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ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

RAUL MENDEZ,

Petitioner,

Vs.

MOONRIDGE NEIGHBORHOOD ASSOCIATION Inc.; et al.,

Respondents.

Supreme Court No.
9th Circuit No. 23-35263
Case No. 1:19-cv-507-DCN

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI PER RULE 13 (5) AND MOTION REQUESTING APPLICATION TO PROCEED IN FORMA PAUPERIS PER RULE 21

Pro Se Petitioner Raul Mendez, respectfully requests a 60 day extension to file the Petition for Writ of Certiorari. The Order dismissing the appeal was filed on December 14, 2023 and it's included as exhibit 1 of the Motion for Clarification/Reconsideration filed at the 9th Circuit. The 90 day deadline to file the petition is on 3/13/2024. Mendez requests a 60 day extension from 3/13/2024. In addition, Mendez would like a copy of the application to proceed in forma pauperis.

Mendez has good cause to request an extension since he is a pro se party and needs additional time to conduct research in support of his Petition for writ of Certiorari. Mendez would briefly summarize why he has good cause as follow:

1) The Idaho Law Library is open business hours from 8-5 and closed on the weekends. It's extremely difficult for pro se non-attorneys to access the only place in all of Idaho that has legal

resources available to the public.

2) The 9th Circuit did not make a decision on Mendez Motion for Clarification and Reconsideration. The pleading summarizes the issues that will be presented on the petition for writ of certiorari

3) The 9th Circuit held the appeal to be frivolous without providing legal authorities with an analysis, reasoning, elaboration, application of legal standards.... used to determine appeal as frivolous. In the context of 28 USC 1915 cases, frivolous has been defined as lacking arguable basis either in law or in fact, being clearly baseless, actions describing fantastic or delusional scenarios. **Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed2d 338 (1989).**

4) In order to file a Petition for Rehearing or Motion for Reconsideration at the circuit, the petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended.....but the 9th Circuit did not elaborate on the 12/14/2023 Order and is refusing to do so after Mendez is seeking Clarification.

5) In addition to dismissing a 28 USC 1915 appeal as frivolous without an elaborate order; the 9th circuit also took a significant delay to mail the order.

6) The dismissal under 28 USC 1915 is not a merits decision. The district court dismissed it as a discovery sanction but that is also not a decision on the merits of the case. More importantly the same district court allowed **five** motions to get the case dismissed. The same district court has subjected Mendez to dismissal sanctions on three separate cases and thus Mendez has legitimate concerns with violation of Due Process and abuse of power by the district court. The issue is that the circuit is not correcting the abusive behavior by the district court, and it's left to the Supreme Court to correct those abuses at the lower court.

CONCLUSION

Mendez understands that review by the Supreme Court is discretionary and Mendez is aware that the Supreme Court very rarely hears pro se cases. Mendez does not see any harm in granting an extension to file the petition since its possible the Supreme Court might decide to correct the abuses at the lower court.

DATED: February 12, 2023

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAUL MENDEZ,

Appellant,

Vs.

MOONRIDGE NEIGHBORHOOD ASSOCIATION Inc.; et al.,

Appellees.

No. 23-35263
Case No. 1:19-cv-507-DCN

MOTION FOR CLARIFICATION AND RECONSIDERATION PER CIRCUIT RULE 27-10 (A)(1) AND FRAP 40 (A)

RAUL MENDEZ, appellant pro se is aware that the rules only permit a Petition for Rehearing or Motion to Reconsider after the final disposition of appeals. There are several issues here: 1) The 9th Circuit issued an Order on 12/14/2023. **Exhibit 1.** 2) It was not mailed until 4 days later on 12/18/2023. **Exhibit 2.** 3) It was not received in the mail until December 29, 2023 because of delays with the holiday season. 4) Local Rule 27-10 allows for filings of Motions for Clarification/Reconsideration 14 days from entry of Orders. **Exhibit 3.** The Motion to Reconsider falls under FRAP 40 (a). **Exhibit 4.** 5) taking the 12/14/2023 date, then the 14 days expired on 12/28/2023. However, it was not put in the mail until 4 days later and if we were to take the 12/18/2023 date, then the 14 days expired on 1/2/2023. **Federal Appellate Rule 26 (c)** also provide the additional three days and if the 3 days are added to the above dates then the deadlines become 1/2 and 1/5.....but Mendez got it in the mail until 12/29/2023 because of the Holiday; therefore justice so requires consideration be given to the delay to mail the order and

the holiday season causing delays as well. The 12/14/2023 Order dismissing the appeal as frivolous does not provide legal authorities with an analysis, reasoning, elaboration, application of legal standards.... used to determine appeal as frivolous. There is no reference to any facts either. Therefore, Mendez requests further Clarification and a more elaborate order in the likelihood he has to file a petition with the Supreme Court. Mendez cannot really file a Motion to Reconsider when there is no facts or laws cited by the Circuit. Mendez requests reconsideration for the sake of the rule requirement after disposition of the appeal.

