No. _____

In the Supreme Court of the United States

PANYA LERDTHAISONG & SG CATTLE SERVICES CO. LTD.,

Petitioners,

v.

BENJAMIN CUNNINGHAM,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Supreme Court of Texas' failure to follow its precedents in enforcing the forum selection clause by Writ of Mandamus is a denial of equal protection to the Petitioners?

2. Whether the Petitioners were denied equal protection of law and due process of law when the trial court denied Petitioners' Motion to Dismiss, which was based upon the Agreement's forum selection clause?

3. Whether the Petitioners' due process rights were violated on the Supreme Court of Texas' failure to provide valid reasons in the disposition of Writ of Mandamus and Petition for Rehearing?

CORPORATE DISCLOSURE STATEMENT REQUIRED BY RULE 29.6

Pursuant to Rule 29.6 of this Court's Rules, Petitioner SG Cattle Services Co. Ltd. states that it has no parent corporation, and no publicly held company owns 10% or more of its stock.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the courts, whose judgments or orders are subject of this Petition includes:

Petitioners are Panya Lerdthaisong and SG Cattle Services Co. Ltd. (Defendants in the trial court, 127th Judicial District, Harris County, Texas), Appellants in the Fourteenth Court of Appeals, and Petitioners in the Supreme Court of Texas).

Honorable, R.K. Sandill, Presiding Judge, 127th Judicial District Court, Harris County, Texas (Respondent in the Fourteenth Court of Appeals and the Supreme Court of Texas).

Respondent is Benjamin Cunningham (Plaintiff in the trial court, Appellee in the Fourteenth Court of Appeals, and Respondent in the Supreme Court of Texas).

LIST OF RELATED CASES

Herein-below is the list of all proceedings/related cases in other courts that are directly related to the case in this Court:

- *Benjamin Cunningham v. The American Brahman Breeders Association Michelle Moffitt, Moffitt Cattle Co, LLC; Panya Lerdthaisong, & SG Cattle Services Co. Ltd* No 201870875, lawsuit filed in the 127th Judicial District. Harris County, Texas.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

Petitioners, Panya Lerdthaisong and SG Cattle Services Co. Ltd., respectfully petition for a writ of certiorari to review the opinion and judgment of the Supreme Court of Texas' denial of Writ of Mandamus and Motion for Rehearing.

OPINIONS BELOW

On April 23, 2021, while no opinion was issued and the decision was unpublished, the Supreme Court of Texas denied the Motion for Rehearing of the order denying Petition for Writ of Mandamus is reproduced in the Appendix A page 1a. The order denying Petition for Writ of Mandamus was entered on March 5, 2021, of the Supreme Court of Texas is reproduced in the Appendix F page 16a.

On September 17, 2020, the Fourteenth Court of Appeals, Texas, issued a memorandum opinion

denying Petition for Writ of Mandamus, reproduced in the Appendix D page 9a. On October 13, 2020, the Fourteenth Court of Appeals, Texas issued an order denying Motion for Rehearing is reproduced in the Appendix E page 12a.

The order of Honorable Judge R.K. Sandill of 127th Judicial District Court Harris County, Texas, denying Motion to Dismiss entered on June 14, 2020, is reproduced in the Appendix B page 5a.

JURISDICTION

The last decision of the Supreme Court of Texas denying the Petition for Writ of Mandamus was entered on March 5, 2021, Appendix F 16a, and the Motion for Rehearing was denied on April 23, 2021. Appendix A page 1a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) and the Fourteenth Amendment of the United States Constitution.

STATUTORY PROVISIONS INVOLVED

USCS Const. Amend. 14, § 1 provides:

"…nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 1257(a) provides:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or

the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

Petitioner Panya Lerdthaisong (hereinafter referred to as "Mr. Lerdthaisong") is a Thai citizen and resides in the Province of Khon Kaen in the Kingdom of Thailand. Petitioner SG Cattle Services Co. Ltd. (hereinafter referred to as "SG Cattle"), is a business entity formed under the laws of the Kingdom of Thailand. Petitioner SG Cattle's business headquarters and all of its owners, executives, and decision-makers (the brain of the business entity) and all of its employees, cattle products, and daily business activities are located in the Province of Khon Kaen, the Kingdom of Thailand. Petitioners do not maintain any physical business location nor any residence in the United States of America. Mr. Lerdthaisong and SG Cattle do not have any resident

alien (green card holder) or citizenship status in the USA.

