

Supreme Court, U.S.

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No. 24-**1191**

IN THE
Supreme Court of the United States

DENNIS D. SADORRA,

Petitioner,

v.

STARLIGHT DUNES HOMEOWNERS ASSOCIATION,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the lower court, in failing to consider arguments presented by Petitioner, erred in its holding that removal procedure was defective?
2. Whether Petitioner established Federal Question Jurisdiction under 28 U.S.C. § 1441(a) and whether jurisdiction as established necessitates the adjudication of questions of civil rights as argued in Petitioner's Cross Complaint?
3. Whether Petitioner, contrary to the lower court's ruling presented sufficient reasons for Disqualification under 28 U.S.C. § 144?
4. Whether District Court violated Petitioner's rights to Due Process when it refused to consider arguments for disqualification?

**PARTIES TO THE PROCEEDINGS AND
RELATED CASES**

All parties to the proceedings are listed in the caption.

The proceedings in federal trial and appellate courts identified below are directly related to the above captioned case in this Court.

Starlight Dunes Homeowners Association v. Dennis D. Sadorra, Case No. EDCV 24-0514 JGB (DTBx) (Cross-Complaint); and 24-0540 JGB (DTBx) (Complaint), United States District Court for the Central District of California. Judgment entered May 30, 2024.

Starlight Dunes HOA v. Dennis D, Sadorra, No. 24-4006, United States Court of Appeals for the Ninth Circuit. Judgment entered July 19, 2024.

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Dennis D, Sadorra respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the U.S, District Court for the Central District of California is reported at No. 5:24-cv-00514. (May 30, 2024).

The opinion of the Ninth Circuit is reported at No. 24-4006 (July 19, 2024).

JURISDICTION

The U.S. Court of Appeals for the Ninth Circuit entered Judgment on July 19, 2024, and denied a timely petition for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

The appendix reproduces parts of 28 U.S.C. § 1441(a), Removal of Civil Actions, 28 U.S.C. § 1443, 28 U.S.C. § 144 and 42 U.S.C. § 1982, Property Rights of Citizens.

INTRODUCTION

The Ninth Circuit acted in error as it failed to consider facts presented by Petitioner. It failed to consider that the trial court abused its discretion when it held that Complaint (EDCV 24-0514 JGB (DTBx)) and Cross Complaint (EDCV 24-0540 JGB (DTBx)) are for all practical purposes the same. The District Court, without considering arguments

before it, granted Motion to Remand while at the same time denying Petitioner's Motion to Disqualify. Petitioner in his Motion to Disqualify, pursuant to 28 U.S.C. § 455, provided sufficient grounds for recusal. Namely, that District Court Judge was partial in dismissing his RICO complaint which he presided over (Case No. 5:24-cv-0396), a decision that was appealed and now in the Ninth Circuit. Petitioner, in the same Motion, established that District Court judge Bernal was non-compliant in reporting his assets. Which in effect prompted him to move for disqualification. Disqualification is necessary as it will allow an impartial judge to adjudicate this action.

Further, Motion to Remand was granted in error because Federal Question Jurisdiction is inherent pursuant to 28 U.S.C. § 1441. Specifically, the violation of FEHA, including the violation of Petitioner's 1st, 5th, and 14th Amendment Rights.¹ Including property rights under 42 U.S.C. § 1982.

STATEMENT OF THE CASE

Petitioner, of Asian/Hispanic descent, a disabled Iraq war veteran and moved into Starlight Dunes Homeowners Association residential development in La Quinta, CA with his family in February 2017. Property adjacent to Petitioner's property is owned by HOA board member Jay

1. Appellees prevented Appellant from exercising his First Amendment rights by manufacturing a fine which was placed on his record. This served to prevent Appellant from running as an HOA board member. The fine mysteriously disappeared after the election. Appellees hindered due process by preventing Appellant from instituting a fence which many houses within the community have.

Brown, therefore Petitioner's immediate neighbor. HOA board member Bonafede resides a few houses removed from Petitioner.

Immediately after moving into his new home, Petitioner made plans for architectural changes including installing drought-tolerant landscaping and installing a block wall for the rear and side of his property (which is the standard in Starlight Dunes).

