

Supreme Court, U.S.
FILED

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No. 21-621

In The
Supreme Court of the United States

VINCE FLAHERTY, ET AL.

Petitioners,

v.

HOLLY HILL INVESTMENTS, LLC

Respondent.

On Petition for Writ of Certiorari to the
California Court of Appeal, Second District

PETITION FOR REHEARING

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SUPREME COURT, U.S.

PETITION FOR REHEARING

Pursuant to Rule 44.2, Vince Flaherty respectfully petitions for rehearing of the Court's order denying certiorari.

CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the United States Constitution provides in relevant part: No State shall . . . deprive any person of life, liberty, or property, without due process of law.

GROUND FOR REHEARING

The original certiorari petition in this case presented the issue of the California Court's Unconstitutional Conclusive Service Presumption. Due process requires notice and an opportunity to be heard on whether service was adequate, which California's conclusive presumption of service denies. In this case, the LLC of a nationally operating off-shore investor shell company withheld the notice of entry of judgment necessary to trigger the time to appeal while that notice was not made available by the court. The Court of Appeal held: "Flaherty's declaration that he did not receive the notice of entry of judgment . . . is not sufficient to rebut the statements attested to in the proof of service." (Pet. App. 17a.) — and then barred acceptance of evidence on the adequacy of service. The result is yet another title clouded without the judicial review required by state and federal law. This sequence of events will continue to recur unless

California's no-evidence-on-presumption of service rule is set aside. One specific event that merits rehearing has occurred since the Court denied the petition for certiorari. In again reviewing the petition yesterday, it was discovered that the attorney who wrote the petition made a material allegation that the underlying docket shows as false. As the petition was not sent to Homeowner until the 11th hour, Homeowner corrected other misstatements but missed this. Homeowner could not have previously discovered this falsity, which substantially intervened with the credibility of the petition, because he is entirely consumed with filing deadlines in the quiet title action, Holly Hill Investments, LLC vs. Flaherty, 19SMCV02002 — and restraining order action Holly Hill Investments, LLC vs. Flaherty, 19STRO07920, which is on appeal, B306603. (Pet. ii.) For instance:

“Proceedings before the Court of Appeal include the March 10, 2021 Motion for Reconsideration, and sworn testimony in the form of declarations from Flaherty and two confidential Superior Court clerks attesting to personal knowledge that (1) Homeowner and the clerks did try to locate the Notice of Entry of Judgment but to no avail; and (2), the purported “judgment” of April 4, 2018, was not available to the public via the Superior Court’s online filing system until the end of July 2018. (Pet. for Recon. (Cal. Ct. App.), Decl. Flaherty; *id.* Exhs. 1 & 2.)

A letter, on Superior Court stationary and

bearing the signature of the court's Operations Manager for the Unlimited Civil Department, attests that, because of the Court's old filing system, she is "unable to determine what specific date the April 4, 2018 Notice of Entry of Judgment or Order [CIV-130] was made into the case management system." *Id.*, Exh. 3.

Despite Investments' contrary allegations, it never sent the initial entry of judgment to Homeowners. According to the clerk's declaration, the entry of judgment signed and stamped 4/3/2018 was not uploaded to the court system until 7/24/2018. Nor was it served to Homeowner by the Court which did fax it on 7/24/2018 to Investments. Homeowner repeatedly inquired to the Dept. O Clerk, Ms. Lee, if there was entry of judgment, and was told it would be sent to Investments. When Homeowner complained – the clerk said it didn't matter to whom it was sent. (Vol.12, pp.2797-2598, ¶4.)"

(Pet. 17.)

The above statements are true — however, the closing statement is not:

"To this date, the California Court of Appeal has not acted on the Petition for Reconsideration it accepted for filing."

(Pet. 18.)

This statement was obviously false, as the Court of Appeal Docket plainly shows the motion for reconsideration to accept the clerks' confidential declarations under special seal was denied the same day it was filed, 3/10/21. Moreover, this false material allegation rendered the rest of the petition suspect — would have caused any research attorney or reviewing clerk to have recommended denial — and obscured the crux of the petition — which is that California has never updated its presumption of service rule to the federal standard. Here, *there was no way for the Flaherty family to discover entry of judgment against them because of a California court's egregious withholding and then back-dating of the entry of judgment in its computer system.*¹ The fact that this is known to have occurred, from the confidential declarations of two clerks submitted for filing under

¹ As touched upon the certiorari petition, the fact that no Notice of Entry of Judgment was uploaded to the court's system nor mailed to the Homeowners by Investments, is no conspiracy theory. All one has to do is look at the Notice Designating Record and Case Information Statement in B282415 (originally Flaherty v. U. S. Bank but changed to Flaherty v. JPMorgan Chase by the Court of Appeal), to see that Homeowner waited 59 days from when the same judge, Judge Cole, could have signed the Judgment from which to appeal, and then filed the Notice of Appeal on the day before the last day, May 4, so as not to lose the right to appeal. Two days later, May 6, the Court uploaded the Notice of Entry of Judgment, one day after it could have been considered untimely if Homeowner had not appealed because he didn't have a Notice of Entry of Judgment from which to appeal (B282415, Reply Br. at pp. 9-11, id.; and S-267741, p. 6.)

special seal, should counsel the Court to intervene on the recurring issue concerning California's service presumption.

CONCLUSION

As touched upon in the certiorari petition, this case presented for the state courts a difficult question of law as to whether, in the absence of any method by which even a maximally diligent litigant could determine whether judgment has been entered, a sophisticated anonymous offshore investor, with the complicity of a court which believed it was doing what higher California courts favor — should get away with stripping a family of their right to appeal in a matter as grave as the loss of their home. This Court should accept their invitation to address this issue now, as a second national foreclosure crisis has begun.

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February 4, 2022

RULE 44.2 CERTIFICATION

As required by Supreme Court Rule 44.2, I certify that the Petition for Rehearing is limited to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented," and that the Petition is presented in good faith and not for delay. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 4, 2022

[s] Vince Flaherty

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