

21-1299
No. _____

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JAN 05 2022
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SUPREME COURT U.S.

ORIGINAL

In The
Supreme Court of the United States

Nicholas Scoyni

Petitioner,

V.

Daniel Salvador et al,

Respondents,

On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Nicholas D Scoyni, Pro se
1701 Blaine St.
Caldwell, Idaho 83605
1 (208) 519- 8246

QUESTIONS PRESENTED FOR REVIEW

1. Does the district court have the right to adjudicate an intellectual property case without addressing parties' pleas, disregarding legal precedence of intellectual property law as to ownership, or type of mark mentioned in original complaint relief, or use in commerce to specifically, a Servicemark, not a Trademark as district judge assumed?
2. Did the district court violate this petitioner's constitutional rights by cancellation of petitioners registrations at state, and federal levels of service marks, and trademarks without proper due process of law, or takings clause consideration, and then redistribution of same property to defendants with unproven use and ownership rights of same defendants service business?
3. Does the district court have the right to deny a 28 U.S.C. § 144 motion to recuse the district judge without due cause, when the statute statement is that "each party has a right to one such action"?
4. Can the district court ignore a FRCP rule 55 (a) that was stamped received by the court prior to reply of defendants, and even without vacating the default request to clerk affidavit to enter default was received deny that default?

PARTIES TO THE PROCEEDINGS

Respondents

DANIEL R. SALVADOR,
CHRISTOPHER A. SALVADOR,
WAYNE J. SALVADOR,
OFFSPEC SOLUTIONS, LLC,
OFFSPEC SOLUTIONS SOUTHEAST,

Represented By

Richard H. Greener
Greener Burke Shoemaker Oberrecht, P.A.
208-319-2600

Thomas E. Dvorak
Givens Pursley LLP
208-388-1200

Respondent

WILLIAM WARDWELL

Represented By

David Perkins
Perkins Mitchell Pope McAllister LLP
208-345-8600

Petitioner

Pro se
Nicholas D Scoyni
1701 Blaine St.
Caldwell, Idaho 83605
1 (208) 519 8246

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TABLE OF CITED AUTHORITIES

Idaho state laws cited ;

Id. at 708, 52 P.3d at 853 (citing *Farnworth v. Femling*, 125 Idaho 283, 287, 869 P.2d 1378, 1382 (1994)).

Gray v. Tri-Way Const. Servs., Inc., 147 Idaho 378, 387, 210 P.3d 63, 72 (2009) (citing *Cheung V. .Pena*, 143 Idaho 30, 35, 137 P.3d 417, 422 (2006)).

Farrell v. Whiteman (Farrell I), 146 Idaho 604, 612, 200 P.3d 1153, 1161 (2009) (citing *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 132 Idaho 754, 767, 979 P.2d 627, 640 (1999)).

Fox, 137 Idaho at 707, 52 P.3d at 852 (quoting *Cont'l Forest Prods., Inc. v. Chandler Supp. Co.*, 95 Idaho 739, 743, 518 P.2d 1201, 1205 (1974)).

United States Code;

15 U.S.C. § 1127

15 U.S.C. §1052(f).

15 U.S.C. § 1053

15 U.S.C. § 1072.

28 U.S.C. § 144

28 U.S.C. § 1254

28 U.S.C. § 1654

35 U.S.C. § 261

Code of Federal Regulations;

37 C.F.R. §2.41(a)(1)

37 C.F.R. §2.41(a)(2)

37 C.F.R. §2.41(a)(3)

**United States patent and trademark office,
Trademark manual examining procedures;**

TMEP §§1212.04-1212.04(e)

TMEP §§1212.05-1212.05(d)

TMEP §§1212.06-1212.06(e)(iv)

Federal Rules of Civil Procedure;

FRCP 55 (a)

FRCP 60 (a)

Case citation, United States Supreme Court;

UNITED STATES v. PALMER (S.Ct. November 19,
1888) 128 U.S. 262, 9 S.Ct. 104, 32 L.Ed. 442 UNITED
STATES. v. PALMER.

