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No. 96655-9

IN THE WASHINGTON STATE SUPREME COURT

GREAT OCEAN CAPITAL HOLDING, LLC, a Washington limited liability company; HUY YING CHEN and XUE PING WANG, Husband and Wife Residing in Washington State,

Petitioners,

v.

YANLU LIU AND AI HUA PAN, husband and wife residing in King County, Washington; PENG ZHANG and ZHONGYUAN PAN, Husband and Wife residing in Ontario, Canada,

Respondents.

PETITION FROM THE COURT OF APPEALS – DIVISION I
Case Number: 76576-1

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioners[1], Great Ocean Capital Holding Company (hereinafter referred to as "Great Ocean") was[2] a United States Regional Center registered and approved by the United States Citizenship and Immigration Service ("USCIS") to accept capital investments and engage in Rule 506 (c) offering to foreign investors for purposes of them obtaining their U.S. Green Card through the Fifth Employment-Based Preference of United States Immigration Act of 1990.

II. CITATION TO THE COURT OF APPEALS' DECISION

Petitioner, Great Ocean, seeks review of the Washington State Court of Appeals, October 15, 2018 decision[3] affirming the King County Superior Court's granting of summary judgment. Petitioner, Great Ocean also seeks review of the Court of Appeal's November 19, 2018 denial[4] of

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[1] Petitioners' Huy Ying Chen and Xue Ping Wang, Members of Great Ocean Regional Center, have elected to represent themselves *pro se* during the course of this appeal.

[2] Great Ocean Regional Center, during the course of this appeal, has lost its regional center status based on the averments and unlawful taking of the $500,000.00 that was to be used by Great Ocean for its governmentally approved project. Great Ocean is appealing this decision and relies, in part, on this Court's decision to rectify a clear cut violation of federal law by Respondents.

[3] Attached hereto as **Appendix 1** and incorporated herein by reference is a true and correct copy of October 15, 2018 Court of Appeals (Division I) decision affirming the trial court's order of summary judgment.

[4] Attached hereto as **Appendix 2** and incorporated herein by reference is a true and correct copy of November 19, 2018 Court of Appeals (Division I) decision denying Respondent. Great Ocean's Motion for Reconsideration.

Petitioner, Great Ocean's Motion for Reconsideration. The grounds for review are based on the following facts and law:

Pursuant to RAP 13.4 (b)(3) there a significant question of law under the Constitution of the State of Washington and the Constitution of the United States wherein neither the King County Superior Court's nor the Washington State Court of the Appeals properly addressed or appreciated in relation to the Fifth Employment-Based Preference of the United States Immigration Act of 1990.

Simply put, Respondent Bonnie Pan, a Chinese national seeking a U.S. Green Card through the United States Fifth Employment-Based Preference of the United States Immigration Act of 1990, invested $500,000.00 U.S. Dollars wherein upon approval of her I-526 Application for a Green Card, these funds **<u>by U.S. law</u>** were to be released to Great Ocean for its governmentally approved project under the EB-5 Program. Both parties signed and acknowledge in a PPM, that upon approval of Respondent Bonnie Pan's I-526 application; these funds were to be dispersed into the federally approved project. Shortly after the filing and services of a civil complaint, part of which wrongfully alleged Great Ocean was a fraudulent regional center, USCIS approved her I-526 application as part of Great Ocean's Regional Center status. At that point, the $500,000.00 that Bonnie Pan invested and "put at risk" under the EB-5

Program, by U.S. law, belonged to the federally approved project she invested in. At that point, the state trial court did not have jurisdiction to interfere with these appropriated funds.

Despite receiving her I-526 approval, despite Great Ocean initially agreeing to returning her capital investment and despite her falsely representing that she was an accredited investor, Respondents continued prosecuting this matter; this was done simply to inflate attorneys' fees. The very basis for Respondent Bonnie Pan's capital contribution was to obtain Green Card approval. When she received her I-526 approval, she unlawfully received the full return of her capital contribution and at the same time received her I-526 approval. This is not very complicated; she paid for something that she got (I-526 approval) and then received all her money back in violation of federal law.

Appellants cannot appreciate or understand how the trial court or the Court of Appeals allowed someone to benefit from Great Ocean's regional center status under federal law and then allow such person to take back the money she placed at risk and by law acknowledged that would belong to the federal government.

