

CASE NO.: S234617

IN THE
SUPREME COURT OF CALIFORNIA

BADRUDIN KURWA,

Plaintiff and Appellant,

v.

MARK KISLINGER, et al.,

Respondent,



SUPREME COURT
FILED

MAY 16 2017

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After a Decision By The Court of Appeal
Second Appellate District, Division 5
Case Number: B264641

Superior Court of Los Angeles
The Honorable Dan Thomas Oki
Case Number: KC 045 216

**RESPONSE TO THE AMICUS CURIAE BRIEF FILED BY THE
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**RESPONSE TO THE AMICUS CURIAE BRIEF FILED BY THE
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I write on behalf of Petitioner Badrudin Kurwa in response to the amicus curiae brief filed by the California Academy of Appellate lawyers.

I write to underline two points:

1. First, the Academy affirmed that “Dr. Kurwa’s predicament is not unique.” (ACB 8).

Respondents contend that “the practicing bar” now understands that parties cannot stipulate to dismiss causes of action without prejudice (and with a waiver of the statute of limitations) with the expectation they will thereby expedite appeal of the rest of the case. (AB 2). According to the Academy brief, however, parties continue to enter into such stipulations with the approval, and even at the urging of, the trial courts, despite this Court’s decision in *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097 (*Kurwa I*). When the appeals filed on the basis of those stipulations are dismissed under *Kurwa I*, the brief continues, the trial courts to which the cases return will also be “in need of the guidance required here.” (ACB 8).

The decision in this case will not, then, be like “a restricted railroad ticket, good for this day and train only....” *Smith v. Allwright* (1944) 321 U.S 649, 669 (Roberts, J., dissenting). There will continue to be litigants seeking relief from the unexpected forfeiture of the right to appeal under similar circumstances, and it will be applicable to them.


2. Second, while offering a third remedy in addition to the two Kurwa proposes, the Academy brief makes it clear that all three have the same goal. No litigant should effectively be denied the right to appeal based on an agreement made under the mistaken impression that it would expedite appeal. As the Academy brief points out, “[w]aiver of the right to appeal ‘should be clear and express’” (*Reisman v. Shahverdian* (1984) 153 Cal.App.3d 1074, 1088, with all doubts resolved against waiver. *Guseinov v. Burns* (2006)145 Cal.App.4th 944, 935. (ACB 11).

Both points reinforce the need for a decision which will, by whatever means this Court decides best accords with our law, ensure that “the Catch 22” (ACB 8) which has ensnared Kurwa since *Kurwa I* is eliminated from our legal system.

DATED: May 17, 2017

Respectfully submitted,
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By: 
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 171 Pier Ave., # 322, Santa Monica, California 90405.

On May 17, 2017, I served true and correct copies of the foregoing document described as **RESPONSE TO THE AMICUS CURIAE BRIEF FILED BY THE CALIFORNIA ACADEMY OF APPELLATE LAWYERS** on the interested parties in this action addressed as follows:

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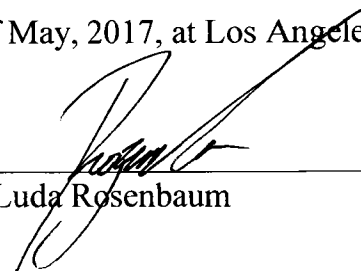
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BY PERSONAL SERVICE: I delivered such envelope by hand to the addressee mentioned above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 17th Day of May, 2017, at Los Angeles, California.



Luda Rosenbaum

SERVICE LIST

Kurwa v. Superior Court Los Angeles County et al.
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