

No. 21-100

In the Supreme Court of the United States

**PANYA LERDTHAISONG & SG CATTLE
SERVICES CO. LTD.,**

Petitioners,

v.

BENJAMIN CUNNINGHAM,

Respondent.

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

PETITION FOR REHEARING

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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 (hereinafter referred to as “Mr. Lerdthaisong” and SG Cattle Services Co. Ltd. (hereinafter referred to as “SG Cattle”) (hereinafter collectively referred to as “Petitioners”), (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 (hereinafter referred to as “Mr. Cunningham”)

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

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PETITION FOR REHEARING TO THE SUPREME COURT OF TEXAS

Pursuant to the Supreme Court of the United States Rules USCS Supreme Ct R 44.2, Petitioners, Mr. Lerdthaisong and SG Cattle, respectfully petition this Court to rehear this case for good cause, namely that substantial grounds not previously presented exist regarding the matter.

OPINION OF THIS COURT

There are compelling interests that can only be vindicated if this Court grants rehearing. Petitioners respectfully request a rehearing and reversal of the order entered by this Court on October 4, 2021, denying Petitioners' Petition for a Writ of Certiorari to the Supreme Court of Texas.

JURISDICTION

The last decision of this Court, Supreme Court of the United States, denying the Petitioners' Petition

for Writ of Certiorari was entered on October 4, 2021. This Court has jurisdiction under USCS Supreme Ct R 44.2.

REASONS FOR GRANTING THE WRIT

In this Petition for Rehearing, Petitioners will state additional ground(s) not previously stated and give reason(s) why this Court's denial of Petitioners' Petition for Writ of Certiorari should be reversed.

The decision of the 127th Judicial District, Harris County, Texas (hereinafter referred to as "127th Court"); Fourteenth Court of Appeals, Texas; Supreme Court of Texas and this Court, i.e., Supreme Court of the United States, in not enforcing the forum selection clause, fosters commercial uncertainty for the international community in doing business with the United States. It creates an unreliable mechanism for the enforcement of forum selection clauses. The international parties to a contract

cannot confidently predict whether their forum selection clause will be enforced.

This approach has several detrimental consequences for the United States trade and commerce. It frustrates the legitimate contractual expectations of the thousands of international businesses that have such clauses in their contracts. It prevents businesspersons and their customers from realizing the substantial efficiencies of limiting litigation costs.

In an arms-length transaction, the Petitioners and Respondent negotiated the valid forum selection clause in their Agreement. The decision of the 127th Court, Fourteenth Court of Appeals, Texas; Supreme Court of Texas, and this Court in declining to enforce the valid forum selection clause frustrates the legitimate contractual expectations of thousands of businesses with similar contract provisions. Suppose

the decision of the said Courts is permitted to stand; in that case, it will undermine the ability of parties to structure their business contracts so that they can select in advance and limit the forum in which disputes will be litigated. It also will likely discourage businesses from expanding the geographic reach of their operations for fear of being unable to control and limit their litigation costs.

Forum selection clauses promote the core purposes of the venue statutes to ensure that the parties litigate the cases in locations that are convenient to both parties. Therefore, their enforcement furthers, rather than infringes on, Congress' objectives in enacting those statutes.

As opposed to the well-settled principles, the 127th Court, Fourteenth Court of Appeals, Texas; Supreme Court of Texas, and this Court, declined to enforce a negotiated forum selection clause between

experienced business entities, providing that all disputes between them would be litigated in the Kingdom of Thailand. The 127th Court first denied Petitioners' Motion to Dismiss even though Respondent's suit clearly breached the parties' forum selection clause of their Agreement. The Fourteenth Court of Appeals, Texas and Supreme Court of Texas then affirmed the 127th Court's determination in denying the Petitioners' Motion to Dismiss.

The parties which conduct businesses throughout various international locations rely on forum selection clauses to ensure that they can anticipate business costs and avoid litigation at possible multiple international venues. Petitioners and Respondent agreed upon the Kingdom of Thailand as the forum to litigate any dispute between them and not in the United States. Thus, entities like Petitioners require a predictable rule of enforcement

of forum selection clauses to allow them to operate internationally and specifically in the United States to trade confidently with the United States.

“We have noted that, because the personal jurisdiction requirement is a waivable right, there are a “variety of legal arrangements” by which a litigant may give “express or implied consent to the personal jurisdiction of the court.” *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, *supra*, at 703. For example, particularly in the commercial context, parties frequently stipulate in advance to submit their controversies for resolution within a particular jurisdiction. See *National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311 (1964).” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 490, 105 S. Ct. 2174, 2191 (1985).