<u>Upon Respondent, Bonnie Pan's I-526 approval, that $500,000.00 capital contribution for a U.S. Green Card did NOT belong to Respondent Bonnie Pan or Appellant Great Ocean Regional Center;</u>

it was money that belonged to the federally approved project under the EB-5 Program. Accordingly, the trial court lacked subject matter jurisdiction to release those funds back to Respondent Bonnie Pan because by federal law, these funds belonged to the federally approved project managed by Great Ocean. By allowing the trial Court to return these funds back to an approved EB-5 applicant, the state trial court interfered with U.S. federal regulations and the Washington State's and the United States Contract's Clause. Thus Appellants bring this Petitioner for Review in accord with RAP 13.4 (b)(3).

III. ASSIGNMENT OF ERROR

The Court of Appeals committed reversible error when it affirmed the trial court's granting of summary judgment and did not address the trial court's lack of subject matter jurisdiction. Upon Respondent, Bonnie Pan and her husband Peng Zhang receiving conditional Green Card approval through Petitioner, Great Ocean's regional center designation, their $500,000.00 capital contribution which was put "at risk" under the EB-5 Program belonged neither to Respondents nor Petitioners. Under the Fifth Employment-Based Preference of the United States Immigration Act of 1990, the $500,000.00 they invested in consideration of obtaining a Green Card were by law to be disperse and appropriated to the governmentally approved project that was to be managed by Great Ocean.

Related Issue to Assignment of Error

Issue Presented: Whether the United States Citizenship and Immigration Service ("USCIS") granting Respondents, Bonnie Pan and Peng Zhang a conditional Green Card during the course of the state court proceedings deprived the state trial court subject matter jurisdiction?

Answer to Issue Presented: Upon USCIS approving Respondents Peng Zhang and Zhongyuan Pan's I-526 application for a condition Green Card, the capital contribution invested by Respondents, by U.S. law, were to be dispersed to the federally approved project that was approved by USCIS. Accordingly, the state trial court lacked jurisdiction to interfere or obstruct with federally appropriated funding for job creation.

IV. STATEMENT OF THE CASE

Respondents, Peng Zhang and his wife Zhongyuan Pan (*aka,* "Bonnie Pan"), are Chinese nationals whose co-respondents are founding members of Great Ocean and are her parents. Respondents Peng Zhang and Bonnie Pan used Great Ocean's U.S. Regional Center designation to obtain I-526 approval for a Green Card.

Although Respondent's Complaint initially alleged that Great Ocean was a fraudulent Regional Center under the EB-5 Program, Respondents Peng Zhang and Bonnie Pan embarrassingly received her I-526 approval for her Green Card during the pendency of the lawsuit. At this point the case should have been dismissed by Respondent and ruled moot by the trial court because she had received the benefit of her capital investment under the EB-5 Program. With egregious indifference, Respondents moved forward with their lawsuit despite such funds at that

point, statutorily under federal law belonging to the United States government for the creation of jobs. The trial court and the Court of Appeals appeared incapable of recognizing this very clear-cut fact that she received the benefit of the bargain and at the same time usurped the full return of her capital contribution despite such funds by law not belonging to her or Great Ocean, but rather to be appropriated to the governmentally approved EB-5 Project that was being managed by Great Ocean. Respectfully, from the pleadings, motions and court orders filed in the action, Appellants contend that neither Respondents' counsel of record the trial court, or the Court of Appeals understand the EB-5 Program and have caused many jobs to be terminated and jeopardized international maritime contracts Great Ocean had in accordance with its approved USCIS project.

At present, Respondents, Peng Zhang and Bonnie Pan have unlawfully obtained unsourced funds belonging to other foreign investors that has interfered profoundly with the capital investment project approved by the United States government to create U.S. jobs; a commerce clause violation. Again, once the U.S. government approved Respondents' Peng Zhang and Bonnie Pan I-526 application for a conditional Green Card, the state trial court proceedings should have ceased and those funds be applied to the project that received U.S. government approval.

While Petitioners understand that appeals are rarely granted and judges tend to uphold lower court decisions, there is a obvious violation of the rule of law. Petitioners prays that the Washington State Supreme Court and the judges that have the honor of presiding over such an appeal must immediately act to rectify a judicial looting of a company that abided by its PPM, Operating Agreement and all federal laws. Appellants urgently ask that this Court find the trial court's judgment void for lack of jurisdiction.

