No. 24-876

In the Supreme Court of the United States

NVWS PROPERTIES, LLC,

Petitioner,

v.

CASUN INVEST, A.G.,

Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court should, as requested by Petitioner, ignore the district court's factual findings, accept Petitioner's misstatements of the factual record, and substitute its judgment for that of the district court in the discretionary application of the balancing test set forth in Section 221 of the Restatement (Second) of Conflict of Laws, as adopted by the Nevada Supreme Court, to determine the statute of limitations applicable to an unjust enrichment claim against a Nevada limited liability company?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29.6, Respondent CASUN INVEST, A.G., a privately held Swiss corporation with no parent corporation, discloses the following: No publicly held company owns 10% or more of Respondent's stock.

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STATEMENT OF FACTS

This dispute arises out of an unjust enrichment claim involving an unauthorized transfer of real property.

On April 8, 2013, Dr. Hans Peter-Wild ("Dr. Wild"), sole shareholder of Respondent Casun Invest, A.G. ("Casun"), wired $2,100,000 to Lezlie Gunn ("Gunn"), with whom he was involved in a personal relationship, so Gunn could purchase real property located in Woodside, California ("Property"), from Casun, for a purchase price of $2,050,000.00. Pet.App.2a-5a.

Gunn organized multiple entities, including Petitioner NVWS Properties LLC ("NVWS"), to facilitate the transfer of the Property. Pet.App.2a-4a, 35a, 37a, 42a, 51a. NVWS was organized in Nevada, and its principal place of business was in Nevada. Pet.App.35a, 37a, 42a, 51a. Accordingly, NVWS was, at all relevant times (including at the time of the transfer), a resident of Nevada. *Id.* NVWS was managed by NVMS Properties, LLC ("NVMS"). NVMS was also organized in Nevada, with its principal place of business in Nevada. Pet.App.37a.

On April 17, 2013, Michael H. Ponder ("Ponder"), who was, at the time, the *direktor* (an individual selected and authorized by the board of directors to act on behalf the corporation) of Casun, executed a grant deed transferring title to the Property from Casun to NVWS. Pet.App.5a, 41a. The grant deed was recorded in San Mateo County, California on April 25, 2013. Pet.App.5a. NVWS never paid the $2,050,000 to Casun

or provided any other form of consideration for the Property. Pet.App.6a, 42a.

On December 16, 2016, Casun sued NVWS, Gunn, and Ponder in United States District Court for the District of Nevada, asserting numerous causes of action, including unjust enrichment, based on the unauthorized transfer of the Property. Pet.App.3a, 6a, 43a. After a three-day bench trial, the district court found that Casun had proven its unjust enrichment claim against NVWS by a preponderance of the evidence. Pet.App.51a. The district court found that Gunn was not liable for unjust enrichment because NVWS, not Gunn, received title to the Property, and NVWS was not Gunn's alter ego. Pet.App.51a.

Applying Nevada's choice-of-law rules, the district court determined that Casun's unjust enrichment claim arose in Nevada because the benefit giving rise to the claim (*i.e.*, title to the Property) was received in Nevada, where NVWS was organized and conducted business. Pet.App.46a-47a. Accordingly, the district court held that Nevada's statute of limitations applied to the claim. Pet.App.50a. The district court entered judgment in favor of Casun and against NVWS on Casun's unjust enrichment claim. Pet.App.32a-33a.

The United States Court of Appeals for the Ninth Circuit affirmed the district court's judgment on the unjust enrichment claim, including the district court's application of Nevada's choice-of-law rules to determine that the claim was governed by Nevada law. Pet.App. 9a-19a.[1]

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[1] The Ninth Circuit reversed and remanded the district court's award of costs to Casun. Pet.App.20a-25a. That portion of the

The Petition urges this Court to ignore the district court's factual findings, accept Petitioner's misstatements of the factual record, and substitute its judgment for that of the district court in the discretionary application of the balancing test set forth in Section 221 of the Restatement (Second) of Conflict of Laws (1971), as adopted by the Nevada Supreme Court.

I. The District Court and the Ninth Circuit Correctly Looked to Section 221 of the Restatement (Second) of Conflict of Laws, as Adopted by the Nevada Supreme Court, to Determine Where the Unjust Enrichment Claim Arose for Choice-of-Law Purposes.