Respondent Benjamin Cunningham (hereinafter referred to as "Mr. Cunningham") is an American citizen and a resident of Texas, who sued Petitioners in 127th Judicial District, Harris County, Texas, based on a Cattle and Genetic Material Partnership Agreement (hereinafter referred to as the "Agreement"). The Petitioners were added as Third-Party Defendants and were sued for Breach of Contract with other claims. However, the other claims sound in tort but were related to or arose out of the Agreement. The Agreement had a mandatory forum selection Clause which provides:

> "In the unfortunate situation that Panya and Ben have a legal problem or disagreement Panya has a tourist visa which states testifying in any trial is not permissible in the USA nor does Panya feel comfortable with the American legal system. Additionally, Panya has no assets in the USA. Ben and Panya own homes, land, and vehicles in Thailand

and agree that any legal dispute between them will be handled in Thai Court first and if necessary, the verdict can be used as evidence in an American court of law."

Mr. Cunningham and Petitioners agreed in advance to handle any legal dispute related to the Agreement between them in a Thailand court. Contrary to this, Mr. Cunningham ignored the forum selection clause and sued Petitioners in Texas, thereby violating the Agreement. Based upon the forum selection clause, Petitioners moved to dismiss the suit filed in Texas against them. In their Motion, Petitioners specifically pleaded, "the parties expressly agreed to forum selection clause of the Agreement." The Petitioners urged Judge R.K. Sandill to dismiss Mr. Cunningham's claims against them, citing the Supreme Court of the United States' precedent, Texas' fundamental policy, and the Supreme Court of Texas' precedent enforcing forum selection clause. American

Brahman Breeders Association (hereinafter referred to as "ABBA"), another Defendant to the suit filed by Mr. Cunningham, but a non-party to the Agreement, also filed a brief supporting Petitioners' Motion to Dismiss.

While Petitioners' Motion to Dismiss was pending, Mr. Cunningham, with the sole purpose to prevent the Petitioners from enforcing the agreed-upon mandatory forum selection clause, amended his claims and artfully pleaded only tort causes of action against Petitioners. A plain review of Mr. Cunningham 's Third and Fourth Amended Original Petition shows that both petitions are based upon a dispute stemming from the Agreement. Mr. Cunningham claim's an alleged possessory interest in Grand Champion Red Brahman Bull CT Mr. Jude Rhineaux (hereinafter referred to as "Mr. Jude"). In the Fourth Amended Original Petition, Mr.

Cunningham removed the Breach of Contract claim. Still, if distilled to its essence, Mr. Cunningham's allegations in the Fourth Amended Original Petition are based upon and related to the Agreement.

Mr. Cunningham responded to Petitioners' Motion to Dismiss but never denied the forum selection clause's validity. Mr. Cunningham claimed that he did not need to show the forum selection clause is invalid. He also argued that Petitioners had denied signing the Agreement. Interestingly, it was Mr. Cunningham who sued the Petitioners in the trial court relying on the Agreement and attached the Agreement signed by the parties containing the forum selection clause with the Original Petition.

Mr. Cunningham did not produce any evidence to show that the clause's enforcement would be unreasonable and unjust; the clause was invalid for fraud or overreaching or that the clause was strongly

contrary to the interests of the witnesses or the public. After a hearing, Judge R.K. Sandill ultimately denied Petitioners' Motion to Dismiss overlooking the Supreme Court of the United States' and Supreme Court of Texas' precedents enforcing the forum selection clause. Appendix B page 5a.

Petitioners filed a Motion to Reconsider and requested an evidentiary hearing upon the denial of their Motion to Dismiss. On or about August 2, 2020, Judge R.K. Sandill denied Petitioners' Motion to Reconsider the Motion to Dismiss. Appendix C page 7a.

On September 10, 2020, Petitioners filed a Petition for Writ of Mandamus in the Fourteenth Court of Appeals, seeking to enforce the forum selection clause based on the Supreme Court of Texas' precedents. On September 17, 2020, the Fourteenth Court of Appeals, in a per curiam unpublished

memorandum opinion from a panel consisting of Justice Christopher, Justice Jewell, and Justice Zimmerer, denied the Petition. Petitioners filed a Motion for Rehearing on September 30, 2020. The court denied the Motion on October 13, 2020, without opinion.

