

NO. 20-960

**In the
Supreme Court of the United States**

**KHUE NGUYEN,
PLAINTIFF – Petitioner**

V.

**ESTATE OF THIN THI TA, HAI PHU NGUYEN
AS HEIR AND ADMINISTRATOR, THAO XUAN
TA,**

DEFENDANTS – Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. A “refusal to settlement at mediation” without any showing of a duty, bad faith or liability does not in itself create a new cause of action against defendants nor does it work to create a new accrual of a cause of action for statute of limitations for the same claims being mediated. Respondents recovered Judgment against Petitioner in the Vietnam litigation and had no liability toward Petitioner. Petitioner claims that because the Vietnam litigation did not settle, the limitations period begins anew for the same claims that were the basis for the Vietnam litigation. Petitioner refers to the Vietnam litigation as a “mediation process” and misstates the outcome of the Vietnam litigation as Petitioner was denied any recovery by the Vietnam courts. Judgment was for Respondents.

2. The only remaining defendants in the trial court were Hai Phu Nguyen served as administer of the Estate of Thin Thi Ta and Thao Xuan Ta and all of Petitioner’s claims against them were dismissed with prejudice creating a final judgment.

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INTRODUCTION

Petitioner's characterization of the issues presented does not correctly present the issues decided in the prior proceedings below, but requests the Court to interpret Petitioner's pleadings to conjure up new claims to get around the well-established doctrine of the statute of limitations and the discovery rule.

This appeal concerns the continued harassment by Petitioner of the family of Mr. Ta Van Viet in regard to a one year renewable contract from 1982 entered into in Vietnam and regarding property in Vietnam, which remains in Vietnam. The Contract ended in 1989. Respondents are Thao Xuan Ta, one of the sons of Mr. Viet, and the Estate of his deceased daughter, Thin Thi Ta, by Hai Phu Nguyen, served as Administrator of the Estate. Mr. Hai Phu Nguyen is the husband of the deceased Thin Thi Ta. The other persons of interest in this matter are the other children and grandchildren of Mr. Viet and his wife, Ms. Ngo Thi Ngoan (all of which were dismissed as not properly served (ROA 860) or due to Motion to Dismiss because of no U.S. jurisdiction over non U.S. residents). ROA.186 Ms. Ngoan, Hien The Ta and Lai Xuan Ta are residents of Vietnam and France.

This matter started in the early 1980's when Mr. Viet and Ms. Ha Thi Thu Thuy, Petitioner's mother, entered into a renewable one year contract to operate a shop in Vietnam called "Snow White". Mr. Viet died in 1989 and the contract was not renewed after the 1988 renewal.

In accordance with Petitioner's Original Complaint, Ms. Thuy was removed from the premises in November 2012. Respondents are taking

Petitioner's allegations in this Brief in a light most favorable to Petitioner for purposes of the standard of review but does not concede that such is the truth of the allegation made as Ms. Thuy was removed from the premises in the 1990s. However, since Petitioner admits that she was removed in November 2012, taking most favorable to Petitioner, Petitioner knew of his claims in November 2012. Petitioner states "Ms. Ha Thi Thu Thuy had timely filed the dispute at the local government of Ben Nghe Ward, District One, Ho Chi Minh City, Vietnam on November 21, 2012 to request relief to recover possession of the Property and business assets from all Defendants who are heirs of Mr. Ta Van Viet." ROA 26

Litigation began in Vietnam in 2013 when Ms. Thuy claimed that Mr. Viet's heirs and his wife, Ms. Ngo Thi Ngoan, took the "partnership" property and the shop property. The persons named in the Vietnam litigation are the same persons named in the District Court case of this Appeal. The Vietnam court ruled in favor of Respondents. ROA.524. Ms. Thuy appealed and the Vietnam superior court affirmed the ruling. ROA.552 Taking the allegations in the light most favorable to Petitioner, Petitioner knew in 2013 of the claims against Respondents.

The Court correctly ruled that in accordance with Petitioner's own statements, the statute of limitations began to run by November 2012 and given even more light most favorable to Petitioner, in 2013 when Petitioner's filed the lawsuits in Vietnam ROA.892

Petitioner now claims because Respondents did not settle the Vietnam suit the way he wanted

them to settle, the statute of limitations should start over. Petitioner misstates the outcome of the Vietnam suits as Respondents were the prevailing party and Petitioner was denied any compensation, return of any property or any monetary amounts.

