-No. 24-6296

IN THE SUPREME COURT OF THE UNITED STATES

LIREN WANG, PETITIONER

vs.

MICHAEL DENNIS IVERSON; LAW OFFICE OF MICHAEL D. IVERSON; CHARLES BENJAMIN GRAFF; GRAFF & ASSOCIATE, RESPONDENT(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

California Courts, Court of Appeal, 4TH District, Division Two

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

It is well known that US has the fairest if not the perfect jury trial system. California civil system has motion for summary judgment (MSJ) to prevent jury trial for frivolous case. But California judges and justices took advantage of the low visibility of a case when the party is neither a celebrity nor a rich person and utilized this summary judgment mechanism to deprive the party of a fair and impartial jury tribunal by giving intentionally bad faith opinion for MSJ which intentionally disregarded well-established general principle of law and created new law on the fly. When California justices intentionally disregard well-established general principle of law and create new law on the fly, there is no way for a party to win a motion of MSJ no matter how strong his case is unless the justices want him to win. So the intentionally wronged party loses his chance to a fair and impartial jury trial. It thus violated the 14th Amendment which states no state shall "deprive any person of life, liberty, or property, without due process of law." This includes the right to a fair and impartial tribunal. When this happens, can a US citizen get help from federal court to preserve his US Constitution right to a fair and impartial tribunal which the 14th Amendment endows?

List of Parties

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

Related Cases

Table of Content

Index To Appendices

Table of Authorities

Statutes And Rules

In The

Supreme Court Of The United States

Petition For Writ Of Certiorari

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

Opinions Below

The8/9/2022 judgment granting the defendant Michael Iverson's MSJ is at Appendix B. The unpublished 6/7/2024 Opinion is at Appendix A. The California Supreme Court's 8/21/2024 denial of Wang's Request to Publish the Opinion and Petition for Review is at Appendix C.

Jurisdiction

Mr. Wang's Petition For Review to the California Supreme Court was denied on August 21, 2024. Wang invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the California Supreme Court's denial.

Constitutional Provisions Involved

The United State Constitution 14th Amendment states that no state shall "deprive any person of life, liberty, or property, without due process of law." This includes the right to a fair and impartial tribunal.

The concept of a "fair and impartial tribunal" comes from judicial interpretations and applications of this due process clause, rather than from explicit constitutional language. Courts have consistently interpreted "due process of law" to include the right to a fair hearing before an impartial decision-maker. In re Murchison (1955): Held that a fair trial in a fair tribunal is a basic requirement of due process.

Statement Of The Case

On December 31, 2013, Plaintiff Liren Wang ("Wang") purchased certain real property located at 18247 Collier Ave., Lake Elisnore, CA 92530 (the "Property"). Attached to the Property is a pet cemetery that is the subject of a judgment and CC&R's which were recorded on the Property on or about December 12, 2002 from a legal dispute in MacIntosh v. Fisher, et al., Riverside County Superior Court Case No. CIV217431 (the "Underlying Case.").

On December 5, 2016, a cross-complainant in the Underlying Case, Marilyn Allen ("Allen"), filed a Motion for Order to Show Cause Re: Appointment of Receiver for Noncompliance with Judgment ("OSC*'). In the OSC Allen alleged that Wang was failing to maintain the pet cemetery on the Property according to the Judgment and CC&R's. In support, Marilyn Allen declared under penalty of perjury six detailed allegations to Wang and provided seven pet cemetery pictures. Besides Allen's declaration and seven pictures, Allen provided no other evidences to support her allegations in her declaration.

On December 19, 2016, Wang retained Defendant Michael Iverson ("Iverson") to represent him in connection with the opposition to the OSC. Since then Wang sent Iverson multiple versions of "my statements.docx" which rebut or explained all six Allen's allegations point to point. Especially Wang pointed out that the fence has been like that for 14 years and Wang could apply Laches defense to defeat Allen's fence allegation. Wang also gave Iverson pictures of the pet cemetery and witness

testimonies along with Pet Cemetery insurance certificates that addressed Allen's no insurance allegation.

On February 2, 2017, Iverson filed a Special Opposition instead of a motion to quash to challenge jurisdiction of the trial court only "for the special and sole purpose of disputing this Court's jurisdiction over NON-PARTIES" on behalf of Wang. Iverson challenged jurisdiction instead of presenting a merit based defense because he found out that Wang's name was not in the original lawsuit and he told Wang by law when challenging jurisdiction one cannot present a merit based defense.

But on 2/14/2017 the court's tentative ruling said "The Motion is GRANTED. There is no substantive opposition to the motion by the current owners, so there is no dispute that the pet cemetery has not been maintained as required by the judgment entered on December 18, 2002." Iverson then asked another lawyer Defendant Benjamin Graff ("Graff"), to show up in the second day's hearing but failed to ask for an oral argument during the transition. So during the 2/15/2017 hearing, judge wouldn't even allow Graff to argue about the appointment of the receiver and tentative ruling became final automatically and the receiver was appointed.

As legal mal case started, Iverson and Graff claimed that it's Wang who asked to not have an oral argument for 2/15/2017 hearing.

Graff and/or Iverson also abandoned Wang's Appeal for appointing the receiver on 6/12/2017, which was without Wang's knowledge. So Wang had to deal with the receiver till the receiver was discharged on 2019 and paid all the expensive receiver fees.

On 5/31/2018 Wang filed legal malpractice claims against his two previous attorneys Iverson and Graff, claiming due to their negligence, the receiver was appointed on 2/15/2017 hearing thus caused financial damage to Wang. On 4/6/2022, Iverson filed a Motion for Summary Judgment ("MSJ") which used the receiver's "finding" or court's finding or whatever happened AFTER the receiver was appointed to justify the original appointment of the receiver so that Iverson's and Graff's actions, even if professionally negligent, were not "but for" causes of his injuries. Iverson tried to use some material facts regarding the receiver's report or what the receiver had done to show Wang was not in compliance with CC&R when maintaining the pet cemetery. But Wang later disputed all of them in his Opposition. Graff joined Iverson's motion for summary judgment and submitted a declaration on 4/6/2022.