On December 2, 2020, after the denial from the Fourteenth Court of Appeals, Petitioners moved to the Supreme Court of Texas and filed a Petition for Writ of Mandamus. On March 5, 2021, the Supreme Court of Texas denied Petitioners' Petition for Writ of Mandamus without providing any written explanation or reasons for its ruling. Appendix F page 16a. Petitioners timely filed a Motion for Rehearing. On April 23, 2021, the Supreme Court of Texas denied Petitioners' Motion for Rehearing without any reasoning or explanation. Appendix D page 9a.

REASONS FOR GRANTING THE WRIT

In this case, the Supreme Court of Texas failed to follow and apply its precedents in enforcing the mandatory forum selection clause through the writ of mandamus. Supreme Court of Texas denied Petitioners' constitutional protections in two ways. First, it refused to apply the pertinent law to the undisputed forum selection clause. Second, it summarily rejected their Petitions without explanation or fair hearing. In failing to follow the well-settled the Supreme Court of Texas' and the Supreme Court of the United States' precedents in enforcing the unchallenged forum selection clause, the Supreme Court of Texas, the Fourteenth Court of Appeals, and trial court (127th. Judicial District, Harris County, Texas) have violated Petitioners' constitutional rights to equal protection and procedural due process.

This Court has often held that the opportunity to be heard in a meaningful manner and meaningful time is an essential part of the constitutional due process right. Yet, in this case, the Supreme Court of Texas denied Petitioners' Petition for Writ of Mandamus and Motion for Rehearing without giving any reason or explanation.

Therefore, the Petitioners' Writ of Certiorari should be granted because the decision matter of this Petition conflicts with the constitutional principles safeguarded by this Honorable Court on the Amendment XIV to the United States Constitution.

1. This Court should grant Certiorari because Petitioners' constitutional rights of due process and equal protection of laws are violated when the Supreme Court of Texas failed to follow its precedents in enforcing forum selection clause by Writ of Mandamus.

The rulings of the Supreme Court of Texas and the Fourteenth Court of Appeals, Texas, violate the

Equal Protection Clause and the Due Process Clause of the United States Constitution.

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S. Ct. 1064, 1070 (1886)

"It has been settled for almost a century that corporations are persons within the meaning of the Fourteenth Amendment. *Santa Clara County v. Southern Pacific R. Co.*, 118 U.S. 394 (1886); see

Covington & Lexington Turnpike R. Co. v. Sandford, 164 U.S. 578 (1896)." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 828, 98 S. Ct. 1407, 1443 (1978)

The failure to follow the controlling and indistinguishable precedents as applied to other litigants denies equal protection to the Petitioners.

The doctrine of stare decisis requires the Supreme Court of Texas and the Fourteenth Court of Appeals to find that the forum selection clause in the Agreement is enforceable and that Mr. Cunningham should have brought the suit in the Thailand court.

The Supreme Court of Texas discussed the importance of stare decisis or precedents "As originally conceived and as generally applied, the doctrine of stare decisis governs only the determination of questions of law and its observance does not depend upon the identity of parties. After a principle, rule or proposition of law has been squarely

decided by the Supreme Court, or the highest court of the State having jurisdiction of the particular case, the decision is accepted as a binding precedent by the same court or other courts of lower rank when the very point is again presented in a subsequent suit between different parties." *Swilley v. McCain*, 374 S.W.2d 871, 875 (Tex. 1964).

""…we must begin with the doctrine of *stare decisis. Stare decisis"* promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)" *Pearson v. Callahan*, 555 U.S. 223, 233, 129 S. Ct. 808, 816 (2009)

Consistency in the law of the highest Texas courts, the Supreme Court of Texas and the

Fourteenth Court of Appeals, is of the utmost importance. Unfortunately, the Supreme Court of Texas and the Fourteenth Court of Appeals undermined the Texas courts' precedents, establishing that the plaintiff seeking the benefits of a contract must also abide by its jurisdictional limitations, whether it be an arbitration clause or a forum selection clause.

