No. _____

In the Supreme Court of the United States

RICHARD GEORGE, ET AL.,

Petitioners,

v.

TRITON PROPERTY INVESTMENTS, LLC,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

---

PETITION FOR A WRIT OF CERTIORARI

Richard George
Sandrine Clark
Pro Se Petitioners
233 Tanbridge Road
Wilmington, NC 28405
(650) 450-2633
mail@rickgeorge.com

QUESTIONS PRESENTED

The Fourteenth Amendment Equal Protection Clause requires fairness and equal treatment under the law. The practical application of this protection for *pro se* litigants has been a subject of scrutiny due to disparities in treatment and outcomes. Controlled studies with state civil court judges wherein only the presence of counsel varied (whereas other case-related factors were held constant), find that judges significantly devalue the case merits of *pro se* litigants relative to otherwise identical counseled litigants.

The questions presented are as follows:

Whether the empirical evidence of bias against, otherwise identically situated, *pro se* litigants in state courts proves the judicial intent to discriminate in violation of the Fourteenth Amendment Equal Protection Clause.

Whether refusal to give standard jury instructions central to a defendant's case violates the Seventh Amendment Right to Trial by Jury and the Fourteenth Amendment Due Process Clause.

Whether the California Tenant Protection Act that purportedly authorizes a landlord to terminate a lease agreement for "just cause" violates the Constitution's Article I sec. 10—Contract Clause when applied to leases that were in place prior to the act taking effect.

PARTIES TO THE PROCEEDING

Petitioners in this Court are Richard George and Sandrine Clark, who were appellants in the Supreme Court of California and the Court of Appeal of the State of California and defendants in the San Mateo County Superior Court of California.

Respondent in this Court is Triton Property Investments, LLC (Triton), who was the respondent in the Supreme Court of California and the Court of Appeal of the State of California and plaintiff in the San Mateo County Superior Court of California.

The Attorneys General of the State of California and other states may be intervenors under 28 U.S.C. § 2403(b) "for argument on the question[s] of constitutionality."

RELATED PROCEEDINGS

This case arises from and relates to the following proceedings in the Supreme Court of California, the Court of Appeal of the State of California and the San Mateo County Superior Court of California:

- *Triton Property Investments, LLC v. Richard George et al.*, No. S282042 (Cal. Supreme Court November 1, 2023).
- *Triton Property Investments, LLC v. Richard George et al.*, No. A163973 (Cal. Court of Appeal September 21, 2023).
- *Triton Property Investments, LLC v. Richard George et al.*, No. 21-UDL-115 (Cal. Superior Court November 4, 2021).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

INTRODUCTION

This case concerns *pro se* civil litigants and the invidious judicial bias in California and other state courts against this class of litigant that violates the Equal Protection Clause. Empirical evidence shows cases of *pro se* litigants are systematically perceived to be less meritorious even when, objectively, they do not differ and that judges rely on *pro se* stereotypes rather than evidence presented to them. (App., *infra*, 32-35.) The appellate court below cites *Nwosu v. Uba* for the proposition that "we treat self-represented litigants as we would any other party or attorney." App., *infra*, 13; *Nwosu v. Uba* 122 Cal.App.4th 1229, 1246-1247 (2004). The Ninth Circuit claims "*pro se* litigants in the ordinary civil case should not be treated more favorably than parties with attorneys" and "it is not for the trial court to inject itself into the adversary process on behalf of one class of litigant" *Jacobsen v. Filler*, 790 F.2d 1362, 1364-1365 (9th Cir. 1986). These cases were meant to preserve *neutrality* and guard against favorable treatment for *pro se* parties. The irony is, it is the *represented* parties in state courts that receive favorable treatment, as the empirical evidence shows, and courts inject on their behalf to the detriment of their *pro se* opponents. On the *lenient* end of the *pro se* spectrum, the Supreme Court has said: *pro se* submissions should be held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). And the Circuit Court went even further by saying: "This court recognizes that it has a duty to ensure that *pro se* litigants do not lose their right to a

hearing on the merits of their claim due to ignorance of technical procedural requirements." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988).

While it is important to resolve the conflicting criteria for *pro se* decision making: *neutrality* advocated by the California Court of Appeal and the Ninth Circuit; and *leniency* toward *pro se* litigants advocated by the Supreme Court and the Ninth Circuit—both positions fail to address the problem of widespread invidious judicial discrimination against *pro se* litigants as exemplified by the case here. Because they were *pro se*, the courts below, by injecting themselves into the adversary process, denied Defendants, Appellants the right to a fair jury trial and deprived them of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Petitioners here are asking this Court for a ruling that *pro se* litigants can cite to ensure their cases receive fair and equal treatment resulting in reasonable outcomes based on the merits. This case presents an ideal vehicle for such a decision. As such, the petition for a writ of certiorari should be granted and the opinion should hold along the following lines:

> The courts below, by injecting themselves into the adversary process, discriminated against the *pro se* litigants here, depriving them of their fundamental rights in violation of the Equal Protection Clause. *Jacobsen v. Filler*, 790 F.2d 1362, 1364-1365 (9th Cir. 1986); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California (App., *infra*, 1-19) affirming the trial court judgment is unpublished. The Petition for Rehearing was denied. (App., *infra*, 20.) The trial court judgment (App., *infra*, 21) was for restitution of possession and rental damages. The Supreme Court of California denied the Petition for Review. (App., *infra*, 22.)

JURISDICTION

The opinion in the Court of Appeal of the State of California was entered on August 24, 2023. A timely filed Petition for Rehearing was denied by the Court of Appeal on September 21, 2023. The trial court filed a judgment on November 4, 2021. And Petitioners' Petition for Review was denied by the Supreme Court of California on November 1, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The relevant constitutional, statutory, and regulatory provisions are reproduced in the appendix, *infra*, 23-31.

STATEMENT OF THE CASE

A. Legal Background

Written in 1787, ratified in 1788, and in operation since 1789, the United States Constitution is the world's longest surviving written charter of government[1]. Article III of the Constitution gives Congress the authority to establish the judicial power of the United States in all cases, in "Law and Equity," arising under the Constitution and provides that the supreme Court shall have appellate Jurisdiction, both as to "Law and Fact." The Judiciary Act of 1789, *An Act to Establish the Judicial Courts of the United States*, signed into law by George Washington, established: 1) the supreme court of the United States; and 2) the right of parties to "plead and manage their own causes personally." (App., *infra*, 24.) Nothing in the act says "never the twain shall meet." In fact, the first case heard by the Supreme Court, *West v. Barnes*, 2 U.S. (2 Dall.) 401 (1791), was brought by William West, a *pro se* litigant. The right of self-representation is currently codified in 28 U.S.C. § 1654 ("parties may plead and conduct their own cases personally"). *Faretta v. California*, 422 U.S. 806, 813 (1975). "All pleadings shall be so construed as to do substantial justice" and documents filed *pro se* are "to be liberally construed" and "must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

---

[1] https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm

Due process in cases brought by *pro se* litigants in state courts is a fundamental right guaranteed by the Due Process Clause of the Fourteenth Amendment. U.S. CONST. amend. XIV. The First and Seventh Amendments as made applicable to the States by the Fourteenth guarantee the Right to Petition for redress and the Right to Trial by Jury in state courts. U.S. CONST. amend. I , VII. Any alleged infringement of these fundamental rights "must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

The meaning of the Equal Protection Clause has been the subject of much debate, and inspired the well-known phrase "equal justice under the law." "[D]iscriminating against some and favoring others, is prohibited" under the Equal Protection Clause. *Yick Wo v. Hopkins*, 118 U.S. 356, 368 (1886). This clause was the basis for *Brown v. Board of Education* 347 U.S. 483 (1954), the Supreme Court decision that helped to dismantle racial segregation and *Reynolds v. Sims, supra* [malapportionment debases the right to vote], along with many other decisions rejecting discrimination against, and bigotry towards, people belonging to various groups. The principle of equal justice applied in these landmark decisions applies equally to other cases involving fundamental rights, including the right to equal justice for *pro se* litigants in state courts.

