No. 23-6291 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Pietro Pasquale Antonio Sgromo
(a/k/a Peter Anthony Sgromo) — PETITIONER

vs.

Eureka Inventions LLC, Leonard Gregory Scott — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI & MANDAMUS TO

The Ninth Circuit Court of Appeals, San Francisco

PETITION FOR WRIT OF CERTIORARI

Pietro Pasquale Antonio (Peter Anthony) Sgromo

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QUESTION(S) PRESENTED

1. Does the *residential lease agreement* a contract involving interstate commerce such that it falls within the purview of the Federal Arbitration Act (the "FAA")?
2. Is the arbitration clause *residential lease agreement* between the parties void as contrary to public policy?
3. Did the Appellant waive any claims to be heard on appeal?
4. Should the Court make a criminal reference to the Department of Justice?
5. Should the Court vacate the Order confirming the arbitration award? and
6. Should the Court transfer the case back to the Superior Court of Ontario, Canada — Thunder Bay?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

9th Cir. Case No.s:	17-17117; 18-16603; 18-16762; 20-15821 22-15199; 18-16228; 18-17040; 19-15709; 19-15797.
Dist. Ct. Case No.s:	4:19-cv-08170-HSG; 4:17–cv–00205–HSG.
JAMS Case No.:	1100080798
Superior Ct. ON CANADA:	2017 ONSC 2524, COURT FILE NO.: CV-16-0529-FW

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 24, 2023.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Civ. Code, § 1940
Civil Code §1953
Civ. Code, § 3513
Federal Arbitration Act, 9 U.S.C. Sec 1
9 U.S.C. §2
9 U.S.C. §12

STATEMENT OF THE CASE

1. After about one year of living together in Appellant's San Francisco one–bedroom Apartment located at 1188 Mission St. in San Francisco CA, on or about December 2012 Appellant, Pietro Pasquale Antonio Sgromo (a/k/a Pete(r) Anthony Sgromo, or "Sgromo") and Respondent Leonard Gregory Scott ("Scott") (together the "Parties") moved into a home Scott purchased located at 637 Noe St., San Francisco 94114 located in the iconic gay village of San Francisco (the "Castro").
2. On or about February 23, 2013 the Parties entered into a *Residential Lease Agreement* drafted by Scott, which included the arbitration provision. See Appx. 5.
3. Shortly thereafter the relationship deteriorated on all levels. Scott decided he was no longer interested in a monogamous relationship and was more interested in imbibing in the underground culture of the Castro. Sgromo exercised §8 of the LTA and moved into the guest room. Id., §8.
4. For all intents and purposes the Parties relationship became that of roommates without incident until June 2014 when Scott began to associate with a promoter of such parties in the underground gay culture of San Francisco, Harry Lit (a/k/a "Castrobear Presents").
5. Unbeknownst to Sgromo Scott had become addicted to crystal methamphetamine and was given the "golden handshake" from his role as

the VP of Tax for PWCL a prominent accounting firm in San Francisco where he earned a salary of $700,000.00 a year. Id., p.14, at *53.

6. On February 2015, Sgromo survived a brutal kinfe attack defending Scott from a armed robbery from an assailant with a knife. See Appx. 6.

7. Unbeknownst to Sgromo this was a targeted event planned by Scott and Lit with the aid of Actors from the SFPD . Lit denies none of this. See Appx. 7. (Lit accuses Appellant of sending the mafia after him to which Appellant denied and answered Lit's email with the details of the targeted attempt on Appellant's life. After the response to Lit's message, Lit blocked the Appellant).

8. Following the Appellant assisting the SFDA's prosecution of the assailant, Scott falsely accused the Appellant of domestic violence three days before his permanent move back to Toronto, Canada. See Appx. 8.

9. The SFDA maliciously prosecuted the Appellant and this is clearly part of a well organized criminal enterprise that included police, prosecutors, the arbitrator and members of the judiciary. By way of example the arresting officer failed to show for the first day of trial where he was to answer why he made a private phone call from his cell 'phone to Scott— a call which appears no where in the police reports. See Appx. 8, pp.12–14.

10. But what is truly telling is that on June 16, 2015 Appellant's dog walker was attacked at gun point demanding the walker's keys. When he refused the assailants *pistol whacked* him. See Appx. 9. The telling part is the arresting

officer in the first DV against Appellant was already on the scene as was a witness who simply does not appear in the report. Id., p.8. Further, Scott's bizarre alibi text clearly shows that this was a failed attempt to stage a home invasion. Compare Id., p.9 to Id., p.10.

