

Supreme Court, U.S.

FILED

JAN 26 2021

OFFICE OF THE CLERK

No. 20-1097

IN THE
SUPREME COURT OF THE UNITED STATES

KAREN C. HAN,

Petitioner,

v.

YANGRAI CHO,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Karen C. Han, *pro se*
2512 Carroll Ct.
Flower Mound, Texas 75022
Phone: (972) 355-7480
karenh514@gmail.com

ORIGINAL

RECEIVED

FEB - 3 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

Whether a defendant who is a citizen of foreign country but is domiciled in a forum state is subject to the forum's exercise of general personal jurisdiction?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Karen C. Han was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent Yangrai Cho was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDINGS BELOW.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.....	2
INTRODUCTION AND STATEMENT OF THE CASE.....	2
I. Cho's Motion To Dismiss.....	3
II. The District Court's Dismissal Of The Complaint Based On Lack Of Personal Jurisdiction.....	5
III. The District Court's Summary Disposition Of Han's Fed.R.Civ.P. 59(e) Motion For Reconsideration.....	6
IV. The Ninth Circuit's Decision.....	7
REASONS FOR GRANTING THE PETITION.....	9
CONCLUSION.....	13
APPENDIX	
Appendix A (Opinion, United States Court of Appeals For The Ninth Circuit filed May 14, 2020).....	1a

Appendix B (Order Denying Motion For Reconsideration, United States District Court For The District Of Hawaii filed April 23, 2019).....	4a
Appendix C (Opinion, United States District Court For The District Of Hawaii filed March 21, 2019).....	9a
Appendix D (Order Denying Petition For Panel Rehearing And Rehearing En Banc, United States Court of Appeals For The Ninth Circuit filed August 31, 2020).....	21a
Appendix E (Excerpts From Complaint filed July 18, 2018 with United States District Court For The District Of Hawaii).....	22a
Appendix F (Defendant's Memorandum in support of Motion to Dismiss filed October 29, 2018 with United States District Court For The District Of Hawaii	28a
Appendix G (Excerpts From Rule 59(e) Motion for Reconsideration filed April 17, 2019 with United States District Court For The District Of Hawaii	41a
Appendix H (Article dated March 20, 2018, Posted on the Official Website of Kelley Drye & Warren LLP at https://www.kelleydrye.com/News-Events/Publications/Client-Advisories/Korea-s-Financial-Supervisory-Service-Retains-Sove	43a

TABLE OF AUTHORITIES

Cases	Page
<i>AT & T Co. v. Compagnie Bruxelles Lambert,</i> 94 F.3d 586 (9th Cir.1996).....	10
<i>Boschetto v. Hansing,</i> 529 F.3d 1011 (9th Cir. 2008).....	8-9
<i>Cervantes v. Countrywide Home Loans,</i> 656 F.3d 1034 (9th Cir. 2011).....	9
<i>CollegeSource, Inc. v. AcademyOne, Inc.,</i> 653 F.3d 1066 (9th Cir. 2011).....	8, 11
<i>Daimler AG v. Bauman,</i> 571 U.S. 117 (2014).....	2, 9-10, 10-11
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown,</i> 564 U.S. 915 (2011).....	2
<i>Lew v. Moss,</i> 797 F.2d 747 (9th Cir. 1986).....	4
<i>Owens v. Hunting,</i> 115 F.2d 160 (9th Cir.1940).....	4
<i>Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.,</i> 476 F.3d 140 (2nd Cir. 2007).....	12
<i>Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.,</i> 509 F.3d 271 (6th Cir. 2007).....	12
<i>Resnick v. Rowe,</i> 283 F.Supp.2d 1128 (D.Haw. 2003).....	10
<i>Sch. Dist. No. 1J Multnomah Cty., Or. v. ACandS, Inc.,</i> 5 F.3d 1255 (9th Cir. 1993).....	8

Statutes

28 U.S.C. § 1254(1).....	1
--------------------------	---

Rules

Fed. R. Civ. P. 12(b)).....	10
Fed. R. Civ. P. 59.....	7
Fed. R. Civ. P. 59(e).....	6, 7, 8
Fed. R. Civ. P. 60.....	7
Fed. R. Civ. P. 60(a).....	7
Fed. R. Civ. P. 60(b).....	7

Supreme Court Rules

S. Ct. R. 10(a).....	11
S. Ct. R. 10(c).....	10-11

District of Hawaii Local Rules

LRCiv.60.....	7
---------------	---

PETITION FOR A WRIT OF CERTIORARI

Karen C. Han ("Han") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit (the "Ninth Circuit") in this case.

