

In the
Supreme Court of the United States

AMIT KHANNA AND MAYURY BOUNPRAKOB,

Petitioners,

v.

WESTPORT VILLAGE AT IRONGATE COMMUNITY ASSOCIATION,
Respondent.

**On Petition for a Writ of Certiorari to the
Court of Appeal of California, First Appellate District**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Petition has seven “questions” listed, but they are confusing, ambiguous, and almost unintelligible. It appears the first five are a mere regurgitation of the same questions of fact resolved by the trial court, with the final two questions criticizing the legal competency of the California appellate courts. The Petitioners questions, as best as can be interpreted, are:

1. Did Westport properly retain the services of its attorneys?
2. Was there a vote by the members of Westport to hire the attorneys?
3. Were the Petitioners properly designated as “vexatious litigants?”
4. Was Petitioners’ “motion to dismiss” properly denied?
5. Did the trial court properly grant Westport’s motion for terminating sanctions and enter their default?
6. After the default was entered, should the California Court of Appeal still have fully heard the Petitioners’ appeal?
7. Was a California Court of Appeal Justice properly designated the “Acting Presiding Judge?”

CORPORATE DISCLOSURE STATEMENT

Respondent WESTPORT VILLAGE AT IRONGATE COMMUNITY ASSOCIATION is not a publicly traded company and no public company owns 10% or greater of respondent or any parent company or subsidiary.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF THE CASE.....	2
REASONS FOR DENYING THE PETITION	6
I. The Petitioners Have Failed to Satisfy Rule 10.	6
II. The Petitioners Do Not Raise Any Unique Constitutional Issue that Would Justify the Court's Intervention.	7
III. The Petitioners' Claim of Violations of their Due Process Rights Under the Fourteenth Amendment is Contradicted by the Record.	8
CONCLUSION.....	11

TABLE OF AUTHORITIES

	Page
CASES	
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005)	2
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972)	8, 9
<i>Layne & Bowler Corp. v. Western Well Works, Inc.</i> , 261 U.S. 387 (1923)	8
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	9
<i>Rice v. Sioux City Cemetery</i> , 349 U.S. 70 (1955)	7, 8
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend XIV.....	8, 9
STATUTES	
28 U.S.C. § 1257(a)	1
JUDICIAL RULES	
Cal. Code Civ. P. 170.3	4
Cal. Code Civ. P. 391(b)(2), (3)	10
Sup. Ct. R. 10	6
Sup. Ct. R. 17.1	2



INTRODUCTION

Respondent Westport Village at Irontate Community Association (“Westport”) respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari (“Petition”) urging the Court to deny Petitioners’ Amit Khanna (“Khanna”) and Mayury Bounprakob (“Bounprakob”) Petition. The issues presented by Petitioners (who have been designated as vexatious litigants by the State of California) do not merit the Court’s attention, as they (1) are inappropriate for United States Supreme Court review under its own jurisdictional constraints and precedents, (2) fail to demonstrate the requisite good cause that warrants the exercise of the Court’s discretionary review powers and (3) the Petition consists of mostly *ad hominem* barbs against the various other courts that have addressed this action, from the trial court, to the California Court of Appeal, to the California Supreme Court.

First, the issues raised by the Petitioners fall outside the scope of this Court’s jurisdiction. Under 28 U.S.C. § 1257(a), the Court’s jurisdiction is limited to cases where the constitutionality of a federal statute, treaty, or state statute is at issue, or where a state court decision relies on federal law in a manner that presents a substantial question. The issues raised by Petitioner do not involve such questions of federal law, nor do they present any unique constitutional issue that would justify the Court’s intervention. The Court has long adhered to the principle that it is “a court of review, not of first view” (*Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7

(2005)), and it should decline to hear issues that have not been adequately developed or analyzed in the lower courts.

Second, the Petitioner has not articulated a compelling reason for the Court to exercise its discretionary power to grant the writ. To satisfy the “good cause” requirement of Supreme Court Rule 17.1, a petitioner must demonstrate that the issue presented is of national importance, has created a significant conflict among lower courts, or involves an unsettled question of federal law. Petitioner’s arguments fall short of meeting these criteria. The issues raised neither present a question of national importance nor reveal a substantial split among lower courts. Furthermore, they do not involve a novel or unsettled area of federal law that would necessitate this Court’s intervention.

In light of the foregoing reasons, Respondent respectfully requests that the Court deny Petitioner’s request for a writ of certiorari.



