

No. 20-170

IN THE
SUPREME COURT OF THE UNITED STATES

KAREN C. HAN,

Petitioner,

v.

HANKOOK TIRE CO., LTD.,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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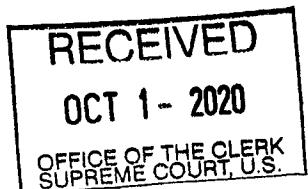


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REPLY BRIEF FOR THE PETITIONER

Respondent Hankook Tire Co., Ltd. ("Respondent" or "Hankook") does not dispute that the petition for writ of certiorari in this case ("Petition") presents an important and recurring issue that warrants this Court's review— that is, whether the doctrine of judicial estoppel can be applied to defeat subject matter jurisdiction that otherwise exists.

Instead, Respondent contends that the courts below dismissed Petitioner Karen C. Han's ("Petitioner" or "Han") claims not by applying judicial estoppel to jurisdictional matters, but on the merits of this case. This argument is refuted by simply reviewing the record; the opinion of the district court dismissing Han's action, which was affirmed by the Sixth Circuit, expressly states that: "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." App. 20a.

Accordingly, Hankook's Response merely confirms that this Court should grant certiorari in this case to restore uniformity to this area of the law. Indeed, as Han explains below, Hankook provides no basis not to summarily reverse the Sixth Circuit opinion.

A. The District Court Applied Judicial Estoppel To Han's Alleged Inconsistent Positions Regarding Indispensability Of Non-Diverse Co-Plaintiff, Which Go Directly To Subject Matter Jurisdiction.

Respondent argues that there is no compelling reason for the Petition to be granted because the district court did not use judicial estoppel to defeat subject matter jurisdiction, "but only discussed judicial estoppel being applied to questions of subject-matter jurisdiction to distinguish the cases cited by Petitioner on that issue." Opp. 2. This argument flies in the face of the record clearly showing that the sole basis for the district court's dismissal of this case was Han's alleged inconsistent position in the second action concerning her non-diverse business entity (Peninsula), which was a co-plaintiff in the first action. App. 20a-22a.

As already addressed above, the district court made it clear that: it applied judicial estoppel to Han's contradicting position relating to standing to sue with respect to Peninsula and "the merits of the claims are irrelevant to adjudication on this matter." *Id.* 20a. Specifically, the district court explained the reasons for its invocation of judicial estoppel as follows:

"In the previous case, Han's position was that Peninsula was an indispensable party...Now, Han argues that the same claims may proceed without Peninsula's presence in the litigation...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... This manner of playing 'fast and loose' with the courts is exactly the type of conduct judicial estoppel seeks to prevent."

Id. 20a-22a (citation and internal quotation marks omitted). As demonstrated

above, since Han's position as to the non-joinder of non-diverse co-plaintiff clearly goes to matters or questions concerning subject matter jurisdiction, it is undeniable that the district court applied judicial estoppel to defeat subject matter jurisdiction, finding fault with Han's alleged inconsistent positions regarding indispensability of her non-diverse business entity.

Furthermore, in determining Han's reconsideration motion, the critical issue was whether judicial estoppel may be used to defeat subject matter jurisdiction that otherwise exists. *Id.* 10a-12a. In applying judicial estoppel, the district court clearly adopted the reasoning of the First Circuit in *Sexual Minorities Uganda v. Lively*, 899 F.3d 24 (1st Cir. 2018) that this Court's *Insurance Corp. of Ireland* principle—that principles of estoppel do not apply to questions of subject matter jurisdiction (see Pet. 7)—is "a one-way ratchet," stating that:

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.

App. 11a-12a.

As shown above, the district court applied judicial estoppel to Han's alleged inconsistent positions which directly go to subject matter jurisdiction. Thus, it is indisputable that diversity jurisdiction based on which the second action was filed was defeated by the district court's judicial estoppel decision.

Therefore, there is no merit to Respondent's argument that only because "[t]here was no finding of a lack of subject matter jurisdiction by the District Court[,]" the district court did not use judicial estoppel. Opp. 3. Respondent's own statements 1) that "the Court dismissed Petitioner's claims to protect the integrity of the judicial system[,]" (*id.*), which is the very purpose of invocation of judicial estoppel; and 2) that "Petitioner sought to create jurisdiction by taking the inconsistent position that her company is not an indispensable party such that it need not be joined in the lawsuit and thereby establishing diversity jurisdiction[]'" (*id.*), contradict Respondent's argument that the district court did not use judicial estoppel to defeat subject matter jurisdiction.

The Sixth Circuit also approved the district court's such use of judicial estoppel, stating that:

"Finding [Han's jurisdictional] assertion [in the second action] 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... Because the district judge properly applied judicial estoppel to dismiss Han's claims with prejudice, we affirm."

