APPENDIX

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APPENDIX A

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File Name: 20a0040n.06

No. 19-3722

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 23, 2020
DEBORAH S. HUNT, Clerk

KAREN CHONGAH HAN,

Plaintiff-Appellant,

v.

HANKOOK TIRE CO., LTD.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

BEFORE: SUHRHEINRICH, DONALD, and MURPHY, Circuit Judges.

SUHRHEINRICH, Circuit Judge. This is the second time that Karen Han has filed the present claims against Hankook Tire Company. In the first case, Han brought her claims jointly with Peninsula Asset Management, a company she owned that was registered in the Cayman Islands. When that case was filed, no one noticed that the presence of alien companies on both sides of the dispute (Hankook is a South Korean entity) deprived the federal court of diversity jurisdiction. That jurisdictional defect became apparent only after the court granted Hankook's summary judgment motion and Han appealed. To preserve its summary judgment win, Hankook argued that the court could dismiss Peninsula and retain jurisdiction over Han's claims. Han objected to that proposal, contending that Peninsula was "indispensable" to the case. The court agreed with Han and dismissed the first case for lack of subject-matter jurisdiction.

When Han refiled her claims against Hankook in the present case, she purported to pursue them individually and as the "real party in interest" for Peninsula. Finding this assertion to be

inconsistent with her prior representation that Peninsula was indispensable, the district judge applied the doctrine of judicial estoppel and dismissed the case with prejudice.

Han argues that the district judge erred because her present claims are not inconsistent with the stance she took in the prior case. She also contends that, even if judicial estoppel applies, the court should have dismissed the matter without prejudice. Because the district judge properly applied judicial estoppel to dismiss Han's claims with prejudice, we affirm.

I.

In 2004, Karen Han and Peninsula Asset Management (Cayman) Ltd. (a Cayman Islands company owned entirely by Han) filed a lawsuit in the Northern District of Ohio claiming that Hankook Tire Company, Ltd. (a South Korean company) breached a contract and committed fraud. The claims arose from a business relationship between Peninsula and Hankook's subsidiary, Ocean Capital Investment Limited. In a lengthy opinion, the district court granted summary judgment in Hankook's favor. *Memorandum Opinion, Peninsula Asset Mgmt. (Cayman) Ltd. v. Hankook Tire Co.*, No. 5:04-cv-1153 (N.D. Ohio, Oct. 13, 2006), ECF No. 184.

After they lost on summary judgment, Han and Peninsula appealed to this court. Without reaching the merits of the appeal, we determined that "[b]ecause there are alien corporations on both sides of the controversy, this case lacks the complete diversity required for a federal court to exercise diversity jurisdiction under [28 U.S.C.] § 1332(a)(2)." *Peninsula Asset Mgmt. (Cayman) Ltd. v. Hankook Tire Co.*, 509 F.3d 271, 272 (6th Cir. 2007). Accordingly, we remanded the case "for consideration of the need to dismiss for lack of subject matter jurisdiction." *Id.* at 273.

On remand, Hankook argued that, although Peninsula was non-diverse, the court could retain jurisdiction over Han's claims because Peninsula was a "nominal" or "dispensable" party. *Motion to Dismiss Dispensable Party, Peninsula Asset Mgmt. (Cayman) Ltd. v. Hankook Tire Co.*,

No. 5:04-cv-1153 (N.D. Ohio, Dec. 20, 2007), ECF No. 215, at ID# 8670. In support, Hankook asserted that Peninsula had ceased doing business and "had been wrapped up" before the lawsuit was filed. *Id.* at ID# 8671. As Hankook noted, a court has the authority to dismiss a dispensable party to preserve diversity jurisdiction. *Id.* (citing Fed. R. Civ. P. 21; *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 832 (1989)).

Facing a loss on the merits, Han contended that Peninsula was "indispensable" and deprived the court of diversity jurisdiction. *Response in Opposition to Motion to Dismiss Dispensable Party, Peninsula Asset Mgmt. (Cayman) Ltd. v. Hankook Tire Co.*, No. 5:04-cv-1153 (N.D. Ohio, Jan. 2, 2008), ECF No. 216, at ID# 8683. According to Han, Peninsula was "an essential party in Plaintiffs' main claim—breach of contract" because that claim was "based on the contract between Peninsula and [Hankook's subsidiary] Ocean Capital Investment (L) Limited." *Id.* at ID# 8683–64. Han made clear that, although Peninsula was "dormant business-wise," it "exist[ed] for [the purposes of] this lawsuit," i.e., the 2004 case. *Id.* at ID# 8682.

The district judge agreed with Han and "reject[ed] the notion that Peninsula is a dispensible [sic] or nominal party." *Memorandum Opinion and Order, Peninsula Asset Mgmt. (Cayman) Ltd. v. Hankook Tire Co.*, No. 5:04-cv-1153 (N.D. Ohio, Feb. 1, 2008), ECF No. 219, at ID# 8703. Because Peninsula was non-diverse and indispensable, the court dismissed the 2004 case for lack of jurisdiction. *Id.*

Nearly ten years later, Han initiated the present case by refiling her claims against Hankook. In the present complaint, Han asserts her claims both individually and "as the real party in interest" for Peninsula, which according to Han is now "defunct." *Id.*, ID# 3.

As the district court was analyzing Hankook's motion to dismiss, it discovered that Han avoided summary judgment in the prior case by arguing that her claims could not proceed without

Peninsula. Based on that fact, the district judge concluded that "allowing Han to proceed on this action without the presence of Peninsula would give Han the unfair advantage of essentially having a second bite of the apple." *Id.* To prevent that "unseemly maneuver," the court applied the doctrine of judicial estoppel and dismissed Han's claims with prejudice. *Id.* at 279. Han filed a motion for reconsideration, which the court denied.

In this appeal, Han challenges the district court's application of judicial estoppel to dismiss her claims. We review questions of judicial estoppel de novo. *In re Ohio Execution Protocol*, 860 F.3d 881, 891 (6th Cir. 2017) (en banc).

