

No.21-22

IN THE
SUPREME COURT OF THE UNITED STATES

Bo Peng,
Petitioner

v.

F.M. Tarbell Co.
Respondent

On Petition For A Rehearing Of The Order Denying The
Petition For The Writ Of Certiorari TO The 2nd Appellate
District Of California Court Of Appeal

PETITION FOR REHEARING

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I. PREAMBLE

Pursuant to Rule 44.2 of this Court, Petitioner Bo Peng, respectfully petitions for a rehearing of the order denying the petition for the writ of certiorari to The 2nd Appellate District Of California Court of Appeal.

“Judgment absolutely void on its face is subject to attack anywhere, directly or collaterally, whenever it presents itself, either by parties or strangers; judgment is simply a nullity and neither basis nor evidence of any right whatever; when judgment on face of judgment roll is void for lack of jurisdiction, it may be attacked at any time.”¹

According to the inalienable rights of property protection guaranteed by the California Constitution, in order to recover the employer's intentional non-payment of wages of \$28,268.01, the appellant sought relief from the court in accordance with the Labor Code §98.2. As a result, without the trial under the Labor Code, the appellant was not only deprived of his wages property, but also was extorted from attorney fees of US\$72,519.03 by the judge using a non-existent contract action without jurisdiction in this case. The reason is that the defendant used a large amount of illegal proceeds to influence and corrupt the judges of the judicial system, thereby purchased judgments that are favorable to the defendant. “Judicial corruption can be understood as the selling and purchasing of legal decisions.”²

For such obvious miscarriage of justice and lawless violence to allow that employers are free not to pay wages at will and Employees can only be the helpless victims, Justice Hofstadt of the Court of Appeal did not

¹ Nagel v. P & M Distributors, Inc. (1969) 273 Cal. App.2d 176, 180, 78 Cal. Rptr. 65

² PAHIS, Corruption in Our Courts: What It Looks Like and Where It Is Hidden (2009) 118 THE YALE LAW JOURNAL 1900, 1903

supervise and stop, but affirmed in full. This obvious miscarriage of justice and the violation of "EQUAL JUSTICE UNDER LAW" cannot be tolerated. The appellant filed U.S. Supreme Court the petition for writ of certiorari.

"No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence." ³

A strong public policy favors full and prompt payment of wages due an employee. However, the jury trial of legal principles of labor code §98.2 and the 5 claims was not conducted. In violation of the due process in this case, Justice Hoffstadt, Judge Moreton and Judge Linfield repeatedly without jurisdiction deprived the appellant of wages property in different modes, that is, deprived the appellant of \$28,268.01 of wages, unreasonably punished the appellant of \$500, extorted attorney's fees of \$72,519.03, totaling more than \$100,000, and approved placing a lien on appellant's real property. They blatantly violated 14th Amendment to the U.S. Constitution. Because they violated the U. S. Constitution, they lost their official status.

"When a state officer acts under a state law in a manner violative of the Federal Constitution, he / she comes into conflict with the superior authority of that Constitution, and he /she is in that case stripped of his / her official or representative character and is subjected in his/ her person to the consequences of his /her individual conduct. The State has no power to impart to him / her any immunity from responsibility to the supreme authority of the United States." ⁴

³ Ableman v. Booth, 21 Howard 506 (1859).

⁴ Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974)

The names of the above judges must be pointed out, mainly to distinguish them from judges who enforce the law impartially and to protect good judges.

Based on factual evidence, the Constitution and the law, petitioner pointed out the following facts: The defendant used large amounts of illegal proceeds to influence and corrupt judges at the upper and lower levels of the judiciary, and formed a government outside of the Constitution, led by Justice Hoffstadt from court of appeal, composed of trial corrupt Judge Moreton and Judge Linfield, acted under color of state government, and not bounded by the Constitution. They have the common unlawful objectives set by the defendant. They knew that they could not accomplish it alone and must accomplish in collaboration. Justice Hoffstadt affirmed the void judgment rendered by members of the trial court valid, to accomplish their common unlawful objectives and benefit financially from this case together.

