No. 22A___

In the Supreme Court of the United States

BLUE FLAME MEDICAL LLC,

Petitioner,

v.

CHAIN BRIDGE BANK, N.A., ET AL.,

Respondents.

APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM JUNE 20, 2023, TO AUGUST 17, 2023

To the Honorable John G. Roberts, Jr., as Circuit Justice for the Fourth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, Blue Flame Medical LLC respectfully requests that the time to file a petition for a writ of *certiorari* be extended 58 days from June 20, 2023, to and including August 17, 2023. The Fourth Circuit issued its opinion on March 20, 2023. App. 2. Absent an extension, the petition would be due on June 20, 2023.[1] This application is being filed at least 10 days before that date. *See* Sup. Ct. R. 13.5. This Court will have jurisdiction to review the petition under 28 U.S.C. § 1254.

[1] Ninety days from March 20, 2023, is Sunday, June 18, 2023. The Following day, Monday, June 19, 2023, is a federal legal holiday. *See* 5 U.S.C. § 6103(a) (recognizing "Juneteenth National Independence Day, June 19"). Thus, the petition was originally due on June 20, 2023. *See* Sup. Ct. R. 30.1.

1. This case presents important questions regarding the U.S. Federal Reserve Bank's Regulation J, which incorporates Article 4A of the Uniform Commercial Code (Article 4A) governing cash-equivalent interbank payment orders, colloquially known as "wire transfers." Specifically, the case raises the questions (a) whether U.C.C. § 4A-204(a) requires repayment when a bank accepts a payment order falsely issued in its customer's name, and (b) whether Article 4A preempts state-law claims respecting a bank's knowingly false issuance of a payment order in its customer's name. The Fourth Circuit held that (a) "Section 4A-204(a) is simply inapplicable" to the knowingly unauthorized wire transfer that petitioner's bank made from petitioner's account, App. 12-14 & n.2, and yet also, somehow, that (b) this same conduct "falls within the scope of Article 4A" such that petitioner's state-law claims against its bank, based on that conduct, are preempted. App. 14-16.

Respondents include the two banks from which a wire transfer was initiated and received, respectively, and then wired back without the petitioner account holder's authorization after the funds had already been accepted by the receiving bank into petitioner's account—the receiving bank being respondent Chain Bridge Bank, N.A. Chain Bridge Bank's top executives who were involved in executing the unauthorized wire from petitioner's account are also respondents.

This case arises from Chain Bridge Bank's unauthorized wire of hundreds of millions of dollars out of petitioner's account, causing the collapse of an over $600 million contract between petitioner and the State of California, which ordered personal protective equipment from petitioner during the early days of the COVID-

19 pandemic. App. 5-6. Chain Bridge Bank wired over $450 million in prepaid funds to California's account with respondent JPMorgan Chase Bank, N.A., admittedly without petitioner's authorization, that California had already successfully wired to petitioner to fulfill an order for at least 100 million N95 masks. App. 7-9.

Petitioner brought this case alleging, among other things, a violation of Regulation J, which unambiguously provides that, unless they follow certain verification procedures not at issue here, banks are liable for processing payment orders their customers did not in fact authorize. U.C.C. § 4A-204(a). Chain Bridge Bank argued, among other things, that its conduct in wiring funds that it had already accepted into petitioner's account did not implicate § 4A-204(a), and that petitioner's state law claims for conversion, fraud, constructive fraud, negligence, and breach of contract were preempted because the bank's "challenged conduct" nevertheless "falls within the scope of Article 4A." *See* App. 12, 16.

2. The U.S. Federal Reserve Bank long ago developed the Fedwire Funds Transfer System so that "interbank payment obligations" could be settled without "the physical delivery of cash or gold … , which was both risky and costly." Bd. of Governors of the Fed. Resrv., *Fedwire Funds Transfer System: Assessment of Compliance with the Core Principles for Systemically Important Payment Systems* (revised July 2014), https://tinyurl.com/4mbwzd4b. Today, the Fedwire Funds Service is routinely used for "time-critical payments such as the settlement of commercial payments and financial market transactions" between banks and bank customers largely because it settles each transaction on a real-time basis. *See ibid.* Such

payment "to the receiving participant over the Fedwire Funds Service is final and irrevocable when the amount of the payment order is credited to the receiving participant's account." *Ibid.*

Despite the Fedwire's benefits, major economic actors still lacked the certainty that inhered in cash transactions because, for a long time, only state law governed what happened if a wire transfer went wrong. *See* U.C.C. § 4A-102 cmt. The solution was Article 4A of the Uniform Commercial Code, which, as previewed above, the Federal Reserve Board incorporated into Regulation J. Funds Transfers Through Fedwire, 55 Fed. Reg. 40,791-01 (Oct. 5, 1990); 12 C.F.R. § 210.25(b)(1).

