

No. _____

In The
Supreme Court of the United States

LARRY HUDACK,

Petitioner,

v.

LA CRESTA PROPERTY OWNERS ASSOCIATION,

Respondent.

**On Petition For A Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two**

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

Petitioner's collateral attack demonstrated the judgments in a prior Riverside case were void on their face based on jurisdictional defects. Respondent did not dispute Petitioner's claims but filed an anti-SLAPP motion. A California Court ruled that, on its face, a collateral attack is an assault on Respondent's First Amendment Right to petition and dismissed Petitioner's complaint citing California's controversial anti-SLAPP statute. The Court of Appeal affirmed the Superior Court ruling citing *Church of Scientology v. Wollersheim*, 42 Cal. App. 4th 628 (1996) ("*Church*") as precedent for the legal principle that claims of protected conduct rise to the level of jurisdictional significance.

1. Is a collateral attack on void judgments, *on its face*, an assault on the constitutional Right to Petition under any state or federal statute?
2. Do claims of protected conduct relieve a court of its constitutional duty to rule on the issue submitted in a collateral attack?
3. Does *Church* establish precedent that a collateral attack is subject to strike under California's controversial anti-SLAPP statute?
4. Can a California Court of Appeal review a void judgment?

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STATEMENT OF RELATED CASES

Hudack v. La Cresta Prop. Owners Ass'n, No. RIC1724414, State of California, Riverside County Superior Court, Judgment Entered March 27, 2018.

Hudack v. La Cresta Prop. Owners Ass'n, No. E070144, 2019 WL 2760834 (Cal. Ct. App. July 2, 2019), review denied (Sept. 18, 2019).

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OPINIONS BELOW

The opinion of the California Court of Appeal, issued on July 2, 2019, was unpublished and is included in the Appendix at page 1. The California Supreme Court's one-page order dated September 18, 2019, denying review and publication is attached in the Appendix at page 21. The Order of the Riverside Court dismissing Petitioner's collateral attack with prejudice was issued on March 27, 2019 and is included in the Appendix at page 18.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal for which petitioner seeks review was issued on July 20, 2019. The California Supreme Court order denying petitioner's timely petition for discretionary review was filed on September 18, 2019. This petition is filed within 90 days of the California Supreme Court's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. art. VI, cl. 2 reads, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United

States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

Cal. Civ. Proc. Code Ann. § 170 provides that a judge has a duty to decide any proceeding in which he or she is not disqualified.

Fed. R. Civ. P. 60(b)(4), 28 U.S.C.A. reads, in relevant part: “On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

Cal. Civ. Proc. Code § 473(d), reads, in relevant part: The court may, upon motion of the injured party, or its own motion, . . . set aside any void judgment or order.

U.S. Const. amend. XIV, § 1-Citizens. “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Cal. Civ. Proc. Code § 425.16 states in relevant part:

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

Cal. Civ. Proc. Code § 431.20 reads in relevant part: (a) Every material allegation of the complaint or cross-complaint, not controverted by the answer, shall, for the purposes of the action, be taken as true.

STATEMENT OF THE CASE

On December 28, 2017, Petitioner filed a collateral attack on the judgments from California case RIC450529 (the "Underlying Case"). Petitioner demonstrated conclusively that the prior judgments were void on their face due to jurisdictional defects.

On January 29, 2018, Respondent filed an anti-SLAPP motion alleging a collateral attack on void judgments constituted an assault on Respondent's Right to Petition and that the litigation privilege barred a collateral attack. Respondent did not challenge Petitioner's claims of jurisdictional defects in the Underlying Case.

The Riverside Court did not rule on the submitted issue of void judgments. On March 27, 2019, the Riverside Court ruled on Respondent's anti-SLAPP motion and found Respondent had no duty to meet the first prong analysis of the anti-SLAPP statute because Petitioner, by the act of filing a collateral attack, met the first prong analysis. The Riverside Court also ruled that the litigation privilege barred Petitioner's collateral attack.