On 6/20/2022, Wang filed Amended Opposition To MSJ which says THROUGHOUT THE MSJ, IT TRIED TO USE THE RECEIVER'S "FINDING" OR COURT'S FINDING AFTER THE RECEIVER WAS APPOINTED OR WHATEVER HAPPENED AFTER THE RECEIVER WAS APPOINTED TO JUSTIFY THE APPOINTMENT OF THE RECIEVER, BUT CALIFORNIA COURT NEVER USE THIS CRITERIA TO JUSTTIFY THE APPOINTMENT OF A RECEIVER.

FURTHER, IN CALIFORNIA, THE BAR TO APPOINT A RECEIVER IS VERY HIGH.

The hearing for MSJ was held on 7/1/2022. The final judgment ("Judgment") was entered on 8/9/2022. The Judgment was made by neglecting all the case laws, material facts and arguments that are in favor of Wang without giving any reason thus was highly biased.

Because the Judgment was highly biased and because Wang found out the trial court judge Raquel Marquez is a close friend with the pet cemetery case judge Sunshine S Sykes, on 8/19/2022, Wang filed NOTICE OF MOTION AND MOTION TO RECUSE JUDGE AND/OR PEREMPTORY CHALLENGES OF JUDGE (13 CT 3263). On 8/23/2022, without going through a hearing, the Court (Judge Marquez) issued NOTICE OF COURT'S RULING denying Wang's Peremptory Challenge to Judicial Officer using Untimely as excuse (13 CT 3366). On 8/29/2022, without going through a hearing, the Court (Judge Marquez) issued Order Striking Plaintiff' S Motion To Recuse Judge Raquel Marquez (13 CT 3476).

On 8/24/2022 Wang filed Motion For Reconsideration For Judgment For MSJ (13 CT 3368) based on a different law---California Evidence Code §350 which shows the receiver's report should not be allowed as admissible evidence in the case-within-a-case circumstance. On 12/14/2022, the Court denied Wang's Motion for Reconsideration technically.

On 9/2/2022 and 9/12/2022, Wang filed two writ of mandate to challenge the court's NOTICE OF COURT'S RULING denying Wang's Peremptory Challenge to Judicial Officer and of the court's Order Striking Wang's Motion to Recuse Judge. Case number E079720 and E079774. Both writs were denied without giving any reason by the Court of Appeal, 4TH District, Division Two.

On 11/23/2022 Wang filed the Appeal to the 8/9/2022 Judgment. Parties finished briefing on 8/30/2023. On 12/18/2023 Wang filed APPELLANT'S PETITION FOR REVIEW FOR A MOTION TO CHANGE APPELLATE COURT FOR THE APPEAL CASE E080240 to the California Supreme Court because during Wang's previous appeal case E073408 with that appellate court, P.J. Ramirez made bad faith opinion by severely twisting Wang's argument about Latches and by forging non-existent key fact that Wang violated 2028 court order. The petition was denied without giving any reason. Wang then sent a public letter to P.J. Ramirez on 3/31/2024 telling him explicitly that "...if you dare again to **intentionally disregard the law and/or case law that should apply to the case without giving any reason...,** I will NOT ONLY report your nasty behavior to Commission on Judicial Performance again but will ALSO expose it to the medium, California lawmakers and California people to let California public know what kind of judge they have in California."

The Tentative Opinion was issued on 3/22/2024. During 6/4/2024 oral argument when Wang questions them why the Tentative Opinion ignored all the case laws presented by Wang without giving any reason, Ramirez pretended to be deaf again.

The final Opinion ("Opinion") was issued on 6/7/2024. It did address some of the case laws that Wang presented regarding the rigid requirement of appointing a receiver but said they didn't apply in the current case because *"It* (those case laws) *provides no support for rejecting the appointment of a receiver to enforce a judgment requiring a property owner to maintain property under specified conditions."*. It also said *"a trial court held a trial-within-a-trial to resolve an attorney malpractice claim"* is *"the rare case*". Wang then filed Appellant's Petition For Rehearing on 6/24/2024 pointing out that in their previous opinions in other similar cases, they actually agreed those case laws are the general principles for appointing a receiver and for legal malpractice case *"no other approach* (other than trial-within-a-trial) *has been accepted by the courts"*. But the APFR was denied without giving any reason in just one day by Raphael.

Because their Opinion establishes several new rules of law, on 6/25/2024 Wang also filed Request to Publish the Opinion based on CRC 8.1105(c) so their "innovative" new rules of law will not just "benefit" Wang alone. Raphael recommended the Request be denied.

On 8/21/2024, both Wang's Request to Publish the Opinion and Petition for Review were denied by California Supreme Court.

REASONS FOR GRANTING THE WRIT

1. The State Trial Court's Judgment for MSJ disregarded well-established case laws regarding the rigid requirement of appointing a receiver in California without giving any reason.

The Trial Court's 8/7/2019 Judgment for MSJ relies heavily on the Receiver's Report which was made several months after the receiver was appointed to show that even if without Iverson and Graff's negligence, the Receiver would still be appointed in the underlying case. But in Wang's Amended Opposition to MSJ, Wang clearly pointed out "**THROUGHOUT THE MSJ, IT TRIED TO USE THE RECEIVER'S "FINDING" OR COURT'S FINDING AFTER THE RECEIVER WAS APPOINTED OR WHATEVER HAPPENED AFTER THE RECEIVER WAS APPOINTED TO JUSTIFY THE APPOINTMENT OF THE RECIEVER, BUT CALIFORNIA COURT NEVER USE THIS CRITERIA TO JUSTTIFY THE APPOINTMENT OF A RECEIVER".**

Wang also pointed out "**FURTHER , IN CALIFORNIA, THE BAR TO APPOINT A RECEIVER IS VERY HIGH**". "The appointment of a receiver on a property is a drastic measure, and a remedy that Court delicately consider and exercise with caution to avoid injury to the owners and their property. (Morand v. Superior Court(1974) 38 Cal.App.3d 347, 350.)