The above three judges, Justice Hoffstadt, Judge Moreton and Judge Linfield, are abbreviated to as "They".

Decisions, absent corruption, would not be *prima facie* wrong or in violation of another law.⁵

II. REASONS FOR GRANTING THE PETITION

A. This case is an obvious miscarriage of Justice and requires a reversal of the judgment

After the establishment of the government outside of the Constitution, led by Justice Hoffstadt, they are highly partial towards the defendant. They and the defendant decided every matter of this case through

⁵ Pahis's Corruption in Our Courts, Page 1907, Supra

improper ex parte communication, which deprived plaintiff's right to speak.

Improper ex parte communications between an arbitrator and a litigant can serve as **a basis for a corruption, fraud, or other undue means finding as would support the vacation of an arbitration award.⁶** Persons with whom contact prohibited: CRPC 3.5(b) (formerly CRPC 5-300(B)) **applies to a judge or judicial officer.** (Witkin, Cal. Proc. 5th Trial § 233 (2020))[Emphasis added]

Without motion, without hearing, the defendant unilaterally drafted the order exempting himself from all penalties. Without giving appellant the opportunity to oppose, they approved the order without changing a word, which is a violation of the constitutional due process. The constitutional due process requires a notice, a hearing in front of an impartial judge and impartial court with jurisdiction. Order made in violation of the Constitutional due process is void, they then ordered to prevent appellant from presenting claim; they forced appellant to comply with their void order; and otherwise they would impose a sanction of \$500. In the end, they violated CCP 177.5 and CRC Rule 2.30 (e.), unjustified sanctioned appellant \$500 without due process, violated the 14th Amendment to the U.S. Constitution; which are miscarriage of justice and tyranny.

This case was the jury trial in which labor code §98.2 is legal principle and in which the five claims are subjects of action of this case. Removing all penalties for defendant is a matter tried by jurors, not by the Judge. The Constitution and the law did not authorize them to make that order. They have no jurisdiction and have no authority to approve the defendant one sided drafting

⁶Baker Marquart LLP v. Kantor, 22 Cal. App. 5th 729, 231 Cal. Rptr. 3d 796 (2d Dist. 2018).

order exempting defendant from all the penalties. Thus the order is void.

Since they hollowed out the jury trial by approving the exemption of all penalties for the defendant and using the defendant's unilateral jury trial binder which deprived plaintiff's right to speak, the jury trial was returned by the honest judge. Not only did they not correct it, but fabricated a non-existent re-application of jury trial and denied the constitutionally entitled jury trial in order to accomplish defendant's unlawful objectives.

"This "denial of a trial by jury to one constitutionally entitled thereto constitutes a miscarriage of justice and requires a reversal of the judgment.""⁷

B. The judgment and opinion of this case, made by them without jurisdiction and in violation of due process, are void.

They dared not exercise the jurisdiction granted to them by Labor Code §98.2, because they knew that if they exercised the jurisdiction of Labor Code §98.2, the defendant would lose this case. So in order to complete the defendant's unlawful objectives, they conspired with defendant to echo with each other through improper ex parte communication, they used defendant's oral motion of CCP §631.8 to overturn the legal principle of labor code §98.2 and the 5 claims of this case. The Constitution and the law did not authorize their jurisdiction to approve the motion of CCP §631.8. They have no jurisdiction to make that judgment.

In particular, jurisdiction of a subject matter over which a court has otherwise no jurisdiction cannot be

⁷ Arciero Ranches v. Meza (1993.) 17 Cal.App.4th 114, 126, 21 Cal. Rptr.2d 127, quoting People v. One 1941 Chevrolet Coupe (1951.) 37 Cal.2d 283, 300, 231 P.2d 832.

conferred by motion,⁸ and contract.⁹

This case is a jury trial in which Labor Code §98.2 is the legal principle and the five claims are the subjects of action, which governs the whole proceeding of this case and must be strictly complied with. Because they intentionally departed from the jury trial in which labor code §98.2 is the legal principle and in which the 5 claims are subjects of action of this case, they violated the due process of law of this case. Judgment and opinion made by them without jurisdiction and in violation of due process are void.

