

No. 18-598

In the
SUPREME COURT OF THE UNITED STATES

Andrew Chien

Petitioner,

v.

Andrew K. Clark; LeClairRyan (Atten: Gary D.
LeClair); Richard J Freer; Christian K Vogel; Michael
G Caldwell; Joseph M. Rainsbury; Joaquin L Madry;
Ilan Markus; James R Byrne; Estate of Everette G
Allen Jr.; William K Grogan; Bradley A Haneberg,
Vincent McNelley; Island Stock Transfer

Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Second Circuit No. 17-3695

PETITION FOR REHEARING

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ARGUMENTS

I. This Court has Original Jurisdiction

Petitioner Andrew Chien ("Chien") asks rehearing with most important reason that in the Certiorari, Chien omitted to claim that this Court has original jurisdiction due to

"28USC §1251(b)(3) All actions or proceedings by a State against the citizens of another State."

Because Chien, a Connecticut ("CT") resident was incarcerated in Virginia ("VA") for nearly 38 months. This Court can allow Chien to submit Brief on merit, or directly order the lower court to process this case following Rule 8(b)(6) of Fed R Civ, Proc. because all Respondents filed "Waiver" here in addition to their waivers of Brief in 2nd Circuit and Motion to Dismiss in the District Court of CT. In summary, Respondents never denied any of Chien's allegations.

II. Amend IV- Seizure of Chien's Liberty and Property without Warrants

The basic allegations are VA's incarceration violated Amend IV and 42USC §1983 because Judge Frederick G. Rockwell III ("Judge Rockwell") and his chamber of Chesterfield County Circuit Court of VA made more than six times of objections, either verbally or writing from 3/23/2013 to 8/12/2015, to Respondents William K Grogan ("Grogan") or Andrew K Clark ("Clark") that VA debt collection acts had no jurisdiction, see p.5-7, Certiorari.

The VA Debt Collection engaged by Clark, LeClairRyan, Grogan and others on behalf of Richard J Freer ("Freer"), usurped the authority of Magistrate and Judges, fabricated dozens of documents with the purposes to retaliate Chien's whistle-blower of the

embezzlement and money laundering by some Respondents, which is racketeering, see p. 7,12,17, 20, 30, *id.*

The VA Debt Collection violated Fair Debt Collection Practice Act ("FDCPA"), codified as "15USC§1692 et seq", which has accurate language that Debtor Collectors can't use the criminal means to engage debt collection.

"15USC§1692d-Harassment or abuse (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person."

Grogan is not employee of VA, but debt collector. LeClairRayn and its Attorneys Clark, James R Byrne, Michael G Caldwell initiated four lawsuits in either CT or VA for debt collections against Chien or associate. In case *Heintz v Jenkins*, 514 U.S. 291, 293 (1995), this Court affirmed the term "debt collector" in FDCPA, "applies to a lawyer who 'regularly,' through litigation, tries to collect consumer debts."

Additionally, the properties of Chien's professional belongings and assets of third-parties under Chien's custody, including about 50 stock certificates, eight bankers of documents, three computers have never returned or gave a price after years, which violated "15USC§1692f(6)", or Amend IV & XIV.

III. VA Judgment is New Scandal for Corporation Financial Fraud since Sarbanes-Oxley Act of 2002

The VA Judgment, see p.11 *id.*, means what Freer obtained the award of \$1.6 million plus interests on 8/22/2012, then certified it on 9/21/2012 in CT for collection, plus simultaneously collection in VA since

1/3/2013. In this complicated case, there was the judicial corruption, cheated and deceived by Respondents, who created new methods of corporation scandal for the purposes of embezzlement, and money laundering in the public traded companies, which destroyed the investors' confidence of the stock market. Petitioner is just a victim in the process of fighting the fraud in two public traded companies: one is the liquidated Commonwealth Biotechnologies Inc ("CBI"), another is China Bull Management Inc (trading ticker: CHBM).

In 2001-2002, the corporation's financial scandal such as Enron and WorldCom etc., caused hundreds of thousands of investors to have significant financial loss. The Congress passed the Sarbanes-Oxley Act of 2002 which established Public Company Accounting Oversight Board ("PCAOB") see Sec.101; and Accounting Standard, Sec.108; and enhanced the penalty of white color crimes in "Sec. 802 Criminal Penalties for Altering Documents" with modified:

"18USC §1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy";

"18USC §1520. Destruction of corporate audit records"

Sarbanes-Oxley Act established PCAOB to audit the corporation financial statements with **two levels of auditing**. First, every public company must follow the Generally Accepted Accounting Principles ("GAAP") to make accounting, then the company, at least once in a year, accepts the auditing of independent account firm, who must be a member of PCAOB. PCAOB, usually in three years, organizes additional team to reexamine the auditing records of

the past three years. The double auditing procedure effectively kept auditing independence from the corporation financial fraud, because big corporation activities such as changing corporation control, how to determine officers' compensations, accurate of the financial statements etc., are included in auditing.

