No. 19-660

In The

Supreme Court of the United States

DAVID SILVER,

Petitioner,

v.

HAMRICK & EVANS, LLP,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeal Of California Second Appellate District

PETITION FOR WRIT OF CERTIORARI

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November 19, 2019

QUESTION PRESENTED

The California Supreme Court chose not to review a civil appeal case number S256869—from the Second Appellate District, Div. 2, of the California Court of Appeals—case number B287437—and thus the question presented now goes to the United States Supreme Court.

Hamrick & Evans, LLP ("Respondent") knowingly made false statements to the Superior Court and to the Court of Appeals, in violation of Federal Rules of Professional Conduct 16-303 "Candor toward the tribunal," "A. Duties: A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal . . . [or] (4) offer evidence that the lawyer knows to be false."

Does a lawyer or a law firm deserve to be given a free pass by the lower courts when the lawyer and the law firm make false statements of material facts—not of law—but of facts to not one but two tribunals?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The caption of the case contains the names of all of the parties who were parties to the proceedings below before the United States Court of Appeals for the Tenth Circuit.

Pursuant to Rule 29.6, David Silver ("Petitioner") notes that he has no subsidiaries, wholly or partially-owned.

Hamrick & Evans, LLP ("Respondent") is a law firm based in Los Angeles, California.

RELATED CASES

David Silver, Appellant v. Hamrick & Evans, LLP, Appellee Before the Supreme Court of California, Dismissed August 21, 2019.

David Silver, Appellant v. Hamrick & Evans, LLP, Appellee Before the Court of Appeal of California, Second District Case Number B287437, Appeal Denied, June 4, 2019.

Hamrick & Evans, LLP, Plaintiff v. David Silver, Defendant Before the Superior Court of California, County of Los Angeles Trial Court Case No. BC663869, Order Filed November 8, 2017.

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Petitioner David Silver ("Petitioner") seeks a writ of certiorari to review an opinion and order of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The Order of the Court of Appeals for the Tenth Circuit dated June 4, 2019, is unpublished and is reprinted in Appendix hereto at App. 1.

JURISDICTION

The United States Court of Appeals for the Tenth Circuit issued its panel opinion on June 4, 2019. A Petition to Review was submitted by Petitioner to the Supreme Court of California on July 15, 2019. The case was disposed of on August 21, 2019. See Supreme Court's Case Summary in Appendix 1b. The Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS

Federal Rules of Civil Procedure Rule 55(b)(2) specifies a three-day notice period . . . and failure to serve the required notice is considered a serious

procedure irregularity warranting reversal by an appellate court.

Federal Rules of Civil Procedure 55(b)(2) "The Court shall not conduct a hearing unless the party entitled to a judgment by default has provided notice to all other parties, including the party against whom a judgment by default is sought, of the date, time and location of the hearing".

STATEMENT OF THE CASE

The Honorable Judge Gregory W. Alarcon, Dept. 36, Superior Court of the State of California, Los Angeles, Central District, was assigned Case No. BC663869, in which Hamrick & Evans, LLP sued David Silver, *pro se*, for approximately Eighty-Six Thousand Dollars ($86,000) in legal fees.

Petitioner refused to pay, because Respondent represented Petitioner as plaintiff in a civil suit against Tavant Technologies, Inc., for breach of implied contract in July 2014, which Respondent handled so terribly that Tavant was awarded a Three Hundred Seventy-Five Thousand Dollar ($375,000) judgment against Petitioner. Petitioner instructed Respondent to inform the Judge that Tavant Technologies, Inc. was a foreign company and thus prohibited from accepting a loan, in this case Twenty Million Dollars ($20,000,000), from a Small Business Investment Corp., which loans U.S. taxpayers' money to qualified domestic companies. But, Respondent did not follow and did not obey

Petitioner's instructions, resulting in Tavant being awarded the Three Hundred Seventy-Five Thousand Dollar ($375,000) judgment against Petitioner.

Judge Alarcon asked the parties to attend a hearing on October 5, 2017, to show cause in a Case Management Conference why he should not dismiss the case.

Respondent failed to show up.

Respondent was instructed by Judge Alarcon to send Petitioner all notices of hearings, including the October 5, 2017, order to show cause.

Respondent sent a copy of its pleading as to why Judge Alarcon should not dismiss Case No. BC663869 to a false address 600 E. Fairview Lane, Española, NM, 87532 (and the process server swore that he handed said pleading to Petitioner at the Española address) – forty-five (45) miles north of another city, Santa Fe, NM – where Petitioner had offices, and to which address Respondent sent all of its invoices and its summons and complaint, i.e., 4001 Office Court Drive, Santa Fe, NM 87507.

