

IN THE SUPREME COURT OF THE UNITED STATES

No. ____

TRANSPERFECT GLOBAL, INC.,
and PHILIP R. SHAWE,

Applicants,

v.

ROBERT PINCUS,

Respondent.

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.,
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT FOR THE STATE OF DELAWARE**

Pursuant to Supreme Court Rule 13(5), TransPerfect Global, Inc., and Philip R. Shawe (collectively, “Applicants”) hereby move for an extension of time of 60 days, to and including November 18, 2022, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be September 19, 2022.

In support of this request, Applicant states as follows:

1. The Supreme Court of the State of Delaware rendered its decision on June 1, 2022 (Exhibit 1). That court denied Applicants’ motion for re-argument on June 21, 2022 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1257(a).

2. Applicant Shawe co-created Applicant TransPerfect Global, Inc. (“TPG”), a provider of translation, litigation support, and website localization services, in 1992. Over the

ensuing two decades, with Shawe and his co-founder Elizabeth Elting at the helm, TPG grew into a highly successful enterprise, with revenues in the hundreds of millions of dollars.

3. In 2014, amid business disagreements between Shawe and Elting (who were once engaged and then estranged), Elting filed a petition with the Delaware Court of Chancery asking that court to appoint a custodian to sell TPG based on a claim of imminent irreparable harm to the company stemming from alleged deadlock between the co-founders, who controlled TPG evenly (Shawe with his mother's supporting one percent vote).

4. The Court of Chancery ultimately appointed Respondent Pincus to serve as custodian of TPG to oversee a sale. The court also named Pincus as the third director of TPG (along with the two founders) and instructed him to break ties on critical business decisions.

5. After an arduous and expensive process supervised by Pincus, Shawe won a court-ordered auction for Elting's fifty percent (50%) stake in TPG in November 2017. Shawe agreed to purchase the shares for \$385 million in cash. The Court of Chancery entered a order finally approving the sale agreement ("SPA") on February 15, 2018 (the "Final Order").

6. In mid-2019, Pincus, who was entitled to certain fees as a result of his court-appointed role, and who up until that point had requested and received fees from an escrow account created by the SPA and funded evenly by Shawe and Elting for that purpose, sought \$62,203.85 in fees directly from nominal-party TPG, rather than from the escrow account. The Court of Chancery entered orders approving these fee requests (the "2019 Fee Orders"). Shortly thereafter, TPG filed suit against Pincus in Nevada state court, arguing that, under the SPA, TPG was not required to indemnify Pincus for the fees he had sought.

7. Pincus responded to the Nevada lawsuit by moving the Court of Chancery to find TPG and Shawe in contempt and to impose a range of sanctions against them (even though Shawe

was not a party to the Nevada lawsuit). Pincus's theory was as follows: Paragraph 10 of the SPA provides that the Court of Chancery "retains continuing and exclusive jurisdiction over the parties to the Actions for all matters relating to the Actions, including the administration, interpretation, effectuation or enforcement of the Sale Agreement ... and all orders of the Court"; the Nevada lawsuit "relat[es] to" the underlying Delaware court proceedings; Applicants were thus in breach of the Final Order. On October 17, 2019, the Court of Chancery issued an opinion and order granting Pincus's motion (the "Contempt Order"). The court found Applicants in contempt, imposed serious financial sanctions against Applicants, and issued an anti-suit injunction against them covering the Nevada lawsuit.

8. Afterward, the court asked Pincus to petition for all outstanding fees and expenses and move for discharge. Pincus did so, seeking \$3,868,363 in outstanding fees and expenses.

9. In an order dated April 30, 2021, the Court of Chancery awarded Pincus nearly all of his requested fees and expenses (the "2021 Fee Order"). It separated the amount into three parts: \$1,907,039 to be paid by TPG alone; \$186,291 to be paid by the escrow account funded evenly by Shawe and Elting; and \$1,148,291 to be paid by Shawe and TPG in fulfillment of the contempt sanction. Pincus was paid in full by September 2021.

10. Applicants appealed to the Delaware Supreme Court, challenging, among other things, the Contempt Order and the 2021 Fee Order. The Delaware Supreme Court affirmed in part, but reversed the Court of Chancery insofar as the Contempt Order and the concomitant \$1,148,291 contempt sanction applied to Shawe personally (given that Shawe was not a party to the Nevada lawsuit).

11. Despite recognizing the patent unfairness and unconstitutionality of sanctioning an individual for conduct that was not his, the Delaware Supreme Court paid no mind to the

fundamental deficiencies in the process underlying the Contempt Order. Nor did the court give meaningful attention to the fact that the conduct that precipitated the contempt sanctions was constitutionally protected petitioning activity and an arguable breach of contract, not a flagrant disregard of court rules or requirements.

12. Undersigned counsel has substantial pretrial filing obligations between now and September 19, including a final review of the discovery status and filing of Note of Issue in the matter *Stella Stopler v. Zarina Burbacki* in New York Supreme Court (September 12, 2022), compilation of the pretrial witness list in *Mutual Benefits Offshore Fund v. Emanuel Zeltser et al.* in New York Supreme Court (September 12, 2022), and the pretrial review, identification and exchange of exhibits, witness lists, and expert reports (as well as filing of summary disposition papers and motions in limine) in the California venued JAMS arbitration *Glaser Weil v. Wicked TV et ano.* (September 16 and 19, 2022).

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including November 18, 2022, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

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