

In The
Supreme Court of the United States

EE HOONG LIANG,

Petitioner,

v.

PANIRCELVAN KALIANNAN; TONG LAY
YEEN GIOVANNA; TAN HOCK SENG; ROGER
TEO KOK WEI; TEO KHIM HO; CHANG MUN
KUMCHRISTINA; KOH HWEE BEN ERIN; NG YIM
HAR; KOH THONG JUAY; TONG SIEW GEOK,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

BRIEF IN OPPOSITION

ALAN ROSCA
(Ohio Bar No. 0084100)
ROSCALAW LLC
23250 Chagrin Blvd.,
Suite 100
Beachwood, OH 44122
Phone: 216-570-0097
Email: arosca@roscalaw.com

BRIAN O. MARTY
Counsel of Record
SHINDLER, ANDERSON,
GOPLERUD & WEESE P.C.
5015 Grand Ridge Drive,
Suite 100
West Des Moines, IA 50265
Phone: 515-223-4567
Email: marty@sagwlaw.com

COUNTERSTATEMENT OF QUESTIONS PRESENTED

Personal Jurisdiction

Respondents alleged Petitioner violated the North Dakota and federal securities laws and acted negligently by actively assisting North Dakota Developments, LLC (“NDD”), a North Dakota company, in offering and selling Respondents unregistered, nonexempt, and fraudulent North Dakota-issued securities that involved interests in North Dakota real estate. Among other things, Respondents alleged Petitioner (i) actively recruited them to invest in a North Dakota company; (ii) brokered the sales of North Dakota real estate and North Dakota-issued securities; (iii) acted as an agent for a North Dakota company, as evidenced by his receipt of commission compensation from NDD; (iv) communicated extensively with North Dakota entities in connection with the sales; and, (v) traveled to North Dakota in connection with marketing and selling the NDD securities and North Dakota real estate. Should the Court grant *certiorari* to consider whether, as the lower courts found, Respondents made a *prima facie* showing that Petitioner was subject to specific personal jurisdiction in North Dakota?

Summary Judgment

Petitioner initially participated in the district court proceedings but thereafter notified the court that, based on his Singapore counsel’s advice, he believed

**COUNTERSTATEMENT OF
QUESTIONS PRESENTED—Continued**

he was improperly served and would no longer participate in the case. Respondents sent him discovery including requests for admission that he failed to answer, and he failed to oppose Respondents' motion for summary judgment. Should the Court grant *certiorari* to consider whether, as the lower courts found, Respondents were entitled to summary judgment based on Petitioner's deemed admissions under Fed. R. Civ. P. 36(a)(3) that established all the necessary elements of their claims?

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INTRODUCTION

Petitioner mischaracterizes Respondents' claims as they relate to personal jurisdiction. Respondents' claims were not based exclusively on alleged untrue statements and omissions made by Petitioner to Respondents in Singapore—rather, Respondents alleged Petitioner: (i) violated the Securities Act of 1933 by making untrue statements and omissions in connection with the sale of North Dakota-issued securities; (ii) violated the North Dakota Securities Act by offering and selling unregistered and nonexempt securities and by selling securities as an unlicensed agent; (iii) acted as an agent of a North Dakota issuer that made untrue statements and omissions in connection with the sale of securities (giving rise to joint and several liability under the North Dakota Securities Act); and, (iv) acted negligently in connection with offering and selling North Dakota real estate and North Dakota-issued securities to Respondents.

North Dakota's long-arm statute permits personal jurisdiction to the maximum extent provided by the Due Process Clause of the Fourteenth Amendment. *Hansen v. Scott*, 645 N.W.2d 223, 232 (N.D. 2002); N.D. R. Civ. P. 4(b)(2). To establish specific personal jurisdiction the defendant must have certain minimum contacts with the forum state and the plaintiff's claims must arise out of or relate to the defendant's contacts. *Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316, 319, 66 S. Ct. 154, 158, 160, 90 L. Ed. 95 (1945); *Ford Motor Co. v.*

Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1025, 209 L. Ed. 2d 225 (2021).

Respondents would not have invested in NDD but for Petitioner's extensive North Dakota-related contacts, and therefore Respondents' claims arose out of those contacts. The lower courts correctly found that Respondents made a *prima facie* showing of specific personal jurisdiction.

Regarding summary judgment, the lower courts correctly found that Respondents were entitled to summary judgment based on Petitioner's deemed admissions under Fed. R. Civ. P. 36(a)(3) that established all the necessary elements of their claims.

