

20 - 6795
No.

In The
Supreme Court of the United States

In Re MARRIAGE OF RYAL W. RICHARDS AND ALICIA MARIE RICHARDS

ALICIA MARIE RICHARDS

Petitioner,

v.

RYAL W. RICHARDS,

Respondent.

ORIGINAL
PETITION

FILED
DEC 17 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA FOURTH
DISTRICT COURT OF APPEAL,
DIVISION THREE

PETITION FOR WRIT OF CERTIORARI
APPENDIX FILED SEPERATELY

Respectfully submitted 11/25/20



s/ Alicia Marie Richards
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QUESTIONS PRESENTED FOR REVIEW (Rule 14.1(a))

1. Does the "Compel Obedience Clause" in Civil Code of Procedure Section 128 allow *ex parte* eviction on the court's own motion? Would that order comply with the due process clause to the 14th Amendment to the Constitution?
2. Did the trial court violate Ms. Richards' due process rights when it applied Civil Code of Procedure Section 128 and evicted her and her minor from their lawfully owned dwelling without affording her notice that it intended to do so, an opportunity to prepare a defense with counsel and an opportunity to be heard in violation of the due process clause to the 14th Amendment to the Constitution depriving Petitioner and her minor child of a significant interest in property and the right to continued residence in their home?
3. Does Civil Code of Procedure 916(a) automatically stay an order for future unknown amount of money sanctions pending appeal or would that future unknown amount of sanctions order be subject to Civil Code of Procedure Section 917.1 requiring a bond? Would it be a violation of due process and equal protection of the law under the 14th Amendment for the Court of Appeals not to reverse an order made without jurisdiction?

LIST OF PARTIES

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RELATED CASES

Case No. S262957

California Supreme Court (denied review August 12, 2020)
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797 tel. 415-865-7000

Case No. G056921 consolidated with Case No. G057041

Fourth District Court of Appeal–Div.3 (Rehearing denied 6/4/2020)
601 W. Santa Ana Blvd.
Santa Ana, CA 92701 tel. 714-571-2600
Written by the Honorable Justice Kathleen E O’Leary Affirmed in Full

Case No. G056921 consolidated with Case No. G057041

Fourth District Court of Appeal–Div.3 (Opinion issued May 18, 2020)
601 W. Santa Ana Blvd.
Santa Ana, CA 92701 tel. 714-571-2600
Written by the Honorable Justice Kathleen E O’Leary Affirmed in Full

Case No. 15d009634

Orange County Superior Court (Orders dated 11/9/18)
341 The City Drive, Orange, CA 92868
The Honorable Andre De La Cruz, Judge Dept. W10/L62
Phone: (657) 622-5562; Email: W10@occourts.com

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1. Opinion, Court of Appeals, Fourth District, Division Three,

Ryal W. Richards v. Alicia Marie Richards, Court of Appeal Case No.G056921

consolidated with Case No.G057041 affirming Orange County Superior Court

Family Law Court, 10/9/18 and 11/9/18 Orders.(Appendix A)

2. Order, Orange County Superior Court, Family Law Court,

Ryal W. Richards v. Alicia Marie Richards, Case No.15D009634, ordering real

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3. Order, Orange County Superior Court, Family Law Court,

Ryal W. Richards v. Alicia Marie Richards, Case NO.15D009634, ordering 11/9/18

clerk to sign listing agreement and all documents that effectuate the sale instead of

allowing it deposited pending appeal, ordering writ of possession, sale of property

within 60 days and if not sold eviction pursuant to Civil Code of Procedure (“CCP”)

§128, sanctions in the amount of \$4,200 pursuant to CCP §128.5, against order on

appeal automatically stayed pursuant to CCP §916(a).(Appendix F p.92)

4. Order, Orange County Superior Court, Family Law Court,

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5. Order, Orange County Superior Court, Family Law Court,

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JURISDICTIONAL STATEMENT

Ms. Richards proceeding pro se because the trial court has refused to hold her requested family law code §2030 hearing requested on 9/17/17 and several other times including 11/9/18 (Appendix J p.194) to ensure she was equally represented to protect her rights and instead sanctioned her \$4,200 to pay her spouse's attorney fees pursuant to an order that the court lacked jurisdiction over because of the automatic stay in CCP §916(a). The Appellate Court stated Wife waived this argument by failing to include record citations to support her claim she requested attorney fees or that the court ruled on the matter even though Petitioner's Brief specifically stated the court "ignored" her request at Appendix J. p.194. The trial court after sanctioning Petitioner at its OSC re sanction hearing had ended then evicted Petitioner and her minor from her lawfully owned property without notice and a hearing. The trial court did not state what statute it was proceeding. The Appellate Court stated it had authority under CCP §128 to enforce its judgments.

Petitioner posits the 10/8/18 and 11/9/18 orders deprived her of due process and equal protection of the law in violation of the 14th Amendment and took away her substantial property rights and continued residence in her home.

On the Court's own motion without jurisdiction over the 7/10/18 order (Appendix W p.429; Appendix X p.432) (CCP §916(a)), sanctioned Petitioner

\$4,200 for filing a motion to deposit the listing agreement pending her appeal. CCP §917.3(Appendix GG) requires the document be deposited with the court for the automatic stay to go into effect pending appeal. The court affected the results and Petitioner was prejudiced thereby.

The Court of Appeals stated the court had jurisdiction over the 7/10/18 order being reviewed on appeal (Appendix W p.429-cf.Appendix X p.432) because Petitioner did not post a bond and “California courts have inherent power to enforce their judgments . . .”(Appendix A p.6;Appendix P p.385)

Ms. Richards appealed the 10/9/18 and 11/9/18 orders challenging the court’s jurisdiction and the trial court’s violation of her procedural due process and equal protection of the law rights.(Appendix AA)

The California Court of Appeals, District Four, Division Three entered its Opinion affirming the Trial Court 10/9/18 and 11/9/18 Orders on 5/18/20.(Appendix A)

A timely petition for rehearing was denied 6/4/20. (Appendix C p.85)

A timely petition for review was denied 8/12/20. (Appendix D p.87)

An automatic extension of time because of Covid19 to file the petition for a writ of certiorari was granted extending the deadline to file certiorari 150 days to and including 1/9/21.(Appendix N p.369)

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) and 28 U.S.C. §1254(1). Accordingly, this Petition is timely.