"California rigidly adheres to the principle that the power to **appoint** a **receiver** is a **delicate** one which is to be exercised sparingly and with caution. It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or navailable. . .' (See Cohen v. Herbert, 186 Cal.App.2d 488, 495, 8 Cal.Rptr. 922, 927; Alhambra etc. Mines v. Alhambra G. Mine, 116 Cal.App.2d 869, 873, 254 P.2d 599; Dabney Oil Co. v. Providence Oil Co., 22 Cal.App. 233, 238, 239, 133 P. 1155; 42 Cal.Jur.2d, Receivers, s 9.). An appointment of a receiver is delicate task, one that is taken with caution to avoid injury to parties and property because such a remedy is a harsh one. Morand v.Superior Court (1974) 38 Cal.App.3d 347,350; Alhambra etc. Mines v. Alhambra G. Jvline Corp. (1953) 116 Cal.App.2d 869, 872. Where there is a less severe remedy available, the Court should not take property out of the hands of its owners. Golden State Glass Corp. v. Superior Court of Los Angeles County (1939) 13 Cal. 2d 384,393." And a party to an action should not be 'subjected to the onerous expense of a receiver, unless . . . his appointment is obviously necessary to the protection of the opposite party. . . .' (De Leonis v. Walsh, 148 Cal. 254, 255, 82 P. 1047, 1048.). The remedy is an extraordinary and harsh one, to be allowed cautiously and only where less onerous remedies would be inadequate or unavailable. Alhambra etc. Mines v. Alhambra G. Mine Corp. (1953) 116 Cal.App.2d 869, 872". But all these Wang's arguments and case laws are disregarded by the Judgment without giving any reason.

The Judgment was made by ignoring all the above laws or case laws regarding the rigid requirement of appointing a receiver in California without giving any reason, by ignoring all the undisputed material facts favoring Wang without giving a reason, by ignoring all Wang's arguments especially the aforementioned one about California court have never used what happened after a receiver was appointed to justify the earlier appointment of a receiver without giving any reason, by weird interpretation of some evidence that a normal person would NOT agree (the court's claim that Allen's small area photos of the pet cemetery rebut Wang's photos which obviously showed the big picture of the pet cemetery (7 CT 1825-1836), and by acting as if an experienced judge would NOT know in the pet cemetery case Wang can also present a declaration under penalty of perjury but for Iverson's negligence to rebut all six Allen's allegations presented in her declaration. The Judgment thus displayed a deep- seated antagonism against Wang and deprived Wang a fair and impartial tribunal. It thus violated The 14th Amendment which states that no state shall "deprive any person of life, liberty, or property, without due process of law" which includes the right to a fair and impartial tribunal.

Wang appealed to California Court of Appeal, 4TH District, Division Two.

2. The State Appellate Court's Opinion created a new law on the fly and continued disregarding the well-established case laws regarding the rigid requirement of appointing a receiver in California and regarding using the case-within-a-case setting to establish causation in legal malpractice case. Yet, the same justices' previous opinions in other cases indicated they know clearly those case laws are general principle of law.

1) The Opinion disregarded the well-established case laws regarding the rigid requirement for the appointment of a receiver and claimed "failing to maintain a property in a manner compliant with the judgment and CC&Rs" justifies "to appoint a receiver to address any noncompliance" without providing any authority to support.

In section A of the Analysis part of the Opinion, it spent large amount of paragraphs to show Wang "had not complied with the judgment" so "appointment of a receiver was justified" so Wang "has not shown a material issue of fact on whether his attorney's decisions caused him to suffer damages in the form of costs he incurred in bringing the pet cemetery into compliance with the judgment and CC&Rs". The Opinion "cleverly" implies that "failing to maintain a property in a manner compliant with the judgment and CC&Rs" justifies "to appoint a receiver to address any noncompliance". There is NO California law or case law to state that

and the Opinion has NOT provided any authority to support its key point. But the Opinion relied on this just created innovative new law throughout the Opinion.

In AOB 22:1-5, Wang stated clearly "Simply because there is defect in the pet cemetery or there is some issue not complying with the CC&R is NOT the basis to appoint the receiver because as shown in Wang's Amended Opposition to MSJ section C (9 CT 2525:18-2526:13), in California the bar to appoint the receiver is very high". In that section C, "California rigidly adheres to the principle that the power to **appoint** a **receiver** is a **delicate** one which is to be exercised sparingly and with caution. It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable. . . .' (See Cohen v. Herbert,...; Alhambra etc. Mines v. Alhambra G. Mine, ...; Dabney Oil Co. v. Providence Oil Co.,...)...".

As shown above, simply because the pet cemetery was not in compliance with the CC&R is not a valid reason to have a receiver appointed because in California the bar to have a receiver appointed is very high.

"Even if this Court thinks Wang was not maintaining the pet cemetery in compliance with CC&R, this fact alone is NOT enough to justify the appointment of a receiver because Allen provided no evidence that "she had been in regular communication with the Owners in an effort to get them to comply with the terms of the CC&Rs and the Judgment", because Allen provided no evidence that she has

ever communicated any of issues from her six allegations listed in her motion to Wang, because Allen did NOT present any evidence that the pet cemetery is in imminent danger of being lost, concealed, injured, diminished in value, squandered or suffering irreparable harm, because Allen did NOT present any evidence that Wang had a history of NOT following the 2002 judgment and/or CC&R, because Allen did NOT present any evidence that any other less severe legal remedies are inadequate or unavailable" (AOB 27:5-15) or "she has exhausted all other legal remedies" (AOB 37:1). And in a case-within-a-case setting, but for Wang's then attorney's negligence, Wang of course would have also filed a declaration under penalty of perjury to deny or explain every allegation Allen launched in her declaration...(AOB 18:6-19:5). But this Wang's main argument was completely ignored by the Opinion without giving any reason.

So instead the trial court can just order Wang to fix the pet cemetery if the court found the pet cemetery was not in compliance with the CC&R based on evidences presented by Allen and evidences presented by Wang but for Wang's attorney's negligence. But the Opinion just disregarded all those well-established case laws regarding the rigid requirements for appointing a receiver and invented a new law for appointing a receiver--- "failing to maintain a property in a manner compliant with the judgment and CC&Rs" justifies "to appoint a receiver to address any noncompliance" which is without any precedent to support. The Opinion then used its newly invented law as the only major argument to justify the appointment of the receiver in the Underlying Case.