App. 1a-2a.

As discussed above, by negating or abandoning its own position or theory accepted by the courts below (*id.* 11a (Hankook argued that "the [district court] properly applied judicial estoppel *not* to establish or expand jurisdiction...") (emphasis in original))), Hankook concedes, in effect, that the courts below erred in applying judicial estoppel in this case.

B. Petition Should Be Granted To Eliminate Confusions Among Courts Regarding The Use Of Judicial Estoppel In The Subject Matter Jurisdiction Context And To Clarify *Insurance Corp. Of Ireland* Principle.

Respondent contends that "[t]here is no split within the Federal Circuit [sic] as the cases cited by Petitioner do not support her argument[that judicial estoppel cannot be used to defeat subject matter jurisdiction that otherwise exists as well as to establish subject matter jurisdiction that otherwise is lacking.]

Opp. 3.

Respondent misconstrues case holdings of courts of appeals enumerated in Petition at 9-13. Those cases patently support Petitioner's argument that there is a circuit split regarding the use of judicial estoppel.

Given that both parties dispute the meaning or interpretation of the case holdings at issue, merits discussion on this matter takes on particular necessity for this Court to grant this Petition to eliminate confusions among courts of appeals regarding the use of judicial estoppel in the subject matter jurisdiction context and to clarify *Insurance Corp. of Ireland* principle.

C. Respondent Fails To Respond To Infringement On Han's Statutory And Constitutional Right of Access To Courts.

In addition to the improper use of judicial estoppel by the courts below to defeat subject matter jurisdiction, the Petition further established that the Sixth Circuit's decision to approve such use of judicial estoppel resulted in an infringement on Han's statutory and constitutional right of access to courts. Pet.

13.

In particular, in support of this proposition, Han cited to this Court's holding in *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 356 (1988) that a federal court's diversity jurisdiction over a case is "not discretionary" such that the court cannot properly eliminate the case from its docket, "whether by a remand or by a dismissal." Pet. 2.

However, Respondent fails to answer Petitioner's such showing that the Sixth Circuit opinion had a significant and adverse impact on a citizen's fundamental right of access to federal forum. Nor does Respondent offer any response to the demonstration by Petitioner that the opinion was in violation of the well-settled law that federal courts have "virtually unflagging obligation [] to exercise the jurisdiction given them." Pet. 13 (citing *Colorado River Water Cons. Dist. v. U.S.*, 424 U.S. 800, 817 (1976) (citation omitted)).

Therefore, this Court should grant the Petition to resolve the circuit division over whether judicial estoppel may be invoked to deprive citizens of their statutory and constitutional right of access to courts.

D. Respondent's Objections To Factual Statements In The Petition Have No Bearing On The Issues Before This Court.

Respondent objects to the factual statement in the Petition that "[u]pon remand from the Sixth Circuit, simply agreeing with the Sixth Circuit with regard to the jurisdictional defect, the district court dismissed the First Action for lack of subject matter jurisdiction without considering or accepting any

positions of the parties." Opp. 1-2.

The truth of the statement quoted above can be confirmed by simply reviewing the order in question. The order plainly states that: the district court's "conclusion that diversity jurisdiction exists" was "an erroneous legal conclusion." App. 26a. Nowhere in the order did the district court in the first action cite or rely on Han's argument or position; the court simply referred to the allegations in the complaint. Since the dismissal for lack of subject matter jurisdiction was solely due to "an erroneous legal conclusion," the district court needed not consider any arguments or positions of the parties.

This objection has no bearing on the issues for review in the Petition. Although Han asserted in the proceedings below that none of the three elements of judicial estoppel (*see* Opp. 6)—one of which is judicial reliance on the position of a party—was met in this case, this issue is not presented in the Petition and thus before this Court.¹

Respondent also denies that "the District Court denied Han's motion for reconsideration on the basis that judicial estoppel can be applied to defeat subject matter jurisdiction." Opp. 2. As the record in this case stands, whether a court may use judicial estoppel to defeat subject matter jurisdiction was Han's

¹ Han also claimed in the proceedings below that her position in the second action that Peninsula no longer existed at the timing of filing of the second action was not inconsistent with her position in the first action that Peninsula was an indispensable party. As to the third factor, Han asserted that she did not derive any unfair advantage from the dismissal of her case due to reasons related to subject matter jurisdiction.

main claimed error in the reconsideration motion, and the district court denied the motion, adopting the logic of the First Circuit in *Lively*. (See Section A., *supra*; App. 10a-12a).

CONCLUSION

For the foregoing reasons and those stated in the Petition, the Petition for Writ of Certiorari should be granted or the Sixth Circuit opinion should be summarily reversed.

Respectfully Submitted,

Dated: September 25, 2020



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