II.

When a party convinces a court to take a certain position, and later advocates an inconsistent position, the court can apply the doctrine of judicial estoppel to prevent that party from playing "fast and loose" with the courts. *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 598–99 (6th Cir. 1982). There is no set formula for assessing when judicial estoppel should apply. *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001). However, courts usually focus on three factors. First, "a party's later position must be 'clearly inconsistent' with its earlier position." *Id.* Second, a court should review "whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled.'" *Id.* (quoting *Edwards*, 690 F.2d at 599). Finally, the court should evaluate whether the party advancing an inconsistent position would gain an unfair advantage if allowed to proceed with that argument. *Id.* at 751.

This case meets the first factor: Han has advocated inconsistent positions. When the prior case was remanded to consider whether Peninsula's presence deprived the court of diversity jurisdiction, Han argued that Peninsula was "indispensable" because she could not pursue the

contract claims on Peninsula's behalf. Now, however, Han asserts that she is the "real party in interest" for Peninsula and can litigate the contract claims on its behalf.

Despite Han's argument to the contrary, the fact that Peninsula is now "defunct" does not harmonize her contradictory positions. When Hankook argued in the prior case that Peninsula was no longer in business and therefore "nominal," Han argued that Peninsula was "essential" to the contract claim and continued to exist for the purposes of the lawsuit, even though it was already "dormant business-wise." She now asserts that the simple lapse of Peninsula's registration automatically (without any formal transfer of assets or assignment of contract rights) made her the "real party in interest" to Peninsula's claims. If that were true, Peninsula should have been considered nominal in the first case, as Hankook contended.

The second factor of the estoppel test is also met. The district judge in the prior case concluded that Peninsula was indispensable and dismissed the case for lack of jurisdiction. If Han prevailed on her present claims, it would create the impression that the court had been misled, either in the prior case or the present one.

The third factor is satisfied as well. Han would gain an unfair advantage from being permitted to pursue her claims as the real party in interest for Peninsula. The claims that form the basis of Han's present complaint lost on summary judgment in 2006. To circumvent that result, Han took the unusual step of arguing that the court in which she filed her complaint lacked jurisdiction. If she had argued at that time that she was the "real party in interest" for Peninsula, it is likely that the court would have dismissed Peninsula, retained jurisdiction over Han's claims, and reaffirmed the grant of Hankook's summary judgment motion.

Because Han previously disavowed the capacity to bring the claims she sets out in the present complaint, dismissal with prejudice is the only adequate sanction. *See Chambers v.*

NASCO, Inc., 501 U.S. 32, 45 (1991) (observing that "outright dismissal of a lawsuit," although it is a "particularly severe sanction" is "within the court's discretion"). To sidestep the summary-judgment loss in the first case, Han argued that she (1) lacked the capacity to pursue claims on behalf of Peninsula and (2) had no individual claims that could be adjudicated without Peninsula. *See Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 572 (2004) (holding that a party is dispensable if its "interests are severable and a decree without prejudice to their rights may be made" (quoting *Horn v. Lockhart*, 84 U.S. 570, 579 (1873))). Those representations fundamentally eviscerate Han's present claims.

Finally, to be clear, the district court did not dismiss the case for lack of jurisdiction. *Contra* Han's Reply Brief at 12. The district court discussed whether judicial estoppel could be applied to questions of subject-matter jurisdiction, but only to distinguish the cases Han cited on that issue. As discussed above, the application of judicial estoppel in this case goes directly to the merits of Han's claims.

III.

Therefore, we **AFFIRM** the district court's dismissal of Han's complaint with prejudice.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KAREN C. HAN,	)	CASE NO. 5:17-cv-2046
PLAINTIFF,	)	JUDGE SARA LIOI
vs.	)	
HANKOOK TIRE CO., LTD.,	)	MEMORANDUM OPINION AND ORDER
DEFENDANT.	)	

Before the Court is the motion of plaintiff Karen C. Han ("Han"), pursuant to Fed. R. Civ. P. 59(e), for reconsideration of the Court's decision dismissing this action. (Doc. No. 23 ["Mot."].) Defendant Hankook Tire Co., Ltd. ("Hankook") opposes the motion (Doc. No. 24 ["Opp'n"]), and Han has filed a reply (Doc. No. 25 ["Reply"]). For the reasons that follow, the motion for reconsideration is DENIED.

I. BACKGROUND

The factual and procedural background of this case, as well as the related 2004 case that forms the basis for this Court's judicial estoppel decision, was detailed in the Court's August 28, 2018 Memorandum Opinion for which Han now seeks reconsideration. (Doc. No. 21 ["MO"].) The Court assumes familiarity with this prior ruling. For purposes of providing context for the present motion, only a few salient facts need be restated. In 2004, Han and Peninsula Asset Management ("Peninsula")—a company for which Han is the sole shareholder—brought a contract action against Hankook in this Court before the late Judge David D. Dowd, Jr. on the

basis of diversity jurisdiction. (N.D. Ohio Case No. 5:04 CV 1153.) Han appealed from Judge Dowd's summary dismissal of the claims. Upon remand from the Sixth Circuit for the purpose of evaluating the existence of diversity jurisdiction, Han successfully argued that Peninsula was an indispensable party to the action, resulting in dismissal of the action by the district court for want of jurisdiction because there were "foreign entities on the two sides of this dispute." *Peninsula Asset Mgmt. (Cayman), Ltd. v. Hankook Tire Co., Ltd.*, No. 5:04 CV 1153, 2008 WL 302370, at *2 (N.D. Ohio Feb. 1, 2008).