Legal Standard on Motion for Reconsideration

To succeed on a motion to reconsider, a party must first establish they have a right to ask for reconsideration; that is to say, they must establish on or more of the limited grounds for reconsideration are present. **United States, ex. rel Rafter H Construction, LLC, v. Big-D Construction Corp., 358 F. Supp 3d 1096, 1098 (D. Idaho 2019).** Those four limited grounds upon which a district court may grant a motion for reconsideration: 1) the motion is necessary to correct manifest errors of fact or law; 2) the moving party presents newly discovered evidence; 3) reconsideration is necessary to prevent manifest injustice; or 4) there is an intervening change in the law. **Turner v. Burlington N. Santa Fe R.R. Co., 338 F.3d 1058, 1063 (9th Cir. 2003).**

1) Dismissal of 28 USC 1915 complaint is not a decision on the merits of the case.

The federal in forma pauperis statute, enacted in 1892 and presently codified as 28 U.S.C. § 1915, is designed to ensure that indigent litigants have meaningful access to federal Courts. **Neitzke v. Williams, 490 U.S. 319, 324 (1989).** In reviewing a 1915 dismissal for abuse of discretion it would be appropriate for the court of appeals to consider among other things, whether the plaintiff was proceeding pro se, **Haines v. Kerner, 404 U.S. 519, 520-521, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972);** whether the court inappropriately resolved genuine

issues of disputed fact; whether the court applied erroneous legal conclusions, **Boag v. MacDougall, 454 U.S. 364, 365, n. 102 S.Ct. 700, 701, n., 70 L.Ed.2d 551 (1982);** whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," ibid.; and whether the dismissal was with or without prejudice. With Respect to this last factor: Because a 1915 dismissal is not a dismissal on the merits, but rather *an exercise of the court's discretion under the in forma pauperis statute*, the dismissal does not prejudice the filing of a paid complaint making the same allegations. **Denton v Hernandez, 504 U.S. 25 (1992).** In the context of 28 USC 1915 cases, frivolous has been defined as lacking arguable basis either in law or in fact, being clearly baseless, actions describing fantastic or delusional scenarios. **Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed2d 338 (1989).** Furthermore, the district court dismissed Mendez pro se case as a dismissal sanction but a Rule 11 sanction is not a judgment on the actions merits. Rather, it requires the determination of a collateral issue; such as abuse of judicial process and if so what sanction would be appropriate. **Cooter & Gell v. Hartmarx Corp. 496 U.S. 384 (1990).**

The 9th Circuit has not made reference to Mendez case being clearly baseless, describing actions that are fantastic or delusional scenarios as required in findings of frivolousness under the 28 USC 1915 code. Clearly, 1) a finding of frivolousness in this appeal is not a final decision on the merits and 2) a dismissal sanction is not a merits decision, and 3) more importantly the 9th circuit has entirely failed to address whether the district court followed the rules and requirements of Due Process prior to dismissing as a sanction on a pro se case. No person shall be deprived of property without due process of law, and more particularly against the opinions of this court in **Hovey v. Elliott, 167 U.S. 409, 17 S.Ct 841, 42 L.ed. 215, Hammond Packing Co. v. State of Arkansas, 212 U.S 322, 29 S.Ct. 370, 53 L.Ed. 530.** These decisions establish that

there are constitutional limitations upon the power of the courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause. **Societe Internationale Pour participations Industrielles Et...,357 U.S 197 (1958).**

2) The Punitive Nature of District Judge Nye is inconsistent with Due Process and constitutionally unacceptable.

The issue here is not only that this particular court is not deciding Mendez cases on their merits. The real issue is the punitive nature in the handling of Mendez cases seeking to impose sanctions in all of them without an exception. The sanctions include dismissal of cases without following the law and the rules.

As a general rule, the district court must consider less severe alternatives and discuss them if it elects to dismiss. **Halaco Engineering Co. v. Costle, 843 F.2d 376, 379 (9th Cir. 1988).** Cases in which we have upheld orders of dismissal have often involved serious disruptions of the district court's trial schedule. **Thompson v. Housing Authority, 782 F.2d 829, 831, 832 (9th Cir.)** We have reviewed the record in this case including the transcript of the hearing on the motion for sanctions and have found no indication that the district judge discussed the feasibility of less drastic sanctions or explained why alternative sanctions would be inadequate. The district court was at fault for not explicitly weighing alternatives before entering its order. **U.S. for Use and Ben. of Wiltec Guam, Inc. v. Kahaluu..., 857 F.2d 600 (1988).** Failure to warn has frequently been a contributing factor in our decisions to reverse orders of dismissal. **Hamilton v. Neptune Orient Lines, Ltd., 811 F.2d 498, 500 (9th Cir. 1987), Mir v. Fosburg, 706 F.2d 916, 919 & n. 2 (9th Cir. 1983), U.S. for Use and Ben. of Wiltec Guam, Inc. v. Kahaluu..., 857 F.2d 600 (1988).** The record indicates no consideration by the district court of the adequacy of lesser sanctions and no warning to the defendants that judgment might be

