

No. 19-476
IN THE
SUPREME COURT OF THE UNITED STATES

DR. USHA JAIN AND MANOHAR JAIN
Petitioners,

v.

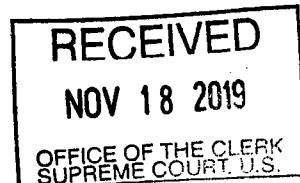
DAVID BARKER, MARY BETH VALLEY,
MICHAEL FURBUSH and ROETZEL &
ANDRESS, L.P.A.,
Respondents.

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

**SUPPLEMENTAL BRIEF TO THE PETITION
FOR WRIT OF CERTIORARI**

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November 12, 2019



i

**QUESTIONS PRESENTED FOR THE
SUPPLEMENTAL BRIEF**

Can State officers in trial court retaliate against colored, self-representing litigants of ethnic origin for filing the case in the Supreme Court regarding violation of 14th Amendment rights? This is a violation of U.S. Code § 12203 (a) Title VII. It is in direct conflict with an established precedent set by the Supreme Court of Anti-Retaliation Principle in employment cases.

Should this Court resolve the question of whether attorney fees should be awarded by defrauding and defiling Florida Statutes 57.105 and 768.79 and 720.311 in retaliation against colored people? The effect of these would be projected to millions of people who would not be able to get justice in the court, which is in violation of the 1st Amendment and 14th Amendment rights.

The court should resolve the question of retaliation by state officers against a protected class, specifically colored, self-representing litigants of ethnic origin for asserting their rights. The question is of great importance because citizens would be afraid to complain about unlawful acts that are in violation of the Constitution of America, Supremacy Clause. These are issues of great public importance due to their violation of Amendment rights.

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,

v.

David Barker, Mary Beth Valley,
Michael Furbush and Roetzel and Andress L.P.A.
Respondents.

Case No. 2

Manohar Jain, and Dr. Usha Jain
Petitioners,

v.

Bay Hill Property Owners Association, Inc.
Respondents.

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**IN THE SUPREME COURT OF THE UNITED
STATES SUPPLEMENT BRIEF TO PETITION
FOR WRIT OF CERTIORARI**

INTRODUCTION

This supplemental brief to the petition for consideration of the court is properly restricted in accordance with Supreme Court Rule 15.8 to intervening matter not available at the time of the Petitioner's last filing. This brief is necessary regarding the retaliation by the state officers of the colored Plaintiffs for asserting their rights in the Supreme Court. Petitioners have a reasonable believe that the retaliation is due to the filing of the notice of the writ of certiorari on May 28, 2019 in the lower court Filing no. 90202267

The states officer Judge Weiss retaliated by awarding attorney fees by violation of the Florida statutes 720.311 and also without the evidentiary hearing for fraud upon the court by the opposing counsel in case #2.

Same Judge Weiss also presided in case no 1 and had to be recused on September 9, 2019 for discrimination and due process violations of colored self-representing Jains of ethnic origin New Judge Roche who is the supervisor of Judge Weiss took over the case. Judge Roche also retaliated the Jains by omitting the entitlement per FS 57.105. Entitlement was supposed to be for either party but Judge Roche started calculating the attorney fees for the attorneys from the unprotected class.

IN THE
SUPREME COURT OF THE UNITED STATES
SUPPLEMENT TO PETITION FOR WRIT OF
CERTIORARI

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

OPINION BELOW

CASE NO.1 5D18-1215 01-22-2019 for attorney fees 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 of attorney fees appears atApp. 1

The opinion of the state court of last resort order to strike the clarification.....App.2

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

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JURISDICTION

The case is already filed in the Supreme Court and is docketed on October 10, 2019. The supplemental brief is submitted due to retaliation by the Judges due to filing of the case of discrimination and due process by the Jains in the Supreme Court

SUPPLEMENTAL BRIEF - CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 12203 prohibits discrimination and retaliation

(a) Retaliation - No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

- A state court has retaliated the Jains which is against the anti- retaliation principle of the Supreme Court.
- Judge Weiss retaliated in Case no. 2 by awarding attorney fees which is against FS 720.311 and intentionally omitted to do the evidentiary hearing on fraud upon the court and jurisdictional issue. Judge Weiss pretexts as following the law but in reality the award of attorney fees was in retaliation and was against the Florida Statutes

720.311. This court has an authority to resolve the defrauding FS 720.311

- Same Judge Weiss retaliated in case no. 1 by obstructing the discovery required for FS 57.105 and also for the validity of FS 768.79.
- 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 regarding pre-suit mandatory mediation required before filing a claim;

Statement of the Case for the Supplemental Brief

This supplement brief is for the retaliation by the Judge Weiss who presided in both cases. The self-representing Plaintiffs who are colored and of ethnic origin filed the case in US Supreme Court for the due process violation and discrimination. The retaliatory activity started right after the filing of the notice in the trial court

STATEMENTS OF THE FACTS OF CASE NO 2
2015-CA-8175-O
Retaliation by Judge Weiss

Judge Weiss presided in the above case and knew about the writ of certiorari in the Supreme Court.

In the hearing of June 21, 2019, Judge Weiss heard the motion to stay but the opposing counsel Andrew Roy and Mya Hatchette stated that there is no filing in the US Supreme Court. Judge denied the stay even when it was known to Judge Weiss that the case is in the US Supreme Court.

