

INDEX OF APPENDICIES

**APPENDIX A
DENIAL OF REVIEW
BY CALIFORNIA SUPREME COURT**

APRIL BOELK
AUTOMATIC APPEALS SUPERVISOR



EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

August 29, 2018

William Ramirez and Stacey Ramirez
P.O. BOX 262
Cedarville, CA 96104

Re: **S250830 — Ramirez v. Superior Court of El Dorado County
(Mangiaracina)**

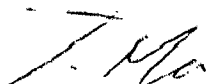
Dear William Ramirez and Stacey Ramirez:

The court has considered your application for relief from default and petition for review. Your application for relief from default has been denied. (Cal. Rules of Court, rule 8.60(d).)

The court has directed that the petition for review be returned to you, and on this date, we returned your petition via trueFiling.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court


By: T. Ma, Deputy Clerk

Enclosure

cc: Court of Appeal, Third Appellate District
Rec:

APPENDIX B
DENIAL OF RECONSIDERATION
BY CALIFORNIA SUPREME COURT



APRIL BOELK
AUTOMATIC APPEALS SUPERVISOR

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

September 6, 2018

William Ramirez
Stacy Ramirez
P.O. Box 262
Cedarville, California 96104

Re: **S250830, Ramirez v S.C. (Mangiaracina)**

Dear Mr. and Mrs. Ramirez:

Returned is the application for reconsideration of denial of the application for relief from default. The court has directed return of such applications for the reason that the California Rules of Court do not authorize reconsideration of such applications.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

A handwritten signature in black ink, appearing to read "F. Coello".

By: F. Coello, Deputy Clerk

cc: Rec.
Enclosure

APPENDIX C
DENIAL OF WRIT OF MANDATE
BY CALIFORNIA COURT OF APPEALS

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

WILLIAM RAMIREZ et al.,
Petitioners,

v.

THE SUPERIOR COURT
OF EL DORADO COUNTY,
Respondent;
MEGAN MANGIARACINA,
Real Party in Interest.

C087596
El Dorado County
No. PCL20170463

BY THE COURT:

The petition for writ of mandate is denied.

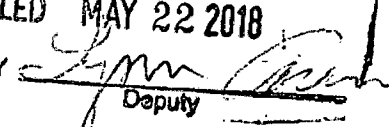
Mauro
MAURO, Acting P.J.

cc: See Mailing List

APPENDIX D
DENIAL OF WRIT OF MANDATE
BY CALIFORNIA SUPERIOR COURT APPELLATE DIVISION

EL DORADO CO. SUPERIOR CT.

FILED MAY 22 2018

BY  Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

WILLIAM RAMIREZ, STACEY RAMIREZ)

Petitioners)

v.)

SUPERIOR COURT OF CALIFORNIA,)
COUNTY OF EL DORADO)

Respondent)

MEGAN MANGIARACINA)

Real Party in Interest)

Case No.: PCL20170463 (SCU201270067)

RULING ON PETITIONERS' REQUEST
FOR WRIT ORDERING RESTORATION
OF POSSESSION OF REAL PROPERTY

After review of the moving and opposing papers and careful consideration of the arguments presented therein, the Court DENIES Petitioners' Petition for a Writ restoring possession of the property located at 1678 Tionontatu Street, South Lake Tahoe, CA 96150. The Court finds (1) the writ is untimely; (2) that Petitioners have failed to show they will suffer irreparable harm if relief is not granted; and (3) Petitioners' contention they were unlawfully evicted through forcible entry is without merit.

The present matter involves a petition for issuance of a writ in a limited civil unlawful detainer matter. Petitioners were evicted (locked out) from the subject property by the Sheriff on August 30, 2017. Petitioners state they are challenging the trial court's action on three separate

1 occasions in failing to set aside their eviction when they were locked out of the property without
2 service of a 5-day Notice to Vacate and valid writ of possession attached. (App-151, ¶3.)
3 Instead, according to Petitioners, they were told on August 30, 2017 they had twenty minutes to
4 gather their things and vacate the premise. Petitioners argue the trial court erred in denying their
5 motions. (App-151, ¶10.) Petitioners contend they are homeless as a result of the unlawful
6 eviction. (App-151, ¶11.) Accordingly, they demand immediate possession of the property or in
7 the alternative “restitution”.¹ (See App-151, ¶3, ¶10(a)(1), (3); ¶12(a).)