Interrelated provisions of Article 4A clearly assign the risk of loss in various circumstances—including when banks make transfers that do not follow Article 4A's "precise and detailed rules" for determining whether a wire is authorized. *See* U.C.C. § 4A-204 & cmt. 1 (explaining circumstances where "the bank takes the risk of loss with respect to an unauthorized payment order"). Thus, the rules firmly require that, once a transferee's bank has accepted a wire, it must give the funds to the intended recipient. *See* U.C.C. § 4A-404(a). Article 4A does not allow for this requirement to be altered by agreement, *id.* § 4A-404(c), while making it virtually impossible to cancel a wire once the transferee's bank has accepted it, *see id.* § 4A-211(c)(2). Indeed, because the cash belongs to the transferee as soon as it arrives, such an order cannot be cancelled even with the consent of that beneficiary's bank "except in unusual cases" involving either the consent of all affected parties or very specific technical mistakes. *See id.* § 4A-211(c)(2) & cmt. 4 ("Since acceptance [by the beneficiary's

bank] affects the rights of the originator and the beneficiary it is not appropriate to allow the beneficiary's bank to agree to cancellation or amendment, except in unusual cases.").

The result of these detailed rules is that "[t]he function of banks in a funds transfer under Article 4A is … essentially mechanical in nature." U.C.C. § 4A-104 cmt. 3. It is thus clear both what banks need to do to avoid creating liabilities in funds transfers and what liability they face if they violate their role in the machine. Relevant here, § 4A-204(a) provides:

> If a <u>receiving bank</u> <u>accepts</u> a <u>payment order</u> <u>issued</u> in the name of its customer as <u>sender</u> which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund.

U.C.C. § 4A-204(a) (emphasis added).

3. Interpreting Article 4A's provisions, the district court held that § 4A-204(a) is not applicable to the payment order that respondent Chain Bridge Bank generated to return the money California already transferred to petitioner back into the State's account with respondent JPMorgan, because the district court believed the payment order was merely "issued" by Chain Bridge Bank *to itself* rather than "accepted" by Chain Bridge Bank. App. 10 (quotation marks omitted).

The Fourth Circuit affirmed. App. 12. The court did not dispute that Chain Bridge Bank had conceded that it had already accepted the wire from California and credited $450 million to petitioner's account with Chain Bridge Bank. And the court

acknowledged that JPMorgan's "cancellation" of the already-accepted wire was "ineffective." App. 13 n.2. Nevertheless, the court held that "[w]hat occurred here was not a funds transfer" that implicated § 4A-204(a), "but a cancellation." *Ibid.* So too, the court agreed with the district court's conclusion that "the payment order generated to return California's funds was issued—rather than accepted—by Chain Bridge." App. 13.

The court rejected petitioner's argument that under the plain text of § 4A-204(a), a "receiving bank" is a bank that receives a *payment order* (not the funds), *see* U.C.C. § 4A-103(a)(1), (3)-(4), and it "accepts" that payment order when it sends out funds in response, *see id.* § 4A-209(a) ("a receiving bank … accepts a payment order when it executes the order"). Instead, the court accepted Chain Bridge Bank's argument that it had issued "*its own* payment order" to itself, naming petitioner as "originator," rather than having "accepted" or "received" any payment order naming petitioner as "sender." *See* Resp. Br. for the Appellees, Doc. 64, at 33, 35-36 (emphasis added).

As petitioner had explained, issuing "its own payment order" naming its customer as the "originator" is precisely how an originator's bank "accepts" the originator's payment order under Article 4A—indeed, that is what it *means* to accept a customer's payment order. But the court believed that accepting petitioner's argument "would mean that a bank violates U.C.C. § 4A-204(a) every time it complies with a cancellation and that cannot be true." App. 14, n.2. The court did not explain why that would follow when § 4A-204(a) would only apply in cases where, as here, there was no effective cancellation. As petitioner explained, and the court accepted, the

cancellation was ineffective. *See* App. 13, n.2. It therefore couldn't possibly affect how Article 4A's "precise and detailed rules" governing a bank's "essentially mechanical" role in a funds transfer assign liability. U.C.C. § 4A-102 cmt.; *id.* § 4A-104 cmt.3.

4. The district court had previously held without reasoning, at the motion to dismiss stage, that petitioner's state law claims for conversion, fraud, constructive fraud, negligence, and breach of contract are preempted by Article 4A. *See* App. 14. Importantly, the district court ruled that these claims are preempted before it ultimately resolved, at the summary judgment stage, that Chain Bridge Bank's conduct did not, after all, implicate § 4A-204(a).