Governmental intent to discriminate is a gateway issue when scrutinizing equal protection cases. "A purpose to discriminate must be present which may be proven by systematic exclusion [] or by unequal

application of the law to such an extent as to show intentional discrimination." *Washington v. Davis*, 426 U.S. 229, 239 (1976).

"The great and primary use of a court of equity is to give relief in extraordinary cases, which are exceptions to general rules." *Federalist* No. 83, p. 376. This Court sitting as a court of Equity and Fact has the power, under Article III, to review the facts in this case and provide equitable relief based on unjust enrichment. "A person who has conferred a benefit upon another in compliance with a judgment, or whose property has been taken thereunder, is entitled to restitution if the judgment is reversed or set aside." *Holmes v. Williams*, 127 Cal.App.2d 377, 379 (1954).

B. Empirical Evidence of Judicial Bias

There has been significant recent research into judicial bias against *pro se* litigants. For example, the American Psychological Association (APA), in its 2020 study, conducted "randomized experiments with civil court judges [] wherein only the presence of counsel varied (whereas other case-related factors were held constant), [and] found that legal officials, on average, devalued the case merit of *pro se* litigants relative to otherwise identical counseled litigants." (App., *infra*, 34). The APA study found that "cases of *pro se* litigants (vs. counseled litigants) are systematically perceived to be less meritorious (though, objectively, they do not differ)" (*Id* at 207) and that judges rely on "preconceptions of *pro se* litigants rather than evidence presented to them. Even under practically perfect conditions where case information was held

constant, legal officials were affected by their preconceived notions about *pro se* litigants over available data." *Id* at 210.

The Signaling Effect of *Pro se* Status (*Signaling Effect*) study (App., *infra*, 32) found that "in the civil rights context, the mere absence of counsel sends a signal that influences the psychology of how law-trained people value *pro se* claimants and their claims. Legal officials and lawyers hold biases that operate against unrepresented parties who bring civil rights claims." *Id* at 1116. The same study reported the following:

> Several randomized controlled studies (RCTs) have sought to disentangle the causal influences of representation by randomly assigning some unrepresented claimants to receive counsel while others remained uncounseled, thereby eliminating attorney case selection as an explanation. For example, Seron et al. (2001) randomly assigned counsel to unrepresented tenants awaiting hearings in landlord-tenant cases before the Manhattan Housing Court. This study revealed a noteworthy effect of legal representation: counseled claimants were more than four times more likely than *pro se* tenants to retain possession of their apartments (Seron et al. 2001). *Id* at 1093.

C. The Present Controversy

1. The Background of the Initial Parties to the Lease Agreement

Woodside, California is a small-town, equestrian community located in Silicon Valley where both lessor, Carleen Whittelsey, and lessee, Richard George, lived prior to entering into a lease agreement for a cottage on Whittlesey's 3+ acre Woodside horse property. Both George and Whittelsey were avid equestrians who were members of the same equestrian clubs and George was a competitive endurance rider whom Whittelsey showed an active interest in supporting.

2. The Lease Agreement

In December 2016, George and Whittelsey entered into a lease agreement commencing January 1, 2017, for a cottage on Whittelsey's property. When the parties first met to discuss the lease George emphasized to Whittelsey that he was only interested in a long-term lease since he did not want to move again unless absolutely necessary. Whittelsey agreed to add a long-term rental clause to the standard lease she had prepared, with the provision that she could terminate the rental if there were an unusual circumstance, such as one of her family members needing to move into the cottage.

Having agreed to the terms, the parties signed the standard lease agreement and then met again a few days later to sign the addendum, drafted by Whittlesey, that included the provision that the rental of the cottage would only be terminated by the owner

under an unusual circumstance. After agreeing to these terms, the parties signed the addendum that contained the following landlord termination clause:

> In the unlikely event that the owner needs to terminate renting the cottage after the lease has expired, a 60 day notice will be given to the tenants from the owner.

The lease agreement also contained the following standard "earthquake" termination clause:

> If the Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty not the fault of Tenant that renders the Premises totally or partially uninhabitable, either Owner or Tenant may terminate the lease by giving the other written notice.

The agreed upon terms were thus that the owner would only terminate renting the cottage if there were an "unlikely event" or unusual circumstance, such as a family member needing to move in or damage due to an unforeseen event, such as an earthquake.

Unbeknownst to George at the time of entering into the lease, Whittelsey had always planned to sell the property and move to Carmel, California.

3. Triton, the Successor in Interest

In November 2019, Whittelsey sold the property to Plaintiff, Respondent, Triton Property Investments, LLC (Triton) who became the successor in interest to the property and thus the lease.

4. The Tenant Protection Act

On January 1, 2020, California Civil Code Section 1946 et seq., the *Tenant Protection Act* (TPA), went into effect. The TPA states that a landlord "shall not terminate a tenancy without just cause," which includes construction, taking the property off the market or when a family member needs to move into a leased housing unit. The TPA also required landlords to notify tenants by August 1, 2020, either by letter or *addendum to the lease*, that their leases were subject to the TPA.

5. Termination of the Lease

In December 2020, Triton member Derek Gaffney emailed George a 60-day termination notice and falsely claimed that the lease agreement was being terminated for planned construction when the actual reason was Triton was selling the property. Gaffney did not read the lease prior to sending the notice. George notified Gaffney that the lease had a restrictive termination clause that required an unusual circumstance prior to termination. Gaffney responded by saying George violated the terms of the lease by having Defendant, Petitioner here Sandrine Clark (Clark) living with him.

Gaffney did not notify George by certified mail as claimed in the appellate court opinion (App., *infra*, 3) nor did he notify George the lease was subject to the TPA prior to emailing the termination notice.

6. The Civil Lawsuit for Breach of Lease

On January 11, 2021, George filed and served a Breach of Lease lawsuit against Triton and its members, including Derek Gaffney, claiming that the lease was being terminated in violation of the special lease termination clause that George and Whittelsey agreed to. George's lawsuit clearly stated that Mr. Gaffney and Triton were the owners of the property.

Gaffney's June 6, 2023 verified response to special interrogatories, set one, in George's civil lawsuit says: "No [construction] Plans were submitted to the Town of Woodside by Triton Property Investments, LLC."

7. The Revised 60-day Notice

On January 26, 2021, Triton allegedly served a second 60-day Notice of Termination of Tenancy (Revised 60-day Notice) that said: "This Notice Supersedes all Previous Termination Notices"; and claimed the tenancy was being terminated under Cal. Civ. Code § 1946 et seq. (TPA) "because the owner is withdrawing the [] premises from the market." The declaration of the process server attached to the filed notice said the notice was posted, "there being no person of suitable age or discretion to be found."