8 PROCEDURAL HISTORY

9 Shortly after their eviction, Petitioners filed three ex parte applications in rapid
10 succession seeking to regain possession of their residence (i.e., September 7, 15 and 23, 2017).²
11 Although Petitioners disagree with this conclusion, each of the motions are based upon the same
12 essential facts and, with some minor deviations, made essentially the same legal arguments. (See
13 Ptnrs.’ Ptn for Rehearing p. 7.)

14 Petitioners argued, among other things, that (1) the eviction violated certain due process
15 protections; (2) their August 22, 2017 Motions to Vacate [the judgment] and Quash [the writ of
16 possession] should have been granted; and (3) they were never served with the August 23, 2017
17 writ, which they claim is the only valid writ of possession issued in the case. (See Ptnrs.’
18 Sept. 7, 2017 Ex Parte Mtn Ps&As pp. 2:7-14; 4-5; 6:13-21; 7:4-16; Ptnrs.’ Sept. 15, 2017 Ex
19

20 ¹ Although the Petition and supporting papers make some passing references to the return of animals and
21 all “applicable remedies [available] in CCP 789(c),” the gist of Petitioners’ claim for restitution appears to
22 the same as her demand for immediate possession. (See APP-151, ¶3; Ptnrs.’ Sept. 7, 2017 Ex Parte Mtn
23 Ps&As 7:17-27; Sept 15, 2017 Ex Parte Mtn Ps&As p. 5:7-20.)

24 ² The record reflects that Petitioner filed a total of four Ex Parte Motions to Vacate, Quash and Stay the
25 August 1, 2017 Judgment i.e., August 14, September 7, 15 and 18, 2017. The grounds alleged in the
26 August 14 Motion are substantially similar to some of the arguments made by Petitioners in their
27 September 7, 2017 Ex Parte Motion (i.e., violation of due process; eviction based upon an invalid writ of
28 possession because the August 1, 2017 judgment overstated the amount of the holdover damages by 29
days, rendering that judgment invalid.) (See Ptnrs.’ Aug. 14, 2017 Ex Parte Mtn. in Record.) This Ex
Parte Motion was heard August 15, 2017; the Stay was granted and the Motions to Vacate and Quash set
for hearing on August 22, 2017. The motions were eventually heard on August 22 and denied.

1 Parte Mtn pp.2:4-8; 3:26-27; 4:3-7, 20-24; Ptnrs.' Sept. 18. 2017 Ex Parte Mtn pp. 3-4; 8; 10:14-
2 26.)³

3 Regarding the alleged due process violations, Petitioners argued the August 22, 2017
4 Amended Judgment should have been vacated because, following the denial of their demurrer,
5 Petitioners were not given a full 5 days leave to answer the complaint nor given 10 days-notice
6 of the hearing on the complaint as required by Code of Civil Procedure section 594.⁴ (See
7 Ptnrs.' Sept. 7, 2017 Ex Parte Mtn Ps&As p. 4.) Regarding the Motions to Quash and Vacate,
8 Petitioners argued the motions should have been granted because the trial court had declared the
9 judgment entered August 1, 2017 "null and void and superseded by the [August 22, 2017]
10 judgment." (See August 22, 2017 Minute Order; Ptnrs.' Sept. 7, 2017 Ex Parte Mtn Ps&As 5-7;
11 Sept 15, 2017 Ex Parte Mtn Ps&As p. 5:7-20.) Also, because the August 1, 2017 judgment was
12 "null and void" the August 7, 2017 the writ of possession that had been served on Petitioners was
13 invalid. Therefore, Petitioners argue, they were never evicted with a valid writ of possession.

14 Petitioners' third Ex Parte motion in this series, dated September 18, 2017, was file as a
15 Request for Reconsideration. It purported to cite "new case law" for the proposition that the
16 eviction was invalid because the only writ of possession served on them (i.e., the August 7 2017
17 writ) was based upon an underlying judgment which the court had declared was "null and void."
18 (Ptnrs.' Sept. 18. 2017 Ex Parte Mtn pp. 3-4; 8; 10:14-26.) Petitioners argued an eviction under
19 those circumstances constitutes an unlawful "forcible entry" self-help eviction. (*Id.*, at p. 9.) As
20 such, they were entitled to retake possession of the property.

