

IN THE
SUPREME COURT OF THE UNITED STATES OF AMERICA

SAMUEL AMBROSIO GURROLA,
Petitioner,
v.

WALGREEN COMPANY,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

MERRITT CLEMENTS
TX State Bar No. 04369500
(Lead Counsel)
JEFF RAY
TX State Bar No. 16604400
(Admission Pending)
Aldo R. Lopez
TX State Bar No. 24060185
(Not Admitted)
RAY | PEÑA | McCHRISTIAN, P.C.
A Professional Corporation
5822 Cromo Drive
El Paso, Texas 79912
(915) 832-7200 Tel
(915) 832-7333 Fax
mclements@raylaw.com
jray@raylaw.com
alopez@raylaw.com
ATTORNEYS FOR RESPONDENT

CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record pursuant to Rule 29.6, Walgreen Co. submits the following disclosure statement:

Walgreen Co.'s parent company is Walgreens Boot Alliance, Inc., a Delaware Corporation. There are no other publicly traded corporations that own more than 10% of its stock.

TABLE OF CONTENTS

	<u>Pages</u>
CORPORATE DISCLOSURE STATEMENT.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
OBJECTIONS TO FACTUAL MISTATEMENTS	2
ARGUMENT	2
A. No Argument Beyond Error in Application of Clear Law	2
B. Promissory Estoppel was not argued before the Fifth Circuit Court of Appeals.....	2
C. No Fraud or Constitutional Violations by Respondent	3
D. Blankets Statements of Violation of Law Do not Support Issuance of Writ.....	3
E. The District Court Properly Dismiss the Case	4
F. No Money Was Stolen by Respondent.....	4
G. Additional Reasons for Denial	5
CONCLUSION.....	5

TABLE OF AUTHORITIES

<i>Cases</i>	<i>Pages</i>
<i>Tuchman v. DSC Communications Corp.</i> , 14 F.3d 1061, 1068 (5th Cir.1994)	3
<i>Zenith Radio Corp. v. Hazeltine Research, Inc.</i> , 401 U.S. 321, 330 (1971).....	4-5
<i>Constitutional Provisions</i>	
U.S. Const. amend. IV	2
U.S. Const. amend. V.....	2
U.S. Const. amend. XIV.....	2
<i>Rules</i>	
United States Supreme Court Rule 10	2,5

INTRODUCTION

This case results from a potential purchase and sale of a pharmacy, which did not occur due to information discovered during the due diligence phase of negotiations. Petitioner makes this request for an extraordinary writ without assertion of any compelling reasons for its issuance. The Petition before this Court contains factual allegations and assertions which were not presented to the appellate court below. Petitioner fails to make coherent arguments for this Court to review, and his request should be denied.

OBJECTIONS TO FACTUAL STATEMENTS

Respondent objects to Petitioner's statement that Walgreen Co. "walked away with a total of one million, eight hundred and fifty thousand dollars without paying a penny for the contract" and denies that Petitioner delivered on 92% of the agreement. Pet. for Cert. 4. Respondent denies refusing to attend a court mandated meeting on May 19, 2017. *Id.* Respondent denies any refusal to comply with a court order. *Id.* Respondent denies that Mark Saenz was not an employee of Walgreen Co. at the time and denies that Mr. Saenz was a government agent. Pet. for Cert. 5. Respondent denies any collaboration with Gay Dodson and using any stolen federal documents to give the market to Walgreen Co. *Id.* Respondent denies sending any person for conversion or for the theft of 92% of the assets of Palafox Pharmacy. *Id.* Respondent denies any involvement with stolen medical records or malicious prosecution in an attempt to close Petitioner's business. Pet.

for Cert. 6. Respondent denies participating in any attempt to fabricate evidence or obtaining a search warrant for Petitioner's pharmacy. Respondent denies any involvement with surveillance, illegal tracking, or intimidation of Petitioner. Respondent denies that it had any involvement or attempted to persuade the State of Texas to close Petitioner's business through the use of stolen documents or any type of illegal search and seizure. Petitioner's Appellant's Brief before the Fifth Circuit of Appeals contains no mention of Gay Dodson or the State of Texas or any kind of conspiracy with Walgreen Co. to track and defeat his case. *See Doc: 00514383897.* Lastly, Respondent denies any involvement in vandalizing Petitioner's typewriters.

