

No. 22-477

In the
Supreme Court of the United States

LEZLIE J. GUNN,

Petitioner,

v.

HANS-PETER WILD,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

REPLY BRIEF OF PETITIONER

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CORRECTED STATEMENT OF FACTS

As usual, Wild and his attorney Maurice misstate the facts (and use outrageous hyperbole).

I was Wild's business consultant, and a key driver of his financial success. Wild is trying to frame this litigation as something it is not, which is just a smoke-screen to attempt to conceal Wild's breach of our oral and written contracts, and to deflect this Court's necessary scrutiny of this extraordinarily important national issue that affects all Americans (which has never been addressed by this Court)—that currently Americans have no recourse against law-breaking resident foreigners under these circumstances in the current system (as proven by my unsuccessful attempts, due to Wild's groundless opposition financed by the billions he obtained from this country and from my work, in multiple courts over the past six years, to recover from Wild what he owes me for my consulting work).

The second sentence attempts to spin my previous litigation against Wild, but fails to point out the fact those multi-state lawsuits support my very point that Wild has had and continues to have extensive and long-term contacts throughout the United States, as evidenced by those actions.

The third sentence apparently attempts to make Wild's Swiss litigation against me relevant to my action against him here in the United States. Wild's choice to sue me in his home country has nothing to do with my right to seek justice against him here in my country. Am I required to prosecute my grievance

against Wild in Switzerland, just because he has sued me there? And this argument demonstrates the hypocrisy of his *forum non conveniens* claim.

The second paragraph begins with a blatant misstatement of my Petition. I am not arguing wealthy foreign nationals are not entitled to due process; I made it quite clear minimum contacts should continue to be required to find personal jurisdiction over a foreign national. My request to this Court is that extensive contacts, such as Wild's, be sufficient in and of themselves to find personal jurisdiction over foreign nationals. *See infra.*

I. Wild's Assertion the District Court Failed to Find Personal Jurisdiction Is Irrelevant.

Wild starts his argument with an irrelevancy. Yes, the District Court failed to find personal jurisdiction, based on a lack of nexus between Wild's breach of contract and his activities in Kentucky, but that is the whole point of this appeal. The District Court followed the law as it stands now; the purpose of my appeal to this Court is to request the law be changed, eliminating the requirement of a direct nexus between a foreign national's law breaking and his activities in a state, where the foreign national's contacts with the state(s) are so extensive as to render it unjust to not find jurisdiction.

II. Wild's Reliance on His Shareholder Status Is Unfounded.

Wild relies on the law by which shareholders of a corporation are not subject to claims against the corporation. But this is not a case where an individual Apple shareholder is being sued for an Apple breach of contract. Wild's family of companies

are/were either owned outright by Wild, or are/were controlled by him. It's also not a case where a shareholder is being haled into a court the shareholder has no connection with. The Kentucky residence was purchased at Wild's direction and with his money. He resided there every time he was in Kentucky, which was frequently and over many years (he still has personal belongings in that residence). He built his manufacturing plant in Kentucky, his "crown jewel," and personally oversaw it over the course of 20 years. Wild was not just the shareholder; he actively ran the company as President, CEO and Chairman (as stated on his personal Kentucky business cards). Wild maintained a huge and the largest office in the Kentucky facility. He presided over board meetings and management meetings in Kentucky; such meetings were not allowed to be held without him present. Wild attended customer visits and customer meetings; went to trade shows and met with all his key customers throughout the United States. Wild was NOT a distant shareholder. He sponsored customer entertainment with golf trips to many golf courses throughout the United States; he even flew them in his private plane, including Pepsi, Coca-Cola, and SoBe. Wild's is a distinction without a difference.

Note that Wild does not deny having all of those private club memberships in Kentucky. He simply states he has them "all over the world" (and since "the world" includes the United States, he is admitting he has memberships all over the United States). He claims that proves he is not "at home" in Kentucky; Wild again misunderstands the whole point of my appeal. I am not alleging Wild is at home in Kentucky; I am alleging the extensive and long-standing contacts

with Kentucky render him subject to jurisdiction in Kentucky.