21 ///

22
23 ³ Petitioners failed to number the pages in their moving Ex Parte papers, which consist of the Notice of
24 Motion, and Motion and Points and Authorities in support thereof. Accordingly, when citing to
25 Petitioners' ex parte motions, the Court will treat them as numbered in consecutive order from the first
page of the notice to the last page of the papers.

26 ⁴ The Court notes that the trial court's reasoning for shortening the timelines Petitioners complain of is set
27 forth in the Order Concerning Appellant's Proposed Statement on Appeal.
28

1 The trial court denied each motion. (See Orders After Ex Parte Application dated
2 September 8, and 18 2017 and Minute Order dated September 18, 2017.)

3 Petitioners filed a Notice of Appeal and the instant Petition for Writ in Limited Civil
4 action on October 6, 2017. The Notice states Petitioners are appealing the judgment entered
5 August 22, 2017. (See APP-102, ¶(3)(a); see also, APP-151.) This ruling will not address the
6 merits of any arguments concerning Petitioners' appeal.

7 **STATEMENT OF FACTS**

8 The landlord filed an unlawful detainer complaint on June 6, 2017. A First Amended
9 Complaint (FAC) was filed July 10, 2017. Petitioners filed a Demur and Motion to Quash the
10 FAC on July 18, 2017. The Demur was heard, argued and denied in its entirety on
11 July 25, 2017.⁵ Petitioner was ordered to file any response by July 28, 2017. The matter was set
12 for trial on August 1, 2017. (See July 25, 2017 Minute Order.)

13 Following trial, judgment was entered in Landlord's favor on August 1, 2017. (See
14 August 1, 2017 Minute Order.) Landlord was awarded possession of the property and a money
15 judgment for \$6,876.26 which included past due rent, hold over damages, and costs. (See Minute
16 Order Aug. 1. 2017 and Judgment in Record.) A Writ of Possession based upon that judgment
17 also issued but contained an incorrect issuance date of "August 1, 2019." A new Writ of
18 Possession was issued August 7, 2017. (See Writs in Record.)

19 On August 14, 2017, Petitioner filed an Ex Parte Motion to Vacate, Motion to Quash and
20 Request for Stay concerning the August 1, 2017 Judgment. (See Ptrns.' Aug. 14, 2017 Ex Parte
21 Mtn. in Record.) This Ex Parte Motion was heard August 15, 2017; a Stay was granted and the
22 Motions to Vacate and Quash set for hearing on August 22, 2017. Following a hearing on the
23 merits, the motions were denied on August 22, 2017.

24
25 ⁵ The Motion to Quash was based upon Petitioners' claim they were never served with the Summons and
26 Complaint. The Court can find no official ruling (minute order or otherwise) on the Motion to Quash in
27 the file. However, according to the minutes of the proceeding, it appears the Motion was decided at the
28 same time as the demur given that Petitioner answered the complaint on July 28, 2017.

1 The Landlord, at this hearing, also filed an Amended Judgment that corrected the
2 miscalculation of holdover damages thereby reducing the entire monetary judgment amount to
3 \$5,776.46. Regarding the Amended Judgment, the trial court stated "The Court hereby accepts
4 and orders the Amended Judgment on August 22, 2017 as orders (sic) of the court, Judgment
5 filed the date of 8/1/2017 is null and void and superseded by the Judgment ordered on
6 8/22/2017." (See Aug. 22, 2017 Minute Order in Record.)

7 A third writ of possession was prepared based upon the new Judgment and issued
8 August 23, 2017. It is undisputed that Plaintiffs were not served with the writ.