Petitioner, Alicia Marie Richards respectfully prays that a Writ of Certiorari issue to review the trial court orders and the Opinion of the Court of Appeals, Fourth Appellate District, Division Three.

The Court of Appeals affirmed the void sanction order for \$4,200 that was made without jurisdiction.

The Court of Appeals also affirmed the eviction order and orders taking away Petitioner's property rights. The Appellate Court, however, without any briefing on the issue, stated the trial court had authority to enforce its judgments under CCP §128.(Appendix CC)

Petitioner claims those orders violated her right to due process and equal protection of the law because there was no noticed hearing scheduled on the issue of eviction on 11/9/18 and the order was excessive, arbitrary and capricious and a miscarriage of justice and should have been reversed.

The Appellate Court stated requests made in responsive pleadings was adequate notice for the court to issue orders taking away property rights although the same Court stated in *Richards II* that it was not adequate notice. The Appellate Court did not address Petitioner's due process and equal protection of the law claims or whether those orders made by the court were void or voidable. It is further not clear what judgment the trial court was enforcing because the final judgment has yet to be resolved and has been pending a motion to vacate since 2/7/18. Petitioner posits that any orders made enforcing that void judgment should be considered void and the Appellate Court erred by not reversing.

CONSTITUTIONAL AND SATUTORY PROVISIONS INVOLVED

Due Process Clause, Fourteenth Amendment, United States Constitution, Section 1 (Appendix AA):

"No state . . . shall . . . 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."

CRC 5.92 (Appendix BB):

- ... (1) In a family law proceeding under the Family Code: . . .
 - (B) A *Request for Order* (form FL-300) must be used to ask for court orders, unless another Judicial Council form has been adopted or approved for the specific request; and . . .

(b) Request for order; required forms and filing procedure

- (1) The *Request for Order* (form FL-300) must set forth facts sufficient to notify the other party of the moving party's contentions in support of the relief requested. . . .

CCP §128 (Appendix CC):

"(a) Every court shall have the power to do all the following:

- ... (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein."

CCP §128.5 (Appendix DD):

... "If, after notice and a reasonable opportunity to respond, the court issues an order pursuant to subdivision (a), the court may, subject to the conditions stated below, impose an appropriate sanction upon the party, the party's attorney, or both, for an action or tactic described in subdivision (a). In determining what sections, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

- (A) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay. . . ."
- (B) If the alleged action or tactic is the making or opposing of a written motion

CCP §916(a) (Appendix EE):

“(a) Except as provided in Section 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order. . .”

CCP §917.1 (Appendix FF):

“Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for any of the following: (1) Money . . .(2) Costs awarded pursuant to 998. . (3) Costs awarded pursuant to Section 1141.21 . .”

CCP §917.3 (Appendix GG):

“The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order directs the execution of one or more instruments unless the instrument or instruments are executed and deposited in the office of the clerk of the court where the original judgment or order is entered to abide the order of the reviewing court.”

CCP §1005 (Appendix HH):

1005(a) Written notice shall be given, . . . at least 16 court days before the hearing. . .”

Family Law Code Section 2030 (Appendix II):

“(a)(1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights . .”

STATEMENT OF THE CASE AND FACTS

Whether the court abused its authority on its own motion proceeding without jurisdiction over the 7/10/18 order (Appendix B p.53; Appendix J p. 158-159,161,165,180; Appendix P p.383 @ p.385 line 10; Appendix W p.429; Appendix X

p.432) automatically stayed pursuant to CCP §916(a) then ex parte without any notice of its intent to evict or to take away Petitioner's substantial property rights did the trial court have authority under CCP §128 (Appendix A p.15) to evict Petitioner and her minor child.

Petitioner objected (Appendix P p.383) to the Court's Order to show Cause re sanctions not personally served on her only attaching the 7/10/18 order (Appendix B p.31; Appendix J p.158-159,161,165,180; Appendix W p.429; Appendix X p.432) being reviewed on appeal stayed, stating the court was without jurisdiction to proceed citing Civil Code of Procedure Sec. 916(a)(Appendix P p.385 line 10.

On 11/7/18, Ryal W. Richards' filed a sur-reply (Appendix A p.18; Appendix F p.92; Appendix B p.35; Appendix J p.159,166; Appendix S p.411; Appendix T p.415; Appendix BB; requesting affirmative relief in his second responsive pleading filed two days before Petitioner's hearing (Appendix Q p.392) scheduled for 11/9/18. Petitioner objected (Appendix I-p.120-ln7-9&ln13-16) on the basis that it was untimely in violation of CCP §1005. (Appendix J p.166 lines 1-5 *cf.* Appendix I-p.120-ln7-9&ln13-16)

The Court of Appeal stated that the trial court had discretion to compel obedience to its judgment under CCP §128. (Appendix A p.15) although it is unclear what judgment the court was enforcing: 1. the final judgment void on its face still pending adjudication in the trial court with a motion to vacate pending against it since 2/7/18 (Appendix M p.311); or 2. the order to sign the listing agreement appealed on 10/10/18 (Appendix U p.423) enforcing the void judgment

still pending adjudication (Appending S) instead of Petitioner depositing the listing agreement pending her appeal (Appendix U p.423) depriving her of due process and equal protection of the law to have that document stayed pending review on appeal pursuant to CCP §917.3.

The Court of Appeals' Opinion is not supported by the evidence and has false facts (Appendix B) and directly conflicts with Supreme Court precedent *Isbell v. County of Sonoma* (1978) 21 Cal.3d 61 holding: "It is settled constitutional law that "in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and a hearing"].

