King County No. 12-2-20411-0
Court of Appeals No. 69691-2
Washington Supreme Court No. 89962-2

SUPREME COURT OF THE STATE OF WASHINGTON

DEANDRA GRANT
Appellant,

v.

NATIONAL COLLEGE FOR DUI DEFENSE,

Respondent

APPEAL FROM THE DISTRICT COURT FOR KING COUNTY
THE HONORABLE THERESA B. DOYLE, DISTRICT COURT JUDGE

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR DISCRETIONARY REVIEW PURSUANT TO WASH.R.APP.P. 13.1, 13.3 AND 13.4

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I.

REPLY FACTS

Respondent continues to mislead this court regarding the mistake of the court of appeal, that forum nonconveniens was never argued [it was the only issue at bar], despite the fact it was the gravaman argument made in the opening brief.

Respondent also advocates that the Washington courts having proper personal jurisdiction over Respondent, as part of the forum nonconveniens analysis, is not important. Petitioner's position is that it is the only issue, because the prevailing case law addressing this very issue, provides that once Washington has jurisdiction over Respondent, forum nonconveniens is not a viable defense of any kind. Respondent continues to deliberately misrepresent the facts by asserting that Washington was an inconvenient forum. This fraud upon the court is self evident, as their own website which all members must accept the terms of, explicitly states that Washington State and King County is the venue for all litigation "for Certification issues." This establishes the disingenuousness of their claims to forum nonconveniens and their willingness to mislead the courts in violation of ethical standards.

Respondent also just tries to reargue the Court of Appeal's finding and recycles that argument and disregards the reality of what was in Petitioner's opening brief.

Lastly, Respondent attempts to correct their blunder on their prior meritless motion for sanctions by refiling it as a new issue here in opposition to the petition for discretionary review, and conflate not prevailing on a proceeding, with frivolousness.

II.
ARGUMENT/ POINTS AND AUTHORITIES
A.
PERSONAL JURISDICTION AS PART OF THE FORUM NONCONVENIENS ISSUE IS A SUBSTANTIAL PUBLIC ISSUE FOR THIS COURT TO GRANT DISCRETIONARY REVIEW ON

Respondent claims first that no grounds for review by this court have been stated. This is incorrect. The forum nonconveniens question is manifestly part of the personal jurisdiction question and due process of law, and is a "substantial public issue". Appellant's position is that the *Gulf Oil* factors that Respondent advocates are an unnecessary part of the analysis whereas here, the State of Washington had personal jurisdiction over Respondent by the fact of its domicile as a corporation of the state, and forum nonconveniens no longer exists as a "red herring" for respondent.

This is a disputed issue of law that is also an issue of substantial public interest.

In deciding whether an issue of substantial public interest is involved, the court looks at three criteria: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination that will provide future guidance to public officers, and (3) the likelihood that the question will recur. *In re Silva*, 166 Wash.2d 133, 137, n. 1 (2009). Here, whether a domiciled corporation's affirmatively establishes personal jurisdiction over a party so as to bar the application of the doctrine of forum nonconveniens is a matter of substantial public interest. It is a public issue that parties will use to guide whether or not to allow Washington corporations to claim litigation here is an inconvenient forum; the resolution of this issue will give future guidance to Washington trial courts; and if not resolved now this will likely reoccur on an unsettled issue of law. This is not "convoluted", the Court of Appeal's decision that jurisdiction was irrelevant to forum nonconveniens was wrongly decided, and it remains a substantial public interest.

1. The Majority of Petitioner's Opening Brief Addressed the Motion to Dismiss on Forum Nonconveniens Grounds

A motion to dismiss on forum nonconveniens grounds is the motion that was granted, and the only one that Petitioner addressed in the opening brief. A motion to dismiss and a motion to stay are the only remedies that forum nonconveniens can be addressed at, and only during the pleading stage of the case. This is well-documented in Washington law. See *Feature Realty, Inc. v. Kirkpatrick & Lockhart Preston Gates Ellis, LLP*, 161 Wash.2d 214, 220 (2007). Only Respondent's motion to dismiss was granted.