9 Regarding the Sheriff's actions upon the writs, the August 1, 2019 Writ appears to have
10 been served on Petitioners by post and mailing August 2, 2017 by post and mail. (See Exh. A,
11 entitled Return on Writ of Possession, to Ptrns.' Sept. 15 Ex Parte Mtn.) The August 7, 2017
12 Writ appears to have been served on Petitioners by post and mailing on August 8, 2017. And,
13 although its accuracy is disputed by Petitioners, Exhibit A *indicates* that Petitioners were
14 personally served with the Writ on August 30, 2017 (the date of their lock out).⁶

15 **Arguments of the Parties**

16 The gravamen of the Petition is as follows: Petitioners contend they were forcibly evicted
17 by the Sheriff from their residence on August 30, 2017 pursuant to a writ of possession issued
18 August 7, 2017 and served August 8, 2017. (APP-151, ¶3 and attachments.)⁷ Further, citing
19 *Bedi v. McMullan* (1984) 160 Cal.App.3d 272, Petitioners aver the August 7 writ of possession
20

21 ⁶ Assuming for argument the Writ was personally served on August 30, the 5-days notice would not have
22 been given, as to this writ, because they were locked out on the 30th. However, as reflected in this ruling,
that does not automatically entitle Petitioners to possession of the property.

23 ⁷ The record of the proceedings below, attached to the Petition, consist of copies of three ex parte
24 applications to stay and vacate a judgment and quash a writ of possession issued August 22, 2017; minute
25 orders related to the ex parte proceedings; three writs of possession (one dated August 1, the second dated
26 August 7, 2017 and the third dated August 23, 2017); two judgments, one dated August 1, the other (i.e.,
27 "Amended Judgment") dated August 22, 2017 and several other documents related to the proceedings.
28 As submitted, however, the record fails to comply with California Rule of Court, rule 8.931(b) and (c).
This alone justifies summary denial of the petition. (See Cal. Rule Court, rule 8.931(b)(4).)

1 was invalid because the underlying August 1 judgment had been declared “null and void” by the
2 trial court and a new judgment entered on August 22, 2017 superseding the original judgment.
3 Petitioners further contend they were never served with the second writ of possession (dated
4 August 23, 2017) that issued upon the August 22, 2017 judgment. As such, they argue, the
5 Sheriff evicted Petitioners under invalid writ. Petitioners also contend that by locking them out
6 without service of a proper writ on August 30, 2017, the Sheriff deprived them of their right to a
7 hearing under Code of Civil Procedure section 1174.3 to challenge the eviction.⁸ (APP-151,
8 ¶10(a)(b), attachment pp. 1-2.) Lastly, Petitioners argue they have been irreparably harmed by
9 the eviction because they have been deprived of their residence and are now “homeless”. (*Id.*, at
10 ¶11.) Accordingly, they demand restoration of possession of the property and “restitution”. (*Id.*,
11 at ¶12.)

12 The Respondent, Landlord, opposes the Petition on the grounds: (1) the Petition is
13 untimely, having been filed more than 30 days after the August 22, 2017 trial and entry of the
14 amended judgment; (2) service of the second writ of possession is not required because no return
15 had been filed to the first writ of possession and per Code of Civil Procedure section 712.010, no
16 new writ can be issued by the clerk; (3) the trial court had considered and rejected Petitioners’
17 arguments concerning the validity of the [August 1, 2017] judgment and [August 7, 2017] writ of
18 possession and concluded the *Bedi, supra*, decision did not apply; and, (4) even if the Sheriff’s
19 lockout was not based upon service of the August 23, 2017 writ of possession, the Landlord
20 cannot be found to have violated the forcible entry statute (Code Civ. Pro. §1160) because she
21 proceeded with the eviction through an orderly judicial process and engaged in no forcible
22 self-help. (Resp’s. Optn pp. 1-7.)

23 ///

24
25 ⁸ Petitioners’ argument that she had a right to a hearing under Code of Civil Procedure section 1174.3 to
26 contest the lock out is without merit. Section 1174.3 pertains to occupants “*not named* in the judgment
27 for possession who occupied the premises on the date of the filing of the action” Petitioners were
28 named in the FAC. Therefore section 1174.3 is in applicable.

