

23-749

No.

In the
Supreme Court of the United States

FILED
DEC 14 2023

OFFICE OF THE CLERK
SUPREME COURT U.S.

ORIGINAL

EDITH SUNDBY,
EDITH SUNDBY, TRUSTEE

Petitioners,

v.

JEFFREY MYERS, ET AL.,

Respondents.

On Petition For Writ of Certiorari
To the California Court of Appeal,
Fourth Appellate District, Division One

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, “as the final arbiter of the law”, this Court will “guard” the Constitution by enforcing the Amendment III due process guarantee, or permit California courts to selectively ration this right.

PARTIES TO THE PROCEEDINGS

Petitioners and Appellants are Claimants Edith Sundby and Edith Sundby, Trustee of Declaration of Trust, Trust No. 1989-1, Dated January 26, 1989.

Respondents and Appellees are Plaintiffs Jeffrey Myers and Kathleen Myers.

LIST OF PROCEEDINGS

Supreme Court of California

Case No. S281304

Jeffrey and Kathleen Myers, *Plaintiffs and Respondents* v. Edith Sundby and Edith Sundby, Trustee, *Claimants and Appellants*.

Date Petition for Review Denied: October 18, 2023.

California Court of Appeal, 4th District, Division 1

Case No. D080926

Jeffrey Myers and Kathleen Myers, *Plaintiffs and Respondents* v. Edith Sundby and Edith Sundby, Trustee, *Claimants and Appellants*.

Date of Opinion: June 30, 2023

Date Petition for Rehearing Denied: July 18, 2023

Superior Court of California, County of San Diego

Case No. 00055006-CU-UD-CTL

Jeffrey Myers and Kathleen Myers, *Plaintiffs and Respondents* v. Edith Sundby and Edith Sundby, Trustee, *Claimants and Appellants*.

Date of Order as to Edith Sundby: August 26, 2022

Date of Orders as to Edith Sundby, Trustee:
September 1, 2022

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PETITION FOR A WRIT OF CERTIORARI

Appellants Edith Sundby and Edith Sundby, Trustee petition for a writ of certiorari to review the opinion in this case of the California Court of Appeal, 4th District, Division 1.

OPINIONS BELOW

The Supreme Court of California denial of a petition for review is reproduced at Appendix A (App., *infra*, 2a), the Court of Appeal opinion at Appendix B (App., *infra*, 3a-11a), its denial of a petition for rehearing at Appendix C (App., *infra*, 12a), the appealed order of the superior court as to Edith Sundby at Appendix D (App., *infra*, 13a), and the appealed orders as to Edith Sundby, Trustee at Appendices F and G (Apps., *infra*, 23a-24a, 25a-27a).

JURISDICTION

The Supreme Court of California denied a petition for review on October 18, 2023.

This Court has jurisdiction under 28 U.S.C. § 1257(a), where any “right [is] claimed under the Constitution”.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Fifth Amendment to the United States Constitution, which is reproduced at Appendix H (App., *infra*, 28a).

INTRODUCTION

The Fifth Amendment to the United States Constitution states that no person shall be deprived of property without due-process of law. And the Fourteenth Amendment states no state shall deprive any person of property without due-process.

The Supreme Court is the only court in America stating a duty to **guard** the Constitution:

“As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as **guardian** and interpreter of the Constitution.”¹

The California Supreme Court does not similarly recognize a duty to **guard** even its own constitution.

The California Court of Appeal, Fourth District, Division One, dubbed the two appealed orders in the underlying action as *Myers II*, which it inextricably linked to *Myers I*, a case with an identical complaint. Petitioners are involved in both cases, which include nearly 400 register of action entries, without so much as a responsive pleading.

Myers I, an unlawful detainer action, was filed after a **non-lender** surprisingly and non-judicially foreclosed on Petitioners’ home.

¹ <https://www.supremecourt.gov/about/about.aspx>

Edith Sundby as trustee of her family trust, and named defendant in *Myers I*:

- Was never served a summons or complaint.
- Learned of the action after default judgment was entered and a writ issued only as to her.
- Filed a motion to vacate the default and writ, but was denied any right to seek relief *pro se, or to obtain counsel* to do so.