Petitioner appealed and submitted arguments that the Riverside Court acted without authority and its judgement was void. Petitioner argued that a collateral attack is based on jurisdictional defects and claims of protected conduct and the litigation privilege do not rise to a level of jurisdictional relevance.

Petitioner argued that the Riverside Court, in ruling on Petitioner's collateral attack, was constitutionally bound to follow well-established legal procedures which required the Riverside Court to consider only the judgment roll from the underlying Case and to reject all extrinsic evidence regardless of how submitted (*Crouch v. H.L. Miller & Co.*, 169 Cal. 341 (1915)), and to reject all motions asserting valid defenses (*Cty. of San Diego v. Gorham*, 186 Cal. App. 4th 1215, 1226 (2010)).

Petitioner cited Fed. R. Civ. P. 60(b)(4), 28 U.S.C.A. and Supreme Court decisional law that makes it mandatory for the Riverside Court to vacate the challenged judgments.

Petitioner argued that by refusing to follow well-established legal procedures, the Riverside Court acted without jurisdiction and its order was void.

But, if the Court acts "without authority, *its judgments and orders are regarded as nullities. They are not voidable, but simply void*; and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification; and all persons concerned in executing such judgments, or sentences, are considered, in law, as trespassers." *Elliott v. Peirsol's Lessee*, 26 U.S. 328, 329 (1828) (italics added).

Petitioner argued that the Court of Appeal could not lawfully review the Riverside Court's void judgment and that the opinion of the Court of Appeal was itself void. *Carlson v. Eassa*, 54 Cal. App. 4th 684, 691 (1997).

Petitioner argued that the Riverside Court and the Court of Appeal violated Petitioner's Fourteenth Amendment right to procedural and substantive due process by refusing to follow the law.

The Court of Appeal affirmed the Riverside Court order declaring the Riverside Court did not err by striking Petitioner's collateral attack citing the hugely dispositive case *Church of Scientology*, 42 Cal. App. 4th 628 as precedent for the proposition that a collateral attack can be defeated by California's anti-SLAPP statute.

On July 9, 2019, Petitioner requested the California Supreme Court publish the Court of Appeal opinion observing that never in California jurisprudence had any court found claims of protected conduct could defeat a collateral attack.

On July 25, 2019, the California Supreme Court denied review and publication.

REASONS FOR GRANTING THE PETITION

As best it can be determined no other state has enacted an anti-SLAPP statute equivalent to California's Civ. Proc. Code § 425.16. There is no equivalent federal statute. California's anti-SLAPP statute, as applied to a collateral attack, conflicts with the laws of other states and federal law subjecting California residents to unconstitutional treatment by denying them procedural and substantive due process.

I. THE JUDGMENTS OF THE RIVERSIDE COURTS ARE REPUGNANT TO THE CONSTITUTION

Cal. Const. art. III, § 1, recognizes United States Constitution as the supreme law of the land. U.S. Const. art. VI, cl. 2, requires all judges in all states to rule according to Supreme Law of the land. This describes a judge's authority to rule.

The law provides that when a judge acts without authority, he has acted without jurisdiction and his

orders are void. *Elliott v. Peirsol's Lessee*, 26 U.S. 328, 329 (1828).

For the purpose of determining the right to review by certiorari a broad meaning is recognized. Though a court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no jurisdiction (or power or authority) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites. *Abelleira v. Dist. Court of Appeal, Third Dist.*, 17 Cal. 2d 280, 288–290 (1941).

A judgment is void on its face if it was “rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant.” *Rochin v. Pat Johnson Mfg. Co.*, 67 Cal. App. 4th 1228, 1239 (1998).

If court acts without authority, its judgments and orders are regarded as nullities and form no bar to a recovery, even prior to a reversal. *Williamson v. Berry*, 49 U.S. 495, 496 (1850).

Petitioner’s properly pled and thoroughly documented collateral attack conformed to the law and properly raised issues of want of jurisdiction by the court in the Underlying Case. *Gray v. Hall*, 203 Cal. 306, 314–315 (1928). *Hill v. United States*, 368 U.S. 424, 428 (1962). See also *United States v. Addonizio*, 442 U.S. 178, 185 (1979).