2) The Opinion implies those case laws regarding the rigid requirements for appointing a receiver is not general principle of the law for appointing a receiver but these justices' previous opinions indicate completely contrary. This shows these justices' disregarding all those case laws in the current case is with bad faith.

The Tentative Opinion completely disregarded those case laws without giving any reason. After Wang questioned them why they disregarded those laws during oral argument, this final Opinion did address some of the laws Wang presented but said "those authorities do not call into question the appointment of a receiver in this case". The Opinion p34said "In Alhambra the plaintiff sought to '" shut down the operations of [a] mine and mill' and permit no person to trespass on the property." (Alhambra, at p. 874.) In Dabney Oil, the plaintiff sought to recover profits realized from operating a business on the property and to stop the defendant from disbursing future profits. Here, Allen did not seek money damages or try to stop Wang from using the property in some way; she sought to force Wang to undertake improvements to the property and to expend resources to do so, and she made that request after Wang resisted efforts to gain voluntary compliance with a judgment[1]" so "those authorities do not call into question the appointment of a receiver in this case". The Opinion p35 said "*Golden State Glass* concerns only the appointment of a

[1] Allen provided no evidence other than her own declaration that "Wang resisted efforts to gain voluntary compliance with a judgment". In a case-within-a-case setting, Wang would also present a declaration denying or explaining every Allen's allegation.

receiver to take over a foundering business. It provides no support for rejecting the appointment of a receiver to enforce a judgment requiring a property owner to maintain property under specified conditions" so the case laws presented in *Golden State Glass* do not apply in the current case. The Opinion p35 footnote 14 says "Other cases (cited by Wang regarding the rigid requirement of appointing a receiver) are even less relevant".

This is extremely shocking! Especially when these statements came out of the mouths of three extremely experienced California law experts--- RAMIREZ P.J. and RAPHAEL and McKINSTER.

It is well known that those case laws established in (Alhambra, at p. 874.) and Dabney Oil and *Golden State Glass* are the general principles regarding appointment of a receiver in California. Those principles do not state that they only apply to a case where "the plaintiff sought to "' shut down the operations of [a] mine and mill' and permit no person to trespass on the property" or "the plaintiff sought to recover profits realized from operating a business on the property and to stop the defendant from disbursing future profits" or "appointment of a receiver (is) to take over operations of a business". The essence of those case laws is that when an appellate court saw there is a less onerous remedy to resolve the issue, the appellate court rejected the more harsh remedy which is to appoint a receiver and adopted the less onerous remedy even though the receiver was planned to be appointed for different purpose and the less onerous remedy took different forms in different case, i.e., in one case, it is an injunction while in another case the

appellate court simply rejected the appointment of a receiver due to the high expense.

In the current case even if "Allen did not seek money damages or try to stop Wang from using the property in some way; she sought to force Wang to undertake improvements to the property and to expend resources to do so" or "the appointment of a receiver (in the current case is) to enforce a judgment requiring a property owner to maintain property under specified conditions", by the same general principle established in those case laws, the trial court could have taken a less onerous remedy---to have Wang fixed the issue by himself instead of depriving the property out of the hand of the owner and having a receiver taking over the property if the court found the pet cemetery was indeed not in compliance with the 2002 judgment and CC&R. The fundamental similarity between those cases cited in those case laws and the current case is they all involve an intention to appoint a receiver to take over the business or property out of the hands of the owner and when the appellate court sees there is a less onerous remedy, the court should take that less onerous remedy. Any reasonable judge who faithfully discharges of judicial duty can see this.

If what these three justices said are true, that is, those general principles for appointing a receiver do not apply to the current case which involves "the appointment of a receiver to enforce a judgment requiring a property owner to maintain property under specified conditions", then it makes case laws meaningless because one can say almost all the case laws does not apply to a

case which doesn't have exactly the same legal demand as the cases generating the case laws. This will effectively shake the foundation of American case law system!

In fact, in their own previous opinions for other cases, these justices actually showed agreement with these case laws about rigid requirement for appointing a receiver. In VAIL LAKE v.SUNDANCE No. 2002 WL 86888, E027601, Creditors brought action against debtors for judicial foreclosure on deeds of trust, for declaratory and injunctive relief, and for damages for trespass. The Superior Court, Riverside County, No. **339527**, Joan Ettinger, Temporary Judge, granted creditors' motion to appoint receiver to take over management of recreational facility, and debtors appealed. In the unpublished opinion by McKINSTER and concurred by RAMIREZ, in "*B. THE RECORD DOES NOT ESTABLISH THAT THE TRIAL COURT FAILED TO CONSIDER LESS DRASTIC ALTERNATIVE REMEDIES. Because the appointment of a receiver "is a harsh, time-consuming, expensive and potentially unjust remedy" (2 Weil & Brown, **Cal**. Practice Guide: Civil Procedure Before Trial (Rutter 2001) Provisional Remedies, § 9:743, p. 9(II)–48.4), it should not be employed where a remedy less drastic in its nature and scope is available that will adequately protect the rights of the litigants (*Golden State Glass Corp. v. Superior Ct. *(1939) 13 **Cal**.2d 384, 393, 90 P.2d 75;* A.G. Col Co. v. Superior Court *(1925) 196 **Cal**. 604, 613, 238 P. 926). Accordingly, "a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a*

receivership." (City and County of San Francisco v. Daley *(1993) 16 Cal.App.4th 734, 745, 20 Cal.Rptr.2d 256.)". "Even without the presumption of correctness, the record here suggests that the trial court was well aware of its obligation to consider alternative remedies." "Those reminders render it more rather than less likely that the court complied with the law by considering possible alternative remedies.".* The Golden State Glass Corp is the exact case law that Wang cited in his AOB.