Judge Weiss again did not look for the entitlement of the supplemental attorney fees per FS 720.311.

Florida Statutes 720.311 2 (b) is very clear about attorney fees, the party who fails to mediate cannot recover attorney fees. Below is part of the FS

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.

Judge Weiss knew about this rule and also the fact that mediation was not done by the opposing counsel even when the consent to mediate was signed timely by Defendant Jains. There were two outstanding motions for fraud upon the court and jurisdictional issues which were pending. Judge Weiss disregarded the pending dispositive motions of the Jains which were about the issues of the law and required the evidentiary hearing. In retaliation Judge Weiss directly went to the attorney fee and pretext that the fee was awarded per FS 57.105 when the case did not even involve FS 57.105

Judge Weiss denied the rehearing even when all the cases which were cited, supported, that attorney fees could not be recovered if the pre-suit mandatory mediation is not done.

Appeal court affirmed his decision on August 12, 2019 to award the supplemental attorney fees without regard to fraud and defrauding of FS 720.311.

CASE No. 1, 2016-CA-7260-O

Same Judge Weiss presided in this case and the entitlement for the attorney fees was required for the sanction fee award to either party because the both parties have filed the motion for sanctions per FS 57.105. Judge Weiss.

Judge Weiss have to be recused for retaliation in case 2 and was recused on September 09, 2019. Judge Roche who was the supervisor of the Judge Weiss took over the case.

Retaliation by Judge Roche

On September 11, 2019, (two days after the recusal of Judge Weiss), Judge Roche, in retaliation, omitted the entitlement per FS 57.105 which was required for attorney fees. Judge Roche overruled the objection of the Dr. Jain who is in protected class. In retaliation Judge Roche calculated the attorney fees. Judge Roche also did not hear the witnesses of colored Plaintiffs who waited all day to prove that there was no bad faith.

Argument**CASE NO. 2, 2015 CA-8175-O****Retaliation by Judge Weiss by Ignoring
Fraud upon the Court by Attorney
Hatchette**

Judge Weiss retaliated the Jains by ignoring the fraud upon the court by attorney Hatchette on June 21, 2019 who misrepresented the court about the stay (there is no filing in the Supreme Court, and entitlement about the attorney fees for which

mediation was required per FS 720.311. Judge Weiss denied the stay and ignored fraud for attorney fees in retaliation. The hearing was noticed for stay and entitlement but Judge went directly to attorney fees without entitlement per mediation. It is not concealed the signed consent for the presuit mediation from the law suit which was filed on September 1, 2015. "The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court. *Hazel-Atlas*, 322 U.S. at 250-51, 64 S.Ct. at 1003-04, vacating a judgment....fraud *Brosnan v. Dry Cleaning Station*

The signed consent is in the record everywhere and was also resubmitted to Judge Weiss before the hearing of June 21, 2019. The Jains filed the notice of writ of certiorari for the US Supreme Court (in the trial court on May 28, 2019). Judge Weiss retaliated the Jains in the above hearing which was on June 21, 2019 and awarded attorney fees and ignored fraud upon the court without an evidentiary hearing. *Goudie v. Garcia*, 584 So. 2d 100, 101 (Fla. 3d DCA 1991)

Lying about facts central to the case, including the nature and extent of one's own injuries, simply cannot be tolerated and, frequently, cannot be remedied by any lesser sanction than dismissal with prejudice. The plaintiff's false or misleading statement given under oath concerning issues central to her case amounted to fraud. See *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998).

The Plaintiff's counsel inserted an unsigned BOGUS DOCUMENT when she already had a signed consent to mediation in her possession as shown below

11/2/2015 4:00 PM FILED IN OFFICE TIFFANY M. RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

Therefore, please give this notice your immediate attention. By law, your response must be mailed by certified mail, return receipt requested, and by first-class mail to me at the address stated below:

PLEASE GOVERN YOURSELF ACCORDINGLY.

MYA M. HATCHETTE
Counsel for the Association
Winder, Wedderburn, Haines,
Ward & Woodman, P.A.
329 Park Avenue North, Second Floor
P.O. Box #80
Winter Park, Florida 32790-0880

MANOHAIR JAIN AND USHA JAIN: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT CHOICE.

EXHIBIT
Usha Jain MD

1

AGREEMENT TO MEDIATE

The undersigned hereby agrees to participate in pretrial mediation and agrees to attend a mediation conducted by the following mediator or mediators who are listed above as someone who would be acceptable to mediate this dispute:

Mediator: *Benjamin W. Newman Esq.*

I/We further agree to pay or prepay one-half of the mediator's fees and to forward such advance deposits as the mediator may require for this purpose.

Manohair Jain

Usha Jain

Telephone Contact No. 407-876-5555 Telephone Contact No. 407-876-5555

Discussed with fresh legal secretary
of Benjamin W. Newman & there
is no charge for cancellation
& no charge for travelling
Dr Usha Jain
11/01/2015
2:00pm

The appeal court affirmed on August 12, 2019 without any regard to fraud upon the court for and mediation. Previously Judge Eisinaugle recused from the case, must know the other party

Judge Weiss in retaliation completely disregarded the notion for fraud for attorney fees.