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process.¹⁰

C. They violated the separation of powers of the Constitution, arbitrarily overturned the statutes and changed the established laws, violated the clause of the equal protection of law of 14th Amendment to the U.S. Constitution. Judgment and opinion in violation of the Constitution are void.

They violated the separation of powers of the Constitution and overturned the statutes of the "Bus. & Prof. Code, § 10132, § 10137, § 10160, § 10177, subd. (h)" which declared that a licensed real estate salesman is an employee and which had existed for over half a century. They also violated related laws that "we conclude, therefore, that a salesman, insofar as his relationship with his broker is concerned, cannot be classified as an independent contractor. Any contract which purports to change that relationship is invalid as

⁸ Kurtz v. Cutler, 178 Cal. 178, 172 P. 590 (1918)

⁹ Marshall v. Phillips, 39 Cal. App. 2d 404, 103 P.2d 240 (2d Dist. 1940)

¹⁰ Kiugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985)

being contrary to the law".¹¹ They forcibly and wrongfully found a licensed real estate salesman as independent contractor, made the independent contractor agreement which law declared invalid, valid.

"Every constitutional provision is self-executing to the extent that everything done in violation of it is void."¹²

D. False evidences were introduced since Defendant attorney committed felony by tampering with Plaintiff's evidences and offered the false evidence to the court. The reversal of the judgment is required.

By tampering with Plaintiff's evidences, defendant's attorney committed felony prescribed by Penal Code 132, which required to go to prison for 1 to 3 years. Defendant already lost this case.

The Ninth Circuit has declared that reversal is "virtually automatic" once it is established that false evidence was introduced.¹³

E. They all violated passive role of the judge and committed the fraud upon the court. Judgment and opinion made through a "fraud upon the court" are void.

In order to accomplish defendant's unlawful objectives, Judge Moreton fabricated a non-existent re-application of jury trial and denied the constitutionally entitled jury trial

In order to shelter the member of the government outside of the Constitution, Led by Justice Hoffstadt,

¹¹ Gipson v. Davis Realty Co., *supra*, 215 Cal. App. 2d 190, 207.
Resnik v. Anderson & Miles (1980) [109 Cal. App. 3d 570, 573]

¹² Katzberg v. Regents of University of California (2002) 127 Cal.Rptr.2d 482, 29 Cal.4th 300, 58 P.3d 339 .Constitutional Law

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¹³ Hayes v. Brown (9th Cir. 2005) 399 F.3d 972, 978.

and to cover its corruption, Justice Hoffstadt intentionally used disinterested clerk as disguise , raised the question of CCP 581c motion that does not exist in this case (in fact, it was his question). "Truth needs no disguise". Then on his opinion, he further fabricated a whole jury trial by the non-existent CCP 581c motion to commit a "fraud upon the court" to deny the right of constitutionally entitled jury trial, which is the error of constitutional dimension; which the Constitution required to reverse the judgment, but he refused to do so and made Judge Moreton's void judgment valid. Thus his opinion in violation of the Constitution is void.

In order to accomplish defendant's unlawful objectives, Judge Linfield fabricated contract action which the court has no jurisdiction; committed the fraud upon the court to extort attorney's fees of \$72,519.03 from appellant.

In order to shelter the member of the government outside of the Constitution Led by Justice Hoffstadt, and to cover its corruption, Justice Hoffstadt further committed the fraud upon the court to extort the attorney's fees from appellant through fabricating a contract action in the labor commissioner and made Judge Linfield's void judgment valid.

Judgments and opinions through a "fraud upon the court" are void.

"Fraud destroys the validity of everything into which it enters," ¹⁴ The affirmance of a void the judgment upon appeal imparts no validity to the judgment, but is itself void by reason of the nullity of the judgment appealed from.¹⁵

¹⁴ Nudd v. Burrows (1875), 91 US 426, 23 Led 286,290

¹⁵ Pioneer Land Co. v. Maddux, 109 Cal. 633

F. Only the Supreme Court of the United States has the paramount power and duty to prevent the corruption, miscarriage of justice and tyranny of a government outside the Constitution under the guise of a state government, led by Justice Hofstadt.

