate court affirmed the decision per curiam and denied the rehearing. Appellate court did not acknowledge the violation of the Constitutional rights and fraud upon the court by Mr. Wert, Mr. Furbush, and Judge Higbee. [2]
Also, opposing Counsel Mr. Wert has been influential due to his position as member of the Board of the Governor of Orange County Bar of 9th Judicial Circuit (same court as all of the Judges in the case) and has been the past president of the Orange County Bar Association. [3]

Mr. Wert and Mr. Furbush has done many unlawful misrepresentations against a pro se representation of the Jains but no Judge paid attention to the facts in the case and all these was affirmed per curiam by the

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[2] Appellate Judge Eisinaugle recused himself from the case apparently Judge must know the other party

[3] Mr. Wert has been the past president of the Orange County Bar Association in the past and knows the judges in the case and also the appellate judges specially Judge Cohen who was in the Orange County.

Appeal Court. The defendants created a notice with false statements to satisfy the prerequisite in FS 720.305(2)(b). The notice was inserted into the homeowners association file with an eye towards a foreclosure of the Plaintiffs' house. Moreover, the appellate court ordered an appellate fee without an entitlement per FS 57.105 and 768.779.

The appeal court affirmed the trial court's decision for not giving the amendment despite Judge Higbee's and Judge Weiss's violation of the due process and discrimination against pro se Plaintiffs.

On April 20, 2018, the hearing for defective filing of the motion for sanctions per FS 57.105 by Defendant Furbush was set five months in advance by the pro se Plaintiff Dr. Jain. However, Judge Weiss did not hear the motion. Dr. Jain protested about the violation of **due process for not holding the hearing,** but Judge Weiss again did not hear it.

Remand after Appeal

On March 6, 2019, Plaintiff Dr. Jain opposed the noncompliant motion filed by the defendants per FS 768.79 and 57.105. The above defects of the motions are the issues of the law which could be settled with a non-evidentiary hearing.

No hearing was given for the above motion. Instead, case management was ordered which mixed the regular hearing of 15 motions with evidentiary hearing for motion for sanction. The intermingling of the motions can easily cause prejudice to the Plaintiffs Jains. This type of prejudice already

happened with Judge Higbee who also mixed the evidentiary hearing with regular hearing.

Plaintiff Dr. Jain filed motions for fraud upon the court by Mr. Wert and Mr. Furbush, but Judge Weiss denied it without holding an evidentiary hearing. Judge Myers made threats for sanctions to Plaintiffs Jains. Judge Weiss also threatened Plaintiffs for contempt of court in order to intimidate them along with threats for attorney fees, even when entitlement per FS 57.105 and FS 768.79 was not done yet.

Discovery was blocked by stating that it was not necessary because appellate court already ordered the appellate fee but entitlement has to be done in the lower court per 57.105 and 768.79. The evidentiary hearing was set but Judge Weiss denied all the depositions of the fact witnesses. Pro se Plaintiffs cannot bring the evidences of bad faith from Mr. Wert who was a manager of the law firm and refused the deposition even if he is the fact witness in the case.

CASE NO 2 2015-CA-8175-O
5D18-2033
Supreme Court 18A1340

The Bay Hill Plaintiffs entire case rests on a false foundation by concealing the signed consent for mediation by the petitioners, misrepresentation of impasse by opposing counsel rather than a mediator as required per FS 720.311, filing premature suit in 20 days instead of 90 days and collecting attorney fees without satisfying the prerequisite mandatory mediation against pro se.

On September 1, 2015 suit was filed against the Jains for covenant violation without doing a mandatory prerequisite presuit mediation required per FS 720.311. However, the Defendants did sign the consent timely and it was in the court record.