TABLE OF APPENDICES

A. Opinion, memorandums, and
Order 9th Circuit district court of Idaho
January 12th , 2020, and June 4th , 2020

B. Opinion, memorandums, Order 9th
circuit Appellant court December 2nd
2021.

OPINION BELOW

The opinion of the United States Ninth circuit district court of Idaho is unpublished, it's case number is 1:18-cv-00506-BLW that is the original docket. The opinion of related case in the United States Ninth circuit district court of Idaho is also unpublished, it's case number is 1:19-cv-00232 DCN. The opinion of the United States Ninth Circuit Court of Appeals is unpublished and has four related case numbers that are in the Ninth Circuit 18-36086 USCA , and the Ninth Circuit 19-35073 USCA, and in the Ninth Circuit, 20-35123 USCA, and in the Ninth Circuit 20-35564 USCA.

JURISDICTION

The judgement of the United States Court of Appeals for the Ninth Circuit was issued on October 28, 2021, and a petition for rehearing en banc was denied on December 2, 2021. The court has jurisdiction over this petition under 28 U.S.C. § 1254 (1) Courts of appeals; certiorari; certified questions.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, section 8, clause 8 of the U.S. Constitution; The Fifth Amendment of the Constitution of United States of America the Due Process Clause, and the Takings Clause, also The Fourteenth Amendment to the United States Constitution, adopted on July 9, 1868, as to property and due process clauses.

STATEMENT OF CASE HISTORY

All motions of plaintiffs were denied, most all defendants motions were granted, Pro se plaintiff was ordered to be a witness for the defendants against himself. In District court adjudication, not once in judgement or orders can you find the word "Servicemark" as relief sought or for "use in commerce" adjudication by distict judge. This intellectual property case was by only civil law foundation , and nothing regarding intellectual property legal foundations established by this court, a Rule 10 issue here. Case herein only a brief misinterpretation of the lanham act as to use in commerce. The district judge refused to recuse himself, even when given affidavit, A certificate of good cause by plaintiff as plaintiff representing himself as herein. Therefore, the pleas of the parties never were addressed by district court in orders to any parties plea asked to be adjudicated by parties.

The district court did not provide adjudication of stipulated facts, or pleas of the parties only an attempt to address validity, not asked for relief of the parties even though validity was a stipulated fact as to both parties use of mark admitted. (DKT2) 11/21/2018 Motion for Partial Summary Judgment Denied. (DKT10) 12/12/2018 Motion for Default Judgment Civ Rule 55 Denied. (DKT13) 12/17/2018 Motion for Partial Summary Judgment Denied. (DKT47) 05/13/2019 Motion to Compel, Motion to Dismiss, Motion to Limine Denied. (DKT48) 05/16/2019 Motion to Terminate or Limit (i.e., Plaintiff's Deposition as he is a Pro se), Denied. (DKT50) 05/16/2019 Motion disqualification judge, or magistrate judge, Denied. (DKT51) Motion for correction of clerical mistake 60(a) Denied (DKT52) 05/16/2019 Motion for Summary Judgment Denied. (DKT73) 09/25/2019 Motion for Sanctions Denied. (DKT75) 10/01/2019 Motion for Summary Judgment Denied. (DKT81) 10/17/2019 Motion to Strike Denied.

(DKT82) 10/17/2019 Motion to treble damage award Denied.
(DKT90) 11/08/2019 Motion to Strike/Motion for Sanctions
Denied (DKT95) 2/10/2020 Motion for Reconsideration
Denied.

