

NO. 22-276

IN THE SUPREME COURT OF THE
UNITED STATES

DR. APARNA VASHISHT-ROTA,

Petitioner,

v.

HOWELL MANAGEMENT SERVICES,

CHRIS HOWELL,

Respondents.

On Petition for Rehearing to the
United States Supreme Court

DR. APARNA VASHISHT-ROTA
PETITION FOR REHEARING MAIN (1-20) AND
APPENDIX TWO (1-95)

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

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QUESTIONS PRESENTED

1. Whether the Court of Appeals allowing materials not on the trial Court record conflicts with the requirements of U.R.A.P 11?
2. Whether the trial Court and the Court of Appeals are erroneous on the compulsory counterclaims as the filed Supplement to the Complaint is under UTSA §13-24-1—9. § 13-24-8 states: Effect on other law.
 - (1) Except as provided in Subsection (2), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.
 - (2) This chapter does not affect: (a) contractual remedies, whether or not based upon misappropriation of a trade secret; Utah Code Page 3 (b) other civil remedies that are not based upon misappropriation of a trade secret; or (c) criminal remedies, whether or not based upon misappropriation of a trade secret.
3. Whether irreparable harm is presumed in a misappropriation of trade secrets case entitling Petitioner to emergency relief?
4. Whether the Complaint in 20010019 filed as declaratory relief under the Declaratory Judgment Act of Utah §78B-6-401 operates only to be procedural leaving substantive rights unchanged?

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Supplement to the Complaint: Misappropriation of Trade
Secrets
Motion To Strike 20210395-CA

PETITION FOR A REHEARING

Petitioner Aparna Vashisht-Rota respectfully requests the issuance of a writ of certiorari to review the judgment of the Utah Court of Appeals.

DECISION BELOW

The decision of the Court of Appeals of Utah is published at 2021 UT App. 133 and Utah Ct. App. 2021.

The SCOTUS denied Cert on December 5, 2022.

JURISDICTION

The Court of Appeals of Utah entered judgment on December 2, 2021. This Court's jurisdiction is invoked under 28 U.S.C. §1257.

STATE RULES INVOLVED

Declaratory Judgments

§78B-6-401 Jurisdiction of district courts -- Form -- Effect.

- (1) Each district court has the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction. An action or proceeding may not be open to objection on the ground that a declaratory judgment or decree is prayed for.
- (2) The declaration may be either affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree.

Utah Rule of Civil Procedure 11.

....

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that paragraph (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorney, law firms, or parties that have violated paragraph (b) or are responsible for the violation.

Utah Rules of Civil Procedure 41(a).

Voluntary Dismissal; Effect Thereof

....

(a)(1)(A) Subject to Rule 23(e) and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(a)(1)(A)(i) a notice of dismissal before the opposing party serves an answer or a motion for summary judgment.

Utah Rules of Civil Procedure 83.

Vexatious Litigants

....

(a)(1)(C) The court may find a person to be a “vexatious litigant” if a person three or more times does anyone or any combination of the following:

... (i) files unmeritorious pleadings or other papers,

... (ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter, or

... (iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

...

(c)(1) Before entering an order ..., the court must find by clear and convincing evidence that:

(c)(1)(A) the party subject to the order is a vexatious litigant, and

(c)(1)(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

Utah Rules of Appellate Procedure Rule 11. The record on appeal.

(a) **Composition of the record on appeal.** The record on appeal consists of the documents and exhibits filed in or considered by the trial court, including the presentence report in criminal matters, and the transcript of proceedings, if any.

§13-24-1: Uniform Trade Secrets Act. Enacted by Chapter 60, 1989 General Session

13-24-2 Definitions. As used in this chapter, unless the context requires otherwise:

- (1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.
- (2) "Misappropriation" means: (a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (b) disclosure or use of a trade secret of another without express or implied consent by a person who: (i) used improper means to acquire knowledge of the trade secret; or (ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
 - (A) derived from or through a person who had utilized improper means to acquire it;
 - (B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.
- (3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Enacted by Chapter 60, 1989 General Session

13-24-3 Injunctive relief.