There is a disagreement of whether the trial court had authority under CCP §128 (Appendix A p.15) to evict without a fully noticed motion giving Petitioner an opportunity to prepare a defense with counsel and whether those orders would satisfy the minimum standards of due process under the 14th Amendment to the United States Constitution.

The Supreme Court of California stated in *Payne v. Superior Court*, (1976) 17 Cal. 3d 908 ("Payne"), that "Few liberties in America have been more zealously guarded than the rights to protect one's property in a court of law. This nation has long realized that none of our freedoms would be secure if any person could be deprived of his possessions without an opportunity to defend them, 'at a meaningful time and a meaningful manner.'" The Fourteenth Amendment to the United States Constitution prohibits a state from depriving any person of property or their substantial rights without due process of law. This mandate has been interpreted

to require, at a minimum, that “absent a countervailing state interest of overriding significance, a person forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.” *Payne* at p. 914.

In *Green v. Lindsay* 456 U.S. 444 (1982), (“*Green*”) this Court stated “By failing to afford adequate notice of the proceedings before issuing final orders of eviction, the State deprived them of property without due process of law required by the Fourteenth Amendment.” This Court went on to state that eviction is a “significant interest in property, and indeed, of the right to continued residence. . . .” And that the “sufficiency of the notice must be tested with reference to its ability to inform” of the pendency of proceedings that affect their interests. Pp. 450-451. When the trial court evicted Petitioner and her minor child out of their lawfully owned home on 11/9/18 (Appendix G p.95 and W), it did so without balancing the equities (Appendix J p. 20) and affording Petitioner an opportunity to address the question of eviction and how those orders would affect Petitioner and her minor child. *Le Francois v. Goel* (2005) 30, 35 Cal.4th 1094 [112 P.3d 636] states that parties have a right to a hearing on the issue of eviction to challenge the court’s decision. *Green v. Lindsey, supra*, 456 US 444, holding that those orders would be in violation of due process and equal protection of the law.

This Court should note that the eviction order (Appendix G&H) signed by the trial court reflects a hearing that never took place [there was no hearing to stay the listing agreement – Petitioner’s hearing was to enforce the stay after the listing

agreement was deposited.(Appendix O p.373@¶2-5) and the order was signed after the hearing on Petitioner's motion to deposit the listing agreement pending her appeal (Appendix Q p.392). On 11/9/18, the judge got up from the bench while Petitioner was still talking and vacated the courtroom and refused to take the listing agreement so the statutory stay went into effect, instead it deprived Petitioner of due process and equal protection of the law. The court orders and minute order do not reflect what took place and are in direct conflict with the reporter's transcripts (Appendix I-p.120-ln.-7-8&13-16). *In re Marriage of Carrlson* (2008) 163 Cal.App.4th 281,291 Held: "Denying a party the right to testify or to offer evidence is reversible per se." However, the Court of Appeals did not reverse the eviction order but instead affirmed it stating that the trial court had authority under CCP §128. (Appendix A p.15).

Petitioner filed an objection to that eviction order after she found about it on 11/19/18. (Appendix O p.373@¶2-5)

Petitioner timely appealed the trial court's orders dated 11/9/18. (Appendix R p.408).

The Court of Appeals, Fourth District, Division Three without any briefing on the issue of whether the trial court had authority under CCP §128 (a)(4) to compel obedience of its judgments even though the void judgment it is enforcing is still pending adjudication in the trial court filed on 2/7/18. (Appendix L p.289) The Court of Appeals relied on one case in support of its Opinion affirming the trial

court's orders, *Blueberry v. Properties, LLC v. Chow* (2014) 230 Cal.App. 4th 1017, 1020-1021. (*Blueberry Properties*)(Appendix A p.15).

In the *Blueberry Properties* case, a party brought a motion giving a party timely notice and an opportunity to oppose enforcement of a valid judgment. *Blueberry Properties* is not on point. In this case, the trial court's orders for eviction (Appendix G p.95) and taking away Petitioner's substantial property rights were made without a scheduled motion. Further, the sanction order for \$4,200 was made without subject matter jurisdiction because it was enforcing the 7/10/18 order on appeal and stayed pursuant to CCP §916(a). (Appendix A p. 10,14,15,19; Appendix B p.53; Appendix J p. 158-159,161,165,180; Appendix O p.373@¶2-5; Appendix S p.411,W,&X)

The trial court on 7/10/18(Appendix W p.429&X), ordered Petitioner while forcing her to proceed pro se because the trial court has refused to hold her timely requested family law code §2030 hearing on 9/13/17 so she can be equally represented and instead has deprived her of representation. (Appendix L p.289) That Family Law Code §2030 hearing is still pending in the trial court. The Court of Appeals reversed that 7/10/18 sanction order. (Appendix S p.411,W,X) But before the order was reversed on appeal , the trial court decided to enforce it on 11/9/18 making a void or voidable order and sanctioning Petitioner \$4,200 in attorney fees pursuant to CCP §128.5. (Appendix B p.53; Appendix J p. 158-159,161,165,180) Petitioner posits that sanction order is void for lack of jurisdiction. The Court of Appeals disagreed and stated that the court had jurisdiction over the

7/10/18 sanction order (Appendix W p.429-*cf.* Appendix X p.432) because Petitioner did not post a bond and “California courts have inherent power to enforce their judgments . . .” (Appendix A p.6 *cf.* Appendix P p.385) Petitioner disagrees and so does the Legislature who enacted CCP §916(a). CCP §917.1 does not apply because it was not a money judgment that would require a bond. Whether the Court had jurisdiction to make an order enforcing the 7/10/18 order under Civil Code of Procedure Section 128.5 and whether that order need to comply with Civil Code of Procedure Section 917.1 and requiring a bond to stay its enforcement is before this court for determination. Court’s do not have discretion to enforce judgment “not inconsistent with statute.” See *Iverson v. Superior Court* 167 Cal.App.3d 544 (1985)[213 Cal. Rptr. 399]

It is also before this Court as to whether the court had authority under CCP §128 (Appendix A p. 15) to issue orders taking away a party of a substantial property interest and continued residence in her home without a full, fair hearing on the issue of eviction and whether that order is in direct conflict with the due process clause to the Fourteenth Amendment.