Ms. Hatchette filed the lawsuit without doing a mandatory presuit precedent condition before filing a suit. The pro se Defendants timely signed the consent to presuit mediation as required by the Statute. Opposing counsel filed the lawsuit in 20 days while concealing the Defendants' signed consent to mediate. Ms. Hatchette immediately got the summary judgment by unilateral hearing against the defendants due to the fact that they were pro se. Moreover, Dr. Jain was disabled because of serious facial injuries from an assault at the time. During this difficult time, Ms. Hatchette **concealed the signed document of the consent of mediation** from the Court. Bay Hill HOA conveniently violated statutes by declaring impasse even when the signed consent was in the record in the Defendants pleading. Pursuant to FS 720.311 2 (b), mediator is an authority to schedule mediation at a mutually convenient time for both parties. Bay Hill HOA and attorney took that authority in their own hand and wrongfully stated that the schedule for mediation could not be done.

FS 720.311(2) (b) is very clear and unambiguous about scheduling. The mediation has to be done by the mediator at a mutually convenient time and place. Ms. Hatchette filed the suit prematurely in 20 days rather than 90 days (after she found out

that Dr. Jain was injured) to harass Dr. Jain who was defending pro se, injured and is of ethnic origin. FS 720.311 clearly states that the mediator is solely responsible for declaring an impasse, as seen below:

> To begin your participation in pre-suit mediation to try to resolve the dispute and avoid further legal action, please sign below and clearly indicate which mediator is acceptable to you. We will then ask the mediator to schedule a mutually convenient time and place for the mediation conference to be held. The mediation conference must be held within ninety (90) days of this date, unless extended by mutual written agreement. In the event that you fail to respond within 20 days from the date of this letter, or if you fail to agree to at least one of the mediators that we have suggested or to pay or prepay to the mediator one-half of the costs involved, the aggrieved party will be authorized to proceed with the filing of a lawsuit against you without further notice and may seek an award of attorney's fees or costs incurred in attempting to obtain mediation.

FS 720.311 2 (b) also clearly states the party who fails to mediate cannot recover attorney fees:

> Additionally, notwithstanding the provisions of any other law or document, persons who fail or refuse to participate in

> the entire mediation process may not recover attorney's fees and costs in subsequent litigation relating to the dispute. If any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline.

In sum, Ms. Hatchette filed the lawsuit prematurely in bad faith with malicious intent to hurt the defendants who were pro se and of ethnic origin, especially disabled at the time.

Plaintiff's counsel failed to abide by Florida Statutory requirement of conducting mandatory pre suit mediation and thereby violated even the Constitution of Florida because that involved defying and defiling the statutes 720.311 against the Jains who were pro se and of ethnic origin.

The Plaintiffs Jains had to continue to defend the claim which did not satisfy the Florida Statue § 720.311 2 (b) and had to file the motion to dismiss and also motions for sanctions per FS 57.105.

On December 14, 2015, Ms. Hatchette filed a motion for summary Judgment and set her own date for the hearing without any coordination. The Defendant disputed this and Judge Kest set a date for evidentiary hearing regarding the dispute over the unilateral setting of the hearing of the motion for summary judgment. The hearing was also set for Defendants' motion to

dismiss and motion for sanctions per FS 57.105. Then when Ms. Hatchette was supposed to cancel the hearing, she instead got the judgment in her favor by misrepresenting that the mediation was waived. This was a deceitful action of the attorney. Judge Kest gave unilateral judgment against a pro se party even when the issue of mediation was not resolved, as the record clearly showed that signed consent agreement for mediation was in the Court file.

Judge Kest disregarded his own order for the pending evidentiary hearing even when four motions of the Defendants were pending. ***The pro se couple never even got a chance to speak in front of Judge Kest*** and judgment was given unilaterally by a deceitful hearing.

This is a clear violation of due process and discrimination of the pro se status and is against the law of the Constitution of United States of America.

On February 25, 2016, during the ex-parte hours Judge Kest simply threw the pro se Defendants out of the chamber when they simply reminded Judge Kest about the pending evidentiary hearings. He then filed an order for reconsideration even when there was no hearing.