As such, Edith in her individual capacity then:

- Filed a claim of right to possession, but was denied the statutorily-required hearing to determine its validity.
- Was denied the ability to effectively appeal that loss of due process, because the filed claim was “moved” to a supervising judge’s chambers and not entered into the register of actions for more than seven months.

In *Myers II*, where Edith’s husband was the only named defendant (he was voluntarily dismissed early in *Myers I*), Edith in her individual capacity:

- Filed a claim of right to possession, but was denied because: (1) the automatic payment tendered with the electronic filing was not “processed” by a clerk until the following court day, and (2) the court sua sponte ruled that Edith “was merely an invitee or guest” in her own home for 20 years, because she and her husband had transferred their interest in the property to their family trust.

As such, Edith then in her trustee capacity:

- Filed a claim of right to possession, but before the statutory hearing to verify the claim defendants filed an ex parte application with a hearing the following day, and it was known that Edith would be unable to attend because she was with her husband during a surgery.
- Was further denied any due process when the application was granted, and the court ordered the sheriff to ignore its statutory duty to accept any properly presented claims to right of possession during any eviction (two were presented and refused).

None of the facts above has ever been challenged.

The property has been vacant for the 15 months since the unlawful eviction. Through this petition, Edith is asking the Court to cause the appealed orders to be reversed, and for her claims to be heard by a court that recognizes her constitutional right to due process.

None of the facts above has ever been challenged.

The property has been vacant for the 15 months since the unlawful eviction. Through this petition, Edith is asking the Court to cause the appealed orders to be reversed, and for her claims to be heard by a court that recognizes her constitutional right to due process.

STATEMENT

What appears below was presented in the petition for review to the California Supreme Court, which was summarily denied.

To distinguish the headings in the California petition, they are italicized.

No Voice

In *Myers I*, Petitioners² were not permitted any voice whatsoever in either the trial court or on appeal. The Court of Appeal opinion in *Myers I* endorsed the abhorrent trial court³ behavior of (1) denying Edith Trustee's right to counsel, and (2) *hiding* Edith's filed claim of right to possession for more than 7 months so it could not be used in *Myers I*, or now in *Myers II*. This Court's summary denial of Petition for Review S278906 encouraged an even more brazen denial of due process by the trial court whose orders are on appeal here, [which] include (1) denying Edith Trustee her statutory right to a hearing, and (2) ***ordering*** sheriffs to ignore their statutory duty to accept properly-presented claims of right to possession.

² “Edith” refers to Edith Sundby in her personal capacity. “Edith Trustee” refers to Edith Sundby in her trustee capacity of the Declaration of Trust, Trust No. 1989-1, Dated January 26, 1989 (family trust).

³ Case No. 37-2021-00041147-CU-UD-CTL (Case 41147).

Meyers I

Not having been served a summons or complaint, Edith Trustee learned that she alone was named in a default judgment and writ of possession. She filed a motion to set aside the surprise default, judgment, and writ, but the trial court denied the motion, finding that the writ was against the trust, not Edith individually, and Edith as a non-lawyer could not represent the family trust. Inexplicably, the denial was *with prejudice*, so at the time Edith Trustee first learned she could not represent the trust, she also was denied her right to seek counsel and refile the motion.

Edith then filed a claim of right to possession, which was immediately denied without the statutorily-required hearing. Remarkably, her claim was *moved to* and *held* by the supervising judge, who caused it not to be entered into the record for more than 7 months, after the *Myers I* appeal had been briefed. As such, the undisputed facts as to the superior court's actions were not even considered on appeal.

Without citing any authority, the *Myers I* panel (the same as the *Myers II* panel) found that Edith could not represent *herself* on appeal, even though the family trust had transferred all interest to Edith and her husband *before* the surprise writ issued, *before* her motion to vacate, *before* the order denying it, and *before* the notice of appeal. As such, the Court of Appeal refused to consider Edith Trustee's argument that since the trial court determined, and the Court of Appeal confirmed, that the writ was

against the trust even though she was named as trustee, that the voluntary dismissal of Dale Trustee in November 2021 was also as to the trust, and as such the case ended at that time, with all subsequent proceedings in the trial court and Court of Appeal being nullities.