In this Case, there is no final judgment (Appendix B p.39) because the judgment has yet to be resolved and a motion to vacate it (Appendix L p.289) has been pending since 2/7/18 stayed by the trial court. (Appendix B p.75; Appendix J p. 168; Appendix K p. 247; Appendix Y p.437-*ln*8-15) The final judgment was procured by the fraud on the Court by Ryal W. Richards giving him more than the court had authority to grant and was by default [stipulated]. However, “the damage is done;

... [Petitioner] now subject to an obligation imposed in violation of [her] due process rights, ... and [Ryal W. Richards] can immediately employ legal process to enforce that obligation" even though void. *Isbell v. County of Sonoma*, 21 Cal. 3d 61, 72 (Cal. 1978) citing *Osmond v. Spence* (1972) 359 F. Supp. 124, 127 explaining that "unless the validity ... is determined before the judgment is entered an alleged [party] will be deprived of his due process rights on every occasion when an effective waiver [or judgment] has not occurred" citing Supreme Court cases in support of "notice and a hearing on the merits" *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.ED.2d 349 (1969); and *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865

On 10/9/18, the court ordered (Appendix E p.89) Petitioner to sign a listing agreement that it had stayed (Appendix B p.75; Appendix J p.1687; Appendix K p.247; Appendix V p.428-last-sentence; Appendix-S; AppendixY p.432 Reporter's Transcripts-p.158-line-8-15) pending appeal to sell the property whose equity is in dispute. Petitioner filed an appeal. (Appendix U p.423) The trial court did not lift the stay but allowed Ryal W. Richards to proceed without jurisdiction to enforce the void judgment. The premature sale without putting any safeguards in to ensure Petitioner her fair share before liquidation of the large asset would prejudice Petitioner by depriving her of a way to collect after all her claims had been heard including the void judgment. (Appendix B p.40; Appendix J p.182) *Lee v. Superior*

Court 63 Cal.App. 3d 705 at p. 711 (Cal.Ct. App. 1976) [Premature sale is not authorized unless safeguards to ensure other party's rights are protected.]

Petitioner brought the listing agreement to court to deposit it with clerk as required by Civ. Code of Proc. Section 917.3, but the clerk refused to take it and told Petitioner to ask the judge.(Appendix B p.76) On 10/11/18, Petitioner filed an ex parte to deposit the listing agreement pending her appeal. At the ex parte, the trial court denied the ex parte to take the listing agreement and instead set it for a full hearing on November 9, 2018. (Appendix Q p.392)

On 10/11/18, the court set a concurrent OSC re Sanctions hearing (Appendix P p.385-cf-Appendix Z p.438) and attached a copy of the 7/10/18 (Appendix-P;Appendix W p. 429;AppendixX p.432)Order that was being reviewed on appeal subject to the automatic stay in CCP § 916(a)(Appendix Y p.435). The court mailed notice of its OSC re sanctions with the 7/10/18 order (Appendix-P) without any information as to what order Petitioner had failed to comply with (Appendix Z p.438). The trial court did not personally serve its OSC re sanction motion on Petitioner nor did it hold a hearing to make sure she was adequately represented to ensure her rights were protected. (Appendix B p.58,81; Appendix J p. 158-159,161,165,180;)

Petitioner timely objected to the Court's OSC re Sanctions hearing stating the court lacked jurisdiction to proceed because the 7/10/18 order was on appeal and stayed pursuant to CCP §916(a).(Appendix P p.385 line 10;AppendixW p. 429;AppendixX p.432; Appendix Y p.435)

The trial court and Ryal W. Richards did not respond to Petitioner's objection (Appendix P p.385 line 10) to jurisdiction over the 7/10/18 order (Appendix W p.429; Appendix X p.432) and Ryal W. Richards did not address it on the appeal. (Appendix F p.92) On 11/9/18, the court proceeding without jurisdiction pursuant to the 7/10/18 order (Appendix W p.429&X p.432), enforcing a void on its face judgment (Appendix M p.311) procured by the fraud on the court by Ryal W. Richards and instead of allowing Petitioner to deposit the listing agreement as requested at her duly noticed motion (Appendix Q p.392), instead ordered the clerk to sign it depriving Petitioner of due process and equal protection of the law to the statutory stay pending appeal. (Appendix F p.92 and I)

The Court did not inform Petitioner at any time it was going to address anything other than the 7/10/18 (Appendix W p.429&X p.432) order on 11/9/18. (Appendix P p.385 line 10) The trial court further violated Petitioner's right to be heard when it got up from the bench while she was still talking without a word and vacated the courtroom and ended the proceedings without taking the listing agreement. (Appendix I-p.120-ln.7-8&p.13-16) The court deprived Petitioner of her statutory right to the automatic stay in CCP § 917.3 when it refused to take the listing agreement and instead made orders without any notice it intended to do so depriving Petitioner of an opportunity to prepare a defense and depriving her of her substantial property rights and continued residence in her property without due process and equal protection of the law.