(1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial Utah Code Page 2 change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Enacted by Chapter 60, 1989 General Session

13-24-4 Damages.

(1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under Subsection (1).
Enacted by Chapter 60, 1989 General Session

13-24-5 Attorneys' fees.

If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.

Enacted by Chapter 60, 1989 General Session

13-24-6 Preservation of secrecy.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade

secret without prior court approval. Enacted by Chapter 60, 1989 General Session

13-24-7 Statute of limitations.

An action for misappropriation shall be brought within three years after the misappropriation is discovered or, by the exercise of reasonable diligence, should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim. Enacted by Chapter 60, 1989 General Session

13-24-8 Effect on other law.

(1) Except as provided in Subsection (2), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This chapter does not affect: (a) contractual remedies, whether or not based upon misappropriation of a trade secret; Utah Code Page 3 (b) other civil remedies that are not based upon misappropriation of a trade secret; or (c) criminal remedies, whether or not based upon misappropriation of a trade secret.

Enacted by Chapter 60, 1989 General Session

13-24-9 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the chapter among states enacting it.

Enacted by Chapter 60, 1989 General Session

STATEMENT OF THE PETITION FOR REHEARING

On April 17, 2020, Petitioner filed her Complaint with the Utah's district court in case number 20010019 under §78B-6-401 Declaratory Judgment. On August 5, 2020, using U.R.C.P. 41(A)(1), Petitioner voluntarily dismissed the complaint. The Supplement had a cause of action for Misappropriation of Trade Secrets under §13-24-1-9.

She filed that due to AAA win in August 2019 and expert reports in 170100325 in December 2019 that opined that her contacts are her secrets.

§13-24-8 Misappropriation of Trade Secrets:

Effect on other law.

(1) Except as provided in Subsection (2), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret. (2) This chapter does not affect: (a) contractual remedies, whether or not based upon misappropriation of a trade secret; Utah Code Page 3 (b) other civil remedies that are not based upon misappropriation of a trade secret; or (c) criminal remedies, whether or not based upon misappropriation of a trade secret.

On November 1, 2021, pursuant to U.R.A.P. 11, Petitioner submitted a Motion to Strike (opinion footnote at 2 which was denied twice). Petitioner filed this motion to strike because Respondents' brief contained materials not in the record. If granted once, she wins. Lastly, the distinction that must be noted by the Court is that Petitioner got the Rule 83 motion almost a year later from her voluntary dismissal of the Complaint.

It was not that Petitioner got a U.R.C.P. Rule 11 (B) letter to withdraw her complaint within 21 days or a Rule 83 motion. Her withdrawal was an independent event.

I. Complaint/Supplement to The Complaint

The Opinion on Page 3 states: *“claims, but without obtaining leave of the district court. HMS moved to strike or dismiss the Supplement to the Complaint on grounds that the new claims were compulsory counterclaims that should have been filed in the Howell Litigation.”*

The Complaint is under §78B-6-401: Declaratory Judgments in Utah. "We have long considered 'the operation of the Declaratory Judgment Act' to be only 'procedural,' ... leaving 'substantive rights unchanged. *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 2014.

**Supplement Misappropriation of Trade Secrets:
§13-24-8 states clearly that it is an independent cause.**

(1) Except as provided in Subsection (2), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This chapter does not affect: (a) contractual remedies, whether or not based upon misappropriation of a trade secret; Utah Code Page 3 (b) other civil remedies that are not based upon misappropriation of a trade secret; or (c) criminal remedies, whether or not based upon misappropriation of a trade secret.

As the cause of action was brought once Petitioner won her AAA trial in 2019, her statue of limitations commenced at that time. There is a presumption of irreparable harm in a misappropriation of trade secrets case *InnoSys v. Mercer*, 2015 UT 80 (Aug. 28, 2015)

under which Petitioner filed her cause of action. Those claims aren't compulsory counterclaims by law.