11. This clearly explains the *set-up* fully organized by the SFPD on July 9, 2015. Appellant quickly made bail on the DV charges and SFPD set Appellant up for another charge. The July 6 report shows that the SFPD removed the Emergency Protective Order ("EPO") from the file just minutes after Appellant made excessive bail of $50,000.00 (20 times the bail schedule). See Appx. 8, p.5, on 7/7/15 at 11:32.

12. This was a deliberate conspiracy coordinated with Scott who professed his love to Appellant to come back to the residence so he can be arrested once again to arrest him for breaking the EPO. But the real objective of that evening was to stage another home invasion to which the Appellant would be murdered. See Appx. 10, pp. 9–10. It should be noted the Appellant asked the Sheriff upon release about the EPO to which the Sheriff confirmed none on the record. This was also confirmed by Appellant's bail provider. But the record shows that Scott made a 11-minute call to the SFPD Mission Station and the very next day Appellant was arrested for breaking the EPO. Ibid.

13. The numerous false arrests, prohibitive bail of up to $300,000.00 (to which the Appellant posted twice), false accusations of substance abuse and violent behavior and malicious 18–month prosecution that followed is simply too enormous to tell here. All that is relevant is that the last SFDA dropped all charges when a new ADA was assigned to the case. See Appx. 11.

14. Appellant filed a civil action for malicious prosecution, breach of contract and other torts in Superior Court of Ontario Canada– Thunder Bay but the case was dismissed for jurisdiction with the court misapplying California Law and ordering arbitration. Appellant appealed but the Ontario Court of Appeal while acknowledging California law also misapplied the law of California. See Appx. 4.

15. JAMS misapplied its own rules (see Appx. 12) as well as California law in continuing with the arbitration and actually arbitrating the malicious prosecution when the demand for arbitration expressly excluded this from arbitration.

16. It is no coincidence that the arbitrator was neither none of the arbitrators the Appellant chose nor is it a coincidence that the arbitrator failed to disclose his ties to the SFPD. It is also no coincidence that Respondents did not forward any arbitrator choices. See Appx. 13.

17. It is also no coincidence that Judge Gilliam inserted himself in the review of the arbitration award. Judge Gilliam, removed the magistrate judge from the case, (see Appx. 14, p.9, DKT No.s: 25–6) related the case to a case to

which the Appellant was never served (not to mention binding Appellant to agreements to which he was not a party and that were expressly rescinded) (Id., DKT No.: 26); vacated the ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR DEADLINES (Id., DKT No.: 40); vacated the Appellant's motion for ADR Conference (the Docket states an ADR conference was held but this is false and the mediator has not been able to confirm it occurred and is now a JAMS mediator) (Id., DKT NO.: 45); quashed without a hearing or allowing the Appellant to reply the subpoenas issued by the arbitrator (Id., DKT No.s: 48–9); allowed Respondents to refile a late Confirmation of the Award (Id., DKT No,: 29); ignored Appellant's motion to vacate and summarily confirmed the award without a hearing.

18. It is no coincidence that Judge Gilliam in the "related case" Ordered royalties belonging to Scott but Ordered third party Bestway to pay them to the Court. The bank records of both Respondents were subpoenaed in a related case for eight (8) other license agreements between Bestway and Appellant and they clearly show the Court has not forwarded them to either of the Respondents. Clearly this is corruption. The stabbing, the malicious prosecution and these decisions are all part of a well-oiled criminal enterprise. Respondents were simply undermined by the criminal enterprise they hired. See Appx. 15.

REASONS FOR GRANTING THE PETITION

The *Residential Lease Agreement* is *not* an Agreement Involving Commerce and does not Fall within the Purview of the Federal Arbitration Act (the "FAA")