OPINIONS BELOW

The Ninth Circuit's unreported opinion and order denying petition for panel rehearing and rehearing *en banc* are reproduced at App. 1a-3a and App. 21a, respectively. The unreported opinion of the United States District Court for the District Of Hawaii and its minute order denying motion for reconsideration are reproduced at App. 9a-20a and App. 4a-8a, respectively.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Ninth Circuit issued its opinion and judgment on May 14, 2020. (App. 1a-3a) The Ninth Court denied the timely petition for panel rehearing and rehearing *en banc* on August 31, 2020. (App. 21a) On March 19, 2020, in light of the public health concerns relating to COVID-19, this Court extended the time for filing any petition for a writ of certiorari to 150 days from the date of the order denying a timely petition for rehearing. (See Order List: 589 U.S.)¹

¹ As permitted by this Court's order dated April 15, 2020, Han files a single paper copy of this petition for writ of certiorari, formatted on 8 1/2 x 11 inch paper.

STATUES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case does not involve interpretation of statutory and constitutional provisions.

INTRODUCTION AND STATEMENT OF THE CASE

Han instituted this action against Yangrai Cho ("Cho") in the United States District Court for the District of Hawaii ("the district court"), asserting claims for piercing-corporate-veil, fraud and civil conspiracy to commit fraud. (App. 12a)

Han claimed, as jurisdictional allegation, that even if Cho is a citizen of South Korea (App. 25a), he is actually domiciled in the State of Hawaii, making himself "at home" there. (App. 27a) Indeed, this allegation tracks in all relevant respects the holdings of controlling cases regarding general personal jurisdiction of this Court. *See, e.g., Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (holding that "[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile[.]") (internal quotation marks and citation omitted); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (holding that to assert general jurisdiction over a defendant, the defendant must "essentially [be] at home in the forum State").

Nonetheless, directly contradicting this Court's controlling authorities set forth above, the district court concluded that it cannot exercise general jurisdiction over Cho insofar as "Defendant Cho is a citizen of South Korea."

(App. 16a; App. 19a)

Without any discussion or analysis, the Ninth Circuit also concluded that "[t]he district court properly dismissed Han's action for lack of personal jurisdiction because Han failed to allege facts sufficient to establish that defendant Cho had continuous and systematic contacts with Hawaii to establish general personal jurisdiction..." (App. 2a)

Indeed, the refusal by the courts below to exercise jurisdiction over Cho, when the precedent of this Court dictates the opposite, effectively infringed on Han's statutory and constitutional right of access to federal forum.

I. Cho's Motion To Dismiss

On July 18, 2018, Han commenced this action against Cho in the district court. (App. 22a) Invoking general personal jurisdiction, the Complaint, as jurisdictional allegation, states that:

This Court has personal jurisdiction over Defendant because Defendant has engaged in continuous and systematic general business or other **contacts that approximate physical presence in Hawaii**. On information and belief, having **decided to live a retired life in Hawaii**, Defendant purchased in his own name as well as names of his family members and **has continuously maintained his residence in various places in Hawaii** since 1990—including but not limited to a house located at 5611 Kalanianaole Highway, Honolulu, a condominium located at 64 Ironwood Lane, Lahaina, and a condominium located at 1108 Auahi Street 3 7-A, Honolulu—which, on information and belief, is valued in total at over \$15 million. Thus, Defendant **made himself at home in this forum**; and Defendant's **physical presence in this forum** has been substantial enough for an

assertion by this Court of **general jurisdiction** over Defendant.

