No. 25-993

IN THE

# Supreme Court of the United States

VINCENZO OPPEDISANO,

*Petitioner,*

*v.*

LYNDA ZUR,

*Respondent.*

---

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

## BRIEF IN OPPOSITION

DANIEL DESOUZA, ESQ.
DESOUZA LAW, P.A.
3111 North University Drive
Suite 301
Coral Springs, FL 33065
(954) 603-1340
ddesouza@desouzalaw.com

391670

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## INTRODUCTION

Respondent Lynda Zur respectfully submits that the petition for a writ of certiorari should be denied.

Petitioner Vincenzo Oppedisano fails to present a "compelling reason" for the Court to grant his Petition for a Writ of Certiorari (the "Petition"). See Sup. Ct. R. 10. Recognizing that this Court does not normally grant petitions for certiorari to review an application of state law, Petitioner attempts to manufacture a reason for review by suggesting that this Court should opine on how state courts across the country should determine how partnerships are formed under their own state laws.

The Court should decline Petitioner's invitation. There is no reason – compelling or otherwise – for this Court to review the prior decisions of the Second Circuit or the Southern District of New York determining whether Petitioner adequately set forth evidence of partnership formation under New York state law. Those decisions do not conflict with federal law, do not conflict with the New York courts' own interpretation of partnership law, and were based on review of thousands of pages in the record (including deposition transcripts, admissions, document production, etc.) conclusively demonstrating the absence of partnership formation.

There is no Circuit split here, conflict with any prior decision of this Court, or other rational reason for this Court to involve itself in the internal business laws of the State of New York. Petitioner has pointed to nothing suggesting that the Second Circuit misinterpreted New York law or that this Court should involve itself in

correcting any such error. The courts of each state are entitled to determine the mechanisms and contours by which partnerships are formed under the laws of their own state. The Petition should be denied.

## REASONS FOR DENYING THE PETITION

### I. Partnership Formation is a Matter of New York State Law

Petitioner does not assert that the Second Circuit applied the wrong law in determining whether a common law partnership existed between Petitioner and Respondent. Nor can he assert such as partnership formation is inherently a creature of state law (here, New York). "A partnership is an association of two or more persons to carry on as co-owners of a business for profit." N.Y. Partnership Law § 10 [1]; see Czernicki v Lawniczak, 904 N.Y.S.2d 127 (2010). "When there is no written partnership agreement between the parties, the court must determine whether a partnership in fact existed from the conduct, intention, and relationship between the parties." Czernicki, 904 N.Y.S.2d at 131. "Relevant factors for the court to consider in determining whether a partnership existed include the intent of the parties, whether there was a sharing of profits and losses, and whether there was joint control and management of the business." Fasolo v. Scarafile, 991 N.Y.S.2d 820, 821-22 (App. Div. 4th Dept. 2014) (collecting cases). "No one factor is determinative [but, rather,] it is necessary to examine the parties' relationship as a whole." Kyle v. Ford, 584 N.Y.S.2d 698, 699 (App. Div. 4th Dept. 1992). "An ***indispensable essential*** of a contract of partnership or joint venture, both under common law and statutory law,

is a mutual promise or undertaking of the parties to share in the profits of the business and submit to the burden of making good the losses." Matter of Steinbeck v. Gerosa, 151 N.E.2d 170, 178 (N.Y. 1958); see also Dinaco, Inc. v. Time Warner, Inc., 346 F.3d 64, 68 (2d Cir. 2003) (same).

The Second Circuit did not manufacture that sharing in the losses of a business is an "indispensable element" of a New York partnership – the New York Court of Appeals announced such standard in 1958, and the New York courts have uniformly followed such since then. See, e.g. Kyle, 584 N.Y.S.2d at 699 (reversing summary judgment granted to plaintiff as "the undisputed evidence that defendants never made a capital contribution to the business strongly suggests that no partnership existed"); Hammond v. Smith, 57 N.Y.S.3d 832, 836 (N.Y. App. Div. 4th Dept. 2017) ("The documentary evidence and plaintiff's own deposition testimony establish that plaintiff made no capital contributions and did not share in the business venture's losses. At his deposition, plaintiff testified that he made no capital contributions to the venture, and contributed only 'time, effort, good will, [and] expertise as the investment.'") (affirming summary judgment against plaintiff seeking to establish existence of partnership); Scott v. Rosenthal, 2000 U.S. Dist. LEXIS 23608, at *8 (S.D.N.Y. Dec. 19, 2000) (granting summary judgment against plaintiff that failed to proffer actual evidence of the factors supporting the existence of a partnership); Cleland v. Thirion, 704 N.Y.S.2d 316, 318-19 (App. Div. 3rd Dept. 2000) ("The record establishes that the studio property was owned solely by defendant and that plaintiff made no contribution to its purchase and neither made nor assumed responsibility for the mortgage payments thereon. Further, it is undisputed that plaintiff's name

was never placed on a certificate of doing business as partners, no partnership tax returns were ever filed and there never was any sharing of profits or losses.").

None of these cases is predicated on interpretations of New York state law that somehow conflicts with federal law or is somehow contrary to any precedent of this Court. Nor does any prior decision of this Court somehow alter the New York Court of Appeals' own interpretations of its state's own laws that do not touch upon federal law in any manner.

## II. Sharing in Profits/Losses was Not the Only Factor Considered

Even if Petitioner was correct that partnership formation under state law was an important matter for this Court to opine on (it is not), he is incorrect that the Second Circuit limited its gaze solely to the issue of sharing in profits/losses. Petitioner ignores that the Second Circuit considered the totality of factors under New York state law with respect to partnership formation. Indeed, the Second Circuit specifically stated: "In any event, Oppedisano also failed to establish the remaining elements of a partnership agreement. . . ." Pet. App. 29a-30a.

Thus, even if this Court was inclined to tell the New York Court of Appeals that it misapplied its own state's laws as to the importance afforded to sharing in profits/losses, the fact remains that the totality of factors was considered here on summary judgment and Petitioner's claim was found lacking of evidentiary support. It is not this Court's function to re-review summary judgment evidence to determine whether Petitioner adequately supported a state law partnership claim.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: March 23, 2026.

Respectfully submitted,

Daniel DeSouza, Esq.
Desouza Law, P.A.
3111 North University Drive
Suite 301
Coral Springs, FL 33065
(954) 603-1340
ddesouza@desouzalaw.com