STATEMENT OF THE CASE

NDD was a North Dakota entity that perpetrated a \$62 million fraud upon investors including Respondents. Although NDD purported to be a real estate venture for the construction and operation of housing units for oilfield workers, it was in reality a Ponzi scheme in which investors were paid returns with funds provided by later investors. App. 2.

NDD investors including Respondents invested in fractional interests in modular housing units that were coupled with management agreements under which NDD was to manage the units. The modular housing unit interests were North Dakota real estate, and when coupled with the management agreements

were also “investment contracts” and therefore securities under the North Dakota and federal securities laws. *See SEC v. Edwards*, 540 U.S. 389, 393 (2004). The NDD securities were neither registered nor exempt from registration and were fraudulent, and in May 2015 the Securities and Exchange Commission sued NDD’s principals and shut the scheme down. App. 2-3.

Petitioner acted as a liaison between NDD and Respondents and other investors and helped NDD perpetrate its fraudulent and unlawful securities offering. Petitioner actively recruited Respondents to invest in NDD and earned (undisclosed) commission compensation from NDD on each investment. He provided Respondents brochures and pamphlets describing the investment, and worked with the NDD scheme perpetrators to create marketing materials specifically targeting Respondents. He traveled to North Dakota to conduct due diligence in connection with marketing and selling the NDD investments, and while he was there he took photos and videos of the NDD properties and sent them to Respondents as “evidence” that the properties were functioning. He urged Respondents to invest in NDD and directed them to send their money and investment-related paperwork to North Dakota, and also communicated extensively with North Dakota entities regarding the sales. App. 2-3.

Respondents sued Petitioner in the District of North Dakota, alleging he violated the North Dakota and federal securities laws and acted negligently in connection with selling the NDD investments and

North Dakota real estate to them. Petitioner filed a response that the clerk of court deemed an “answer,” and then filed a motion to dismiss for lack of personal jurisdiction and improper venue. While his motion was pending, and after he participated in a telephonic scheduling conference with the court, Petitioner sent a letter to the district court stating that his attorney in Singapore had advised him that he had not been properly served and thus there was “[n]o case for [him] to answer.” He then stopped participating in the district court litigation. App. 4-5.

The district court denied Petitioner’s motion to dismiss. Respondents served Petitioner with discovery including requests for admission that he failed to answer, and then filed a motion for summary judgment based on the deemed admissions (which established all the necessary elements of their claims). Although Petitioner acknowledged he was served with Respondents’ summary judgment motion, he did not submit an opposition to it. The district court ultimately granted Respondents’ motion and entered judgment against Petitioner. App. 5.

REASONS FOR DENYING CERTIORARI

- 1. Petitioner is subject to personal jurisdiction in North Dakota under the Court’s well-settled precedent.**

This case does not involve any complicated or novel due process issues related to specific personal

jurisdiction. While all the parties are foreigners, with the exception of the ‘convenience of the parties’ consideration the personal jurisdiction analysis and result are the same whether Petitioner resides in Singapore or South Dakota. As discussed above, Petitioner had extensive contacts with North Dakota in connection with marketing and selling the unlawful NDD securities and North Dakota real estate to Respondents. Petitioner’s conduct was not limited to simply making untrue statements and omissions in Singapore—he also traveled to North Dakota to conduct due diligence in connection with marketing and selling the investments, worked with a North Dakota company to prepare marketing materials directed at Respondents, acted as an agent of a North Dakota company in connection with the sales, brokered the sales of North Dakota real estate and North Dakota-issued securities, directed his investors to send their paperwork and investment proceeds to North Dakota, and received sales commissions from a North Dakota company.

Petitioner asks the Court to grant certiorari to “clarify that [material misstatements occurring in Singapore do] not satisfy the ‘arise out of’ or ‘relate to’ aspects of the minimum contacts test.” The question is not, as Petitioner suggests, whether those material misstatements *in isolation* give rise to personal jurisdiction in North Dakota—it is whether his contacts with North Dakota *as a whole* satisfy the minimum contacts requirement and whether Respondents’ claims arise out of or relate to those contacts. *Int’l Shoe Co.*, 326 U.S. at 316; *Ford Motor Co.*, 141 S. Ct. at 1025. The

Court need not “clarify” anything regarding Petitioner’s misstatements made in Singapore, given the extent of his other forum-related contacts and the causal relationship between Respondents’ claims and those contacts.