Meyers II

Edith filed a claim of right to possession in the case at bar⁴. Unlike in [*Myers I*], her claim was not *hidden*, but denied by the trial court for two reasons. The first was a non-sensical finding that the required fee payment was not timely because, although all fees are automatically tendered with electronic filings, it was not processed by a clerk until the following court day. The second and equally non-sensical reason was not argued by Plaintiffs (the Myers), instead manufactured by the trial court, declaring that the family trust was the owner, and Edith merely an “invitee, licensee, guest, or trespasser” in the home she occupied for 20 years.

Given the ruling, Edith Trustee filed a claim of right to possession, paying the associated fee in person at the clerk’s office. But the next day the Myers filed an ***ex parte*** motion to strike the claim, *without a Rule 3.1202(c) factual showing*.

Despite no factual showing, and knowing Edith would be unable to appear at the next day’s *ex parte* hearing because she would be at a hospital while her

⁴ Case No. 37-2021-00055006-CU-UD-CTL (Case 55006).

husband was in surgery (*see* App. 19a), the Court not only granted the motion to strike, but also ordered “the San Diego County Sheriff, as the levying officer, [to] enforce the writ of possession of real property against any occupant or occupants notwithstanding receipt of any claim of right to possession”, in violation of Code of Civ. Proc. § 1174.3(b):

If a claim of right to possession is completed and presented to the sheriff, marshal, or other levying officer, the officer ***shall forthwith stop the eviction*** of occupants at the premises.

An aggressive and unlawful eviction occurred early the following morning. Multiple claims of right to possession were properly presented, but citing the trial court’s order, they were refused.

PETITION FOR REHEARING

A petition for rehearing was summarily denied. Because its content demonstrates the denial of due process by the Court of Appeal, it is presented below.

In its June 30, 2023 opinion (“Opinion”), which inextricably links *Myers I* and this case, the Court fails to address ANY of the FIVE issues or UNDISPUTED facts presented in Petitioners’ opening brief. Instead, the Court manufactures its own issues, facts, and arguments to support its desired outcome.

COURT'S "FACTUAL AND PROCEDURAL BACKGROUND"

A. The Court Fails to Address ANY of the FIVE Presented Issues

Petitioners presented five issues in their opening brief, all subject to de novo review.

As to Edith:

Issue 1 – What is the correct interpretation of the California Rules of Court as to the time of payment when eFiling?

Issue 2 – What is the correct interpretation of case law regarding the owner status of an express (family) trust beneficiary?

As to Edith Trustee:

Issue 3 – Can a claimant be denied a statutorily required hearing pursuant to Code of Civil Procedure Section 1174.3 after timely filing a claim of right to possession and timely paying the associated fee?

Issue 4 – If a claimant can be denied a statutorily required hearing re Issue 3, can it be considered and ordered pursuant to an ex parte application?

Issue 5 – Can a judge order a levying officer to ignore the statutory duty to accept a properly completed and presented claim of right to possession and notice of hearing pursuant to Code of Civil Procedure § 1174.3?

As addressed below, the Court creates its own facts and issues, then argues and rules for Respondents as to those facts and issues.

B. The Court Ignores Essential and Undisputed Facts

In the Opening Brief, Petitioners began their STATEMENT OF FACTS with:

A. Edith's Family Home was Foreclosed by a Non-Lender

On August 26, 2021, a Trustee's Deed Upon Sale (1 AA 14) ("Trustee's Deed") was filed asserting a foreclosure purchase of Edith's home for \$4,334,685.48 "in lawful money" by a *Grantee* that paid nothing at the sale, and was not *entitled to payment* because it had never made a loan on the property or acquired a debt, in direct violation of the California Supreme Court ruling in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 938:

"The borrower owes money not to the world at large but to a particular person or institution, and only the person or institution entitled to payment may enforce the debt by foreclosing on the security."

The Trustee's Deed has conflicting deed of trust references in a *single* sentence (1 AA 14 last ¶);

“This conveyance is made in compliance with the terms and provisions of the Deed of Trust... dated 6/27/2017... default having occurred under the Deed of Trust recorded on 9/11/2020”.