STATEMENT OF THE CASE

On December 7, 2016, Westport commenced the underlying action for enforcement of the covenants, conditions, and restrictions in the Westport CC&Rs and governing documents. Specifically, Westport alleged the following causes of action against the Petitioners: (1) Breach of CC&Rs, (2) Fraud, (3) Breach of Implied Covenant of Good Faith and Fair Dealing, (4) Preliminary and Permanent Injunctions to Abate Nuisance, (5) Declaratory Relief and (6) Violation of Dublin Municipal Code/Public and Private Nuisance. Appendix – B attached to the Petition

(“Pet. App.”) at p. 4. The Petitioners timely answered, through counsel, however during the discovery the Petitioners refused to submit to their depositions. Pet. App. 4. The basis of the lawsuit was that “Bruno” a dog owned by the Petitioners and kept at their home was a nuisance and being kept in violation of the CC&Rs regulating the common interest development where the Petitioners lived. *Id.*

After Petitioners refused to appear at noticed depositions, the trial court granted Westport’s motions to compel Petitioners to produce documents and provide testimony at deposition. *Id.* The Petitioners refused to schedule a deposition by August 14, 2019 as required by the trial court’s order, thus in January 2020 Westport filed a motion seeking terminating sanctions and judgment by default on the grounds that Petitioners had refused to comply with discovery demands and that Petitioners’ refusal to comply with the court’s orders constituted a misuse of the discovery process. Pet. App. 5.

The hearing on the sanctions motion was held on February 13, 2020, and in an order dated the next day, the trial court granted the motion, and authorized Westport to file a request for entry of default. Pet. App. 5.

The court noted in its order that Petitioners’ opposition to the sanctions motion rested on the argument that Westport’s counsel was not authorized to act on Westport’s behalf because such authority can be granted only by a vote of all members of Westport. The court characterized the argument as “unsupported” and “frivolous.” Pet. App. 5.

On February 27, 2020, the clerk entered the default against Petitioners. As a result of the default being entered, the trial court dropped the Petitioners' motions for summary judgment and to quash all discovery from the calendar on the basis of the Petitioners being in default. *Id.*

In March 2020, Petitioners filed a renewed motion to quash all discovery and a motion for reconsideration of all prior orders, both set for hearing in May 2020. *Id.* The trial court denied both motions in orders dated June 2, 2020. Pet. App. 6.

In March 2021 Petitioners filed a "Motion to Recuse" the trial court judge who had been presiding over the matter, the Honorable Dennis Hayashi. *Id.* The judge interpreted the document as a challenge for cause, and ordered it stricken on the ground that as defaulted parties, Petitioners could not participate in the lawsuit. *Id.*

In April 2021, Petitioners filed a statement to disqualify Judge Hayashi under section 170.3 of the Code of Civil Procedure, alleging that Judge Hayashi was biased against them. *Id.* The challenge was stricken on the grounds that Petitioners were in default and could not participate in the lawsuit. *Id.*

In May 2021, Petitioners filed another challenge for cause, which the trial court also ordered stricken. *Id.*

In June 2021, the superior court issued an order granting Westport's motion to declare Petitioners vexatious litigants and prohibit them from filing any litigation as self-represented parties without first obtaining leave from the presiding judge of the court where the litigation would be filed. Pet. App. 7.

In July 2021, Petitioners filed a motion to set aside the default that had been entered against them in February 2020. *Id.* The court heard argument in August 2021, and denied the motion as untimely. *Id.* The court also denied Petitioners' applications to vacate the prefiling orders and remove them from the vexatious litigant list. *Id.*

On September 1, 2021, a default judgment was entered in favor of Westport. *Id.* The court ruled that Westport was the prevailing party on the complaint and cross-complaint, and ordered defendants to remove Bruno from the development. *Id.* A file-endorsed copy of the judgment was served on defendants by the court on September 2, 2021. *Id.*

In December 2021, Westport filed a motion for attorney fees, which is not included in the record on appeal. *Id.* Defendants filed objections, arguing among other things that the lawsuit was filed in violation of the Westport bylaws, and therefore Westport was not entitled to recover its fees. *Id.* In an order dated February 18, 2022, the trial court granted Westport's motion for attorney fees, and awarded Westport a total of \$365,495.02 in fees and costs for prosecuting Westport's claims and defending the cross-complaint. *Id.* The court found that counsel's billing rates were reasonable, and that the time spent by the attorneys performing the tasks described in the billing records was reasonable. The court ordered Westport to file and serve the notice of entry of order, which Westport did that same day, and further ordered Westport to lodge a revised Proposed Amended Judgment, which Westport did on February 25, 2022. *Id.*

The Petitioners' filed a notice of appeal on March 3, 2022 with the First Appellate District of the California Court of Appeal as to "judgments and orders that were entered on 'various [d]ates.'" Pet. App. 8. The appeal was dismissed as to all claims except the February 18, 2022 order awarding attorney's fees which was affirmed by the Court. Pet. App. 16.

The Petitioners' writ for certiorari to the California Supreme Court filed on November 9, 2022 was denied on December 14, 2022.