"That a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999). (quoting *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing *Carter v. Carter*, 88 So. 2d 153, 157 (Fla. 1956); *Ashwood v. Patterson*, 49 So. 2d 848, 850 (Fla. 1951); *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998); *Figgie Int'l, Inc. v. Alderman*, 698 So. 2d 563 (Fla. DCA 1997); review dismissed, 703 So. 2d 476 (Fla. 1997); *Mendez v. Blanco*, 665 So. 2d 1149 (Fla. 3d DCA 1996); *O'Valey v. Miller*, 664 So. 2d, 550, 550 (Fla. 3d DCA 1994); *Kornblum v. Schneider*, 609 So. 2d 138 (Fla. 4th DCA 1992); *Horjales v. Loeb*, 291 So. 2d 92, 93 (Fla. 3d DCA 1974); *Fair v. Tampa Elec. Co.*, 158 Fla. 15, 27 So. 2d 514 (1946); *Fagan v. Powell*, 237 So. 2d 579 (Fla. 3d DCA 1970)).

Because the record clearly establishes that plaintiff engaged in serious misconduct, we hold that she has forfeited her right to proceed.

Plaintiff's attempt to conceal the signed mediation does not constitute "truthful disclosure," *McNally v. U.S.*, 483 U.S. 350, 371-372 (S.Ct. 1987), quoting U.S. v Holzer, 816 F.2d. 304, 307 (7th Cir. 1987).

In *Destafano v. State Farm Mutual Automobile Insurance Co.*, 28 Fla. L. Weekly D1077 (Fla. 1st DCA April 28, 2003), the First DCA affirmed the dismissal with prejudice of an uninsured motorist's claim for various false statements and omissions "on matters central to the issues in her lawsuit." See also *Long v. Swofford*, 805 So. 2d 882 (Fla. 3d DCA 2003)

Retaliation by Judge Weiss by Defrauding FS 720.311

Judge Weiss in retaliation disregarded the statutes 720.311 even when the following was clear:

(i)Fee can be awarded only if the precedent condition of pre-suit mediation was made by the prevailing party (ii)It is also undisputed that mediation is not done in this case;(iii)It is also undisputed that the Defendants signed the consent for mediation and selected the mediator per statutes and it is in the record everywhere.

FS 720.311 is being non ambiguous and with a clear legislative intent behind this stature, to avoid clogging of the court with noncompliant suits. Cases for attorney fees: *Alhambra Homeowners Association, Inc. Conrad v. Hidden States, Neute v. Cypress Club Condominium,3-J Hospitality, LLC v. Big Time Design, Inc. Ocasio v. Froedtert Memorial Lutheran Woods v. Holy Cross Hospital* 591 F. 2d 1164

Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a

person of a right or privilege protected by the laws or
Constitution of the United States
Retaliation can be proved by three things:

1. Plaintiffs Jains engaged in the protected activity of filing the case in the Supreme Court for discrimination and due process violation which was filed in the trial court on May 28, 2019. "Plaintiffs had a good faith, reasonable belief that the underlying challenged actions of the Judge Weiss violated the federal and statutory law and deprived the plaintiff of their rights."
2. Judge Weiss awarded attorney fees to the opposite party by ignoring the fraud upon the court and jurisdiction issue in violation of FS 720.311
3. There is a causal link between the Jains' protected act of filing and Judge Weiss awarding attorney fees on June 21, 2019 without considering fraud upon the court and also jurisdiction issue raised by the Jains

Case no. 1

Judge Weiss was recused due to intentional retaliation of the petitioners in case no 2. On September 9, 2019. Judge Roche took over the case who is the supervisor of Judge Weiss. Judge Roche during the hearing on September 11, 2019, again in retaliation directly went to attorney fees without an entitlement of either party. This was done in retaliation of the protected class by defrauding the FS 57.105 which requires entitlement by considering the issue of the fact, law and bad faith.

The Supreme Court has defined retaliation as an intentional act in response to a protected action.

Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 173-74 (2005).

It is well-settled that Title VI supports retaliation claims. See, e.g., *Peters v. Jenney*, 327 F.3d 307, 318 (4th Cir. 2003); *Chandamuri v. Georgetown Univ.*, 274 F. Supp. 2d 71, 83 (D.D.C. 2003); *Gutierrez v. Wash. Dep't of Soc. & Health Servs.*, CV-04-3004-RHW, 2005 WL 2346956, at *5 (E.D. Wash. Sept. 26, 2005)

Causal connection exists between the two events. *Gates v. Caterpillar, Inc.*, 513 F.3d 680, 686 (7th Cir. 2008) (citing *Treadwell v. Office of Ill. Sec'y of State*, 455 F.3d 778, 781 (7th Cir. 2006)). Under this evidence method, a plaintiff must present evidence of discriminatory intent that does not require support from inferences.