However, Respondent Freer in conspiracy with his attorneys successfully made embezzlement in CBI's Chapter 11, by both altering CBI's financial statements in the bankruptcy court, and using lawsuit to suppress Chien's whistle-blower.

Freer, after sold all CBI's operation in 2009, on behalf of CBI, filed application of Chapter 11 without any financial statement. Under excuse of no money, Freer wanted to cancel the auditing process. On 2/3/2011, without audited financial statement of Year 2010, Freer, under oath of penalty in the Bankruptcy Court, filed "Summary of Schedules", and fabricated his pre-petition unpaid compensation for \$211,019, later adjusted to \$158,519 to cancel one repeated claim of \$52,500, in which it included fabricated unpaid cash of \$97,582, under an exaggerated 2010 salary of \$222,097, and unpaid stock option of \$52,500.

CBI had seven members of the Board which didn't approve the "Summary of Schedules". CBI in 2008, adapted the policy that executives' compensations tied with CBI's financial performance which caused Freer's salary dropped from \$363K of year 2006 to \$120K of 2010.

Under SEC, on 1/14/2011, approved proposal for CBI shareholder meeting, then Chairman and biggest shareholder Bill Guo hired Chien to call shareholder meeting in March of 2011 with purpose to change the operation control. On the published 8-K, dated

3/9/2011, for announcing the shareholder meeting, it disclosed that Freer unpaid CBI salary claim wasn't affirmed by CBI Board of Directors, which caused panic of Freer. Freer interrupted and cancelled the shareholder meeting when the meeting was in process of votes, with over 98% voted shares to support Bill Guo. There was no time to continue the vote, because it needed the lawsuit to resolve the dispute. Later Bill Guo, with his intention informed the staff of SEC, temporarily halted any SEC filings on 3/14/2011 until CBI made audited Financial Statement. Under requirement of SEC, Freer was compelled to engage accounting auditing. Then on 5/4/2011, CBI published 2010 Audited Financial Statement in which the auditors kept independent, followed existing records of the Financial Committee of CBI to ignore Freer's false claim of the 2010 salary of \$211,019 in the Bankruptcy Court. Finally, CBI's 10-K for year 2010, published Freer's 2010 salary of \$124,515, fully paid, and Freer's stock option of \$52,500 still available, but his exercises prices of the options ranged from \$3.30 to \$6.00, while the market price of CBI's stock, was \$0.02 /share. Obviously, the stock option became valueless automatically with no liability from CBI.

Ignoring 10-K for Year 2010, Freer still wanted his embezzlement for \$158,518 going on, by concealing the audited records to the Bankruptcy Court. But, Freer's embezzlement payment delayed over two years, until CBI's final liquidation in April of 2013. In the waiting period, Chien periodically joining hearing of Chapter 11, was threat to Freer's embezzlement, which created the defamation lawsuit in Chesterfield County Circuit Court of VA filed by Freer at Clark and other attorneys, in which Freer not only wanted

the Judge affirmed Freer's 2010 salary was \$222,097 with unpaid cash of \$97,582, but also gave Chien penalty for millions of dollars for Chien's "attacking" Freer's embezzlement.

The full text of Freer's complaint ("F-Compl") can be found on Case 1:17CV0677(LO-TCB), A.74-95, Appendix (I), Doc. #32, dated 8/1/2017, District Court for the Eastern District of VA, pending Certiorari of 18-775, in which there were two allegations. One alleged the shareholder meeting was a conspiracy, which is wrong because VA Code "§13.1-654.A" specified to elect director annually, and VA Code "§13.1-655.A.1" specified: Chairman directly calls shareholder meeting. Further, CBI's By-laws allowed Chairman to directly call shareholder meeting.

Another (main allegation) was Chien defamed Freer's 2010 salary claim in the Bankruptcy Court, for which the VA State Court didn't have subject-matter jurisdiction, see. p.11-12, *id.* But, F-Compl was seeking Freer's compensation damage as shown in F-Compl: ¶ 67, 76, 82 as:

"67. As a proximate cause of Guo and Chien's defamation, Dr. Freer has suffered substantial **compensation damages, loss of future wages and compensation,**"

Most important, F-Compl concentrated whether Freer had unpaid 2010 salary. Chien attending CBI §341 meeting on 2/18/2011 in the Bankruptcy Court, politely asked Freer about his 2010 unpaid salary claim, which became defamation, as shown in F-Compl

"31. At the §341 meeting, Chien.....made defamatory statements about, Dr. Freer,... Those

defamatory statements included the following exact words:

.....