Judge Kest and Ms. Hatchette did not follow the law as they were required to have an attorney represent the trust that the Jains' house was under. Instead, they quickly closed the case with summary judgement without proper representation and without regard to the statutes. This was deceitful as the house was in

trust when Judge Kest gave the Final judgment. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989)

Attorney Ms. Hatchette went to the extent that Ms. Hatchette presented affidavit of Jim Audie which was only hearsay and even mischaracterized pro se Dr. Jain who has served the community for 34 years, seven day a week and saves lives.

Ms. Hatchette filed les pendens on the property illegally which is not allowed for the covenant violation. Ms. Hatchette went after the couple again and gave the BOGUS citations for no reason. The continuous discriminatory acts of Bay Hill are against the Constitution.

Pro se Defendants have questioned the jurisdiction of the court and even requested a hearing to resolve this dispute but it was never provided. Final Judgment against pro se was done against the law when four motions needed to be heard by evidentiary hearing scheduled two months later on April 18, 2015.

"A judgment rendered by a court without personal jurisdiction over the defendant is void. It is a nullity." *Hagans v. Lavine* 415 U, S. 533.

Judge Weiss dismissed the case on 1.540 and motion per 1.530 was never heard. Judge Weiss did not hold an evidentiary hearing required to resolve disputed facts raised in motion to vacate. *see also Schleger v. Stebelsky*, 957 So. 2d 71, 72 (Fla. 4th DCA 2007) ("A motion for relief from judgment should not be

summarily dismissed without an evidentiary hearing unless its allegations and accompanying affidavits fail to allege colorable entitlement to relief.").
Judge Weiss did not hold an evidentiary hearing nor did he set aside the judgment. *Somero v. Hendry Gen. Hosp.*, 467 So.2d 1103, 1104 (Fla. 4th DCA 1985)"favors of setting aside defaults.... merits."

APPEAL COURT IN CASE NO. 2

The decision was appealed to 5th DCA which confirmed per curiam decision which incorrectly applied Statutes 720.311 regarding the pre-suit mediation. Appeal court also disregarded the fact that the unilateral judgment was done when the pro se party was not present in the hearing which was supposed to be cancelled. The judgment was not done on the merits but it was based on the unilateral misrepresentation against the pro se party. The appeal court also had a chance of making a correction equal application of the law against pro se litigants by upholding the FS Statutes 720.311.

Appeal court in case of Bay Hill affirmed the decision even when there was a violation of FS review was de novo. The house is question has been in good condition all these years but their motive was to get the black tenants out of the neighbourhood. Also appeal court incorrectly ignored the fraud committed to defile the FS 720.311.
The Appeals court denied to hear an appeal per 1.530 and heard only per 1.540 even when the motion for reconsideration was still pending.

Concealment of the consent for mediation and false assertion about refusal to schedule are both purely deceitful actions of Attorney Hatchette.

U.S. 637 (1974) *McNally v. U.S.*, 483 US 350,371-372, and Quoting *U.S. v Holzer*, 816 F.2d. 304, 307 Fraud in its elementary law sense of deceit..... **The Plaintiff's entire case rests on a false foundation.** In *Hazel-Atlas,* the relief awarded took the form of vacating a judgment long after it had become final, and prohibiting the judgment-holder from relitigating its claim. 322 U.S. at 250-51, 64 S Ct. at 1003-04.

In any case, it is illegal, and every case which has had fraud involved can be reopened at any time, because there are no statutes of limitations on fraud.

Argument

The Fourteenth Amendment guarantees that "[t]he right of the people to fundamental due process and prohibits discrimination on the basis of age sex, race religion and pro se status of the citizens."

Fundamental due process shall be observed and shall govern the proceedings. Due process requires that decisions be arrived at by maintaining the reality and appearance of fairness. *Ridgewood Prop. Inc. v. Dept. of Community Affairs*, 562 So. 2d 322, 323–324 (Fla. 1990).