"The FAA governs arbitration agreements "involving commerce."" *Mathias v. Rent-A-Center, Inc.,* CIV. No. S-10-1476 LKK/KJM, at *6 (E.D. Cal. Sep. 15, 2010), citing 9 U.S.C. § 2; see also *Hill v. Anheuser-Busch InBev Worldwide, Inc.*, CV 14-6289 PSG (VBKx), at *1 (C.D. Cal. Nov. 26, 2014) ("[t]he Federal Arbitration Act ("FAA") governs arbitration agreements in contracts involving transactions in interstate commerce."). However, "a typical . . . residential lease does not involve a credit transaction." *Ollie v. Waypoint Homes, Inc.,* No. 14-cv-01996-YGR, at *2 (N.D. Cal. Oct. 28, 2014); see also *Laramore v. Ritchie Realty Management Co.,* 397 F.3d 544, 547 (7th Cir. 2005) ("the terms of a residential lease are often constrained by state and local laws"); *Manley v. National Auto Warranty Services*, Inc., No. 08 C 3808 (N.D. Ill. Mar. 17, 2009) (concluding that a typical residential lease was not a credit transaction as defined in §1691a(d) because it "involves a contemporaneous exchange of consideration" where the tenant's responsibility to pay the total rent due arises in installments and not all at the moment the lease is signed.) It is therefore established the *residential lease agreement* does not fall within the purview of the FAA.

In the present case, the 9th Circ. misquotes and misapplies its own precedential case law in ruling that "[t]he district court properly determined that the Federal Arbitration Act ("FAA") governs this action because the parties did not "evidence a 'clear intent' to incorporate state law rules for arbitration." See *Johnson v. Gruma Corp.,* 614 F.3d 1062, 1066–67 (9th Cir. 2010) at (citation omitted) (explaining the strong default presumption that the FAA supplies the rules for arbitration)." Respectfully, the appellate court's reliance on

Johnson that "the strong default presumption that the FAA supplies the rules for arbitration" is egregious and misplaced. In *Johnson* that very same court ruled that "agreement in this case is a contract "evidencing a transaction involving commerce" that comes within the purview of the FAA. . .[and w]hen an agreement falls within the purview of the FAA, there is a "strong default presumption . . . that the FAA, not state law, supplies the rules for arbitration[,]" *Id.,* at 1065, citing *Sovak v. Chugai Pharm. Co.,* 280 F.3d 1266, 1269 (9th Cir. 2002). It is established that the *residential lease agreement* does not fall within the purview of the FAA. The 9th Circ.'s misapplication and misquoting of its own precedence is perhaps why in the present case the court's judgement states "NOT FOR PUBLICATION." Appx [emphasis provided].

The district court further relied on Rule 20 of the JAMS Streamlined Arbitration Rules, to which the LTA cites to establish the *residential lease agreement* was bound by the FAA. Jams Streamlined Arbitration Rule 20, entitled "Enforcement of the Award" expressly states: "[p]roceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1, et seq., or applicable state law." As shall be argued next, the applicable state law makes the arbitration clause entirely null and void.

In fact, the Arbitration Clause in the *Residential Lease Agreement* is precluded by State Statute and JAMS Rules Itself

Whether an arbitration agreement is precluded by statute is an issue of law Appellate Courts review *de novo*. *Cooper v. Lavely & Singer Professional Corp.* (2014) 230 Cal.App. 4th 1, 12, 178 Cal.Rptr.3d 322.

Civil Code §1953, subdivision (a), states, "[a]ny provision of a lease or rental agreement of a dwelling by which the lessee agrees to modify or waive any of the following rights shall be void as contrary to public policy: [¶] . . . (2) His right to assert a cause of action against the lessor which may arise in the future. (3) His right to a notice or hearing required by law. (4) His procedural rights in litigation in any action involving his rights and obligations as a tenant." The chapter that includes Civil Code section 1953 applies to "all persons who hire dwelling units located within this state including tenants, lessees, boarders, lodgers, and others, however denominated." Civ. Code, § 1940, subd. (a).) "'Dwelling unit' means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household." Civ. Code, § 1940, subd. (c). "Inherent in an arbitration agreement is a waiver of any right to a jury trial." *Jaramillo v. JH Real Estate Partners, Inc.* (2003) 111 Cal.App.4th 394, 404, 3 Cal.Rptr.3d 525. Accordingly, Civil Code section 1953, subdivision (a)(4), "establishes the general rule that a tenant of residential premises cannot validly agree, in a residential lease agreement, to binding arbitration to resolve disputes regarding [their] rights and obligations as a tenant." *Jaramillo*, at p. 404.