Justice Hoffstadt from court of appeal affirmed in full the void judgments rendered by trial court, which means that he shall bear full responsibility for violations of the Constitution, the Law, and the Rules committed by the trial court.

In addition, he personally wars against the Constitution, which manifested that he has the pecuniary interest in the outcome of this case. Justice Hoffstadt cannot try the case that he has interests. He should disqualify himself. Not only did he not withdraw from this case, but he violated the CRC Rule 10.1000, without approval procedures, personally transferred this case to himself for proceeding after this case has been randomly assigned to Division one for half a year. This constitutes miscarriage of Justice. Its purpose is to prevent the exposure of the existence of a government outside of the Constitution led by him and the existence of the corruption.

His opinion is based on the labor commissioner's determination and the independent contractor agreement which both have been declared invalid by the law, thus opinion made by him based on invalid matters is also void.

Under color of the state government, they legalized the defendant's wage theft of deliberately not paying wages; legalized wrongful termination in violation of public policy; legalized the defendant's willful misclassification; exempted the defendant from million dollar of damages compensation and tens of millions of government fines; accomplished all the unlawful

objectives given by defendant to them; and made every member, in the government which is outside of the Constitution, led by Justice Hoffstadt and composed by corrupt Judge Moreton and Judge Linfield, obtaining considerable financial benefits from this case.

In summary, corruption has a potentially infective quality and flourishes when those higher up in the hierarchical structure engage in it. The government outside of the Constitution, led by Justice Hoffstadt, composed of corrupt judges, acted under the color of the state government, and not bounded by the constitution, has been formed.

The government outside of the Constitution, led by Justice Hoffstadt is above the law, no one dares to touch and supervise. California Supreme Court is mute. Therefore, the government outside the Constitution, led by Justice Hoffstadt became more and more reckless, openly violated the separation of powers of the Constitution, aggregating power of legislator and judiciary into their own hands, overturning statutes and changing the established laws and rendering many void judgments as valid. They caused no right law to follow, so as to exercise their arbitrary powers. Due to their unchecked powers, they openly committed miscarriage of justice, openly wars against the Constitution, they not only violated U.S. Constitution, but also violated the similar State Constitution. 1) They violated 14th Amendment to the U.S. Constitution. 2) They violated separation of powers of the U.S. Constitution article 1, article 2, and article 3. 3) They violated right to Jury trial guaranteed by 7th amendment to the U.S. Constitution.

They openly imposed tyranny, administering judiciary according to their will, exposing the people to the oppressions of arbitrary power, and openly trampling on the "EQUAL JUSTICE UNDER LAW.

The primary purpose of the doctrine is to prevent the commingling of different powers of government in the same hands.¹⁶ The doctrine is premised on the belief that too much power in the hands of one governmental branch invites corruption and tyranny.¹⁷

“As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution,”¹⁸ only U.S. Supreme Court has the paramount power to exert its full authority to prevent all violation of the principles of the Constitution.

“No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it.”¹⁹

“It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violation of the principles of the Constitution.” (Downs v. Bidwell, 182 U.S.244, 382, (1901))

III. CONCLUSION

For the reasons set forth in this Petition, Petitioner Bo Peng requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Respectfully submitted,



Bo Peng

Date: 10/26/21

¹⁶ State v. McCleese, 333 Conn. 378, 215 A.3d 1154 (2019).

¹⁷ State v. Baxter, 686 N.W.2d 846 (Minn. Ct. App. 2004).

¹⁸ <https://www.supremecourt.gov/about/constitutional.aspx>

¹⁹ Cooper v. Aaron, 358 U.S. 1 (1958)

CERTIFICATION OF BO PENG

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully submitted,

Executed on 10/26/ , 2021

By: 

Bo Peng, Petitioner, Pro Per