8. Triton Entered into an Agreement to Sell the Property

On March 7, 2021, Triton entered into an agreement to sell the property to Natalie Szeskowski.

9. The Unlawful Detainer Complaint

On March 30, 2021, Triton filed an unlawful detainer complaint against Defendants, Petitioners, based on the Revised 60-day Notice of termination.

10. Answer to the Unlawful Detainer Complaint

Defendants' Answer to the unlawful detainer complaint included a Seventh Affirmative Defense that Triton's reliance on the TPA to terminate the lease was a violation of the U.S. Constitution Contract Clause. (App., *infra*, 38.)

11. Trial Conferences

There were several trial conferences where the trial judge exhibited bias against Defendants. For example, prior to hearing all of the relevant testimony, the judge refused a jury instruction related to the restrictive "unlikely event" owner termination clause. Defendants filed and submitted to the trial court the following proposed instruction, based on standard California jury instruction CACI 321:

> Existence of Condition Precedent Disputed
>
> Richard George ("George") claims that the contract with Triton Property Investments, LLC ("Triton") provides that he was not required to vacate unless an unlikely event occurred.
>
> George must prove that the parties agreed to this condition. If George proves this, then

> Triton must prove that an unlikely event occurred.
>
> If Triton does not prove that an unlikely event occurred then George was not required to vacate.

The trial court refused to give the jury George's proposed CACI 321 instruction, claiming: "I can tell from the writing alone under Civil Code Section 1639 there is no condition precedent." Section 1639 says: "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Title." The related § 1647 says, "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." And, § 1654 says, "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist," which was Whittelsey.

The trial court also allowed a non-standard jury instruction for service of the 60-day notice over Defendants' objection. The instruction did not include the requirement to attempt service at Defendants' place of business prior to posting. And, Defendants filed a pre-trial Motion in Limine for Unclean Hands Defense, which was granted by the court. The court agreed to hear the matter, separate from the unlawful detainer jury trial, but did not schedule a separate "unclean hands" proceeding. Normally, under California law, an equitable defense would be heard prior to a jury trial.

12. The Unlawful Detainer Jury Trial

George represented the Defendants at trial. Witnesses included:

- Carleen Whittelsey, the initial landlord
- Richard George, tenant and defendant
- Derek Gaffney, managing member of Triton
- Michael Limosana, member of Triton
- Martin Garcia, the process server
- Natalie Szeskowski, who entered into a contract to buy and subsequently did buy the property from Triton

Whittelsey testified as follows about what she meant by the term "unlikely event" in the owner termination clause:

> Q: And when you say in the unlikely event you need to terminate, do you mean that it can be only terminated if there's an earthquake?
>
> A: No. If I sold my home, if I decided my family needed to use the cottage instead, I would give a 60-day notice. (RT 3 95:3-8.)

George testified that he asked Whittelsey for a long-term lease when they first met about the lease and that Whittelsey then added the addendum to the lease that included the "unlikely event" clause; they then met a second time to go over the addendum and agreed there would have to be an unusual circumstance before Whittelsey would give a 60-day notice.

Whittelsey also testified that it was always her plan to sell the property and move to Carmel, California.

Derek Gaffney falsely testified that the lease was terminated because Triton was planning on beginning construction on the property even though Triton had no approved plans or permits and was actually planning to sell the property. Michael Limosana testified that it would take "approximately a year" after plans were submitted to the Town of Woodside to get construction permits and Gaffney testified: "I think we had finished [construction] plans around November, 2020."

Gaffney gave perjured testimony that George's civil complaint alleged that George owned the property. The following is from Gaffney's testimony:

> Q. Okay. What did Mr. George do after you told him that he could not have the extra time, he'd have to move out in 60 days?
>
> [DEREK GAFFNEY]: He filed a lawsuit for $10 million, claiming that he owned the property...
>
> MR. GEORGE: Objection. There's no evidence.
>
> THE COURT: So lack of foundation?
>
> MR. GEORGE: Yes.
>
> THE COURT: Overruled.

Gaffney also testified that Whittelsey had been trying to sell the property for "seven or eight years."

Exhibit 113 admitted at trial was a Declaration of Michael Limosana that stated:

> Triton has recently entered into an agreement to sell the property to a third party, with the third party agreeing to close the sale by mid-June 2021, after Mr. George and Ms. Clark are no longer in possession of the cottage. If the sale does not go through [], Triton would lose approximately $2.5 million in profit.

Natalie Szeskowski testified that she entered into an agreement with Triton to purchase the property around March 7, 2021 and that the sale was contingent upon Defendants vacating the premises. She also testified that she had been shown the property previously when Whittelsey had it on the market, prior to the time when George and Whittelsey entered into their lease agreement.

At trial, the process server, Martin Garcia, was asked under oath by George: "did you speak with the plaintiff?" At first, he said "yes." He then backtracked by saying: "I just told my boss," turned in the file and "that's all I do." Shortly after that testimony, during a mid-trial conference, George gave copies of Exhibit 121 (Application for Order Permitting Service by Posting and Mailing) to the trial court and plaintiff's attorney, which contained Garcia's false sworn declaration that he was "unable to locate an alternate address [for defendants] *after inquiry with plaintiff*." (italics added.) However, the trial judge, without objection from opposing counsel, refused to admit Exhibit 121 into evidence. The disallowance of this evidence was prejudicial to defendants since it would

have given the jury reason to question Garcia's testimony.

After the trial ended, the trial court abruptly announced, without notice, there would be a hearing on Defendants' Unclean Hands Motion. George asked for a continuance to bring in the attorney who wrote the motion so she could argue it. Cal. R. 3.35["Limited scope representation" is a relationship between an attorney and a person seeking legal services in which they have agreed that the scope of the legal services will be limited to specific tasks that the attorney will perform for the person.] However, the trial court refused, leaving George to argue without the opportunity to prepare. The standard notice for motions is 5 days in summary judgment proceedings. (Cal. Code Civ. Proc. § 1170.7.)

13. The Trial Court Judgment

The trial court judgment was in Triton's favor for restitution of possession and rental damages of $62,500. (App., *infra*, 21.)

14. Notice of Appeal

Defendants filed a timely Notice of Appeal from the trial court judgment.

15. The Trial Court Record on Appeal

The trial court Record on Appeal contained most of the trial court record, including the 60-day Notice, Complaint, Answer, Proposed Jury Instructions, Exhibits (both admitted and not admitted) and

Transcripts. The Record on Appeal was transmitted to the court of appeal by the trial court.