awarded for Wiltec. The judge's understandable pique at defense counsel's lapses cannot excuse his failure to consider alternative sanctions nor can it overcome the strong policy favoring disposition of cases on their merits. **Hamilton v. Neptune Orient Lines, Ltd., 811 F.2d 498, 500 (9th Cir. 1987), U.S. for Use and Ben. of Wiltec Guam, Inc. v. Kahaluu..., 857 F.2d 600 (1988)** and dismissal is authorized only in "extreme circumstances" **Fjelstad v. American Honda Motor Co., Inc., 762 F.2d 1334, 1338 (9th Cir. 1985)** such as in cases involving multiple instances of discovery misconduct of at least five separate acts. **Adriana Intern. Corp. v. Thoeren, 913 F.2d 1406 (1990).**

In short, there is no record or transcript showing any hearing or showing that the district court has considered lesser sanctions and there are no warnings.

3) The Motion for Summary Judgment requires as a matter of right the opportunity to conduct discovery.

A summary judgment motion must be denied or the hearing on the motion to be continued if the nonmoving party has not had an opportunity to make full discovery. **Celotex Corp. v. Catrett, 477 U.S. 317 (1986).** A motion for summary judgment is decided based upon the "pleadings, depositions, and admissions on file," along with any supporting affidavits. Thus the standard contemplates the existence of an adequate record and it follows that a party opposing summary judgment must be afforded an adequate opportunity to conduct discovery to make that record. **Doe v. Abbington Friends Sch., 480 F.3d 252, 257 (3d Cir. 2007).** The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. **Hickman v. Taylor, 329 U.S. 495 (1947).** First, defendants have not gone beyond the pleadings to support their position with depositions, admissions on file; etc. on their motion for summary judgment. Second, Mendez was not allowed an opportunity to support his position because defendants

refused to comply with discovery. Third, there is no Summary Judgment hearing. Fourth, there isn't any kind of hearing prior to the disposition of the case.

4) The district court has issued subjective orders and allowed FIVE motions to get Mendez case dismissed. It's not only unfair to Mendez but incompatible with Due Process.

How many motions to dismiss and summary judgment are allowed without violating a party's Due Process? Mendez has not seen a case either pro se or represented by counsel in which a court allowed so many opportunities to get the case tossed. Attorneys representing the government or some rich corporation would rightfully be raising a Due Process violation under similar circumstances, so why can't a Hispanic guy appearing pro se not do the same, and when a Due process violation is supported by the record? It is the appeal court who has to review and correct such an abuse of discretion. That the district court is holding the appeal is frivolous is thus unsurprising. The possibility of bias is further supported by this language while at the same time dismissing most claims and allowing multiple motions to dismiss:

complaint is "very unclear", in "many respects fails" to allege the basis for his claims, Mendez response is of "little to no assistance", the court would not do the bulk of the work for him, Mendez allegations are "far from a shining example" of clarity, and to 'reiterate' Mendez "does nothing" to direct the Court's focus, Mendez does "not even come close", Mendez "conjures", and Mendez "false".....while at the same time the attorneys "properly" filed, "many" of the defendants arguments are "persuasive" to the Court, "providing grounds" to dismiss. **DKT 21.**

5) The lien is still filed and therefore this FDCPA suit is proper to challenge it. There is still an existing contract and therefore a suit for breach of contract is proper.

Attached is the lien. **Exhibit 5.** There are thousands of lawsuits across the country seeking to remove liens, so how would Mendez challenge a fraudulent lien? And when he filed to challenge the debt collection on 19-cv-00092-DCN? The Homeowners association overdue assessment fee is a debt under 15 USC 1692a (5). **Mashiri v. Epsten Grinnell & Howell, 845 F.3d 984 (2017).** In order to resolve these issues, we must construe the bylaws. Because corporate documents are equivalent to contracts among the members of the association, the normal rules

governing the interpretation of contracts apply. **Twin Lakes Village Property Ass'n, Inc. v Crowley, 124 Idaho 132 (1993).** Thus, the Idaho Supreme Court has held that HOA covenants are equivalent to contracts and therefore Mendez challenge of the lien is also proper under breach of contract.

CONCLUSION

Mendez requests the circuit panel draft a more elaborate Order and **GRANT** reconsideration by reopening the appeal.

DATED: January 4, 2023

Raul Mendez