The actual lender recorded a deed of trust at closing on July 7, 2017. The fraudulent deed of trust was recorded more than three years later for the sole purpose of stealing the Property, valued in two independent appraisals in July 2021 at \$7.5 million and \$7.58 million (Case No. D080323, Exhibits Vol. 2 415, 418). The fraudulent foreclosure has denied the Sundbys more than \$3 million in equity life savings and the ability to repay the actual Lender.

Respondents did not challenge this essential fact in their Response Brief, because they cannot. As such, it is conceded. But this Court chose to ignore this foundational fact, which confirms the illegality of the unlawful foreclosure (“UD”) actions.

The Opinion falsely states:

“The Sundby Trust defaulted in the payment of a promissory note secured by a deed of trust on the property. The owner and holder of the promissory note and deed of trust recorded a notice of default, held a foreclosure sale, and sold the property to the Myerses.”

The foreclosure that forms the entire basis for these UD actions was fraudulent. The *Grantee* listed in the Trustee's Deed Upon Sale (1 AA 14), which includes Respondents, never made a loan, and is certainly not "the owner". That essential fact is the reason Respondents, with the trial court's and this Court's determined assistance, have thus far denied Petitioners any opportunity to defend the unlawful detainer actions on merit, by not allowing so much as a responsive pleading to either complaint (even though there are nearly 400 register of action entries between the two UD cases). That denies Plaintiffs' their due-process right to defend (emphasis added):

"[T]he central meaning of procedural due process is that parties whose rights are to be affected are entitled to be heard at a meaningful time and in a meaningful manner. ([See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 481, pp. 668-669.]); *Fuentes v. Shevin* (1972) 407 U.S. 67, 80 [32 L.Ed.2d 556, 569-570, 92 S.Ct. 1983]; *Orloff v. *804 Cleland* (9th Cir. 1983) 708 F.2d 372, 379.)" *People v. Sutton* (1993) 19 Cal.App.4th 795, 803.

The Court also ignores Petitioners' second fact statement, which is also *uncontested* by Respondents:

- B. Two of Twelve Named Grantee Persons and Entities Filed this Unlawful Detainer Action Seeking Possession

On December 30, 2021, two of the twelve named non-loan *Grantee* persons and entities in the fraudulent Trustee's Deed filed this action (1 AA 10) naming Edith's husband, Dale Sundby ("Dale"), as the sole defendant, even though the attached Three-Day Notice to Quit named Dale Sundby and Edith Littlefield Sundby in their trustee capacities (1 AA 19), itself a non-curable failure to meet the Code of Civil Procedure Section 1161a(b) strict requirement that "a three-day written notice to quit the property has been served upon the [named] person."

This inconvenient and conceded fact also undermines the present action's legitimacy. As stated above, Petitioners have been unlawfully denied standing, via either of the two claims of right to possession, to make such a challenge via demurrer.

The Opinion further states:

"While the prior appeals were pending, the Sundbys continued to litigate the matter. On August 10, Edith delivered another claim to right to possession to the San Diego County Sheriff."

The "prior appeals" were not pending when on August 10..." As to the *prior appeals*, a remittitur issued on May 9, 2023. Further, Petitioners are not named defendants in the action subject to this appeal (Case No. 37-2021-00055006).

The Opinion further states:

“The court also ordered the San Diego County Sheriff, as the levying officer, to proceed with enforcement of the original writ of possession as deemed amended to include the claim.”

But that statement completely omits the unlawful portion of the order as to Petitioners’ Issue 5:

Can a judge order a levying officer to ignore the statutory duty to accept a properly completed and presented Claim of Right to Possession and Notice of Hearing pursuant to Code of Civil Procedure § 1174.3?

COURT’S “DISCUSSION”

A. “The Trial Court Properly Denied Edith’s August 10 Claim”

As to Edith’s August 12 claim, and the trial court’s August 26 order, the Opinion states (emphases added):

“We conclude Edith, in her individual capacity, failed to demonstrate a valid right to possession and the trial court properly denied her August 10 claim on this ground. Accordingly, we need not address whether Edith timely paid the filing fee and deny her request for judicial notice of the trial court’s electronic filing requirements as moot.”