When ruling on a collateral attack, Federal and State law required the Riverside Courts to reject all

extrinsic evidence and to consider and rule only on the Judgment Roll. *Crouch*, 169 Cal. 341; *Coffman v. Cobra Mfg. Co.*, 214 F.2d 489 (9th Cir. 1954); *Schwarz v. Thomas*, 222 F.2d 305 (D.C. Cir. 1955). The Riverside Court ignored the law, rejected evidence from the judgment roll, and considered only extrinsic evidence.

The Riverside Court was prohibited from considering valid defense motions including, but not limited to, claims of estoppel (*Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428 (2011)), res judicata and demurrer (*Rochin*, 67 Cal. App. 4th at 1240), latches (*City of Los Angeles v. Morgan*, 105 Cal. App. 2d 726 (1951)), and motions to strike *County of San Diego*, 186 Cal. App. 4th at 1226.

“No action upon the part of the plaintiff, no inaction upon the part of the defendant, no resulting equity in the hands of third persons, no power residing in any legislative or other department of the government, can invest [a void judgment] with any of the elements of power or of vitality.” *County of San Diego*, 186 Cal. App. 4th at 1226. See also *Schwarz*, 222 F.2d 305.

The law makes no exception for an anti-SLAPP motion. The law must be taken as written, “no action” will defeat a collateral attack; that would rationally include an anti-SLAPP motion.

There is no exception for an anti-SLAPP motion and the silence of the law to specify alternate procedures may be deemed to constitute a prohibition

against their use. *First Fed. Sav. & Loan Ass'n of Altadena v. Johnson*, 49 Cal. App. 2d 465, 468 (1942).

The Riverside Court cast aside all consideration for this well-established law, accepted Respondent's motion, and ruled only on that motion; disregarding its duty to rule on the issue submitted. Cal. Civ. Proc. § 170.

The Riverside Court did not have discretion to decline to vacate the void judgments from the underlying case when the challenged judgments were shown to be void for want of jurisdiction. *Walker & Zanger (W. Coast) Ltd. v. Stone Design S.A.*, 4 F. Supp. 2d 931, 934 (C.D. Cal. 1997). *Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir. 1994).

The Riverside Court, ruling on a collateral attack had a binary choice; the court could rule the challenged judgments were void or the judgments were valid. A court, ruling on a collateral attack, may not restate the challenged judgments to find some parts of a judgment are void and other parts are valid. If the court finds evidence in the judgment roll of jurisdiction defects, the whole of the judgment is void and unenforceable. *Frey v. Superior Court in & for San Diego Cty.*, 22 Cal. App. 421 (Cal. Ct. App. 1913).

The Riverside Court turned a blind eye to the law and refused to grant Petitioner relief the law required.

The Riverside Court order gives effect to a void judgment and is itself void. *Residents for Adequate Water v. Redwood Valley Cty. Water Dist.*, 34 Cal. App. 4th 1801, 1805 (1995); *Carlson*, 54 Cal. App. 4th at 691.

Respondents' anti-SLAPP motion did not dispute that the challenged judgments were void on their face based on jurisdictional defects and the Riverside Court was required to rule for Petitioner. Cal. Civ. Proc. Code § 431.20. *OC Interior Servs., LLC v. Nationstar Mortg., LLC*, 7 Cal. App. 5th 1318, 1328 (Cal. Ct. App. 2017), citing to *Hill v. City Cab & Transfer Co.*, 79 Cal. 188, 191 (1889).

California's anti-SLAPP statute allows a defendant to move to strike a plaintiff's complaint only if the complaint arises from an act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1109 (9th Cir. 2003). The Underlying Case did not involve Respondent's right to petition, it involved breach of fiduciary duty.