Trial courts possess the inherent power to protect the function, dignity, and integrity of the judicial system. *Tramel v. Bass,* 672 So. 2d 78, 83 (Fla. 1st DCA 1996). This includes the right and even obligation to not defy and defile the Statutes and to deter fraud upon the court by the litigants

FS 720.311 is clear and not ambiguous. It is a prerequisite mandatory requirement before filing lawsuit for covenant violations. Defying and defrauding FS 720.311, should not be allowed by Bay Hill's attorney or Judge Kest **even** though the Defendants were a pro se party. Further defiling of FS 720.311 came by declaring an "impasse" by attorney Hatchette of Bay Hill unilaterally when it was a responsibility of the mediator per FS. Also in filing the lawsuit in 20 days instead of waiting for the full 90 days per FS.720.311. Fraud upon the court by concealing the consent of the mediation at the time of filing the suit is deceitful. *McNally v. U.S.*, 483 US 350,371-372, Quoting U.*S. v Holzer*, 816 F.2d. 304, 307.

Adherence to the plain meaning of the statute requires mediation as a precondition to filing suit. Because the dispute falls within the purview of Fla. Stat. § 720.311, the trial court had no choice but to dismiss the suit due to the Plaintiff's failure to satisfy a pre-condition to initiating a lawsuit. *Neute* v. *Cypress Club Condominium, Inc.,* 718 So. *2d* 390, 392 (Fla. 4th DCA 1998). The analysis provided by the Fourth District Court of Appeal in *Neute* may *be* similarly applied to Fla. Stat. § 720.311.

The obvious intent of sections720.311 fully expressed by the legislature ***is that no party may commence an action in court on a dispute covered by the statute until and unless mediation / arbitration has been had.*** As we earlier explained, the requirement of prior mediation / arbitration is a condition precedent to any suit on the dispute.

Plaintiff's attorney Hatchette's failure to mediate is immediate grounds for dismissal. See *Alhambra Homeowners Association, Inc. v. Asad*, 943 So. 2d 316 (Fla. 4th DCA 2006) This is also enumerated in *Conrad v. Hidden States* and ***Neate*** v. ***Cypress Club Condominium, Inc.,*** **supra**

Presuit mediation is also required per 3-J Hospitality, LLC v. Big Time Design, Inc. (SD FL 2009).In sum, after careful consideration of controlling law, the court finds that Plaintiff is bound to mediate the claims presented in the complaint before it may proceed...Accordingly, Plaintiff has failed to satisfy a condition precedent to litigation and the complaint must be dismissed." (Citing *Kemiron Atlantic* 290 F. 3d 1291). 3-J supports looking to other state jurisdictions for guidance on pre-suit mediation requirements. (e.g. it cites *Brosnan v. Dry Cleaning Station, Inc.* 2008 WL 2388392 (N.D. Cal 2008) (Failure to mediate a dispute pursuant to a contract that makes mediation a condition precedent to filing a lawsuit warrants dismissal."); *Woods v. Holy Cross Hospital* 591 F. 2d

1164 (5th Cir. 1979) (Dismissing medical malpractice action where mediation was a condition precedent to filing suit under state law.)

A medical malpractice case from Wisconsin may provide the best guidance of all. In *Ocasio v. Froedtert Memorial Lutheran Hospital,* 637 N.W. 2d 459 (2001) the appeals court first held that interpreting statutory presuit mediation requirements was a matter of law to be reviewed de novo. Next, the court ruled that waiting a minimum of 60 days after serving a notice of mediation was required and the plaintiff could not proceed with suit until the time elapsed. The appeals court must also decide permissive or mandatory.

Concealment of the consent to mediation and misrepresentation about the refusal to schedule were purely deceitful actions of Attorney Hatchette of Bay Hills which was then allowed by Judge Kest and Judge Weiss and was later affirmed by the Appeals Court.