The appealed August 26 order only contained two reasons for denial. (App. 181-2.) One is the “mooted”

(and absurd) finding that a timely filed claim, which automatically includes the required fee (as do all electronic filings), not processed by a clerk until the following court day is untimely. The other reason is:

“In addition, the claim of possession lacks substantive merit. ‘At the hearing, the court shall determine whether there is a valid claim of possession by the claimant who filed the claim, and the court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. The court shall determine the claim to be invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser.’ Code Civ. Proc. 1174.3(d).

The terms, ‘invitee, licensee, guest, or trespasser’ are not defined in the statute, ‘but apparently refer to any occupant who cannot demonstrate a right to possession under a written or oral rental agreement with the landlord or other person in privity with the landlord -- e.g., the master tenant.’ Friedman, Garcia and Hoy, Cal. Prac. Guide: Landlord-Tenant, *supra* at ¶ 9:543.

Section 13 of the ‘CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING’ form utilized by Ms. Sundby pertains to the basis for the claim of possession, and includes the following potential categories: (a) an oral

rental agreement with the landlord; (b) a written rental agreement with the landlord; (c) an oral rental agreement with a person other than the landlord; (d) a written rental agreement with a person other than the landlord; (e) a rental agreement with the former owner who lost the property through foreclosure; or (f) other. Ms. Sundby checked the box for “other” and states: “I am and have been an owner and occupant of the property, my family home, since 2004.

Therefore, Ms. Sundby admits she is not in possession because of a rental agreement, or some other similar agreement. In addition, it is undisputed that the December 20, 2018 Quitclaim Deed vested ownership of the subject property, prior to foreclosure, in the ‘Sundby Declaration of Trust, Trust No. 1989-1, Dated January 26, 1989.’ See Declaration of Lewis R. Landau at ‘Exhibit 1.’ Thus, Ms. Sundby, in her individual capacity, did not own the property prior to foreclosure. Instead, she was merely an invitee or guest prior to the foreclosure sale that occurred on August 25, 2021. Ms. Sundby has not demonstrated a valid right to possession and the claim of right is also denied on this basis.”

To that portion of the August 26 order, Edith [in an opposition filing] argued (1 AA 177-8):

LEGAL OWNER VERSUS BENEFICIAL OWNER

“The term ‘owner’ is applied to a variety of situations, as is demonstrated by the types of owners listed in Black’s Law Dictionary. The list includes ‘beneficial owner,’ ‘legal owner,’ ‘general owner,’ ‘special owner’ and ‘limited owner.’ (Black’s Law Dict. [8th ed. 2004] at pp. 1137-1138.) A ‘beneficial’ or ‘equitable owner’ is defined as ‘[o]ne recognized in equity as the owner of something because *use and title belong to that person*, even though legal title may belong to someone else; esp., one for whom property is held in trust.’ (Id. at p. 1137, italics added; see *Miller v. Dyer* (1942) 20 Cal.2d 526, 529 [equitable owner].) In contrast, the ‘legal owner’ is ‘[o]ne recognized by law as the owner of something; esp. one who holds legal title to property for the benefit of another.’ (Id. at p. 1138, italics added; see *Parkmerced Co. v. City and County of San Francisco* (1983) 149 Cal.App.3d 1091, 1094-1095 [‘legal title’ is the antithesis of ‘equitable title’].)” *Pacific Gas and Electric Company v. Hart High-Voltage Apparatus Repair and Testing Co., Inc.* (2017) 18 Cal.App.5th 415, 427.

Legal ownership is not about having special rights or advantages, but more about certain responsibilities. A legal owner is essentially the official owner of a property whereas a beneficial owner is the person with

equitable interest, the right to enjoy or benefit from the property, including the right to occupy or enjoy any income. Black's Law Dictionary (9th ed. 2009) further confirms that Edith was a *beneficial owner*, and not 'merely an invitee or guest prior to the foreclosure sale':

Invitee – A person who has an express or implied invitation to enter or use another's premises.

Guest – A person who is entertained or to whom hospitality is extended.

Beneficial Owner – One recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust. Also termed *equitable owner*.