Casun sued NVWS in United States District Court for the District of Nevada based on diversity jurisdiction. Federal courts sitting in diversity apply the forum state's choice-of-law rules to determine controlling substantive law. *Fields v. Legacy Health Sys.*, 413 F.3d 943, 950 (9th Cir. 2005) (quoting *Patton v. Cox*, 276 F.3d 493, 495 (9th Cir. 2002)); *see also Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496 (1941), superseded by statute on other grounds. Thus, the district court looked to Nevada's choice-of-law rules.

In choice-of-law questions related to tort and contract law, the Nevada Supreme Court looks to the Restatement (Second) of Conflict of Laws (1971). *See, e.g.*, *McNamara v. Hallinan*, No. 2:17-cv-02967, 2019 U.S. Dist. LEXIS 168028, 2019 WL 4752265, at *5 (D. Nev. Sept. 30, 2019) ("The Nevada Supreme Court has endorsed looking to the Restatement (Second) Conflict of Laws and applying the most specific, applicable

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Ninth Circuit's ruling has not been appealed by either party and is unrelated to the Petition.

section to questions of tort and contract law.") (citing *Gen. Motors Corp. v. Eighth Judicial Dist. Court of State of Nev. ex rel. Cty. of Clark*, 134 P.3d 11, 116 (Nev. 2006)); *Progressive Gulf Ins. Co. v. Faehnrich*, 752 F.3d 746, 750 (9th Cir. 2014) ("Nevada tends to follow the Restatement (Second) of Conflict of Laws (1971) in determining choice-of-law questions involving contracts . . . "). Unjust enrichment claims are considered quasi-contractual claims under Nevada law. *See Carter v. Ethicon, Inc.*, No. 2:20-cv-1232, 2021 U.S. Dist. LEXIS 62463, 2021 WL 1226531, at *4 (D. Nev. Mar. 31, 2021); *see also Certified Fire Prot. Inc. v. Precision Constr.*, 283 P.3d 250, 256-58 (Nev. 2012).

In accordance with Nevada's choice-of-law rules, the district court looked to the Restatement (Second) of Conflict of Laws (1971) when determining where Casun's unjust enrichment claim arose for choice-of-law purposes. Pet.App.44a, 46a-47a. The Ninth Circuit agreed with the district court's approach. Pet.App.16a-19a. Both the district court and the Ninth Circuit found that the most specific, applicable section of the Restatement (Second) of Conflict of Laws was Section 221, which "applies to claims . . . to recover for unjust enrichment." Pet.App.17a, 46a (citing Restatement (Second) of Conflict of Laws § 221 cmt. a (1971)).

Under Section 221, the relevant factors to determine where an unjust enrichment claim arose are: (i) the place where the relationship between the parties, if any, is centered; (ii) the place where the benefit is received; (iii) the place where the act conferring the benefit or enrichment was performed; (iv) the domicile of the parties; and (v) the location of any land or chattel connected to the enrichment. *See* Restatement (Second) of Conflict of Laws § 221 cmt. a (1971)).

The Petition does not dispute that Section 221 is the applicable section for determining where Casun's unjust enrichment claim arose for choice-of-law purposes.[2] *See* Pet. at 5.

II. Contrary to the Multiple Misstatements of Fact in the Petition, the District Court and the Ninth Circuit Properly Determined That the Unjust Enrichment Claim Arose in Nevada Because the Benefit Which Served as the Basis for the Claim Was Received in Nevada.

The Petition does not argue that the district court or Ninth Circuit incorrectly relied on Section 221 of the Restatement (Second) of Conflict of Laws when determining where the unjust enrichment claim arose for purposes of the statute of limitations. Instead, the Petition asserts that the district court misapplied the test set forth in Section 221 because it concluded that Casun's unjust enrichment claim arose in Nevada because certain parties relocated to Nevada prior to the initiation of the lawsuit. *See, e.g.*, Pet. at *i*, 5-6. The Petition further argues the transfer had nothing to do with Nevada, claiming all parties resided in Switzerland

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[2] The Petition cites "*General Motors Corp. v. Eighth Judicial Dist. Court*, 134 P.3d 111 (Neb. 2006)." *See* Pet. at 5; *see also* Pet. at *viii* (Table of Cited Authorities). The actual citation to the Pacific Reporter in the Petition directs to a Nevada Supreme Court decision. However, the Petition repeatedly mislabels the case as a "Nebraska" Supreme Court decision. This Brief presumes that this is a mistake and treats any reference in the Petition to the Nebraska Supreme Court as meaning to refer to the Nevada Supreme Court decision *General Motors Corp. v. Eighth Judicial Dist. Court*, 134 P.3d 111 (Nev. 2006), which specifically endorses looking to the Restatement (Second) of Conflict of Laws for choice-of-law purposes.

at the time of the transfer. *Id.* at 2-3. These are misstatements of the factual record.