More than nine years later, Han filed the present action—without naming Peninsula as a party plaintiff—raising allegations involving the same contract between Peninsula and Hankook. Hankook sought dismissal of Han's contract claims because she was not a party to the contract between Hankook and Peninsula. In opposition, Han argued that she could maintain the action on behalf of herself and Peninsula because Peninsula was not an indispensable party, a representation contrary to the one she advanced in 2004. These inconsistent positions formed the basis for this Court's determination that judicial estoppel barred Han's claims.[1] Having successfully maneuvered out from under an unfavorable summary judgment ruling in the 2004 case by arguing that Peninsula was an indispensable party to the parties' contract dispute, the Court concluded that Han could not adopt a contrary position because it now suited her purposes. (MO at 279 ["Essentially, Han seeks to clear the previous jurisdictional hurdle by simply moving it out of the way by recharacterizing Peninsula's breach of contract claim as hers—an unseemly

[1] Han incorrectly maintains that the Court "sua sponte" raised the issue of judicial estoppel. (Mot. at 284 [All page number references are to the page identification number generated by the Court's electronic docketing system.].) Hankook raised this doctrine in its reply brief in support of dismissal in response to Han's attempt to change positions on Peninsula's status as an indispensable party to the underlying contract dispute. (Doc. No. 14 at 151.) The Court granted Han leave to file a sur-reply to address this and other issues. (Doc. No. 15 (Motion to File Sur-reply); Doc. No. 15-3 (Sur-reply); *see* MO at 275.)

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maneuver the Court must not permit."].) *See New Hampshire v. Maine*, 532 U.S. 742, 743, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) (a party may not "deliberately chang[e] [her position] according to the exigencies of the moment") (quotation marks and citation omitted).

II. STANDARD OF REVIEW

The Federal Rules of Civil Procedure do not provide for motions for reconsideration. Such motions are typically treated as motions to alter or amend the judgment under Fed. R. Civ. P. 59(e). *McDowell v. Dynamics Corp. of Am.*, 931 F.2d 380, 382 (6th Cir. 1991) (citing *Smith v. Hudson*, 600 F.2d 60, 62 (6th Cir. 1979)). The purpose of Rule 59(e), however, is not to provide an unhappy litigant with an opportunity to relitigate issues already considered and rejected by the Court. *Morgantown Mach. & Hydraulics of Ohio, Inc. v. Am. Piping Prods., Inc.*, No. 5:15-cv-1310, 2016 WL 3555431, at *3 (N.D. Ohio June 30, 2016). In other words, a motion for reconsideration is not a substitute for appeal. *See CitiMortgage, Inc. v. Nyamusevya*, No. 2:13-cv-00680, 2015 WL 1000444, at *4 (S.D. Ohio Mar. 5, 2015) (citing, among authority, *Gore v. AT & T Corp.*, No. 2:09-CV-854, 2010 WL 3655994, at *1 (S.D. Ohio Sept. 14, 2010) ("Motions for reconsideration should not be used as a substitute for appeal nor should they be used as a vehicle for mere disagreement with a district court's opinion.")). Neither is a Rule 59(e) motion properly used to advance a new legal theory or new evidence to support a prior argument when either or both, with due diligence, could have been discovered and offered during the initial consideration of the issue. *McConocha v. Blue Cross & Blue Shield Mut. of Ohio*, 930 F. Supp. 1182, 1184 (N.D. Ohio 1996).

Generally, only three situations justify a district court in altering or amending its judgment: (1) to accommodate an intervening change in controlling law, (2) to account for new

evidence not available at trial, or (3) to correct a clear error or prevent a manifest injustice. *Rodriguez v. Tenn. Laborers Health & Welfare Fund*, 89 F. App'x 949, 959 (6th Cir. 2004) (citing *Reich v. Hall Holding Co.*, 990 F. Supp. 955, 965 (N.D. Ohio 1998)); *see also Huff v. FirstEnergy Corp.*, No. 5:12CV2583, 2014 WL 2441768, at *2 (N.D. Ohio May 29, 2014) (The party seeking to alter or amend judgment under Rule 59(e) "'must either clearly establish a manifest error of law or must present newly discovered evidence.'") (quoting *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 395 (6th Cir. 2007)). Han bases her request for reconsideration on the third reason—to correct what she perceives as a clear error of law. (Mot. at 287.)

III. DISCUSSION

A. Judicial Estoppel may be Employed in this Action

As an initial matter, Han argues that the Court clearly erred in applying judicial estoppel to dismiss the action because "the judicial estoppel doctrine does not apply to questions of subject matter jurisdiction[.]" (*Id.* at 284.) In support of this position, Han cites cases, such as *In re S.W. Bell Tel. Co.*, 535 F.2d 859, 861 (5th Cir.), *judgment vacated by* 556 F.2d 370 (5th Cir. 1977), holding that:

> Judicial estoppel principles cannot conclusively establish jurisdictional facts. If facts come to light casting significant doubt on the power of a federal court to hear a pending case, it must, of course, re-examine its jurisdiction.

See Creaciones Con Idea, S.A. de C.V. v. Mashreqbank PSC, 232 F.3d 79, 82 (2d Cir. 2000) (another case cited by Han, providing "'[I]rrespective of how the parties conduct their case, the courts have an independent obligation to ensure that federal jurisdiction is not extended beyond its proper limits'") (quoting *Wright v. Bankamerica Corp.*, 219 F.3d 79, 80 (2d Cir. 2000)).