When the Legislature declares conduct to be contrary to public policy, the rights provided are unwaivable. Civ. Code, § 3513; see also *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 101, 99 Cal.Rptr.2d 745, 6 P.3d 669 (waiver of California Fair Employment and Housing Act remedies contrary to public policy); *Bickel v. Sunrise Assisted Living,* (2012) 206 Cal.App.4th 1, 8-10, 141 Cal.Rptr.3d 586 (statutory attorney's fees and costs for elder abuse unwaivable].) Rights established for a public purpose cannot be waived through an arbitration agreement before a dispute arises. *Armendariz*, at p. 101; *Bickel*, at p. 8. Further, California Civil Code §3513 prohibits a waiver of statutory rights by private agreement where one of the primary purposes of the statute is to benefit the public. CAL. CIV. CODE § 3513.

The legislative history confirms the legislative intent in the plain–meaning construction of Civil Code section 1953. Civil Code section 1953 was enacted because it "'would help prevent the unknowing signing away of valuable rights by a tenant who may not fully understand a lease or rental agreement,'" and is "'necessary to protect tenants who generally find themselves in an inferior bargaining position.'" *Jaramillo*, supra , 111. Thus, a tenant "cannot validly agree ... to binding arbitration to resolve disputes regarding his or her rights and obligations as a tenant." *Id.*, at p. 404. *Jaramillo* and its reasoning remain valid law in California. *Harris v. Univ. Vill. Thousand Oaks, CCRC, LLC,* 49 Cal.App.5th 847 (Cal. Ct. App. 2020). *Harris*, followed *Jaramillo* when interpreting section 1953, subdivision (a)(4). The *Harris* court found section 1953, subdivision (a)(4) even applied to continuing care contracts in retirement communities and reversed an arbitrator's award. *Id.,* at pp. 856–857, 263 Cal.Rptr.3d 386.).

The Respondents' briefs do not set forth any argument the Appellant entered an agreement to arbitrate separate and independent from the *residental lease agreement* (*Williams v. 3620 W. 102nd St., Inc.,* 53 Cal.App.5th 1087, 1093 (Cal. Ct. App. 2020))— nor is the public benefit incidental to the *residential lease agreement.* And therefore, the 9th Circ.'s determination that "[t]he district court properly denied Sgromo's motion to vacate the arbitration award because the motion was time–barred. See 9 U.S.C. §12 (providing that notice of a motion to vacate an arbitration award must be served on the opposing party within three months after the award is filed or delivered)" is egregious and misplaced because his rights are unwaivable. Here, the arbitration clause was contained in a residential lease agreement and is thus void. *Reynolds v. Royal Garden Apartments, Inc.,* B298112, at *6 (Cal. Ct. App. Aug. 11, 2020). Therefore, the fact that the CAA allows 100 days to file a motion (with which the Appellant complied) is moot because the arbitration clause whether under the FAA or CAA are void as per public policy.

JAMS Streamlined Arbitration Rule 4, entitled "Conflict with Law" expressly states that "[i]f any of these Rules, or modification of these Rules agreed to by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected." Nothing in Rule 4 states or implies that the application of this rule must be brought on motion by one of the parties. Instead, it states that JAMS will adhere to the applicable law. Here the arbitration clause was null and void and JAMS should have never proceeded with the arbitration— but it negligently proceeded nonetheless.

Any Waiver in the Present Case is an Impossibility

Silent acquiescence cannot effect a valid waiver of statutory and constitutional rights. "[T]o infer that by failing to object, a party's silence can effect a waiver of fundamental rights, whether from ignorance, confusion, or other disability, . . . flies in the face of established precedent." "While any constitutional right can be waived, mere acquiescence is not a waiver; a waiver must be knowing and intelligent." *In re Laura H.,* 8 Cal.App.4th 1689, 1695 (Cal. Ct. App. 1992). *In re De Neef,* 42 Cal.App.2d 691, 694 [109 P.2d 741], is directly on point. As said in *De Neef,* ". . . primary essentials of a waiver are knowledge and intent. Before one may be deemed to have waived a right granted by statute he must be shown to have knowledge of the right and an intent to waive or forego it." See also *Record v. Indemnity Ins. Co.*, 103 Cal.App.2d 434, 445 (Cal. Ct. App. 1951); see also generally 7 Witkin, Summary of Cal. Law (8th ed. 1974) Equity, § 133, pp. 5352-5353.).