Protected conduct, as might be found in the judgment roll in the Underlying Case, is irrelevant to the question of whether the challenged judgments are void. Protected conduct cannot render a valid judgment void, nor can it render a void judgment valid. Protected conduct does not rise to the level of jurisdictional relevance. An anti-SLAPP motion is irrelevant and frivolous in a collateral attack.

The Riverside Courts extended the already excessive reach of its controversial anti-SLAPP statute

beyond the legislative intent of that statute and beyond any rational limits.

The judgments of the Riverside Court cited herein is void on its face for lack of jurisdiction and should be vacated by this Court pursuant to Fed. R. Civ. P. 60(b)(4), 28 U.S.C.A.

II. THE COURT OF APPEAL WAS PROHIBITED FROM REVIEWING THE RIVERSIDE COURT'S VOID JUDGMENT

The Riverside Court order striking Petitioner's collateral attack is itself void because, the Riverside Court acted in defiance of the law and without authority and its orders are void. *Elliott*, 26 U.S. at 329.

The Riverside Court order gives effect to void judgments in the Underlying Case and is itself void. *Residents for Adequate Water*, 34 Cal. App. 4th at 1805; *Carlson*, 54 Cal. App. 4th at 691.

The Court of Appeal demonstrated reckless disregard for the law. The Court of Appeal was prohibited from affirming the Riverside Court's void judgment.

"That a void order is appealable does not permit us to consider the appeal on its merits and to affirm the order if we were so disposed, because our affirmance would impart it no validity and would be similarly void." *Adohr Milk Farms, Inc. v. Love*, 255 Cal. App. 2d 366, 371 (1967) citing to *Hager v. Hager*, 199 Cal. App. 2d 259, 261 (1962) and *Pioneer Land Co. v. Maddux*, 109 Cal. 633, 642 (1895).

Nevertheless, the Court of Appeal affirmed the void order of the Riverside Court saying, "The trial court did not err by granting the anti-SLAPP motions. . . .". The California Supreme Court denied review and refused to publish the Court of Appeal Opinion.

III. PETITIONER DEMONSTRATED THAT THE PRIOR JUDGMENTS WERE VOID.

The Court in the Underlying Case acted without jurisdiction when it ordered payment of legal fees be made directly to a person not a party to the action, the insurance company for Defendant and Respondent La Cresta Property Owners Association (Appendix page 22). *Pennell v. Superior Court in & for Los Angeles Cty.*, 87 Cal. App. 375 (Cal. Ct. App. 1927); *Chavez v. Scully*, 62 Cal. App. 6 (Cal. Ct. App. 1923), *Sullivan v. Gage*, 145 Cal. 759 (1905).¹ *Moore v. Capital Gas Corp.*, 117 Mont. 148 (1945). *Harris v. Hardeman*, 55 U.S. 334, 341 (1852).

That the prior judgment was entered pursuant to a stipulation does not insulate judgment from attack on grounds that it is void. *John Siebel Assocs. v. Keele*, 188 Cal. App. 3d 560 (Cal. Ct. App. 1986).

In the Underlying case the bench judge usurped power, ruled without authority on his own disqualification, and forfeited jurisdiction as the law required the issue of disqualification be heard by another judge.

¹ The law also requires the actual entry of judgment must itself conform to the law.

Reisman v. Shahverdian, 153 Cal. App. 3d 1074, 1095–1096 (Cal. Ct. App. 1984); *Elliott*, 26 U.S. at 329.

The prior court did not find Petitioner was acting in the capacity of a trustee, and the prior court could not award damages against that trust.

A trust does not fall within the statutory definition of a judgment debtor. A judgment debtor is “the person against whom a judgment is rendered.” (§ 680.250.) A trust is not included within the definition of person. (§ 680.280.) *Portico Mgmt. Grp., LLC v. Harrison*, 202 Cal. App. 4th 464, 473 (2011)

“A . . . trust . . . is simply a collection of assets and liabilities.” *Galdjie v. Darwish*, 113 Cal. App. 4th 1331, 1343–1344 (2003). As cited in *Portico Management Group, LLC*, 202 Cal. App. 4th at 473.