Hankook agrees that judicial estoppel cannot be employed to *establish* or *expand* federal jurisdiction. (Opp'n at 312, citing *Ins. Corp. of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982) ("no action of the parties can confer subject-matter jurisdiction upon a federal court").) But it insists that "this case is different. Here, [the C]ourt properly applied judicial estoppel *not* to establish or expand jurisdiction, but to *dismiss* a case because of Han's unseemly gamesmanship." (*Id.*, emphasis in original.) As such, Hankook argues that the Court's "decision doesn't run afoul of the limited-jurisdiction principle on which Han relies." (*Id.*)

Hankook suggests that the Court's decision is consistent with a recent case from the First Circuit. In *Sexual Minorities Uganda v. Lively*, 899 F.3d 24 (1st Cir. 2018), the defendant, like Han here, previously argued that the district court lacked diversity jurisdiction. *Id.* at 32. But on appeal, the defendant, contradicting his previous position, argued that jurisdiction existed. *Id.* When the plaintiff invoked judicial estoppel to oppose jurisdiction, the defendant, again like Han, argued that estoppel did not apply to matters of jurisdiction. *Id.* at 33-34. But the appellate court rejected this argument and applied judicial estoppel to decline, not establish, jurisdiction over the case. The First Circuit explained:

> [Defendant] overlooks, though, that this is a one-way ratchet. Even though federal subject-matter jurisdiction cannot be established through waiver or estoppel, it may be defeated by waiver or estoppel. For example, a federal court is not required to assume jurisdiction under a theory that a party has waived. So, too, although the doctrine of judicial estoppel cannot be applied to create federal subject-matter jurisdiction that is otherwise lacking, it may be applied to prevent a party from basing federal subject-matter jurisdiction on facts that directly contradict his previous representations to another tribunal.
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> [Defendant] and his counsel owed a duty of candor to the district court; they told that court that diversity jurisdiction did not exist; and they secured a dismissal of

> the pending federal suit, partially as a result of that disclaimer. When a party makes a representation to a court, there is no unfairness in insisting that he live with its consequences. Accordingly, there is no principled way in which we can now permit [defendant] to embrace a directly contradictory position simply because his interests have changed. Any other outcome would raise the specter of inconsistent determinations and endanger the integrity of the judicial process.

Id. at 34 (quotation marks and internal citations omitted).

The Court finds the analysis offered by the First Circuit persuasive. Here, the Court did not apply judicial estoppel for the improper purpose of creating jurisdiction where it was otherwise lacking. Instead, the Court applied the doctrine to protect the integrity of the judicial system by holding a party to a previously asserted position. This distinction takes the case out of the realm of decisions, relied upon by Han, prohibiting the use of judicial estoppel to confer jurisdiction in "the face of an alleged jurisdictional default." *See, e.g., Gray v. City of Valley Park, Mo.*, 567 F.3d 976, 982 (8th Cir. 2009) (noting that "[e]ven if the parties wasted judicial resources up to this point and misled the courts on this issue in the process, we may not forge ahead on blind principle without jurisdiction to do so").

B. Han Previously Successfully Asserted a Contrary Position

Han argues that, even if judicial estoppel was available as a remedy in this case, the Court clearly erred by misapplying the three-factor judicial estoppel test.[2] (Mot. at 289.) Specifically, Han posits that the Court erred in finding that she had previously succeeded in getting the Court to accept her earlier, inconsistent position. (*Id.*) According to Han, the "record clearly establishes, upon remand, simply agreeing with the Sixth Circuit, which detected, *sua sponte*, [a]

[2] When determining whether to apply judicial estoppel, the Sixth Circuit considers the following factors: (1) whether the party's later position is clearly inconsistent with its earlier position, (2) whether the party has succeeded in persuading a court to accept that party's earlier position, and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage if not estopped. *Flexsys Am. LP v. Kumho Tire U.S.A., Inc.*, 726 F. Supp. 2d 778, 791 (N.D. Ohio 2010) (citing *Lewis v. Weyerhaeuser Co.*, 141 F. App'x 420, 425 (6th Cir. 2005)).

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jurisdictional defect, Judge Dowd dismissed the prior action without considering or accepting any positions of the parties." (Reply at 331, citing Mot. at 284-85.)

Han has misrepresented the record. In dismissing the 2004 action upon remand, Judge Dowd specifically "reject[ed] the notion that Peninsula is a dispensable or nominal party"—that is, the Court accepted Han's position relative to Peninsula and afforded Han the relief she requested—and dismissed the action for want of jurisdiction. *Peninsula Asset Mgmt.*, 2008 WL 302370, at *2. No more is necessary to demonstrate that a party has "successfully asserted an inconsistent position in a prior proceeding." *Cf. Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982) (finding that the plaintiff did not "successfully assert" a contrary position where the relief he sought was obtained, not by a judicial ruling, but by way of "the settlement of the contested claim"). Judge Dowd's reliance was sufficient to support an application of judicial estoppel here:

> The district court unarguably bought what [defendant] was selling: although it did not expressly address the existence vel non of diversity jurisdiction in its dispositive ruling, its dismissal of the action necessarily adopted [defendant's] argument that diversity jurisdiction was lacking. No more is exigible to satisfy the second element [of judicial estoppel].

Sexual Minorities, 899 F.3d at 33.[3] Regardless of whether Judge Dowd explicitly explained the basis for his rationale in so many words, he clearly "bought what [Han] was selling"—the position that Peninsula was an indispensable party to the proceedings. Having derived the benefit

[3] Han argues that *Sexual Minorities* represents the "minority view" that "all that is necessary to invoke judicial estoppel is that by changing a previous position the party is playing fast and loose with the court." (Reply at 329.) As the Ninth Circuit observed, "[t]he majority of circuits recognizing the doctrine [of judicial estoppel] hold that it is inapplicable unless the inconsistent statement was actually adopted by the court in the earlier litigation . . . The minority view, in contrast, holds that the doctrine applies *even if the litigant was unsuccessful in asserting the inconsistent position*, if by his change of position he is playing fast and loose with the court." *Morris v. Cal.*, 966 F.2d 448, 452053 (9th Cir. 1991) (collecting cases) (emphasis added, quotation marks omitted). Contrary to Han's suggestion, the court in *Sexual Minorities* did not employ the minority view but found that the defendant, like Han, successfully asserted a prior inconsistent position.