Intentional Omission: Fraud also includes the intentional omission of a material fact.
Ward v. Atlantic Security Bank, 777 So.2d 1144, 1146 (Fla. 3d DCA 2001).

The Appeals Court per de novo review issued a per curiam decision without any deference to defying and defiling of FS 720.311 by Judge Kest and Judge Weiss against a pro se litigant Dr. Jain and Mr. Jain which was discriminatory against the equal protection under the law.

U.S. 637 (1974) *McNally v. U.S.*, 483 US 350,371-372, Quoting *U.S. v Holzer*, 816 F.2d. 304, 307 Fraud in its elementary form is law with a sense for deceit.... includes the deliberate concealment of material information in a setting of fiduciary obligation.

The Appeals Court incorrectly did not consider the misrepresentation for the mediation by Attorney Ms. Hatchette. In *Hazel-Atlas,* the relief awarded took the form of vacating a judgment long after it had become final, and prohibiting the judgment-holder from relitigating its claim. 322 U.S. at 250-51, 64 S.Ct. at 1003-04. In any case, it is illegal, and every case which has had fraud involved can be re-opened at any time because there are no statutes of limitations on fraud.

The Appeal court affirmed without requiring an evidentiary hearing for misrepresentation *of the mediation Schleger v. Stebelsky*, 957 So. 2d 71, 72 (Fla. 4th DCA 2007) ("A motion for relief from judgment should not be summarily dismissed)." *Goudie v. Garcia*, 584 So. 2d 100, 101 (Fla. 3d DCA 1991) (evidentiary hearing required to resolve disputed facts raised in motion to vacate).

The Appeals Court incorrectly affirmed the judgment which is against FS 720.311. "Where a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction" and courts exercising jurisdiction, must proceed within the structures of the statute. *Stock v, Medical Examiners* 94 Ca 2d 751.211 P2d 289;

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The Appeals Court's affirmation per curiam was a decision without any regard to Federal Law and the Constitution when Judge Higbee violated due process against pro se Dr. Jain. The Appellant Dr. Jain was denied due process in the hearing of June 5, 2017 with Judge Higbee which was not in compliance with the hearing notice requirements. Judge Higbee took evidence against her own notice of regular hearing of four motions as published per *Christian Herranz vs Roberto Siam* 3D08 1252 (Reversing results of hearing as evidentiary hearing must specifically be noticed as such). *RODRIGUEZ, Appellant, v. Lou SANTANA*, Appellee. No. 4D11–1856.Decided: December 14, 2011 (A trial court violates a party's due process rights "when it expands the scope of a hearing to address and determine matters not noticed for hearing) *Dwork v. Executive Estates* 219 So.3d 858 (2017) (FL 4 DCA 2017). Fl. Stat. 720 strict compliance with notice requirement should be adhered.

Due process requires that a party be given sufficient notice to prepare for a hearing *WA LTD Partnership v Lemontang* 19 So. 3d 1079 (Fla. 3 DCA 2009).

The Appellate court also incorrectly affirmed Judge Weiss's decision even when Judge Weiss abruptly interrupted pro se Plaintiff Dr. Jain in the middle of

the hearing, Pro se Dr. Jain got only five minutes total with no rebuttal time. The Pro se Plaintiff thus did not get a chance to have a meaningful hearing. *Julia v. Julia* 773 146 So. 3d 516 (Fla. 4th Dist. 2014) (The principles of due process demand that both parties be adequately heard... as "justice cannot be administered with a stopwatch.")*Madison v. Purdy*, 410 F.2d 99, 100 (5th Cir. 1969); "justice cannot be admin .... stopwatch.")

The Appeals court affirmed the decision of the court without attention to the recurrent violation of due process by every judge in the case because pro se litigants, are colored and of ethnic origin. Judge Myers of the trial court refused to give disclosure and threatened pro se for sanctions even when the attorneys who made the certified document to fulfill FS 720.305 could not produce the receipts and it was a sham document to file a lien and foreclosure. Judge Eisinaugle of the appeals court recused in the case, as he likely knows the attorneys of Isleworth.