FIRST, in its Opinion, the Court attempts to avoid an obvious inability to defend the trial court's reasoning, by instead arguing:

"We review the result of an order, not its reasoning and thus may affirm an order on any proper legal ground regardless of the trial court's rationale. (*Goles v. Sawhney*(2016) 5 Cal.App.5th 1014, 1021; *Green v. Superior Court* (1985) 40 Cal.3d 126, 138 [It is a "settled principle of appellate review that a correct decision of the trial court

must be affirmed on appeal even if it is based on erroneous reasoning."].)

But neither authority has any application here because the appealed order itself must be "correct in law", which the August 26 order certainly is not.

The *Goles* court cites *Schabarum*, which in turn quotes *Belair* (emphasis added):

Phrased otherwise, "[i]t is established that on appeal we quote review the decision of the trial court rather than its reasoning, and thus '... a ruling or decision correct in law will not be disturbed on appeal merely because it was given for the wrong reason. If correct upon any theory of law applicable to the case, the judgment will be sustained regardless of the considerations that moved the lower court to its conclusion.'" (*Schabarum v. California Legislature* (1988) 60 Cal.App.4th 1205, 1216 [70 Cal.Rptr.2d 745], quoting *Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 568 [253 Cal.Rptr. 693, 764 P.2d 1070].)

The *Green* authority is no more helpful to the Court. In that *criminal* case, the court ruled on "inevitable discovery", which is not present here (emphases added):

“The record in this case provides full factual support for application of the doctrine of ‘inevitable discovery.’ [Citations omitted.]

To close our eyes to the clear applicability of the inevitable discovery doctrine would run contrary to the settled principle of appellate review that a correct decision of the trial court must be affirmed on appeal even if it is based on erroneous reasoning. [Citations omitted.]”

Again, the trial court did not make a “correct [in law] decision”.

SECOND, having waived aside the actual not correct in law August 26 order that is on appeal, the Court then makes the following inappropriate – and wrong – argument:

“Based on the March 21 order, *Edith as an individual*, is now named in the writ of possession as well as Edith in her capacity as trustee for the Sundby Trust.”

The Court has access to the entire record in both unlawful detainer actions, and should know that there is no such thing as “the writ”, as there are distinct and *different* writs in the two cases. (*Compare* Case D080011 App. 268-70 and D080687 App. 280-2.) Further, “Edith as an individual” has never been named in either writ (and Respondents made no such argument or filed any appendix in support thereof). Indeed, the “Writ of Possession Returned - Wholly Satisfied filed by Myers, Kathleen (Plaintiff); Myers, Kathleen; Myers, Jeffrey”, filed on September 8, 2022 (App. 295 at

ROA 153), only names Dale Sundby as an individual. (See Exhibit 2 attached herein).

The Opinion continues (emphasis added):

“By filing another third party claim to right to possession under section 1174.3 on August 10, Edith is attempting to avoid the effect of the March 21 order made in Superior Court case No. 37-2021-00041147-CU-UD-CTL. This is called a collateral attack. (*F.E.V. v. City of Anaheim* (2017) 15 Cal.App.5th 462, 471 [“A collateral attack is an attempt to avoid the effect of a judgment or order made in some other proceeding.”].) A judgment or order is subject to collateral attack if the judgment or order is void on the face of the record or was the product of extrinsic fraud. (*Ibid.*) Edith has not shown that the March 21 order is void or was the product of extrinsic fraud, therefore, it is not subject to collateral attack.”

This “collateral attack” argument is not present in the appealed order. Importantly, the San Diego Superior Court did commit extrinsic fraud by hiding Edith’s March 18 filed claim of right to possession from the register of actions for more than seven months. (*See Case D080348 1 AA 7*, which is ROA 128 in the register of actions at 1 AA 59. There is no ROA 129 (Edith’s filed claim), even though it is denied in ROA 130. The filing does not appear until November 9 (*see Exhibit 3 Notice of Confirmation of Electronic Filing*) as ROAs 168-9 (*see Exhibit 4 Register of Actions*).