16. Appellant, Defendants' Arguments on Appeal

Appellant, Defendants' arguments on appeal were as follows:

I. The Right to Terminate the Lease did not Accrue

The precise meaning of any contract, including a lease, depends upon the parties' expressed intent, using an objective standard. *Golden West Baseball Co. v. City of Anaheim* 25 Cal.App.4th 11, 21 (1994). When there is ambiguity in the contract language, extrinsic evidence may be considered to ascertain a meaning to which the instrument's language is reasonably susceptible. *Id.* The rational interpretation of a contract requires judges to consider all credible evidence offered to prove the intention of the parties when the contract language is not unambiguous. (Cal. Civ. Code § 1647; Cal. Code Civ. Proc. § 1860.) Such evidence includes testimony as to the "circumstances surrounding the making of the agreement" so that the court can "place itself in the same situation in which the parties found themselves at the time of contracting." *Pacific Gas Elec. Co. v. G.W. Thomas Drayage Rigging Co.* 69 Cal.2d 33, 40 (1968). If the court decides the language is reasonably susceptible to a given interpretation, the court must determine what the parties intended the language to mean. *Cedars-Sinai Medical Center v. Shewry*, 137 Cal.App.4th 964, 979-80 (2006). The testimony at trial by George and Whittelsey about the termination

clause was that the rental was meant to be long-term and would not be terminated unless there was an unusual circumstance, such as a family member needing to move in. Triton did not allege any such event took place, therefore its right to terminate the agreement did not accrue.

II. Defendants' Right to Due Process was Violated

Fundamental rights are safeguarded against state interference by the due process clause of the Fourteenth Amendment. *DeJonge v. Oregon,* 299 U.S. 353 (1937); U.S. CONST. amend. XIV. The trial court violated Defendants' due process rights by failing to give the jury instruction on the central issue in their case, i.e., the interpretation of the lease termination clause. The trial court further violated Defendants' due process rights by refusing to admit into evidence the perjured declaration of the process server and by not giving fair notice of Defendants' unclean hands proceeding, thus depriving Defendants of the right to counsel. The trial court's violations of Defendants' due process rights "caused undue deprivation of Defendants' right to property."

III. Triton's Unclean Hands Bar Its Recovery

It is well established that tenants may tender an equitable defense in response to an unlawful detainer action if the defense goes to the question of possession. *Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, at 414. Such equitable defenses specifically include improper acts on behalf of the landlord. *Id.* Triton engaged in a course of eviction

based upon a false claim that it was starting construction, and sought to pursue a sham claim that defendants had violated the lease by having both partners occupy the leased unit. In fact, Triton was aware at all times of both of the occupants of the property who had been residing there at the time Triton purchased the property. A trial court, sitting as a court of equity, has discretion to invoke the unclean hands doctrine when plaintiff has engaged in such bad faith conduct. Thus, the trial court should have barred Triton's recovery under the doctrine of unclean hands, due to its bad faith conduct.

IV. Triton Violated the Mandatory Unlawful Detainer Procedures for Obtaining Possession of Real Property

A tenant is guilty of unlawful detainer when the tenant continues in possession of real property after the expiration of the term for which it is let. (Code Civ. Proc. § 1161.) The term of the lease here was until an unlikely event took place, such as a member of the owner's family needing to move in. No such event took place and, throughout the eviction process, Triton has not alleged such an event took place. Thus, the term for which the property was let did not expire and Tritons right to terminate the lease did not accrue.

Service of a 60-day notice must "strictly comply" with one of three "alternative" methods: 1) by personal service; 2) by substituted service; or 3) by post and mail service. (*Liebovich v. Shahrokhkhany*, 56 Cal.App.4th 511, 513 (1997); *Losornio v. Motta* 67 Cal.App.4th 110, 113–14 (1998).) The process server, in his sworn declaration, claimed he posted the notice

"there being no person of suitable age or discretion to be found." However, at trial he surprisingly claimed Clark was at the residence, throwing the defense off guard and indicating service of the 60-day notice was by personal service, not post and mail. The trial court subtly manipulated the jury in Triton's favor by altering the standard jury instruction to include either personal service or post and mail methods of service, a deviation from the standard, which requires the jury to consider just one method. As such, Triton did not strictly comply with the mandatory unlawful detainer procedures and the trial court erred by giving improper jury instructions.

V. Violation of the U.S. Constitution Contract Clause

As set forth in Defendants' Answer (App., *infra*, 38), U.S. CONST. art. I, sec. 10 (Contract Clause) prohibits states from passing laws that impair the obligation of contracts; Triton's legal basis for terminating the lease was Cal. Civ. Code § 1946.2, a law that went into effect 3 years after the parties entered into the lease agreement; and, as such, Triton's reliance on § 1946.2 to terminate the lease impairs its obligation under the parties' lease termination provision in violation of the Contract Clause.

17. Triton's Response Brief on Appeal

Triton acknowledged in its response brief that Whittelsey said in her testimony the lease termination clause meant "if she decided her family

needed to use the cottage, she would give a 60-day notice."

Triton's primary argument on appeal was that "The Lease was Not Perpetual." All of the cases cited by Triton to support this argument had to do with contracts that were interpreted by the courts to be perpetual and thus unenforceable, including *Zimco Restaurants v. Bartenders Union*, 165 Cal.App.2d 235 (1968) and *Ginsberg v. Gamsom* 205 Cal. App. 4th 873 (2012). None of these cases were on point since the issue in dispute was about whether the right to terminate the lease had accrued, which could have happened at any time the owner needed to terminate due to an unusual circumstance. Triton's failure to address Appellants' core arguments on appeal should have caused the appellate court to reverse the trial court's decision.

Triton's appellate brief also doubled down on Gaffney's perjured trial testimony that "[George] filed a lawsuit [] claiming that he owned the property."

18. Respondent, Plaintiff's Unjust Enrichment

Since the property was sold and appellants had no chance to recover possession on reversal, Appellants, in their reply brief and a separate appellate motion, asked the appellate court for restitution on reversal based on: 1) Triton's unjust gain of $2.5 million when it sold the property after Appellants, Defendants left; and 2) actual and projected injuries to Appellants in excess of $2.5 million.

19. The Court of Appeal Oral Argument

Appellants had counsel for oral argument in the Court of Appeal. The oral argument video is archived at https://jcc.granicus.com/player/clip/3988, starting at 1:09:06. Appellants' counsel thoroughly rebutted all of the court's arguments related to termination of the lease and fully addressed the trial court's errors related to jury instructions and evidence. During argument the presiding justice asked Appellants' counsel: "Is it true that [George] filed a case against Triton alleging that he owned [the] property?" (1:20:42.) Appellants' counsel's response was: George filed a lawsuit, but did not claim ownership of the property.

20. The Court of Appeal Opinion

Since Triton failed to address Appellants' core arguments on appeal, the appellate court, in its opinion, argued on Triton's behalf, without reference to Triton's brief.

The appellate opinion states that extrinsic evidence may be referenced "to ascertain whether it supports an interpretation to which the agreement is reasonably susceptible." (App., *infra*, 6.) It then changes the "reasonably susceptible" standard of review to an "unambiguous" standard (App., *infra*, 7) when evaluating the extrinsic evidence related to the lease termination clause at issue here.

The opinion acknowledges "George expressed his desire to rent the cottage long term." (*Id.*) The opinion, however, misinterprets Whittelsey's testimony about

the termination clause. It says "Whittelsey testified the term "unlikely event" simply indicated it may be unlikely defendants would have to move immediately after the initial one-year lease expired." (*Ibid.*) This interpretation leaves the lease addendum without effect in violation of the rules Cal. Code Civ. Proc. § 1858 [contract interpretation should give effect to all provisions]. *Estate of Jones* 82 Cal.App.5th 948, 953 (2022). The only interpretation that gives effect to all provisions is: the parties had a long-term agreement that restricted owner termination to an unlikely event.