Temporal proximity between the complainant's protected activity and the recipient's adverse actions often is relevant to a determination of causation. See, e.g., *Loudermilk v. Best Pallet Co.*, 636 F.3d 312, 315 (7th Cir. 2011) ("an adverse action [that] comes so close on the heels of a protected act that an inference of causation is sensible"); *Krouse v. Am. Sterilizer Co.*, 126 F.3d 494, 503 (3d Cir. 1997) ("the timing of the alleged retaliatory action must be 'unusually suggestive' of retaliatory motive before a causal link will be inferred."); *Palmer*, 918 F. Supp. 2d at 199

It is a form of "discrimination" because the complainant is being subjected to differential treatment." Gutierrez, 2005 WL 2346956

Retaliation is a deliberate action used to send a clear message that complaining is unwelcome and risky. It is employed to instill fear in others who might consider making a complaint in the future. Those with cause for complaining are frequently among the most vulnerable in an institution. Once they complain, they are labeled "troublemakers." Retaliation, and the fear of retaliation, becomes a potent weapon used to maintain the power structure within the institution.

SUPPLEMENTAL REASONS TO GRANT A PETITION FOR A WRIT OF CERTIORARY

1. THE DECISION BELOW CONFLICTS WITH THIS COURT'S TAKINGS PRECEDENTS OF ANTI-RETALIATION PRINCIPLE: The decision below is in conflict with the Supreme Court's decision. This Court had a precedent where the anti-retaliation principles were employed in many employment cases and similar analysis can be used in the instant case where the State officers in the trial court retaliated colored self-representing litigants of ethnic origin for filing the case in the Supreme Court regarding violation of 14th Amendment rights. Retaliation is a form of intentional discrimination for a protected act and is a violation of U.S. Code § 12203 (a) Title VII. It is in direct conflict with an established precedent set by the Supreme Court of Anti Retaliation Principle in employment cases.

2. THIS CASE PRESENTS A QUESTION OF GREAT IMPORTANCE OF PROTECTED ACT AND RETALIATION BY THE STATE OFFICERS BY STATUTORY VIOLATION OF FS 57.105 and 720.311 REQUIREMENT

This question of great importance because millions of colored and self-representing people would be afraid to go to the court to get the justice for retaliatory actions in awarding attorney fees which is against the rule and FS 57.105 and 720.311.

3. The question is of exceptional importance because the millions of people would never be able to do a protected activity against a state officer and Supremacy Clause of the Constitution can never be exercised. The effect of these will be projected to millions of people who would continue to be the victim of retaliation and would not be able to get the justice in the court which is the 1st Amendment and 14th Amendment rights of the citizens.

4. The decision below for award of attorney fees in retaliation conflicts with decision of other same state court of last resort and also other states of last resort

15
CONCLUSION

Petitioners pro se Dr. Usha Jain and Manohar Jain respectfully request that this Court consider the supplement question of retaliation to grant petition for writ of certiorari filed and docketed on October 10, 2019.

Respectfully submitted on this November 12, 2019.

*Usha Jain and
Manohar Jain*

names for Dr. Jain

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IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

DAVID BARKER, MARY
BETH VALLEY, MICHAEL
FURBUSH AND ROETZEL
AND ANDRESS, P.A.,
Appellees.

**DATE: January 22, 2019
BY ORDER OF THE COURT:**

ORDERED that Appellees' Motion for Attorneys' Fees, filed October 29, 2018, is granted and the above-styled cause is hereby remanded to the Circuit Court for Orange County, Florida, pursuant to Florida Rule of Appellate Procedure 9.400(b), to determine and assess reasonable attorney's fees for this appeal. Further, it is

ORDERED that Appellant, Manohar Jain's Motion for Attorney's Fees, filed October 15, 2018, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Edwards, Sasso, and Jacobus
Thomas P. Wert David J. Lienhart Erich Schuttauf
Michael J. Furbush Usha Jain, M.D.

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

DR. USHA JAIN AND
MANOHAR JAIN,

Appellants, CASE NO. 5D18-1215

v.

DAVID BARKER, MARY
BETH VALLEY, MICHAEL
FURBUSH AND ROETZEL
AND ANDRESS, P.A.,

Appellees.

DATE: November 12, 2019
BY ORDER OF THE COURT:

ORDERED that Appellants' "Motion to Prevent
Manifest Injustice.....," filed November 5, 2019, is
denied..

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*



Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

Panel: Judges Edwards, Sasso, and Jacobus

Thomas P. Wert David J. Lienhart Erich Schuttauf
Michael J. Furbush Usha Jain, M.D.

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

DR. USHA JAIN AND
MANOHAR JAIN,

Appellants, CASE NO. 5D18-1215

v.

DAVID BARKER, MARY
BETH VALLEY, MICHAEL
FURBUSH AND ROETZEL
AND ANDRESS, P.A.,

Appellees.

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Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Edwards, Sasso, and Jacobus

Thomas P. Wert David J. Lienhart Erich Schuttauf
Michael J. Furbush Usha Jain, M.D.

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

MANOHAR JAIN, AS TRUSTEE, AND ITS
SUCCESSORS OR SUCCESSOR TRUSTEES
UNDER THE MANOHAR JAIN TRUST DATED
JULY 1, 2000 AND USHA JAIN, AS TRUSTEE,
AND ITS SUCCESSORS OR, ET AL.,

Appellants, CASE NO. 5D18-2033

v.

BAY HILL PROPERTY OWNERS
ASSOCIATION, INC.,
Appellee.