of her prior position—the dismissal of the prior action for want of jurisdiction—Han cannot now claim that she did not successfully assert a prior contrary position. *See Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 389 n.4 (2d Cir. 2011) (holding that for judicial estoppel to apply, "[t]he court need only adopt the position in some manner, such as by rendering favorable judgment") (quotation marks and citation omitted); *see, e.g., Patriot Cinemas, Inc. v. Gen. Cinemas Corp.*, 834 F.2d 208, 213 (1st Cir. 1987) (applying judicial estoppel and noting that "[a]lthough the court gave no reasons, it is reasonable to believe that it was influenced by [plaintiff's prior inconsistent] representation"). The Court did not err in finding the second judicial estoppel factor met.[4]

C. This Court was not Presented with New Circumstances

Han also argues that the Court clearly erred in applying judicial estoppel because her current position is based upon the "new" allegation in the complaint that Peninsula is now "defunct." (Mot. at 290, citing Doc. No. 1 ["Compl."] ¶ 4.) She notes that her understanding of the word "defunct" means that the entity no longer exists. (*Id.*) Continuing, she argues that "[s]ince the factual allegations in the Complaint are deemed true in a Rule 12(b)(6) motion, Han need not explain why Peninsula no longer exists." (*Id.*)

[4] Han also argues that the Court erred in finding that the third factor was met. To the extent that any of her arguments relative to the Sixth Circuit's three-factor test are properly raised in a Rule 59(e) motion, and do not simply represent an attempt to relitigate issues already considered and rejected, Court finds no error. Permitting Han to proceed in this Court, after having escaped an unfavorable summary judgment ruling, would obviously bestow upon Han the unfair advantage of a second bite at the apple in federal court. *See, e.g., id.*, 834 F.2d at 213-14 (noting that defendants were harmed by plaintiff's prior inconsistent statement as it "spelled clear defeat for defendants' stay motion").

There are several problems with Han's position. First, and foremost, the Court was not exploring in the first instance whether it had jurisdiction over this matter. Had the Court considered its jurisdiction in the first instance, its analysis would have been guided by Rule 12(b)(1) and not Rule 12(b)(6). The Sixth Circuit has clearly recognized that a district court is empowered to consider evidence beyond the pleadings and to resolve factual disputes when necessary. *Madison-Hughes v. Shalala*, 80 F.3d 1121, 1130 (6th Cir. 1996). In fact, a "district court has broad discretion over what evidence to consider and may look outside the pleadings to determine whether subject-matter jurisdiction exists." *Adkisson v. Jacobs Eng'g Grp., Inc.*, 790 F.3d 641, 647 (6th Cir. 2015). Further, the "plaintiff bears the burden of proving that jurisdiction exists." *DLX, Inc. v. Kentucky*, 381 F.3d 511, 516 (6th Cir. 2004). Han's conclusory allegation that Peninsula is now "defunct" would not have met her burden.

Instead, it was considering whether Han was free to rely on an inconsistent position to create jurisdiction in the face of an alleged jurisdictional defect—a defect she previously brought to the Court's attention. Second, Han's allegation is not new. In the 2004 action before Judge Dowd, Hankook "argue[d] that Peninsula is a dispensible and nominal party and probably did not even exist at the time of the filing of the complaint." *Peninsula Asset Mgmt.*, 2008 WL 302370, at *3. Judge Dowd specifically rejected this argument and found, at Han's urging, that Peninsula was not a "dispensible or nominal party." *Id.* One of the purposes of judicial estoppel is to avoid the creation of "'the perception that either the first or the second court was misled.'" *New Hampshire,* 532 U.S. at 750 (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982)). Allowing Han to rely on the same conclusory allegation previously rejected by Judge Dowd because it subsequently suited her purposes to do so would have given the clear

impression that one court was misled. *Id.* at 749-50. The doctrine of judicial estoppel was designed to address this very type of unseemly maneuvering. *See* 18B Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 4477 (2d ed. Apr. 2018 Update).

D. This Case was Properly Dismissed with Prejudice

Finally, Han suggests that, even if the Court is disinclined to reconsider its application of judicial estoppel, the "maximum estoppel sanction permitted by law is a dismissal of this action for failure to join an indispensable party without prejudice, after conducting a Rule 19 analysis."[5] (Reply at 355, citing Mot. at 297-98.) Again, the Court was not contemplating its jurisdiction in the first instance when it dismissed this matter with prejudice; nor did it dismiss for failure to join an indispensable party. Instead it was protecting the integrity of the judicial process by prohibiting a party from deliberately changing positions according to the exigencies of the

[5] Without referencing any authority, Han also invites the Court to carve out her individual indemnification claim and permit it to go forward, even if the underlying contract claims are dismissed. (Mot. at 293.) Because the underlying contract provides her with an "independent right of action" for indemnification, separate and apart from any contract claim involving Peninsula, she believes that "this new claim remains intact from invocation of judicial estoppel." (*Id.*) In advancing this position, Han overlooks Peninsula's status as an indispensable party. Judge Dowd determined that Peninsula was an indispensable party to this contract action, requiring the entire action to be dismissed for want of jurisdiction under Fed. R. Civ. P. 19. *See PaineWebber, Inc. v. Cohen*, 276 F.3d 197, 200 (6th Cir. 2001) (dismissal of the action should occur if indispensable party cannot be joined without eliminating the basis for jurisdiction). Given the relationship of the indemnity claim to the underlying contract dispute, Han would derive an unfair advantage if she were permitted to repackage this dispute as one of indemnity to get around Judge Dowd's prior determination.

moment. (MO at 279.) *See New Hampshire*, 532 U.S. at 749; *Lewis v. Weyerhaeuser Co.*, 141 F. App'x 420, 424 (6th Cir. 2005) (The doctrine of judicial estoppel prevents parties "from abusing the judicial process through cynical gamesmanship"—from "playing fast and loose with the courts" and "blowing hot and cold as the occasion demands[.]") The Court recognizes that judicial estoppel is a potent sanction that "must be exercised with restraint and discretion." *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Still, the Court finds that no lesser sanction would adequately address Han's clear abuse of the judicial system or avoid permitting Han to benefit from the advancement of clearly inconsistent positions. *See, e.g., Joy Tech. Inc. v. N. Am. Rebuild Co., Inc.*, No. 12-0144, 2012 WL 1802023, at *8 (W.D. Pa. May 15, 2012) (finding no lesser sanction than dismissal with prejudice would remedy the harm done by plaintiff's playing fast and loose with the courts, and noting that the "harm of an inconsistent, duplicative second lawsuit filed in bad faith can only be avoided by dismissal, with prejudice, of that second action"). Here, a sanction short of dismissal with prejudice would unfairly permit Han to seek that second bite of the apple in state court. The Court will not reward this gamesmanship by changing its dismissal to one without prejudice.