Respondent continues to falsely claim that the motion to dismiss was never addressed in the opening brief, when it was addressed throughout the majority of the brief, even if the words "motion to dismiss" were not mentioned at every page in the brief. It was stated in the standards of review on page 7 of the brief, in the headnote on Respondent's forum selection clause on pages 12-20, and specifically on the forum nonconveniens headnote on pages 20-26.

It is patently absurd that Respondent is saying the basis upon which Petitioner filed an opening brief was not about Respondent's motion to dismiss. That was all that it addressed.

2. Personal Jurisdiction is Inextricably Intertwined with the Forum Nonconveniens Question, and it Raises a Substantial Public Issue on Whether Washington Domiciled Corporations Can Claim Forum Nonconvenies to Obtain Case Dismissal

Whether King County, Washington is an inconvenient forum for the litigation at bar is something that addresses constitutional due process, including personal jurisdiction that is inextricably intertwined with forum nonconveniens, the latter being part of the former. "The Due Process Clause of the Fourteenth Amendment to the United States Constitution permits personal jurisdiction over a defendant in any State with which the defendant has "certain minimum contacts . . . such that the maintenance of the suit does not offend `traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

In reality, forum nonconveniens is appropriately considered as one specific aspect of the more general personal jurisdictional issue. See *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 429 (2007). Respondent cannot legitimately claim forum nonconveniens in Washington where they elected to incorporate in and submitted to the State's personal jurisdiction. This is because forum state domicile precludes consideration of forum

nonconveniens. Nonconveniens has an extremely limited application to a case where a party is a bona fide resident of the forum state. See *Thomson v. Continental Ins. Co.*, 66 Cal.2d 738,742 (Cal. 1967). "If a corporation is the defendant, the state of its incorporation and the place where its principal place of business is located is presumptively a convenient forum." *Stangvik v. Shiley Inc.*, 54 Cal.3d 744, 755 (Cal. 1991). The determination that a party is domiciled in a state would ordinarily preclude granting the defendant' s motion for dismissal on the grounds of forum nonconveniens. See *Goodwine v. Superior Court,* 63 Cal.2d 481, 485-486 (1965).

Thus, the Court of Appeal's failure to consider Respondent's submitting to the personal jurisdiction of Washington due to their choosing to incorporate in the state as part of the forum nonconveniens analysis was a manifest abuse of discretion, and this is a substantial public issue that this court should grant discretionary review to.

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B.

RESPONDENT'S BOARD CERTIFICATION FORUM SELECTION PROVISION/AGREEMENT CONSTITUTED ACKNOWLEDGMENT OF THE VENUE OF KING COUNTY, WASHINGTON AS A CONVENIENT FORUM, AND THE LOWER COURTS' DISREGARD FOR THIS UNDENIABLE FACT WAS REVERSIBLE ERROR

Remarkably, Respondent treats their obvious knowledge of the Board Certification forum selection and choice of law provision and the Membership forum selection and choice of law provision, as the elephants in the room, continuing to argue that the nearly identical provisions are irrelevant. The agreement regarding Board Certification on Respondent's website states as follows:

> 8. GOVERNING LAW AND JURISDICTION. "Applicant agrees and acknowledges that any dispute relating to Board Certification, including but not limited to rules, application, evaluation, qualification, examination, grading, and results, will be governed by the laws of the State of Washington. **Applicant further irrevocably agrees to submit to the exclusive jurisdiction of and venue in the Superior Court of King County, Washington.** This provision shall be enforced without reference to any conflict-of-laws provision that would require application of a different choice of law. (Emphasis added) Available at http://ncdd.com/rules-governing-board-certification

Respondent continues to make this false argument by denying the existence of this Certification forum/venue selection

provision on pp. 8, 9, 14, and 16, and conflating it with Membership, as if the Certification provisions that is nearly identical does not exist. Respondent and their counsel have misrepresented this now to three Washington courts. This is a troubling issue of client and attorney dishonesty that should also be taken up by this court. "RPC 3.3(a)(1) provides it is misconduct for a lawyer to "knowingly ... make a false statement of fact or law to a tribunal." *In re Disciplinary Proceeding Against Conteh*, 175 Wash.2d 134, 148 (2012). "Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense." *Williams v. Superior Court*, 46 Cal.App.4th 320, 330 (Cal. 1996).