After the OSC re sanctions hearing, the court signed Ryal W. Richards' proposed orders (Appendix G p.95 and I) evicting petitioner and her minor out of their property as well as another order for the clerk to sign on Petitioner's behalf the listing agreement that Petitioner was trying to deposit pending her appeal filed 10/10/18 enforcing the void judgment. (Appendix U p.423);Appendix O p.373@¶2-5)

Petitioner timely appealed. (Appendix R p.408)

On appeal Petitioner argued she was denied of fair warning that that the trial court was going to make orders for eviction and clerk signing instead of Petitioner depositing - issues not before the court by noticed motion depriving Petitioner of due process and equal protection of the law.(Appendix-I) The Court of Appeals stated that the trial court had authority under CCP §128 to enforce its judgments. (Appendix A p. 15)

The Court of Appeals further stated the court had jurisdiction over the 7/10/18 order (Appendix W p.429;AppendixX p.432)being reviewed on appeal to award the \$4,200 in sanctions because Petitioner did not post a bond and "California courts have inherent power to enforce their judgments . . ." (Appendix A p. 6,10,14,15,19; Appendix B p. 53; Appendix J p. 158-159,161,165,180;)

Petitioner brought up the fact that she was denied due process and equal protection of the law in her Opening Brief at p.158,161,166,169,182-187,192,194. The Court of Appeals did not address Petitioner's due process and equal protection of the law violations in its Opinion (Appendix A). Instead, the Court of Appeals

stated that petitioner had adequate notice of eviction because she objected to Ryal W. Richards' late responsive pleading [on the record contrary to the court] stating that his requests were inappropriate without a fully noticed motion depriving Petitioner of a full hearing. (Appendix A p.14; Appendix A p.18 ¶ 1 lines 5 to 7,41; Appendix F p.92; Appendix B p. 57; Appendix J p.159,166; Appendix S p.411) Thus, the Court of Appeals held that the trial court had authority to issue orders on issues not properly noticed and before the court pursuant to CCP §128 to enforce its judgments. (Appendix A p.15 *cf.* Appendix M p.311 and Appendix Q p.393)

REASONS FOR GRANTING OF THE WRIT

This Court has not defined whether CCP §128 gives the court authority to order eviction without a motion and would that be in violation of the due process clause to the Fourteenth Amendment? In the absence of direction from this Court, a conflict has occurred in the court of appeals on whether the court has authority under the compel obedience to its judgments clause in CCP §128 to evict a party and take away her property rights without proper notice of its intent, giving her adequate time to prepare a defense with counsel and a full and fair hearing at a meaningful time and meaningful place. Would those orders made on 11/9/18 be in violation of the due process clause to the 14th Amendment to the Constitution? The answer should be yes.

The Court of Appeals, Fourth Appellate District Division Three decided an appeal on 1/9/20, case no. G056626 stating that requests made in responsive pleadings would not give a party adequate notice to put a party on notice that those

requests for orders would be addressed. (Appendix B p. 77; Appendix S p.411)

However, on 5/18/20, the Court of Appeals stated the complete opposite – requests for orders brought in a responsive pleading would be adequate notice to put the party on notice that the court would be enforcing a judgment pursuant to CCP §128 (Appendix A p.15;Appendix B p.77). However, contrary to *Elkins v. Superior Court*, (2007) 41 Cal. 4th 1337,1357-1358 the court stated that “. . . the efforts of a judge presiding over family law cases to expedite matters ‘should never be directed in such a manner as to prevent a full and fair opportunity to the parties to present all competent, relevant, and material evidence bearing upon any issue properly presented for determination.’” In this case, Petitioner had a motion to deposit the listing agreement pending her appeal because the clerk refused to take it. (Appendix Q p.392) The court scheduled a concurrent OSC re sanctions to enforce its 7/10/18 order (Appendix O p.373@¶2-5) being reviewed on appeal automatic stayed by CCP §916(a) and proceeded without subject matter jurisdiction sanctioning Petitioner \$4,200 for filing the motion that the court told her to file even though the Court of Appeal stated it was for not signing the listing agreement at Petitioner’s hearing to deposit the listing agreement. (Appendix B p.53; Appendix J p. 158-159,161,165,180; Appendix G p.95; Appendix O p.373@¶2-5) Petitioner posits the sanction order should be considered void. There were no other motions for request for orders scheduled to be heard on 11/9/18.

In *Isbell v. County of Sonoma* (1978) 21 Cal. 3d 61, the court stated that: “It is settled constitutional law that “in every case involving a deprivation of property

within the purview of the due process clause, the Constitution requires some form of notice and a hearing"]. Whether a party does not have to comply with California Rules of Court, Rule 5.92 or CCP §1005 and files 2 days before another party's hearing requests in a responsive pleading is adequate notice as defined by the due process clause to the Fourteenth Amendment is before this Court. The Supreme Court of California stated that "Under the due process clause of the federal Constitution, a court may enter judgment against a defendant only if the record shows that either (a) the defendant has received notice and an opportunity to be heard, or (b) the defendant has voluntarily, knowingly and intelligently waived his constitutional rights." Petitioner did not waive her constitutional rights to due process and equal protection of the law and she was completely surprised by the court's orders because at no time did the court inform her that he would be making eviction orders or orders for the clerk to sign on her behalf instead of allowing her to deposit the listings agreement depriving her of her right to have that listing agreement stayed while it was being reviewed on appeal in violation of due process and equal protection of the law. Further, Courts do not have discretion to enforce a judgment "not inconsistent with statute." See *Iverson v. Superior Court, supra*, 167 Cal.App.3d 544 "However, since the Judicial Council may only adopt rules not inconsistent with law, and since local rules have the force of law only when there is no legislative direction to the contrary" citing (*Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 29 [210 Cal.Rptr. 762, 694 P.2d 1134]) A responsive pleading requesting

affirmative relief 2 days before another party's hearing violates CCP § 1005 and CRC 5.92 and Petitioner objected.