Petitioner worked with an architect to shore up plans to be submitted to Starlight Dunes HOA for approval. While Petitioner was removing a dead tree from his front yard, HOA member Bonafede, who lives across the street, approached him, and introduced himself. During their conversation, Petitioner mentioned the major front yard landscape project (drought tolerant) across the cul-de-sac from his property undertaken by neighbors Nick and Tammy Nguyen. Bonafede immediately replied in a menacing tone that "Those Asians never submitted an application for all the work done at that property." Further that, "He is on the HOA board and knows this for a fact" While Petitioner found it insulting that Bonafede derogatorily pointed out a neighbor's Asian heritage, Petitioner said nothing in order to maintain peace with his new neighbor. Petitioner and HOA board member Bonafede eventually developed grievances. Bonafede stopped waving hello to Petitioner's family and showed anger whenever he saw them.

In May 2017, while obtaining estimates from various contractors, Petitioner provided contractors with architectural drafts of the block wall and landscaping project he wanted to install. As contractors were taking

measurements, Petitioner went inside to retrieve bottles of water for them. Upon returning, Petitioner noticed HOA board member Bonafede trespass onto his front yard. With a very angry stare, and without asking, he snatched the architectural draft from the contractor. When Petitioner asked him if there was a problem, he did not respond. He looked over the plans, looked up at Petitioner angrily and in a harsh tone said, "The Board Will Never Approve A Wall." He threw the document on the ground and walked back across the street to his home before Petitioner could utter a response.

In June 2017, Petitioner had an encounter with another HOA member, Jay Brown. Petitioner informed him of his intention to install solar panels. To which he responded that it would be easily approved by the HOA board, as he was a member and knew the process. When Petitioner brought up installing a block wall, HOA board member Brown became agitated, he yelled that Petitioner's wall would "BLOCK HIS FUCKING VIEW." and that "YOU PEOPLE CAN'T MOVE INTO THIS NEIGHBORHOOD AND DO WHAT YOU WANT." Mrs. Brown, also yelling, added that "A WALL WOULD BRING OUR PROPERTY'S VALUE DOWN." Necessary to point out, the wall was to be built on Petitioner's land and not Brown's.

Petitioner sent an email to the managing supervisor of the HOA's management company Mr. Carvetto of Desert Resort Management (DRM)/Associa, drawing attention to the racism and civil rights violations exhibited by HOA board members Brown and Bonafede. Yet, Starlight Dunes HOA did nothing to call its board members to order. Rather, HOA board member Brown amplified

his racist acts and directed HOA to halt Petitioner's landscaping project by grossly misrepresenting the scope of project. Brown made false statements that "All existing landscaping would be removed and replaced with a concrete slab" (App. F). The falsity of this statement becomes immediately evident when compared to the first application submitted by Petitioner (App. G).

Starlight Dunes HOA targeted Petitioner. To be exact, board member Brown, who represented the HOA in small claims court, amplified his discriminatory and retaliatory acts when he realized that Petitioner intended to sue Starlight Dunes.

Without providing any response to Petitioner's complaint of harassment, Starlight Dunes HOA halted Petitioner's Solar Panel Project, on the basis of a member's capricious complaint, whose sole intention was to protect his line of sight. Board member Brown in his email admitted he was the person who complained to Starlight Dunes HOA regarding Petitioner's proposed solar panels. He stated that "I did email on the solar ARC and later rescinded as I was not sure what he was actually doing" (App. H). Starlight Dunes HOA and its board members denied Petitioner the use of his property, in violation of 42 U.S.C. § 1982 (Property Rights of Citizens).

Without any response or action from Mr. Carvetto of Desert Resort Management (DRM)/Associa, Petitioner on May 29, 2019, reported the incident of discrimination to the State of California's Department of Fair Employment and Housing.

Petitioner, in all, submitted over six applications requesting approval for a wall, all were denied or later rescinded when work commenced. DFEH, upon concluding its investigation, responded that Petitioner should exercise his “Right to Sue.”

Starlight Dunes initiated suit in Superior Court, Riverside County (PSC2003087) on July 8th, 2020. Petitioner, on August 12, 2020, filed an Answer and a Cross-Complaint. The court on March 22, 2023, granted Motions for Summary Judgment to Starlight Dunes Homeowners Association, Martin Bonafede, and Jay Brown on Cross-Complaint.

On or about March 30, 2023, Starlight Dunes, along with Delphi Law LLP, Haight Brown & Bonesteel LLP, and Klinedinst PC in a combined effort threatened to charge Petitioner almost a million dollars in legal fees. This threat consequently forced Petitioner into chapter 7 bankruptcy. Chapter 7 was processed on July 17, 2023, for U.S. Bankruptcy Court, Central District of California, Case No. 6:23-bk-11327-RB.