In that opinion, McKinster did NOT say "***Golden State Glass* concerns only the appointment of a receiver to take over a foundering business. It provides no support for** rejecting the appointment of a receiver to take over management of recreational facility for judicial foreclosure on deeds of trust, for declaratory and injunctive relief, and for damages for trespass". On the contrary, the citing of Golden State Glass Corp case law shows McKinster and Ramirez know clearly it's a general principle of law in appointing a receiver that the court should consider less drastic remedy first before taking the harsh and extraordinary remedy of appointing a receiver. Pay attention to the statement *"Those reminders render it more rather than less likely that the court complied with the* ***law*** *by considering possible alternative remedies.".* This statement shows they know clearly considering possible alternative less onerous remedies first before employing the extraordinary remedy of a receivership by the court is the "**law**".

In FONTANA v. BANI, 2016 WL 2864971, E062018, E063549, this is a nuisance abatement action by the City of Fontana. In the unpublished opinion by RAMIREZ and concurred by McKINSTER, in VII THE APPOINTMENT OF A RECEIVER,

"California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution. It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable....' [Citations.] And a party to an action should not be 'subjected to the onerous expense of a receiver, unless ... his appointment is obviously necessary to the protection of the opposite party....' [Citation.]" (Morand v. Superior Court *(1974) 38 Cal.App.3d 347, 351.)* The Morand case is the exact case law that Wang cited in his AOB. In that opinion, RAMIREZ didn't say "The Morand case is "even less relevant". In *Morand v. Superior Court* (1974) 38 Cal.App.3d 347, 352-353, the court did not question the appointment of the receiver, but the scope of the receiver's power to initiate legal proceedings against unnamed parties, so it provides no support for rejecting the appointment of a receiver to enforce nuisance abatement action required by the City". On the contrary, the citing of this Morand case law shows they know clearly it's a general principle of law in appointing a receiver case that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable.

If these three justices truly believe that those case laws cited by Wang regarding the rigid requirement of appointing a receiver don't apply in the current case, how come they didn't say so in their Tentative Opinion (the only difference between the

Tentative Opinion and the final Opinion is the addition of the two paragraphs on p34-35 stating the un-applicability of those case laws in the current case)? **It's unimaginable that as such experienced appellate court justices they would not point out the un-applicability of those case laws in the current case in the first place**. But the fact is they only point out the un-applicability of those case laws in their final Opinion AFTER Wang questioned them why they completely disregarded those case laws regarding the appointment of a receiver without giving any reason and threatened to complain to CJP again in Wang's 5/2/2024 Motion for Extended Time for Oral Argument and in 6/25/2024 Request to Publish the Opinion and during oral argument. These justices' behavior is really fishy and actually shows they know those case laws apply to the current case so they just played disregarding game first. But after Wang questioned them and threatened to report to CJP, they had to address it somehow so they claimed those case laws don't apply in the current case with bullshit reason.

3) The Opinion completely ignored Wang's argument that "throughout the MSJ, it tried to use the receiver's "finding" or court's finding after the receiver was appointed or whatever happened after the receiver was appointed to justify the appointment of the receiver, but California court never use this criteria to justify the appointment of a receiver" (9 CT 2524:16-2525:16) and "To Establish Causation In Legal Malpractice Case, The Case-Within-The-Case Standard Must Be Used. Then When Recreating The Underlying Case, California Evidence Code §350, Shows The Receiver's Report Should NOT Be Allowed As Admissible Evidence In The Underlying Case (during the hearing to determine if a receiver should be appointed or not)" (AOB 16:1-19:11) without giving any reason.

On the Opinion p41, "Framed in this way, Wang has failed to provide proof of causation. He could have prevailed against the motion for summary adjudication if he had presented evidence that he would have defeated the claim that he was in noncompliance after a trial in the pet cemetery case. But the evidence in fact contradicts that claim. No speculation is needed because the underlying issue was litigated until the pet cemetery was in compliance and the court had discharged the receiver". From p41-42, the Opinion uses the receiver's report to show Wang was not maintaining the pet cemetery in compliance with the CC&R so "The entire litigation history of that case shows that the property was not in compliance until the receiver intervened and supervised maintenance, care, and installation of the

fence and gates. Wang cannot use the case-within-a-case method to obscure this reality."

Here the Opinion completely disregarded the well-established case law that when legal malpractice involves attorney negligence in the prosecution or defense of a legal claim, the case-within-a-case methodology must be used (Orrick Herrington & Sutcliffe v. Superior Court (2003) 107 Cal.App.4th 1052, 1056-1057 (Orrick).) and used what happened after the receiver was appointed in the Underlying Case to prove the legal malpractice case. Why? Is it because if using case-within-a-case setting along with California Evidence Code §350, the receiver's report cannot be used as admissible evidence? So those justices decided that in a legal malpractice case involving attorney negligence, they would not use a case-within-a-case setting so the receiver's report can be used as evidence in the legal malpractice case as they wish?

The Opinion p40 did mention *Moradi-Shalal v. Fireman's Fund* case and its statement "["The trial of the 'suit within a suit' involves a determination of the merits of the underlying action; thus, there can be no recovery for a breach of duty without a preliminary showing as to the merits of an underlying claim"]". But this statement from *Moradi v. Fireman's* didn't mean suit-within-a-suit should not be applied and *Moradi v. Fireman's* is not even a legal malpractice case.

Meanwhile, there are thousands of firmly established California precedents of legal malpractice case involving attorney negligence that utilized suit-within-a-suit

setting to determine merits of the underlying action. **Wang only cited one Orrick case because Wang didn't expect that this California Appellate Court has an intention to not follow these well-established case laws** and also due to word limitation of a brief.

"The case-within-a-case methodology continues to apply in all legal malpractice actions involving a client's assertion that his attorney has either negligently prosecuted or defended that client's claim" (*California State Auto. v. Parichan, Renberg, 2000 84 Cal.App.4th 702 101 Cal.Rptr.2d 72 00 Cal. Daily Op. Serv. 8786*). The list of similar case laws can be on and on. But the Opinion disregarded thousands of firmly established California precedents of legal malpractice case involving attorney negligence that utilized suit-within-a-suit setting to determine merits of the underlying action.

