

Supreme Court for the State of New York
Appellate Division – Second Judicial Department

Brett Wynkoop

Claimant/petitioner,
-against-

Judge Francois A. Rivera
Judge, New York Supreme Court
Kings County

Respondent

ORDER TO SHOW CAUSE
Appellate Division Docket no: 2017-06555

**NOTICE OF PETITION FOR
WRIT OF
PROHIBITION**

ORAL ARGUMENT DEMANDED

STAY REQUESTED

PLEASE TAKE NOTICE that upon the annexed verified petition of Brett Wynkoop dated 27 June 2017 and the papers annexed thereto, Let Judge Francois A. Rivera **SHOW CAUSE BEFORE THIS COURT**, at the courthouse thereof, located at 45 Monroe Place, Brooklyn, New York, 11201 on the 21 day of July, 2017, at 9:30 o'clock in the forenoon of that date or as soon thereafter as counsel may be heard, why an order should not be made and entered:

1. Granting a **WRIT OF PROHIBITION** in the matter of Wynkoop v. 622A President Street Owners Corporation (Kings Supreme Index No. 507156-2013).
2. Staying all Orders issued in 507156-2013 on or after Friday 23 June 2017 with respect to motions 29 & 30.
3. Granting such other and further relief as to the court may seem just and equitable including costs for this action.

~~SUFFICIENT CAUSE THEREFORE APPEARING, it is ORDERED that pending the hearing and determination of this petition that all proceedings in Wynkoop v. 622A President Street Owners Corporation are stayed; and it is further,~~

~~ORDERED that responsive papers if any shall be served upon Petitioner 21 days before the return date; and it is further,~~

ORDERED that service of a copy of this order to show cause and the papers upon which it was made upon Francois Rivera, Kyle Taylor, Hillary Taylor, Rajeev Subramanyam, Kathleen Keske, 622A President Street Owners Corporation and Eric Schneiderman (Attorney General of the State of New York) by

☒ personal delivery pursuant to CPLR 2103(b)(1) or ☒ office delivery pursuant to CPLR 2103(b)(3) or

☒ by electronic mail

☒ overnight delivery pursuant to CPLR 2103(b)(6)

on or before June 30, 2017 shall be deemed sufficient service thereof.

Dated: Brooklyn, New York

June 27, 2017

Hector D. LaSalle
Associate Justice
Appellate Division: 2nd Department
Hon. Hector D. LaSalle
Associate Justice
Appellate Division 2nd Dept.

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Supreme Court for the State of New York
Appellate Division – Second Judicial Department

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Brett Wynkoop

Claimant/petitioner,
-against-

Judge Francois A. Rivera
Judge, New York Supreme Court
Kings County

Respondent
-----X

Appellate Division Docket no:

2017-06555

INDEX NUMBER: 507156-2013

VERIFIED PETITION FOR WRIT OF
PROHIBITION

ORAL ARGUMENT DEMANDED

STAY REQUESTED

1. I, Brett Wynkoop, sui juris, a man, free born, and of lawful age, make this Verified Petition for a Writ of Prohibition to prohibit the Judge Francois A. Rivera in New York Supreme Court, County of Kings, located at 360 Adams Street, 5th Floor, Brooklyn, New York, 12001, from taking any further action in 507156-2013 because he lost jurisdiction by issuing an order on a matter which he admitted on the record was not within the jurisdiction of the court (Ex. A – Wynkoop P4, Affidavit – Ex. B Richmond Affidavit P5).
2. I have personal, first-hand knowledge of the facts and am competent, willing to testify, and swear, under penalty of perjury to the following facts:
3. I refer the court to my affidavit (Exhibit A) and include it here by reference.
4. I caused to be served on Kyle Taylor Esquire and Rajeev Subramanyam, Defendants in 507156-2013 an affidavit sworn under penalty of perjury in accordance with common law stating certain facts to be true and giving Messrs. Taylor and Subramanyam 30 days to respond by sworn affidavit. This was an extra-judicial common law action, related to no docketed case, and filed in no case until Defendants attached the documents to their motion to quash.
5. At the hearing on 23 June 2017 all parties and Judge Rivera agreed that the documents were not related to the instant action.

6. Judge Rivera stated on the record that the documents submitted by Defendants were not part of the action before him.
7. Judge Rivera therefore had no jurisdiction to issue any orders with respect to the documents submitted by Defendants.
8. Judge Rivera in spite of not having jurisdiction and knowing he did not have jurisdiction said that unless I withdrew the documents (some thing that is impossible as I have not filed them anyplace) that he would sanction me.
9. Judge Rivera further stated on the record that I could take no future actions without invoking aid of an attorney.
10. Judge Rivera has no power to enjoin me from taking any action I desire outside his court independent of the action before him. Should I choose to report Mr. Taylor and Mr. Subramanyam for their criminal activity, that would be my right. Should I desire to report Mr. Taylor's conduct, including several violations of New York Judiciary Law 487 and other misdeeds to the First Department Disciplinary Committee that is well within my right and beyond the jurisdiction of Judge Rivera.
11. Judge Rivera's order on the record was so broad that he would force me to use an attorney to fight a parking ticket.
12. Judge Rivera has effectively made me a ward of my attorney without the due process of a competency hearing.
13. Judge Rivera has violated my rights to due process and equal protection under the law. He acted against the Constitution of the United States of America, which means he has violated his oath of office.