DISCUSSION OF CASE

Idaho laws as follows not observed by district judge; Both quantum meruit (implied-in-fact contracts) and unjust enrichment (implied—in-law contracts) are "measures of equitable recovery." *Farrell v. Whiteman* (Farrell I), 146 Idaho 604, 612, 200 P.3d 1153, 1161 (2009) (citing *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 132 Idaho 754, 767, 979 P.2d 627, 640 (1999)). An implied-in-fact contract exists where "there is no express agreement, but the conduct of the parties implies an agreement from which an obligation in contract exists." *Fox*, 137 Idaho at 707, 52 P.3d at 852 (quoting *Cont'l Forest Prods., Inc. v. Chandler Supp. Co.*, 95 Idaho 739, 743, 518 P.2d 1201, 1205 (1974)). We have held that "an implied in fact contract is defined as one where the terms and existence of the contract are manifested by the conduct of the parties with the request of one party and the performance by the other often being inferred from the circumstances attending the performance." *Id.* at 708, 52 P.3d at 853 (citing *Farnworth v. Femling*, 125 Idaho 283, 287, 869 P.2d 1378, 1382 (1994)). The measure of damages under an implied-in-fact contract is quantum meruit, which "permits a party to recover the reasonable value of services rendered or material provided on the basis of an implied promise to pay." *Gray v. Tri-Way Const. Servs., Inc.*, 147 Idaho 378, 387, 210 P.3d 63, 72 (2009) (citing *Cheung V. Pena*, 143 Idaho 30, 35, 137 P.3d 417, 422 (2006)). Thus, once the court determines that an implied-in-fact contract exists, the recovery is restricted to the reasonable value of the services rendered in exchange for the promise

District judge cited contract law under civil contract law existed only citing a 2006 citation of Idaho law. As the court can see Idaho has had a long history of understanding of implied intellectual property law contracts and by it's self is a reason to overturn such an order as untrue, and incorrect to state laws that must be followed by the district court.

Laws at the federal level in case herein;

The right to appear **pro se** in a civil case in federal court is defined by statute 28 U.S.C. § 1654, as "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct cases therein that the constitutional provisions allow. In this case before the court constitutionally protected issues such as, due process, and personal property clauses that are individually protected rights outlined in constitutional amendments, and federal statutes are shown to be violated by lower court orders. Specifically outlined by the fifth and fourteenth amendment of the constitution of the United States of America. Civil litigants have a protected interest in a meaningful opportunity to be heard,

The district judge did in fact infer in it's court order that Idaho did not have implied contracts of any kind, and that only expressed hearing discussing a summary judgment proposed by defendants, there then is no opportunity for due process to occur as to property or constitutional protected issues . This is especially true when private property of a plaintiff is involved, and then that property ordered seized without any due process by a government entity such as the federal court district judge did order case herein.

This litigant argues that, regardless of whether there are protected liberty or property interests attached to a given pro se litigant's underlying claim, courts should hold that a meaningful opportunity to be heard is itself a protected

interest for such litigants, but also is a constitutional right for all. Herein however is an added element of being an intellectual property case, only heard in a civil venue, not adhering to this courts previous rule of law.

It is also this litigants contention that these conditions should apply regarding other federal statutes when issues of representation applies such as particularly with 28 U.S.C. § 144 that stipulated " Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith."

In this case the lower court made ruling against the last sentence stipulating that a pro se can not be considered counsel personally on representative of himself , were this pro se contends self representation is a right, and should convey to this statue, and therefore the judge in this case should have agreed to recuse himself in good faith, as an affidavit was presented in the same. These issues where pro se litigant rights were outright ignored resonated throughout this case.

The issues involving due process right violations also resonated throughout this case as not just one instance. Also a default was not entered by clerk properly under federal and state laws, FRCP rule 55 (a), and was miss docketed, then

misplaced, then never corrected on a FRCP motion 60 (a), or otherwise to allow either to be vacated or allowed by the court properly as to law. Then as the defendants enjoyed complete use of the courts mechanisms, this pro se was denied all such mechanisms of legal procedures. This would include being denied a trial by jury to protect personal property without impunity of the registered servicemark, and state trademarks collectively owned by this Pro se alone . The lower court simply stated they did not see how mechanisms of ownership proof worked, despite the oppositions admissions through the pleas of defendants in case herein of plaintiff / petitioner abandonment of "his" private service marks.

The lower court proceeded to ignore those pleas and added that implied agreements, contracts, and liability do not exist in intellectual property laws despite 128 U.S. 262. 9 S.Ct. 104. 32 L.Ed. 442. UNITED STATES v. PALMER (November 19, 1888) or Idaho state laws. At that point the court without evidence of any kind to any interstate commerce ownership as of defendants, then preceded to the district court order that all registrations of plaintiff will by order of the court be cancelled, and that then defendants (who had no legal registrations) would be entitled to all rights of same property with no regards to any constitutional rights of Plaintiff/ petitioner.