In *Briggs v. Brown*, (2017) 3 Cal. 5th 808,852, the court stated that a superior court has both the inherent authority and responsibility to fairly and efficiently administer all the judicial proceedings that are pending before it, and that one important element of a court's inherent judicial authority is to . . . 'weigh competing interests and maintain an even balance.'" The court did not weigh competing interests like the fact that Petitioner's claims against Ryal W. Richards have yet to be litigated (Appendix B p.82) and would offset (Appendix J p.160) anything he had coming against the equity in the residence, or whether Petitioner and her minor could obtain adequate housing elsewhere knowing that Ryal W. Richards has refused to pay child support and alimony for the last four years. The Court abused its discretion enforcing a void judgment (Appendix B p.40) and trying to sell the property whose equity is in dispute before all the claims have been resolved (Appendix B p.82), including the judgment that is void on its face because it was procured by the fraud on the court by Ryal W. Richards giving him more than the court had authority to grant. Petitioner's motion to vacate the void judgment and has been pending since 2/7/18 (Appendix B p.39,75; Appendix J p.168; Appendix K p. 247) and although it was brought under a motion to correct, it was recently discovered that an order correcting a void on its face judgment is also void. The Court's only remedy is to void the void judgment and litigate the disputes. (Appendix M p.311) "A void judgment [or order] is, in legal effect, no judgment. By

it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bards any one.” [Citation.]’ *Bennett v. Wilson* (1898) 122 Cal. 509, 513-514.” *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App. 4th 1228, 1240.) [Thus, an order to correct a void judgment is itself void.] Even though the judgment should be considered void and has yet to be adjudicated stayed by the trial court (Appendix B p.39,75; Appendix J p.168; Appendix K p.247), Ryal W. Richards has been trying to enforce it. Petitioner brought her appeal under both theories void and voidable. (Appendix J p.185) The Court of Appeals did not address either argument.

Petitioner’s argument of whether the trial court violated her due process rights when it used its authority under CCP §128 (Appendix A p.15) and evicted her and her minor from their lawfully owned dwelling without affording her notice that it intended to do so, an opportunity to prepare a defense with counsel and an opportunity to be heard at a meaningful time and place in violation of the due process clause to the 14th Amendment of the Constitution depriving Petitioner and her minor child of a significant interest in property and the right to continued residence in their home raises substantial constitutional questions. *Greene v. Lindsey, supra*, 456 U.S. 444 stated that “continued residence in their home” was a significant interest in property and proper notice would go a long way toward providing the constitutionally required assurance that the State has not allowed its power to be invoked against a person who has had no opportunity to present a defense. Pp. 455-456. *In Johnson v. Hous. Auth. Of Oakland*, 38 Cal.App. 5th 603,

607, (2019) states that “notice must be specifically specific.” And the purpose of the written notice is “to inform the [party] of the allegations so he can prepare a defense.” *Id* at 689.

In *In re Robert G.* 31 Cal. 3d 437, 442 (1982) states: “[D]ue process requires . . . adequate notice of the charge so that he may intelligently prepare a defense.” Compliance with this requirement has been held “by the Supreme Court to mandate . . . [a party] be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation.” *Id* p.442. In this case, there was no petition filed by Ryal W. Richards setting forth the facts and the Court’s OSC re Sanctions notice was completely insufficient because the court attached the 7/10/18 order (Appendix W p. 429; AppendixX p.432)that was on appeal. Petitioner objected to proceeding for lack of jurisdiction. (Appendix P p.385 line 10) No other information was given to Petitioner setting forth the charge that she would be evicted at her hearing to deposit the listing agreement and it was an abuse of the trial courts discretion to not continue the hearing on eviction to give Petitioner adequate time to obtain counsel and prepare a defense of why there should be no eviction.

This case provides this Court with an opportunity to address whether requests brought in responsive pleadings would give a party adequate notice that a court may consider those requests at another party’s duly noticed hearing and in light of the fact that California Rules of Court, Rule 5.92(b) states that in family law

proceedings, “A request for Order (form FL-300) must be used to ask for court orders and must set forth facts sufficient to notify the other party of the [moving] party’s contentions in support of the relief requested.” CRC 5.92 further states that “the moving party must file the documents with the court clerk and obtain a court date and then have a filed copy served the timelines required by law. CCP §1005 requires that a party be served 16 court days before the hearing. Ryal W. Richards did not file a separate motion, he did not serve petitioner 16 court days before the hearing, in fact, he filed a reply and an additional a sur-reply to petitioner’s motion to deposit the listing agreement 2 days before the hearing and Petitioner objected as untimely and not in compliance with CCP § 1005. (Appendix A p.17; Appendix F p.92; Appendix B p. 57; Appendix J p. 159,166; Appendix S p.411; Appendix I-p.120- ln7-9&p.13-16)

In *Dusenberry v. United States*, 534 U.S. 161 (2002), the court stated that “the Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person without “due process of law.” This Court “determined that individual whose property interests are at stake are entitled to ‘notice and an opportunity to be heard.’” Citing *United States v. James Daniel Good Real Property*, 510 U.S. 43,48 (1993). This Court has regularly turned to *Mullane v. Central Hannover Bank* (1950) 339 U.S. 306, 313-315 [94 L.Ed. 865,872-874, 70 S.Ct. 652] holding that “It is fundamental to the concept of due process that a defendant be given notice of the existence of [an action] and notice of the specific relief which is sought. . .” when

confronted with adequacy of the method used to give notice. Whether a responsive pleading would give adequate notice of an action requesting specific relief is a question before this court because of the conflicting opinions of the Fourth Appellate District, Division Three and considering that the due process clause to the Fourteenth Amendment and CRC 5.92 states otherwise and considering the fact that the trial court judge got up from the bench in the middle of Petitioner's argument and vacated the courtroom depriving her of an opportunity to be heard.

(Appendix J p. 159) See: *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281,291 [Re: "Denying a party the right to testify or to offer evidence is reversible per se."]

Petitioner's hearing to deposit would have been completely unnecessary had the trial court's clerk not refused to take the listing agreement and telling her to ask the judge. (Appendix B p. 71) The Court's error affected the results and injury resulted from that error by eviction by unlawful means resulting in a miscarriage of justice and affecting Petitioner's substantial rights to her property and continued residence and absent the Court's error, Petitioner would have obtained a more favorable result by being allowed to deposit the Listing Agreement and the Court enforcing the stay granted by statute and no unlawful eviction. *In re Marriage of Carrlson, supra*,163 Cal.App.4th 281.

