

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JEFFREY SALT – Petitioner

VS.

WATERKEEPER ALLIANCE, INC. – Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Were Jeffrey Salt's fifth amendment due process rights violated when the District Court, in a federal civil trademark case between two corporations, ruled that he was bound by an injunction and subject to imprisonment for civil contempt as a non-party, after denying him entry into the case as a party, thereby prohibiting him from asserting his individual right to disputed intellectual property?

LIST OF PARTIES

All parties appear in the caption of the case on the cover sheet except:

Spirit of Utah Wilderness, Inc., d/b/a Great Salt Lakekeeper, or Great Salt Lake Water Keepers,
Defendant-Counter-Claimant

RELATED CASES

None

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OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinions of the United States district court appear in Appendix B, C and D and are unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 22, 2022.

No petition for rehearing was timely filed in the case.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

“No person shall ... be deprived of life, liberty or property without due process of law.”

STATEMENT OF THE CASE

This case arises out of litigation between two corporate entities, Waterkeeper Alliance, Inc. (“Waterkeeper”), a New York corporation, and Spirit of Utah Wilderness, Inc. (“SUW”), a Utah corporation. Waterkeeper sued SUW in the Southern District of New York for trademark infringement, breach of contract, and unfair competition under state and federal law. SUW is a former member organization of Waterkeeper, a network of organizations dedicated to protecting waterways worldwide. Appellant Jeffrey Salt, a corporate officer and principal of SUW, a Utah resident with no ties to New York State, was not a party to the litigation.

The litigation involved ownership and the right to use intellectual property, the Waterkeeper trademarks, which included the name “Lakekeeper.”

Waterkeeper moved for summary judgment. SUW failed to respond to the motion. The District Court entered a default judgment in favor of Waterkeeper and against the corporate defendant SUW. The judgment enjoined both SUW, and Jeffrey Salt as an individual, from using the Waterkeeper marks. (Appendix D, page 10).

Jeffrey Salt claimed that he had an individual right and property interest in the tradename “Lakekeeper,” as the first person or entity in the United States to create, develop and reduce the name Lakekeeper to commercial use in the form of Great Salt Lakekeeper. Indeed, Waterkeeper in a court filing early in the case, prior to entry of the default judgment,

recognized that Salt identified himself individually as the “Great Salt Lakekeeper” without any reference to SUV, and took the position that Salt should be added as an individual defendant. (DC, ECF No.43).

However, because the District Court denied Mr. Salt’s motion to intervene and/or be substituted as an individual defendant in the litigation prior to granting the default judgment, Salt, a non-party, was deprived of the opportunity to pursue his viable legal claim of an individual property interest in the Lakekeeper mark, but he was, nonetheless, bound as an individual by the injunction against SUW, and subject to draconian fines and arrest and incarceration based solely on his status as an officer of the defaulting corporation. Because of the corporate party’s default, Mr. Salt was deprived of any due process opportunity to assert his individual property claims.

Salt did not comply with the terms of the default judgment and was twice held in contempt of court.— A third contempt order directed Mr. Salt to surrender to the custody of the United States Marshal unless he purged himself by complying with the requirements of the default judgment and prior contempt order. Salt sought multiple extensions in the surrender/purge date of the third contempt order and moved for relief from the order under Rule 59(e), which motion was denied

Salt appealed this third contempt order and denial of Rule 59(e) motion to the United States Court of Appeals for the Second Circuit.—

The United States Court of Appeals For the Second Circuit affirmed the District Court orders holding Mr. Salt in contempt and directing his

imprisonment and denying his rule 59(e) motion.

REASONS FOR GRANTING THE PETITION

As highlighted in the Fifth Amendment, a person cannot be deprived of liberty or property without due process and the opportunity to have his day in court.

By affirming the district court's contempt order directing Mr. Salt's incarceration and denial of Mr. Salt's Rule 59(e) motion challenging this order, the United States Court of Appeals for the Second Circuit ignored a blatant violation of Mr. Salt's Fifth Amendment Due Process rights by sanctioning the unconstitutional taking, under threat of incarceration, of an individual's intellectual property without due process of law. The actions of Judge Roman in holding Jeffrey Salt as an individual in contempt of court under the circumstances of this case, sanctioned by the Court of Appeals rulings, departed to such an extent from the accepted and usual course of judicial proceedings, as to call for an exercise of the Supreme Court's supervisory power to correct.

Mr. Salt as an individual was never a party to the litigation between Waterkeeper Alliance, Inc. and Spirit of Utah Wilderness, Inc.

The default judgment and order issued by the District Court, which ultimately led to the contempt orders at issue, restrained and enjoined Jeffrey Salt as an individual from using the "Waterkeeper Marks."

As documented in his Rule 59(e) submission, and prior case filings,

Mr. Salt had a substantive individual claim to the trademark “Lakekeeper,” as the first person or entity to reduce the name Lakekeeper to commercial use in the form of Great Salt Lakekeeper. Judge Roman denied him the opportunity to pursue and assert this individual claim in litigation by initially denying Salt’s motion in the case for intervention and substitution as an individual party, and latter, refusing to reconsider his decision in denying the Rule 59(e) motion that was affirmed in the appeal at issue.

Mr. Salt is a Utah resident with no personal and business connection with New York State and the Southern District of New York as would subject him to the jurisdiction of the District Court.

The Default Order and the subsequent contempt orders are all based on the premise that the District Court has jurisdiction over Salt as an individual and can enjoin him from using and enjoying intellectual property, and further, can punish him with fines, damages, and imprisonment, without according him the basic due process right as a party in litigation to assert and defend his ownership claim to the disputed trade name.