DATE: February 26, 2019

BY ORDER OF THE COURT:

ORDERED that Appellee's Motion for Attorneys' Fees and Costs, filed October 29, 2018, is granted and the above-styled cause is hereby remanded to the Circuit Court for Orange County, Florida, pursuant to Florida Rule of Appellate Procedure 9.400(b), to determine and assess reasonable attorney's fees for this appeal. Further, it is

ORDERED that Appellants' Motion for Attorney's Fees, filed October 29, 2018, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Evander, Lambert, and Harris

Mya M. Hatchette C. Andrew Roy Erich Schuttauf
Orange Cty Circuit Ct Clerk (2015-CA-8175-0)

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA, FIFTH DISTRICT

MANOHAR JAIN, AS TRUSTEE, AND ITS
SUCCESSORS OR SUCCESSOR TRUSTEES
UNDER THE MANOHAR JAIN TRUST DATED
JULY 1, 2000 AND USHA JAIN, AS TRUSTEE,
AND ITS SUCCESSORS OR, ET AL.

Appellants, CASE NO. 5D18-2033

v.

BAY HILL PROPERTY OWNERS
ASSOCIATION, INC.,
Appellee.

/

DATE: August 12, 2019

BY ORDER OF THE COURT:

ORDERED that Appellants' Motion for Review of the
Order Awarding Fees Rendered on June 25, 2019, is
denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Evander, Lambert, and Harris

Cc: Mya Hatchette C. Andrew Roy Erich Schuttauf

Filing # 91622036 E-Filed 06/25/2019 11:27:04 AM

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

BAY HILL PROPERTY OWNERS
ASSOCIATION INC.

Plaintiff(s),

vs.

2015-CA-008175-O

MANOHAR JAIN
USHA JAIN AS TRUSTEE AND ITS
SUCCESSORS

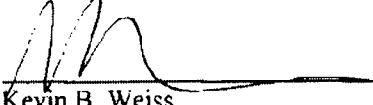
Defendant(s).

ORDER ON DEFENDANTS' MOTION TO STAY

THIS CAUSE having come on to be heard by the Court on June 21, 2019 and the Court being otherwise duly advised in the premises it is hereby, ORDERED and ADJUDGED that:

1. The Defendants' Motion to Stay is hereby DENIED

DONE AND ORDERED on this 25th day of
June, 2019.



Kevin B. Weiss
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 25th day of June, 2019 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the e-Portal Electronic Service List, via transmission of Notices of Electronic Filing generated by the e-Portal System.

I HEREBY CERTIFY that a copy of the foregoing was furnished on 25th day of June, 2019 by US Mail to

Manohar Jain 4800 S Apopka-Vineland Rd Orlando,
Fl 32819

Usha Jain As Trustee And Its Successors 4800 S
Apopka - Vineland Rd Orlando, Ft 32819

Jill Gay, Judicial Assistant to
Judge Kevin B. Weis

Filing # 91622036 E-Filed 06/25/2019 11:27:04 AM
IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

BAY HILL PROPERTY OWNERS
ASSOCIATION INC.

Plaintiff(s),
vs. 2015-CA-008175-O

MANOHAR JAIN
USHA JAIN AS TRUSTEE AND ITS
SUCCESSORS
Defendant(s).

**ORDER ON DEFENDANTS'OBJECTION TO
HEARING ON PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES AND COSTS**

THIS MATTER came before the Court on June 21, 2019 on Defendants' Objection to Hearing on Plaintiffs Motion for attorney's Fees and Costs, and the Court, having reviewed the file and being otherwise fully informed, finds as follows:

1. This case involves a claim brought by the Defendants' homeowners association involving a property owned by the Defendants. The homeowners association filed a Complaint in Orange County Court alleging that the owners were in violation of Article 9 of the Restrictive Covenants by failing to maintain and landscape the lawn on the property and by refusing to clean and repair the exterior of the house. Amended Complaint, Para. 6-7.

2. On February 25, 2016, Judge Kest entered a Final Judgment in favor of the Plaintiff. In the Final Judgment, Judge Kest awarded attorney's fees to the Plaintiff pursuant to the Covenants but retained jurisdiction as to any supplemental requests for attorney's fees. See Para.10 of the Final Judgment and Para.7 of the Ordered and Adjudged section of the Final Judgment.
3. On March 7, 2016, the Plaintiff filed "Plaintiffs Motion for attorneys ' Fees" claiming that it was entitled to additional attorneys' fees and costs related to the continued enforcement of the Covenants.
4. Over the course of a few years, the Plaintiffs challenged Judge Kest's Final Judgement with various motions. The second judicial officer involved with the case, Judge White, denied some of the Defendants' motions. On May 18, 2018, the undersigned judge heard additional motions filed by the Plaintiffs including "Defendant's Verified 1.540(b) Motion to Vacate Judgment of 2/25/16 and Plaintiffs Motion to Enforce Final Judgment and for Contempt." In an Order dated June 15, 2018, this Court GRANTED the Plaintiffs Motion and DENIED the Defendants' Motion. This Court retained jurisdiction to issue an Order as to Plaintiff's supplemental request for fees and costs. On June 19, 2018, the Defendants filed a 'Notice of Direct Appeal" of this Court's orders. On the same date, the Defendants requested a stay until after the appellate proceeding. The appeal proceeded in the Fifth District at Case No. 5D18-2033. On June 26, 2018, the Plaintiff filed "Plaintiffs Supplemental Motion for Attorneys' Fees." Along with the motion, the Plaintiff

filed an Affidavit of attorney Maya M. Hatchette, Esq. which provided specific information regarding the additional attorneys' fees and costs her firm incurred in the litigation. The Plaintiff also filed the Affidavit of attorney Neil A. Saydah, Esq., in support of the claim for attorney's fees and costs. 7. The Plaintiff set its fees and costs motion for July 19, 2018, October 5, 2018 and December 7, 2018. The Court did not proceed with the hearing on fees and costs until after the appeal was concluded.