III. My Role in Wild's Success Cannot Be Overstated.

Wild owes his enormous financial success to me. It is absolutely true I was employed as his consultant. I sat next to him at all board of director meetings. I saved him from making disastrous blunders¹, and created many money-making endeavors for him. I have proof of my consultant status in the form of checks from Wild's corporate account as well as wires from Wild's personal account to me for consulting fees. See my Opposition to Motion to Dismiss, Gunn Declaration, October 14, 2021, Kentucky District Court case no 2:20-cv-00150, Document 35-1. It is also true Wild himself named me his "Director of Strategic Planning and New Business"; Wild himself directed I be given business cards with that title, that I submitted to the Kentucky District Court, which proves it. *Id.* Wild also referred to me as his "Chief General Counsel." And much of my consulting work was provided to Wild when he was in Kentucky.

¹ The most important of which involved the sale of Wild Flavors to AGM for \$3,100,000,000.00, and the escrow for the sale, in which Wild's attorneys attempted to appoint themselves as Wild's attorneys-in-fact in the escrow instructions in order to illegally divert the sale proceeds to themselves, until I exposed the plot and therefore personally saved Wild billions. This act of mine, and Wild's gratitude for, was the basis for our oral contract for a lifetime of unlimited spending.

IV. The Release and Merger Clauses Are Irrelevant.

First of all, Wild claims my Amended Complaint only contained the one cause of action for breach of written contract. This is not true; even a cursory review of my Amended Complaint will reveal the merger clause incorporating all the allegations of my initial Complaint, which included a cause of action for breach of oral contract².

Second, my allegations relating to my oral contract with Wild support my position that Wild had extensive contacts with Kentucky. Many of Wild's acts in the creation and furtherance of our oral contract were conducted in Kentucky.

Third, it is ironic Maurice bases his opposition to my Petition on a clause in the Release and Settlement Agreement, which contract is the subject of his Swiss suit for rescission against me in Switzerland. Maurice speaks out of both sides of his mouth like this all the time; in Switzerland he argues the Release and Settlement Agreement is void and of no legal effect³, but here where it is convenient to do so he argues the Release and Settlement Agreement is enforceable and therefore a bar to my current action.

² If Maurice is successful in rescinding the Release and Settlement Agreement in his Swiss action against me, this will void the release and merger clause, and will therefore eliminate this defense to my suit against Wild for breach of his oral contract with me for a lifetime of unlimited spending.

³ Wild brought his suit against me in Switzerland, not because he has any valid legal grounds, but pursuant to his standard *modus operandi* which is to "go on the attack" in order to avoid his legal obligations, rather than acknowledge and pay his debts.

Wild again bases his opposition on his ineffective assertion the lower courts found the oral promises did not "arise from" his activities. As discussed *supra*, his opposition is addressing the wrong issue.

V. *Ponder v. Wild*, a Related Case, Established Kentucky Has Jurisdiction Over Wild.

Wild makes a big deal about his residency and citizenship of Switzerland, and how that necessarily precludes Kentucky jurisdiction over him. This is obviously not true, since the District Court of Eastern Kentucky has already ruled that Wild is subject to justice in Kentucky, despite his Swiss status.

The *Ponder* case and my case are very similar. We both worked for Wild; we both worked for Wild in Kentucky for 20 years; we both had offices in Wild's Kentucky facility; both of us have sued him for breach of oral contract (Wild insisted on these oral contracts); the subject matter of both of our oral contracts is based on our employment with Wild; I am a material witness in the *Ponder v. Wild* case, since the three of us worked closely together in Kentucky.