(App. 27a) (emphases added)

As emphasized in the paragraph quoted above, Han clearly purported to assert Cho's actual residency in Hawaii with the intent to "live a retired life" there—in other words, Cho's actual domicile in Hawaii.²

Cho retained Ms. Ando of McCorriston Miller Mukai MacKinnon LLP as his counsel, and filed his Motion to Dismiss based on various grounds, including lack of personal jurisdiction on October 29, 2018. (App. 28a-40a) However, Cho failed to submit any sworn evidence in the form of affidavit or declaration alongside the Motion to Dismiss in order to rebut his alleged actual residency in Hawaii with the intent to live a retired life there, based on which the Complaint invokes general personal jurisdiction over Cho. (App. 30a-31a)

Moreover, Cho even avoided to address or discuss Han's jurisdictional bases or allegations for the district court's exercise of general jurisdiction over him, except for his sole argument in passing, without any supporting evidence,

² Although without the benefit of jurisdictional discovery Han has no private and confidential information about Cho's actual visa status in Hawaii, such as investment immigration visa, permanent resident visa, or temporary sojourn visa renewed on a regular bases, Han claimed that Cho is an actual resident in Hawaii with the intent to live there indefinitely, which means that Cho is actually domiciled in Hawaii. *See Lew v. Moss*, 797 F.2d 747, 749-750 (9th Cir. 1986) ("a person is 'domiciled' in a location where he or she has established a 'fixed habitation or abode in a particular place, and [intends] to remain there permanently or indefinitely.'") (quoting *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir.1940) (alteration in original)).

that "while Defendant owns vacation property in Hawaii, this lawsuit does not relate in any way to the ownership of that property." (App. 31a)

As shown above, despite the jurisdictional allegations supporting the district court's assertion of general personal jurisdiction, in his Motion to Dismiss, Cho lodged an objection to only the exercise of specific personal jurisdiction over him—which Han did not even assert in this case—with the jurisdictional allegations claiming general personal jurisdiction remaining uncontested. (App. 30a-31a) Thus, Cho, in effect, waived his right to contest general jurisdiction.

II. The District Court's Dismissal Of The Complaint Based On Lack Of Personal Jurisdiction.

On March, 21, 2019, the district court granted Cho's Motion to Dismiss, finding that it did not have personal jurisdiction over Cho because: "Plaintiff does not allege that Defendant has any significant contacts with Hawaii separate from Defendant's property ownership[,] the Court cannot exercise general jurisdiction over Defendant based only on his property ownership in Hawaii." (App. 16a)

The district court further denied Han's request for jurisdictional discovery, reasoning that: "Plaintiff Han has not provided any basis to justify jurisdictional discovery[]" because "[i]t is uncontested that Defendant Cho is a citizen of South Korea." (App. 19a)

Given the district court's decisions and reasoning set forth above, in

declining to exercise general jurisdiction over Cho, the district court in effect concluded that courts cannot exercise general jurisdiction over a defendant who is a citizen of foreign country regardless of his or her residency or domicile in a forum state.

III. The District Court's Summary Disposition Of Han's Fed.R.Civ.P. 59(e) Motion For Reconsideration

On April 17, 2019, Han filed her Fed.R.Civ.P. ("Rule") 59(e) Motion for Reconsideration. (App. 41a) In the reconsideration motion (and on appeal), claiming that the order dismissing her case was "manifestly unjust" Han raised the issue of ex parte communication that might have occurred between Ms. Ando of McCorriston Miller Mukai MacKinnon LLP, Cho's counsel, and Magistrate Judge Kenneth J. Mansfield, to whom this case was assigned, because the Magistrate Judge had worked for the same law firm before he was selected as a Magistrate Judge for the district court. (App. 42a)

On April 23, 2019, Han's Rule 59(e) Motion was denied in its entirety in the Minute Order submitted by Rachel Sharpe, a courtroom manager of the district court, reiterating the reasoning of the district court's order granting Cho's Motion to Dismiss that: general jurisdiction does not exist because "[t]he Complaint specifically alleged Defendant was a citizen of South Korea." (App. 6a; App. 8a)

The reconsideration motion was summarily disposed of without a full

briefing³ because the reconsideration motion was found to be untimely (App. 5a-6a) and frivolous.⁴ Moreover, the Minute Order constrained Han from filing any Rule 60(a) or (b) motions by making her obtain the leave of the district court before filing such motions.⁵ (App. 8a)

IV. The Ninth Circuit's Decision

On May 14, 2020, in an unpublished memorandum (Memorandum") the Ninth Circuit affirmed the district's decisions with no merits discussions of

³ The Minute Order dispensed with Cho's response brief and Han's reply brief.