The opinion dismisses Appellants' due process injury out of hand. (App., *infra*, 13.) The argument, as stated above, was that the trial court violated Defendants' due process rights by refusing to give the jury instruction (CACI 321 – Existence of Condition Precedent Disputed) on the central issue in their case, i.e., the lease termination clause. And *that* refusal to give the instruction "caused undue deprivation of Defendants' right to property." Without thought or consideration given to Appellants' argument, the opinion says, "[e]xamining the specifics of defendants' argument is unnecessary because they make no effort to demonstrate the asserted errors were prejudicial." (*Ibid.*) The demonstration was: But for the trial court excluding the jury instruction, defendants would not have been deprived of their rental property. The appellate opinion's failure to consider Appellants' due process injury and prejudicial error, laid out in their opening brief, is cause for reversal.

Despite Appellants' attorney correcting the presiding justice at oral argument, the opinion

included the knowingly false statement that, "[George] filed a civil case against Triton, alleging he owned the property." (App., *infra*, 3). Gaffney's perjured testimony had a clear impact on the appellate court's decision. Otherwise, it would not have brought it up at oral argument and included it in its opinion. And if it had an impact on the justices, then one can only reason it influenced the jury. Gaffney's perjured testimony defamed George's character in the eyes of the jury and the court of appeal causing prejudicial and thus reversable error.

21. George's Request to Modify the Opinion

Shortly after the appellate court issued its opinion, George sent the appellate justices a letter requesting removal of the knowingly defamatory statement that "[h]e filed a civil case against Triton, alleging he owned the property." The letter informed the justices that the lawsuit actually said, "[d]efendants [] are all owners of, or affiliated with, the Property" and "[d]efendant Derek Gaffney is [] one of the owners of the Property." Attached to the letter was a copy of George's lawsuit. The justices, however, refused the request by George. (App., *infra*, 20)["request to modify the opinion [] denied."]

George sent a similar letter to Triton's attorneys, demanding they correct the record, but they did not respond.

22. Appellants' Motion for Restitution on Reversal

In addition to asking for restitution in their reply brief, Appellants filed a Motion for Restitution on

Reversal concurrently with their Petition for Rehearing. The motion was based on Triton's $2.5 million unjust enrichment.

23. Petition for Rehearing

The Petition for Rehearing in the Court of Appeal was denied along with Appellants' Motion for Restitution of Reversal and the request to modify the opinion. (App., *infra*, 20.)

24. Petition for Review

The Petition for Review to the Supreme Court of California was denied. (App., *infra*, 22.)

REASONS FOR GRANTING THE PETITION

Discrimination against *pro se* litigants violates the Equal Protection Clause, it is ubiquitous throughout the States and therefore a general solution is needed. Using the same principles the U.S. Supreme Court applied in the landmark cases of *Brown v. Board of Education*, *Reynolds v. Sims* and *303 Creative LLC v. Elenis*, 600 U. S. 570 (2023) to ensure racial equality, voting rights and free speech, this Court has the opportunity to promote the equally fundamental right of equal justice for *pro se* litigants. This Court should grant the petition because a decision rejecting discrimination against *pro se* litigants on equal protection grounds will provide much needed precedent, binding on the States. This case is an ideal vehicle for such a decision because it exemplifies the invidious judicial discrimination by state courts against *pro se* litigants.

I. This Case Exemplifies Judicial Bias Against *Pro Se* Litigants in State Courts that Impacts Due Process and Equal Protection Rights

The Seventh Amendment guarantees the right of trial by jury in "suits in which *legal* rights [a]re to be ascertained and determined," *Curtis v. Loether*, 415 U.S. 189, 193 (1974); and is made applicable to the States by the Fourteenth. Under California law, "[a] party is entitled to have the jury instructed on each viable legal theory supported by substantial evidence if the party requests a proper instruction." *Orichian v. BMW of North America, LLC*, 226 Cal.App.4th 1322, 1333 (2014). Fundamental rights, including trial by jury, are safeguarded against state interference by the due process and equal protection clauses of the Fourteenth Amendment. *DeJonge v. Oregon,* 299 U.S. 353 (1937); *Reynolds v. Sims, supra.* Because it is the duty of the jury to determine the facts and apply those facts to the jury instructions, the jury should have been allowed to determine whether or not the parties entered into a long-term agreement that could only be terminated by an unlikely event; and, if so, whether Triton proved an unlikely event occurred. The trial court's refusal to let the jury decide whether the pre-condition to termination existed and was met violated Defendants' Seventh Amendment right to trial by jury. And denying Defendants the opportunity to guide the jury on a critical trial issue because they are self-represented infringes upon the very essence of equal protection. A court's duty to ensure equal justice is paramount, and the trial court's denial of Defendants' right to a fair trial undermined that duty.

Had the jury been allowed to decide whether there was a pre-condition to terminating the lease, the outcome would have, more-than-likely, been in Defendants' favor since it was clear, based on the testimony, that George requested a long-term lease and Whittelsey accommodated him by including the unlikely event provision in the addendum; and Triton made no claim that an unlikely event occurred.

On appeal, the standard is to "independently review claims of instructional error viewing the evidence in the light most favorable to the appellant." *Orichian v. BMW, supra.* "All pleadings shall be so construed as to do substantial justice" and documents filed *pro se* are "to be liberally construed" and "must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus, supra.* The appellate opinion claims: "we treat self-represented litigants as we would any other party or attorney." (App., *infra*, 12-13.) Not so. Normally, when two parties are represented, the Division Three court bases its opinions on the party with "the better argument." See e.g., *Bennett v. Ohio Nat'l Life Assurance Corp.*, No. A166049, 5 (Cal. Ct. App. Jun. 20, 2023)["Bennet has the better argument."] When it comes to *pro se* litigants, the court takes a different approach. If the *pro se* party has the better argument, the court intercedes to undermine the argument, by using sophisticated discriminatory techniques, such as unreasonable technical criteria, e.g.: "[e]xamining the specifics of defendants' argument is unnecessary because they make no effort to demonstrate the asserted errors were prejudicial" (App., *infra*, 13) and "[w]e have no duty to examine the record here –

defendants fail to address the *Soule* factors or explain how any instructional error resulted in a miscarriage of justice." (App., *infra*, 15.) So, not only does the court not adhere to the standards for *pro se* litigants set out in *Erickson v. Pardus*, *supra*, e.g., "do substantial justice" and "liberally construe" pleadings, it goes out of its way to discriminate against *pro se* litigants by raising new legal theories with overly-stringent standards that fail to consider the merits. *Jacobsen v. Filler, supra* ["it is not for the trial court to inject itself into the adversary process on behalf of one class of litigant"].

The appellate court cites its own opinion in *Estate of Jones*, claiming, *sua sponte*, conditions precedent generally, contain words such as "subject to" or "conditioned upon" and are "generally disfavored." (App., *infra*, 6.) Nowhere in Triton's brief are these legal theories raised. The duty of the appellate court was to weigh the arguments made by the parties, not to introduce new theories. "The rule that points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one." *United States v. Burke*, 504 U.S. 229, 246 (1992) (Scalia, J., concurring). While courts "need not render judgment on the basis of a rule of law whose nonexistence is apparent on the face of things" (*Id*), that is not the case here; conditions precedent are all-too common in contracts. There is not one reference to Triton's brief in the opinion. Instead, the opinion injects new arguments without giving Appellants the opportunity to respond.