14. Since Judge Rivera has violated his oath of office he is no longer qualified to act as a Judge in the State of New York.

15. In addition on the same date on another motion by Defendants, this one to gain access to my apartment for the purposes of inspecting it where there are no facts in dispute, where the Defendants have no claims under the law, and where no probable cause has been shown by affidavit or other means whereby a search would be warranted, Judge Rivera responded on the record "I am going to order the inspection to take place, they [Defendants] might find something else". The allegation by Defendants' is that the cellar of my duplex apartment is illegal because of the presence of a spiral staircase. They further allege that I am responsible for the condition. In coop buildings the shareholder is only a tenant with respect to the corporation, and liability if there is any lies with the owner of the property, in this case the coop corporation. This means that Defendants have no derivative cause of action supported by any law. If they have no cause of action they have no need or right to inspect, especially on a fishing expedition. Beyond the simple concepts of law here the record below is filled with documentary evidence from the City of New York Department of Buildings showing the entire conversion of my unit 1 apartment into a duplex took place 10 years before I came to hold the lease for the unit, and was properly approved the NYC DOB. Since I admit the apartment is a duplex, that a spiral stair is present and the approved plans as well as the Certificate of Occupancy are part of the record below the only possible reasons for an inspection is to harass my wife and me while they "go fishing".

16. This is clearly Judge Rivera giving his blessing to a fishing expedition. Here Judge Rivera has violated my civil rights under the 14th, 4th and 5th amendments of the United States Constitution.

17. I note for the court that Judge Rivera has repeatedly refused to examine the evidence

referenced above. On one occasion he said on the record in open court “You want me to rule on the evidence, I don't want to work that hard”, and on another occasion in dismissing my summary judgement motion in the case below he made statements to the effect that he was not required to read my papers because I provided my opponents no discovery. This indeed shows that he does not look at evidence I submit because that summary judgement motion (which is appealed, fully submitted and waiting oral arguments) contained an affidavit where I described all the discovery provided to Defendants. Said discovery consisting of hundreds of pages of records and many recordings.

18. Judge Rivera by his actions is violating my constitutionally-protected and guaranteed rights.
19. Judge Rivera violated his oath of office and has committed a fraud upon the court.
20. Acts contrary to the Constitution are sedition and treason. Judge Rivera is guilty of treason by ignoring my civil rights and exceeding his jurisdiction.
21. Judge Rivera has made statements in my case like “I do not care what the law says”.
22. Under federal law, which is applicable to all states, the U.S. Supreme Court stated that "if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simple void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers; see also *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974). Note: By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual, in his person. When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject matter jurisdiction and the judges' orders are not voidable, but **VOID**, and of no legal force or effect. The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner

violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States; see also **Cole, State Hospital Superintendent, et al. v. Richardson**, 405 U.S. 676, (1972), illegal, unconstitutional conduct is subversive, is sedition, is treason.

23. Judge Rivera by his own actions has lost jurisdiction.

Harms to Petitioner

24. Petitioner's civil rights have been violated under the 4th, 5th, and 14th amendments to the United States Constitution.

25. Petitioner could lose his home because Judge Rivera has acted outside the law and shows a pattern of disregard for the law and the limits of his authority.

26. As things currently stand Petitioner is at risk of illegal sanctions, and illegal detention based on acts by Judge Rivera where he exceeded his authority and had no jurisdiction.

Relevant Section of the New York State Constitution

27. "Article I Section 1. No member of this state shall be disfranchised(1), or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or her peers...."

28. As noted above Judge Rivera has in effect made me a ward of my attorney.

Relevant New York State Law

29. New York State Judiciary Law 487 is controlling on all attorneys, including judges and teaches us that no attorney may attempt to deceive any party. Judge Rivera attempted to deceive me by

stating that I could take no actions independent of my attorney. In addition by exceeding his jurisdiction he has committed fraud upon the court.

Relief Sought

30. Respectfully Petitioner asks this court to prohibit Judge Francois Rivera from any further actions in the matter of Wynkoop -v- 622A President Street Owners Corporation.
31. Petitioner also asks this court to issue a permanent injunction against any and all orders issued by Judge Rivera on or after 23 June 2017 that pertain to motions 29-30 in the matter below.
32. Petitioner asks that this court strike any orders made by Judge Rivera that were made without, or in excess of jurisdiction.
33. Petitioner asks for other such relief as justice may demand guided by the wisdom of the court.

Conclusion

34. No previous request for the relief asked for here has been made to this or any other court.
35. I reserve the right to submit supplemental papers to be heard and considered with this petition.
36. A Writ of Prohibition against Judge Rivera must be granted because he has shown that he has no care for the law or maintaining himself as an independent non-biased professional.

