

No.22-1049

IN THE
SUPREME COURT OF THE UNITED STATES

R KR
Bo Peng,

Petitioner

v.

F.M. Tarbell Co.

Respondent

Supreme Court, U.S.
FILED

JUL 21 2023

OFFICE OF THE CLERK

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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SUPREME COURT, U.S.

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PETITION FOR REHEARING

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.”

REASONS FOR REHEARING

A. **Justice Hoffstadt committed obstruction of justice, violated the 14th Amendment to the U.S. Constitution**

The first appeal of this case was randomly assigned to Division 1, and has been tried for nearly half a year by division 1 that had the jurisdiction. The case law established by Division 1 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 being contrary to the law”¹ indicated that real estate salesman Bo Peng is an employee of broker employer, F.M. Tarbell and Independent contractor agreement is void.

Discovering that the outcome of this case was not the result he desired, Justice Hoffstadt of division 2, overturning the fairness mechanism of random case assignment, usurped the jurisdiction of Division 1 and unlawfully diverted this case that had been tried in the Division 1 for nearly half a year to himself to try, controlling the outcome of this case, indicating that he had an economic interest in the outcome of this case. “Under the Due Process Clause, no one can be a judge in

¹ Resnik v. Anderson & Miles (1980) 109 Cal. App. 3d 570, 573, Second District Division 1)

his or her own case, and no one is permitted to try cases where he or she has an interest in the outcome.”²

However, Justice Hoffstadt unlawfully used government power to overturn due process, not only did he not withdraw from this case, but also further controlled the three appeals firmly in his hands, making opinions that “a licensed real estate salesman is an independent contractor and independent contractor agreement is valid”, which is completely contrary to the case law of Division 1, which constitutes obstruction of justice, that is, “Interference with the orderly administration of law and justice.”³

After usurping the jurisdiction of Division 1, Justice Hoffstadt unlawfully used his governmental power, refused and did not follow the due process of the Constitution and the Law’s established “the jury trial for the 5 claims, under Labor Code §98.2 as the legal principle”, to try. Since “Judgment reached without due process of law is without jurisdiction and void,”⁴ there is no prevailing party in the case and there is no legal basis of granting attorneys fees and costs. In particular, the jurisdiction of a subject matter over which a court has otherwise no jurisdiction cannot be conferred by motion⁵, contract.⁶ Justice Hoffstadt declined the jurisdiction conferred on him by Labor Code §98.2 and through motion of CCP §631.8 and the contract of the fabricated Civil Code 1717 contract action, usurped the jurisdiction not given, the one or the other would be treason to the Constitution. “Judges have no more right

² Williams v. Pennsylvania, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016).

³ Black's Law Dictionary (11th ed. 2019), obstruction of justice

⁴ Bass v. Hoagland, 172 F.2d 205 (5th Cir. 1949).

⁵ Kurtz v. Cutler, 178 Cal. 178, 172 P. 590 (1918)

⁶ Marshall v. Phillips, 39 Cal. App. 2d 404, 103 P.2d 240 (2d Dist. 1940)

to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution".⁷ The above case Law from U.S. Supreme Court has declared that Justice Hoffstadt committed treason to the Constitution. Meantime, Justice Hoffstadt violated the restrictions on government power imposed by the 14th Amendment to the Constitution that may not deprive citizens of life, liberty, and property without due process, and that may not deny the equal protection of the law.

The judgment made by unlawfully using government power to use CCP §631.8 judicial process to try this case, and the order and the amended judgment granting defendant attorney's fees and costs through fabricating Civil Code §1717 contract action judicial process to commit fraud upon the court, are all void judgments which were rendered in violation of the Constitution, in violation of due process, without jurisdiction and in fraud upon the court.

Justice Hoffstadt unlawfully used government power, found void judgments rendered in violation of the Constitution, in violation of due process, without jurisdiction and in fraud upon the court, to be valid; he executed the void judgments under color of state law in violation of 14th Amendment to the U.S. Constitution, deprived citizen of life, liberty, and property without due process, deprived without due process appellant of wage property \$28,268.01 in the first appeal; he, in the second appeal, deprived without due process appellant of wage property \$73,639.03 by granting defendant undeserved attorney's fees and costs through Judge Linfield's fabricating Civil Code §1717 contract action; he, in the third appeal, deprived without due process appellant of wage property \$26,489.30, deprived total wage property

⁷ Cohen v Virginia, (1821), 6 Wheat.