On November 30, 2015 Respondents initiated a civil lawsuit[5] against Appellants' Huy Ying Chen, Xue Ping Wang and Great Ocean by filing a Complaint with the King County Superior Court (Seattle) that alleged a total of eight (8) legal claims: (1) Breach of Contract; (2) Fraudulent Misrepresentation; (3) Negligent Misrepresentation; (4) Washington State's Securities Act; (5) Washington State's Consumer Protection Act; (6) Consumer Protection Act (Injunctive Relief); (7) Breach of Fiduciary Duty; and (8) Accounting. Prior to this lawsuit, as required by WSSA, PPM and the Operating Agreement Respondent Zhongyuan Pan signed, Ms. Pan made no demand for return of her investment and instead appeared *ex parte* before King County Superior

Court Commissioner Carlos Vellatagui[6] and obtained a temporary restraining order that recklessly froze unsourced funds belonging to other international investors. These funds were in Great Ocean's East West Bank Account designated for EB-5 investors.

On January 16, 2016, Appellants, in response to Respondents' claims, filed a Motion to Compel Arbitration in conformity with an Operating Agreement signed by Defendant, Zhongyuan Pan. On February 8, 2016[7] the trial court granted Appellant's Motion to Compel Arbitration, finding that the arbitration agreement contained in the Operating Agreement was both "*valid and enforceable*." Accordingly, all claims, *except* Respondents' claims for alleged violations of: (1) Washington State's Security Act; (2) Breach of Fiduciary Duty; and (3) Accounting, were remanded to arbitration in accordance with Paragraph 24.3 of the Operating Agreement.

Oddly enough, during the interim of this litigation, ***Plaintiff/Respondent Zhongyuan Pan, who alleged Great Ocean was a fraudulent Regional Center despite working within the Regional Center***

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[6] Although the Commissioner granted the Motion for a Temporary Restraining Order, he warned Respondent's counsel of the consequences of freezing unsourced funds.

[7] Attached hereto as **Appendix 3** and incorporated herein by reference is a true and correct copy of the court order dismissing Plaintiffs/Respondents claims, with the exception of (1) Washington State's Security Act; (2) Breach of Fiduciary Duty; and (3) Accounting.

with her Member parents, received her I-526 approval from USCIS. This approval was a result of Great Ocean's regional center status and her promise to invest her capital investment. ***As Respondent Zhongyuan Pan received the benefit of her capital contribution all further litigation should have stopped; not the case here. Respondents, despite receiving approval of her I-526 petition for her Green Card, moved forwarded in litigating this matter and seeking return of funds she represented to Great Ocean and the United States that would be used to creating U.S. job***s. At this point, ***there was no basis in either fact or law wherein she was entitled to recoup her capital investment, especially since for immigration purposes she received the benefit of afforded by the EB-5 Program***.

Instead of dismissing her lawsuit when she received her I-526 approval, she manipulated and abused our judicial system to obtain capital funds belonging to other international investors; meaning she obtained *ex parte* restraining order freezing corporate funds belonging to other EB-5 investors. ***Respectfully, the trial court, based on federal law and regulations, had no power or authority to grant a restraining order or enter judgment on a program governed and regulated by the U.S. government***. ***Despite Defendants/Appellants contesting jurisdiction and filing a 12 b (6) motion, the trial court judge did not appear to have a***

comprehensive understanding of EB-5 law and its mechanics. As a result, Respondents obtained funds by making a number of false and misleading misrepresentations to the Court and making ignorant representations to the Court that a U.S. Regional Center had to show creation of 10 full time jobs[8].

Respondent, Zhongyuan Pan has not only ***not*** created jobs for U.S. residents, she has caused several people to lose their jobs and has profoundly damaged a company (Great Ocean) fully compliant with U.S. immigration laws. Moreover, she has and continues to destroy the reputation of its owners, Huy Ying Chen and Xue Ping Wang. Through court orders prepared by Respondents' legal counsel and virtually rubber stamped and unchanged by Judge Parisien, Respondent, Zhongyuan Pan has absconded with funds not belonging to her. Respondents, despite having no legal basis to do so, are now in the process of garnishing attorneys' fees not only in violation with federal law, but also in violation with WSSA; a claim that this Washington State has no authority to impose on a U.S. Regional Center and which is exempt from enforcement as a 506 (c) 3 offering.

