No. 19-526

In the Supreme Court of the United States

DEXTER EDWARDS,
d/b/a Edwards Land & Cattle,
Petitioner,

v.

GENEX COOPERATIVE, INC.,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Circuit correctly applied North Carolina law and held that Petitioner's state law claims fail as a matter of law.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Respondent Genex Cooperative, Inc. states that it is wholly owned by Cooperative Resources International, Inc..

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STATEMENT OF THE CASE

Dexter Edwards d/b/a Edwards Land & Cattle ("Petitioner") petitions this Court for certiorari review of the decision of the United States Court Appeals for the Fourth Circuit affirming the Eastern District of North Carolina's grant of summary judgment to Respondent and its holding that, regardless of whether Petitioner's claim is predicated on a written or oral contract fails as a matter of law. Pet. App. 2a.

Contrary to Petitioner's arguments, the Fourth Circuit did not refuse to apply established North Carolina law in violation of this Court's precedent in *Erie*.

In *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), this Court held that federal courts sitting in diversity jurisdiction must follow state substantive law in cases arising under state law. *Erie* and its progeny aim for equity among court systems, including an equitable administration of the law and the avoidance of forum shopping. *See generally Guaranty Trust Co. York*, 326 U.S. 99, 109 (1945); *Hanna v. Plumer*, 380 U.S. 460, 468 (1965); *Felder v. Casey*, 487 U.S. 131, 151 (1988).

Petitioner's claim is grounded in an alleged breach of contract claim arising under North Carolina law. The Fourth Circuit's decision applying established North Carolina contract law, thereby affirming the District Court's grant of summary judgment to Genex, and denying Petitioner's claims, does not violate either aims of *Erie*. As such, the Fourth Circuit correctly concluded that Petitioner's breach of contract claim fails as a matter of law.

Petitioner attempts to convolute the issues in this case to show that the Fourth Circuit violated basic

principles of federalism. However, it has and will not be able to prove anything remotely close to such a violation. Rather, Petitioner asks this Court to engage in fact-bound error correction.

I. Terms of the Contract

Dexter Edwards is a cattle breeder with a farm in Eastern North Carolina, and stored frozen embryos and bull semen in storage tanks. Pet. App. 3a. Dexter Edwards and Genex Cooperative, Inc. ("Genex") entered into a contract for the provision of liquid nitrogen ("LN_2") to cool storage tanks maintained at Dexter Edwards's North Carolina cattle operation. Pet. App. 3a-4a. Cory Peters, a Genex territory sales manager, serviced Dexter Edwards's tanks, and provided Dexter Edwards with LN_2 and various other products used for breeding. Pet. App. 5a. The storage tanks were metal containers with plastic lids that were filled with LN_2 to keep biologic product, including semen and embryos, cold or frozen. Pet. App. 3a. LN_2 will not last in the storage tanks forever and the tanks must be regularly monitored and periodically refilled. Pet. App. 3a.

Pursuant to the terms of the contract between Dexter Edwards and Genex, Dexter Edwards was required to routinely monitor LN_2 levels in the storage tanks. Pet. App. 4a. Specifically, the contract contained the following provision:

> "[c]ustomer accepts full and sole responsibility to maintain LN_2 biostat in good operating condition, **to monitor the LN_2 routinely**, and to make the LN_2 tank fully accessible to Genex representative for servicing.

App. 4. (**emphasis added**). Routine monitoring meant that a customer should periodically check the LN_2 levels in the tanks. Pet. App. 6a. Routine monitoring of the LN_2 levels in the storage tanks was required because it ensured that the storage tanks remain filled with coolant between the service dates. Pet. App. 6a. If the storage tanks did not have enough LN_2, the temperature inside the tanks would rise and the product inside of the tanks could spoil. Pet. App. 3a. If a customer did not routinely monitor the LN_2 levels in the storage tanks, it was contrary to the customer's responsibilities under the contract. Pet. App. 11a.

The contract also contained a provision stating that it would remain in effect unless terminated in writing by sixty (60) days' notice from either party. Pet. App. 4a. Finally, the contract contained provisions limiting damages for frozen biologic product, including semen and embryos. *Id.* Pursuant to the terms of the contract under "Embryo Storage Policy," Genex would not accept responsibility or liability for embryos stored in the storage tanks filled with LN_2. *Id.*

In addition to the contract term that required that LN_2 levels in the storage tanks be routinely monitored, Mr. Peters also placed green disclaimer stickers on Dexter Edwards's storage tanks. Pet. App. 4a. Those stickers read as follows:

> DISCLAIMER: **Owner/user is responsible for monitoring nitrogen level**; making sure LN_2 unit is filled regularly and kept in good working order. If tank is found to be low in LN_2, owner/user must immediately call an LN_2 provider for a refill. No Genex

> Cooperative, Inc. Representative has authority to relieve user of this responsibility.