The Opinion p42-43 continues to use the receiver's report to prove "It follows that Wang cannot establish he would have obtained a better judgment after a trial on the merits" But it didn't address why, according to California Evidence Code §350, The Receiver's Report Should NOT Be Allowed As Admissible Evidence In The Underlying Case (during the hearing to determine if a receiver should be appointed or not). It also ignored Wang's argument that California court never uses the receiver's "finding" or court's finding after the receiver was appointed or whatever happened after the receiver was appointed to justify the appointment of a receiver without giving any reason.

The Opinion p43-44 did try to rebut Wang's claim that "the case-within-a-case method requires the underlying action to "be recreated through the trial-within-a-trial process to resolve the issues of causation and damages" and limits the evidence at trial to what "the court heard in the underlying case, plus such additional evidence that the court would have heard in the absence of such negligence" by simply saying "*Kessler* does not do the work Wang suggests". Again the Opinion tried to say the general principle about how to use the trial-within-a-trial method established in Kessler case doesn't apply to the current case because Kessler case is different from the current case. If this viewpoint holds, then all case laws would become useless because no cases are exactly the same so no law established in one case can be applied to another case even if both cases have fundamental similar legal demand. The Opinion pretended to not understand that both Kessler case and the current case were about appointing a receiver.

The Opinion p45 said "while *Kessler* does represent the rare case in which a trial court held a trial-within-a-trial to resolve an attorney malpractice claim, it does not support Wang's position that...". Apparently the Opinion "believes" a trial court held a trial-within-a-trial to resolve an attorney malpractice claim is "the **rare** case" so this belief justifies the Opinion's relying on what actually happened in the Underlying Case (the fact the receiver was appointed and discharged and all the receiver's reports) to prove the legal malpractice case.

4) These Justices' previous opinions show clearly they know "To Establish Causation In Legal Malpractice Case, The Case-Within-The-Case Standard Must Be Used" is the general principle of law.

In a legal malpractice action THV INVESTMENTS v. ROBERTS, 2019 WL 2558207, E065126, McKINSTER wrote in his unpublished opinion "*A.* ***General Principles of Law for Legal Malpractice Claims*** ["One who establishes malpractice on the part of his or her attorney *in prosecuting a lawsuit* must also prove that careful management of it would have resulted in a favorable judgment and collection thereof, as there is no damage in the absence of these latter elements."].) This requirement essentially necessitates a "trial-within-a-trial" of the underlying case. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 832-834 [recounting the "long line of cases adopting the trial-within-a-trial method of proof when an attorney is accused of losing a client's legal claim or defense" and noting that "[c]ertainly to date, no other approach has been accepted by the courts"].)". **"[W]hen the [attorney] malpractice involves negligence in the prosecution or defense of a legal claim, the case-within-a-case method is appropriately employed.** [Citation.] Thus, when a client seeks to recover damages for his attorney's negligence in the prosecution or defense of the client's claim, the client must prove that 'but for that negligence a better result could have been obtained in the underlying action. [Citation.] "An attorney malpractice action then, involves a suit within a suit, a **reconsideration** of the previous legal claim, and only by determining whether or not the original claim was good can proximate

damages be determined." [Citation.] **This trial within a trial avoids the specter that the damages claimed by a plaintiff are a matter of pure speculation and conjecture.**' " (California State Auto. Assn. Inter-Ins. Bureau v. Parichan, Renberg, Crossman & Harvey (2000) 84 Cal.App.4th 702, 710-711, disapproved on another ground in Viner v. Sweet, supra, 30 Cal.4th at p. 1244, fn. 5.)" (emphasis added). RAMIREZ concurred.

Here McKINSTER didn't say "But the evidence in fact contradicts that claim. No speculation is needed because the underlying issue was litigated until the bank sues the members of THV ..." or "THV cannot use the case-within-a-case method to obscure this reality" or "while Kessler does represent the rare case in which a trial court held a trial-within-a-trial to resolve an attorney malpractice claim" or "The question here is not what might have happened, but what should have happened. And the record here demonstrates that what should have happened did happen- the bank sues the members of THV" or "In that counterfactual world (the case-within-a-case world)..." because apparently he knows using the case-within-a-case methodology is the *"General Principles of Law for Legal Malpractice Claims"* so case-within-a-case method does not involve any "speculation" and "a trial court held a trial-within-a-trial to resolve an attorney malpractice claim" is not "the rare case".

In another legal malpractice action DAVCON v. ROBERTS, 2006 WL 541024, RAMIREZ concurred "D. Proof of Causation in a Legal Malpractice Action The elements of a cause of action for legal malpractice are... Such actions **must** be tried as a "case-within-a-case" or "trial-within-a-trial." (*Mattco Forge, Inc. v. Arthur*

Young & Co. (1997) 52 Cal.App.4th 820, 832-834 [recounting the "**long line of cases adopting the trial-within-a-trial method of proof** when an attorney is accused of losing a client's legal claim or defense" (*id.* at p. 832) and noting that "[c]ertainly to date, **no other approach has been accepted by the courts**" (*id.* at p. 834).) The case-within-a-case approach "simply requires that to prove damages in certain types of legal malpractice lawsuits, the underlying case in which the malpractice allegedly occurred must be tried as part of the malpractice claim in order for the plaintiff to establish the amount of the damages caused by the malpractice." (*Rice v. Crow* (2000) 81 Cal.App.4th 725, 740.) In particular, "[t]he trial-within-a-trial method does not 'recreate what a particular judge or fact finder would have done. Rather, the jury's task is to determine what a reasonable judge or fact finder would have done....' [Citation.]" (*Mattco Forge, Inc. v. Arthur Young & Co., supra,* 52 Cal.App.4th at p. 840.)".

Please note the words "Such actions **must** be tried as a "case-within-a-case" or "trial-within-a-trial." and "recounting the "**long line of cases** adopting the trial-within-a-trial method of proof when an attorney is accused of losing a client's legal claim or defense" and "noting that "[c]ertainly to date, **no other approach has been accepted by the courts**". Apparently RAMIREZ didn't think "a trial court held a trial-within-a-trial to resolve an attorney malpractice claim" is "the **rare** case". Instead, RAMIREZ concurred that "**no other approach has been accepted by the courts**". Then why in the current legal malpractice case, RAMIREZ concurred that "a trial court held a trial-within-a-trial to resolve an attorney

malpractice claim" is "the **rare** case" and used what actually happened in the underlying case to prove the legal malpractice case involving attorney negligence--- " what should have happened did happen-the receiver and the court intervened to enforce the judgment and the CC&Rs governing the use of the pet cemetery property"?