II. Mis-application Of U.R.A.P Rule 11

The Opinion at Footnote 2 states: "*2 After both parties filed their responses to the sua sponte motion for summary affirmance, Vashisht-Rota filed a reply/motion to strike portions of the opposing parties' response. We deny the motion to strike. To the extent that the reply renews a request to remand that has twice been denied, it is again denied*"

The Utah Rule of Appellate Procedure Rule 11 states clearly what constitutes the record on appeal.

Rule 11. The record on appeal.

(a) Composition of the record on appeal.

The record on appeal consists of the documents and exhibits filed in or considered by the trial court, including the presentence report in criminal matters, and the transcript of proceedings, if any.

"In all events, papers not filed with the district court or admitted into evidence by that court are not part of the clerk's record and cannot be part of the record on appeal." *Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988) (citing *United States v. Walker*, 601 F.2d 1051, 1054-55 (9th Cir. 1979) and *Panaview Door & Window Co. v. Reynolds Metals Co.*, 255 F.2d 920, 922 (9th Cir. 1958)).

The Motion was made pursuant to Rule 11 of the Appellate Procedure. (Appendix 2).

REASONS FOR GRANTING THE PETITION FOR REHEARING

The Court should grant the petition because the trial and appeals are not following the prescribed form.

First, she dismissed her complaint without prejudice pursuant to U.R.C.P. Rule 41 (A)(1) on August 5, 2020 so the trial court can't reach the merits of her Complaint/Supplement at all. Even if it could, Misappropriation of Trade Secrets is a standalone cause of action that does not need to be a compulsory counterclaim that arose post her AAA win in August 2019. A declaratory relief Complaint does not impact substantive rights.

Second, if the Court of Appeals court applied the U.R.C.P. Rule 11 framework fully, then Petitioner does not meet the Rule 11 framework because she never got the Rule 11 (B) letter, she withdrew the motions and the Complaint without it so she did what is required under that rule too.

Finally, if the Court of Appeals applied the Utah Rules of Appellate Procedure Rule 11 as to the record on appeal, then Respondents do not have a brief at the appellate level.

CERTIFICATE OF GOOD FAITH

I, Aparna Vashisht-Rota, verify under oath that the petition is made in good faith.

CONCLUSION

Ms. Rota respectfully requests that this Court grant this petition for rehearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aparna Vashisht Rota".

/s/ Aparna Vashisht-Rota Pro

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

December 11, 2022

Certificate of Compliance

I hereby certify that: This brief complies with the word limits set forth in Supreme Court Rule 33.1, because this brief contains 2, 730 words, excluding the parts of the brief exempted by United States' Supreme Court R. 33.

DATED this 11th day of December, 2022.

A handwritten signature in black ink, appearing to read "Aparna Vashisht-Rota". The signature is cursive and includes a small circle around the "A" in "Aparna".

/s/ Aparna Vashisht-Rota

Certificate of Service

This is to certify that on the 11th day of December 2022, I caused the corrected Petition for Rehearing of the *Writ of Certiorari of Petitioner Aparna Vashisht Rota* to be served via email on:

Mr. Jeff Shields

Ray Quinney & Nebeker PC
36 South State Street
Suite 1400

Salt Lake City, Utah 84111
Ph: 801 532 1500
Email. hi@rqn.com

*Attorneys for Howell Management Services, LLC
and Chris Howell*

DATED this 11th day of December, 2022.

/s/ Aparna Vashisht-Rota

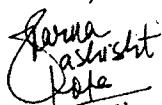
December 30, 2022

Dear Mr. Levitan:

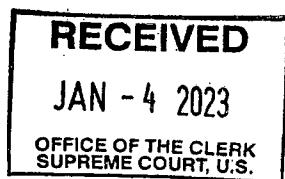
I got your letter dated 12/15/2022 today. The 40 copies should be with you. It was supposed to get there earlier but due to the holidays, there was a delay. You sent the paper copy back so I have sent it back to you.

The certificate of good faith is on the last page of the petition and it covers substantive issues not presented previously. If you also consider the petition for rehearing in Appendix One along with the Appendix One, then that also provides the way to set aside the ruling.

Thanks,



Aparna



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