STATEMENT OF THE CASE

Although Respondents disagree with Petitioner's rendition of the factual background, taking all reasonable inferences of fact in light most favorable to Petitioner, Petitioner has presented the following facts to determine when the statute of limitations began to run:

1. Petitioner states that in November 2012, Ms. Thuy was removed from the premises and denied her property.
2. Petitioner states that suit was filed in Vietnam in 2013 and named Respondents as interested persons in such suit.
3. Petitioner claims that Respondent's claim of *res judicata* for the Vietnam suits does not limit his right to file suit against Respondents in the United States because they were only listed as interested persons. Then Petitioner argues that because of the Vietnam matter, he could not file suit in the United States against Respondents.
4. Taking Petitioner's allegations in light most favorable to Petitioner, no facts are presented that would establish that there was a breach of contract for the mediation. Petitioner admits that Respondents have a right to "no pay".

REASONS FOR DENYING CERTIORARI

- 1. THE COURT OF APPEALS DECISION DOES NOT CONFLICT WITH THE DECISIONS OF THE ESTABLISHED PRECEDENCE IN TEXAS COURTS OR THE CIRCUIT COURTS.**

Respondent filed a Motion for Summary Judgment based upon res judicata and the statute of limitations. The trial court ruled for Respondents for both defenses. The Court of Appeals issued the opinion based upon the statute of limitations.

Under Texas law, the statute of limitations for a breach of contract action is four years from the day the cause of action accrued. Tex. Civ. Prac. & Rem. Code Ann. § 16.004(a) (2002). A breach of contract claim accrues when the contract is breached. *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002). A breach occurs when a party fails or refuses to do something it has promised to do. *Capstone Healthcare Equip. Servs., Inc. v. Quality Home Health Care, Inc.*, 295 S.W.3d 696, 699 (Tex. App.—Dallas 2009, pet. denied).

The applicable legal standard is the statute of limitations begins to run when a party has actual knowledge of a wrongful injury. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211 (Tex. 2003). Once a claimant learns of a wrongful injury, the statute of limitations begins to run even if the claimant does not yet know "the specific

cause of the injury; the party responsible for it; the full extent of it; or the chances of avoiding it." *PPG Indus., Inc. v. JMB/Houston Ctrs. Partners Ltd. P'ship*, 146 S.W.3d 79, 93-94 (Tex. 2004) (internal citations omitted); *Velsicol Chem. Corp. v. Winograd*, 956 S.W.2d 529, 531 (Tex. 1997) (holding that the statute of limitations on claim for damage to real property ran as soon as property owner knew of presence of a hazardous chemical on the property, not when the residue exceeded regulatory contamination levels); *Mooney v. Harlin*, 622 S.W.2d 83, 85 (Tex. 1981) (holding that the statute of limitations runs from the time fraud could have been discovered).

Petitioner knew by at least November 2012 of the alleged injury and breach and did not file this action until 2018, more than four years after such confrontation. Taking the facts in light most favorable to Petitioner, whether Respondents were present when the Property was allegedly withheld, the cause of action accrues when the Property was withheld in November 2012. However, Ms. Thuy did bring Respondents in the lawsuit in Vietnam, and thus showed she had knowledge of who she claimed was withholding the property in 2013. ROA.523 Therefore, the trial court did not err in granting summary judgment for Respondents on the statute of limitations as Petitioner knew in November 2012 and most definitely in 2013 when the Vietnam action was filed. The Court of Appeals was correct in assessing the statute of limitations had expired.

There are no facts presented that Respondents' refusal to settle creates a liability or a breach of contract. The purpose of mediation and

dispute resolution is to resolve existing claims. The claims for not complying with Petitioner's demand to return the Property was the basis and purpose of the mediation process as described by Petitioner. Therefore the demand to return the Property would have been made prior to "mediation".

Petitioner misstates the outcome of the Vietnam matter as Petitioner was denied any relief by the Vietnam court. Petitioner refers the Court to Appendix B Page 4 to assert that Respondents refused to hand over property. The Court stated that "Nguyen asserts that the cause of action against the defendants other than Ngoan accrued in 2017 (rather than 2012) when they refused to hand over the property in contravention of a Vietnamese court order". Appendix B, Page 4. The Court was stating Petitioner's allegations, not finding that Respondent actually was ordered turn anything over. The Court was showing that it was taking the facts in light most favorable to Petitioner, not that such allegation were actually true. The Court correctly concluded that Petitioner's allegation that he was entitled to such property, if true, was time barred. Therefore, Respondents "refusal to settle" of a claim that denied Petitioner any relief cannot create a new liability to start the statute of limitations.