1 ANALYSIS

2 Although initially presented as a writ for extraordinary relief, a close review of
3 Petitioners' arguments reflect that they are, in fact, petitioning for a full review of the
4 proceedings at the trial court. (See APP-151, ¶3 and arguments regarding the three ex parte
5 motions.) The Court further notes that Petitioners have also appealed the judgment awarding
6 possession of the property to Respond and appear to seek the same remedies in both proceedings
7 – restoration of possession of the property and restitution. (See Ptn. APP-151, ¶12a and d;
8 Notice of Appeal APP-102, ¶3 and Attachment p. 3.) Because there is a pending appeal
9 regarding the proceedings before the trial court, the Court will only consider in this writ whether
10 Petitioners are entitled to immediate repossession of the property and will not address the merits
11 of any argument raised in their appeal. For the reasons stated below, the Court declines to order
12 the subject real property returned to Petitioners' possession.

13 I. Timeliness

14 Unlawful detainer actions are summary court proceedings. (Code of Civ. Pro. §§1161,
15 1161a; *Cheney v Trauzettel* (1937) 9 Cal.2d 158; *Telegraph Ave. Corp. v. Raentsch*, (1928) 205
16 Cal. 93, 98 [stating, in sum, that unlawful detainer statutes were enacted to provide property
17 owners with a quick and ready determination of the forfeiture of a tenancy].) This means the
18 issues to be considered at trial are very limited and the rules of procedure shortened to allow
19 such cases to move forward very quickly. Thus, for example, a tenant is typically afforded only
20 five days to file a written response to the complaint and may be set for trial within 20 days after
21 the property owner's request. (Code of Civ. Pro. §§1167.3, 1170.5(a).) Because of the summary
22 nature of these proceedings, it is imperative that tenants act quickly in asserting their rights.
23 Further, delays in acting promptly can result in the denial of a petition for writ of review. (See
24 *Peterson v. Superior Court* (1982) 31 Cal.3d 147, 163 where writ denied under the doctrine of
25 laches because petitioner unreasonably delayed filing the petition and real party in interest
26 suffered prejudice from the delay; see also, *People v. Superior Court (Clements)* (1988) 200
27 Cal.App.3d 491, 496.)

28 ///

1 The original complaint in unlawful detainer was filed June 6, 2017. Respondent filed a
2 first amended complaint (FAC) on July 10, 2017. Petitioners' demurred to the amended
3 complaint, which was heard and denied July 25, 2017. The case proceeded to trial on the merits
4 of Respondent's FAC on August 1, 2017. Respondent prevailed and judgment was entered in
5 her favor. A writ of execution (money judgment) and possession issued August 1, 2017.

6 Petitioners' responded to the adverse judgment by filing four ex parte motions on
7 August 14, 2017, September 7, 15 and 18, 2017, to vacate the judgment, quash the writ of
8 possession and stay the eviction.⁹ The application for a temporary stay was granted on
9 August 15, 2017, however, the Motions to Vacate and Quash was continued to August 22, 2017.
10 Thereafter, the trial court denied the motions on August 22, 2017 and entered an Amended
11 Judgment. Thus, the time to seek relief commenced August 22, 2017 because it is the judgment
12 Petitioners contend superseded the August 1 judgment.

13 Petitioners delayed filing the instant writ petition until October 6, 2017 – a span of more
14 than 30 days. Given the summary nature of the underlying proceeding, such a delay is
15 significant particularly where the Petitioners are requesting restoration of the premises,
16 "restitution," and "return of the family pets." (See Ptn., APP-151, ¶12(a).) Indeed the
17 instructions for preparing the writ, state as follows:

18 ///

19 _____
20 ⁹ The September 18, 2017 was the only ex parte application entitled "Application for Reconsideration"
21 under Code of Civil Procedure section 1008. And, only this motion purported to state it was based upon
22 the discovery of "new case law." Nevertheless, the failure to identify the prior ex parte motions, as
23 "motions for reconsideration" does not negate the fact that is what they were. As such, every motion after
24 the August 22 hearing was subject to section 1008. The court further notes section 1008 was enacted
25 specifically to prohibit the practice of filing successive motions on the same issues. These motions
26 appear to violate that prohibition.

27 Petitioners' contention the motions were not similar and raised different issues is not well taken. The
28 gravamen of each of the September Ex Parte motions was a dispute over the validity of the August 1
Judgment and the August 7 Writ of Possession and denial of their Motions to Vacate and Quash on
August 22, 2017. Petitioners' "spin" on the subtleties of their arguments aside, the motions raised
substantially similar issues.