Pet. App. 4a-5a. (**emphasis added**).

Genex's customers typically had systems for routinely monitoring the LN_2 levels in their storage tanks, and Mr. Peters testified Dexter Edwards was aware that it was his or Nicholas Edwards's, manager of Petitioner's farm and Dexter Edwards's son, responsibility to monitor the tanks. Pet. App. 3a. CA-App. 210, 213.[1] However, Dexter Edwards did not have any written policies or procedures for monitoring the storage tanks and did not regularly monitor the tanks outside of the breeding season. CA-App. 141, 164, 167-169. Nicholas Edwards testified that he did not observe the tanks on a daily basis, and the LN_2 levels in the storage tanks at Dexter Edwards's farm were not monitored at all between June and October 2015. CA-App. 139-141, 166-168.

After servicing Dexter Edwards's tanks, Mr. Peters always recorded his service date on a tag that hung on one of Dexter Edwards's storage tanks, and also recorded the service date, number of tanks serviced and other details on a handwritten service log that he retained for Genex's records. CA-App. 149-150, 160-162, 181, 213-214, 243, 245-248, 437. Mr. Peters also left receipts after servicing Dexter Edwards's tanks with the same information as was written on the tank tags. CA-App. 137-138, 151. Dexter Edwards testified that the tank tags were not

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[1] "CA-App." refers to the Joint Appendix filed in the Court of Appeals, Fed. Cir. No. 18-1183 (filed Apr. 16, 2019), ECF No. 15.

regularly checked. CA-App. 163-164. Mr. Peters serviced Dexter Edwards's storage tanks roughly every three months and based the service dates on the storage tank with the shortest LN_2 holding time. CA-App. 135-136, 224-225, 247-248.

II. July 13, 2015 Service Date and Cancellation of Contract

Mr. Peters performed a service call at Dexter Edwards's farm on July 13, 2015, and he recorded that service date on the tank tag, as well as on his handwritten service record. CA-App. 172, 175, 214, 222-223, 245, 437. Mr. Peters filled all of Dexter Edwards's tanks with LN_2 on that date. CA-App. 149-150, 215-216, 223, 245, 437. After that service call, Mr. Peters input the data from that service visit into his computer, and submitted it to Genex so that a service invoice could be generated by Genex and sent to Dexter Edwards. CA-App. 219, 226. Genex mailed invoices to Dexter Edwards sometime after the service date was complete. CA-App. 137, 179. Mr. Peters did not send invoices directly to customers, including Dexter Edwards. CA-App. 219, 226. There was typically a delay with processing invoices once the data was inputted and received by Genex. CA-App. 219-220. The invoice for the July 13, 2015 service date was not submitted to Dexter Edwards until August 31, 2015. CA-App. 219-220, 228, 249-252. Nicholas Edwards was not involved in the payment of invoices and Dexter Edwards testified that he did not check the tanks to confirm the service date when he received invoices. CA-App. 145, 180-181.

On September 17, 2015, Genex sent a written notice to Dexter Edwards that service would be discontinued because Genex would no longer have a

salesperson in the area due to issues with profitability of providing LN_2 service to beef cattle farms in the Southeast region. CA-App. 220-222, 236-237, 244. Dexter Edwards acknowledged receipt of the cancellation notice. CA-App. 171. The cancellation notice was a standard form letter generated by a representative in the Genex accounts receivable department following a request by the territory sale manager. CA-App. 202, 244. The cancellation notice was not prepared by Mr. Peters. CA-App. 202, 238. Therefore, the date listed on the cancellation notice was the date that the last invoice that was submitted to a customer. CA-App. 238, 244. The evidence in the case is uncontroverted that Dexter Edwards's storage tanks were serviced by Mr. Peters on July 13, 2015, and the invoice for that service date was sent on August 31, 2015. CA-App. 172, 214, 229, 245, 263, 437. However, the cancellation notice sent to Dexter Edwards incorrectly listed a service date of August 31, 2015. CA-App. 244. This inaccurate date was simply a clerical error in the letter based on the fact that Dexter Edwards was invoiced on August 31, 2015. CA-App. 223, 203. Further, upon receipt of the cancellation notice, Dexter Edwards admitted that no one checked the tank tags on the storage tanks to confirm the last service date. CA-App. 161-162, 187-188. Also, at the time that Dexter Edwards received the cancellation notice, the storage tanks had enough LN_2 to cool the tanks for another month. CA-App. 186-187.