By this Court granting this writ would settle the above important questions and divergent opinions issued by the Fourth Appellate District, Division Three departing from the accepted and usual course of judicial proceedings calling for an exercise of this Court's supervisory power to bring back conformity to the justice

system instead of allowing this gross miscarriage of justice and deprivation of property and substantial rights without due process and equal protection of the law in violation of the 14th Amendment to the Constitution.

Ms. Richards respectfully requests that the Court grant certiorari to review the trial court's orders and Court of Appeals, Fourth Appellate District, Division Three's Opinion in order to resolve these important constitutional questions.

ARGUMENT

1. The Trial Court's Eviction Order did not Comply with the Due Process Clause to the 14th Amendment to the Constitution and deprived Petitioner of a Substantial Property Interest and Continued Residence of her Property

The Appellate Court did not allow any briefing on the issue on whether the trial court had authority under CCP §128 (Appendix A p. 15) to enforce its judgments on 11/9/18.

The question here is whether the "Compel Obedience Clause" in CCP §128 (Appendix A p. 15) allows the trial court to evict without a fully noticed motion filed by the opposing party and would the ex parte eviction order comply the due process clause to the 14th Amendment? Petitioner posits that it did not comply and was not adequate notice denying her of her substantial property interest and continued residence in her home.

In Drum v. Fresno County Dept. of Public Works, 144 Cal.App. 3d 777 (1983) stated that "Wholly inadequate notice is no notice at all." *Id* at p. 783 The Court further stated that "Several cases have held to be adequate 'the notice must be such as would according to common experience be reasonably adequate to the purpose'"

citing for example *Kennedy v. South Coast Regional Com.* (1977) 68 Cal.App. 3d 660, 670-672 [127 Cal.Rptr. 396]; *Litchfield v. County of Marin* (1955) 130 Cal.App. 2d 806, 813 [280 Cal.Rptr. 117]. “[C]ommon sense and wise public policy . . . require an opportunity for property owners to be heard before [requests for orders] which substantially affect their property rights are [affected] . . .” citing *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 548-549 [99 Cal.Rptr. 745, 492 P. 2d 1137.] CRC 5.92(b) states that a request for order must be filed on the FL-300 form and set forth with specificity the grounds for the relief requested and comply with CCP §1005 . None of these requirements were met in these proceedings causing a miscarriage of justice and denial of due process and equal protection of the law.

The question here is did the court violate Ms. Richards' due process rights when it applied CCP §128 and evicted her and her minor from their lawfully owned dwelling without affording her notice that it intended to do so, an opportunity to prepare a defense with counsel and an opportunity to be heard in violation of the due process clause to the 14th Amendment depriving Petitioner and her minor child of a significant interest in property and the right to continued residence in their home? In *Mooney v. Superior Court of Santa Cruz County*, (2016), 245 Cal.App. 4th 523 @ 525 states that without a motion the court was not authorized to proceed. And in *Elkins v. Superior Court*, (2007) 41 Cal.4th 1337, 1357-1338 states that “. . . the efforts of a judge presiding over family law cases to expedite matters ‘should never be directed in such a manner to prevent a full and fair opportunity to the parties to present all competent, relevant and material evidence bearing upon any

issue properly presented for determination.” (Appendix J p. 253) The question in this case was the issue of eviction properly submitted for determination because there was no motion for eviction or for the clerk to sign instead of Petitioner depositing and would a request made in a responsive pleading without setting forth the grounds in contradiction with court procedure and CRC 5.92 be considered a violation of Petitioner’s due process and equal protection of the law rights when the court proceeded on issue not properly before the court depriving Petitioner of an opportunity to prepare a defense with counsel taking away her substantial property rights and continued residence in her home in violation of due process clause of the 14th Amendment to the Constitution.

The United States Constitution Article XIV (Appendix J. p. 229) states that “It is a fundamental concept of due process that a judgment against a [party] cannot be entered unless he was given proper notice and an opportunity to defend.” *In re Marriage of Lippel* (1990) 51 Cal. 3d 1160. (*Lippel*) (Appendix J p.183-184) The question here is whether due process and CCP §128 permit a court to order eviction of a party out of her property enforcing a void on its face judgment still pending adjudication and no request for eviction was pending by noticed motion and defendant had not received notice that it may be awarded. The Supreme Court in *Lippel* stated that that is not allowed citing *Mullane v. Central Hannover Bank* (1950) 339 U.S. 306, 313-315 [94 L.Ed. 865, 872-874, 70 S.Ct. 652] holding that “It is fundamental to the concept of due process that a defendant be given notice of the existence of [an action] and notice of the specific relief which is sought. . .” The case

went on to state that "A defendant is not in a position to make such a decision if he has not been given full notice. " In the instant case, there was no motion setting forth the specific facts and no request for relief and based on the CRC 5.92 states that if a party requests an order from a court that he is to file a separate motion setting for the specific facts on which his requests rests so they can prepare a defense. The Responsive pleading did not comply.

Petitioner had no idea that the court would make orders at her hearing for the other party and she specifically objected. (Appendix I-p.120-1n7-9&1n13-16) Petitioner thought that was enough and the court should have either continued the matter to give petitioner due process and equal protection of the law or told Ryal W. Richards to file his own motion to set forth the facts and good cause for eviction. In this matter, although there was no support for eviction or statement the court based its ruling, Petitioner can only assume she was evicted because she wanted to deposit the listing agreement pending her appeal and have that listing agreement viewed for an abuse of discretion by the court of appeals. In *Hale v. Morgan* (1978) 22 Cal. 3d 388, 398 [Penalty exceeded constitutional limit and was arbitrary, excessive, and unreasonable.] Evicting a party out of their property without notice of intent to do so, setting forth the facts exceeds the constitutional limits and was arbitrary, excessive and unreasonable. The eviction order was a miscarriage of justice and should have been reversed by the Court of Appeals and remanded for further proceedings to provide Petitioner a full, fair hearing on the issue of eviction.