As Edith argued in the February 9, 2023 petition for rehearing (at page 6) in Case D080348:

The Opinion then states (emphasis added):

“Even if Edith had followed the procedural rules for requesting that this court take new evidence, the circumstances under which we may receive new evidence are “very rare” and “*the evidence normally must enable the Court of Appeal to affirm the judgment, not lead to a reversal.*” (*Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1090.) In this case, Edith seeks admission of her declaration to reverse the trial court’s March 21 order. Accordingly, it is not proper for this court to take and consider this new evidence proffered on appeal.”

Checkmate! A trial court can commit an *illegal* and *immoral* act, then make sure discovery of the all-to obvious fact only occurs after briefing, so this Court can complicitly declare that any attempt to enter the post-judgment fact can only be “to affirm the judgment.” This is both a state and federal denial of due-process. (U.S. Const. amend. XIV; “nor shall any State deprive any person of life, liberty, or *property*, without due process of law”.)

The Opinion continues:

“Accordingly, the trial court did not abuse its discretion when denying Edith’s August 10 third party claim to right to possession on the ground it lacked substantive merit. (*Crescent*

Capital Holdings, LLC v. Motiv8 Investments, LLC (2022) 75 Cal.App.5th Supp. 1, 9 [ruling on a claim of right to possession reviewed for abuse of discretion].”

This Court knows that the appealed order paragraph “In addition, the claim of possession lacks substantive merit” was fully explained as to Code Civ. Proc. 1174.3(d), having nothing to do with a collateral attack:

“In addition, the claim of possession lacks substantive merit. ‘At the hearing, the court shall determine whether there is a valid claim of possession by the claimant who filed the claim, and the court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. The court shall determine the claim to be invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser.’ Code Civ. Proc. 1174.3(d).”

The Court further misapplies *Crescent Capital* as to an abuse of discretion standard. The issue on appeal regarding the trial court’s “invitee, licensee, guest, or trespasser” finding is presented in the Statement of Appealability section in Petitioners’ opening brief, which was not challenged by Respondents:

Issue Two – Is a settlor beneficial owner of an express (family) trust living in a trust-owned property only an invitee or guest?

Case authority presents a question of law, which is reviewed de novo. *Prigmore v. City of Redding* (2012) 211 Cal. App. 4th 1322, 1333; *Topanga and Victory Partners v. Toghia* (2003) 127 Cal.Rptr.2d 104, 106 (citing *Silver v. Boatwright Home Inspection, Inc.* (2002), 118 Cal.Rptr.2d 475, 478).

B. “The Trial Court Properly Denied the August 30 Claim”

The Opinion states (emphasis added):

“The Myerse contend the trial court properly struck and denied this claim based on her unauthorized practice of law on behalf of the Sundby Trust. As we explained in *Myers I*, Edith is not licensed to practice law in California and cannot represent the Sundby Trust on appeal in *propria persona*. (*Myers I*, *supra*, D080011.) *Myers I* constitutes the law of the case with respect to Edith’s ability to represent the Sundby Trust on appeal. Thus, the trial court properly struck and denied the August 30 claim.”

Myers I does not in any manner constitute the law of the case with respect to Edith’s ability to represent her sole beneficial interest in the trust on August 30.

FIRST, the Court surely knows that the law of the case doctrine only applies to the same case. As the California Supreme Court ruled in *Nally v. Grace Community Church*(1988) 47 Cal.3d 278, 301-302 (emphasis added):

“Under [the law of the case] doctrine, ‘the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.’ (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 737, pp. 705-707.)”

Appellate court rulings in Case Nos. D080011 and D080348, as to Case No. 37-2021-00041147-CU-UD-CTL, have no law of the case affect on this Case No. 37-2021-00055006-CU-UD-CTL.

SECOND, as the California Supreme Court ruled in *Pillsbury v. Superior Court* (1937) 8 Cal.2d 469, 472 (emphasis added):

“[T]he District Court of Appeal is the law of the case and governs its subsequent course on the undetermined issues in so far as the same facts and principles of law are concerned.”

The Court also knows from the briefs and record that “the same facts” are not present as to the August 30 order. Instead, the FACT section of the opening brief recited Edith’s opposition to Respondents’ *ex parte* application to strike or

advance and deny the claim of right to possession (1 AA 220-1):

***EDITH IS NOT ENGAGED IN THE
PRACTICE OF LAW***

Plaintiffs cite *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, which states (at 549); “[a] trustee must always act solely in the beneficiaries' interest. [Citations.]”