Jaramillo is directly on point here. As the *Jarmaillo* Court explained a tenant cannot, in a residential lease agreement, waive rights like "the right to conduct discovery and to have a jury trial in any affirmative action against the landlord that involves the tenant's rights or obligations." Id., pp. 403–404. And that is exactly what happened here. Neither the actual JAMS Arbitration nor the District Court held a hearing. The District Court undermined the litigation altogether. Judge Gilliam who delivered the most egregious decision in an entirely different case where service against the Appellant was defective— yet he bound the Appellant to license agreements to which the Appellant was not a party and the license agreements before that court were rescinded in their entirety. In the present case, the parties agreed to submit to a magistrate judge but Judge Gilliam inserted himself taking over the case (Appx.

14, p.9, at Dkt No.s: 25–6) vacated the case management conference (Ibid., at Dkt No.: 28; see also Id., pp.2–3), quashed the subpoenas issues by the arbitrator (Id., p.12, Dkt No.: 49) and when the Appellant demanded an ADR conference (Id., p.16) vacated that as well. The docket states that an ADR conference was held on March 16, 2020 by a court appointed mediator but no such conference was held. Instead Appellant received an email message from the mediator that the case was not appropriate for ADR. Id., p.11, at Dkt No.: 45 This did not happen and Appellant at time o ffiling has not received confirmation by the mediator or the court that this happened. (Id., pp.4–5). The district court then allowed the Respondents to file a new confirmation of the arbitration award (Id., p.10, at Dkt No.: 29) and summarily granted it (Id., p.13, at Dkt No.: 60). This type of conduct is *exactly* what legislator's sought to protect unsuspecting tenant's with inferior bargaining power under Civil Code §1953. The 9th Circ. Court's determination that it "do[es] not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal" (citing *Padgett v. Wright,* 587 F.3d 983, 985 n.2 (9th Cir. 2009)) is completely egregious and flies in the face of Legislator's intent with §1953. As *Padgett* expressly states and relevant here, "[t]here is an exception to this rule where the [question] turned on a purely legal question, rather than a disputed factual issue that went to the jury, citing *Pavon v. Swift Transp. Co., Inc.,* 192 F.3d 902, 906 (9th Cir. 1999)." *Ibid.* In the present case, the question is purely a legal question— whether under Civil Code §1953 the *arbitration residential lease agreement* is null and void. Again, the 9th Circ. is misapplying its own precedential authority.

In sum, it is irrelevant whether the FAA or the CAA applies as it is irrelevant whether either party was time barred under the FAA or CAA; as it is irrelevant whether the arbitrator—failed to disclose a required matter, exceeded his powers or failed to draw the award from the essence of the agreement because arbitration clause in the *residential lease agreement* is unenforceable and void as per public policy and Civil Code §1953.

Based on the statutes, the statutory schemes, and the legislative intent, the Court should conclude Civil Code section 1953 prohibits enforcement of a predispute arbitration provision for disputes arising from or related to the tenancy provisions of a [residential lease agreement]." *Harris*, at 856. "Because we conclude that arbitration should not have been ordered, we need not resolve the other issues raised on appeal." *Ibid.*

A Criminal Reference to the Dept. of Justice is Warranted

However "following the money" a criminal referral to the Dept. of Justice is warranted. *Estate of Stewart v. Comm'r*, 617 F.3d 148, 154–55 (2d Cir. 2010) (holding that when determining who retains "substantial present economic benefit," "[a]ll we have to do is follow the money."); see also *United States v. Wellman,* 26 F.4th 339, 350 (6th Cir. 2022) (material to the FBI's bribery investigation was to "follow the money" and ascertain the true nature of the campaign contributions to reveal whether any bribery of public officials took place. And truthful statements about the transfers of money and the reasons for those transfers would have assisted that investigation."). In the present case, the arbitrator egregiously awarded the Respondents the Appellants patents, trademarks, royalties (collectively the "Intellectual Property") and bound Appellant to Resondents business expenses when the LTA expressly states otherwise:

> "We agree that all property owned by either of us as of the date of this agreement, obtained during the agreement shall be considered to be and shall remain the separate property of each. Neither of us will have any claim to the separate property of the other absent a written agreement transferring ownership. This includes but is not limited to personal income . . . royalty income . . . business interests, legal settlements, . ." Appx-29, §1.
>
> "Greg [Scott] acknowledges that a significant portion of Pete[r Sgromo]'s income from his business Wide Eyes Marketing Ltd. (and possibly other LLC names) and that he often conducts business from home and as such will list [it] as a place of "doing business" in royalty agreements. [Scott] acknowledges that this does not give him ownership rights of any kind in Wide Eyes Marketing or any other LLC [Sgromo] owns. . . ." Ibid., §2.
>
> Neither of us shall be liable or responsible for the individual debts incurred by the other in his own name or company name." Ibid., §3.