IV. CONCLUSION

For all of the foregoing reasons, Han's motion for reconsideration (Doc. No. 23) is DENIED.

IT IS SO ORDERED.

Dated: July 3, 2019

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KAREN C. HAN, PLAINTIFF, vs. HANKOOK TIRE CO., LTD., DEFENDANT.	)	CASE NO. 5:17-cv-2046 JUDGE SARA LIOI **MEMORANDUM OPINION**

Before the Court is the motion to dismiss filed by defendant Hankook Tire Co., Ltd. ("Hankook"). (Doc. No. 7 ["Mot."].) Plaintiff Karen C. Han ("Han") filed a memorandum in opposition to the motion (Doc. No. 12 ["Opp'n"]), and Hankook replied. (Doc. No. 14 ["Reply"].) In response, Han filed a motion for leave to file a surreply in opposition to the motion to dismiss (Doc. No. 15), which is not opposed by Hankook. (Doc. No. 16.) Accordingly, Han's surreply, attached to the motion for surreply will be considered. (Doc. No. 15-3 ["Surreply"].)

I. PROCEDURAL BACKGROUND

This case stems from a contract between Peninsula Asset Management (Cayman) Ltd. ("Peninsula") and Ocean Capital Investment Limited ("Ocean"). Neither Han nor Hankook are parties to the contract. Further, this is the second time these parties and claims have been before this Court. But in the first action, Peninsula was also a plaintiff.

In the previous case, another judge of this district decided the claims on the merits, granting summary judgment on all claims to Hankook. *Peninsula Asset Management (Cayman)*

Ltd. v. Hankook Tire Co., Ltd., No. 5:04 CV 1153, 2006 WL 2945642 (N.D. Ohio Oct. 13, 2006).

On appeal, the Sixth Circuit raised the issue of subject matter jurisdiction sua sponte. *Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.*, 509 F.3d 271 (6th Cir. 2007). Because Peninsula was a Grand Cayman Islands corporation and Hankook was a South Korean corporation, the Sixth Circuit held the case lacked complete diversity. *Id.* at 272 ("[b]ecause there are alien corporations on both sides of the controversy, this case lacks the complete diversity required for a federal court to exercise diversity jurisdiction under § 1332(a)(2)[]"). According, the Sixth Circuit "reverse[d] the judgment of the district court and remand[ed] the case for consideration of the need to dismiss for lack of subject matter jurisdiction." *Id.* at 273.

On remand, the court accepted plaintiffs' position (including Han's) and concluded that the case should be dismissed for lack of subject matter jurisdiction because, despite Hankook's urging to the contrary, Peninsula was an indispensable party, resulting in there being "foreign entities on two sides of this dispute." *Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.*, No. 5:04 CV 1153, 2008 WL 302370, at *2 (N.D. Ohio Feb. 1, 2008).

Han, although acknowledging the first action, now seeks to assert those very same claims entirely on her own behalf, alleging Peninsula need not be included as a party because it is "defunct" and she is "the real party in interest" for Peninsula. (Doc. No. 1 (Complaint) ¶ 4.) Han claims that complete diversity of citizenship forms the basis for this Court's jurisdiction because she is a citizen of Texas and Hankook is a citizen of South Korea.

II. DISCUSSION

Recognizing the procedural background of this case, the Court holds that the merits of the claims are irrelevant to adjudication on this matter. Specifically, the Court holds Han is judicially estopped from asserting these claims.

Judicial estoppel has long been recognized by courts as an "equitable doctrine invoked by a court at its discretion,...to protect the integrity of the judicial process, by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine,* 532 U.S. 742, 750-51, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) (citing cases) (quotations omitted). When determining whether to apply the doctrine, the Sixth Circuit considers the following factors:

> (1) whether the party's later position is clearly inconsistent with its early position; (2) whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that the court was previously misled; and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Flexsys Am. LP v. Kumho Tire U.S.A., Inc., 726 F. Supp. 2d 778, 791 (N.D. Ohio 2010) (citing *Lewis v. Weyerhaeuser Co.*, 141 F. App'x 420, 425 (6th Cir 2005) (quoting *New Hampshire,* 532 U.S. at 750-51)). All factors are met here.

In the previous case, Han's position was that Peninsula was an indispensable party. (*Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.*, No. 5:04 CV 1153, (Doc. No. 216 ["Han 2008 Opp'n"])). Accordingly, because Peninsula's presence defeated complete diversity, the action was dismissed for lack of subject matter jurisdiction. Now, Han argues that the same claims may proceed without Peninsula's presence in the litigation, but may instead be asserted by Han herself "in the shoes of her defunct business entity[.]" (Opp'n at

129[1].) Han argues that judicial estoppel should not apply because there has been a change in fact rather than an inconsistent position.

To support her argument, Han notes that Peninsula is now "defunct" and claims that it now lacks capacity to sue or be sued. But prior to choosing to make Peninsula "defunct," Han was aware of the fact that the claims belonged to Peninsula's itself, asserting,

> Although Plaintiffs' intention to include Han and Park as plaintiff was more or less related to Plaintiffs' alternative fraud claim, Peninsula is an essential party in Plaintiffs' main claim-breach of contract.... Plaintiffs' claim is based on the contract between Peninsula and Ocean Capital Investment (L) Limited. In addition, Plaintiffs' seeking remedy for financial loss is limited to that of Peninsula.