\$128,396.34 in 3 appeals, and added Lien to the plaintiff's real property. Void judgments have no legal effects. "All persons concerned in executing such judgments or sentences are considered in law as trespassers."⁸

Appellate cases are less likely to be reviewed again by state high courts or the Supreme Court, which makes bribery more attractive at this level.⁹

The bribery of judges has a direct impact on the very essence of the judicial function, which is to deliver an independent, fair and impartial decision. The consequence is unfairness and unpredictability in the legal process from start to finish, and a systematic undermining of the rule of law.¹⁰

Labor Code §98. declares that defendant violated the law, which is accurate. Labor Code §98.2 is to resolve wage disputes between employers and employees and declares again that Bo Peng is employee of broker employer Tarbell. Tarbell's willfully failing to pay employee wages through its wrongful termination is defined by the Labor commissioner as wage theft and is defined by labor code as a crime.¹¹ Tarbell's deliberately misclassifying employee as an independent contractor is illegally evading federal and state taxes and profiting from employee's benefits, conducting unfair business competition, and obtaining a large amount of illegal

⁸ Elliott v. Lessee of Piersol, 26 U.S. 1 Pet. 328 328 (1828)

⁹ STRATOS PAHIS, Corruption in Our Courts: What It Looks Like

and Where It Is Hidden (2009) 118 THE YALE LAW JOURNAL

1900, 1923-1924

¹⁰ TI, Global Corruption Report 2007 supra P62

¹¹ Labor Code §216

gains. According to Labor code 226.8, it will be subject to tens of millions of government fines.

In order to reverse the defeat and escape huge government fines, defendant risked a crime to corrupt the Judges who posse judiciary power. Defendant used large amount of illegal gains to influence and corrupt judges in upper and lower both levels by conducting improper ex parte communication with Judges through its attorney. 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.¹² Persons with whom contact prohibited: applies to a judge or judicial officer.¹³

Corruption has a potentially infective quality and flourishes when those higher up in the hierarchical structure engage in it.¹⁴

Thus, a multi-judge corruption ring¹⁵ with Justice Hofstadt as the core, organizing and executing, and with trial court Judge Morton and Judge Linfield as members, and with the funding of defendant's large amount illegal gains, was formed.

First of all, without entering the jury trial and even without the motion, Judge Moreton unlawfully used government power to let defendant to unilaterally draft an order to exempt defendant itself from all penalties, that is, "precludes any claims by Plaintiff of punitive damages, emotional distress, lost wages or ancillary

¹² Baker Marquart LLP v. Kantor, 22 Cal. App. 5th 729, 231 Cal. Rptr. 3d 796 (2d Dist. 2018)

¹³ Witkin, Cal. Proc. 5th Trial § 233 (2020)

¹⁴ STRATOS PAHIS, *supra*, at P1924

¹⁵ *Id*

claims against Tarbell". Judges have no authority to grant immunity for unlawful acts.¹⁶ However, Judge Moreton approved the void order without changing a single word, which shows that Judge Moreton usurped the jurisdiction of jury, was highly partial to defendant, and served the economic interest of defendant, and which is also the evidence that defendant bribed the judge to trade money for power.

To remain consistent with his void order, Judge Moreton also ordered the plaintiff not to make claims or face sanctions of \$500. Unjust Judge Moreton used the court as an unjust instrument, unlawfully used his government power to grant defendant immunity for unlawful and criminal acts, and violated the plaintiff's fundamental Constitutional rights to the action and to claims.

Judge Moreton did accomplish defendant's 1st unlawful objective; he precluded all the penalties against Defendant; and he gained defendant's trust. The very next day, defendant made a 180-degree U turn in attitude, withdrawing previous commitment of willing to pay unpaid wages \$23,000 and willing to settle, further presented unlawful objectives of turning the lawsuit impossible to win, into a win and demanding \$40,000 attorney fees. The change in defendant's attitude before and after the bribe is the evidence that defendant bribed the judge.