Respondent repeatedly failed to send Petitioner the required notices except for one instance in which Respondent committed perjury, and a violation of California Rules of Civil Procedure, Rule 11(b)(2) " . . . a pleading – (must not be) presented for any improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of violation." To wit, Respondent mailed Petitioner on November 6, 2017, to

4001 Office Court Drive, Suite 604, Santa Fe, NM 87505 (the correct address), a hearing in Judge Alarcon's office regarding the Notice of Continuance of OSC Re: Dismissal to occur on December 8, 2017, notwithstanding that Judge Alarcon had granted a default judgment to Respondent one month prior! Extrinsic fraud at its worst.

The legal definition of perjury is the "act of intentionally lying, or telling an untruth, whether verbally or in writing, while under oath in an official proceeding."

Plus, Respondent knew that Judge Alarcon intended to rule on November 6 or 7 when Respondent sent the Notice to Petitioner preparing him to come to Los Angeles a month later.

Truthfulness is everything before a tribunal.

ARGUMENT

Petitioner further asserts that the default judgment is voidable because of Respondent's intent to deceive by not mailing to Petitioner important notices of the Court to his actual address, as it was instructed to do so by the Court; and when Respondent actually did mail the Continuance of the Order to Show Cause to Petitioner, it was completely untruthful. See "Meaning, Purpose, and Cause in the Law of Deception," Gregory Klass, University of Colorado Law Review, Vol. 89, page 708.

Where Judgments are Voidable for Lack of Notice:

"In California, the rules of court ensure parties are entitled to fundamental fairness. Cal. Code Civil Procedure sec 580. This includes giving defendants adequate notice of a pending action against them. When a defendant does not have actual notice of the action, any default judgment that results is voidable!" *Grappo v. McMills* (2017), 11 Cal. App. 5th 996.

"One example of failure to give proper notice is where the service to the defendant was not properly effectuated, therefore not giving defendant actual notice of the complaint." See *Moghaddam v. Bone* (2006), 142 Cal. App. 4th 283.

Fasuyi v. Permatex, Inc. (2008), 167 Cal. App. 4th 681, 691 [84 Cal. Rptr. 3d 351] also *Kim v. Westmore Partners, Inc.* (2011), Cal. App. 4th 267, 272 [133 Cal. Rptr. 3d 774].

"Extrinsic fraud is that which induces one not to present a case in court or deprives one of the opportunity to be heard or is not involved in the actual issues."

Petitioner was blindfolded concerning the Order to Show Cause matter, because Respondent failed to notify him in a timely manner. The giving notice in a timely manner is the pivotal issue in *Espindola v. Nunez* (1988), 199 Cal. App. 3d 1389 [245 Cal. Rptr. 596].

In *Espindola*, the California Court of Appeals relied on *Andre v. General Dynamics, Inc.*, Civ. No. 43683, Court of Appeals of California, 2nd Appellate Dist., Div. One, December 12, 1974, to wit, "citing the criticality of service to be provided the opponent "in a timely manner."

Further, in *People v. Swinney*, 46 Cal. App. 3d 332 (1975), this court showed disdain for "affirmative specific acts of concealment" and thus reversed an order of the Superior Court.

In *Trigg v. Superior Court*, Civ. No. 36362, Court of Appeals of Cal., 1st Appellate Dist., Div. One, July 2, 1975, this court once again stated its insistence on the parties providing service to one another in a timely manner.

Trigg relied on *Von Eichelberger v. United States*, 1252 F.2d 184, the California Court of Appeals wrote: the statutory time period as written in California Codes of Procedure cannot be moved around by the parties. The California Court of Appeals said in effect, "You can't move the goal posts."

REASONS FOR GRANTING THE WRIT

The primary reason for granting the Writ is for this honorable Court to make a firm statement that people, including lawyers, may not make false statements to tribunals as Respondent has done in subject case.

Respondent committed multiple fraudulent acts against Petitioner and the Superior Court, and the Court of Appeals permitted Respondent to get away with their false statements and actions.

CONCLUSION

The process server hired by Respondent signed a Proof of Service claiming he served Petitioner with a document required that Petitioner must see in a timely manner; but the process server took the document to an address in another city, not to Petitioner in Santa Fe, NM.

The Courts of law accepted Respondent' s untruthful statement and awarded them a victory for a fraudulent act.

Then, Respondent wrote to Petitioner on November 7, 2017, that Judge Alarcon would rule on December 8, 2017, when Judge Alarcon in fact ruled on November 7, 2017. That is a second fraudulent act, and Respondent got away with it in the lower courts.

This honorable Court must not permit Respondent to get away with its fraudulent acts a third time.

Respectfully submitted,

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