

NO. 22-7004
IN THE SUPREME COURT OF THE UNITED STATES

Amit Khanna.

Mayury Bounprakob, Amit's wife,
and Khanna's Bruno, their dog.

PETITIONERS

vs.

Michael E. Vinding (falsely
asserting that his firm
Brady & Vinding, represents
the California HOA
Westport Village at
Irongate Community Association)
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA

REPLY TO ERSATZ ATTORNEYS' OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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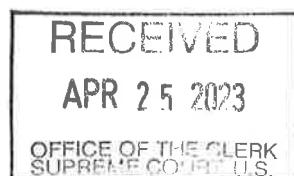


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PETITIONERS' REPLY

VINDING CONTINUES TO IGNORE THE PRIMARY REASON WHY THE PETITION SHOULD BE GRANTED.

As from the very beginning, Vinding continues here to ignore the overwhelming, dispositive, and primary issue of this matter, which is that the person identified as Plaintiff did not authorize Vinding or his firm to represent it, and did not authorize the filing of any suit against Amit Khanna, Mayury Bounprakob, and Khanna's Bruno. As stated repeatedly in the prior replies of Amit Khanna, Mayury Bounprakob, and Khanna's Bruno, the Declaration and By-laws of Westport Village at Irongate Community Association any such authorization would have had to come from the vote therefor of a majority of the Members of that Home Owners Association. As stated repeatedly in the prior replies of Amit Khanna, Mayury Bounprakob, and Khanna's Bruno, no such authorization by a majority of the Members of that Home Owners Association were given, nor even sought. So this case is nothing more than the independent, totally unauthorized action of a vindictive, Developer retaliating against Amit Khanna, and Mayury Bounprakob for complaints they made about the Developer's shoddy workmanship which resulted in substantial defects in the home they bought

from the Developer, and which the Developer repeatedly refused to remedy, instead fabricating complaints about Khanna's Bruno, and engaging attack dog Vinding to drive Amit Khanna, Mayury Bounprakob, and Khanna's Bruno out of their home in the Westport Community.

INSTEAD VINDING CONTINUES TO OBFUSCATE WITH HIS IRRELEVANT POSITINGS.

I. Contrary to Vinding's assertions, Supreme Court Rule 10 does not preclude the relief here sought which is to eliminate a case brought by attorney Vinding without the pre-requisite authorization by vote of the HOA Members, but rather at the instance of Lennar Builders, the Developer, which is precluded from doing so by the HOA Declaration and By-laws, and to return all those named as parties to *status quo ante*, By its own language, as recited in Vinding's Opposition, Rule 10 does not preclude such relief. Among the *compelling reasons* for the relief sought from the US Supreme Court in accordance with Rule 10 are that (1) the safeguards of the HOA Declaration and By-laws were ignored and, indeed, abrogated by the failure to obtain the required Member authorization, and instead proceeding based solely on the Developer's authorization, which authorization was specifically precluded by the HOA Declaration and By-laws; (2) Lowest Court Judge

Hayashi, the Appellate Court, and the California Supreme Court ignored these basic and dispositive points, thereby subjecting Petitioners to a proceeding neither authorized nor based on any facts that would permit the consequences that ensued therefrom, i.e. the abatement and banishment of the innocent Khanna's Bruno from the Westport Community; and (3) the ultimate outrage of Vinding's charging Petitioners more than \$365,000 in fees being approved by the California Courts, all contrary to many California cases, including *Aldea Dos Vientos v. Cal Atlantic Group, Inc.*, (2020) 44 Cal.App.5th 1073, and *Branches Neighborhood Corporation v. Cal Atlantic Group, Inc.* (2018) 26 Cal.App.5th 74 which have been cited and summarized in the numerous briefs filed in the California Courts to no avail there, and in the Petition filed with the Supreme Court, which should avail appropriately to remedy and the return of the named parties to status quo ante.

II. The Petition does raise unique Constitutional Issues Justifying the Intervention of the Supreme Court. As revealed in the Petition, the provisions of the Declaration and By-laws which are being violated here by the Developer and Vinding are standard form inclusions in HOA Declarations and By-laws throughout the Nation, another compelling reason for intervention for the purpose of resolution by the US Supreme Court.

As for Vinding's assertion that no federal laws are at stake, the Petition asserts that they are, citing the applicable provisions of the US Constitution as follows.

The California Supreme, Appellate, and Trial Courts ignore Petitioners' plight at their hands in collusion with Respondent Vinding contrary Amendment 14 to the United States Constitution by (a) depriving Petitioners of life, liberty, and property without due process of law, and (b) denying Petitioners equal protection of the laws in permitting them to be subjected without remedy to an illegitimate process brought and maintained by an attorney who has not been authorized by the alleged plaintiff to bring or maintain such suit contrary to the HOA's Declaration and By-Laws.

For the convenience of the Court, the relevant provisions of the Declaration and By-laws were repeated in the Memorandum and briefs filed is as follows with comment. Westport Declaration Section 5.2 K. states:

K. Contracts. The Board shall have the power to contract for goods and/or services for the Common Area, for the Units, or for the Association, subject to the limitations set forth in the Bylaws or elsewhere in this Declaration.