"The Texas Supreme Court has repeatedly held that mandamus relief is available to enforce a forum-selection clause in a contract. See, e.g., *In re Fisher*, 433 S.W.3d 523, 535 (Tex. 2014) (orig. proceeding); *In re Lisa Laser USA, Inc.* 310 S.W.3d 880, 883 (Tex. 2010) (orig. proceeding) (per curiam); *In re Laibe Corp.*, 307 S.W.3d 314, 316 (Tex. 2010) (orig. proceeding) (per curiam); *In re ADM Inv'r Servs., Inc.* 304 S.W.3d 371, 374 (Tex. 2010) (orig. proceeding); *In re Int'l Profit Assocs.*, 274 S.W.3d 672, 674 (Tex. 2009)

(orig. proceeding) (per curiam); *In re AIU Ins. Co.*, 148 S.W.3d 109, 115-19 (Tex. 2004) (orig. proceeding). A trial court abuses its discretion when it fails to properly interpret or apply a forum-selection clause. *In re Lisa Laser USA, Inc.*, 310 S.W.3d at 883; *In re Laibe Corp.*, 307 S.W.3d at 316. Further, "an appellate remedy is inadequate when a trial court improperly refuses to enforce a forum-selection clause because allowing the trial to go forward will vitiate and render illusory the subject matter of an appeal, i.e., trial in the proper forum." *In re Lisa Laser USA, Inc.*, 310 S.W.3d at 883 (internal quotations omitted); In re Laibe Corp., 307 S.W.3d at 316; *In re AIU Ins. Co.*, 148 S.W.3d at 115." *In re First Specialty Ins. Corp.*, No. 13-20-00122-CV, 2020 Tex. App. LEXIS 4042, at *7 (Tex. App.—Corpus Christi May 22, 2020)

The Supreme Court of Texas' ruling denying Petitioners' Petition and not following its well-

established precedents violates the Petitioners' Equal Protection Clause and the Due Process Clause of the United States Constitution. The Texas state court system (including the Fourteenth Court of Appeals and the Supreme Court of Texas) denied Petitioners equal protection of laws and deprived Petitioners of due process in violation of the Fourteenth Amendment of the United States Constitution.

"A basic command of equal protection is that justice applied equally to all parties, poor man or affluent man." *Schilb v. Kuebel*, 404 U.S. 357, 358, 92 S. Ct. 479, 481 (1971). So, long as the law applies to alike, the requirements of equal protection are met. But, in the present case, the Supreme Court of Texas and the Fourteenth Court of Appeals ignored the controlling precedents on applying the forum selection clause, so that the law was not applied to alike.

All courts must follow their precedent under the principle of stare decisis: "[E]ven in constitutional cases, the doctrine carries such persuasive force that we have always required a departure from precedent to be supported by some 'special justification." *United States v. IBM*, 517 U.S. 843, 856 (1996).

The Texas courts erroneously deprived Petitioners of their constitutional right to equal protection of the law. Now, the Petitioners are entirely dependent upon the wisdom of this Honorable Supreme Court of the United States.

Under Texas law, "[t]he court of appeals is obligated to hand down a written opinion that "addresses every issue raised and necessary to final disposition of the appeal." TEX. R. APP. P. 47.1"" *Tex. Disposal Sys. v. Perez*, 80 S.W.3d 593, 594 (Tex. 2002). The majority did not address these issues at the time of opinion delivered. Accordingly, Petitioners' Writ of

Certiorari should be granted based on applicable precedents enforcing forum selection clauses.

2. The Supreme Court of Texas violated the Petitioners' due process rights when it failed to provide valid reasons in the disposition of Writ of Mandamus and Motion for Rehearing.

Petitioners filed their Motion for Rehearing with the Supreme Court of Texas. The Supreme Court of Texas denied Petitioners' Motion. The Supreme Court of Texas did not provide any reasons or written explanation for summarily denying Petitioners' Motion for Rehearing. Appendix F page 16a. The Supreme Court of Texas deprived Petitioners of the opportunity to be heard at a meaningful time and in a meaningful manner in violation of the Fourteenth Amendment of the United States Constitution.