The trial court's pervasive bias against Defendants as *pro se* litigants is an affront to the principles of fairness and justice. Every litigant, regardless of representation, is entitled to an impartial tribunal that will adjudicate the case based on the merits, free from the taint of bias. The trial court's failure to provide a fair trial due to Defendants' *pro se* status constitutes a violation of their rights to due process and equal protection.

The allowance of perjured testimony strikes at the heart of the judicial process. A fair trial demands truthfulness from all parties, and the court's decision to permit perjury over George's objection is a clear departure from the principle of fairness. This not only tainted the jury, thus denying George the opportunity to present his case on a level playing field, but also eroded the integrity of the judicial system. That integrity was further eroded when the appellate court relied on the perjured testimony at oral argument and in its opinion and then failed to correct its mistake after being notified of the mistake by George and his attorney. The opposing attorneys and the appellate court knowingly engaged in defamation, when they promoted Gaffney's perjured testimony about George claiming he owned the property in his separate case. That false statement had nothing to do with the issues in this case. The only reason it was included in the opinion was to defame George and punish him for exercising his constitutional right to petition in a separate matter. It is a Title 42 Civil Rights violation to conspire to injure a person for exercising a constitutional right. 42 U.S.C. § 1985; *Griffin v. Breckenridge*, 403 U.S. 88, (1971). Because the courts

and opposing attorneys conspired to injure George for exercising his constitutional right to petition here and in his separate action for breach of lease, they violated his Civil Rights under 42 U.S.C. § 1985.

Refusing standard jury instructions, denying evidence and counsel, condoning perjury, opinions based on *sua sponte* technical legal theories, outcomes not based on the merits and violation of Civil Rights, as occurred here, are examples of a pervasive problem of judicial discrimination against *pro se* litigants that exists throughout state courts.

II. Empirical Evidence Shows Judicial Bias Against *Pro Se* Litigants by State Court Judges is Intentional

The Equal Protection Clause protects against "sophisticated as well as simple-minded modes of discrimination." *Gomillion v. Lightfoot*, 364 U.S. 339, 342 (1960). "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens." CAL. CONST. art. I sec. 7.

Courts are not justified in treating two litigants who are similarly situated differently. Yet empirical evidence shows, cases where counseled and self-represented litigants are under the same exact circumstances consistently result in less-favorable outcomes for the self-represented party. (App., *infra*, 32-35.) As cited above, the *Signaling Effect* study reported that randomly assigned "counseled claimants were more than four times more likely" to succeed than *pro se* litigants. The pervasive unequal

application of the law against *pro se* litigants proves the intent to discriminate. "A purpose to discriminate must be present which may be proven by systematic exclusion [] or by unequal application of the law to such an extent as to show intentional discrimination." *Washington v. Davis*, *supra*, at 239. Proof that state court proceedings are purposefully discriminatory against *pro se* litigants is by "unequal application of the law to such an extent as to show intentional discrimination." *Id.* Study after study provides empirical proof of the dramatic extent of judicial bias against *pro se* litigants. This extensive unequal application of the law shows that the purpose of these judicial actions is to discriminate.

One reason judges and lawyers discriminate against *pro se* litigants is to discourage them from participating in the legal process. A comment by a lawyer participating in the *Signaling Effect* study is telling. The following response was provided when asked to explain his settlement offer:

> A settlement offer here needs to reflect the weight of the evidence and the relative weakness of Atlantic's case. However, the fact that Ms. Smith is a *pro se* plaintiff must be considered. The offer cannot be so substantial as to communicate to her that Atlantic believes she has [won]. They want to keep alive in her mind the fear that she might lose and walk away with nothing—a fear that likely would be very small if she were represented. *Signaling Effect* at 1118.

Based on empirical studies, the intent to discriminate is clear. This intent is the gateway issue to applying strict scrutiny in equal protection cases.

III. Evaluation of Cases Subject to the Equal Protection Clause

A. General Criteria for Evaluating Equal Protection Cases

Evaluation of cases under the Equal Protection Clause is subject to rigorous legal scrutiny based on established criteria, including identification of the protected class and the rights at stake. The controlling legal authority for equal protection analysis is *Washington v. Davis*, *supra*. The analysis is based on whether a law or government action creates a classification that treats certain groups differently or impacts a fundamental right. If the law discriminates based on suspect classifications such as race, ethnicity, national origin, or infringes upon fundamental rights, such as freedom of speech or voting rights, it is subject to strict scrutiny. *Reynolds v. Sims*, *supra* at 562. Laws subject to strict scrutiny must serve a compelling state interest, be narrowly tailored to achieve that interest, and be the least restrictive means available. Under strict scrutiny, the government bears the burden of proving that its action or law meets the compelling interest and narrow tailoring tests. The gateway issue in equal protection cases is the purpose and intent behind the law or government action. Discriminatory intent or a law's disparate impact on certain groups or fundamental rights without a compelling interest

must render it unconstitutional under the Equal Protection Clause.

B. Under Strict Scrutiny the Burden of Proof is on the States to Show a Compelling State Interest for Judicial Bias Against *Pro Se* Litigants

The First and Seventh Amendments as made applicable to the States by the Fourteenth guarantee the rights to petition and trial by jury in state courts. Access to courts is a fundamental right on par with free speech and arguably more fundamental than the right to vote. See, e.g., *303 Creative LLC v. Elenis*, 600 U. S. 570, 584-586 (2023); *Kramer v. Union Free School District*, 395 U.S. 621, 626-627 (1969). In *303 Creative* and in *Kramer*, the right to petition secured the right to free speech and the right to vote. Since the right to petition is "preservative of other basic civil and political rights, any alleged infringement [] must be carefully and meticulously scrutinized." *Reynolds v. Sims, supra* at 562. The purposeful judicial bias against *pro se* litigants in state courts is therefore subject to the strict scrutiny standard of review, which places the burden of proof on the States to show that their actions serve a compelling state interest, are narrowly tailored to achieve that interest, and are the least restrictive means available. Indeed, the Attorney General for the State of California should intervene here under 28 U.S.C. § 2403(b) to argue the question of constitutionality of its ongoing judicial discrimination against *pro se* litigants in order to attempt to satisfy its burden of proof.

IV. California Civ. Code § 1946.2 when Applied to Pre-existing Leases Violates the Contract Clause

"No State shall [] pass any [] ex post facto Law, or Law impairing the Obligation of Contracts." U.S. CONST. art. I, sec. 10. (Contract Clause.) It is a long-standing rule of law that "the laws which subsist at the time and place of the making of a contract [] enter into and form a part of it, as if they were expressly referred to or incorporated in its terms." *Wood v. Lovett*, 313 U.S. 362, 370 (1941). Since the parties' lease agreement commenced in 2017 and Cal. Civ. Code § 1946.2 went into effect in 2020, § 1946.2 was not a part of the agreement. And Triton did not notify George prior to emailing its termination notice on December 30, 2020, that the lease was subject to § 1946.2. As set forth in Defendants' Answer to the Complaint, the Contract Clause prohibits states from passing laws that impair the obligation of contracts. Triton's obligation under the contract was to continue renting to George until an unlikely event occurred. Triton circumvented that obligation by relying on the provision in § 1946.2 that requires "just cause" to terminate, specifically, construction and taking the property off the market. Thus, § 1946.2 was used to impair Triton's obligation to continue renting to George in violation of the Contract Clause.