First, the district court held that the unjust enrichment claim arose in Nevada because Nevada was the location where the benefit was received. Pet.App.46a. In concluding the benefit was received in Nevada, neither the district court nor the Ninth Circuit found that the benefit was received in Nevada based on the parties' domicile at the time the lawsuit was filed. To the contrary, the district court found that Nevada was the location where the benefit was received because it was NVWS – not Gunn or Ponder – that received the benefit which served as the basis for the claim. Specifically, the district court found that:

- NVWS was organized as a "Nevada limited liability compan[y]" between "March 26, 2013, and March 28, 2013" (Pet.App.37a);
- NVWS "is incorporated in Nevada with its principal place of business in Nevada" (Pet.App.35a);
- NVWS was "managed by NVMS," another "Nevada limited liability compan[y]" organized between "March 26, 2013, and March 28, 2013" (Pet.App.37a);
- "Casun conferred a benefit on NVWS by transferring title for the property to it" (Pet.App.42a);
- "NVWS appreciated that benefit by holding title for and managing the property" (Pet. App.42a); and

- "There is no evidence that NVWS provided payment to Casun for the Property" (Pet. App.42a).

Because the district court found that the benefit was received in Nevada, the district court held that Nevada law – including Nevada's statute of limitations – governed the unjust enrichment claim. Pet.App.46a-50a.

In affirming the district court's decision, the Ninth Circuit expounded on the district court's conclusion that the benefit was received in Nevada by clarifying, in a parenthetical, that title to the property was received in Nevada. Pet.App.9a-10a ("The district court made these conclusions of law relevant to the unjust enrichment claim: . . . . ii. The place where the benefit [(the title to the property)] was received: Nevada; . . . ."). The district court and the Ninth Circuit agreed that the benefit which served as the basis for the unjust enrichment claim was received in Nevada because NVWS, which received title to the Property and managed the Property, was organized and conducted business in Nevada. Pet.App.9a-10a, 35a, 37a, 42a.

Second, the Petition erroneously claims that, at the time of the transfer, all parties resided in Switzerland. *See* Pet. at 2-3. While Gunn and Ponder may have been residents of Switzerland at the time of the transfer (Pet.App.5a), NVWS was organized and conducting business in Nevada. Pet.App.35a. Moreover, NVWS was managed by NVMS, which was also organized and conducting business in Nevada. Pet.App.37a. There is no evidence that either NVWS or NVMS was ever a resident of Switzerland. Pet.App.35a, 37a, 42a. Although Gunn organized NVWS, Gunn's Swiss residency at the time of the transfer had no jurisdictional relevance

because the district court found that NVWS was not Gunn's alter ego. Pet.App.51a.

The Petition is premised on multiple misstatements of fact. Not all parties resided in Switzerland at the time of the transfer. Indeed, the most important party for choice of law purposes – NVWS, *i.e.*, the party that received title to the Property – was a resident of Nevada at all relevant times, including at the time of the transfer. Pet.App.9a-10a, 35a, 37a, 42a. Not only did the district court explain its reasoning for concluding that the benefit was received in Nevada (which the Ninth Circuit affirmed), but that reasoning had nothing to do with the parties' domicile at the time the lawsuit was filed, as the Petition erroneously contends.

REASONS FOR DENYING THE PETITION

I. The Petition Fails to Present an Actual Legal Dispute for Consideration by the Court.

A. The Choice of Law Analysis Requires a Discretionary Balancing of Facts Under State Law, and the Petition Does Not Argue That the District Court or the Ninth Circuit Either Applied the Wrong Balancing Test or Incorrectly Performed the Applicable Balancing Test.

The Petition does not argue that the district court or Ninth Circuit applied the wrong law. The Petition agrees with both the district court and the Ninth Circuit that, under Nevada Supreme Court precedent, Section 221 of the Restatement (Second) of Conflict of

Laws sets forth the appropriate test for determining where an unjust enrichment claim arose for choice-of-law purposes. *See* Pet. at 5.

Section 221 contains a list of factors to consider when determining where an unjust enrichment claim arose for choice-of-law purposes. Under the Restatement (Second) of Conflict of Laws, the evaluation of these factors is discretionary, and the Court can give different factors different weight depending on the facts of the case. *See* Restatement (Second) of Conflict of Laws § 221 cmt. a (1971) (stating the contacts "are to be evaluated according to their relative importance with respect to the particular issue."). Here, the district court determined the factor to be given the most weight was the location where the benefit was received. Pet.App.46a-47a. In affirming the district court's decision, the Ninth Circuit specifically noted that it would not analyze the weight given to the factors by the district court because NVWS did not challenge on appeal "the district court's weighing of the various factors under Restatement section 221." Pet.App.14a n.12.

Similarly, the Petition does not assert that the district court gave too much weight to any one of the five factors set forth in Section 221 of the Restatement (Second) of Conflict of Laws. In fact, the Petition agrees that, under Section 221 of the Restatement (Second) of Conflict of Laws, the "critical issue" for determining where an unjust enrichment claim arises is "where the benefit or enrichment was received." *See* Pet. at 5 (citing Restatement (Second) of Conflict of Laws § 221 cmt. (2)(b) (1971)). Thus, by NVWS's own admission, the location where the benefit was received is the most critical factor under Section 221 of the Restatement (Second) of Conflict of Laws in determining where

an unjust enrichment claim arose for choice-of-law purposes. This is the precise factor upon which the district court, as affirmed by the Ninth Circuit, based its holding that the unjust enrichment claim arose in Nevada. Thus, according to the Petition, the district court and Ninth Circuit not only considered the appropriate factors under Section 221, but also correctly applied and weighed those factors.

Because the Petition does not argue that the district court or the Ninth Circuit either applied the wrong balancing test or incorrectly performed the applicable balancing test, the Petition fails to present an actual legal dispute for consideration by the Court.

B. The Petition, Which Relies on Multiple Misstatements of the Factual Record, Asks This Court to Resolve a Manufactured Factual Dispute.

Everyone involved in this case – including NVWS, Casun, the district court, and the Ninth Circuit – agrees that Section 221 of the Restatement (Second) of Conflict of Laws sets forth the factors for determining where a claim for unjust enrichment arose for choice-of-law purposes. Everyone involved in this case also agrees that the critical factor for determining where a claim for unjust enrichment arose under Section 221 is where the benefit was received. This is precisely the factor upon which the district court, as affirmed by the Ninth Circuit, based its decision that the claim arose in Nevada. Pet.App.9a-10a, 17a-19a, 46a-47a.

The Petition distorts this holding, however, by asserting that the district court and Ninth Circuit held that the benefit was received in Nevada because some parties had relocated to Nevada by the time the

lawsuit was filed. This is a false premise. Neither the district court nor the Ninth Circuit concluded that the benefit was received in Nevada because certain parties were domiciled in Nevada when the lawsuit was filed.

The Petition boldly (and erroneously) asserts that the transfer had nothing to do with Nevada because all parties resided in Switzerland at the time of the transfer. *See* Pet. at 2-3. This is not true. While Gunn and Ponder may have been residents of Switzerland at the time of the transfer (Pet.App.5a), the district court correctly found that NVWS, the entity that received the benefit which served as the basis for the unjust enrichment claim, was, at all relevant times (including at the time of the transfer), a resident of Nevada. Pet.App.35a, 37a, 42a.

By misstating the factual record, the Petition attempts to create a factual dispute. This Court, however, is not in the business of error correction; any factual disputes are appropriately left to the courts below. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

C. The Actual Facts in the Case Do Not Address the Question Presented.

The Petition asserts that the question presented is whether, in assessing a conflict of laws, a court should apply the laws of the "jurisdiction where all the parties resided at the time of the events giving rise to the lawsuit" or "the jurisdiction where some of the parties resided at the time the lawsuit was filed." *See* Pet. at *i* (Question Presented). But this case does not present either of those scenarios. Neither the district

court nor the Ninth Circuit were asked to apply Nevada law (a) because "all the parties resided" in one jurisdiction at the time of the transfer; or (b) because some of the defendants resided in a particular jurisdiction at the time the lawsuit was filed. Again, the determinative fact was that the benefit which served as the basis for the unjust enrichment claim was received by Petitioner NVWS in Nevada.

The Petition should be denied because it states a question presented which is unsupported by the factual record in the case. There is no actual legal dispute for this Court to resolve.

II. There Is No Conflict Among the Circuits.

This is an appeal from the Ninth Circuit's affirmance of a district court's application of Nevada choice-of-law rules. Casun's complaint was filed in federal court on diversity grounds. The district court applied Nevada Supreme Court choice-of-law precedent, which directs courts to look to the Restatement (Second) of Conflict of Laws to determine the substantive law governing the claim. Under *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), federal courts exercising diversity jurisdiction apply state law to substantive issues and federal law to procedural issues.

There is no conflict among the Circuits with regard to application of the *Erie* doctrine to conflict of law questions: All Circuits agree that federal courts sitting in diversity jurisdiction apply the forum state's choice-of-law rules to determine controlling substantive law.[3] This Court has already determined that, under

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[3] *See*, *e.g.*, *Foisie v. Worcester Polytechnic Institute*, 967 F.3d 27, 41 (1st Cir. 2020); *Chau v. Lewis*, 771 F.3d 118, 126 (2nd Cir. 2014); *Yohannon v. Keene Corp.*, 924 F.2d 1255, 1264-65 (3rd Cir.

the *Erie* doctrine, federal courts sitting in diversity jurisdiction apply the forum state's conflict-of-law rules. *See Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496 (1941), superseded by statute on other grounds.

III. The Ninth Circuit's Affirmance of the District Court's Decision Will Have No Consequences Beyond the Facts and Parties of This Case.

The Petition claims this case has important federal implications because, if it is allowed to stand, it will encourage plaintiffs and defendants to "forum shop" by moving to a forum with a favorable statute of limitations prior to the commencement of the lawsuit. *See* Pet. at 7. But, as explained previously, these are not the facts of this case. The district court concluded that the benefit was received in Nevada because NVWS, the entity that received the benefit, was a resident of Nevada because it was organized in Nevada and was conducting business in Nevada when the benefit that served as the basis for the unjust enrichment claim was received. Pet.App.9a-10a, 35a, 37a, 42a. Neither the district court nor the Ninth Circuit placed any

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1991); *Medical Mutual Ins. Co. of North Carolina v. Gnik*, 93 F.4th 192, 199 n.3 (4th Cir. 2024); *FMC Finance Corp. v. Murphree*, 632 F.2d 413, 418 (5th Cir. 1980); *Cole v. Mileti*, 133 F.3d 433, 437 (6th Cir. 1998); *Sosa v. Onfido, Inc.*, 8 F.4th 631, 637 (7th Cir. 2021); *Shelby County Health Care Corp. v. Southern Farm Bureau Casualty Ins. Co.*, 855 F.3d 836, 841 (8th Cir. 2017); *Fields v. Legacy Health Sys.*, 413 F.3d 943, 950 (9th Cir. 2005); *Unitednet Ltd. v. Tata Communications America, Inc.*, 112 F.4th 1259, 1266 (10th Cir. 2024); *Garcia v. Chiquita Brands Int'l, Inc.*, 48 F.4th 1202, 1210 (11th Cir. 2022); *A.I. Trade Finance, Inc. v. Petra Intern. Banking Corp.*, 62 F.3d 1454, 1458 (D.C. Cir. 1995).

importance on the fact that certain parties had relocated to Nevada by the time the lawsuit was filed.

Besides, it is undisputed that all defendants in the action – NVWS, Gunn, and Ponder – were residents of Nevada when the lawsuit was filed. Pet.App.10a n.11, 35a. Accordingly, Nevada courts could exercise personal jurisdiction over all defendants. *See State ex rel. Crummer v. Fourth Judicial Dist. Court of Nev., in and for Elko Cty.*, 249 P.2d 226, 228 (Nev. 1952) (domicile in state sufficient to bring jurisdiction over defendant) (citing *Milliken v. Meyer*, 311 U.S. 457, 462 (1940)); *see also Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (general jurisdiction over individual exists in place of domicile and general jurisdiction over corporation exists in corporation's place of incorporation and principal place of business). In this regard, the decision to file in Nevada was not, as the Petition alleges, an example of forum shopping, but rather an exercise of prudent litigation strategy and case management.

CONCLUSION

The Petition should be denied. This case involves an affirmance of a district court's discretionary application of a set of factors under Nevada's choice-of-law rules. The Petition does not dispute the law applied by the district court and affirmed by the Ninth Circuit. Instead, the Petition relies on multiple misstatements of the factual record in an attempt to manufacture a factual dispute for this Court to resolve. There is no conflict among the Circuits and this case does not implicate an important federal question or have any application beyond the parties and facts in this case. Accordingly, the Petition presents nothing which would warrant this Court's involvement.

Respectfully submitted,

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