The Appeals Court affirmation per curiam is incorrect and is in conflict with the precedent cases.*Davis ex rel. Davis v. Bell,* 705 So. 2d 108 (Fla. 2d DCA 1996) Plaintiff's allegations in complaint should be taken as true.) *Cruz v. Beto*, 405 U.S. 319,322 (1972). accept as true all factual allegations in the complaint

Reasons to Grant a Petition for Certiorari
Violation of the Constitutional Right of Equal Benefit of all laws and Proceedings in both Cases

Originally included as part of the Civil Rights Act of 1866, Section 1981(a) states in relevant part:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

"the right to file a lawsuit pro se is one of the most important rights under the Constitution and laws." and they should be given proper due process. *Elmore v. McCannnon* (1986) 640 F. SUI)P. 905

All decisions should be based on admissible evidence and defenses rather than innuendo, hearsay, or predetermined opinions. *City of Tampa v. Brown*, 711 So. 2d 1188, 1189 (Fla. 2d Dist.App. 1998), *rehearing granted* 728 So. 2d 200 (Fla. 1988).

The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his

official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Scheuer v. Rhodes* 416 U.S. 232~ 94 S. CL 1683, 1687 (1974)
As state officers, Judges cannot violate the due process requirement and act in violation of the law as Judge Higbee, Judge Weiss and Judge Myers did.

"All law (rules and practices) which are repugnant to the Constitution are VOID". Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges. or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law .... or equal protection under the law", this renders judicial immunity unconstitutional. *Marbury v. Madison*, 5 U.S. (2 Cranch) -137,180 (1803).

Judges are bound by the federal rules *Mattox v, U.S.*, 156 US 237,243. (1895) "We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted." *Mattox v. U.S.*, 156 US 237,243. (1895)
The Appeals Court incorrectly affirmed the final judgment when there was a violation of the Constitutional rights of pro se Dr. Jain and also defying and defiling FS 720.311. Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law

of the land. The judge is engaged in acts of treason. *Cooper v. Aaron,* 358 U.S. 1, 78 S. Ct. 1401 (1958)

Judge Weiss, Judge Higbee and Judge Myers cannot claim that they did not know the law of due process violation and of not discriminating pro se party. The Judges deem to know the law *Owen vs. City of Independence*100 S Ct. 1398; officials and judges are deemed to know the law and sworn to uphold the law: officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, *Maine vs. Thiboutot*, 100 S. Ct. 2502

Judges have a duty to do the right thing even if the party is pro se and is of ethnic origin. "It is the duty of all officials so to perform every official act as not to violate Constitutional provisions. *Williamson v. U.S. Department of Agriculture*, 815 F.2d. 369, ACLU *Foundation v. Barr*, 952 F.2d. 457,293 U.S. App. DC 101, (CA DC 1991)."

Judges are bound by the law of the Constitution.
Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."
Sherer v. Cullen, 481 F 946.
Davis v. Wechsler, 263 US 22, 24

The Court decided in *United States v. Guest*, 383 U.S. 745 (1966) that the Enforcement Clause gave Congress the power to regulate the private individuals who conspired with state officials to deprive people of their rights under Section One of the Fourteenth Amendment.