V. The Questions Presented Are Important and Recurring

The majority of civil cases in the United States involve at least one *pro se* party (App., *infra*, 34); and

the empirical evidence of judicial bias against *pro se* litigants in state courts as presented herein is unequivocal. Thus, the question of whether this recurring bias violates the Equal Protection Clause is of utmost importance, especially when *pro se* parties are defendants, since an unjust award is more offensive than unjust refusal to give an award. Cicero's principle to "never lodge a capital charge against an innocent person" and to "not be overscrupulous about defending a guilty person" applies. *De oficiis* 2.51 (App. 39). Federal district courts, where *pro se* defendants are four times more likely to prevail than *pro se* plaintiffs, appear to be somewhat cognizant of this principle; however, represented plaintiffs are still six times more likely to prevail over *pro se* defendants, whereas when both parties are represented the chances of prevailing are about 50/50. The following table from *Empirical Patterns of Pro Se Litigation in Federal Courts,* University of Chicago Law Review (App., *infra*, 36) shows *pro se* versus represented civil outcomes.

Judgment For	Plaintiff Pro Se	Defendant Pro Se	Both Represented
Plaintiff	4%	86%	51%
Defendant	96%	14%	49%

Outcomes of Cases Reaching Final Judgment for Plaintiff or Defendant, Pro Se versus Represented Litigants, 1998–2017

The opportunity for judicial discrimination at the state level is far greater since the majority of cases in state courts involve a *pro se* litigant, compared to about 11-12% in civil cases at the federal level. *Ibid.*

State court discrimination against *pro se* Petitioners here, and others similarly situated, deprives this class of litigants of their right to equal protection. These litigants have a substantial interest in shaping state court decisions because they are significantly affected by those decisions. All members of the community have an interest in the quality and integrity of the judicial system. Full jury deliberation is essential to uphold that interest. Debasing the jury's role, as happened here, not only degrades the quality and integrity of the judiciary, but it undermines the duty of all members of the community to participate in the judicial process.

VI. This Case Is an Ideal Vehicle to Resolve the Questions Presented

The empirical studies cited here show without question that state courts stereotype and discriminate against litigants based solely on their *pro se* class membership. The lower courts' discrimination here violated the Equal Protection Clause by debasing the *pro se* litigants' rights to petition and jury trial, just as the plaintiffs' right to vote was debased in *Reynolds v. Sims, supra.* Faith in Almighty God, the Founders' wisdom and the Constitution fuel hope that this Court will use the case at hand to promote equal justice for *pro se* litigants. This case is an ideal vehicle for that purpose since many significant elements of judicial bias are present. It provides a unique opportunity to establish principles of equal justice for *pro se* litigants, based on merit, not bias or unreasonable standards meant to frustrate these litigants. A holding by this Court that judicial bias against *pro se* Defendants,

Appellants here violated the Equal Protection Clause would send a clear message to the State courts that *pro se* discrimination is unconstitutional. And a further holding that judges should give *the benefit of the doubt* to *pro se* litigants, especially when they are defendants, would be appropriate to level the playing field and address past discrimination.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard George

Sandrine Clark

Pro Se Petitioners

233 Tanbridge Road
Wilmington, NC 28405
(650) 450-2633
mail@rickgeorge.com

JANUARY 17, 2024

VERIFICATION

I, Petitioner Richard George, declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of January, 2024

Richard George

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

Signed and sworn to (or affirmed) before me on this 16th day of January, 2024, by

Richard George,

who produced identification as follows:

N.C. Drivers License.

KAROLYN HARRIS
Notary Public, North Carolina
New Hanover County
My Commission Expires
03/05/2028

Signature of Notary Public

APPENDIX

APPENDIX: TABLE OF CONTENTS

APPENDIX A

No. A163973
California Court of Appeals
First District, Third Division
Triton Prop. Invs. v. George
Decided Aug 24, 2023
https://casetext.com/case/triton-prop-invs-v-george

Opinion

A163973

08-24-2023

TRITON PROPERTY INVESTMENTS, LLC, Plaintiff and Respondent, v. RICHARD GEORGE et al., Defendants and Appellants

Rodríguez, J.

NOT TO BE PUBLISHED

(San Mateo County Super. Ct. No. 21UDL00115)

Rodríguez, J.

Defendants Richard George and Sandrine Clark, representing themselves, appeal from a jury verdict in an unlawful detainer action. Triton Property Investments, LLC (Triton) notified defendants it was terminating their lease to a rental cottage because it was taking the property off the rental market. Defendants refused to leave; they argued the lease agreement expressly allowed termination only in an

unlikely event. A jury found in Triton's favor, restored possession to it, and awarded $62,500 in reasonable rental damages for a seven-month holdover. On appeal, defendants make several challenges to the unlawful detainer judgment: they argue the lease agreement could not be terminated as a matter of law; Triton did not comply with its obligations for providing notice of termination under the Tenant Protection Act of 2019 (Act) (Civ. Code, § 1946.2 et seq.; undesignated statutory references are to this code); the trial court made several erroneous rulings; and the damages award is excessive. We affirm.

BACKGROUND[1]

Carleen Whittelsey owned property in Woodside consisting of one main house and two cottages. In 2016, Whittelsey leased a cottage to George and his then-girlfriend for a fixed term of one year. When that term expired, the lease converted to a month-to-month tenancy. George was required to provide notice 60 days before terminating the agreement after the initial lease period expired. The lease also provided, "[i]n the unlikely event that the owner needs to terminate renting the cottage after the lease has

---

[1] While this appeal was pending, defendants filed a motion to strike portions of Triton's brief, arguing it refers to evidence outside the record. (Cal. Rules of Court, rule 8.204(e).) We deny the motion. The objectionable references were sourced from witness testimony presented at trial, not documents the parties stipulated to excluding from evidence. While defendants also seek to strike testimony they assert is false, they fail to demonstrate this is a proper basis for striking portions of a brief. (*Ibid.*)

expired, a 60 day notice will be given to the tenants from the owner."

Triton, a real estate investment and development company, purchased Whittelsey's property in November 2019. It intended to take the house and cottages off the rental market and sell them as a single-family home. To that end, it developed plans to tear down the main house and rebuild a new one, and completely gut and renovate the two cottages. On December 30, 2020, Triton notified George via email and certified mail he must vacate the property in 60 days so it could begin construction. George, who was living with Clark at the time, countered this lease could not be terminated unless there was an unlikely event or a legitimate need. Shortly after, George informed Triton he had "exclusive use and possession" of the property based on a court order from a domestic violence dispute. He filed a civil case against Triton, alleging he owned the property and sought $10 million in damages.

On January 26, 2021, Triton served defendants with a 60-day notice of termination of tenancy. The notice stated Triton was withdrawing the property from the residential rental market. (§ 1946.2, subd. (b)(2)(B).) A process server mailed the notice to defendants. He also attempted to personally serve defendants at the cottage. When outside the house, he saw Clark sitting inside on a couch. Upon seeing the process server, Clark walked away into another room. She did not respond when the server knocked on the door and called out for both George and Clark. The process server then posted a copy of the notice on the

front door so it could be easily identified when entering or exiting the cottage.