8. On February 26, 2019, the Fifth District AFFIRMED this Court's decision and GRANTED Appellee's Motion for attorney's Fees and Costs. The matter was remanded for a finding of reasonable attorney's fees. After unsuccessful motions for rehearing, the Fifth District issued its Mandate on April 22, 2019.

9. On March 14, 2019, the Plaintiff filed its Third Amended Notice of Hearing scheduling a hearing to determine its attorney's fees and costs for June 21, 2019. The hearing notice provided the Defendants with information about the matters to be heard, the location of the hearing and the time and date of the hearing.

10. On May 24, 2019, the Plaintiff filed a "Motion to Determine Amount of Appellate attorneys' Fees and Costs."

11. On May 28, 2019, the Plaintiff filed an "Amended Affidavit of attorneys ' Fees and Costs" providing the appellate timesheets and costs for Ms. Hatchette and another attorney involved with the appeal, Mr. Roy.

12. On June 3, 2019, despite this Court's prior Orders regarding entitlement and the Fifth District's Mandate, the Defendants' filed a Memorandum in opposition to the Plaintiffs request for attorney's fees and costs. The Defendants also requested a stay of all proceedings until they are able to file a "Writ of Certiorari" to the United States Supreme Court.

13. On June 10, 2019, the Plaintiff filed an "Affidavit of Reasonableness of attorneys ' Fees" regarding the appellate fees from Michael M. Brownlee, Esq., a board-certified appellate attorney. Plaintiff also filed an "Amended Affidavit of Reasonableness of attorneys ' Fees" from Mr. Saydah regarding the trial court fees.

14. On June 12, 2019, the Defendants filed another Memorandum in opposition to the Plaintiffs request for Attorney's and costs. The Defendants also sought to stay the proceedings in the case which was opposed by the Plaintiff in writing on June 14, 2019. The basis of the Defendants' opposition to the fee hearing involved the Defendants' displeasure with the Fifth District's decision and their intent to seek relief at the United States Supreme Court. The Defendants also mentioned that they wanted a hearing on alleged fraud on the court and needed fee related discovery.¹

15. On June 21, 2019, the Court held a hearing on the Plaintiffs claim for trial and appellate fees. The

¹ On the same day that the Defendants filed their request for stay, they also served a Request to Produce requesting fee discovery¹

Defendants had crossed noticed the hearing for a stay which the Court denied. The Defendants also objected, for the first time, on the basis that the Plaintiffs hearing notice did not specifically indicate that evidence would be taken at the June 21, 2019 hearing. The Court overruled the Defendants' objection, finding that the Defendants had ample time to prepare for the fees and costs hearing and that the Defendants knew or should have known that the June 21, 2019 hearing would require evidence. Further, the Court found that for well over a year the Plaintiff had been providing the Defendants with information about their claim for supplemental fees and the experts who would be offering testimony.

16. The Court finds that the Defendants had more than 3 months to prepare for the fees and costs hearing. At no time during these months did the Defendants raise any concern about the Third Amended Notice of Hearing. The Defendants' objections, noted above, involved the Court proceeding with the fees and costs hearing prior to the U.S. Supreme Court hearing their grievance about the Fifth District. It also involved the Defendants' demand that this Court hear about "fraud" issues that, upon review, this Court finds were either resolved by the Fifth District or should have been raised in the appeal to the Fifth District.

17. At the hearing, the Defendants attempted to argue that due to the hearing notice, they were not provided due process. Although the better practice is for the hearing notice to expressly state that evidence will be taken, this technicality in the hearing notice should not prevent the Plaintiff from its day in court after waiting for more than a year,

and after giving the Defendant ample notice of the hearing and the evidence that would be presented.

18. The Court finds that there was no due process violation by proceeding with a hearing that the Defendants had known would occur for well over a year. "A fundamental requirement of due process in any judicial proceeding is notice reasonably calculated both to apprise interested parties of the pendency of the action, and to give the party so notified an opportunity to present his or her side of the controversy." Miller v. Partin, 31 So.3d224, 227 (Fla.5th DCA 2010).

19. There is no question that the Defendants' counsel knew or should have known that the evidence that had been filed repeatedly over the years would be considered by the Court. Further, as entitlement to fees had been established, the only remaining issues involved amount of fees and costs. Dabas v. Bos. Inv'rs Grp., Inc., 231 So.3d. 542, 546 (Fla. 3d DCA 2017)(Borrower's due process rights were not violated because the Borrower received notice of the hearing and was given an opportunity to be heard.).

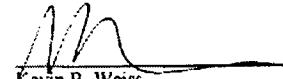
20. All of the interested parties appeared before the Court on June 21, 2019 and were provided notice that the Court, at that time, would consider the already filed Affidavits by the attorneys and the experts. Any argument by the Defendants that they were not prepared for the fee hearing is both disingenuous and a symptom of their own failure to timely prepare. The Defendants had been in possession of the Plaintiffs timesheets and affidavits for a considerable amount of time and only filed a Request to Produce shortly prior to the hearing.