REASONS TO GRANT A PETITION FOR A WRIT OF CERTIORARY

1. THE DECISION BELOW CONFLICTS WITH THIS COURT'S TAKINGS PRECEDENTS

The decision below is in conflict with the Supreme Court's decision. This Court had a precedent where an extra leniency should be afforded to a pro se litigant. *Haines v. Kerner,* 404 U.S. 520 (1971) Supreme Court pro se ..."less stringent standard *Hughes v. Lott* 350 F. 3d 1157, 1160 (11th Cir. 2003) unrepresented by added element of grace. This question of Federal law is of exceptional importance because millions of people who are trying to get justice in the court by self-representation become victim of abuse of power by judicial officers and court officers and lose their life savings. Florida is growing very rapidly and many working people cannot afford attorneys. The law should be applied equally despite their pro se representation to get the justice and attorneys and judicial officers should treat them like a human being and not like a second class citizen. The Constitution provides citizens' rights to represent pro se *Elmore v. McCannnon* (1986) 640 F. SUI)P. 905 " But if the pro se litigants do not get

equal opportunity and also get in lethal traps by the abuse of the power then that right has no meaning. Judicial officers and court officers do not feel obligated to follow the law and rule of professional conduct. Judicial officers and court officers do not follow any laws and statutes against pro se litigants. Judicial officer should not abuse the power to retaliate the self-representing citizens who are trying to get justice.

2. THIS CASE IS AN IDEAL VEHICLE TO ADDRESS THE QUESTION PRESENTED The writ of certiorari should be granted because this case is of great public importance concerning the discrimination of race and colored people, with far reaching implications to the public where millions of disadvantaged people lose their houses and lifesavings. These two cases where there was discrimination not only to the pro se status but also involved the age, sex, race and ethnicity. In Bay Hill case this discrimination was also extended against the renters who were black with disability.

3. THIS CASE PRESENTS A QUESTION OF EXCEPTIONAL IMPORTANCE TO THE CONSTITUTION OF THE COUNTRY AND INTEGRITY OF JUDICIAL SYSTEM.

The national importance of the takings question presented about a fundamental due process written to the Constitution of US in 14th Amendment can hardly be overstated and further warrants the grant

of certiorari. The written Constitution by the founding fathers in the due process clause is the most important right of the citizens. The right to file a lawsuit pro se without providing fair due process by state officers defeats the purpose of the citizens' rights to self-represent. In the instant two cases the self-representing pro se litigants were not given any due process by defaulting and giving Final summary judgment by conducting unilateral hearing. The pro se litigants never got a chance to present the issue of the law which was clearly present in the record. In the second case the due process was violated by taking unilateral evidence, stopping the pro se doctor Usha Jain in the middle of the hearing, and threat of contempt of the court sanctions by Judges.

4. THE DECISION BELOW CONFLICTS WITH DECISION OF OTHER SAME STATE COURT OF LAST RESORT AND ALSO OTHER STATES OF LAST RESORT

This Court should resolve the question of exceptional importance in order to prevent the clogging of the court throughout this country with ***noncompliant suits,*** by violations of mandatory presuit requirements by attorneys vs pro se. The decision below of this Appeals Court of last resort conflicts with the decision of other appeals court of Florida and also the appeals court of last resort of other states. This a great reason to grant certiorari

regarding the strict requirement of presuit mediation to preempt the clogging of the court from unnecessary suits. In the instant case #2 of Bay Hill, a noncompliant suit was filed and pro se litigants were given the final judgment with unilateral summary judgment without regard to due process and the case reached all the way to attorney fees with many misrepresentations. The Judge never granted an evidentiary hearing which is also required for proper due process. Appeal court affirmed the decision per curiam without regard to improper Final Judgment by Judge Kest and **failure of Judge Weiss** to provide the evidentiary hearing for a matter of jurisdiction and also fraud upon the court by Plaintiff's attorney of Bay Hill. *Schleger v. Stebelsky*, 957 So. 2d 71, 72 (Fla. 4th DCA 2007), *Goudie v. Garcia*, 584 So. 2d 100, 101 (Fla. 3d DCA 1991).

