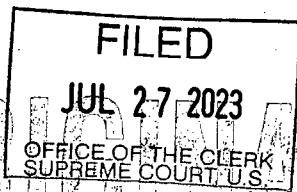


23-010

No. _____



In The

Supreme Court of the United States

Shaomin Sui,

Petitioner,

v.

FedEx Ground Package System, Incorporated,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

The unpublished opinion of the 4th Circuit Court erroneously upheld the district court's order, concluding the district court did not abuse its discretion in reaching the conclusion that arbitration fully decided all claims in the case.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

1. 4th Circuit Court, Case number: 23-1093
2. Federal District Court of Maryland, Case number: 1:19-cv-03318-DLB

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

For case from **federal courts**:

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

reported at _____; or,

has been designated for publication but is not yet reported; or,

unpublished. USCA4 Appeal: 23-1093, Doc 17, filed on 05/26/2023

The opinion of the United States district court appears at **Appendix C** to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

unpublished.

JURISDICTION

For case from **federal courts**:

The date on which the United States Court of Appeals decided my case was 05/26/2023. **Appendix B**

No Petition for rehearing was timely filed in my case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

Before Petitioner entered into the relevant contract, FedEx contract Relation Manager Denise Blaise represented to Petitioner that FedEx would renew Petitioner's contract if Petitioner met contract safety performance. Denise Blaise's misrepresentation was undisputed, and supported by the transcripts. Petitioner entered contract in Jan 2017.

In 2018, FedEx changed contract term into one year. Jim Farrell (FedEx Senior Manager and Contract Signer/Owner) confirmed to Petitioner that Petitioner had first opportunity to renew contract if Petitioner met contract performance, which was undisputed and supported by communication documents. However, there was below language in the contract.

15.4 Extension of Expiration or Termination Date. The Parties acknowledge that this Agreement has no provision for renewal or automatic renewal and further acknowledge that

there is no express or implied obligation upon either Party to enter into a subsequent agreement for the Services upon the expiration of this Agreement. However, if the Parties agree in writing, either the Expiration Date or the Termination Date of this Agreement may be extended in weekly increments one or more times not to exceed fifty-two weeks in total (“Extension Period”) beyond the original Expiration Date or Termination Date. No oral agreement to extend this Agreement will be effective. The level of Charges at the Termination Date or Expiration Date will continue in effect through any Extension Period.

These were undisputed Frauds. For details, please see USCA4 Appeal: 23-1093, Doc 10, 2/20/2023, Page 2 Background.

On 2/19/2019 FedEx noticed Petitioner that MINGERS INC (the business Petitioner owned) did not meet contract performance conditions for the first opportunity. Please see below notice.

This is notice that MINGERS INC did not meet all of the service, safety and contract performance conditions for the first opportunity to negotiate a new ISP Agreement. The CSP did not achieve at least 99.0% Inbound Local Service in the 12 months prior to the date of notification.

On 7/19/2019 FedEx terminated Petitioner and damaged Petitioner.

On 11/19/2019 Petitioner filed complaint including claim - *the district court 1:19-cv-03318-DLB Doc 1, Statement of Claim*, "No. 5 FedEx clearly stated only reason to loose (lose) contract is about safety before I signed contract".

On 2/3/2020 Petitioner filed Amended Complaint to add frauds – "FedEx fraud and deceit by knowingly and intentionally used false and wrong package delivery data to take off Petition's first right (first opportunity) to renew contract". *The district court 1:19-cv-03318-DLB Doc 16*

MINGERS INC filed the Arbitration on 7/1/2020 including Claim – "FedEx committed fraud and deceit by knowingly, intentionally and unlawfully used false and wrong package delivery rate data to take away Mingers' first right to renew contract which resulted in Mingers' loss of the entire business".

On 7/6/2020, the district court *Doc 28* granted Amended Complaint and asked Petitioner to go through arbitration. MINGERS INC and Petitioner brought the district order, Doc 28, to the Arbitrator to add the district court case but the Arbitrator denied to proceed the district court case, which caused Claim-Denise Blaise was not proceeded by the Arbitrator. During arbitration, Petitioner also clearly stated that FedEx's frauds in both of operation and contract. Please see *USCA4 Appeal: 23-1093, Doc 10 Page 7*.

Petitioner received the Arbitrator's Award on 12/03/2021. The Award granted that FedEx underpaid \$15,000 to Petitioner. The Arbitrator failed properly to consider the fraud claim and the fraud in the inducement supported by the evidence, thereby not resolving the entire case. Both the Claim - Denise Blaise and Claim - Jim Farrell, were not resolved by the arbitrator. As such, the case was not fully decided and should not have been dismissed or closed by the lower court.

Despite both aforementioned claims being previously presented in the district court case, the Arbitrator failed to consider the pleadings and evidence fully to ensure a decision on all clearly pending claims. Subsequently, the Petitioner sought to introduce the fraud claim to the district court. However, Petitioner's attempt was denied by the court. Petitioner also filed district court Doc 62 to reconsider district court Doc 28 based on fraud/misrepresentation. The district court Doc 65 denied to reconsider and closed case.

Petitioner filed Doc 77 to reopen based on Frauds were part of his claims and were not resolved by Arbitrator. The district court denied. Petitioner appealed it with 4th circuit court. 4th circuit court affirmed the judgment of the district court.

REASONS FOR GRANTING THE PETITION

1. The unpublished opinion of the 4th Circuit Court erroneously upheld the district court's order, concluding the district court did not abuse its

discretion in reaching the conclusion that arbitration fully decided all claims in the case. That decision is incorrect and Petitioner now asks this court to review both the Court of Appeals decision to uphold the district court and to examine the district court's orders that allowed an arbitration to resolve a case and deprive the Petitioner of due process on claims that were not actually determined by the arbitrator. The district court's decision included both mixed questions of facts and law and thus, was not subject to the abuse of discretion standard applied by the appellate court because the primary question decided by the lower court and to be reviewed by this Court is a legal one - whether an arbitration can deprive a litigant of a right to due process and a court trial on claims raised but not actually decided by the arbitration award. Courts will usually look to whether the decision is more factual or more legal. Where the law is applied to facts, and the inquiry made is an "essentially factual" one, then clear error applies the same as it does for findings of fact. *Koirala v. Thai Airways Int'l, Ltd.*, 126 F.3d 1205, 1210 (9th Cir. 1997). In any case, either de novo or clear error review will apply.

2. The Arbitrator did not proceed the district court case at all. The District Court order, 1:19-cv-03318-DLB Doc 28, was disregarded by the arbitrator, which led to the persistence of critical issues that remained unresolved. For details please see *USCA4 Appeal: 23-1093, Doc 16 Page 4* Fourth. This failure to comply with the court's directive is unacceptable and should not be upheld. It established an unsuitable precedent in the field of law.

3. Below Petitioner's claims description clearly stated that there are some issues outside of contract. However, the Arbitrator did not resolve. The district court should hear those. 1) *The district court 1:19-cv-03318-DLB Doc 1, Statement of Claim*, "No. 5 FedEx clearly stated only reason to loose (lose) contract is about safety before I signed contract". 2) "FedEx fraud and deceit by knowingly and intentionally used false and wrong package delivery data to take off Petition's first right (first opportunity) to renew contract". *The district court 1:19-cv-03318-DLB Doc 16*. Petitioner descripted the facts and claimed that it was fraud. District court should not deprive a litigant of a right to due process.

4. Despite the Petitioner's formal attempts to include the fraud claim due to the Arbitrator's failure, it should not be inferred that the fraud claims were absent from the district court case. The Petitioner effectively and explicitly articulated the fraud claims and their relevant issues during the proceedings. The evidence also supported such a claim such that petitioner's requests to include it should be considered, what is often referred to, as a motion to amend the pleadings to conform to the evidence. When evidence clearly supports a claim that both parties realize is being included, it should be included. The court must still stand ready to decide issues that an arbitrator failed to address.

5, Petitioner passed rule 60 (b) and its requirements with case law support. For details please see *4th circuit court case 23-1093 Doc 10 INFORMAL OPENING BRIEF filed 2/20/2023*. Court

should reopen the case and resolve unresolved issues. The judgment from the 4th Circuit Court established an unsuitable precedent in the field of law.

6. Except above, there are also below important and interesting issues in our case that the Supreme Court will see value in it deciding these issues.

6.1 The district court treated the Petitioner as an entity, MINGERS INC. However, the Arbitrator did not recognize MINGERS INC as the Petitioner, leading to conflicting stances that adversely affected the Petitioner's position. The divergent decisions reached by the district court and the Arbitrator raise the question of why such disparities emerged. It is evident that one of these authorities must have erred in their judgment.

6.2 This case raises important issues about the clarity of what can and is being arbitrated, particularly in cases involving self-represented litigants.

6.3 There is no dispute regarding the Petitioner's performance, as it is evident that FedEx Manager's underpayment significantly impaired the Petitioner's operations and overall performance. The presented evidence clearly indicates that FedEx Manager intentionally altered the Petitioner's performance metrics and employed fabricated figures to terminate Petitioner. The key issue here pertains to the true reason behind the

termination, raising questions about the manager's motives and actions.

CONCLUSION

For the reasons stated, petitioner kindly asks the Court to grant the petition for a writ of certiorari.

Dated: July 27, 2023.

Respectfully submitted,

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