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[8] This occurs for direct investment for foreign nationals, not U.S. Regional Centers.

As memorialized in Defendants/Appellants' April 15, 2016 Answer and Affirmative Defenses[9] ***the trial court lacked subject matter and personal jurisdiction***. Despite Appellants/Defendants Motion to Dismiss objecting and contesting the trial court's jurisdiction, on May 6, 2016 Plaintiffs/Respondents filed a Motion for Partial Summary Judgment seeking judgment on Respondents,Peng Zhang and Bonnie Pan's WSSA claim.

On September 26, 2016, the trial court granted partial summary judgment on Plaintiff, Zhongyuan Pan's WSSA claim and within the September 26, 2016 Court Order instructed Plaintiff to provide a Motion for Entry of Judgment. As remaining claims remained, ***Appellants filed a CR 54 (b) motion contesting jurisdiction again and asking the trial court to reconsider its September 26, 2016 granting of summary judgment under WSSA***. ***After waiting over two (2) months to render a ruling on the motion, the trial court, without requiring a response from Respondents, denied the reconsideration motion on November 28, 2016***. On that very same day; the trial court issued November 28, 2016 Findings of Fact and Conclusions of Law allowing Respondent to go into Great Ocean's East West and operating account and withdraw 519,500.00 out of the account; ***funds which by federal law that were supposed to be used by***

[9] Attached hereto as **Appendix 2** and incorporated herein by reference is a true and correct copy

Great Ocean in creating U.S. jobs. This was curious, as there was remaining claims and no final order on disposition of the matter. Respectfully Great Ocean and the federal government was robbed.

Again, the purpose of the United States EB-5 Program is to promote the immigration of foreign nationals who can help create jobs for U.S. workers through their investment of capital into the U.S. economy. In the EB-5 Program, immigrants who invest their capital in job-creating businesses and projects in the United States receive conditional permanent resident status in the United States for a two-year period. After two years, if the immigrants have satisfied the conditions of the EB-5 Program and other criteria of eligibility, the conditions are removed and the immigrants become unconditional lawful permanent residents of the United States. Congress created *the two-year conditional status period to help ensure compliance with the statutory and regulatory requirements* and to ensure that *the infusion of investment capital is sustained and the U.S. jobs are created*.

For purposes of understanding how the federal government wholly governs and regulates immigration law through the U.S. Department of Homeland Security and why a state trial court lacks jurisdiction to render judgment on a U.S. designated Regional Center (especially under WSSA as it is an offering to ***foreign national***) it is important to have a clear

understanding for the EB-5 Program. The EB-5 Program is based on three main elements: (1) the immigrant's investment of capital, (2) in a new commercial enterprise, (3) that creates jobs. Investment may be directly shown by the EB-5 investor investing $1,000,000.00 (USD) in a new commercial enterprise; however, the investor will be required to show a direct job creation over a two-year period.

In the alternative, the EB-5 investor may reduce that investment amount by $500,000.00 (USD) by placing their U.S. capital contribution in a U.S. designated regional center, such as Great Ocean. Job creation is established through an economic model approved by USCIS; there is ***no direct*** job creation correlation as hypothesized by Plaintiffs. Admission into the EB-5 Program is done by filing an I-526 to USCIS. In this case Respondent Zhongyuan Pan did this by submitting an I-526 application and choosing her parents' U.S. designated Regional Center, Great Ocean Capital Holding Company. Under the law, if Respondent, Zhongyuan Pan wanted a return of her capital contribution, she must, by federal law, withdraw her, I-526 application; she has not from what we know and instead has obtained her money capital contribution back and received her I-526 approval. Appellants don't know the definitive status of this because Respondent Zhongyuan Pan refused to appear at a deposition and was

allowed to delay her appearance. A decision which was at odds with interim Judge's ruling that Zhongyuan Pan appear.

At present, the state Supplemental Proceedings on this judgment not only threaten to interfere with federally regulated but are being enforced in ways contrary to federal laws and regulations.

V. ARGUMENT

In the instant case, Appellants contested jurisdiction within Answer and Affirmative Defenses and its December 16, 2016 Motion for Reconsideration. While this should suffice for preserving any argument related to jurisdiction, this Court is very aware that a party may raise the issue of lack of subject matter jurisdiction at any time. RAP 2.5(a)(1); *MHM&F, LLC v. Pryor*, 168 Wn. App. 451, 459, 277 P.3d 62 (2012).

