

No.

IN THE
Supreme Court of the United States

George Kersey,
Petitioner,
v.

BECTON DICKINSON & CO., ESTATE OF JOSEPH R. PARADIS,

Defendants- Appellees,

CAROL PARADIS; WILLIAM MARSHALL

Defendants.

**On Petition for a Writ of Certiorari
To the United States Court of Appeals for the First Circuit**

PETITION FOR A WRIT OF CERTIORARI

George Kersey
Petitioner
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Dated: November 27, 2017

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly affirmed the District Court's October 17, 2016 and November 21, 2016 decisions by which Appellant's amended complaint was dismissed for lack of Diversity Jurisdiction;
2. Whether the amended complaint cured the alleged pleading difficulties by reciting the citizenships of the Defendants and stating that Plaintiff was not a citizen of any state of the Defendants
3. Whether Appellant complied with *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) by alleging affirmatively the actual citizenship of the relevant parties, namely each Defendant and stating that Plaintiff was not a citizen of any state of the Defendants
4. Whether Appellant complied with *Ill. Cent. Gulf R.R. Co. v. Pargas, Inc.*, 706 F.2d 633, 636 by stating the basis upon which jurisdiction depends other than "by mere inference[]" It is not mere inference to state there is diversity because Plaintiff is not a citizen of any state of the Defendants
5. Whether pleading federal question jurisdiction cured any pleading deficiency because the claims asserted against Becton Dickinson and Co. ("BD") in the amended complaint arose under the Constitution because Appellant claimed a jury trial pursuant to the 7th amendment of the Constitution
6. Whether, in any event, the complaint was subject to dismissal on the merits because, assuming Massachusetts law applied to the contract claim, an incidental beneficiary of a contract has no standing to enforce the contract and acquires no rights against the contracting parties, BUT WHETHER Plaintiff was more than an incidental beneficiary
7. Whether *Alicia v. Machete Music*, 744 F.3d 773, 784 (1st Cir. 2014) supports the Court of Appeals since applying all reasonable inference it is apparent that the Court has Diversity Jurisdiction
8. Whether *Public Servo Co. of N.H. v. Hudson Light & Power Dept.*, 938 F.2d 338, 341 n.8, 343 n.12 (1st Cir. 1991); supports the Court of Appeals
9. Whether Plaintiff's patent infringement claim asserted against BD stated no plausible ground for relief because it asserts patent infringement and provides Federal Question jurisdiction
10. Whether *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007) support the Court of appeals

11. Whether The district court was not required to issue summonses until after it screened the complaint and amended complaint under 28 U.S.c. § 1915(e)(2). (e) (2) provides: Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that(A) the allegation of poverty is untrue; or (B) the action or appeal (I) is frivolous or malicious;(II) fails to slate a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

12. Whether even though no summonses ever issued (although the clerk was required to issue the summons under the Rules) and BD waived service of the summons by sending a copy of a proposed Rule 11 motion to Kersey, BD had an obligation to respond to the complaint. See Fed.R.Civ.P. 12(a) (stating when responsive pleading is required). Therefore, the district court improperly denied Kersey's serial motions for entry of a default judgment against BD.

13. As for the district court's award of sanctions against Kersey under Rule 11 of the Federal Rules of Civil Procedure or the amount of the sanctions award, it certainly is an abuse of discretion to award sanction in a case where the Court does not believe it has jurisdiction and the Defendant doesn't bother to answer the complaint or make a motion under Rule, but appears in the case , not by answering or moving under Rule 12, but by wrongly appearing mand asking for sanctions. Sanctions should be awarded to Plaintiff.

14. Finally, the Court noted: Kersey offers no argument in his appellate brief about whether or how the district court erred in denying his motion to dismiss the writ of execution. BD was in default in the case for appearing, and not answering the complaint or making a motion under Rule 12, so, if the Court had jurisdiction, the writ of execution would have had to be dismissed.