The arbitrator took judicial notice of the Interpleader Action and vice versa. Judge Gilliam *sua sponte* related the present case to that Interpleader Action where he also awarded the Intellectual Property to Scott. While Judge Gilliam quashed the subpoenas for Respondents' bank records, in a separate case that is currently pending before the Supreme Court of Arizona, Appellant was able to obtain those bank records. See Appx. 15. Judge Gilliam ordered royalties to be paid directly to the Court but there is no record of those monies being forwarded to the Respondents. Similarily the Arbitrator ordered royalties being held in escrow to be paid to Respondents. But again, there is no such record of the Court forwarding royalties to the Respondents. Id. This now makes the violence and the malicious prosecution the Appellant faced clearly part of a broader conspiracy that was initiated by Scott and a known actor of criminal activity Harry Lit. Mr. Lit is promoter of gay events in the bars, night clubs and gay event in San Francisco. Lit's reputation of connections to organized crime precede him. Lit does not argue this. See Appx. 7.

The Conspiracy

On or about December 2014, Scott began spending an inordinate amount of time with Lit. Appellant with previous experience with Lit became suspicious that Lit and Scott purported to be attending movies whilst their car was parked opposite the lot adjacent to the theater in the private parking spot to a night club Mezzanine. Mezzanine's owner, Audrey Joseph is a staple in the night club business and also serves on the city's entertainment commission. Joseph is a known associate of Lit. Appellant became suspicious and witnessed Scott, Joseph and Lit meeting with a plain closed individual which Appellant would later identify as Lt. Ed Santos of the SFPD SVU Unit. Meanwhile, on February 13, 2015 on the advice of Eureka's counsel, Appellant assisted the filing of a claim for non–payment of royalties for two non–exclusive licenses for two patents belonging to the Appellant. Just ten (10) days later Appellant survived a brutal knife attack on February 23, 2015 *purportedly* defending Scott from a robbery by an assailant armed with a knife. The Appellant only received complete police reports on or about April 2020.

While not stated, it would seem the 9th Circ. is implying Appellant's argument regarding the 10 day statute of limitations for the Appellee's to answer his motion to vacate the award and thereby default under the CAA the argument is deemed to be admitted. But the arbitration provision in the LTA is void and unenforceable so the argument is moot. Notwithstanding and under an abundance of caution, the district court's behavior blocked the Appellant from presenting this argument. The default did not occur until 10 days after the court took jurisdiction. Appellant planned to present the argument to the district court at the case management course scheduled for March 10, 2020. See Case No.: 4:19-cv-08170-HSG,

Sgromo v. Scott et al., NorCal Dist, Dkt entry No.:18; see also Appx. 14, p.8, at Dkt No.: 18. However, on March 10, 2020 the court *sua sponte* vacated the case management conference. Id., Dkt No.: 40. The docket falsely states that an ADR conference was held on March 16, 2020 by Ms. Tamara Lange (Id., Dkt entry No.: 45) but this is false. Appellant distinctly recalls receiving an e–mail from Ms. Lange stating the case was not suitable for ADR. It should also be noted that Ms. Lange has a gross conflict here. Ms. Lange is a mediator with JAMS in San Francisco from which the Appellant is seeking to vacate an Order from that exact JAMS office. Appellant sent an email to Ms. Lange asking for evidence of such an ADR conference occurred (Id., pp.4–5) but has received no response. There was never any hearing and the district judge confirmed the award summarily. Appellant has never had his day in court. It is hard to imagine how the Appellant even had the opportunity to present the argument to the district court when his access to justice was clearly blocked. But again this is moot because the arbitration clause in the *residential lease agreement* is unenforceable and void. The remainder of the of the *residential lease agreement* however is valid.

CONCLUSION

The petition for a writ of certiorari should be granted and the case remanded back to the Ontario Superior Court of Ontario, Thunder Bay Division because there is no forum selection clause other than arbitration occurring in San Francisco. But again, the clause in the *residential lease agreement* is null and void.

Respectfully submitted,

Date: 10-19-2023