REASONS FOR DENYING THE PETITION

I. THE FOURTH CIRCUIT CORRECTLY APPLIED ESTABLISHED PRINCIPLES OF NORTH CAROLINA CONTRACT LAW, LEAVING NO QUESTION FOR THIS COURT TO DECIDE.

Petitioner's arguments for granting his petition are grounded in the unsubstantiated argument that the Fourth Circuit violated the doctrine set forth by this Court in *Erie RR. Co. v. Tompkins*, 304 U.S. 64 (1938) and refused to apply established principles of North Carolina contract law.

However, Petitioner's argument relies on a flawed reading of North Carolina precedent, a distorted understanding of the Fourth Circuit's decision and a discount of the evidence that his own actions caused his loss. In direct contradiction of Petitioner's argument that the Fourth Circuit created "federal 'general' common law at odds with the substantive law of North Carolina in order to reach a particular result," Pet. 25., in this case is the Fourth Circuit's decision to affirm based on a thoughtful analysis of the record and faithful application of North Carolina law. Additionally, completely absent from Petitioner's reasons for granting his petition for certiorari is any discussion of how the Fourth Circuit also actively analyzed Petitioner's claim in a written contract context under North Carolina law.

In its opinion, the Fourth Circuit outlined the framework used to analyze the district court's decision. It first relied on North Carolina precedent to establish the elements of a breach of contract claim: "(1) existence of a valid contract and (2) breach of the

terms of that contract." Pet. App.[2] 21a. After establishing this framework of analysis, the Fourth Circuit continued to apply the substantive law of North Carolina.

A. The Alleged Oral Agreement

Petitioner argues that if the Fourth Circuit "had applied the substantive law of North Carolina, it would have concluded that the summary judgment record created a jury question" with regard to the existence of an oral contract of unlimited duration between the parties. Pet. 18. However, this argument disregards the Fourth Circuit's reliance on substantive law established by the North Carolina Court of Appeals: it is within the court's discretion to make conclusions of fact and law in contractual disputes.

Under *McKinnon v. CV Indus., Inc.*, the North Carolina Court of Appeals held that "[c]ourts may enter summary judgment in contract disputes because they have the power to interpret the terms of contracts." 713 S.E.2d 495, 500 (N.C. Ct. App. 2011). *See also* Pet. App. 21a. The court is able to interpret the terms of contracts "where the language . . .is plain and unambiguous" and "the construction of the agreement is a matter of law." *Id.* (quoting *Hodgin v. Brighton*, 674 S.E.2d 444, 446 (N.C. Ct. App. 2009)).

Petitioner's argument also relies on a belief that the "uncomplicated and undisputed actions of the parties continuously from 1999 onward show a

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[2] "Pet. App." refers to the Appendix filed by Petitioner on October 8, 2019.

mutual assent to their verbal agreement" of liquid nitrogen delivery on a regular basis. Pet. 19. As such, Petitioner believes the existence of an oral contract and his allegation that Genex breached it prior to its termination constituted genuine issues of material fact. Pet. 19.

However, the Fourth Circuit addressed this argument head-on in its opinion. Relying again on established North Carolina contract principles, it found that "even if [it was] assumed that. . .the parties' relationship was instead governed by an oral contract," Petitioner presented no evidence to plead the terms of the oral contract, including terms related to length of time or termination procedure. Pet. App. 26a. Applying North Carolina contract principles, "the contract is terminable at will" as long as reasonable notice was given. Pet. App. 26a. (citing *City of Gastonia v. Duke Power Co.*, 199 S.E.2d 27, 30 (N.C. Ct. App. 1973)). The Fourth Circuit also noted that during the March 21, 2019 oral argument, Petitioner did not contest the reasonableness of Genex's notice of termination of the contract, thus Genex's obligations to fill Petitioner's LN_2 tanks ceased upon Petitioner's receipt of Genex's notice of termination. Pet. App. 26a. Since it is uncontroverted that Petitioner's loss occurred well after the date of cancellation, if the parties' contract was oral then Petitioner's claim fails as a matter of law since he was solely responsible for monitoring and filling the tanks at that point.

Further, Petitioner's argument as to Genex's liability for damages had Genex breached the contract prior to its termination were found to fail explicitly under North Carolina's Uniform Commercial Code. Pet. App. 27a. Because Petitioner's damages are

consequential damages, they are only recoverable if they resulted from "a seller's breach 'which could not be reasonably prevented by cover or otherwise.'" Pet. App. 27a. (citing N.C. Gen. Stat. § 25-2-715(2)(a)). Petitioner's failure to take reasonable measures to prevent his consequential damages, including "the easiest first check of simply lifting [the LN_2 tanks he could see from his office] up" precluded his recovery. Pet. App. 27a.