It has long been the law under 35 U.S.Code § 261.Ownership; assignment that "Subject to the provisions of this title, patents shall have the " attributes of personal property." The Patent and Trademark Office shall maintain a register of interests in patents and applications for patents and shall record any document related thereto upon request, and may require a fee therefor."

Here there was unlawful reassignment of property, registration of marks. In this case herein the personal property that is in the form of state and federal registrations

that serve as documents of ownership of service marks sought for in original complaints as relief.

Then also 15 U.S. Code § 1072. Registration as constructive notice of claim of ownership. A Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof. While a "service mark" is a type of trademark protected and regulated under the Lanham Act, are used to identify and distinguish the services of one individual or organization, even a unique service, from those provided by others. See 15 U.S.C. § 1127. Service marks and trademarks serve essentially the same purpose and function in essentially the same manner except that service marks identify the source of services rather than goods. The term "service" applies only to services rendered to others.

Under 15 U.S. Code § 1053 Service marks registerable "Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks shall be registerable, in the same manner that conform as nearly as practicable to those prescribed for the registration of trademarks" 15 U.S.C § 1053.

The framers of the Constitution struck a compromise position: creators of intellectual property (IP) would own it and be able to exclude others from using it for a limited period of time. After this time period expired, the right to use the IP was extended to all. By agreeing to accept the "disclosure inducement theory" of advancing science and the arts, the framers also allowed a creator of IP to deny others the use of that property for a limited period of time in exchange for disclosing the nature of the property to all. The conveyed right is expressed in article I, section 8, clause 8 of the U.S. Constitution:

"The Congress shall have Power—to promote the progress Of Science and useful arts, by securing for limited Times To Authors and Inventors the exclusive Right to their Respective Writings and Discoveries."

The U.S. patent system finds its origin in the U.S. Constitution (art. I, § 8, cl. 8). The system described therein is the primary vehicle for transferring IP from the university and nonprofit sectors to the private, and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks. Applications and procedure under this section shall sector or, as is often the case, from the government to the private sector. Within its scope, the clause includes trademarks, Servicemark, and copyrights. Indeed, all of these elements—patents, trademarks, and copyrights—are classified as intellectual property and in the United States have the imprimatur of personal property rights.

The terms and provisions governing these forms of IP are codified in various statutes: U.S. Code, title 35 for patents (35 U.S.C.); U.S. Code, title 15 (15 U.S.C.), chapter 22 for trademarks; and U.S. Code, title 17 (17 U.S.C.) for copyrights. Detailed regulations governing the application of these statutes are found in title 37 of the Code of Federal Regulations (37 C.F.R.), chapters I and II. These laws and regulations outline the obligations for obtaining and maintaining IP protection and for asserting the property rights that the laws convey. "If a proposed trademark or service mark is not inherently distinctive, it may be registered on the Principal Register only upon proof of acquired distinctiveness, or "secondary meaning," that is, proof it has become distinctive as applied to the applicant's goods or services in commerce.

- (3) Other Evidence: Other appropriate evidence of acquired

If the applicant establishes, to the satisfaction of the examining attorney, that the matter in question has acquired distinctiveness as a mark in relation to the named goods or services, then the mark is registerable on the Principal Register under §2(f) of the Trademark Act, 15 U.S.C. §1052(f)."

Three basic types of evidence may be used to establish acquired distinctiveness under §2(f) for a trademark or service mark:

- (1) **Prior Registrations:** A claim of ownership of one or more active prior registrations on the Principal Register of the same mark for goods or services that are sufficiently similar to those identified in the pending application (37 C.F.R. §2.41(a)(1), see TMEP §§1212.04-1212.04(e));

(2) **Five Years' Use:** A verified statement that the mark has become distinctive of the applicant's goods or services by reason of the applicant's substantially exclusive and continuous use of the mark in commerce for the five years before the date on which the claim of distinctiveness is made (37 C.F.R. §2.41(a)(2), see TMEP §§1212.05-1212.05(d)); and distinctiveness (37 C.F.R. §2.41(a)(3); see TMEP §§1212.06-1212.06(e)(iv))."