Also in DAVCON case, the opinion disapproved Davcon's relying on the expert opinion to establish causation rather than using case-within-a-case approach. Then why RAMIREZ allowed in the current case to use the receiver's report to substitute for the case-within-a-case approach to establish causation?

In another legal malpractice action Charles v. JAMES, 2013 WL 4511248, E053292, McKINSTER wrote in his unpublished opinion "2.ANALYSIS The elements of a cause of action for legal malpractice are ... **Such actions are tried as a "case-within-a-case" or "trial-within-a-trial.**" (Mattco Forge, Inc. v. Arthur Young & Co. (1997) 52 Cal.App.4th 820, 832–834 [recounting the "**long line of cases adopting the trial-within-a-trial method of proof** when an attorney is accused of losing a client's legal claim or defense" (id. at p. 832) and noting that "[c]ertainly to date, **no other approach has been accepted by the courts**" (id. at p. 834)].) The case-within-a-case approach "simply requires that to prove damages in certain types of legal malpractice lawsuits, the underlying case in which the malpractice allegedly occurred must be tried as part of the malpractice claim in order for the plaintiff to establish the amount of the damages caused by the malpractice." (Rice v. Crow (2000) 81 Cal.App.4th 725, 740.)". RAMIREZ concurred.

Please note the words "Such actions are tried as a "case-within-a-case" or "trial-within-a-trial" and "[recounting the "long line of cases adopting the trial-within-a-trial method of proof when an attorney is accused of losing a client's legal claim or defense" and "[c]ertainly to date, **no other approach has been accepted by the courts**". Apparently McKINSTER and RAMIREZ didn't think "a trial court held a trial-within-a-trial to resolve an attorney malpractice claim" is "the **rare** case". Instead, both believe that "no other approach has been accepted by the courts". Then why in the current legal malpractice case, both concurred that "a trial court held a trial-within-a-trial to resolve an attorney malpractice claim" is "the rare case" and used what actually happened in the underlying case to prove the legal malpractice case involving attorney negligence---"what should have happened did happen-the receiver and the court intervened to enforce the judgment and the CC&Rs governing the use of the pet cemetery property"?

In another legal malpractice action Leticia ARCINIEGA v. BANK OF SAN BERNARDINO, 52 Cal.App.4th 213, No. E016659, RAMIREZ concurred in the published opinion "Analysis of the legal validity of the foregoing position requires an exercise in melding two legal propositions, i.e., (1) the retraxit resulting from the court's dismissal of the legal malpractice action and (2) the "case-within-a-case" doctrine which **characterizes** legal malpractice cases". The opinion then gave a detailed analysis of the essence of the case-within-a-case doctrine---"the misperforming attorney must stand in and submit to being the target instead of the former target which the attorney negligently permitted to escape. This is the

essence of the case-within-a-case doctrine". These statements show RAMIREZ knows clearly it is **characteristic** and axiomatic that case-within-a-case doctrine applies to legal malpractice cases and he also knows clearly how to apply case-within-a-case doctrine to legal malpractice cases. So if the defendants of the current legal malpractice case stand in as the other party Allen in the Underlying Case, and reconstruct the original case, it is obvious the receiver's report was not an admissible evidence for defendants because at the hearing to appoint the receiver, Allen didn't have the receiver's report yet!

From the above their previous opinions in other legal malpractice cases, one can see RAMIREZ and McKINSTER know clearly in legal malpractice action involving attorney negligence, case-within-a-case methodology must be used. So their choice to use what actually happened after the receiver was appointed in the underlying case to prove the legal malpractice case involving attorney negligence so "no speculation is needed" instead of using case-within-a-case setting to prove is extremely disturbing.

5) The Opinion implies the appointment of a receiver is just "an earlier stage of the litigation" but the justice's previous opinion shows the justice knows the order to appoint a receiver is appealable order so the appointment of a receiver is final of the litigation in terms of appointing of a receiver.

The Opinion p45 said "Thus, while *Kessler* does represent the rare case in which a trial court held a trial-within-a-trial to resolve an attorney malpractice claim, it does not support Wang's position that the method allows a plaintiff to prove causation or damages by proving they may have prevailed at an earlier stage of the litigation." and "*Laube* explains why the proper focus is on the ultimate merits rather than some intermediary stage in the litigation".

The Opinion tried to describe that the appointment of a receiver is just "an earlier stage of the litigation" and implied that the later stage of the litigation (what happened after the receiver was appointed) demonstrates that receiver should have been appointment anyway.

But in terms of whether a receiver would have been appointed or not, that litigation is final: either a receiver is appointed or not appointed. Period. If the receiver was not appointed, then Wang would not have incurred all the cost associated with dealing with the receiver. If the receiver was appointed, unless the court explicitly said what the receiver later finds will be the basis for reevaluating the appointment of the receiver, then what the receiver had done or found later has

nothing to do with its earlier appointment because when the receiver was appointed the court simply couldn't have considered what the receiver had done or found since the receivership didn't even exist yet so what the receiver had done or found later is irrelevant to the earlier appointment of the receiver.

RAMIREZ's previous opinion shows he knows the order to appoint a receiver is an appealable order so that order is an appealable collateral order which conclusively determines the issue of whether a receiver should be appointed. In Mark v. Denise, 2002 WL 436970, No. E029620, RAMIREZ wrote in the unpublished opinion "Moreover, if the trial court had appointed a receiver for the duration of the action on its own motion, that order would have been immediately appealable. (Code Civ. Proc., § 904.1, subd. (a)(7).) As a result, Mr. Stanley would be obligated to pursue an appeal challenging appointment of the receiver as improvident. He could not wait until trial to collaterally attack the receiver's appointment, nor could he challenge the receivership yet again on appeal from the final judgment rendered after trial. (*McCarthy v. Tally* (1956) 46 Cal.2d 577, 587, 297 P.2d 981.) ".