1 “you should file the petition as soon as possible and not later than 30 days
2 after the court makes the ruling that you are challenging in the petition . . .
3 Remember, the court is not required to grant your petition even if the trial
4 court made an error. If you delay in filing your petition, . . . *the appellate
5 division may deny your petition.* If there are extraordinary circumstances that
6 delayed the filing of your petition, you should explain this circumstances . . .
7 in your petition.” (Emphasis added; APP-150-INFO, p. 7 ¶14.)

8 Thus, Petitioners were clearly on notice that time was of the essence in bringing their
9 writ. Moreover, they have provided no explanation as to why they delayed so long in seeking
10 such relief, and the fact they filed three highly questionable ex parte motions in September does
11 not justify nor explain the delay.¹⁰

12 The Court further observes that Respondent has been prejudiced by the delay because
13 issuance of the writ at this late date impacts the availability of the property for rent to long term
14 tenants. For example, if the Landlord has re-rented the property then ordering restoration of the
15 property to the tenants would necessarily dispossess the current tenants. Alternatively, if the
16 property is still vacant, the Landlord is prejudiced because the property would be unavailable for
17 rent to long term tenants. Thus, Petitioners needed to file their petition for writ relief, *promptly*
18 after issuance of the August 22, 2017 order and judgment. They failed to do.

19 Under these circumstances, the Petition for writ relief is untimely.

20 II. *No showing of Irreparable Harm*

21 Civil judgments are generally reviewable by extraordinary writ (certiorari, prohibition, or
22 mandamus) only if there is “not a plain, speedy, and adequate remedy in the ordinary course of
23 law.” (Code Civ. Pro §§1068, 1086, 1103.) Normally, an *appeal* from a civil judgment is
24 deemed an “adequate remedy” (even though not as speedy as writ review). Consequently,

25 ///

26 ¹⁰ The ex parte motions are questionable because they seek reconsideration of the Court’s August 22,
27 2017 judgment. Such requests are governed by Code of Civil Procedure section 1008, which requires the
28 request to be filed within 10 days of the issuance of the order to be considered.
(Code Civ. Pro. §1008(a).) In addition to their failure to state any new facts or law not otherwise
available at the time of trial, none of the ex parte motions were filed within the 10-day time limit. It
would have been appropriate for the trial court to deny the motions on that basis alone.

1 review by writ is permitted only in *exceptional* circumstances. (*Conway v. Muni. Ct. (Security*
2 *Pac. Nat'l Bank)* (1980) 107 Cal.App.3d 1009, 1015.)

3 Further, while courts are inclined to view unlawful detainer judgments awarding
4 possession to the landlord as presenting “exceptional circumstances,” the courts also require the
5 tenant to show some type of extraordinary or unconscionable *hardship*. Moreover, the hardship
6 must be a condition *other than* the mere fact of the eviction, otherwise every judgment of
7 eviction would be subject to stay and/or review by writ thereby rendering the summary
8 proceedings provided by the unlawful detainer statutes meaningless. (See *Thrifty Oil Co v*
9 *Batarse* (1985) 174 Cal.App.3d 770, 777 [mere eviction from property is not a hardship
10 justifying relief from the forfeiture of the property]; see also, *Olympic Auditorium v Superior*
11 *Court in and for Los Angeles County* (1927) 81 Cal.App. 283, 285-286.)

12 Petitioners have made no showing of extraordinary hardship or irreparable harm from the
13 alleged defective eviction. Indeed, they have provided no information concerning the impact on
14 their family or property, impact on work, or impairment of their health or safety as a result of
15 August 30, 2017 eviction. Further, the fact they have had to relocate is a condition that can be
16 remedied through money damages if they were to prevail on their appeal. In addition, any
17 damages they might receive could be limited to their cost of five days of alternative housing,
18 minus the rent they would still have to pay the Respondent Landlord if they were placed back in
19 possession (e.g., if Petitioners were placed back in possession of the property today, they would
20 still be required to pay rent for the five days and could be immediately served by the Sheriff,
21 while moving in, with another writ of possession (based upon the August 22, 2017 Judgment).
22 Such service would require their ouster from the property within 5 days of that service.
23 Accordingly, all Petitioners stand to gain by a successful writ (or the appeal), is restoration of the
24 property for as long as it takes for them to be served with the new writ of possession, which can
25 be as short as 5 days. (See *S.P. Growers Assn. v. Rodriguez* (1976) 17 Cal.3d 719, 730, [holding
26 that tenants “may normally [be] evict[ed] . . . for any reason or for no reason at all.”) Petitioners
27 have made no showing their eviction on August 30, 2017 has created an extreme hardship or that
28 they have suffered irreparable harm.