(Han 2008 Opp'n at 8683-84.) Further, answering lingering questions about whether Peninsula was already defunct, Han recognized the fact that Peninsula's continued existence was critical to bringing these claims, stating,

> Peninsula has not been liquidated yet and still exists legally although business or operation of Peninsula had ceased due to this causes [sic] of action. Peninsula never agreed with Hankook on its allegation that Peninsula did not existed at the time of filing Complaint. Conversely, Plaintiff made clear that Peninsula exists for this lawsuit while it is dormant business-wise.

(*Id.* at 8681-82.) As such, Han's current argument that Peninsula need not exist in whole or be a party to the litigation clearly contradicts her previous position.

Because the Court accepted Han's previous argument and dismissed the action for lack of subject matter jurisdiction, the second factor is also met. In turn, with respect to the third factor, allowing Han to proceed on this action without the presence of Peninsula would give Han the unfair advantage of essentially having a second bite of the apple. Prior to reversal and remand by the Sixth Circuit for lack of subject matter jurisdiction, the Court previously decided the claims

[1] All page number references are to the page identification number generated by the Court's electronic docketing system.

on the merits in favor of defendants, including Hankook. Further, had Han previously taken her current position -- that Peninsula's presence is unnecessary -- this litigation would have proceeded and likely been over years ago.

This manner of "playing 'fast and loose' with the courts" is exactly the type of conduct judicial estoppel seeks to prevent. *See New Hampshire*, 532 U.S. at 749-51 (quoting *Scarano v. Cent. R. Co. of N.J.*, 203 F.2d 510, 513 (3d Cir. 1953) (further citation omitted)); *see also* 18B Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 4477 (2d ed. April 2018 Update). Han recognized the importance of Peninsula's inclusion in the prior case and adamantly asserted that Peninsula continued to exist for purposes of the litigation. The Court found in her favor and dismissed the action. Now, ten years later, Han attempts to take advantage of her decision to make Peninsula "defunct" and masquerade Peninsula's claims as her own. Essentially, Han seeks to clear the previous jurisdictional hurdle by simply moving it out of the way by recharacterizing Peninsula's breach of contract claim as hers – an unseemly maneuver the Court must not permit. *See* Wright & Miller, *supra*, at §4477 ("The concern [of judicial estoppel] is to avoid unfair results and unseemliness.").

IV. CONCLUSION

For the foregoing reasons, Hankook's motion to dismiss is GRANTED and Han's claims are dismissed with prejudice.

IT IS SO ORDERED.

Dated: August 28, 2018

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

APPENDIX D

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Peninsula Asset Management (Cayman), Ltd., et al.,	)	CASE NO. 5:04 CV 1153
Plaintiff(s),	)	MEMORANDUM OPINION AND ORDER
v.	)	
Hankook Tire Co., Ltd., et al.,	)	
Defendant(s).	)	

I. INTRODUCTION

The above-captioned case is before the Court on remand from the U.S. Court of Appeals for the Sixth Circuit. In an Opinion issued on December 13, 2007, that court determined that complete diversity is lacking. *Peninsula Asset Management (Cayman) Ltd. v. Hankook Tire Co., Ltd.*, 509 F.3d 271 (6th Cir. 2007). The case was remanded "for consideration of the need to dismiss for lack of subject matter jurisdiction." *Id.* at 272. A true copy of the mandate was docketed on January 9, 2008. (Doc. No. 217).

Even before jurisdiction was returned to this Court, defendant Hankook Tire Co., Ltd. filed a motion to determine subject matter jurisdiction, to dismiss a dispensible party, and for sanctions. (Doc. No. 215). Plaintiffs filed a response (Doc. No. 216) and defendant filed a reply (Doc. No. 218). The matter is ripe for determination.

II. DISCUSSION

Plaintiffs filed this action on June 17, 2004. The Complaint alleges, in relevant part, as follows:

> 1. Plaintiff Karen Chongah Han is a citizen of the State of Texas who resides there with her husband, Plaintiff No Joon Park. Peninsula Asset Management (Cayman) Ltd. *("Peninsula") is an exempt company duly organized and existing under the laws of the Cayman Islands.* Ms. Han is currently the sole director and shareholder of Peninsula. Mr. Park was an initial director of Peninsula and, after his resignation as director, was appointed by Peninsula as agent or officer from time to time including the time when he performed acts relevant to this cause of action.
>
> 2. *Defendant Hankook is a global corporate conglomerate organized and existing in the Republic of Korea.* In 1991, the State of Ohio granted Hankook a permanent license to transact business in the state, and Hankook has continously maintained a business office in Ohio since that time. In the late 1990s, Hankook changed its name from "Hankook Tire Manufacturing Co., Ltd." to its current name, Hankook Tire Co.., Ltd. Defendant Yang-Rae Cho is a citizen of the Republic of Korea, who as director of Hankook or in his personal capacity has maintained minimum contacts with the State of Ohio.
>
> * * *
>
> 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(2) because this is a civil action in which the matter in controversy exceeds $75,000 and because the action is between parties with complete diversity of citizenship. *Peninsula is a Cayman Islands company*, Ms. Han is a citizen of the State Texas, and Mr. Park had been admitted to the United States as a permanent resident and he is also domiciled in the State of Texas. *Hankook is a Korean conglomerate* doing business in the State of Ohio, and its chairman Cho is a Korean citizen. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

(Doc. No. 1) (italics added).