Superior Court scheduled this action (PSC2003087) for trial on January 26, 2024, court later continued proceedings to March 8, 2024. Petitioner, on March 5, 2024, filed a Notice of Removal, 28 U.S.C. § 1441(a) for federal question jurisdiction. Respondents on April 8, 2024, filed Motion to Remand in an attempt to keep matter from being heard by Judge Kato who has oversight over the Notice of Removal (5:24-CV-00540).

U.S. District Court for the Central District of California entered judgment on May 30th, 2024, granting

Respondent's Motion to Remand without considering federal questions of First, Fifth and Fourteenth Amendment violations. It further ignored the violation of Petitioner's property rights under 42 U.S.C. § 1982.

Court of Appeals entered Judgment on July 19, 2024, asserting "Lack of Jurisdiction." Further that order challenged is not reviewable. *Starlight Dunes HOA v. Dennis D. Sadorra*, No-24-4006 (9th Cir. July. 19, 2024) at 1; (App. A).

REASONS FOR GRANTING THE PETITION

I. THE LOWER COURT'S ORDER THAT REMOVAL WAS DEFECTIVE FAILED TO CONSIDER FACTUAL ARGUMENTS PRESENTED BY PETITIONER.

Consistent with this court's opinion, "A cause of action arises under federal law . . . when the plaintiff's well-pleaded complaint raises issues of federal law." *Metropolitan Life Insurance v. Taylor*, 481 U.S. 58 (1987). Further "Any civil action . . . commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending." 28 U.S.C. § 1443. Specifically, if "Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof" (*id*). Furthermore "For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law" (*id*). Synonymously, this court held that,

“Defendants may remove to the appropriate federal district court [a]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction.” *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997). While the district court held that removal was untimely, it is necessary to note that Petitioner/pro se Defendant (Cross-Complainant), filed Notice of Removal upon discerning federal question jurisdiction. More specifically, this court laid down the precedent that “If a court concludes that a plaintiff has “artfully pleaded” claims [it should] uphold removal even though no federal question appears on the face of the plaintiff’s complaint.” *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470 (1998). To reiterate, Petitioner asserted bona fide federal questions. i.e., violations of the Civil Rights Act, and of 42 U.S.C. § 1982 (property rights), including the violation of Petitioner’s First, Fifth and Fourteenth Amendment rights. Every violation, taken individually, is sufficient to establish federal question jurisdiction. Untimeliness should not invalidate a well pleaded claim. Specifically in an instance where a movant, upon finding federal question, immediately moves for removal.

II. PETITIONER, PURSUANT TO 28 U.S.C. § 1441(a) ESTABLISHED FEDERAL QUESTION JURISDICTION WHICH INHERENTLY OBLIGATES ADJUDICATION OF FEDERAL QUESTIONS OF CIVIL RIGHTS AS ARGUED IN CROSS-COMPLAINT

Respondent, Starlight Dunes HOA violated the Civil Rights Act of 1964 when it refused to act on discriminatory remarks made by two of its board members. Further, Respondent denied Petitioner his property rights in

violation of 42 U.S.C. § 1982, it further denied Petitioner due-process under the 5th and 14th amendment. In addition to violating Petitioner's First Amendment rights (Petitioner's Cross Complaint; App. C). Respondent treated Petitioner differently from others, because a majority of homes within Starlight Dunes HOA have the exact wall that HOA denied Petitioner, over the course of six applications. Violation of the Civil Rights Act invokes Federal Question Jurisdiction. Relatively, this court in *Metropolitan Life Insurance v. Taylor*, made clear that "Any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 481 U.S. 58 (1987).

Respondents, further in violation of Petitioner's rights, prevented him from exercising his First Amendment rights by manufacturing a fine which was placed as a hold on his record. This served to prevent Petitioner from running as HOA board member (App. I). The fine, without explanation, disappeared after the election. Furthermore, acts of Respondent which prevented Petitioner from installing a fence, that a majority of the homes within the community have, all equate to denial of due process. In violation of the Fifth and Fourteenth Amendments.

The action before this court is not a mere HOA dispute. Actions undertaken by Starlight Dunes and its board members towards Petitioner, outrightly violates the U.S. Constitution and other federal statutes. More so, this court made clear that "Federal question jurisdiction [exists] if plaintiffs' right to relief depended necessarily

on a substantial question of federal law.” *Merrell Dow Pharmaceuticals Inc. v. Thompson Ex Rel. Thompson*, 478 U.S. 804 (1986). Remand by district court is erroneous because questions of federal law are inherent in the action at hand. Pursuant to this court’s decision, “[A] suit arises under the Constitution and laws of the United States [-] when the plaintiff’s statement of his own cause of action shows that it is based upon [federal] laws or [-] Constitution.” *Beneficial National Bank v. Anderson*, 539 U.S. 1 (2003). Accordingly, ruling of lower court, that remanded action back to state court, is contrary to established jurisprudence.