Defendant, who overtly presented the judges the four unlawful objectives, has done its part towards consummating guilt. "When the defendant's intent is

¹⁶ S.D.—Wipf v. Hutterville Hutterian Brethren, Inc., 2013 SD 49, 834 N.W.2d 324 (S.D. 2013)

evidenced by overt acts, he or she has done his or her part towards consummating guilt.”¹⁷

In order to stop Judge Moreton's being highly partial to defendant and unlawfully using government power, plaintiff petitioned the Court of Appeal for a writ of mandate, but Justice Hoffstadt unreasonably denied it, which exposed that the Justice Hoffstadt is the core member of the corruption ring.

Due to the shelter of Justice Hoffstadt, Judge Moreton is emboldened, became more disregarding for the laws, unjustified imposed \$500 sanctions on plaintiff without due process, fabricated a jury trial re-application, committed fraud upon the court, denied the constitutionally entitled jury trial, accomplished defendant's second unlawful objective, and changed 12 jurors jury trial to a court trial presided over by him alone, and paved the way for defendant to bribe the judges to purchase judicial decisions in favor of defendant.

“This ‘‘denial of a trial by jury to one constitutionally entitled thereto constitutes a miscarriage of justice and requires a reversal of the judgment.’’”¹⁸

In the first appeal, Justice Hoffstadt not only did not overturn the judgment, but were highly partial to defendant, and by personally fabricating CCP 581c jury trial judicial process to defraud the court. Justice Hoffstadt affirmed in full and supported Judge Moreton's unconstitutional acts denying the constitutionally entitled jury trial.

¹⁷ People v. Markham, 64 Cal. 157, 161, 30 P. 620 (1883)

¹⁸ Arciero Ranches v. Meza (1993.) 17 Cal.App.4th 114, 126, 21 Cal. Rptr.2d 127

Judge Moreton's denying constitutionally entitled jury trial and Justice Hoffstadt affirmed in full are strong evidences that defendant bribed the judges.

B. Justice Hoffstadt was highly partial to defendant and enabled impunity for defendant

In the court order publishing the evidences, it was found that the plaintiff's evidences were extensively tampered with by defendant's attorney, resulted that the value of the evidences has been diminished, Defendant committed felony prescribed by the Penal code §132 and is required to go to prison for one to three years.

The Ninth Circuit has declared that reversal is “ ‘virtually automatic ’ ’ once it is established that false evidence was introduced.¹⁹

Justice Hoffstadt not only did not reverse the judgment, but also affirmed the judgment in full, and determined defendant's felony tampering with plaintiff's evidences as “re-labeling” in his appeal opinion to enable impunity for defendant, which is contrary to Penal Code §132 and Ninth Circuit's judgment, which manifested that Justice Hoffstadt is highly partial to defendant and which is also the protection that defendant obtains through bribery of a judge.

The courts may not expand the legislature's definition of a crime nor may they narrow a clear and specific definition.²⁰

¹⁹ Hayes v. Brown (9th Cir. 2005) 399 F.3d 972, 978

²⁰ People v. Powell, 5 Cal. 5th 921, 236 Cal. Rptr. 3d 316, 422 P.3d 973 (Cal. 2018)

Whenever impunity takes hold, it is never just a matter of simple quid pro quo corruption. On the contrary, impunity threatens the rule of law and the stability of republican government precisely because it both constitutes, and depends upon, a corruption of law and legal institutions.²¹

C. Justice Hoffstadt conspired with defendant to execute the evil scheme and violated the Penal Code §132

I am a licensed real estate salesman. When I joined Tarbell in 2015, the express statutes of Business and Professional Code §10132 et seq. prescribed that a licensed real estate salesman is an employee of his broker employer. And the case law clearly stated the same, See Resnik v. Anderson & Miles, *Supra*.

However, in order to evade federal and state taxes and profit from employee benefits, to engage in unfair business competition, and to obtain a large amount of illegal gains, Defendant Tarbell ignored the law, deliberately made the signing of an independent contractor agreement when joining the company as the primary condition, did not give employee the opportunity to bargain, and the employees had no choice but to sign. Contracts that are contrary to express statutes or to the policy of express statutes are illegal contracts, and any such illegality voids the entire contract.²² Thus, independent contractor agreement is void.

²¹ Elizabeth M. Iglesias, U.C. Davis Journal of International Law

and Policy, 2018

²² Green v. Mt. Diablo Hospital Dist., 207 Cal. App. 3d 63, 254 Cal.