A trust itself cannot sue or be sued. *Presta v. Tepper*, 179 Cal. App. 4th 909, 914 (2009). See also *Oliver v. Swiss Club Tell*, 222 Cal. App. 2d 528, 537–538 (1963).

A judgment against a nonentity incapable of suing or being sued is void ab initio. Cal. Civ. Proc. Code §§ 680.250, 680.280.

The trial court in the underlying case acted without personal jurisdiction when it awarded judgment

against "the Hudacks,"² a non-existent entity undefined in the Underlying Case.

"[T]he marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup." *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 896 (1992).

Judgments against this fictitious entity, "the Hudacks," are void and cannot be imputed to the individuals. *Hill*, 79 Cal. 188. Absent personal jurisdiction over the Hudacks, the judgments in the Underlying Case are void and unenforceable.

IV. THERE IS NO PRECEDENT FOR THE CALIFORNIA COURTS' RULINGS

A collateral attack is based on jurisdictional defects found in the judgment roll. An anti-SLAPP motion pleads extrinsic evidence of protected conduct which does not rise to jurisdictional significance and is irrelevant in a collateral attack.

Never in the history of California jurisprudence has any court ruled an anti-SLAPP motion, a derivative tort defense, defeats a collateral attack on judgments void on their face.

The California Court of Appeal cited the hugely dispositive case *Church of Scientology*, 42 Cal. App. 4th

² A term never defined by the court that presumably was reference to Larry and Marianne Hudack, husband and wife.

628 for the nonconforming legal principle that an anti-SLAPP motion can defeat a collateral attack. No such principle has been published, and *Church* is no exception. *Church* cannot be precedent because jurisdiction was not at issue in that case.

The action in *Church* was a *direct attack* on judgments that were *not void on their face*. By contrast, Petitioner's complaint is a collateral attack on judgments that *are void on their face*.

The action in *Church* relied *exclusively on extrinsic evidence*. In considering Petitioner's complaint the Riverside Court was prohibited from considering extrinsic evidence.

Plaintiff's claims in *Church* were on claims of *judicial prejudice*, contrasted with Petitioner's claims which were jurisdictional defects.

In *Church*, the prior action involved petitioning activity. The Underlying Case did not involve "petition activity," it involved breach of fiduciary duty.

That the court in *Church* found an anti-SLAPP motion was applicable in that one specific and unique instance, does not establish authority for a ruling that an anti-SLAPP motion can defeat Petitioner's collateral attack. Courts do not establish precedent by implication, and the Riverside Courts should not be granted an exception.

Church is authority only for the points actually involved and actually decided. *Santisas v. Goodin*, 17 Cal. 4th 599, 620 (1998).

Church is not authority for the proposition that an anti-SLAPP motion defeats a collateral attack as stated in the Court of Appeal Opinion.

V. THE RIVERSIDE COURTS ACTED WITHOUT JURISDICTION

The Riverside Court acted without power or authority and lost jurisdiction when it disregarded and exempted itself from a well-established body of law. *Elliott*, 26 U.S. at 329.

The Riverside Court acted without authority when it interpreted the discretionary provisions of Cal. Civ. Proc. Code § 473(d) to empower the court to disregard established procedures and to rule without consideration of the judgment roll, to consider extrinsic evidence, to entertain invalid motions in opposition, and to decline to rule on the principal issue presented in a collateral attack; are the challenged judgments void?

The Riverside Court's order and the Court of Appeal opinion are repugnant to the constitution because they elevate Respondent's right to petition to an absolute jurisdictional status. The right to petition is not absolute. *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53 (2002).



CONCLUSION

The rulings of the California Court are repugnant to the Constitution and an open and notorious denial of substantive due process to Petitioner. The California Court sacrificed and compromised essential judicial integrity of the proceedings. The rulings of the California courts are a travesty of justice.

A solitary citizen appeals to this Court of last resort. I claim no grand following and my Petition is not endorsed by any famous advocacy group; I trust my case is worthy of your attention.

December 3, 2019

Respectfully submitted,

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