The Fourth Circuit affirmed this holding too. App. 14. The court did not explain how affirming *both* district court rulings could be internally consistent, when the district court first held, at the motion to dismiss stage, that petitioner's state law claims against Chain Bridge Bank were preempted because the alleged misconduct implicated Article 4A and then later held, at the summary judgment stage, that the same conduct did not implicate § 4A-204(a). Petitioner had explained that the district court simply could not be right that *neither* state law *nor* Article 4A proscribes Chain Bridge Bank's unlawful conduct here.

In other words, petitioner explained that if Article 4A does not apply to Chain Bridge Bank's conduct, then it could not preempt petitioner's state law claims based on that conduct. Nevertheless, without addressing this contradiction, the Fourth Circuit held that the "district court appropriately dismissed these claims, because they are foreclosed by the 'strong doctrine of preemption' for 'state causes of action

that essentially overlap or dovetail' with the provisions of Article 4A," App. 14 (quoting district court), despite the court of appeals' holding *on the very same page* that "Section 4A-204(a) is simply inapplicable to this situation," App. 14 n.2.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 58 days for the following reasons:

1. The forthcoming petition is likely to be granted. Under the Fourth Circuit's result-oriented decision, clearly biased against petitioner's principals, who the court described as conservative "political consultants" without "any experience in the field of medical supplies" who "[n]evertheless …. formed Blue Flame" to "connect[] … medical supply companies with buyers" at the beginning of the COVID-19 pandemic, App. 5, banks are free to wire their customers' money to whomever they want, without consequence, because according to the court, neither § 4A-204(A) *nor* common law can reach a bank's unambiguously wrongful conduct in knowingly wiring funds out of their customers' accounts without authorization. That drastic result demands a response from this Court, before other bank customers are harmed to the tune of hundreds of millions of dollars as petitioner was damaged here, entirely without consequence to the wrongdoing banks.

And the Fourth Circuit was plainly wrong in its inconsistent rulings. The court's reasoning that "[w]hat occurred here was not a funds transfer, but a cancellation," is entirely incompatible with the court's acceptance that the purported "cancellation" was "ineffective." App. 13 n.2. As Article 4A's official commentary explains, "[t]here

is no concept of wrongful cancellation or amendment of a payment order. If the conditions stated in [§ 4A-211] are not met the attempted cancellation or amendment is not effective." U.C.C. § 4A-211 cmt. 1. Plainly, Chain Bridge Bank's wire transfer to JPMorgan could not be effected by Chain Bridge Bank accepting a cancellation of JPMorgan's original funds transfer where the district and appellate courts agreed there was not an effective cancellation. It thus had to be accomplished by acceptance of the new payment order that (again, according to the Fourth Circuit itself) had been "issued … by Chain Bridge" Bank and not petitioner. App. 13.

It will be particularly critical that this Court reverse the Fourth Circuit's preemption holding if it accepts that Chain Bridge Bank's conduct is not otherwise prohibited by § 4A-204(a). That is because, if the Fourth Circuit is right that: (1) Chain Bridge Bank did not "accept" the unauthorized payment order insofar as it issued that order to itself; (2) issuing that unauthorized order to itself is not covered by § 4A-204(a); *and* (3) state-law causes of action for that wrongful issuance are still preempted, the upshot will be that banks can wire money out of their customers' accounts any time they wish simply by drawing up their own unauthorized payment orders—free from any consequence under *either* Regulation J or any other source of authority (given Regulation J's preemptive effect).

This is not and cannot be the law. Instead, Article 4A sets up a plain and simple system where a bank's acceptance of an unauthorized order—even one it issues to itself—is regulated by § 4A-204(a) and the fraudulent creation of that order remains subject to ordinary common-law remedies. Rejecting either proposition would have

been incorrect. The Fourth Circuit's rejection of both is catastrophic and requires correction.

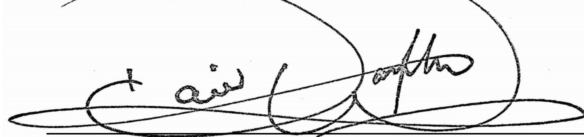
2. The press of other matters before this and other courts makes the existing deadline on June 20, 2023, difficult to meet. Petitioner only recently retained undersigned counsel to assist in preparing this petition. Further time is required to allow counsel to study the voluminous record and prepare a concise petition for the Court's review. In addition to this case, counsel has other briefs due in this Court in June and August, as well as multiple briefs in several federal and state courts of appeals.

3. Whether or not the extension is granted, the petition will be considered—and, if the petition were granted, the case would be considered on the merits—in the next Term. The extension thus will not substantially delay the resolution of this case or prejudice any party.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended for 58 days to and including August 17, 2023.

Respectfully submitted,



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