

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

PETITION FOR REHEARING

HUA CAI

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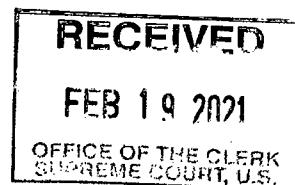


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Pursuant to Rule 44.2, and based on intervening circumstances of a substantial or controlling effect, Petitioner Hua Cai respectfully petitions for rehearing of the Court's order denying certiorari in this case.

GROUNDS FOR REHEARING

Clerk of this Court violated Petitioner's procedural due process rights by intentionally ignoring court's rule as to the filing of reply brief for the petitioner.

According to the Court Rule 15.6, petitioner has the right to file a Reply Brief after respondent filed its Brief in Opposition. Petitioner timely filed Reply Brief but the Reply Brief was not distributed for conference.

Petitioner sent the Reply Brief on Dec. 29, 2020, which was the 12th day after Respondent file its Brief in Opposition, by third-party commercial carrier DHL (air waybill No.1923548406), the express arrived Washington DC on Dec. 31, 2020, and was signed for by DOOR MARBURY on Jan. 4, 2021 (App. B, 2b). The Docket shows that the Clerk office distributed documents for conference 2 days later, on Jan. 6, 2021, but did not distribute petitioner's Reply Brief. Because petitioner cannot find the Reply Brief on the Docket, Petitioner e-mailed Mr. Scott Harris to check if the clerk office have received it, but he didn't reply (App. A, 1b). In order to catch up the conference scheduled on Jan. 22, 2021, Petitioner resent the Reply Brief on Jan. 11,

2021, via DHL (air waybill No.2249536973), this express was delivered on Jan. 15, 2021 (App. B, 3b). Petitioner sent again an e-mail to Mr. Scott Harris to follow up the delivery status, but still no response (App. A, 1b). Mr. Scott Harris dose not always keep silent, he would reply e-mail to remind respondent's rookie attorney for electronic filing, but never respond to petitioner's requests and inquiries.

The strange thing is, until Jan. 15, 2021, the Petitioner's Reply Brief was not available on Docket, so Petitioner was sending e-mail to clerk office to check on that day, but after certiorari denied on Jan. 22, 2021, the Reply Brief appeared on the Docket, with entry date Jan. 11, 2021. obviously this filing time is fake. Even assuming the filing date is true, the status shows undistributed.

More puzzled, Petitioner serve the Reply Brief in paper form, but the file download from Docket has no Court Stamp on it (The document filed in paper form is usually stamped by clerk with two stamps, one for the date it was filed and the other for the date it was received, before scan to Docket).

Therefore, Petitioner has good reason to suspect that the clerk office intentionally withheld Petitioner's Reply Brief until certiorari was denied, then put it on Docket. The Justice and their assistant made their decision without seeing the Reply Brief. In view of this, the rehearing should be granted and this court need to thoroughly investigate what is the real filing time and what happened.

ARGUMENT

I. Business Conduct Guidelines Is Exactly A Legally Enforceable 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.) Vicky Fan, an employee of Huntsman Shanghai, of course an associate, signed BCG as one of representative from China (R.139). It was wrote in 24 languages, (R.99) and 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 Contact. 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 contact other than employment contract. (R.98-140.) Its like a dos and don'ts list, 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.

We may cannot assert every provision in BCG constitutes enforceable 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. Suppose Huntsman Corporation don't do investigation, how could they make sure no retaliation?

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 that the Utah Federal Judge was looking for.

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, This Court Shall Not Tolerate Perversion Of Law

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 it was respondent themself 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 nationwide may cite this bad precedent to void contracts-any kind of contracts, as long as they don't like it, they could assert that they haven't see the element they thought to have, even its irrelevant.

Back to this case, lower court's decision impacted every working people and mess up other contract law dispute. This matter will come to people's attention sooner or later. It shaken up America's contract law foundation. The clarification of this issue is no less important than the Constitution.

The trial court judge, Mr. Ted Stewart, 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. Lower court judges flouting legal precedents is intolerable at any time. Supreme Court always limit itself to be a law interpreter, but if lower court judges do not respect law, this court's work become meaningless.

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

The reasons set forth in this Petition prove a substantial need for this Court's intervention, therefore Petitioner Hua Cai respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari. In view of the egregiousness of the lower court's decision, the Court may wish to consider summary reversal.

February 7, 2021

Respectfully submitted,

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**Additional material
from this filing is
available in the
Clerk's Office.**