It is interesting Wild bases his opposition on an unsubstantiated and self-serving claim he supposedly intends to appeal the ruling he is subject to Kentucky jurisdiction. Wild's opposition fails—if he truly felt he was not subject to Kentucky jurisdiction, he would have appealed it long ago and had Mr. Ponder's case against him dismissed. Why would Wild subject himself to years of litigation if it was unnecessary? Either he is lying about his intent to appeal, or his lawyer Maurice has given him bad advice and is stringing this litigation out simply to run up his legal fees.

VI. Wild's Status as a United States Resident Under the Substantial Presence Test Is Relevant.

Once again, Wild's lawyer Maurice fails to comprehend the nature of my Petition. The fact Wild is, and has been for decades, a United States resident under the Internal Revenue Service's Substantial Presence Test is relevant to the issue under consideration, which is whether extensive contacts with the United States and with the state in question by a foreign national are sufficient by themselves to find personal jurisdiction over that foreign national. And the fact Wild's contacts are so extensive as to meet the Substantial Presence Test is extremely germane to this issue.



REASONS FOR GRANTING THE PETITION

Wild bases his opposition to my Petition on the grounds the Sixth Circuit did not decide an important question of federal law that has not been, but should be, settled by this Court, and has not decided an important federal question in a way that conflicts with relevant decisions of this Court.

These grounds for opposition are meritless. On the contrary, the matter at issue is an important question of federal law that should be settled by this Court. As my Petition makes clear, the current state of jurisdictional law *vis a vis* foreign nationals is unjust, and unfair to American citizens. As it is, foreign nationals are allowed to enter into this country, by their own choice, to take advantage of this great

country and the opportunities it creates, to spend so much time in America as to become United States residents and therefore obligated to pay income tax, to become fabulously wealthy, to pay no income tax, to break the law and injure American citizens by breaking his contracts, and then skip out and avoid justice by asserting they are not subject to American jurisdiction! This particular case against Wild is a perfect example. He came to America voluntarily, and especially to the state of Kentucky (it was Wild's choice to move the Ohio-based F&C International company he bought to Kentucky, and rename it Wild Flavors), to establish a major manufacturing plant, in Kentucky specifically because it offered wonderful tax benefits and major financial incentives and subsidies, spent and still spends as much or more time in America, including Kentucky, as he does anywhere else, became a multi-billionaire when he sold his Kentucky business for over three billion dollars (\$3,100,000,000.00), paid no income tax at any time on this amount or any other despite his status as a United States resident per the Substantial Presence Test, breached his written and oral contracts with me⁴, and now claims he is not subject to Kentucky (or any other state's jurisdiction⁵) and should be allowed to just get away with it because he is a resident of Switzerland.

⁴ Both of these contracts were based on Wild's Kentucky business. My consideration for our oral contract was services rendered in the growth of the Kentucky business. And our written contract was simply a replacement for our oral contract.

⁵ I also attempted to bring Wild to justice in Nevada and California, due to his extensive contacts with those states, and Wild fought me tooth and nail there as well.

Further, the Sixth Circuit in fact did decide a federal question in a way that conflicts with a relevant decision of this Court. As clearly set forth in my Petition, the Sixth Circuit's decision is in direct conflict with the recent United States Supreme Court's decision in *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017 (2021). The *Ford* case explicitly separated "arising from" and "related to" as two independent standards, either of which can support a finding of jurisdiction. The Sixth Circuit considered only the "arising from" standard, and utterly failed to consider the "related to" standard. This is a clear failure by the Sixth Circuit to abide by a precedent of the United States Supreme Court.



CONCLUSION

Wild's claim I am requesting this Court eliminate all due process protections for foreign nationals is absurd. Contrary to the misplaced arguments in the Opposition, the point of my Petition is to simply request this Court carve out a much needed narrow exception, only relating to foreign nationals, to the current jurisdictional requirement that a claim arise from or relate to an instate activity, and hold that extensive and long-term contacts are alone sufficient to find personal jurisdiction over foreign nationals (which would satisfy due process concerns).

Respectfully submitted,

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