B. Equitable Estoppel

Petitioner also argues that the Fourth Circuit failed to apply established North Carolina contract principles in its review of the district court's denial of Petitioner's equitable estoppel motion. Pet. 22-23. Petitioner's argument that Genex should be estopped from presenting Petitioner's own lack of diligence over his LN_2 tanks failed because Petitioner did not meet all of the elements of equitable estoppel in the context of the balancing test established and upheld by the North Carolina Supreme Court and Court of Appeals. Pet. App. 23a. Relying on *Hawkins v. M. & J. Fin. Corp.* and *Wade S. Dunbar Ins. Agency, Inc.*, the Fourth Circuit analyzed Petitioner's argument under three elements:

> 1) Lack of knowledge and the means of knowledge of the truth as to the facts in question; 2) reliance upon the conduct of the party sought to be estopped; and 3) action based thereon of such character as to change his position prejudicially.

Pet. App. 22a-23a. 77 S.E.2d 669, 672 (N.C. 1953); 556 S.E.2d 331, 336 (N.C. Ct. App. 2001).

The Fourth Circuit found that Petitioner could not "establish the first element of equitable estoppel – lack of knowledge" because Petitioner conceded that he had "simply not paid attention to the dates on the [service] tag [hung on the tanks] until he discovered the empty tanks, except on rare occasions where [Genex's territory service manager]" was delayed with refilling the tanks. Pet. App. 23a.

However, Petitioner argues that before he can lose his "right to claim estoppel, he must *not only* have the means available to discover whether Genex filled his tanks on August 31, 2015, *but also* he must be 'put on inquiry' as to the truth of whether Genex actually filled his tanks on that day." (emphasis in original), Pet. 21. Petitioner relies on *Hawkins v. M & J. Fin. Corp.* to support this argument, stating that under the first prong of this test, "estoppel will be denied where the party claiming it 'was put on inquiry as to the truth and had the available means for ascertaining it." Pet. 21. However, directly above this reference, the court in *Hawkins* established that "he who claims the benefit of an equitable estoppel on the ground that he has been misled by the representations of another must not have been misled through his own want of reasonable care and circumspection." 77 S.E.2d at 673. Petitioner is claiming exactly that in this case where he failed to exercise reasonable care and inspection of his LN_2 tanks.

The Fourth Circuit noted that Petitioner's seven liquid nitrogen tanks were "stored on rubber mats. . . in Petitioner's unlocked office on the farm" and that Petitioner "would see [the tanks] everyday" when he walked through his office. Pet. App. 5a. However, Petitioner testified that he would not regularly check

the levels of the tanks outside of breeding season [from June to October]. *Id.* Thus, although Petitioner claims that he relied on the termination letter from Genex to his detriment, he would not have checked the tanks until November 2015 by his own practices, despite having the knowledge or means of knowledge to confirm the date of the last service by Genex: the hanging tag on the tank. Petitioner could have easily discovered the error by checking the hanging tag on the tank. However, no check was ever performed to verify the service dates. CA-App. 145,180-181. Additionally, upon receipt of the termination letter, Petitioner even admitted that no one checked the storage tank tags to confirm the last date of service. CA-App. 161-162, 175, 187. Petitioner was undisputedly put on notice. He cannot claim equitable estoppel due to his own want of reasonable care and inspection of his LN_2 tanks.

In an attempt to support his contention further, Petitioner relies on the *Meacham* cases. Pet. 22. However, the *Meacham* cases are distinguishable to the matter at hand. *Meacham* involves a plaintiff who was suffering from health issues that grossly affected her day-to-day job as a teacher. *Meacham v. Montgomery Cty. Bd. of Educ.*, 297 S.E.2d 192, 193 (N.C. Ct. App. 1982). She contacted her employer for support and advice on how take time off to recover so that she could eventually return to work. *Id.* An agent of her employer spoke with her about applying for disability retirement, where "the retirement aspect was just a formality." *Meacham*, 267 S.E.2d at 354. Relying on this statement, she applied for disability retirement status for which she was approved, but eventually was barred from returning to work because the school board had hired another

teacher to take her position when she went on retirement status. *Meacham*, 297 S.E.2d at 274-275. Plaintiff then brought suit against the school board when she was not reinstated. *Id.*

