No. 19-293

IN THE

Supreme Court of the United States

TKC AEROSPACE INC.,

Petitioner,

v.

CHARLES TAYLOR MUHS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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BRIEF IN RESPONSE TO PETITION FOR CERTIORARI

ARGUMENT

Petitioner contends that the 4th Circuit in the decision below created a circuit split, disagreeing with *In re Miller*, 156 F.3d 598, 603 (5th Cir. 1998). It did not. The 4th Circuit did not cite *Miller,* nor any other case addressing the supposed subjective/objective split. Why? Because it found that the meaning of "willful and malicious" in the Alaska judgment did not meet either standard because it addressed only the willfulness of the *act*, not the *injury.*

> TKCA's attempts to define "willful and malicious" in Alaska's version of the UTSA as identical to § 523(a)(6) fall short of its burden. It refers to an Alaska Supreme Court decision stating, "[a]n act is willful if it is done intentionally and purposefully, rather than accidentally or inadvertently." *Walt's Sheet Metal v. Debler*, 826 P.2d 333, 336 (Alaska 1992). It then contends that the Alaska court necessarily determined that Appellant "intentionally and purposefully misappropriated TKCA's trade secrets, which is sufficient to meet the Fourth Circuit standard for willfulness." Appellee's Br. 11. But *Geiger* and *Duncan* specifically instruct that it is not enough to have "a deliberate or intentional act that leads to injury." *Geiger*, 523 U.S. at 61.

> Rather, a bankruptcy court must specifically find a deliberate and intentional injury. Therefore, even if TKCA is correct that the Alaska court decided Appellant intentionally and purposefully misappropriated TKCA's trade secrets, that is still not enough. It must have taken the additional step of finding that Appellant, in so doing, intended for TKCA to be injured by that misappropriation.

___ F.3d at ___, Apx. 23a-24a. There was no finding of intent to injure *at all.*

This was recognized in *In re Miller* itself:

> Merely because a tort is classified as intentional does not mean that any injury caused by the tortfeasor is willful. This case illustrates the distinction, since misappropriation of proprietary information and misuse of trade secrets are wrongful regardless of whether injury is substantially certain to occur. See, e.g., Restatement (Third) Unfair Competition § 40(b) cmt. c ("[A]ny exploitation of the trade secret that is likely to result in injury to the trade secret owner or enrichment to the defendant is a `use' under this section."). Misuse of trade secrets is not precisely like stealing funds from a till, because

> the tortfeasor's gain is not inevitably a loss to the legal owner of the secret.[1]

156 F.3d at 604. There was no determination in the underlying litigation of an intent to injure under an objective standard, subjective standard, or any standard. In fact, Petitioner's own characterization shows that, by stating "In the case at bar, the debtor inflicted injury on TKCA when the debtor 'willfully and maliciously' stole TKCA trade secrets as part of a scheme to take TKCA's business." Petition at 1. The *act* is alleged to be "willful and malicious," but Petitioner does not even state, in this iteration, that the injury was willful or malicious. Later in the same paragraph, it similarly refers to the act, not the injury: "debtor's willful and malicious theft in violation of the Uniform Trade Secrets Act." As recognized in *Miller*, this is not enough.

Petitioner later formulates the facts as stating that the Alaska and Arizona courts "found that Respondent Charles Taylor Muhs ("Muhs") willfully and maliciously stole trade secrets from his employer, Petitioner TKC Aerospace, Inc. ("TKCA"), as part of a

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[1] Petitioner asserts (Petition at 5) that "Until the Fourth Circuit's decision that is the subject of this appeal, no court had held that that a debtor found liable for a willful and malicious theft of trade secrets under the UTSA could escape the Bankruptcy Code's prohibition on discharging debts arising from a "willful and malicious injury by the debtor to another". Indeed *Miller*, the case on which Petitioner most relies, held as much in the passage quoted above.

plan to divert on-going contracting opportunities to a competitor." Again, the assertion is that the *act* was willful and malicious, not the injury.

Furthermore, the Arizona court applied as the definition of "willful and malicious" "[s]uch intentional acts or gross neglect of duty as to evince a reckless indifference to the rights of others on the part of the wrongdoer, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness." Appendix to Petition, 148a. This is precisely the recklessness standard rejected in *Geiger*, in addition to which it is directed to the act, not the injury. Nowhere is there a finding of willful and malicious intent to injure under either a subjective or objective standard.

This case simply does not present the question that Petitioner says it does – whether the objective or subjective standard applies – because neither standard is met here. Accordingly, this Court should deny *certiorari.*

CONCLUSION

Wherefore, Respondent respectfully requests that *certiorari* be denied.

Respectfully submitted,

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