Application of Westport Declaration Section 5.2 N. to contracting the attorneys in this case is premised on interpreting whether the contract with Vinding for litigating this case involves (1) "alleged design or construction defects in the Project" [the innovating predicate being Owners' complaints about defects and the Owners' Memorandum in Support of Motions for Reconsideration of All Prior Orders and to Quash All Discovery and Sanctions, and Process against Bruno in retaliation therefor as asserted in numerous case documents]; (2) "facilities the Association is responsible for maintaining as provided herein" [the rules about pets being such]; (3) "matter...not resolved pursuant to the procedures" [Owners legitimately asserting examination of Bruno by experts constituting resolution, BV illegitimately asserting the opposite]; and (4) getting the Members' vote [the Property Manager admitting on behalf of Westport that this vote did not occur], Vinding necessarily silent, knowing the necessary

vote did not occur, so to gain grossly outrageous fees from his malicious prosecution and his malpractice . The Section states:

N. Litigation/Arbitration. The Board of Directors has authority to enter into a contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, only if the matter is not resolved pursuant to the procedures set forth in Article IX, and only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant.

The Relevant Provisions of the Westport By-laws state:

“7.2. Powers. The Board of Directors shall have power to:

“D. Under no circumstances may the Association cause a forfeiture or abridgment of an Owner’s right to full use and enjoyment of the Owner’s Unit on account of the failure of the Owner to comply with the provisions of the Declaration, Articles, Bylaws, or Rules except by judgment of a court or decision of an arbitrator, or on account of a foreclosure or a sale under power of sale for failure of the Owner to pay Special Assessments or Regular Assessments due or levied by the Association.

“E. Contracts: Contracts for goods or services in accordance with the Declaration and Section 7.3. A of these Bylaws.

“7.3. Prohibited Acts. The Board shall not take any of the following actions, except with the vote at a meeting of the Association, or by written ballot without a meeting pursuant to California Corporations Code § 7513, of a simple majority of the Members other than the Declarant.

A. Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Areas or the Association for a term longer than one (1) year, or notwithstanding the term, where the amount to be paid to the vendor, including, without limitation, amounts to be paid under contingent fee contracts, may reasonably be expected to exceed the sum of \$5,000 or five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the contract is signed, whichever is less, and the contract is for other than maintenance, repair, replacement or

reconstruction of one or more elements of the Common Area, with the following exceptions:" [none applicable]

There is one additional provision of the Westport Declaration which is applicable here. It is Declaration Section 10.1 which states:

"10.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles, and the Bylaws, and in such action shall be entitled to recover reasonable attorneys fees as are ordered by the Court or in arbitration."

Pursuant to this Declaration Section 10.1 right, Owners can enforce the restriction imposed on filing lawsuits and hiring attorneys by Declaration Sections and By-laws Sections set forth above. To do so is not frivolous. Indeed, such enforcement is essential to protecting all Members from the kind of outlandish case that this case is, and the outlandish costs that have been incurred and will continue to be incurred by Owners and Westport unless the Appellate Court rules in Owners favor on the basis proposed by Owners--in this case a dog barking, used illegitimately as illegitimate retaliation for Owners legitimately insisting that defects of construction be remedied; indeed, that such protection as commanded by the Westport Declaration and By-laws, as essential to precluding the horrendous harassment that Vinding has imposed on a pregnant mother, a solicitous father, their baby, and their comfort dog. Probably not a single Member vote in favor could have been, or be, obtained for filing such a case or hiring a lawyer to do so, let alone the required majority!

Clearly this meets the criteria of *Rice v. Sioux City Cemetery* (1955) 349 U.S. 70, 73, and *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923)), those cases cited by Vinding in his Opposition for his false contrary assertion that the criteria are not met here.

III. Contrary to Vinding's assertions, Petitioners' Claim of Violations of our Due Process Rights Under the Fourteenth Amendment is Confirmed by the Record. Vinding asserts that the awareness, diligence, and aplomb of Petitioners demonstrated by their filings with the California Courts conclusively establishes that Petitioners' Constitutional rights have not been violated. However, this ignores the California Courts' summary denials of any review of said filings and any opportunity to the Petitioners to be heard. Vinding misstates the sequence of events in support of his false narrative. The Petitioners had subjected themselves to the interminable harassment by Vinding's interrogatories due to the failure of their attorneys Brown and Ellis to realize that the entire proceeding had not be authorized as required by the Westport Declaration and By-laws, and that in consequence there was no legitimate Plaintiff, no legitimate engagement of Vinding, and therefor no case. Not until Petitioners' came to that realization and made their *pro se* disclosure filings to Judge Hayashi in consequence did they cease their further submissions to Vinding's harassments, that done so to avoid being deemed to have waived the assertions of lack of authorities and case in their filings. The record makes clear that Petitioners were thereafter denied any audience or relief by the California Courts. Indeed, their claims were

mischaracterized and they were inappropriately declared vexatious litigants.

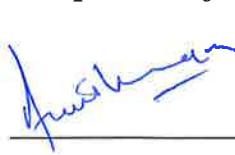
This was an egregious violation of Petitioners' Constitutional rights.

CONCLUSION

For the reasons set forth in the Petition and this Reply to Vinding's Opposition, the Supreme Court should grant the Petition and take whatever others actions in support thereof that the Supreme Court deems mete.

A case without a plaintiff cannot be permitted to proceed. The attorneys purporting to represent a plaintiff have not been hired. The case that they filed and have pursued up through the California Courts has not been authorized by majority vote of the HOA Members as required by the HOA Declaration and By-laws. Petitioners have been falsely and unconstitutionally declared vexatious litigants solely for alerting the lower courts to this lack of plaintiff, and lack of authority for attorneys and case to proceed. The egregious malicious prosecution by unauthorized attorneys condoned by Judge Hayashi, Justice Stewart, and the California Supreme Court must be stopped by the United States Supreme Court ruling that such a *faux* case must be dismissed and those named as parties, Westport, Amit Khanna, Mayury Bounprakob, and Khanna's Bruno be restored to *status quo ante* in the manner set forth in all of the Defendants', Appellants', Petitioners' pleas therefor previously. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Amit Khanna, Mayury Bounprakob, Khanna's Bruno

Date: 4/20/23