⁴ Han's Rule 59(e) Motion was timely filed on April 17, 2019, 27 days after the entry of the final judgment and the district court's March 21, 2019, Order dismissing the Complaint. See Rule 59(e) (providing that "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment"). (App. 6a)

⁵ For instance, Han wished to file a motion for clarification or a motion under Rule 60(a) (providing that "[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record"). However, she did not seek such leave of the district court—to correct apparently an unduly imposed constraint on her with no authority—because such attempt would be futile considering that the mistakes in the Minute Order, such as finding Han's Rule 59(e) Motion for Reconsideration untimely, were obviously intentional ones. It is beyond doubt that the courtroom manager or the district court knew that Cho's Motion to Dismiss was a dispositive motion, which was not subject to 14 days' filing limitation period applicable only to non-dispositive orders under District of Hawaii Local Rule 60.1 (providing that "[m]otions seeking reconsideration of case-dispositive orders shall be governed by Fed. R. Civ. P. 59 or 60, as applicable"). (App. 5a-6a) As addressed above, Han has compelling reasons and grounds to believe that ex parte communication possibly occurred between Cho's counsel and the judge or clerks of the district court and there might have been a pre-determined agreement between them to rule in favor of Cho. Although these matters are beyond the scope of this Petition, Han submits that afore-mentioned procedural irregularities in the proceedings below should be considered while examining the substantive aspect of decisions of the courts below up for review in this Petition.

Han's four claimed errors up for review on appeal. (App. 1a-3a)

The Memorandum relegates analysis or discussions of the four claimed errors to only one paragraph per claimed error as follows.

As to the dismissal of Han's action for lack of personal jurisdiction, the Memorandum states that:

"The district court properly dismissed Han's action for lack of personal jurisdiction because Han failed to allege facts sufficient to establish that defendant Cho had continuous and systematic contacts with Hawaii to establish general personal jurisdiction, or sufficient minimum contacts with Hawaii to provide the court with specific personal jurisdiction over Cho. See *CollegeSource, Inc. [v. AcademyOne, Inc.]*, 653 F.3d [1066,] 1074-76 [(9th Cir. 2011)] (discussing requirements for general and specific personal jurisdiction)."

(App. 2a)

With regard to the district court's denial of Han's Rule 59(e) motion, the Memorandum states that:

"The district court did not abuse its discretion in denying Han's motion for reconsideration because Han failed to establish any basis for relief. See *Sch. Dist. No. 1J Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Federal Rule of Civil Procedure 59(e))."

(App. 2a)

As for the district court's denial of Han's request for jurisdictional discovery, the Memorandum reads, in pertinent part, that:

"The district court did not abuse its discretion in denying Han's request for jurisdictional discovery because Han failed to demonstrate that the requested discovery would have yielded

'jurisdictionally relevant facts.' *Boschetto v. Hansing*, 529 F.3d 1011, 1020 (9th Cir. 2008) (setting forth standard of review and explaining that the denial of a request for jurisdictional discovery 'based on little more than a hunch that it might yield jurisdictionally relevant facts [is] not an abuse of discretion')."

(App. 2a)

Regarding the district court's refusal to allow Han's request to amend the Complaint, the Memorandum states that:

"The district court did not abuse its discretion by dismissing Han's complaint without leave to amend because amendment would have been futile. See *Cervantes v. Countrywide Home Loans*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that a district court may deny leave to amend if amendment would be futile)."

(App. 3a)

As quoted above, the Memorandum is utterly devoid of any discussion addressing the merits of Han's arguments. It merely makes conclusions in the most conclusive fashion citing cases for only general propositions that have no specific relevancy to the merits discussions at hand—for instance, with respect to the first claimed error which is the subject issue in this Petition, whether a district court can exercise general personal jurisdiction over a defendant who is a citizen of foreign country but is domiciled in the forum.