5. QUESTION OF GREAT IMPORTANCE REGARDING THE RETALIATION BY THE JUDICIAL OFFICERS

The reason this writ should be granted is to have the question resolved regarding the retaliatory abuse of power in not rendering an order on the petitioner's motion for reconsideration and denying a just *sua sponte* recusal which is supported by the case law of *William Caperton*. In the instant case, the abuse of power by Judge Higbee led to her recusal but resulted in her retaliation by not rendering the order in another case of Jains. This abuse of power in retaliation cause material injury

to the pro se Plaintiff Dr. Jain who is an older lady doctor of medicine and of ethnic origin.

6. AUTHORITY OF THIS COURT TO ENFORCE DETERENCE OF FRAUD UPON THE COURT BY STATE OFFICERS WITH PROPER EVIDENTIARY HEARING AND NOT TO DEFY FS 817.535

This Court has highest authority for enforcing the deterrence of fraud upon the court by the court officers. The judicial officer has an obligation to deter the fraud upon the court to subvert the judiciary. There is a new FS that emerged in 2013 which prevents filing false documents in official file, especially a prerequisite document required to lien and foreclose a house. Judge Weiss who gave the final judgement totally ignored FS 817.535 and the appeals court (5th DCA) affirmed it per curiam against a pro se litigant. Attorneys filing the false document in the official record file, was the reason for the financial damage of the petitioner Dr. Jain who is a medical doctor and serves the community for emergencies.

7. QUESTION TO BE RESOLVED BY THIS COURT REGARDING THE DEFYING AND DEFILING OF FS 57.105 AND 768.79.

This court should grant the writ of the petitioner which is of exceptional importance because FS 57.105 and 768.79 are a derogation of common law to get an award of attorney fees and need to be followed to the letter of the law. The

filing of defective 57.105 and 768.79 procedurally and substantively is in bad faith against the pro se litigant who filed the lawsuit against attorneys for damages caused by filing of false document in an official HOA record. Because the Plaintiffs are pro se, none of the judges looked at the false document and gave the decision for dismissal with prejudice on the basis that the complaint was conclusory. There was no discovery provided prior to dismissal and simply the case was dismissed with prejudice and now the court officers and Judge Weiss is considering it as a sham pleading because attorney Mr. Wert is a member of the Board of Governor of the Florida bar of the same judicial circuit as all the judges in the case. Mr. Wert has done many violations of rules of discovery, rules of evidence, violation of rule of professional conduct 3.7, 3.4, Judicial rules 2.515 and Judicial rules 2.505 (e)(f) and also defying and defiling FS 57.105 and 768.79. The Appeals court simply affirmed the decision of the lower court. It is all possible because the litigants are pro se, colored and of ethnic origin and attorney Mr. Wert is from a big law firm and influential so none of the judges want to acknowledge his misrepresentation and subverting the judiciary.

The Court decided in *United States v. Guest* 383 U.S. 745 (1966) that the Enforcement Clause gave Congress the power to regulate the private acts of individuals who conspired with state officials to deprive people of their rights under Section One of the Fourteenth Amendment.

Discrimination is prohibited for race and color per the Fourteenth Amendment when the state courts to enforce them. *Shelley v. Kraemer*, 334 U.S. 1 (1948)

8. QUESTION OF GREAT PUBLIC IMPORTANCE TO BE RESOLVED BY THIS COURT IS UNLAWFUL ATTEMPTS OF ATTORNEYS IN VIOLATION OF THE CONSTITUTION TO EXPEL COLORED PEOPLE FROM WEALTHY COMMUNITIES

The millions of colored people are affected by unconstitutional acts of due process violation and discrimination by HOA, attorneys and state officers. This Court has an authority to deter these kinds of unconstitutional acts.

CONCLUSION

Petitioners pro se Dr. Usha Jan and Manohar Jain respectfully request that this Court grant petition for writ of certiorari for the foregoing reasons of (i) protecting the rights of colored people and pro se litigants under Federal Law, 14th Amendment to the Constitution of United States of America and also to protect the integrity and public trust in the Judicial System of America.

Respectfully submitted on this 2nd day of October 2019,

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