One can only surmise that Respondent's litigation repudiation of this Certification agreement is because they believed it to only be unilaterally "irrevocable" for them.[1] "Respondent's cannot repudiate their own prior agreement in court to avoid litigation. "A party 'cannot have it both ways. (It) cannot rely on the

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[1] Irrevocable" means "[u]nalterable; committed beyond recall," Black's Law Dictionary 848 (8th ed. 2004), or "[i]mpossible to retract or revoke," American Heritage College Dictionary 719 (3d ed.1993).

contract (provision), when it works to (its) advantage, and repudiate it when it works to (its) disadvantage." *Lounge-A-Round v. GCM Mills, Inc.*, 109 Cal.App.3d 190, 197 (Cal. 1980).

Respondent went forward in arguing facts completely contrary to that Certification forum selection agreement solely because they wanted to get the case dismissed. Here are those remarkable words:

> "In short there is not one scrap of paper or one potential witness in this case (including Plaintiff herself) located in Washington and it will be extremely burdensome for everyone involved for this case to be litigated in Washington." (CP 059)

The Internet may not be a scrap of paper, but it is documentary evidence of a forced agreement upon those seeking Certification with Respondent that the unilaterally repudiated in litigation to make the false claim of forum nonconveniens.

The trial court and Court of Appeal's disregard for Respondent's own website contract binding the parties to litigation only in King, County Washington was also reversible error. *Bank of America, N.A. v. Miller*, 108 Wash.App. 745, 748 (2001).

D.
RESPONDENTS' CONTINUED CONFLATING BEING A PREVAILING PARTY WITH FRIVOLOUSNESS IN ORDER TO GET SANCTIONS IS A MERITLESS ARGUMENT

Respondent first claims that no grounds for review by this court have been stated. This is incorrect. As stated hereinabove, personal jurisdiction and due process of law is manifestly part of the forum nonconveniens question, and is a "substantial public issue".

Respondent continues with its overzealous advocacy that anything that another party disagrees with them on is grounds for sanctions if they are the prevailing party. " 'Meritless' means "groundless or without foundation, rather than simply that plaintiff has ultimately lost his case." *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412, 421 (1978).

Under RCW 4.84.185, an action is frivolous if, considering the action in its entirety, it cannot be supported by any rational argument based in fact or law. See *Dave Johnson Ins., Inc. v. Wright*, 167 Wn.App. 758, 785, review denied, 175 Wn.2d 1008 (2012). Under RAP 18.9, an appeal is frivolous if it is so devoid of merit that there exists no reasonable possibility of reversal. See *In re Marriage of Healy*, 35 Wn.App. 402, 406 (1983). "Raising at least one debatable issue precludes finding that the appeal as a

whole is frivolous." *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd.*, 170 Wn.2d 577, 580 (2010).

It is debatable whether personal jurisdiction and Respondent's incorporation in Washington is part of the forum nonconveniens analysis. The fact that several states including California and New York have considered forum nonconveniens as part of the entire personal jurisdictional question shows that this was not frivolous. As such, Respondent's motion for sanctions for a frivolous appeal itself lacks merit.

III.

CONCLUSION

Based on the foregoing, this court should grant review and decide the issues of first impression that control over the imperative issues of proper court orders, the relationship between incorporation and the forum non conveniens doctrine, and that a forum selection clause for King County, Washington negates any claim to forum nonconveniens.

Dated this 26 day of March, 2014

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PROOF OF SERVICE

STATE OF WASHINGTON

I am a resident of/employed in the county of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; My business address is: 3940 Laurel Canyon Blvd., Ste 1038, Studio City, Ca 91604

On March 26, 2014 I served the within documents described as: **PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR DISCRETIONARY REVIEW PURSUANT TO WASH.R.APP.P.13.1,13.3 AND 13.4**

Grant v. NCDD – King County Case No. 12-2-20411-0; Court of Appeals No. 69691-2

on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Studio City, California, addressed as follows

SEE ATTACHED LIST

__X____ (U.S. MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Studio City, California in the ordinary course of business. The envelope was sealed and placed for collection that same day following ordinary business practices, addressed to the above attorney.

I declare under penalty of perjury under the laws of the State of California, State of Washington, and the United States of America, that the foregoing is true and correct.

Executed on March 26, 2014, at Studio City, California

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