1 III. *Petitioners' Reliance Upon Bedi v. McMullan is Misplaced.*

2 Petitioners contend they must be restored possession of the subject property because their
3 eviction was based upon an invalid writ of possession (i.e., the August 7, 2018 writ) and no other
4 writ had been served prior to their eviction on August 30, 2017. They contend the August 7 writ
5 is invalid because the August 1, 2017 Judgment, upon which the writ is based, was declared
6 “null and void and superseded” by the August 22, 2017 Amended Judgment. Petitioners rely
7 heavily on *Bedi v. McMullan* (1984) 160 Cal.App.3d 272 as authority that their eviction was
8 improper. Petitioners argue the *Bedi* decision stands for the proposition that a writ of possession
9 effectuating an eviction is invalid if the underlying judgment is invalid.

10 Petitioners' argument is partially correct i.e., a writ of possession generally must be based
11 upon a valid underlying judgment. Unquestionably, *Bedi, supra*, holds as follows:

12 “a landlord should ‘be liable for forcible entry and detainer if he evicts a
13 tenant under color of a void judgment. A default judgment that has been set
14 aside will not support a writ of execution [citation], . . . [¶][¶] Clearly, an
15 eviction is no less forcible because it is carried out by the marshal instead of
16 by the landlord personally.’ ” (*Bedi v. McMullan, supra*, 160 Cal.App.3d at p.
17 275.) . . .

18 Also,

19 “A valid writ of execution is the ultimate indispensable element of the legal
20 process by which a party entitled to possession of the property acquires
21 possession. Allowing the landlord to forcibly evict a tenant on the strength of
22 a judgment alone would remove the key conditions on the use of force:
23 necessity and judicial authorization.” (*Id.* at p. 276.)

24 And,

25 “There is no substitute for the crucial element of a valid writ of execution.”
26 (*Id.* at p. 277, 206 Cal.Rptr. 578.)

27 Petitioners' reliance upon *Bedi, supra*, is misplaced for several reasons. First, the issue in
28 this writ is whether Petitioners should be restored to possession of property that was returned to
 the landlord nearly a year ago (i.e., August 2017), particularly given that even if Petitioners were
 restored possession, they could be immediately subject to eviction upon service by the Sheriff of
 a new writ of possession. This could be accomplished in as little time as it would take to have

1 the clerk issue a new Writ of Possession based upon the August 22, 2017 Judgment and have the
2 Sheriff serve it, then wait 5 days. These facts militate against issuing an order restoring
3 possession of the subject property to Petitioners.

4 Second and more to the point, more recent case authority explains the *Bedi* decision,
5 expressly limiting it to its facts. Specifically, the First District Court of Appeal stated in *Glass v*
6 *Najafi* (2000) 78 Cal.App.4th 45 as follows:

7 “we think the [*Bedi*] decision can be most reasonably read in light of the well-
8 established distinction between forceful self-help and reliance on orderly
9 judicial process. On the alleged facts, the defendants’ conduct in *Bedi* fell in
10 the category of forceful self-help. Knowing that the writ was based on a
judgment that had been set aside, they concealed this information from the
marshal and deceived him “into believing he had judicial authority to execute
the writ.” (*Bedi v. McMullan, supra*, 160 Cal.App.3d at p. 274, 206 Cal.Rptr.

11 578.) In other words, the defendants allegedly manipulated the marshal, by
12 withholding information, so as to induce him to act on an invalid writ.