Petitioner seems to infer that if you are the Defendant and you do not settle in a mediation, you are liable. Petitioner puts forth no facts or allegations to give rise to 'bad faith" or irregularity in the alleged mediation. Petitioner relies on *Guillory v. Domtar Indus., Inc.*, 95 F 3d 1320, (5th Cir. 1996) to state that a liability arises for failure

to settle in mediation. In *Guillory*, the court had imposed sanctions for failure to participate in a pretrial settlement conference in good faith. *Guillory* at 1334. The district court had provided a detailed statement as to the reason for the imposition of sanction in its order against the defendant in *Guillory* for not attending the pretrial conference in good faith. Just because a person is a defendant in a matter, does not mean that they should have to pay if they have good reason not to pay. In this instance, there was good reason. Judgment was in favor of Respondents, not Petitioner. Petitioner was found not to have put forth evidence in the Vietnam matter to sustain any recovery. Therefore, Petitioner claims that “failure to pay” in Vietnam when Petitioner’s claim was denied does not give rise to a breach of contract claim in Texas.

There is no argument for equitable tolling of the statute of limitations in this matter. Equitable tolling is appropriate when, despite all due diligence, a plaintiff is unable to discover essential information bearing on the existence of his claim. *Pacheco v. Rice*, 966 F2d 904, 906-907 (5th Cir. 1992). In this instant, Petitioner had all information on this existence of his claim. He knew in November 2012 that the alleged property was not being turned over to Petitioner. In 2013, Petitioner knew all persons of interest as Petitioner named Respondents in the Vietnam matter. The trial court stated that Petitioner had not established any genuine issue of material fact that would support a claim of tolling. ROA .896 Petitioner sets forth in his brief that “Defendant admitted the fact that a third party appointed by

the authority had legal custody of the property in the summary judgment hearing. ROA doc. 141 page 54 line 6-7.” Petitioner’s Brief for Writ of Certiorari, Page 14, Paragraph 4. However, at the summary judgment hearing, it is part of the Vietnam judgment stating that Mrs. Ngoan is not responsible for the property and that the request for compensation is not proper. ROA.975. There was not an affirmation by Respondent. Petitioner states he did not have the right to sue until the Vietnam courts order return of said shop house and assets to the partnership – which Vietnam court did not. Vietnam court denied any recovery for Petitioner. The trial court noted that Petitioner does not dispute that his mother lost her lawsuit in Vietnam and the appeal therefrom. ROA .891. This is not a novel case or case decided in contrary to established precedence. The Court of Appeals followed the established precedence in assessing the statute of limitations. Therefore, the Petitioner for Writ of Certiorari should be denied.

2. THE TRIAL COURTS JUDGMENT WAS A FINAL JUDGMENT DISPOSING OF ALL CLAIMS.

Petitioner served Hai Phu Nguyen as administrator of the Estate of Thin Thi Ta. Hai Phu Nguyen was not served in his individual capacity. The trial court’s Final Judgment states that Petitioner take nothing on his claims against defendant Hai Phu Nguyen served as administrator of the Estate of Thin Thi Ta. ROA.900 The trial court granted Defendants’ Motion for Summary Judgment ad that Plaintiff

take nothing on his claims against Defendants and such claims are dismissed with prejudice. ROA.898. A judgment that finally disposes of all remaining parties and claims, based on the record in the case, is final, regardless of its language. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 200 (Tex. 2001). The only remaining parties was Hai Phu Nguyen served as administrator of the Estate of the Estate of Thin Thi Ta and Thao Xuan Ta and all claims against them were dismissed. The trial court had dismissed the claims of plaintiff against Hai Phu Nguyen, Mai Tuyet Nguyen, Que Dang Nguyen and Anh Kim Nguyen, individually and as heirs of Thin Thi Ta. ROA.862. Therefore, the Final Judgment addressed Hai Phu Nguyen as he was served as administrator of the Estate of Thin Thi Ta and the court dismissed those claims, making a final judgment.

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,



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