ARGUMENT

A. No Error Beyond Alleged Error In The Application Of Clear Law

Rule 10 of this Court provides the considerations governing review of certiorari and provides it is not a matter of right, but of judicial discretion. Compelling reasons must be advanced for a petition for writ of certiorari to be granted. Petitioner fails to advance any compelling reason whatsoever, and, at most, asserts error as to factual findings or misapplication of a properly stated rule of law.

B. Promissory Estoppel Was Not Argued Before the Fifth Circuit Court of Appeals

Petitioner failed to brief a claim for Promissory Estoppel in the underlying appeal and it is not properly presented to this Court.

C. No Fraud or Constitutional Violations By Respondent

Petitioner asserts there was some error in the lower court rulings based on the fact that the case was dismissed prior to the taking of the deposition of Mr. Saenz. Pet. for Cert. 5. The lower courts properly dismissed Gurrola's fraud claim as it was not pleaded with particularity and failed to show intent to support a claim for fraud. Pleading fraud with particularity in this circuit requires "time, place and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby." *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1068 (5th Cir.1994); Fed.R.Civ. P. 9(b). Petitioner failed to meet that requirement. Petitioner further asserts that Mr. Saenz was not an employee of Respondent but rather a government agent working for the Texas Pharmacy Board. *Id.* Petitioner asserts that his constitutional rights under the 4th, 5th, and 14th Amendments to United States Constitution were violated by this government agent. Clearly, Respondent is not a government agency and would not be subject to a claimed violation of those rights. Moreover, Petitioner appears to be complaining regarding prosecution by the State Pharmacy Board over which Respondent would have no control. Pet. for Cert. 5-6. Petitioner's claim also appears to implicate an obstruction claim against Gay Dodson of the Texas Pharmaceutical Board for somehow compelling the District Court to dismiss the case prior to the end of the discovery period. Pet. for Cert. 6. There is nothing in the record to support such argument.

D. Blanket Statements of Violations of the Law Do Not Support Issuance of Writ

Petitioner alleges that Federal and State laws must not be violated and that alleged thefts of medical records, false affidavits of an individual, and an alleged rogue agent were actions taken by Ms. Dodson. Pet. for Cert. 8. There is no basis for how these supposed actions should be imputed to Respondent. While Respondent agrees that laws should not be violated, Petitioner has failed to show that Respondent violated any of these laws and instead accuses persons unrelated to Respondent of taking actions against him.

E. The District Court Properly Dismissed the Case

Petitioner asserts that there was an improper dismissal as the discovery period was still open. Petitioner had an opportunity to respond to Respondent's Motion to Dismiss and be heard by the District Court prior to dismissal and even requested leave to amend his petition. The District Court held that an amendment to the Petition would be futile. Pet. for Cert. App.21a-22a. It is well-settled law that "the grant of leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330 (1971). Pursuant to S. Ct. Rule 10, this is not the type of determination as to which certiorari should be granted.

F. No Money Was Stolen By Respondent

Petitioner fails to provide any argument relating to his claim for unjust enrichment and simply states that it is wrong. Pet. for Cert. 9. Petitioner wrongly classifies the

fact that the proposed purchase was never agreed to or consummated as a theft of money from him.

G. Additional Reasons For Denial of the Writ

There is no decision in conflict with another United States Court of Appeals on the same important matter; there has been no decision on an important federal question in a way that conflicts with a decision by a state court of last resort; no far departure from the accepted and usual course of judicial proceedings or any other of the bases enumerated in Rule 10 of this Court. S.Ct. Rule 10.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully Submitted,

RAY | PEÑA | McCHRISTIAN, P.C.
A Professional Corporation
5822 Cromo Drive
El Paso, Texas 79912
(915) 832-7200
Fax: (915) 832-7333

Date: August 7, 2020 By:



Merritt Clements
TX Bar No. 04369500
(Lead Counsel)
mclements@raylaw.com
JEFF RAY
TX Bar No. 16604400
(Admission Pending)
jray@raylaw.com
ALDO R. LOPEZ
TX Bar No. 24060185
(not admitted)
alopez@raylaw.com