Petitioner pleads this court to examine all facts and reverse the error of the lower court and allow federal violations of the Civil Rights Act, 42 U.S.C. § 1982 (property rights), First, Fifth, and Fourteenth Amendment violations to be adjudicated in a federal court because federal question jurisdiction was established prior to removal from state court.

III. PETITIONER, CONTRARY TO THE LOWER COURT’S RULING PRESENTED SUFFICIENT REASONS FOR DISQUALIFICATION UNDER 28 U.S.C. § 144

According to the governing statute, “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). By virtue of the statute, Petitioner on April 15, 2024, filed a Motion to Disqualify against presiding judge Jesus G. Bernal on two grounds (App. D). Firstly, presiding judge Bernal was not forthcoming in his mandated Financial Disclosure.

Secondly, judge Bernal who presided over Petitioner's RICO complaint was biased and not objective in his ruling and dismissal of RICO claim.

a. Judge Bernal Failed to Rule Objectively in Three Distinct Actions Involving Petitioner

In a separate, yet related RICO action, Judge Bernal failed to consider facts presented by Petitioner in his RICO complaint.² More specifically, Petitioner finds a conflict in the fact that the judge in question presided over all his three cases. i.e., Complaint, Cross-Complaint, and RICO Complaint. The outcomes of which are all the same.

While presiding judge Bernal held that "Under Sections 144 and 455 the alleged prejudice must result from an extrajudicial source; [and that] a judge's prior adverse ruling is not sufficient cause for recusal . . ."³, This court, to the contrary, has held that

"[T]he question of disqualification focuses on whether an objective assessment of the judge's conduct produces a reasonable question about impartiality . . ." *Caperton v. A. T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009). Petitioner removed case because of the ill treatment at the State court, only to be worse off in U.S. District court.

All three actions ruled on by presiding judge are distinct from each other. Judge Bernal, however, changed Notice to Remove from Cross-Complaint (ED CV 24-

2. RICO Complaint is currently on appeal before the Ninth Circuit (*Sadorra v. Starlight Dunes* et. al, Case No. 5:24-cv-0396).

3. Order, Civil Minutes, at 5. May 30th, 2024; App B.

0514) into a Motion to Disqualify, and then transferred judge Kato case Complaint (ED CV 24-0540) into his own caseload. There was a mechanism in place for judge Kato to continue Petitioner's case. Judge Bernal however stifled it.

Lower court judge abused his discretion when Complaint (ED CV 24-0540) and Cross-Complaint (ED CV 24-0514) were brought together as one (Order, Civil Minutes, at 1. May 30th, 2024; App. B). Petitioner pleads this court to issue certiorari and review the erroneous ruling of the lower court.

b. Judge Bernal's Non-Compliance With Official Judiciary Financial Disclosure

An independent report, by a private investigator found a discrepancy in Judge Bernal's official Judiciary Financial Disclosure (App. E). As stated in this court's ruling "The Court of Appeals' willingness to enforce § 455 may prevent a substantive injustice in some future case by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988). The discrepancy in Judge Bernal's financial disclosure was hidden until discovered by a private investigator. This discovery betrays the transparency expected of U.S. judges. More specifically, disqualifies judge Bernal from presiding over the suit.

**IV. THE DISTRICT COURT VIOLATED
PETITIONER'S RIGHTS TO DUE PROCESS
WHEN IT REFUSED TO CONSIDER
ARGUMENTS FOR DISQUALIFICATION**

Generally, “A fair tribunal is a basic requirement of due process.” *Caperton v. A. T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009). Additionally, “The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.” *Arnett v. Kennedy*, 416 U.S. 134 (1974) (quoting, *Cafeteria Workers v. McElroy*, 367 U.S., at 895 (1961)). Accordingly, “The Due Process Clause may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. [However], to perform its high function in the best way, ‘justice must satisfy the appearance of justice.’” *Aetna Life Insurance v. Lavoie*, 475 U.S. 813 (1986). In effect, Petitioner respectfully request the court to grant certiorari and review erroneous order, including presiding judge refusing to recuse (App. B) despite bias being evident through not one, but three negative rulings in three different suits.

CONCLUSION

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

Respectfully submitted,

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