15. The District Court's October 17, 2016 and November 21, 2016 orders were improperly affirmed because the trial court had both Diversity and Federal Question jurisdiction..

16. The Courts failed to grant sanctions to Plaintiff

PARTIES TO THE PROCEEDINGS BELOW

George Kersey,
Plaintiff-Appellant,

**BECTON DICKINSON & CO.,
And ESTATE OF JOSEPH R. PARADIS,**

Defendants-Appellees,

**CAROL PARADIS;
And WILLIAM MARSHALL**

Defendants

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PETITION FOR A WRIT OF CERTIORARI

Petitioner George Kersey respectfully Petitions for a Writ of Certiorari to review the judgments of the United States Court of Appeals for the First Circuit and the United States District Court for the District of Massachusetts.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the First Circuit, Filed September 8, 2017, is reproduced in the Appendix to this Petition for Certiorari.

RELEVANT CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendments 5 and 7. The Fifth Amendment to the U.S. Constitution provides for due process and the Seventh Amendment provides for Trial by Jury.

JURISDICTION

This Court has jurisdiction over the judgments of the United States Court of Appeals for the First Circuit and the United States District Court for the District of Massachusetts.

STATEMENT

This case present the fundamental question of whether a court can deprive litigants of their right to trial by jury where there are disputed issues of fact by wrongly asserting that the Case does not have Diversity Jurisdiction This also is a patent *infringement action where the question of infringement is one of fact, not of law.*

The District Court DISMISSED THE CASE FOR ALLEGED FAILURE TO SHOW DIVERSITY JURISDICTION..

Instead of answering the complaint the defendants initially moved for sanctions and the Court initially awarded sanctions as a result of the initial filing by the Defendants, although the Court should have awarded a Default Judgment since the Defendant did not file an answer to the Complaint or a Motion under Rule 12

**Statement on the Nature of the Case,
The Course of Proceedings
and Disposition in the Court Below**

This case involves a fundamental QUESTION of whether a case can be dismissed for alleged failure to show diversity Jurisdiction after diversity jurisdiction has been demonstrated.

In addition if the District Court does not have jurisdiction how can the District Court make rulings against Appellant:

Moreover if the District Court does not have jurisdiction how can the Court of Appeals make rulings against Appellant, except on the issue of Jurisdiction

Statement of the Facts Relevant to the Issues

The Appellant sought and was granted Pauper Status. That should have resolved any question about jurisdiction because is not seen how a litigant can be awarded pauper status for a case that does not have jurisdiction. Appellant's original complaint recited jurisdiction as follows:

<a. For diversity-of-citizenship jurisdiction.>

The defendant Corporation, Becton Dickinson and Co. ("Becton"), is incorporated under the laws of the State of New Jersey, with its principal place of business at 1 Becton Drive, Franklin Lakes, New Jersey. Its Agent for the service of Process in Massachusetts is C T Corporation System, 155 Federal Street Ste 700, Boston, MA 02110, 617-757-6400

The defendant Estate is a citizen of South Carolina. The defendant Carol Paradis is a citizen of South Carolina and Executrix of the Estate of Joseph R. Paradis. The defendant William Marshall ("Marshall") is the successor to Carol Paradis and understood to be a citizen of Utah.

The plaintiff, George Kersey ("Kersey"), receives mail at P.O. Box 1073, Framingham, Massachusetts 01701.

The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

The District Court did not regard the above as a satisfactory statement of diversity and Appellant filed an amended complaint which recited citizenship as follows:

<a. For diversity-of-citizenship jurisdiction.>

The defendant Corporation, Becton Dickinson and Co. ("Becton"), is incorporated under the laws of the State of New Jersey, with its principal place of business at 1 Becton Drive, Franklin Lakes, New Jersey. Its Agent for the service of

Process in Massachusetts is C T Corporation System, 155 Federal Street Ste 700, Boston, MA 02110, 617-757-6400

The defendant Estate is a citizen of South Carolina. The defendant Carol Paradis is a citizen of South Carolina and Executrix of the Estate of Joseph R. Paradis. The defendant William Marshall ("Marshall") is the successor to Carol Paradis and understood to be a citizen of Utah.

The plaintiff, George Kersey ("Kersey"), receives mail at P.O. Box 1073, Framingham, Massachusetts 01701 IS NOT A CITIZEN OF NEW JERSEY, SOUTH CAROLINA OR UTAH

The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332. Under the Constitution of the United States this a Jury case where the amount in controversy exceeds \$20

<b. For federal-question jurisdiction under 28 U.S.C. 1331 This action also arises under the United States Constitution; article XIV and amendment and a federal statute, Title 42 U.S.C. § 1983. Kersey has been deprived of his Due Process and Equal Protection Rights by not receiving equal pro se or pauper treatment

Argument

A. THE TRIAL COURT IMPROPERLY DISMISSED THE CASE BECAUSE IT IMPROPERLY CLAIMED IT DID NOT HAVE DIVERSITY JURISDICTION

As stated in the Amended Complaint: The defendant Corporation, Becton Dickinson and Co. ("Becton"), is incorporated under the laws of the State of New Jersey, with its principal place of business at 1 Becton Drive, Franklin Lakes, New Jersey. Its Agent for the service of Process in Massachusetts is C T Corporation System, 155 Federal Street Ste 700, Boston, MA 02110, 617-757-6400

The defendant Estate is a citizen of South Carolina. The defendant Carol Paradis is a citizen of South Carolina and Executrix of the Estate of Joseph R. Paradis. The defendant William Marshall ("Marshall") is the successor to Carol Paradis and understood to be a citizen of Utah.

The plaintiff, George Kersey ("Kersey"), receives mail at P.O. Box 1073, Framingham, Massachusetts 01701 IS NOT A CITIZEN OF NEW JERSEY, SOUTH CAROLINA OR UTAH

If plaintiff lives in the United States and is not a citizen of any state of the Defendants how can there not be Diversity of Citizenship ?

B. The Court of Appeals WRONGLY contends that the recitation of Diversity is insufficient based on the following:

Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001) for the proposition that "Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able to allege affirmatively the actual citizenship of the relevant parties." APPELLANT ALLEGED AFFIRMATIVELY THE CITIZENSHIP OF THE RELEVANT PARTIES

Ill. Cent. Gulf R.R. Co. v. Pargas, Inc., 706 F.2d 633, for the proposition that the basis upon which jurisdiction depends cannot be established "by mere inference[]" APPELLANT DID NOT ESTABLISH CITIZENSHIP BY MERE INFERENCE; HE STATED HE WAS NOT A CITIZEN OF ANY OF THE STATES OF THE DEFENDANTS

The Court also states that. "Pleading federal question jurisdiction did not cure the pleading deficiency because the claims asserted against Becton Dickinson and Co. ("BD") in the amended complaint did not arise under the Constitution or 42 U.S.C. § 1983. THE CLAIMS ARE TO BE DECIDED BY A JURY AS PROVIDED BY THE CONSTITUTION.

The Court wrongly believes; "In any event, the complaint was subject to dismissal on the merits because, assuming Massachusetts law applied to the contract claim, an incidental beneficiary of a contract has no standing to enforce the contract and acquires no rights against the contracting parties. TO THE CONTRARY, KERSEY HAS RIGHTS AGAINST ONE OF THE CONTRACTING PARTIES ARRANGED BY THE ATTORNEY FOR BD . WHILE THE ORDINARY BENEFICIARY MAY NOT HAVE RIGHTS, UNDER THE FACTS OF APPELLANT'S BENEFICIARY STATUS, HE DOES HAVE RIGHTS. Accordingly *Alicea v. Machete Music*, 744 F.3d 773, 784 (1st Cir. 2014) and *Public Servo Co. of N.H. v. HudsonLight & Power Dept.*, 938 F.2d 338, 341 n.8, 343 n.12 (1st Cir. 1991) do not apply

It also is incorrect to state: "the patent infringement claim asserted against BD stated no plausible ground for relief. See *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). THE PATENT INFRINGEMENT CLAIM RECITES "PATENT INFRINGEMENT"

The Court wrongly states" "The district court was not required to issue summonses until after it screened the complaint and amended complaint under 28 U.S.C. § 1915(e)(2)." UNDER THE RULES, THE CLERK OF THE COURT UPON REQUEST OF THE PLAINTIFF IS TO SSUE A SUMMONS. Rule **4(b) Issuance states:** On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served. (emphasis added)

The Court wrongly states : Because no summonses ever issued and BD did not waive service of the summons and complaint by sending a copy of the proposed Rule 11 motion to Kersey, BD had no obligation to respond to the complaint. See Fed.R.Civ.P.

12(a) (stating when responsive pleading is required). As a result, the district court improperly denied Kersey's serial motions for entry of a default judgment against BD.

BD WAIVED SERVICE OF A SUMMONS BY APPEARING IN THE CASE; IT FAILED TO ANSWER THE COMPLAINT SO THAT Kersey is entitled to a default judgment

The Court wrongly states As for the district court's award of sanctions against Kersey under Rule 11 of the Federal Rules of Civil Procedure or the amount of the sanction award, Kersey has not sustained his "formidable" burden-2! establishing that the district court abused its discretion. See *Silva v. Witschen*, 19 F.3d 725, 727 (1st Cir. 1994) (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *Navarro-Ayala v. Nunez*, 968 F.2d 1421, 1425 (1st Cir. 1992)). HOW CAN SANCTIONS BE AWARDED WHERE THE COURT HAS WRONGLY DENIED JURISDICTION TO THE CASE

Finally, Kersey is said to offer no argument in his appellate brief about whether or how the district court erred in denying his motion to dismiss the writ of execution, so this issue has not been properly preserved for appeal. See *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990). SINCE BD DID NOT ANSWER THE COMPLAINT, KERSEY IS ENTITLED TO A DEFAULT JUDGMENT AND BECAUSE OF THE DEFAULT, THE WRIT OF EXECUTION SHOULD HAVE BEEN DISMISSED

The district court's October 17, 2016 and November 21, 2016 orders SHOULD NOT HAVE BEEN affirmed, BUT BD's request for sanctions pursuant to Fed. R. App. P. 38 and 1st Cir. R. 38.0 WAS PROPERLY denied.

C. APPELLANT SHOULD BE ALLOWED TO PROVE PATENT INFRINGEMENT BY THE SEVENTH AMENDMENT JURY THAT THEY REQUESTED

Appellant believes that discovery will confirm the belief that the Defendant is an infringers, including the Doctrine of Equivalents, particularly since the all the Paradis patents prosecuted by Appellant are well known to Becton, were made known to Becton and one of them became the basis of a patent and trade secret license agreement between Paradis and Becton

CONCLUSION

The case should be returned to the District Court for Discovery and a Seventh Amendment Jury Trial on the questions of whether the Defendant Becton owes Payment for the use of trade secret information , whether Kersey was originally alleged (wrongly) to be merely a beneficiary of the agreement between BD and Paradis but became a Third Party Beneficiary by subsequent events in the relationship among Kersey, BD and Paradis, to be decided by the jury that Kersey has claimed pursuant to the Constitution

Respectfully submitted,

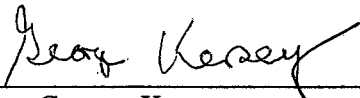
/s/ George Kersey
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Originally DATED: November 27, 2017

This copy Dated" February 9, 2018

CERIFICATE OF SERVICE

I, hereby certify that a true copy of the above document will be served upon opposing counsel by first class mail.


George Kersey