REASONS FOR GRANTING THE PETITION

A question should quickly arise: where else can Han sue Cho, when Han's jurisdictional allegation that Hawaii is Cho's domicile—which this Court has held is "[f]or an individual, the paradigm forum for the exercise of general

"jurisdiction" *Daimler AG*, 571 U.S. at 137—is an allegation of facts insufficient to establish that "defendant Cho had continuous and systematic contacts with Hawaii to establish general personal jurisdiction..." ? ⁶ (App. 2a)

Especially, in this case, Cho neither submitted his own sworn statements to deny Han's allegations nor lodged an objection to the exercise of general personal jurisdiction. (App. 30a-31a) Therefore, Han's jurisdictional allegations in the Complaint should be taken as true for the purposes of Cho's Motion to Dismiss under Rule 12(b)(2). *See Resnick v. Rowe*, 283 F.Supp.2d 1128, 1132 (D.Haw. 2003) ("In determining whether a plaintiff has made a *prima facie* showing of jurisdictional facts, the court must accept uncontested allegations in a complaint as true, even if unsupported by any evidence in the record before the court.") (citing *AT & T Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.1996)).

As shown above, the Memorandum is completely bereft of any case-specific analysis or discussion of Han's jurisdictional allegations. Thus, there is little to discuss regarding the propriety of the Ninth Circuit's decision in the Memorandum; it simply directly contradicts the well-settled law of this Court that "[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's *domicile*["] *Daimler AG*, 571 U.S. at 137

⁶ Had Han sued Cho in South Korea, Cho might have asserted that South Korean courts cannot exercise jurisdiction over him because he is not domiciled in South Korea but in Hawaii.

(citation omitted). S. Ct. R. 10(c).

Moreover, as demonstrated above, the Ninth Circuit's disposition without any analysis or discussion whatsoever of Han's claimed errors "has so far departed from the accepted and usual course of judicial proceedings [] as to call for an exercise of this Court's supervisory power[.]" S. Ct. R. 10(a).

The Ninth Circuit's indifference or insincerity in reviewing Han's appeal is on full display when it cited *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066 (9th Cir. 2011) in support of its conclusion. (App. 2a)

As opposed to this case where an exercise of general personal jurisdiction over an individual defendant was at issue, *CollegeSource, Inc.* concerned a district court's assertion of personal jurisdiction over a foreign corporation, the requisite inquiry into or analysis of which is wholly distinguished from the former case. *CollegeSource, Inc.*, 653 F.3d at 1074 ("we consider [a nonresident corporation's contacts'] '[l]ongevity, continuity, volume, economic impact, physical presence, and integration into the state's regulatory or economic markets.'") (second alteration in original) (citation omitted); *see also Daimler AG*, 571 U.S. at 137 ("With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] ... bases for general jurisdiction.'") (alteration in original) (citation omitted).

In view of the foregoing, this Petition should be summarily disposed of on the merits; and the Ninth Circuit's decision to affirm the district court's

dismissal of Han's Complaint for lack of personal jurisdiction should be vacated.

Two oft-cited cases in the areas of foreign sovereign immunity and subject-matter jurisdiction dealt with Han's pursuit of causes of action, for about twenty years, against Cho and Hankook Tire Co., Ltd. ("Hankook Tire"), of which Cho was the controlling shareholder: *Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.*, 476 F.3d 140 (2nd Cir. 2007), and *Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.*, 509 F.3d 271 (6th Cir. 2007).

In addition, various news and legal articles published in the United States and South Korea have covered Han's action against Cho and Hankook Tire. (See, e.g., App. 43a-45a) This case involves Cho and Hankook Tire's alleged illegal activities in offshore tax haven areas including a money-laundering scheme. (App. 11a; App. 44a-45a) Currently, South Korea's governmental agency (equivalent to United States' SEC) and the Prosecutors' Office of South Korea, are probing into said unlawful activities of Cho and Hankook Tire.

As such, although the Memorandum is an unpublished opinion, given the attention this case has received from the public both in the United States and South Korea, assumedly, there have been and will be a considerable number of readers of the Memorandum. Therefore, the Memorandum written in the most insincere manner could undermine the credibility of the world-renowned,

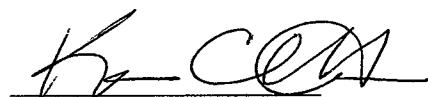
efficient and sophisticated judicial system of the United States, which constitutes a compelling reason for this Court to summarily dispose of this Petition on the merits, vacating the Ninth Circuit's decision in this matter.

CONCLUSION

For the foregoing reasons, the Court should grant Han's Petition for Writ of Certiorari.

DATED this 26th day of January, 2021.

Respectfully Submitted,



Karen C. Han, pro se
2512 Carroll Ct.
Flower Mound, Texas 75022
Phone: (972) 355-7480
karenh514@gmail.com