Despite waiting until the "last minute" to send a Request to Produce, the Plaintiffs provided the Defendants with ample information to assist them with preparation for the fee hearing. If the Defendants had an issue with the hearing notice, or the taking of evidence, the Defendants could have and should have raised the issue prior to the hearing with a written objection, a Motion to Continue, or at a minimum, a motion seeking discovery with a shortened time frame. Rather, the Defendants remained silent as to the alleged "defective" notice, relying on their request for a stay.

21. In sum, the Court finds that the Plaintiff provided the Defendants with sufficient notice of the hearing, full opportunity to be heard, and adequate time to examine the witnesses. Accordingly, there was no due process violation as claimed by the Defendants.

DONE AND ORDERED in Chambers, at Orlando, Orange County.

Florida, on this 25th day of July, 2019.



Kevin B. Weiss
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 25th day of June, 2019 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the e Portal Electronic Service List, via transmission of Notices of Electronic Filing generated by the e Portal System. I HEREBY CERTIFY that a copy of the foregoing was furnished on 25th day of June, 2019 by US Mail to

Manohar Jain 4800 S Apopka-Vineland Rd Orlando,
Fl 32819
Usha Jain As Trustee And Its Successors 4800 S
Apopka - Vineland Rd Orlando, Ft 32819

Jill Gay, Judicial Assistant to
Judge Kevin B. Weis

Filing # 91642335 E-Filed 06/25/2019 02:27:24 PM

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

BAY HILL PROPERTY OWNERS
ASSOCIATION INC.

Plaintiff(s),

vs.

2015-CA-008175-O

MANOHAR JAIN
USHA JAIN AS TRUSTEE AND ITS
SUCCESSORS

Defendant(s).

**FINAL JUDGMENT AWARDING ATTORNEYS'
FEES AND COSTS**

THIS CAUSE came before the Court on the 21st day of June, 2019 on Plaintiffs Supplemental Motion for Attorneys' Fees (the "Motion") and Motion to Determine Amount of Appellate Attorneys ' Fees and Costs (the "Appellate Motion"), and the Court having reviewed the Court file, heard testimony as to the amount of reasonable Attorneys ' fees and costs incurred by Plaintiff in this matter, the argument of counsel, weighed the weight and credibility of the witnesses, used its own knowledge and being otherwise fully advised in the premises, the Court finds as follows:

1. The Court has jurisdiction over the subject matter and the parties. The Court expressly finds that the Defendants had sufficient notice of this hearing and that the Filing # 91642335 E-Filed 06/25/2019 02:27:24 PM 2. Defendants were provided ample opportunity to evaluate, review and analyze the Plaintiffs attorneys' timesheets, as well as the affidavits of the experts.¹
2. Plaintiff's requests for supplemental attorneys' fees for trial court and appellate legal work is GRANTED. The Court notes that in a Final Judgment dated February 25, 2016, this Court, Judge Kest presiding, awarded entitlement and amount of certain trial court fees and reserved jurisdiction to consider Plaintiff's supplemental motions for attorneys' fees. Also, the Fifth District Court of Appeals awarded entitlement to appellate attorneys' fees pursuant to an Order dated February 26, 2019.²
3. The Court's findings summarized below are a result of the evidence presented and the arguments presented by the parties. Further, the Court has considered the factors set forth in Rule 4-1.5 Rules Regulating the Florida Bar. and Florida Patient's Compensation Fund v. Rowe, 412 So.2d 11a5 (Fla. 1985).

¹ On June 25, 2019, this Court issued an Order on the Defendants' objection to the hearing notice raised for the first time at the fee hearing.

² Pursuant to the Fifth District Court of Appeals Order dated February 26, 2019 granting Appellee/Bay Hill's Motion for Attorneys' Fees and Costs pursuant to Rule 9.400(b). Florida Rules of Appellate Procedure and Section 57.105 Florida Statutes, this Court found that it was required to "determine and assess reasonable attorney's fees for this appeal."

4. The Plaintiff is entitled to an award of appellate attorneys' fees, trial court attorneys' fees and costs totaling \$12,673.60 which is comprised of the following amounts:

a. Attorneys' fees associated with the appellate proceeding (Case No.: 5D18-2033), totaling \$15,099.00 which is comprised of the following amount:

1. \$15,099.00 in attorneys' fees for Winderweedle, Haines, Ward & Woodman based on the Court's findings as follows:

a \$240.00 per hour is a reasonable hourly rate for Attorneys Mya M. Hatchette and 4.2 hours is a reasonable number of hours expended for the work performed by Ms. Hatchette;

b \$295.00 per hour is a reasonable hourly rate for Attorney C. Andrew Roy and 41.8 hours is a reasonable number of hours expended for the work performed by Mr. Roy;

c \$320.00 per hour is a reasonable hourly rate for Attorney C. Andrew Roy (change in rate due to promotion) and 4.6 hours is a reasonable number of hours expended for the work performed by Mr. Roy;

d \$240.00 per hour is a reasonable hourly rate for Attorney Brandon DeGel and .9 hours is a reasonable number of hours expended for the work performed by Mr. DeGel;

b Attorneys' fees associated with the trial court proceedings totaling \$13,047.00 which is comprised of the following amount:

1 \$13,047.00 in attorneys' fees for Winderweedle, Haines, Ward & Woodman based on the Court's findings as follows:

a \$225.00 per hour is a reasonable hourly rate for Attorney Mya M. Hatchette and 32.9 hours is a b. b. reasonable number of hours expended for the work performed by Ms. Hatchette;

b \$240.00 per hour is a reasonable hourly rate for Attorney Mya M. Hatchette and 10.7 hours is a reasonable number of hours expended for the work performed by Ms. Hatchette;

c \$200.00 per hour is a reasonable hourly rate for Attorney Brandon DeGel and 5.2 hours is a reasonable number of hours expended for the work performed by Mr. DeGel;

d \$240.00 per hour is a reasonable hourly rate for Attorney Brandon DeGel and .9 hours is a reasonable number of hours expended for the work performed by Mr. DeGel;

e \$105.00 - \$150.00 per hour are reasonable hourly rates for paralegals and 14.9 hours is a reasonable number of hours expended for the work performed by the paralegals.

c Plaintiff is awarded taxable costs totaling \$4,527.60 which is comprised of the following amounts:

1. \$1,785.00 for expert witness fee of Neil Saydah, Esquire, based on this Court's finding that \$350.00 is a reasonable hourly rate and 5.1 hours is a reasonable number of hours d. e. 4 expended for the work performed by Neil Saydah, Esquire in this action. The Court finds that Mr. Saydah's testimony was helpful and he expected to be paid for his services. See Travieso v. Travieso, 47 4 So. 2d 1 I 84 (Fla, 1985); Stokus v. Phillips, 65 1 So. 2d 1244 (Fla.

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2nd DCA 1995); and Mangel v. Bob Dance Dodge, Inc., 739 So. 2d 720 (Fla.5th DCA 1999);

2. \$2,000.00 for expert witness fee of Michael Brownlee, Esquire, based on this Court's finding that \$400.00 is a reasonable hourly rate and 5 hours is a reasonable number of hours expended for the work performed by Michael Brownlee, Esquire in this action. The Court finds that Mr. Brownlee's testimony was helpful and he expected to be paid for his services. See Travieso v. Travieso, 474 So.2d 1184 (Fla, 1985); Stokus v. Phillips, 651 So.2d 1244 (Fla. 2nd DCA 1995); and Mangel v. Bob Dance Dodge, Inc., 739 So. 2d 720 (Fla. 5th DCA 1999);
3. 5'142.60 for court reporter time and transcription

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff, BAY HILL PROPERTY OWNERS ASSOCIATION, INC., whose address is c/o Mya M. Hatchette, Esquire, Winderweedle, Haines, Ward & Woodman, PA, 329 N. Park Ave., 2nd Floor, Winter Park, Florida 32789, shall recover from Defendants, Manohar Jain, as Trustee, and its Successors or Successor Trustees Under the Manohar Jain Trust Dated July 1, 2000 and Usha Jain, as Trustee, and its Successors or Successor Trustees Under the Usha Jain Trust Dated July 1, 2000, the total amount of \$32,673.60, for which let execution issue FORTHWITH

IT IS FURTHER ORDERED AND ADJUDGED
1 That the judgment debtors shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required

attachments, and serve it on the judgment creditor's attorney within forty-five (45) days from the date of this Final Judgment, unless this Final Judgment is satisfied or post-judgment discovery is stayed.

2. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete Form 1.977, including all required attachments, and serve it on the judgment creditor's attorney..

3 Jurisdiction of this case is also retained to enter further orders pertaining to attorneys' fees and costs, including attorney's fees and costs related to the Defendants' continued denial of entitlement to the Plaintiffs fees.

DONE AND ORDERED in Chambers at Orlando, Orange County,
Florida, , on this 25 day of June, 20 19.



Kevin B. Weiss
Circuit Judge

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

BAY HILL PROPERTY OWNERS
ASSOCIATION INC.

Plaintiff(s),

vs.

2015-CA-008175-O

MANOHAR JAIN
USHA JAIN AS TRUSTEE AND ITS
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Defendant(s).

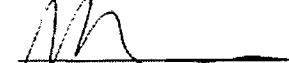
ORDER ON MOTIONS FOR REHEARING

THIS MATTER comes before the Court on Motions for Rehearing, and the Court, having reviewed the file and being otherwise fully informed, finds as follows:

1. The Motion for Rehearing dated July 9, 2019 and the Amended Motion for Rehearing dated July 10, 2019 are DENIED.

DONE AND ORDERED in Chambers, at Orlando,
Orange County, Florida, on this 1 day of

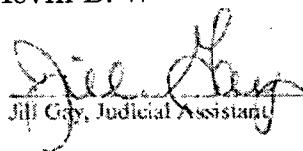
August 20, 19


Kevin B. Weiss
Circuit Judge

App. 23

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 2nd day of j, ZO /9 Ay using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the e-Portal Electronic Service List, via transmission of Notices of Electronic Filing generated by the e-Portal System. Jill Gay, Judicial Assistant to Judge Kevin B. W



Jill Gay, Judicial Assistant