

No. 20-621

IN THE
Supreme Court of the United States

HUA CAI

Petitioner-Plaintiff-Appellant

v.

HUNTSMAN CORPORATION

Respondent-Defendant-Appellee

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

REPLY BRIEF FOR THE PETITIONER

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ARGUMENT

I. Huntsman Corporation's Business Conduct Guidelines is truly a contract.

Respondent repeatedly stressed that Cai was not an employee of Huntsman Corporation. See Br. in Opp. 1-2. But their emphasis makes no sense. In the "Business Conduct Guidelines" (hereinafter BCG), Huntsman Corporation has clearly indicated that 10,000+ associates they employed worldwide are the contracting party. (R.103.) It also re-stressed that BCG applies globally. (R.107.) Respondent shall find a way to prove that Cai is not an associate of Huntsman Corporation but seems they can't. Cai has never alleged Huntsman Corporation breached Employment Contract. In the Complaint, Cai only alleged Huntsman Corporation breached BCG. (see generally R.5-8.) Cai merely mentioned Huntsman Shanghai breached Employment Contract but didn't name it as defendant. *Id.*

BCG is a contract other than employment contract. (R.98-140.) Its like a dos and don'ts list wrote in 24 languages, nearly covers every aspect, include how to use company physical property, how to protect intellectual property, how to use company IT systems, how to cope with media and investors, how to handle and/or comply with conflicts of interest, anti-corruption, sex-harassment, insider trading, international trading compliance, work-site EHS (Environment, Safety & Health)...*Id.*

BCG stipulates rights and obligations other than

employment contract, that is to help Huntsman maintain their "highest ethic standards and reputation". (R.103.) To that end they ask employees to report possible violations (R.106.), and Huntsman promise "protect them from retaliation". (R.107-109.) "Violations of these Guidelines can have serious consequences, including disciplinary action up to and including termination of the individuals involved". (R.109) Even if the offender is not its employee, Huntsman Corporation can ask its subsidiary to terminate his employment contract. At least the no-retaliation policy in BCG is unambiguous and definite enough to constitute legally binding contract: no retaliation, means zero retaliation, therefore 100% investigation should be carried out to determine if retaliation exists.

Respondent also contend that "the Guidelines contain no specific contractual terms such as the duration of any contract, any work to be performed, or the salary to be paid". See Br. in Opp. 1. But it doesn't stand with scrutiny. For example no one denies that Non-disclosure Agreement (employee need to keep employer's secret) and Non-compete Agreement (employee can not work for rival) are all contracts, but they do not contains those terms.

In short, BCG is not an employment Contract, but its a contract, as Utah Federal Court previously ruled, "...the Code of Ethics and Conduct are enforceable, unilateral contracts and are not illusory". Pet. at 8.

II. Lower Court's Verdict Is Egregious

Respondent contended that there is no federal questions for review since only Utah State Contract Law applied to this case. But they may forgot that they first cited other circuit court's precedent cases to support their views, in DEFENDANT HUNTSMAN CORPORATION'S REPLY IN SUPPORT OF ITS MOTION FOR JUDEMENT ON THE PLEADINGS, they cited precedent case from 1st circuit: *DeLia v. Verizon Communications Inc.*, 656 F.3d 1, 7 (1st Cir. 2011). (R.157.) But they overlooked one thing is that 1st circuit also believe that "Code of Business Conduct" constitutes contract, they didn't ruled in favor of employee only because the employee already has signed "Code of Business Conduct" with subsidiary instead of parent company. Pet. at 8.

The Supreme Court have already ruled that "[f]ederal-question jurisdiction is usually invoked by plaintiffs pleading a cause of action created by federal law, but this Court has also long recognized that such jurisdiction will lie over some state-law claims that implicate significant federal issues", *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005). This case is a good example: There is no federal contract law in the United States but the definition of contract is the same in almost every states, that is require an offer, an acceptance, and consideration. So there is a common legal basis for reasoning.

The key point is how to define the definiteness of contract terms. As petitioner mentioned, lower

courts' verdict made a very bad precedent and bring chaos into law system. They can't point out which BCG provision subject to more than one interpretation, they just made conclusory assertion. Pet. at 11. If this new approach works, other judges may cite this bad precedent to void contracts, it may impact every working people and mess up other contract law dispute. They shaken up America's contract law foundation. The clarification of this issue is no less important than the Constitution.

More importantly, lower court judges flouting legal precedents, is intolerable at any time. The trial court judge considered Code of Conduct a contract couple of years ago, but reversed himself in this case. Pet. at 9-10. The circuit court also turned a blind eye to this confusion, refuse to follow precedent from same state, allowing contradictory precedents to coexist. Pet. at 8-9.


Petitioner comes from People's Republic of China, in that country, the judicial system is notorious, but what you despised and hated is happening right now in America. If this court do not say no to egregious verdict, soon it will downgrade to China's level.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted. In view of the egregiousness of the lower court's decision, the Court may wish to consider summary reversal.

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Respectfully submitted,

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