Rptr. 689 (1st Dist. 1989).

Tarbell was originally an unscrupulous businessman, deliberately misclassified employees as independent contractors, and the signing of the independent contractor agreement as the primary condition is the unlawful acts of defendant's willful misclassification. According to the labor Code §226.8, Tarbell is subject to tens of millions dollars of huge government fines.

Defendant attorney Griffin's declaration on 9/21/21 exposed the evil scheme that Justice Hoffstadt united trial Judges, conspired with Defendant to use the void independent contractor agreement as valid to offer to the court to make false evidence, which is clearly fraud upon the court and committing the felony prescribed by Penal Code §132.

Void contract is "the equivalent of no contract at all;²³ never had any legal existence or effect, and such contract cannot in any manner have life breathed into it.²⁴

D. Driven by corruption, Justice Hoffstadt overturned due process and executed judicial tyranny

The touchstone of due process is protection of the individual against arbitrary actions of the government.²⁵ A judge's application of uniform, pre-existing procedural rules is unlike her creation of a substantive legal rule to decide a particular case-the sort of arbitrary judicial

²³ Williston, Contracts 3d ed §15; 17 Am J2d Contr § 7

²⁴ National Union Indemnity Co. v. Bruce Bros., Inc., 44 Ariz. 454, 38 P.2d 648, 652

²⁵ Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)

tyranny the Framers feared.²⁶

The arbitrary judicial tyranny that the framers feared happened on Justice Hoffstadt. He, driven by corruption, obstructed justice, unlawfully diverted this case under his control, fabricated various judicial processes to overturn due process of this case, rendered opinions in favor of defendant, completed defendant's four unlawful objectives, and finally enabled defendant to evade tens of millions of government fines, which is the kind of judicial tyranny that combines legislation and judiciary and that the framers feared.

In his confirmation hearing in 2005, Chief Justice Roberts has proposed that some cases be submitted to the U.S. Supreme Court. Here this case comes. This case was submitted to the Supreme Court 5 times (3 petitions for Certiorari, 2 petitions for rehearing). The U.S. Supreme Court does not address the constitutional issues that the framers feared. This is the 6th time that this case has been submitted to the U.S. Supreme Court.

The Supreme Court has the duty and responsibility to solve the Constitution issue that the Framers feared. So U.S. Supreme Court has the responsibility to enforce the 14th Amendment to the U.S. Constitution. No higher duty rests upon this Court than to exert its full authority to prevent all violation of the principles of the Constitution.²⁷ If it is not enforced, the supreme power of the Supreme Court will not deter the violators of 14th Amendment to the U.S. Constitution. Justice Hoffstadt unlawfully used government power, blatantly committed treason to the Constitution, and repeatedly, continuously violated 14th Amendment to the U.S. Constitution.

²⁶ 1 Wilson's Works, *supra*, at 298;

²⁷ *Downs v. Bidwell*, 182 U.S.244, 382, (1901)

CONCLUSION

The United States Supreme Court has recognized that the lack of an impartial judge is violative of the due process clause of the fourteenth amendment.²⁸

Justice Hoffstadt, driven by corruption, firmly controlled the three consecutive appeals of this case into his hands, did not follow due process to try, acted under a state law in a manner violative the Federal Constitution, violated 14th Amendment to the U.S. Constitution, unlawfully used government power, deprived without due process appellant of wage property totaling \$128,396.34 in the three consecutive appeals and added Lien to appellant's real property. Appellant was deprived of his fundamental constitutional rights, which caused great harm to appellant, and Appellant invoked the right to constitutional protection to the U.S. Supreme Court for the remedy.

Petitioner is hoping that the Supreme Court Chief Justice Roberts will fulfill his promise to the American people: "Judges and Justices are servants of the law, not the other way around." "I was right on the law, and the Government was wrong, and all that power and might would recede in deference to the rule of law." ²⁹

This petition for rehearing should be granted.

Respectfully submitted,



Bo Peng
Date: 7/21/2023

²⁸ See, e.g., *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986)

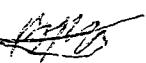
²⁹ <https://www.uscourts.gov/educational-resources/educational-activities/chief-justice-roberts-statement-nomination-process>

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 7/21/ , 2023

By: 

Bo Peng, Petitioner, Pro Per