

No. 20-288

IN THE
SUPREME COURT OF THE UNITED STATES

ALCR, LLC,

Petitioner,

vs.

Linda W. Swain and Eileen R. Breslin,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

REPLY TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

I. PETITIONER HAS NO CHOICE

Contrary to Respondents' argument, the Petitioner has no choice but to operate a business that it does not want to operate due to the Arizona trial court's and the Arizona Court of Appeals' decision in this case. In fact, the trial court has found the Petitioner in contempt of court for not rebuilding and running a golf course on the Property. When one is left with no alternative but to operate a business, that is involuntary servitude.

When Bixby Village Golf Course, Inc., Hiro Investments, LLC, Nectar Investments, LLC and Kwang Co., LLC (collectively, "Bixby") purchased the Property with a golf course on it in 2006, it intended to and did operate the golf course. After the Great Recession hit in 2008 and Bixby began to lose money operating the golf course, it approached the local homeowners about amending the Deed Restrictions to permit Bixby to do something else with the Property but the homeowners said no. Bixby continued to operate the golf course at a loss for five (5) more years, before deciding to shut down the golf course and do nothing with the Property. Bixby was not making money but with the golf course shut down, it was not losing money. Bixby believed this was a choice Bixby had and exercised it. Bixby then sold the Property to TTLC Ahwatukee Lakes Investors, LLC ("TTLC") who only wanted to amend the Deed Restrictions. The Deed Restrictions restricted how the Property could be used but it did not appear to require that an unprofitable recreational business be run on the Property. After the trial court ordered TTLC to rebuild the

golf course and operate it, TTLC defaulted on the purchase and ALCR, LLC (“ALCR”) was formed and Bixby transferred its interest to ALCR that then took back the Property.

This Court has stated “that in every case in which this Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction.” *United States v. Kozminski*, 487 U.S. 931, 943 (1988). Contrary to the Respondents’ statements, the Petitioner is left with no choice but to build a golf course and operate it or be subject to legal sanctions; *i.e.*, contempt of court. The Petitioner believes it has the right to do nothing with the Property but that choice has been eliminated. When one has no choice but to work for the benefit of another against their will, which is what operating a business amounts to, that is the essence of involuntary servitude. There is no choice for the Petitioner, that choice has been eliminated. As the Second Circuit held in *Immediato v. Rye Neck School Dist.*, 687 F.3d 505, 510 (2nd Cir. 1996), the Thirteenth Amendment does not “bar labor that an individual may, at least in some sense, choose not to perform, even where the consequences of that choice are ‘exceedingly bad.’”

The Petitioner has no choice but to work or operate a business on its personal property for the benefit of others. Petitioner did not freely accept this consequence by voluntarily purchasing the Property subject to the Deed Restrictions. Deed Restrictions limit how property can be used but do not mandate that the property must be used. This decision turns a restriction into a mandate and requires that the owner of the Property must operate a business. This is involuntary servitude.

The Arizona Court of Appeals' holding in *Swain v. Bixby Golf Course, Inc.*, 247 Ariz. 405, 450 P.3d 270 (Ariz. Ct. App. 2019) will have widespread effect because the holding changes deed restrictions into a mandate, not a restriction. Granted, Arizona has a statute that gives a tax break to property that is used as a golf course, Arizona Revised Statute (“A.R.S.”) § 42-125.01; however, if property owners do not operate a golf course on the property, they will not receive the tax benefit given to golf course owners but the statute does not require that they operate a golf course on their property. They should be able to leave it in its natural state and not obtain the tax benefit.

CONCLUSION

The Swain courts decision mandates that the owner of property that contains deed restrictions limiting its use to a golf course must operate a golf course on the property and is not permitted to not use the property. There are hundreds of golf courses across the United States that have shut down because they are unprofitable. If the property owner has deed restrictions on it stating it can only be used as a golf course, then under this decision, the property owner has no other choice but to operate a golf course. This is involuntary servitude and violates the Thirteenth Amendment of the Constitution.

RESPECTFULLY SUBMITTED this 14th day of October, 2020.

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