Wherefore it is requested that this Petition for Writ of Prohibition be granted in it's entirety and that such further relief as justice demands including restitution of costs of this petition.

27 June 2017

A handwritten signature in black ink, appearing to read "Brett Wynkoop", written over a horizontal line.

Brett Wynkoop, Sui Juris

Exhibit A

Supreme Court fo the State of New York
Appellate Division – Second Judicial Department

Appellate Division Docket no: _____

-----X
Brett Wynkoop

**AFFIDAVIT
OF
Brett Wynkoop**

Claimant/petitioner,
-against-

Judge Francois A. Rivera
Judge, New York Supreme Court
Kings County

Respondent

-----X

STATE OF NEW YORK }
 }
COUNTY OF KINGS }

Brett Wynkoop being duly sworn does depose and say,

1. Everything stated below except where stated as upon information and belief are facts known first hand by me, to which I am competent to testify.
2. I was in the front row of the gallery in Judge Rivera's courtroom on 23 June, 2017 for the below described events. It is a rule of Judge Rivera's that clients are not allowed to sit at the table with their attorney during hearings. I first became aware of this rule in 2012 on my first appearance in his court. Several times in the intervening years I have attempted to sit with my attorney during hearings and each time the court officer has told me that I could not remain per Judge Rivera's orders.
3. The court reporter has been unable to provide me with a transcript as of the date of this writing. In fact court reporter Robert E. Frankel declined on 23 June 2017 to discuss my obtaining the transcript and instead gave me his card with the instruction to call him, which I did that very day. He has not yet returned my call.
4. On 23 June, 2017 Judge Rivera heard Motion Sequence 29 under index number 507156-2013.
The motion was brought by Defendants requesting the quash of a subpoena. On oral arguments

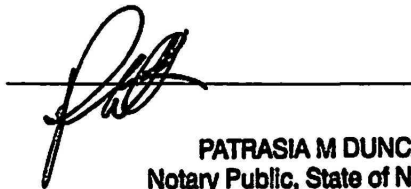
Plaintiffs, Judge Rivera, and Defendants all agreed the document Defendants attached to their frivolous motion was not a subpoena, and was not part of the instant action.

5. Initially Judge Rivera told Defendants to ignore the document, but later he said he was going to direct Mr. Wynkoop to withdraw the document or face sanctions.
6. Further Judge Rivera ordered that no one named in the case may take any legal action on anything without aid of an attorney. These statements were made on the record.
7. Further on Defendants' Motion (Seq. 30) to Compel an inspection of Plaintiffs' cellar Judge Rivera stated that on Tuesday 27 June 2017 he would write an order granting said inspection. He made this determination without any sworn statement of probable cause. When Plaintiffs' attorney protested that there were no facts in controversy with respect to the cellar in relation to Defendants' third party counter-claims, which are: There is a spiral staircase, and Plaintiffs occupy the cellar, Judge Rivera said that if Defendants were allowed an inspection they might find something else.

Sworn to before me this
26th Day of June, 2017

June 26, 2017


Brett Wynkoop



PATRASIA M DUNCAN
Notary Public, State of New York
No. 05DU6306208
Qualified in Kings County
Commission Expires June 23, 2018

Exhibit B

AFFIDAVIT

STATE OF NEW YORK }
 } ss
COUNTY OF KINGS }

I, Eric Richmond, being a resident of the State of New York, am competent and willing to testify, and having personal, first-hand knowledge of the facts stated herein, swear, under penalty of perjury, to the following:

1. On Friday, June 23, 2017 from approximately 11:00AM to 1:00PM affiant was in the 5th Floor Court Room of Francois Rivera of the New York State Supreme Court ~~provided~~ at 360 Adams Street, Brooklyn, NY 11201 for a hearing on case 507156/2013.

2. Judge Francois Rivera held a hearing on a motion to Quash a Subpoena.

3. Rivera said he did not know what the document in question was.

4. Rivera said the document in question was not a Discovery Device.

5. Rivera said that the Document was not filed in the court.

6. The Document in question bears no Docket Number.

7. Rivera issued a threat to sanction the author of the document in question if it was not withdrawn.

8. Rivera then held a hearing about scheduling an inspection of the home of the author of the document.

9. Attorney for the author of the document informed Rivera that the movants for an inspection alleged that the cellar was occupied and that there was a circular staircase to the cellar.

10. Attorney for the author to the document informed Rivera that his client, the author of the document, had long stipulated to the occupancy of the cellar and the presence of the circular staircase.

11. Attorney for the author of the document then argued that with the stipulation to the allegations there was no need or reason to schedule an inspection.

12. Judge Rivera then informed the attorney for the author of the document that he was still planning to order the inspection because movants might find something else.

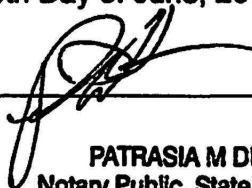
Sworn to before me this

June 26, 2017



Eric Richmond

26th Day of June, 2017



PATRASIA M DUNCAN
Notary Public, State of New York
No. 05DU6306208
Qualified in Kings County
Commission Expires June 23, 2018