Why do you consider continuing running [CBI] and take your salary of \$200,000

Both of these *statements are not only factually false, they were made for the purpose of implying Dr. Freer took, and intended to take scarce CBI cash while the company was in bankruptcy*" (emphases added)

Further F-Compl. ¶34, 44 & 61, masqueraded Freer's false claim for 2010 unpaid salary as Freer's *loyalty* to CBI:

"34. Because of his (Freer's) *loyalty* to CBI and its shareholders, ***Dr. Freer has not taken a full paycheck since May of 2010.*** For June and July 2010, Dr. Freer voluntarily reduced his salary by 50% per cent. From August of 2010 ..., Dr. Freer received a salary of 0 ..."

"44..... As stated above, Dr. Freer received ***no*** salary from August 2010 through April 2011."

"61... Dr. Freer ..., did ***not*** receive a full salary....., did ***not*** receive a full salary....," (emphases added).

More, in F-Compl. ¶ 8, 29-37, 62, 74(b)&(c), Chien's discovery of embezzlements, was widely attacked as defamation: Chien made "defamation statements" of "painting Dr. Freer as a CEO who put his personal economic interests above CBI's in breach of his fiduciary duty" (¶29,31,38 of F-Compl) and "Dr. Freer took, and intended to take, scarce CBI cash resources

while the company was in bankruptcy" (§31,43 of F-Compl).

There was damage hearing on 7/30/2012. Mr. Clark first submitted a series of document to identify Freer's CBI salary was \$124,515, and fully paid.

Exh. 17. Freer's CBI compensation table from year 2003 to 2011 (not to July 15, 2012) with record that Freer's compensation in 2010 was \$124,515 only, fully paid.

Exh. 20. CBI 10-K for year 2011 which reported Freer in 2010 had compensation of \$124,515 fully paid.

Due to these Exhibits, the defamation was hard to win. Then Freer and Clark began fabrication. Just before the hearing, Freer at Clark, hiding the auditing results by added another Exh, 27. as

Exh. 27. Freer's CBI compensation table for year 2003 to July 15, 2012 with record that Freer's compensation in 2010 was \$222,096.70 with unpaid of \$97,581.70.

On the damage trial, Exh. 27 was projected onto the big screen to demonstrate Chien's defaming, while Clark never mentioned Exh. 17 and the audited financial statement for year 2010.

In late, Chien's appeal to VA Supreme Court, Recording No. 131044, Freer at Mr. Clark submitted same Chart of Exh. 27 as only evidence to win the appeal.

Definitely, Freer at Mr. Clark committed perjury defined by VA Code "§18.2-435 Giving conflicting testimony on separate occasions as to same matter", see p. 18 *id*.

IV. Stealing Cash of CHBM by Making False Corporation Identity

As mentioned in p.7-8 *id*, Detaining Chien in VA is for stealing cash of CHBM, an act of RICO, which included to forge a stock certificate of CHBM for Freer, with unauthorized medallion signatures of both President Chien and Secretary Li. The forged stock certificate has pledged in LeClairRyan since 2014.

As mentioned in p.19. *id*, Freer, Byrne, Caldwell, on dated 4/23/2015, attached and delivered a set of falsified documents to the Local Court of CT to claim the legality of Grogan ordering Freer to control CHBM and distribution all cash of CHBM to shareholders per share ownership ratio. Then the CT Court approved the action and gave sanction to Chien.

As mentioned in p.24-25, *id*, CHBM isn't party of any lawsuit, Grogan has no any excuse to interrupt CHBM business. Article Six of Constitution makes Securities Laws to overwrite VA State's act for public company. If Freer wanted 90% shares ownership of CHBM becoming legal, he would have followed NRS §78.379 and Securities Laws to file proxy with SEC for a vote, in which the acquiring shares have no vote right primarily. But Freer did nothing for SEC filing. Due to Sec.14(a)(1) of Exchange Act, his acquisition of shares is "unlawful for any person...in contravention of such rules and regulations ..." Additionally, Freer must cancel his stock certificate if he can't finish the acquisition of 60 days, as specified in Sec.14(d) (5). Further, CHBM called shareholder meeting on 7/10/2016 to reject Freer's control shares, nine shareholders made affidavits to approve the genuine of the shareholder meeting. None of them received any dividend distribution of CHBM's cash as showed in the order of Grogan dated 10/30/2014, ghost-written by Mr. Clark on 4/22/2015 (p.20 *id*).