(S.D. Ohio C.V. 1153)

II. DISCUSSION

Plaintiffs filed this action on June 17, 2004. The Complaint alleges, in relevant part, as follows:

> 1. Plaintiff Kang Chongah Han is a citizen of the State of Texas who resides there with her husband, Plaintiff No Joon Park. Peninsula Asset Management (Cayman) Ltd. ("Peninsula") is an exempt company, duly organized and existing under the laws of the Cayman Islands. Ms. Han is currently the sole director and shareholder of Peninsula. Mr. Park was an initial director of Peninsula and, after his resignation as director, was appointed by Peninsula as agent or officer from time to time including the time when he performed acts relevant to this cause of action.
>
> 2. Defendant Hankook is a global corporate conglomerate organized and existing in the Republic of Korea. In 1991, the State of Ohio granted Hankook a permanent license to transact business in the state, and Hankook has continuously maintained a business office in Ohio since that time. In the late 1990s, Hankook changed its name from "Hankook Tire Manufacturing Co., Ltd." to its current name, Hankook Tire Co., Ltd. Defendant Yang-Rae Cho is a citizen of the Republic of Korea, who as director of Hankook or in his personal capacity has maintained minimum contacts with the State of Ohio.
>
> * * *
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> 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(2) because this is a civil action in which the matter in controversy exceeds $75,000 and because the action is between parties with complete diversity of citizenship. Peninsula is a Cayman Islands company. Ms. Han is a citizen of the State Texas, and Mr. Park had been admitted to the United States as a permanent resident and he is also domiciled in the State of Texas. Hankook is a Korean conglomerate doing business in the State of Ohio, and its chairman Cho is a Korean citizen. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

(Doc. No. 1) (italics added).

Title 28, Section 1332(a) provides as follows:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--
>
> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
>
> (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.
>
> For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

"Section 1332 has been interpreted to require 'complete diversity.'" *Ruhrgas AG v. Marathon Oil Company,* 526 U.S. 574, 570, n.2 (1999) (citing *Strawbidge .v Curtiss*, 3 Cranch 267, 2 L.Ed. 435 (1806)). In *Ruhrgas*, the presence of a German corporation on one side and a Norwegian corporation on the other rendered diversity incomplete.

In this case, plaintiff Peninsula is a Cayman Islands business entity, while Defendant Hankook is a Korean company. In a previous Memorandum Opinion and Order issued on September 14, 2004, this Court ruled, *inter alia,* on Hankook's motion to dismiss on the ground of *forum non conveniens*. Without further explanation, the Court declared:

> This action is based on diversity jurisdiction. 28 U.S.C. § 1332. Two residents of Texas along with a foreign (Cayman Islands) corporation that has a place of business in Dallas County, Texas have sued a Korean citizen and a foreign (Korean) corporation that has both a registered agent in Uniontown, Ohio and an office in Arlington, Texas.

(Doc. No. 26, at 14). In light of the Sixth Circuit's remand, the Court must now reconsider its conclusion that diversity jurisdiction exists, a conclusion that was based on the fact that, although there were foreign corporations on both sides, each corporation does business in a State of the United States where it is deemed to be a citizen. This, however, was an erroneous legal conclusion. "[E]ven if a corporation organized under the laws of a foreign nation maintains its principal place of business in a State, and is considered a citizen of that State, diversity is nonetheless defeated if another alien party is present on the other side of the litigation." *International Shipping Co., S.A. v. Hydra Offshore, Inc.*, 875 F.2d 388, 391 (2d Cir.1989) (citing *Corporacion Venezolana de Fomento v. Vintero Sales Corp.*, 629 F.2d 786, 790 (2d Cir.1980)).

Hankook argues that plaintiffs are estopped from asserting there is no jurisdiction since they brought the lawsuit here in the first place and must take the consequences of their actions. However, the complaint clearly alleges the presence of foreign entities on the two sides of this dispute. Furthermore, "principles of estoppel do not apply" to questions of subject matter jurisdiction. *Creaciones v. Con Idea, S.A. de C.V. v. Mashreqbank PSC*, 232 F.3d 79, 82 (2d Cir. 2000) (cited with approval by the Sixth Circuit in the remand order).

Finally, Hankook argues that Peninsula is a dispensible and nominal party and probably did not even exist at the time of the filing of the complaint. There is no evidence of this latter assertion and the Court disagrees that Peninsula is dispensible and/or nominal. The complaint alleges that Peninsula was founded "to engage in the business of the provision of financial services to world-renowned investment banks in international finance centers." (Compl. ¶ 4). It further alleges that Peninsula "quickly became known as one of the market leaders in the

provision of financial services related to structured investments[.]" (Compl. ¶ 5). Plaintiffs allege that Hankook engaged the services of Peninsula to raise money in the international financial market (Compl. ¶ 9) and, unbeknownst to Peninsula, actually engaged in a complicated scheme of accounting fraud solely for the benefit of Hankook's owner, Yang-Rae Cho. (Compl. ¶¶ 6-8). The Court rejects the notion that Peninsula is a dispensible or nominal party.

III. CONCLUSION

Urged by the Sixth Circuit Court of Appeals to re-examine, in light of case law it pointed out, whether there is complete diversity in this case, this Court now concludes that complete diversity is lacking and that there is no subject matter jurisdiction. As a result, the Court will dismiss this case without prejudice for lack of subject matter jurisdiction.[1]

IT IS SO ORDERED.

February 1, 2008
Date

s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge

[1] Hankook has moved for Rule 11 sanctions in the event the case is dismissed, asserting that plaintiff "did not waiver from [the assertion of subject matter jurisdiction] until judgment was rendered against them." (Motion, at 11-12). The Court concludes, however, that sanctions are not warranted since it appears that the Sixth Circuit, not the plaintiffs, *sua sponte* raised the question of subject matter jurisdiction.

No. 19-3722

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 11, 2020
DEBORAH S. HUNT, Clerk

KAREN CHONGAH HAN,

Plaintiff-Appellant,

v.

HANKOOK TIRE CO., LTD.,

Defendant-Appellee.

ORDER

BEFORE: SUHRHEINRICH, DONALD, and MURPHY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

FILED
Mar 17, 2020
DEBORAH S. HUNT, Clerk

No. 19-3722

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

KAREN CHOMOAH HAN,

Plaintiff-Appellant,

v.

HANKOOK TIRE CO., LTD.,

Defendant-Appellee.

ORDER

BEFORE: SUHRHEINRICH, DONALD, and MURPHY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk