

No. _____

In The
Supreme Court of the United States

SHENZEN SANLIDA ELECTRICAL TECHNOLOGY
COMPANY, LIMITED; SHENZEN AVOGA
TECHNOLOGY COMPANY, LIMITED,
Petitioners,

v.

WHIRLPOOL CORPORATION;
WHIRLPOOL PROPERTIES, INCORPORATED,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should the district court consider personal jurisdiction when issuing a preliminary injunction order under Rule 65?

LIST OF PARTIES

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

CORPORATE DISCLOSURE STATEMENT

Petitioners have no parent or publicly owned corporation owns 10% or more of the stock.

RELATED PROCEEDINGS

United States District Court for the Eastern District of Texas:

Whirlpool Corporation; Whirlpool Properties, Incorporated v. Shenzhen Sanlida Electrical Technology Company, Limited; Shenzhen Avoga Technology Company, Limited, No. 22-cv-00027. (order granting motion for a preliminary injunction, entered Jun. 14, 2022)

United States Court of Appeals for the Fifth Circuit:

Whirlpool Corporation; Whirlpool Properties, Incorporated v. Shenzhen Sanlida Electrical Technology Company, Limited; Shenzhen Avoga Technology Company, Limited, No. 22-40376 (affirming, Aug. 25, 2023).

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The order of the United States Court of Appeals, Fifth Circuit is reported at 80 F.4th 536. That order is found in the Appendix to the Petitioner for a Writ of Certiorari (or “Pet. App.”), at pages A1-A14. The order of the District Court of Eastern District of Texas is unreported. Pet. App. A15-A17. The report and recommendation of the Magistrate Judge in the District Court of Eastern District of Texas is unreported. Pet. App. A18-A23.

JURISDICTION

The judgment of the Court of Appeals, Fifth Circuit was entered on August 25, 2023. Pet. App. A1-A14. This Court has jurisdiction under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Rule 65 of the Federal Rule of Civil Procedure provides:

“(a) Preliminary Injunction.

- (1) Notice. The court may issue a preliminary injunction only on notice to the adverse party...”

INTRODUCTION

Rule 65 explicitly specifies the requirement for “notice” but does not provide anything regarding whether “service of process” is required to issue a preliminary injunction order. In particular, since “service of process” is intertwined with the personal jurisdiction analysis and is one of the prerequisites for establishing personal jurisdiction, if service of process does not need to be considered, does it imply that the court is not required to consider personal jurisdiction when issuing a preliminary injunction order under Rule 65?

The Fifth Circuit’s decision below provides an ideal train for this Court to provide an instruction on the interpretation of the “only on notice” requirement under Rule 65. In particular, the Fifth Circuit’s decision allows a plaintiff to obtain a preliminary injunction order against a defendant without even trying to serve process on that defendant, deviating from the due process right, Federal Rule of Civil Procedure.

As this Court has made clear, exercising personal jurisdiction over a defendant requires service of process. Therefore, the Fifth Circuit’s decision directly contradicts with this Court’s jurisprudence by implying that obtaining a preliminary injunction under Rule 65 does not

require personal jurisdiction; notice alone is deemed sufficient.

This Court should grant the writ and reserve the decision below.

STATEMENT OF THE CASE

On January 31, 2022, Respondents (“Whirlpool”) filed a lawsuit for trademark infringement, trademark dilution, trade dress infringement and unfair competition under federal and state law against Petitioners (collectively “Shenzhen”). That same day, Whirlpool filed a motion for a preliminary injunction including prohibiting Shenzhen from selling, distributing, advertising, or promoting the allegedly infringing mixers; and destroy the alleged infringing mixers.

On March 14, 2022, Whirlpool requested a preliminary injunction hearing, which was granted, and a hearing before a Magistrate Judge was scheduled for April 19, 2022. At the hearing, Shenzhen disputed personal jurisdiction for lack of service.

On the same day, the Magistrate Judge issued a Report and Recommendation recommending the granting of the preliminary injunction. Pet. App. A18-A23. Although Defendants objected to the Report and Recommendation, and throughout the relevant times, Plaintiff did not even attempt to serve Defendants. Subsequently, the District Court adopted the Report and Recommendation and issued

a preliminary injunction order. Pet. App. A15-A17. Defendants then appealed.

On appeal, the Fifth Circuit affirmed the preliminary injunction order and ruled that Rule 65 only requires notice, quoting *Corrigan Dispatch Co. v. Casa Guzman, S.A.* and stating that “Rule 65(a) does not require service of process,’ but rather requires ‘notice to the adverse party.’ 569 F.2d 300, 302 (5th Cir. 1978).” Pet. App. A1-A14.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS ARE SPLIT ON WHETHER A PRELIMINARY INJUNCTION ORDER UNDER RULE 65 CAN BE ISSUED “ONLY ON NOTICE.”

The circuits are split on whether a preliminary injunction order under Rule 65 requires “only on notice.” The decision below demonstrates that courts are straying further from this Court’s precedents. This case highlights a discrepancy in how different circuit courts interpret the “notice” requirement under Rule 65 of the Federal Rules of Civil Procedure.

Namely, the Seventh Circuit states, “in order for the district court’s preliminary injunction to be valid, that court had to have personal jurisdiction over the defendant.”). *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 800 (7th Cir. 2014). Furthermore, the Sixth

Circuit concludes that “without proper service of process, consent, waiver, or forfeiture, a court may not exercise personal jurisdiction over a named defendant.” *King v. Taylor*, 694 F.3d 650, 655 (6th Cir. 2012). Although not explicitly addressing preliminary injunction, the Tenth Circuit emphasizes that even if in the preliminary stages, the Court considers whether it has personal jurisdiction over Defendant. *AST Sports Sci., Inc. v. CLF Distrib. Ltd.*, 514 F.3d 1054, 1056 (10th Cir. 2008).

The Federal Circuit concludes that “[f]ailing to consider [the district court’s jurisdiction] was legal error.” *U.S. Ass’n of Importers of Textiles & Apparel v. U.S. Dep’t of Commerce*, 413 F.3d 1344, 1348 (Fed. Cir. 2005). Further, the Federal Circuit states “[a] district court cannot enjoin a party if it does not have jurisdiction over that party.” *Celgard, LLC v. LG Chem, Ltd.*, 624 F. App’x 748, 751 (Fed. Cir. 2015).

The Fourth Circuit concludes that injunctive relief, by its very nature, can only be granted in an *in personam* action commenced by one party against another in accordance with established process. *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 957 (4th Cir. 1999), certiorari denied.

By contrast, the Fifth Circuit decision states that “notice” alone is sufficient to issue a preliminary injunction order Rule 65. Apparently, there is a conflict among the federal court of appeals. This case satisfies the criteria for this Court’s review as this conflict is acknowledged, entrenched, and widespread.

In addition, this Court's intervention would promote consistency and uniformity in legal interpretation nationwide. An instructive ruling on this case would reduce legal uncertainty and inevitable forum shopping.

II. THE DECISION BELOW IS INCORRECT, DANGEROUS, AND IN A DIRECT INCONSISTENCY WITH THIS COURT'S PRECEDENT.

Certiorari should be granted because the question presented is important. The decision below is incorrect as it fails to consider personal jurisdiction prior to issuing an order, and such a decision creates a dangerous precedent for the Fifth Circuit. It allows someone's assets to be frozen or destroyed "only on notice," without "service of process," thus inadvertently encouraging forum shopping.

This Court has never endorsed this result. Rather, this Court is clear on that to obtain personal jurisdiction over a defendant, a court must have (1) proof of "notice to the defendant," (2) "a constitutionally sufficient relationship between the defendant and the forum," and (3) "authorization for service of a summons on the defendant." *Omni Capital v. Rudolf Wolff & Co.*, 484 U.S. 97, 108 S. Ct. 404, 98 L. Ed. 2d 415 (1987).

Moreover, this Court is clear on that regardless of nationality, all people or entity are assured of either personal service, which typically will require service abroad and trigger the Hague

Convention or substituted service. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705, 108 S. Ct. 2104, 2111, 100 L. Ed. 2d 722 (1988) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)).

Specifically, this Court states that “[o]nce personal jurisdiction of a party is obtained, the District Court has authority to order it to ‘freeze’ property under its control, whether the property be within or without the United States.” *United States v. First Nat. City Bank*, 379 U.S. 378, 384, 85 S. Ct. 528, 531, 13 L. Ed. 2d 365 (1965).

Here, while the district court issued a preliminary injunction order, the district court fails to consider service of process. Shenzhen’s appeal emphasizes the fundamental principle of due process. The question of whether service of process is one of the prerequisites for a preliminary injunction order speaks to the core of constitutional rights. Therefore, an instructive ruling from this Court can provide clarity on “only on notice” requirement under Rule 65, service of process and upholding due process rights, offering essential guidance to lower courts.

III. THIS CASE IS AN IDEAL VEHICLE TO PROVIDE A GUIDANCE ABOUT THE “ONLY ON NOTICE” REQUIREMENT UNDER RULE 65

The question presented here raises an issue of fundamental importance, and its correct dispositions are essential to the proper and uniform operation of the due process protection nationwide. This case

further raises questions about fairness in litigation. This Court's grant of certiorari could establish standards that ensure fairness and equitable treatment for all parties in cases involving preliminary injunction order.

In light of the significant implications for legal uniformity, due process rights, and fairness in litigation, this case is undeniably vital and warrants the attention of this Court. An instruction from this Court will promote consistency and guide future legal proceedings in similar cases, thereby benefiting not only the parties directly involved but also the broader legal landscape in the United States.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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