In beginning of auditing, CHBM will receive from Auditors a document request list (see. attached App.32a), with PCA-CX-3.1: Client Information Form, App.33a, Chien must submit all the primary documents of CHBM to register in Nevada since December of 2000 with continuously annual officer lists. This is no strange that Nevada Secretary corrected Freer's false annual officer lists for CHBM for both year 2014 and 2015 after Chien made request p.9-10. *id.*, because the history documents existed.

In financial, CHBM's ledger book, bank statements, tax forms, where the cash coming from, which shareholder at what price, when purchased shares were all included in auditing. CHBM on website of SEC, filed 10- K for year 2014, in which there was NOTES TO FINANCIAL STATEMENTS, included:

"3. GOING CONCERN

.....Further, the operation of this company was haled since May of 2013 by a third party who wanted controlled the operation and took all cash, but without notice to shareholders and making any SEC filing. No shareholder approved the action of the third party."

This note indicated the third party ("Freer") to steal cash of CHBM. The cash loss also was reported to IRS in the tax form of CHBM for year 2014.

Chien's allegation of Freer in conspiracy, made false corporation identity, then to steal the cash of CHBM, was supported by these documents, in compliance with GAAP under examination of PCAOB following Sarbanes-Oxley Act of 2002.

Any public company must have two officers. Freer repeated that Respondent Vincent McNelley was his secretary of CHBM (p.19, *id.*). But there have been no

third-party documents such as Freer's filings in Nevada, or Vincent McNelley making to admitt.

Freer was officer for CBI over a decade, having enough knowledge what a public corporation must do. He knew that despite of his conspiracy with Clark and others easily making court fraud, but the existing accounting standard GAAP will force him to admit embezzlement in CHBM. Therefore, he never made any financial statements for CHBM since September of 2014, even didn't hire any Stock Transfer Agency for CHBM. After Chien released, Chien made the missed SEC filings until 2017. But Freer and LeClairRyan rejected to surrender the forged stock certificate as required by Sec.14(d) (5) of Exchange Act of 1934, which caused Chien's loss in attempting to hire another stock transfer agency to replace Island Stock Transfer, which makes it impossible to trade shares of CHBM. So far, there is no perspective time to resolve Chien's claim under Sec.14(d) (5). Finally FINRA removed trading symbol CHBM for China Bull Management on September 21, 2018, App. 34a. which was printed from website of Bloomberg, section of private companies on January 17, 2019. The media information further approved that the public consistently knew that CHBM having two officers: Chien as president, and Li as Secretary. Freer after he got forges stock certificate on 9/26/2014 never did anything legal for CHBM. But, various wrong orders of the Courts, protected Freer's false CHBM identity, and embezzlement.

The cancellation of trading ticker for CHBM is significant loss for Chien, because Chien lost capability to run CHBM for living. Chien's reputation was greatly hurt because 40 shareholders of CHBM

lost the value of their shares. The corporation financing fraud hurt the integrity of the stock market, regardless of the size of the corporation.

CONCLUSION

1. Chien sincerely requests this court to grant this rehearing, based on 28USC §1251(b)(3).and Waivers of Respondents.

2. Congress passed Sarbanes-Oxley Act in 2002, and Executive Branch of Government built PCAOB, an independent and reliable system with double auditing procedure of the financial results of the public companies. As third branch of Government, the judicial system should affirm the weight of evidence of the auditing results for public companies. The current judgment errors, deceived by Respondents, created corporation financial fraud in both CHBM and CBI.

3. This case having great public interests in it, because Chien has fiduciary duty for maintaining value of shares for all shareholders of CHBM.

4. Currently, Chien's financial assets are negative with unpaid judgment debt and interests for over \$2 million, which is 'death penalty' of Chien's economy condition. Chien did nothing wrong. The embezzlements of Freer with LeClairRyan, had convinced evidence,

5. Chien's incarceration for total 1148 days in VA was abused in debt collection, ref No.18-775 of this Court, which is the worst case in violating FD CPA in past fifty years,

PRAYER

Petitioners respectfully beseech this Honorable Court to grant re-hearing, by making remand of this case to lower court to process following Rule 8(b)(6)

of Fed R Civ. Pro.

CERTIFICATION OF PETITIONER

Petitioner Chien hereby certify that the foregoing Petition for Rehearing is: (1) presented in good faith, (2) not for delay, and (3) restricted to grounds identified in Supreme Court Rule 44.2 insofar as it is limited to the substantial, controlling, or other substantial grounds not previous presented.

Respectively Submitted

Andrew Chien
Petitioner Andrew Chien

**Additional material
from this filing is
available in the
Clerk's Office.**