In the herein case Pro Se did In fact make a verified statement as to 37 C.F.R. §2.41(a)(2) about collective marks in herein case, where in applicant's substantially exclusive and, continuous use of the mark in commerce for the five years before the date on which the claim of distinctiveness is made to the director of the United States patent and trademark office in application, petition, and registration, as well as to each level of the Ninth Circuit courts (applications were suspended for the outcome of this litigation, because of breach of contract, and then registration applications actions then of defendants of herein case).

The rights ,and the status ,and regulations protected by the constitutional provisions aforementioned herein state that what the court ordered taken from this pro se litigant is in fact personal property accordingly the fifth amendment of the constitution of the United States of America that made clear statement as to property and due process: These constitutional provisions then clearly by the orders of the United States district court of Idaho ninth circuit are then a violation of pro se litigants constitutional rights, as the many statute violations that violated the due process clauses aforementioned herein.

REASON FOR GRANTING THE PETITION

For the reason that a court must follow clear rules laid before it when specific outlined by law as to the constitution outlined herein.

For the reason the United States ninth district court of Idaho failed to follow outlined rules of law specifically in place as to due process.

For the reason that property belonged to pro se party the court order then surrender of property unto non rightful owners.

For the reason of protecting the rights of this petitioner to enjoy constitutional protection, that any other citizen of the United States of America should enjoy.

That these actions taken by lower courts have violated directly the fifth and fourteenth amendment , along with article I, section 8, clause 8 of the U.S. Constitution as rights of this petitioner.

For the reason that if this is left un corrected, as to proper adjudication then the constitution has been greatly harmed,

and open to further such harm in the future as precedence to other cases.

The Fifth Amendment to the U.S. Constitution is comprised of two clauses—the Due Process Clause and the Takings Clause—each designed to protect citizens from undue government interference. The Due Process Clause prescribes that any deprivation of “life, liberty, or property” requires “due process of law.”

For the reason no pleas set forth by the parties in the district complaints were ever specifically adjudicated by the court (ie a Servicemark infringement, an abandonment, or alternative naked licensing,) or ever proven by court or party.

The Takings Clause imposes two restrictions on the government’s ability to take individuals’ property. It requires the government to take property only for “public use,” and to pay “just compensation” for property it has taken.

CONCLUSION

For the forgoing reasons this writ of certiorari should be granted. That this writ may further protect the private citizens of the United States, and their constitutional rights, and the rights of small business owners that are not as large corporations, but instead are individual citizens with private constitutional protections that should not be trampled by opinion alone without law, but upheld by law only as they are constitutionally obligated unto.

Also it is not possible for a district judge to adjudicate a "use in commerce" that is a "first in advertising in interstate commerce" of a "Servicemark" , in a Servicemark classification without mention of "Service marks" in any of the final judgement, memorandum, or orders, and as this is the main cause of case herein, as to petitioner original complaint asked relief from, infringement of a Servicemark the lower courts are in fault, and should be reversed. And as to the takings clause is exemplified in : Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 673 (1999) ("The hallmark of a constitutionally protected property interest is the right to exclude others The Lanham Act's false-advertising provisions . . . bear no relationship to any right to exclude.").

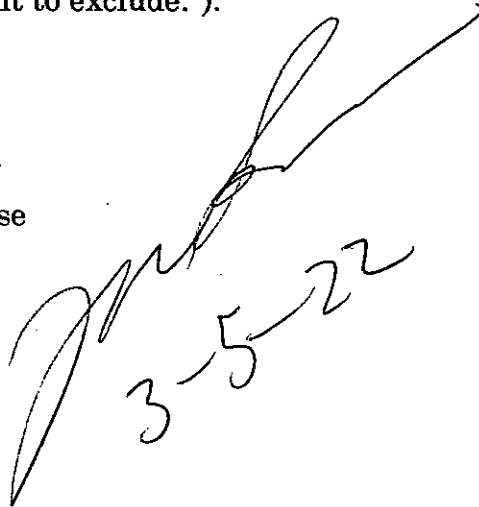
Respectfully submitted

Nicholas D Scoyni pro se

1701 Blaine St

Caldwell ID, 83605

1 (208) 519-8246

A handwritten signature in black ink, followed by the date "3-5-22" written in a similar style.