First, the plaintiff in *Meacham* was a teacher who had begun to experience health issues and actively sought advice from the defendant school district's agents related to her available support options during medical treatment. *Meacham*, 297 S.E.2d at 193. As an elementary school teacher, she was not in the best position to know the Board's employment, leave, and disability policies. Here, Petitioner describes his business as one of "elite cattle reproduction." Pet. *i*, 3. Petitioner has years of experience monitoring his liquid nitrogen tanks and passed the tanks during every walk through the office. Pet. App. 5a-6a. Petitioner knows how to check the levels for liquid nitrogen in the tanks and determine whether the liquid nitrogen levels are acceptable. Pet. 5. Unlike the plaintiff in *Meacham* who was not in the best position to access knowledge related to her employment policies, Petitioner was in the best position to access the knowledge Petitioner claims he was not "put on inquiry" to locate.

Second, the plaintiff in *Meacham* and Petitioner are in two incomparable situations. By relying on defendant's agent's statements, the plaintiff in *Meacham* was not informed about the negative impact her application for retirement disability benefits would impose on her active employment status and there was no evidence presented that she had means to access that knowledge or was "put on inquiry" to figure it out. *Meacham v. Montgomery Cty. Bd. of Educ.*, 297 S.E.2d 192, 195-196 (N.C. Ct. App. 1982). Petitioner received Genex's notice of

termination on September 23, 2015. Pet. App. 7a. However, the information on the tanks was easily accessible to him and listed the actual last date of service to the liquid nitrogen tanks. Pet. 6. Where the plaintiff lacked the ability to have control over her employment, Petitioner maintained full power over the tanks and could access them and view the tags hanging on them at any time.

Finally, the representations in *Meacham* were found to have been "calculated to and did induce plaintiff to act in her detriment." *Meacham*, 297 S.E.2d at 196. Genex admitted that, due to a clerical error, it inadvertently listed the date of the last invoice instead of the actual last service date on the cancellation letter sent to Petitioner. CA-App. 54. However, Genex's conduct does not rise to the level of calculation to induce Petitioner to act in his detriment. The plaintiff in *Meacham* was not required to make "extensive inquiry" of the facts after being told one aspect of the information she relied upon was a mere formality. *Meacham*, 297 S.E.2d at 197. Genex's cancellation letter mistakenly informed Petitioner of the fill date of the tanks. CA-App. 54. However, Petitioner's practice outside of the breeding season, during which the mistaken fill date falls, was to not check the tanks. Pet. App. 5a. Thus, Petitioner's actions can be separated from Genex's mistake.

II. THERE ARE NO VIOLATIONS OF *ERIE* RESULTING FROM THE FOURTH CIRCUIT'S OPINION.

Petitioner incorrectly argues that the Fourth Circuit's failure to apply substantive North Carolina law resulted in disregarding a valid and enforceable

agreement between Petitioner and Genex. Pet. 24. However, this argument completely ignores the Fourth Circuit's analysis of Petitioner's claims in the context of a written agreement and an oral agreement. Pet. App. 21a-22a, 24a-27a. The Fourth Circuit applied North Carolina state court precedent and state statute in both agreement contexts and found that Petitioner's claims failed despite whether an oral or written agreement applied. Pet. App. 27a.

Instead of accepting that under North Carolina law, the evidence in the record does not support his desired outcome, Petitioner chooses to ignore those precedents. Petitioner attempts to argue that the Fourth Circuit wrongly deprived Petitioner of relief by failing to apply the substantive law of North Carolina. Pet. 24. The claimed deprivation suffered includes not having his contract and estoppel claims "fairly considered in the same manner they would be considered in State court." Pet. 25. Contrary to Petitioner's belief, his claims were not required to be sent to a jury for deliberation. State courts in North Carolina have the power to interpret contractual terms and may enter summary judgment in contractual disputes. Pet. App. 21a. (citing *McKinnon*, 713 S.E.2d at 500). Despite Petitioner's suggestion that the Fourth Circuit's holding nullified state law, Pet. 25, North Carolina court precedent explicitly permits the Fourth Circuit's contractual analysis.

Petitioner's *Erie* violation claim would only succeed if the Fourth Circuit actually disregarded North Carolina law and Petitioner showed that the outcome in state court would be completely different. Petitioner has not, and is unable to, prove that point. Instead, the record clearly indicates that the even

when the Fourth Circuit took Petitioner's proposition at full value, that there was an oral agreement between the parties, Petitioner's claims still fail under North Carolina law. Pet. App. 26a.

CONCLUSION

For the reasons stated above, the Petition for Certiorari should be denied.

Respectfully submitted,

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