REASONS FOR DENYING THE PETITION

I. The Petitioners Have Failed to Satisfy Rule 10.

The U.S. Supreme Court Rule 10 explains that "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." As to state court decisions, Rule 10 states that compelling reasons include "a state court of last resort has decided an important federal question" that is in conflict with either another state high court or of a "United States court of appeals" or "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court" or finally that a state court has "decided an important federal question in a way that conflicts with relevant decisions of this Court."

Here, Petitioners have failed to cite any federal statute, let alone cite any application of federal law by the California State courts in this litigation. That is not surprising. Indeed, this is a fairly typical breach of governing documents action

involving California property, California parties, California governing documents, and California statutes which govern common interest developments.

While the Petition rambles, jumps from point to point, and is difficult to follow, at least 24 times the Petitioners' claim that Westport's attorneys were "unauthorized" which makes clear the Petition is yet another effort to relitigate the issue of Westport's retention of its attorneys. This argument was explored by the trial court and it found it to be "unsupported" by the evidence and "frivolous." Pet. App. 5.

Unhappy with the rejection of their main if not sole theory, the Petitioners have expended an immense amount of effort to relitigate this issue. However, a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." As a consequence, the Petitioners' effort to, yet again, appeal the purported "erroneous factual finding" they disagree with must be rejected and the Petition denied.

II. The Petitioners Do Not Raise Any Unique Constitutional Issue that Would Justify the Court's Intervention.

In exercising the Court's "discretionary power of review upon writ of certiorari" the CT looks for 'special and important reasons' for granting the writ of certiorari . . ." *Rice v. Sioux City Cemetery* (1955) 349 U.S. 70, 73. "'[I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of

appeal.” *Rice*, 349 U.S. at 79 (quoting *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923)).

Thus, the primary function of the Court on a Petition for a writ of certiorari is not to decide whether the court below correctly decided the case, but to determine whether the case raises legal issues of sufficient importance to the public to warrant the Court’s review.

Petitioners fail to raise a special or important legal issue that should be decided by the Court. They vociferously disagree with the trial court’s determination that the evidence showed the Petitioners’ claim of error as to the retention of Westport’s attorney’s was “frivolous” and are wrongly attempting to have this Court reevaluate the trial court’s finding based on a nebulous and unexplained connection with the Fourteenth Amendment of the U.S. Constitution. Pet. at p. 8.

The California Court of Appeal dismissed all of the Petitioners claims as the appeal was untimely, and it did not apply any federal law or make any special or unique ruling which is attractive for resolution by the Court.

III. The Petitioners’ Claim of Violations of their Due Process Rights Under the Fourteenth Amendment is Contradicted by the Record.

The Due Process Clause of the Fourteenth Amendment provides in pertinent part that “[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . .” This Clause is not meant to be an “impenetrable barrier to the taking of a person’s possessions. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

The Court repeatedly has emphasized that “procedural due process rules are shaped by the risk of error inherent in the truth-finding process. . . .” *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). Such rules “minimize substantively unfair or mistaken deprivations of” life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. *Fuentes v. Shevin, supra*, at 81.

The litigation history found in the record shows the Petitioners were quite aware of the legal maneuverings available to them to exercise their Fourteenth Amendment Due Process rights and they did so with aplomb. The Petitioners filed a motion for summary judgment, motion to quash all discovery, and numerous motions to disqualify the trial court judge, in addition to opposing all of Westport’s discovery motions. Petitioners further moved for relief from both the terminating sanctions and the entry of default.

At no point did any of the courts complained of by the Petitioners cut off or deny the Petitioners an opportunity to be heard. But the fact is once the Petitioners voluntarily refused to participate in the discovery process and then decide to thumb their collective noses at the trial court’s orders compelling discovery, then they knew or should have known that their conduct would lead to an adverse decision. Twice the Petitioners were put on notice that their conduct was improper and an adjustment in their obstructionist strategy was needed: once when the motion to compel was filed and a second time when the motion for terminating sanctions was filed. The Petitioners are not victims of judicial malfeasance in eliminating their

opportunity to be heard, but instead are experiencing the consequences of their own conduct.

Moreover, the fact that the trial court found them to be “vexatious litigants” meaning they were found to be persons who “repeatedly relitigates or attempts to relitigate, in propria persona . . . the validity of the determination against” them or to relitigate “the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against” them is persuasive evidence they were afforded all the Due Process rights afforded to them under the law.

The definition of vexatious litigant also encompasses their conduct in repeatedly fil[ing] unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.” California Code of Civil Procedure section 391, subdivision (b) (2) and (3). This reinforces the trial court properly afforded the Petitioners their fundamental constitutional rights.



CONCLUSION

For all the reasons stated above, the Petition should be denied.

Respectfully submitted,

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