The Supreme Court should grant certiorari to review the circumstances under which a federal District Court judge is authorized to utilize contempt power to imprison an individual who is not a party to litigation and who has been wrongfully denied his right to enter the litigation to assert an individual claim to property rights.

The seminal and often cited case on this issue is *Alemite Mfg. Corporation v. Staff*, 42 F.2d 832 (1930). This was a patent infringement case. The principal holding of J——Judge Hand was that “... no court can make a decree which will bind any one but a party... it cannot lawfully enjoin the world at large, no matter how broadly it words

its decree.” Further “It is not vested with sovereign powers to declare conduct unlawful; its jurisdiction is limited to those over whom it gets personal service, and who, therefore can have their day in court.” (Alemite, 832-833).

The Court in Alemite notes that a person who knowingly assists a defendant in violating an injunction is subject to contempt. “Thus, the only occasion when a person not a party may be punished, is when he has helped to bring about, not merely what the decree has forbidden, because it may have gone too far, but what it has power to forbid, an act of a party. This means that the respondent must either abet the defendant or must be legally identified with him.” (Alemite, 833).

See also, *G&C Merriam Co. v. Webster Dictionary Co. Inc.* 639 F.2d 29,35 (1st Cir. 1980; (‘To hold a nonparty bound by an injunction it is essential to prove either that the nonparty participated in the contumacious act of a party or that the nonparty was subject to the injunction because legally identified with a party.’)

There is caselaw and statutory law which recognizes the authority of the Court to hold a non-party in contempt in limited circumstances.

Federal Rule of Civil Procedure 65(d)(2), with respect to injunctions, provides:

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties.

(B) the parties’ officers, agents, servants, employees, and attorneys.

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

A non-party may be bound by being legally identified with an enjoined party as a "successor or assign." However, the transfer of assets from one entity to the other must occur after issuance of the injunction for a non-party to be liable as a successor in interest. (See, *Herrlein v. Kankakis*, 526 F.2d 252, 254-255 (7th Cir. 1975)).

In *National Labor Relations Board v. Hopwood Retinning Co.* 104 F.2d 302, 305 (2d Cir. 1939), the Court, (quoting *Wilson v. United States*, 223 U.S. 361, 376 (1911)), held "It is well settled that [a] command to a corporation is in effect a command to those who are officially responsible for the conduct of its affairs." If they, apprised of the writ directed to the corporation, prevent compliance, or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt. "The non-parties in this case were the corporate officers and the orders they were defying were clearly corporate mandated unfair labor actions that could only be conducted by a corporation through its agents; failure to pay wages, reinstate employees locked out and engage in collective bargaining. See also, *CBS Broadcasting Inc. v. Filmon.Com, Inc.* 814 F.3d 91 (2d Cir. 2016).

There is no question that a court has the power to enjoin a non-party responsible for the conduct of a contemptuous corporation. An officer and agent of a corporation can be held in contempt for a corporation's non-compliance with a court order. But the exercise of this power must relate to the required actions or non-actions of the corporation.

Salt's case is distinguishable from these cases and their progeny. He was not trying to prevent compliance by Spirit of Utah Wilderness, Inc. with the terms of the injunction. He was not acting in the capacity of a corporate agent or officer to prevent compliance by a corporate party with a court mandate as occurred in the NLRB and CBS cases. The individual corporate officer may have property rights and interests separate and independent of those that may be claimed by a corporation in litigation including an interest and/or ownership of a trademark. Salt's actions were individual and not those of, or on behalf, or in privity with a corporate defendant.

As was set forth, in detail in his Rule 59(e) motion, Salt only wished to be accorded the opportunity to establish in Court as a party in a civil proceeding his individual right to disputed intellectual property; a right he asserts predated any claim by plaintiff and defendant, and a right separate, apart, and independent of any right asserted by the defaulting corporate party, Spirit of Utah Wilderness, Inc. (SUW). The court cannot arbitrarily deny the individual the fair opportunity to participate in the litigation as an individual party to establish those individual rights in the context of a civil lawsuit because of his or her status as a corporate officer of a defaulting party.

Fed. R. Civ. P. 60(b)(6) gives the district court broad authority and discretion to prevent manifest injustice in an appropriate case. It was an abuse of discretion for Judge Roman to deny Salt's motion seeking relief from the default judgment, contempt order and subsequent resulting imprisonment order. Mr. Salt was denied the opportunity to assert this individual right by virtue of the court's denial of his motion to intervene as a party. Mr. Salt never had his day in Court to assert his individual entitlement to the Trademarks at issue.

The district court further, abused its discretion, by not considering the additional case law and authorities submitted by CJA counsel to supplement Mr. Salt's filed pro se Rule 59(e) motion.

In summary, Salt's case raises fundamental legal issues with respect to personal jurisdiction, the relationship between a corporate party and its officers, deprivation of liberty and property without due process of law.

Substantial justice and fundamental due process required that Mr. Salt as an individual should have been given the opportunity to have his day in court as a party in the Waterkeeper case, a right separate and apart from SUW, and that he not be subject to imprisonment as a non-party, under the circumstances of this case.

The Supreme Court should exercise its discretionary supervisory power to correct this injustice by overturning the decision of the Court of Appeals and vacating the District Court's contempt order and denial of Salt's Rule 59(e) motion and accord Jeffrey Salt his day in court as a party.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/S/ Joseph A. Vita

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Attorney for Jeffrey Salt, Petitioner

Dated: November 16, 2022