13 “In contrast, the defendants here proceeded in accordance with orderly
14 judicial processes. They applied to the court for an order directing the clerk to
15 issue a writ of possession, secured the writ pursuant to the order, and
16 recovered possession under the authority of the writ. The fact that the court
later determined that it had erred in ordering issuance of the writ does not
change the nature of the defendants’ action: they nevertheless acted in reliance
on a properly issued order in securing possession. Similarly, the defendants
17 relied on court authorization by remaining in possession. The order recalling
18 the writ expressly deleted proposed provisions ordering them to deliver
19 possession to the Glasses. The legal basis of the order is immaterial for
purposes of the forcible detainer statute; it matters only that they acted in
accordance with orderly legal process.

20 In our view, the *Bedi* decision must be confined to its facts. The critical
element in the decision is that the defendants allegedly acted without judicial
authority by inducing the marshal to execute on a writ based on a judgment
that had been set aside. It is this factor that placed their action in the category
of forceful self-help. The decision should not be interpreted to impose liability
21 on parties who rely on a properly issued court order, which is ultimately

22
23 determined to have been erroneously issued as the result of legal error. Such
24 an interpretation would undermine the policy favoring orderly judicial process
25 by placing litigants in jeopardy of liability even though they acted under the
26 authority of the court.” (Emphasis added; *Glass v Najafi, supra*,
27 78 Cal.App.4th 45, 50-51.)

28 The Court finds the present case is more similar to *Glass, supra*, than to *Bedi, supra*,
because there is no evidence the Respondent concealed from the Sheriff the fact the
August 1, 2017 Judgment had been superseded. Indeed, it appears the August 22, 2017

1 judgment merely corrected a calculation of the holdover damages and *made no change to the*
2 *issue of possession*. Thus, Respondents' right to possession has never been challenged or altered
3 – only the timing of when it should occur.

4 Further, while it appears the August 23, 2017 Writ was never served, the failure to do so
5 did not change Respondent's right to retake possession of the property. The August 7, 2017 writ
6 was still the active writ; it had not been withdrawn, returned nor expired. The practical effect of
7 that writ was the same as the August 23, 2017 writ and the same as the August 1 and August 22,
8 2017 Judgments – to restore possession of the property to Respondent. Thus, by acting upon the
9 August 7, 2017 writ, the Sheriff and, in turn, Respondent, clearly acted "in accordance with [an]
10 orderly legal process" to retake possession of the subject property because they were acting
11 pursuant to an active Writ of Possession. (*Glass, supra*, at p. 51.) Moreover, Respondent gained
12 no advantage, nor were Petitioners' unfairly prejudiced, by the Sheriff's reliance upon the
13 August 7, 2017 Writ because had the August 23, 2017 writ been delivered and promptly served,
14 Petitioners would still have been evicted on August 30, 2017.

15 Accordingly, Petitioners' contention they were evicted through forcible entry is without
16 merit.

17 The Petition for a writ ordering repossession of the subject property is DENIED.

18 IT IS SO ORDERED

19
20 5/22/18

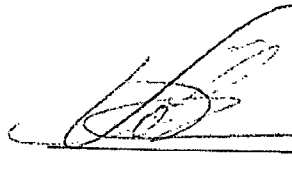
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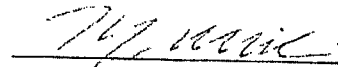
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26 5-22-18

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HON. VICKI ASHWORTH,
ASSISTANT PRESIDING JUDGE



HON. KENNETH J. MELIKIAN



HON. WARREN C. STRACENER

CLERK'S CERTIFICATE OF MAILING

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, CA 95667; and that I delivered a copy of **RULING ON PETITIONERS' REQUEST FOR WRIT ORDERING RESTORATION OF POSSESSION OF REAL PROPERTY FILED MAY 22, 2018** to the individual(s) listed below:

WILLIAM RAMIREZ & STACEY RAMIREZ
P.O. BOX 262
CEDARVILLE, CA 96104

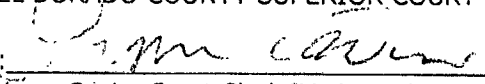
SCOTT W. SOUERS
ALLING & JILLSON, LTD.
P.O. BOX 3390
LAKE TAHOE, NV 89449

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on May 22, 2018 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY:


Lynn Cavin, Court Clerk IV, Appeals