In recent years, some judges and commentators have expressed concern that abbreviated dispositions may be used to avoid addressing important issues,

including jurisdictional and Constitutional issues, whose resolution might require judges to hold contrary to their preconceptions. See, for example, Richard S. Arnold (then a sitting judge of the federal Eighth Circuit Court of Appeals), "Unpublished Opinions: A Comment," 1 J. App. Prac. & Process 219, 223 (1999). As Judge Arnold stated "Let me explain, though, some of the effects that this practice [i.e., use of unpublished decisions] can have on the psychology of judging. If, for example, a precedent is cited, and the other side then offers a distinction, and the judges on the panel cannot think of a good answer to the distinction, but nevertheless, for some extraneous reason, wish to reject it, they can easily do so through the device of an abbreviated, unpublished opinion, and no one will ever be the wiser. (I don't say that judges are actually doing this-only that the temptation [*43] exists.). Or if, after hearing

argument, a judge in conference thinks that a certain decision should be reached, but also believes that the decision is hard to justify under the law, he or she can achieve the result, assuming agreement by the other members of the panel, by deciding the case in an unpublished opinion and sweeping the difficulties under the rug. Again, I'm not saying that this has ever occurred in any particular case, but a system that encourages this sort of behavior, or is at least open to it, has to be subject to question in any world in which judges are human beings."

The Supreme Court of Texas' Orders Appendix A page 1a and Appendix F 16a are not inconsistent with Judge Arnold's concerns.

However, the "unpublished," precedential focus of these and other commentaries is not the issue for any specific set of litigants. They are not ordinarily legal scholars concerned whether the disposition of

their case will be precedent in the future. They are concerned whether the law is applied correctly to resolve the facts of their dispute. The problem for them is that courts may decide not to use traditional legal decision-making to their appeal and issue a disposition that does not address the facts or apply the law.

To avoid creating vast numbers of apparent conflicts in the decisions of a court caused by "result-driven" rulings, state court panels may go beyond "unpublished" status by not addressing issues. The refusal to address fundamental issues such as jurisdiction may occur in any disposition, but the temptation is greatest for abbreviated dispositions. The court uses the reduced length, sometimes coupled with "unpublished disposition," Memorandum or Order designation to justify an attenuated responsibility to follow the judicial process, the laws

and the applicable facts. However, regardless of the length and designation of a disposition, the courts must follow the laws and apply them to the evidence in the record. Constitutional Due Process and Equal Protection guarantees to protect all litigants, not just those Track-One litigants deemed by a state court worthy of its full attention.

An abbreviated disposition that declines to apply the pertinent law to the facts may avoid scrutiny by self-designation as an "unpublished disposition," a Memorandum or an Order. This approach turns the disposition into an ad hominem determination in which refusal to follow regular appellate processes and procedures (and the law and facts of the case) may be practiced with impunity. Such a disposition only affects the litigants, cannot be invoked by subsequent litigants and is not binding

upon the issuing court. The power of the judiciary thereby becomes arbitrary, erratic, and unchecked.

The constitution's Framers recognized that adherence to precedent is an important limitation on unchecked judicial power in a tripartite, balanced government. Arbitrary departure from precedent is contrary to this Court's position in *United States v. IBM*, 517 U.S. at 856, stating "[S]tare decisis promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."

The present facts provide an ideal vehicle to address this Question. If this Honorable Court concludes that the improper treatment of appellants by a state supreme court should be taken up, then this case presents facts highly suitable for that consideration. The issues raised by Petitioners to the

Supreme Court of Texas included both jurisdictional and non-jurisdictional matters, and the Supreme Court of Texas did not apply the law to any of those. The issues involve failure to follow the Supreme Court of Texas' precedents. The Orders Appendix A page 1a and Appendix F page 16a were not based upon applying the pertinent law to the undisputed facts. Jurisdiction, when raised by a party (and even when not raised), can never be appropriately ignored. Consequently, judicial restraint is not applicable.

Petitioners properly raised the issues to the Supreme Court of Texas in their Writ of Mandamus, and then in their Motion for Rehearing. There was no substantive response. This misuse of the judicial process is precisely why the Honorable Court should grant certiorari on this Question, to resolve whether lower courts may dispense threadbare justice in the manner as done in this case.

Moreover, it is axiomatic that due process provides the litigants the right to come to court and provides them an opportunity to be heard in a meaningful manner. Further, an explanation is an essential part of the judicial process. E.g., Richard A. Posner, Divergent Paths; The Academy and the Judiciary 162 (2016) (an opinion consisting of the single word "Affirmed" is "suggestive of a miscarriage of justice").

According to Rule 10 of the Rules of the Supreme Court of the United States, review on a writ of certiorari is not a matter of right but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. Certiorari is granted only "in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of

opinion and authority between the circuit courts of appeal." *NLRB v Pittsburgh S.S. Co*., 340 U.S. 498, 502, 71 S. Ct. 453, 456 (1951). The Supreme Court of Texas' failure to allow the litigants to be heard in a meaningful time and meaningful manner is sufficient consideration for granting a certiorari review. This Honorable Court should grant the Petitioners' Petition for Writ of Certiorari as there was due process violation in denying it without any explanation.