After George and Clark did not vacate the premises within 60 days, Triton filed an unlawful detainer action on March 30, 2021 to recover possession. The process server attempted to personally serve George and Clark at their residence several times each day over the course of eight days, but no one ever responded. The trial court granted Triton's request to serve defendants by posting and mailing the summons and complaint on April 14, 2021.

In July 2021, George and Clark filed a demurrer, arguing the lease created a condition precedent to terminating the lease - that it could only be terminated upon the occurrence of an "unlikely event." They also argued the complaint failed to allege that the requisite 60-day notice was personally served, and whether notice withdrawing the property from the rental market was provided to them. The trial court overruled the demurrer.

After a jury trial at which George and Clark represented themselves, the jury found Triton was entitled to possession of the property. The jury awarded $62,500 in damages as the reasonable rental value of the property from the date after the expiration of the notice of termination of tenancy through the date of the verdict.

DISCUSSION

Defendants make several challenges to the unlawful detainer judgment. "The Unlawful Detainer

Act governs the procedure for landlords and tenants to resolve disputes about who has the right to possess real property." (*Stancil v. Superior Court* (2021) 11 Cal.5th 381, 394.) Plaintiffs may file unlawful detainer complaints under specific circumstances enumerated in Code of Civil Procedure section 1161. (*Stancil*, at p. 395.) Relevant here, a plaintiff can seek possession when the tenant continues to possess the real property after the expiration of the term for which it was leased to the tenant. (Code Civ. Proc., § 1161, subd. (1).) We review questions of law de novo and factual findings for substantial evidence - considering the evidence in the light most favorable to the prevailing party and drawing all reasonable inferences in support of the findings. (*Cuiellette v. City of Los Angeles* (2011) 194 Cal.App.4th 757, 765; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364.) We do not reweigh the evidence or assess witness credibility. (*Foreman*, at p. 365.) With this framework, we review defendants' arguments below.

I.

Defendants contend the lease agreement contained a condition precedent to terminating the lease. According to defendants, the sentence - "In the unlikely event that the owner needs to terminate renting the cottage after the lease has expired, a 60 day notice will be given to the tenants from the owner" - required the occurrence of an unlikely event before Triton could terminate the lease. We disagree.

Interpreting a contract requires giving "effect to the mutual intention of the parties as it existed at the

time of contracting." (§ 1636.) To ascertain the intent of the parties, we review the contract's written provisions, giving them their plain and ordinary meaning. (*Hewlett-Packard Co. v. Oracle Corp.* (2021) 65 Cal.App.5th 506, 531.) Extrinsic evidence may be referenced "to ascertain whether it supports an interpretation to which the agreement is reasonably susceptible." (*Id.* at p. 532.) Where the extrinsic evidence is not in conflict, we review the contract de novo. (*Ibid.*)

A "condition precedent is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises." (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 313; § 1436.) Generally, conditions precedent are created expressly, with words such as "subject to" or "conditioned upon." (*Estate of Jones* (2022) 82 Cal.App.5th 948, 953.) Conditions precedent are generally disfavored - courts "will not interpret a provision as a condition precedent absent clear, unambiguous language requiring that construction." (*Ibid.*)

No such unambiguous language creating a condition precedent appears here. The plain language does not require termination be "conditioned upon" or "subject to" an unlikely event. (*Minton v. Mitchell* (1928) 89 Cal.App. 361, 368.) The phrase, "[i]n the unlikely event that the owner needs to terminate renting the cottage after the lease has expired," is followed by an additional phrase requiring the owner to provide 60-days notice of termination. In its entirety, the sentence sets forth the requisite notice

the owner must provide the tenant before needing to terminate the lease. But it does not unequivocally limit the circumstances under which the owner is authorized to terminate the lease. (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 890.)

Moreover, we observe the extrinsic evidence submitted at trial supports the conclusion that the phrase "unlikely event" did not unambiguously create a condition precedent. (*Hewlett-Packard Co. v. Oracle Corp.*, *supra*, 65 Cal.App.5th at p. 538.) Though George expressed his desire to rent the cottage long term, Whittelsey testified the term "unlikely event" simply indicated it may be unlikely defendants would have to move immediately after the initial one-year lease expired. She noted she may need to use the cottage if her family moved in, but she emphasized to George she would provide defendants 60 days of notice before terminating the lease. Whittelsey expressly disavowed making any representations defendants could remain on the property for their entire lives or that the lease could only be terminated if there was an unlikely event such as an earthquake. And as George testified, these events were merely presented as examples of unlikely events. Termination was not limited to those situations. As a matter of law, there was no condition precedent in the lease agreement.

II.

Defendants next argue we must reverse the judgment because there is insufficient evidence Triton complied with its obligations under the Act. (§ 1946.2 et seq.) According to defendants, Triton was not

authorized to terminate their lease agreement because its statements the property was being withdrawn from the rental market and substantially remodeled were false. They further argue Triton failed to properly serve the 60-day notice of termination of tenancy. Neither argument warrants reversal.

The Act is a comprehensive anti-rent gouging and eviction control law. (*Borden v. Stiles* (2023) 92 Cal.App.5th 337, 346.) It provides, in relevant part, "the owner of the residential real property shall not terminate the tenancy without just cause" if one or more tenants, as here, have continuously and lawfully occupied the property for 12 months or more. (§ 1946.2, subd. (a)(1).) "Just cause" can be defined as "[n]o-fault just cause." (*Id.*, subd. (b) (2).) Examples of no-fault just cause include withdrawing the residential property from the rental market or intending to demolish or substantially remodel the residential rental property. (*Id.*, subds. (b)(2)(B), (D).) Just cause must be stated "in the written notice to terminate tenancy." (*Id.*, subd. (a).)

Here, Triton notified defendants it was withdrawing the cottage from the rental market. (§ 1946.2, subds. (a)-(b).) Derek Gaffney, a managing member of Triton confirmed this intent in his testimony. To the extent the jury credited this testimony, we defer to that determination here. (*People v. Jones* (1990) 51 Cal.3d 294, 314 [determining the credibility of witnesses is the exclusive province of the jury].) Indeed, in March 2021, Triton entered into a contract to sell the property to a

third party. The sale has not been completed - escrow has not closed - due to the possession dispute between defendants and Triton. The third party intended to demolish the three buildings on the property and rebuild them as a family home for themselves, all supporting the statement the cottage was being removed from the rental market.

Defendants insist this testimony is false because Triton also separately expressed the need to terminate the tenancy to substantially remodel the cottage. Not so. The substantial remodel was part of its effort to take the cottage off the rental market. After purchasing the property, Triton planned to entirely tear down the main house and renovate the cottages to sell the property as a single-family home. The plans required completely tearing down the cottage to its structural studs, as well as installing a new roof. Because Triton's plans involved a gut renovation, it would not obtain the necessary permits to perform the construction while people were residing inside. (§ 1946.2, subd. (b)(2)(D)(ii) [defining "substantially remodel" as substantial modification of any structural system requiring a permit from a government agency].) Triton finished developing its construction plans by approximately November 2020. The notice of termination was sent January 26, 2021, giving Triton approximately two months to obtain the requisite permits to start construction while defendants vacated the premises. There was sufficient