Petitioner also asks the Court to “define further the limits of the ‘relate to’ provision by declaring that [his] single visit to the place where the investment happened to be located did not satisfy this test.” There is no reason here for the Court to further define the boundaries of the “relate to” provision discussed in *Ford Motor Co.*, because Petitioner’s contacts with North Dakota and Respondents’ resulting claims satisfy the more demanding “arise out of” provision. Respondents would not have invested in NDD but for Petitioner’s extensive North Dakota-related contacts, and therefore Respondents’ claims “arise out of” those contacts. The Court need not reach the “relate to” provision in this case.

Petitioner also takes issue with the Court of Appeals’ application of the Eighth Circuit’s personal jurisdiction factor test here. The factors are: “(1) the nature and quality of the [defendant’s] contacts with the forum state; (2) the quantity of the contacts; (3) the relationship of the cause of action to the contacts; (4) the interest of [the forum state] in providing a forum for its residents; and (5) the convenience or inconvenience to the parties.” *Johnson v. Arden*, 614 F.3d 785, 794 (8th Cir. 2010). “The first three factors are primary factors, and the remaining two factors are secondary factors.” *Id.*

Petitioner asks the Court to find that factors (4) and (5) are *not* of secondary importance in this case, and that personal jurisdiction is “unreasonable” under *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477, 105 S. Ct. 2174, 2184, 85 L. Ed. 2d 528 (1985) notwithstanding his purposeful establishment of minimum contacts with North Dakota. When a defendant has purposefully established minimum contacts with the forum state,

he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional. For example, the potential clash of the forum’s law with the “fundamental substantive social policies” of another State may be accommodated through application of the forum’s choice-of-law rules. Similarly, a defendant claiming substantial inconvenience may seek a change of venue.

Id. at 477. The only “other considerations” to which Petitioner points are Singapore’s purported interest in applying its laws, and the alleged inconvenience of litigating in North Dakota. However, as *Burger King* stated, the existence of a conflict of law does not preclude the exercise of personal jurisdiction because the issue can be resolved by applying the forum’s choice-of-law rules. *Id.*; see *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 778 (1984) (“[W]e do not think that such choice of law concerns should complicate or distort the jurisdictional inquiry.”); *Hanson v. Denckla*, 357 U.S.

235, 254, 78 S. Ct. 1228, 1240, 2 L. Ed. 2d 1283 (1958) (“The issue is personal jurisdiction, not choice of law.”). And, on the issue of convenience, the Court of Appeals put it best: “[Petitioner] was willing to travel to North Dakota to advance the alleged investment scheme, so his complaint that it would be inconvenient for him to litigate in North Dakota rings hollow.” App. 10. Petitioner does not present a “compelling case” that personal jurisdiction over him is unreasonable here, and there is no reason for the Court to further define what hypothetical facts *might* present such a compelling case.

2. Petitioner waived any argument regarding forum *non conveniens*.

To the extent Petitioner argues that jurisdiction is not proper in North Dakota based on forum *non conveniens*, the Court should decline to consider the issue because Petitioner failed to raise it in the district court. App. 11-12.

3. Summary judgment was proper under Fed. R. Civ. P. 56.

Petitioner failed to respond to Respondents’ requests for admissions, and those requests were deemed admitted under Fed. R. Civ. P. 36(a)(3). The deemed admissions, which Petitioner never contested or asked to set aside, established all the necessary elements of Respondents’ claims, and the district court accordingly entered summary judgment against him.

There is no compelling reason—such as a conflict among the Courts of Appeals or an unsettled question of federal law—for the Court to consider Petitioner’s summary judgment argument. *See* Sup. Ct. R. 10.

CONCLUSION

Respondents request that the Court deny the petition for writ of certiorari.

Respectfully submitted,

BRIAN O. MARTY
Counsel of Record
SHINDLER, ANDERSON, GOPLERUD
& WEESE P.C.
5015 Grand Ridge Drive,
Suite 100
West Des Moines, IA 50265
Phone: 515-223-4567
Email: marty@sagwlaw.com

ALAN ROSCA
(Ohio Bar No. 0084100)
ROSCALAW LLC
23250 Chagrin Blvd.,
Suite 100
Beachwood, OH 44122
Phone: 216-570-0097
Email: arosca@roscalaw.com