Even the Appellate Court stated in *Richards II* that requests made in responsive pleadings were not adequate notice (Appendix S p.411) to put the other party on notice then contradicted itself in this appeal. In *Boddie v. Connecticut*, 401 U.S. 371 (1971) states “Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that “[w]herever one is assailed in his person or his property, there he may defend,” citing *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876) and *Baldwin v. Hale*, 1 Wall. 223 (1864); *Hovey v. Elliott*, 167 U.S. 409 (1897) stating “The theme that ‘due process of law signifies a right to be heard in one’s defense,” *Hovey v. Elliott, supra*, at 471. Mr. Justice Jackson wrote for the Court in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950), “there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” Id., at 313. See Constitution Article 1 § 1 and § 2, United States Constitution Fourteenth Amendment; See also *Marriage of Fingert* (1990) 221 CA3d 1575, 1579 at page 1580; *Marriage of Lopez* (1974) 38 CA3d 114; See also *Fewel v. Fewel*, (1923) 23 C2d. 431, 434 [Re: Right to produce evidence and cross examine adverse witnesses.]; See also 2 Cal. Procedure 3rd Jurisdiction, Section 234, *et seq.*

Finally, pursuant to CRC 5.92, a *Request for Order* (form FL-300) must set forth facts sufficient to notify the other party of the “moving” party's contentions in

support of the relief requested.] In this case, Ryal W. Richards was not the moving party. In *Mooney v. Superior Court of Santa Cruz Cnty, supra*, 245 Cal.App.4th 523 [absence of motion court was not authorized.] CCP §917.3 [Stay after lodging document ordered to sign] *Isbell v. County of Sonoma*, (1978), 21 Cal.3d 61[Held: it is settled Constitutional Law that 'in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and a hearing.'] and whether a request for order in a responsive pleading was adequate notice to put Petitioner on notice that the court would evict is a question before this court for determination. In *Kobey v. Morton*, (1991) 228 Cal.App.3d 1055, 1060 [Held: "The Court's inherent power does not extend so far as to encompass an order without a petition to serve as a vehicle for that order."]

Marquez-Luque v. Marquez (1987) 192 Cal.App.3d 1513, 1517 [238 Cal.Rptr.172] [Re: There is no statute or equity that gave the court authority to evict without basic requirements of due process.] This Court should decide whether CCP §128 trumps the due process requirements provided in the 14th Amendment in direct conflict with *Kobey v. Morton*, (1991) 228 Cal.App.3d 1055, 1060 that states "neither statute or equity gave the court authority to evict the defendant from his dwelling;" and *Marquez-Luque v. Marquez* (1987) 192 Cal.App.3d 1513, 1517 [238 Cal.Rptr.172] [Re: There is no statute or equity that gave the court authority to evict without basic requirements of due process.]; *Isbell v. County of Sonoma*, (1978), 21 Cal.3d 61["notice and a hearing."] and whether a request in a responsive pleading was adequate notice to put Petitioner on notice that the court would evict

her at her hearing to deposit the listing agreement is a question before this court for determination.

Ms. Richards respectfully requests that the Court grant certiorari to review the trial court's orders and Court of Appeals, Fourth Appellate District, Division Three's Opinion to resolve these important constitutional questions.

2. The Trial Court's Order for Sanctions is Void for Lack of Jurisdiction because it was made Enforcing an Order Automatically Stayed Pending Appeal and it Was A Violation of Due Process and Equal Protection of the Law for the Appellate Court not to Vacate the Void Order made without jurisdiction.

The question is does CCP 916(a) automatically stay the sanction order (Appendix P p.385 line 10) for future unknown amount or would that order be subject to Civil Code of Procedure Section 917.1 requiring a bond and did the court have inherent power to enforce its judgment while on appeal. (Appendix A p.-6) Petitioner posits that CCP §917.1 does not apply. The trial court did not have jurisdiction over that order and all orders made against it should be considered void for lack of subject matter jurisdiction, however, the court of appeals did not reverse the \$4,200 void order made without subject matter jurisdiction instead it stated the court had jurisdiction over that order because Petitioner failed to post a bond. (Appendix A p. 3 and 15). The Supreme Court of California in *Varian Medical Systems, Inc. v. Delfino*, 35 Cal.4th 180 (Cal. 2005) (*Varian Medical Systems, Inc.*) stated that "Subject to certain exceptions not relevant here, "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including

enforcement of the judgment or order . . ." (§ 916(a).) The purpose of the automatic stay provision of section 916(a) "is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it." Citing (*Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629 [5 Cal.Rptr.2d 742] (*Elsea*)).

In *Varion Medical Systems, Inc.* the court went on to state "(2) To accomplish this purpose, section 916, subdivision (a) stays all further trial court proceedings "upon the matters embraced" in or "affected" by the appeal. In determining whether a proceeding is embraced in or affected by the appeal, we must consider the appeal and its possible outcomes in relation to the proceeding and its possible results. In *Hauck v. Riehl*, 224 Cal.App.4th 695 (Cal. Ct. App. 2014) the court stated that "If the court lacked jurisdiction . . . it did not have the power to issue any . . orders, no matter what evidence was or was not presented by the parties to the action. Citing *Valenta v. Regents of University of California* (1991) 231 Cal.App. 3d 1465, 1470, fn. 2 282 Cal.Rptr. 812 Held: "It is axiomatic that a judgment entered by a court which lacked jurisdiction is void and must be reversed" The Court of appeals, however, did not reverse the void order but instead it affirmed it on the basis that because Petitioner failed to post a bond, the trial court had authority to enforce it in direct conflict with CCP §916(a) and court precedent.

Ms. Richards respectfully requests that the Court grant certiorari to review the trial court's orders and the Court of Appeals, Fourth Appellate District Division Three's Opinion to resolve this important question of jurisdiction.

CONCLUSION

In consideration of the foregoing, Petitioner urges the Court to grant certiorari review in order to resolve these important questions. Petitioner respectfully submits that the Petition for Certiorari should be granted, the orders of the trial court and judgment by the Court of Appeals, Fourth Appellate District be vacated, and the case remanded for further consideration.

Respectfully submitted,



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