Since the trial court's order to appoint the receiver in 2017 is an appealable collateral order, it conclusively determines the issue of whether a receiver should be appointed and the appointment of a receiver is a matter separate from the ultimate merits of the case. So the later stage of the litigation (what happened after the receiver was appointed) has nothing to do with the appointment of the receiver. As an experienced law expert, RAMIREZ's above statements shows he knows this clearly.

6) The Opinion tried to confuse the underlying case with the legal malpractice case.

The Opinion p32 "...,Allen presented evidence of..., Wang presented no contrary evidence." p33, "...She also represented that she had been trying to work with Wang to address these issues since April 2014, to no avail. This evidence supported finding appointment of a receiver was necessary to enforce the judgment"; "Wang's draft statement, which he did not submit to the court and which he did not sign under penalty of perjury, conceded...". It clearly shows this Opinion is trying to justify the original appointment of the receiver in the underlying case. But a legal malpractice case is not a re-justification of the underlying case so there is NO need for this Opinion to justify the original appointment of the receiver based only on the original evidences in the Underlying Case. A legal malpractice case is to see but for attorney negligence whether plaintiff can have a better result. So but for Iverson's negligence, Wang would have converted his unsigned and un-submitted draft statement into a signed and submitted declaration under penalty of perjury. And then in this declaration, Wang would have rebutted or explained Allen's all six allegations. Then based on evidences from both sides, the legal malpractice case will see how a reasonable judge will decide.

This Opinion just pretends to not know the difference between the underlying case and the legal malpractice case. As an experienced justice who is "faithfully discharging of judicial duty", do they really not know the difference between the underlying case and a legal malpractice case?

7) This Appellate Court has a solid history of ignoring a party's main argument without giving any reason and of disregarding the well-established law without giving any reason.

In Wang's previous appeal to this Court E073408 which involved a trespassing case and an attorney fees case, besides this Court's severe twisting of Wang's argument about Laches and forging nonexistent key fact that Wang violated the 2018 court order in the trespassing case, in the attorney fee case, this Court disregarded the well-established law regarding attorney fees in a contract---Civil Code 1717(a) upon which all the parties and the trail court had been relying without giving any reason, and suddenly adopted Civil Code section 5975 which is part of Davis-Stirling Common Interest Development Act that only applies to (a) A community apartment project and (b) A condominium project and (c) A planned development and (d) A stock cooperative but NOT to a pet cemetery without giving any reason. (that appeal case's files are AOB(CT 4082), RB(CT 4118), ARB(CT 4172), final Opinion(CT 4227), Appellant's Petition for Rehearing(CT 4244), Order Denying APFR(CT 4292), Wang's Complaint to CJP(CT 4295), CJP's Denial(CT 4304), Wang's Additional Information to CJP(CT 4306)). Apparently this Appellate Court's notorious behavior of disregarding well-established law or case laws without giving any reason lasts to the current appeal.

3. The State Supreme Court's denial of Wang's Request to Publish the Opinion shows it disagrees with the State Appellate Court's creating a new law for appointing a receiver and with the State Appellate Court's disregarding well-established case laws regarding rigid requirement of appointing a receiver and regarding using the case-within-a-case setting to establish causation in legal malpractice case. Yet its denial of Wang's Petition for Review shows it has no intention to correct the State Appellate Court's nasty bad faith opinion.

On 8/21/2024 the California Supreme Court denied Wang's Request to Publish the Opinion and Petition for Review without giving any reason.

California Rules of Court Rule 8.1105(c) "An opinion of a Court of Appeal or a superior court appellate division-whether it affirms or reverses a trial court order or judgment-**should** be certified for publication in the Official Reports if the opinion: (1) Establishes a new rule of law". The Opinion established one new law for appointing a receiver---failing to comply with the CC&R justifies appointing a receiver to make compliance and overturned well-established case laws regarding the general principle of law for appointing a receiver and for resolving causation in a legal malpractice case so it completely complies with California Rules of Court Rule 8.1105(c) for publishing an opinion.

But the denial of Wang's Request to Publish the Opinion shows the State Supreme Court disagrees with the State Appellate Court's creating a new law on the fly and with the State Appellate Court's disregarding well-established case laws regarding the rigid requirement of appointing a receiver and regarding using the case-within-a-case setting to establish causation in legal malpractice case.

Wang asked the California Supreme Court "The Supreme Court is busying interpreting laws so very unlikely to accept my case since I'm neither a celebrity nor a rich person so nobody cares about my case. **But if an appellate court takes advantage of the low case acceptance of the Supreme Court and intentionally disregards the law or case laws so they can judge the case at their will and yet the Supreme Court refuses to take up the case to correct their nasty**

behavior, how useful it is for this Supreme Court to continue to make case laws thinking natively all the appellate courts will follow?" Its denial of Wang's Request to Publish the Opinion and Petition for Review at the same time shows the State Supreme Court has no intention to correct the State Appellate Court's bad faith opinion even though they knew the Opinion is a bad faith one so Wang's Constitutional Right to a fair tribunal is deprived completely by California Jurisdiction System.

Conclusion

The California trial court made highly biased Judgment by disregarding all the case laws presented by Wang without giving any reason and ignoring all Wang's main arguments without giving any reason. Then California Appellate Court played disregarding without reason game first and after being pushed then claimed those well-established case laws favoring Wang "provides no support for" Wang's case yet their previous opinions show they know clearly those case laws are the general principle of the law. California Supreme Court apparently disagreed with the California Appellate Court's inventing of new law on the fly and intentionally disregarding of those general principles of law. Yet it still refused to review Wang's appeal to correct the nasty bad faith Opinion. So Wang's Constitution Right to a fair and impartial tribunal which is guaranteed by the 14th Amended is violated completely by California Jurisdiction System. Since Wang's Constitution Right is violated and California Jurisdiction System indulges such violation, Wang is asking Federal Supreme Court to intervene to protect Wang's Constitutional Right with which every US citizen was endowed by 14th Amendment.

RESPECTFULLY SUBMITTED

Dated: November 6 , 2024 Liren Wang /s/ Lake Wang