First, Plaintiffs do not know who may or may not represent Edith in arguing her claim. *Second*, should Edith represent herself as trustee, it would only be as to her *sole* beneficial interest as to the property at issue. Plaintiffs provided the Court a copy of the December 2021 quitclaim deed transferring all interest in the property to Dale H. Sundby and Edith Littlefield Sundby as community property. ROA 120 at 6. The Sundby family trust agreement was later amended and restated to include the following provisions (see Exhibit 1):

“Where the husband or wife transfer to the trust any portion of the husband's or wife's undivided one-half interest in community property, the husband trustee or wife trustee respectively will be the sole trustee as to the transferred portion of his or her undivided one-half interest.”

“As to any portion of the husband’s or wife’s undivided one-half interest in community property transferred to the trust, the transferring husband or wife will be the sole beneficiary.”

Subject to the provisions above, Edith Littlefield Sundby in her individual capacity transferred one-half of her undivided one-half interest in the property to the trust prior to Edith filing the claim of right to possession. *Compare* Exhibit 2 quitclaim deed notarized time with timestamps on claim ROA No. 134. As such, Edith has every right to represent her *sole* beneficial interest in the property.

After the December 2021 quitclaim deed transferred all interest in the property to Dale H. Sundby and Edith Littlefield Sundby as community property, the trust no longer had any interest in the subject property. That remained until, prior to Edith Trustee filing the claim of right to possession on August 30, she quitclaimed “One-Half of [her] Undivided One-Half Interest (25% of total)” to the trust. As such, when she filed the claim, pursuant to the amended trust agreement, Edith was the *sole* settlor, *sole* beneficiary, and *sole* trustee as to the transferred interest. As to Respondent’s unlawful *ex parte* motion, Edith Trustee was only representing her own personal interest as “sole” settlor and “sole” beneficiary as to that trust interest.

In its August 31, 2021 minute order, the trial court stated (1 AA 277) (emphases added):

Court finds good cause to grant the ex-parte application and strikes the Claim of possession application filed by Edith Sundby.

Court vacates the ex-parte set on 9/6/22. Counsel to file an order for the Sheriff forthwith.

Respondents' counsel filed an order for the Sheriff (1 AA 278-9), which the trial court signed. That order included: "1. The Court finds notice properly given and has reviewed the response filed by Mrs. Sundby." The "response filed by Mrs. Sundby" included that Edith is not engaged in the practice of law section cited above.

The unlawful order also included (emphasis added): "6. Upon receipt of the court's order, the San Diego County Sheriff, as the levying officer, shall enforce the writ of possession of real property against any occupant or occupants notwithstanding receipt of any claim of right to possession." This Court has not ruled on Petitioners' *uncontested* (therefore conceded) Issue 5:

Can a judge order a levying officer to ignore the statutory duty to accept a properly completed and presented claim of right to possession and notice

of hearing pursuant to Code of Civil Procedure § 1174.3?

CONCLUSION

The Court should rule on the actual appealed orders, and the actual issues and arguments presented by the parties in their briefs, not misrepresent essential facts and manufacture arguments to support a predetermined and preferred outcome.

As to Edith's appeal, for the reasons above the Court should reverse the August 26 order as to Edith, grant Edith's claim, and order additional proceedings.

Alternatively, the Court should reverse the order and order additional proceedings.

As to Edith Trustee's appeal, the Court should vacate the September 1 orders denying her statutory right to have the validity of her claim determined at hearing, and order additional proceedings.

REASONS FOR GRANTING THE PETITION

The Property has been vacant for the 15 months since Edith's illegal eviction. She has been denied due process at every turn.

The constitutional *guarantee* that no person can be deprived of property without due process should be absolute, not an ornament that courts selectively use or ignore to support a desired outcome.

As the *guardian* of the Constitution, this Court should protect Edith's right to due process.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari, reverse the appealed orders, and cause Edith's claims to be heard by an impartial court.

December 18, 2023.

Respectfully submitted,

/s/ Edith Sundby

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