The international companies want the courts to enforce the forum selection clauses like any other

provision of the contracts. Such clauses are included in contracts to create certainty about the venue of any potential litigation; such certainty is often a prerequisite to the transaction or relationship in the future. In *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 516 (1974), “[a] contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is, therefore, an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction.”. As a result, commercial certainty is destabilized when judicial enforcement is lacking or unreliable, such that parties have no way of knowing whether their forum agreement will have binding effect. See *Norfolk & W. Ry. v. Am. Train Dispatchers Ass’n*, 499 U.S. 117, 130 (1991) (“A contract has no legal force apart from the law that acknowledges its binding character.”).

Without predictable and enforceable contract rights, business activity cannot flourish.”

In this case, Petitioner Mr. Lerdthaisong is a citizen of the Kingdom of Thailand and resides in the Province of Khon Kaen in the Kingdom of Thailand. Petitioner 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. This scenario was kept in mind when both Petitioners and Respondent executed the

Agreement and agreed upon the mandatory forum selection clause, which provides that:

“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.”

Therefore, the decision of this Court and Texas Courts creates a system in which, unlike other contract provisions, forum selection clauses are not enforced.

If this scenario is allowed to stay, this will have several detrimental consequences for the international business community doing trade and commerce with the United States. This system of not enforcing the mutually agreed forum selection clause will upset the well-founded contractual expectations of thousands of businesses that have similar clauses in their contracts. No matter what forum these businesses have chosen in their contracts, they now face the prospect that the United States Courts will allow a lawsuit to be litigated there, violating the forum selection clause of the parties' agreement.

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)).

“Even before *Scherk*, this Court had recognized the utility of forum-selection clauses in international transactions. *In The Bremen*, *supra*, an American oil company, seeking to evade a contractual choice of an English forum and, by implication, English law, filed a suit in admiralty in a United States District Court against the German corporation which had contracted to tow its rig to a location in the Adriatic Sea. Notwithstanding the possibility that the English court would enforce provisions in the towage contract exculpating the German party, which an American court would refuse to enforce, this Court gave effect to the choice-of-forum clause. It observed: “The

expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts. . . . We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.” 407 U.S., at 9. Recognizing that “agreeing in advance on a forum acceptable to both parties is an indispensable element in international trade, commerce, and contracting,” *id.*, at 13-14, the decision in *The Bremen* clearly eschewed a provincial solicitude for the jurisdiction of domestic forums.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 629-30, 105 S. Ct. 3346, 3355 (1985).

Petitioners believe that the non-enforcement of the mutually agreed Kingdom of Thailand forum

selection clause will harm the United States' trade and commerce with Thailand.

Petitioners belong to the Kingdom of Thailand, an important trading partner and ally of the United States, dating back to establishing diplomatic ties in 1833 through the Treaty of Amity and Commerce. The United States and Thailand meet regularly under the auspices of the 2002 bilateral Trade and Investment Framework Agreement (TIFA) to address outstanding bilateral issues and coordinate bilateral, regional, and multilateral issues. The United States goods and services trade with Thailand totaled an estimated \$52.3 billion in 2020. According to the Department of Commerce, U.S. exports of goods and services to Thailand supported an estimated 70 thousand jobs in 2019.¹ The United States business

¹ <https://ustr.gov/countries-regions/southeast-asia-pacific/thailand>

with Thailand will be adversely affected if the forum selection clause is ignored by the United States Courts.

It is clearly in the general interest of United States' international trade and commerce, viewed from all perspectives, to ensure the forum clause's global applicability and enforceability. It would thus be precious 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 where contracting parties will litigate the disputes between them 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.

CONCLUSION

This Honorable Court, should grant Petitioners' Petition for Rehearing as it would reinforce the confidence of international business community in the United States court system. Applicability of the forum selection clause is of vital importance to the international business community doing trade and commerce with the United States.

Petitioners respectfully request this Honorable Court to grant rehearing and, upon rehearing, grant their Petition for Writ of Certiorari, Certiorari and enter an Order directing that case in trial court be

dismissed in favor of the contractually selected Thailand forum. It will strengthen and bolster the global business community's confidence in doing trade with the United States, and that forum selection clauses will be honored by the United States Courts.

Respectfully submitted,

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October 27, 2021

In the Supreme Court of the United States

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SERVICES CO. LTD.,**

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BENJAMIN CUNNINGHAM,

Respondent.

CERTIFICATE OF GOOD FAITH 44(2)

I, S. Bruce Hiran, counsel for Panya Lerdthaisong & SG Cattle Services Co. Ltd., hereby respectfully submit this Certificate of Good Faith declaring that such Petition for Rehearing is not submitted for purposes of delay. This Petition is restricted to the grounds specified in U.S. Sup. Ct. Rule 44.

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