3. The Petitioners were denied equal protection of the law and due process of law when the trial court denied Petitioners' Motion to Dismiss.

The decision of the trial court in denying Petitioners' Motion to Dismiss is in conflict with other decisions of the Supreme Court of Texas and the Supreme Court of the United States. Courts have by and large granted the motion to dismiss the complaint

based on a valid forum selection clause in the agreements. The Supreme Court of the United States in the case of *Atl. Marine Constr. Co. v. United States Dist. Court*, 571 U.S. 49, 62, 134 S. Ct. 568, 581 (2013) held that "When the parties have agreed to a valid forum selection clause, a district court should ordinarily transfer the case to the forum specified in that clause."

For decades, American courts have demonstrated genuine hospitality to forum selection clauses that manifest the parties' intention to submit future disputes relating to their contract to a predetermined forum. This commitment to party autonomy and predictability is especially pronounced in the context of international transactions.

This Court expressed its strong attachment to these principles in its seminal decision in *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 516-17 (1974), a case

involving enforcement of an international arbitration agreement.

The Court recently echoed its powerful support for forum selection clauses in *Atlantic Marine Construction Co. v. U.S. District Court*, 134 S. Ct. 568, 581 (2013). In this case, this Court emphasized that such a clause "protects [the parties] legitimate expectations and furthers vital interests of the justice system."

It is clearly in the general interest of international trade, viewed from all perspectives, to ensure the global applicability and enforceability of forum clauses. Moreover, it is important because the parties have taken the trouble to draft to cover not only disputes "arising out of" the contract but also disputes "relating to" their contractual relationship. It would thus be highly valuable if this Honorable Court grants certiorari in the present case and

reaffirm its commitment to the proper interpretation of international forum selection clauses.

A contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is an almost indispensable precondition to achieving the orderliness and predictability essential to any international business transaction. Suppose the United States courts will not enforce the foreign forum selection clause, which the parties have freely agreed upon, then it will have severe repercussions on the United States' international trade and commerce. It will negatively impact the United States economy and more so in the present challenging times of the COVID-19 pandemic.

"As in *Scherk* v. *Alberto-Culver Co*., 417 U.S. 506 (1974), we conclude that concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of

the international commercial system for predictability in the resolution of disputes require that we enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 629, 105 S. Ct. 3346, 3355 (1985)

In *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 89, 130 S. Ct. 2433 2010), a district court dismissed respondent cargo owners' suits against petitioners based on a Tokyo forum selection clause. The U.S. Court of Appeals for the Ninth Circuit reversed it. Petitioners challenged the decision of the U.S. Court of Appeals and filed Writ of Certiorari, which was granted. The Court of Appeals' judgment for the Ninth Circuit was reversed, and the case was remanded for further proceedings.

Supreme Court of Texas in the case of *In re Lyon Fin. Servs.*, 257 S.W.3d 228, 231-32 (Tex. 2008)

held that "A trial court abuses its discretion in refusing to enforce a forum-selection clause unless the party opposing enforcement of the clause can clearly show that (1) enforcement would be unreasonable or unjust, (2) the clause is invalid for reasons of fraud or overreaching, (3) enforcement would contravene a strong public policy of the forum where the suit was brought, or (4) the selected forum would be seriously inconvenient for trial. *See In re AIU,* 148 S.W.3d at 112 (citing *The Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 15-17, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972)); *In re Automated Collection Techs., Inc.,* 156 S.W.3d 557, 559 (Tex. 2004). A forum-selection clause is generally enforceable, and the burden of proof on a party challenging the validity of such a clause is heavy. *See In re AIU,* 148 S.W.3d at 113."

Petitioners moved the trial court to dismiss Mr. Cunningham's claim filed against them in Texas,

based upon the forum selection clause. Mr. Cunningham responded to the Petitioners' Motion to Dismiss but never denied the forum selection clause's validity or even claimed that the forum selection clause was invalid or unenforceable. Moreover, Mr. Cunningham did not produce any evidence to show that the enforcement of the forum selection clause would be unreasonable and unjust, or it was invalid for fraud or overreaching, or it was strongly contrary to the interests of the witnesses or the public.

"Forum selection clauses are generally enforceable, and a party attempting to show that such a clause should not be enforced bears a heavy burden to prove the clause is invalid. *In re Int'l Profit Assocs.*, No. 08-0531, 286 S.W.3d 921, 2009 Tex. LEXIS 391, at *4 (Tex. June 12, 2009) (orig. proceeding) (per curiam); Lyon Fin. Servs., 257 S.W.3d at 232; AIU Ins. Co., 148 S.W.3d at 113. A trial court must presume that a

mandatory forum-selection clause is valid and enforceable. See *Int'l Profit Assocs.*, 274 S.W.3d at 680; *In re Boehme,* 256 S.W.3d 878 (Tex. App.-Houston [14th Dist.] 2008, orig. proceeding)." *In re GreatAmerica Leasing Corp.*, 294 S.W.3d 912, 916 (Tex. App.—Corpus Christi 2009)

The validity of the forum selection clause was never in question in this case. The Petitioners specifically pleaded that "the parties expressly agreed to forum selection clause of the Agreement." The facts and circumstances compel a single conclusion that the Texas courts should have enforced the forum selection clause and should have dismissed Mr. Cunningham's claims against the Petitioners. However, Honorable Judge R.K. Sandill denied the Petitioners' Motion to Dismiss. Appendix B page 5a.

"When a trial court denies a motion to enforce a valid, enforceable forum selection clause that

specifies another state or country as the chosen forum, the trial court's final judgment is subject to automatic reversal at the request of the party seeking enforcement of the clause. As the United States Supreme Court held in The Bremen, "the correct approach [is] to enforce the forum clause specifically." Otherwise, courts would be guilty of the parochial and "provincial attitude" that led jurists in another era to refuse to enforce forum-selection clauses. Thus, a trial in a forum other than that contractually agreed upon will be a meaningless waste of judicial resources. The error is not harmless." *In re AIU Ins. Co.*, 148 S.W.3d 109, 118 (Tex. 2004).

The Petitioners filed the Motion to Dismiss based on the mandatory forum selection clause. The Petitioners specifically pleaded that "the parties expressly agreed to forum selection clause of the Agreement." Mr. Cunningham never denied the

validity of the forum selection clause. The Petitioners were only required to show that the forum selection clause was in the Agreement on which Mr. Cunningham's claims were based. The Relators showed that the Agreement has a forum selection clause and that Mr. Cunningham's claims against them stemmed from the Agreement. The Petitioners had no further burden. Therefore, Honorable Judge R. K. Sandill abused his discretion in denying Petitioners' Motion to Dismiss. Thus, a trial in a forum other than that contractually agreed upon will be a meaningless waste of judicial resources.

This Court should grant Petitioners' Writ of Certiorari because trial court deprived the Petitioners' right to substantive and/or procedural due process and equal protection of the laws by dismissing their Motion to Dismiss.

CONCLUSION

This Honorable Court, following its precedents, should grant Petitioners' Writ of Certiorari and dismiss Respondent Mr. Cunningham's suit against the Petitioners based on the Thailand forum selection clause in the Agreement. The Supreme Court of Texas failed to follow its controlling precedents and this Court's precedents in dismissing the suits based on a mandatory forum selection clause. Supreme Court of Texas denied equal protection to the Petitioners. Furthermore, the doctrine of stare decisis required the Supreme Court of Texas, the Fourteenth Court of Appeals, Texas, and the trial court to find that the forum selection clause in the Agreement is enforceable and that Mr. Cunningham should have brought the suit in the Thailand court.

Respondent Mr. Cunningham is trying to take benefits of the Agreement, and at the same time,

he is circumventing the mandatory forum selection clause of the Agreement. Suppose if this Honorable Court permits to do so; in that case, it will undermine the well-established legal principle that a plaintiff who seeks the benefits of a contract must also abide by its jurisdictional limitations, whether it be an arbitration clause or a forum selection clause.

In granting this Writ as this Honorable Court has done in the past in similar circumstances, will strengthen the international community's faith in doing trade and commerce with the United States of America.

Petitioners Panya Lerdthaisong and SG Cattle Services Co. Ltd. respectfully request this Honorable Court to grant this Petition for Writ of Certiorari and enter an Order directing that case in trial court be dismissed in favor of the contractually selected Thailand forum.

Respectfully submitted,

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