Under *Metropolitan Federal Sav. & Loan Asso. v. Greenacres Memorial Asso.*, 7 Wash. App. 695, 502 P.2d 476 (1972), the inquiry in the case of whether judgment is void for lack of jurisdiction is whether the trial court had the power to enter the judgment, and not whether the judgment is erroneous. No exercise of discretion is involved in vacating a judgment entered without jurisdiction. *See*, *Brickum Investment Co v. Vernham Corp* 46 Wash. App. 517, 731 P.2d 533 (1987). ***A "void judgment" is a judgment, decree, or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the***

inherent power to make or enter the particular order involved. *State ex rel. Turner v. Briggs* (1999) 94 Wn. App. 299, 971 P.2d 581*; emphasis added*.

In the instant case, there is profound interference with a federal immigration project occurring wherein this Court, on motion, has authority to void judgment to not further expose Appellants to further damage and to rectify a travesty of justice. A final judgment is subject to attack on the court's lack of jurisdiction if it manifestly abuses its authority in entertaining the action. *See*, *Marriage of Brown* (1982) 98 Wash.2d 46, 653 P.2d 602 (1982). In the *Marriage of Brown*, the Washington State Supreme Court stated:

> "…allowing the judgment to stand would substantially infringe the authority of ***another tribunal or governmental agency***, or the court lacked the capability to make an informed decision regarding its jurisdiction and the collateral attack should be allowed as a matter of procedural fairness.

See, *Marriage of Brown* (1982) 98 Wash.2d 46, 653 P.2d 602.

Based on fact applicable to the parties herein and the law highlighted and briefed below, the state trial court lacked jurisdiction to entertain Respondent, Zhongyuan Pan's WSSA claim and has effectively rendered a void judgment that it did not have the power to enter.

It is also important to note that the uncontested facts in this case, as it stands, and the federal regulations governing the EB-5 program mandates that Respondent Zhongyuan has a definitive duty to return her capital contribution in its entirety, especially if such funds belong to other foreign investors. The EB-5 Program defines "invest" as follows:

> Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur [immigrant investor] and the new commercial enterprise

Under 8 C.F.R. § 204.6(e) the regulation mandates that Plaintiff, Bonnie Pan must actually place her capital ***"at risk"*** for the purpose of generating a return, and that the mere intent to invest is not sufficient. The regulation provides as follows:

> To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the ***capital placed at risk***. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petition is actively in the process of investing. ***The alien must show actual commitment of the required amount of capital***.

At present, Respondent, Zhongyuan Pan has unlawfully obtained the total return of her capital contribution, **but received an I-526, provisional Green Card approval!** Essentially, this amounts to Immigration Fraud under 18 U.S.C. §1546 *et. seq.*, because she is holding an I-526 approval that she represented would be "*at risk*", but to date is not releasing or allowing Great Ocean, a federally designated U.S. Regional Center, to use these funds towards the project she committed to invest into in order to obtain a provisional U.S. Green Card. Simply put, when she purchases a security from Great Ocean, she is essentially representing and warranting to both the company and to the U.S. government that these funds will remain "at risk". *See*, CP

While Defendants acknowledge and give deference to the trial court's authority to settle claims and controversies amongst parties, it must invoke judicial restraint when a party litigant has not: (1) Complied with federal law; nor (2) Abided by a valid and enforceable Operating Agreement; or (3) A signed and acknowledged PPM that expressly prohibit her from obtaining monies that she represented would be going towards creating jobs and promoting the U.S. economy.

The trial court's November 28, 2016 Findings of Facts and Conclusions of Law return funds to Zhongyuan Pan, who represented and warranted would be used towards job creation to Great Ocean and the U.S.

government is contrary to Article VI, Clause 2 of the U.S. Supremacy Clause. ***The Returning of Respondent, Zhongyuan Pan's entire capital contribution is clearly pre-empted by federal law and the state trial has no authority to render judgment***. As Respondent, Zhongyuan Pan has obtained an I-526 Green Card approval, these funds ***must be released back to Great Ocean*** immediately to use in the project that Respondent, Zhongyuan Pan invested and represented to the Company and the U.S. government that she would contribute! Her attempt to flip-flop between a U.S. Green Card and a Canadian Maple Card is making a mockery of our U.S. judicial system our long-held adherence to the concept of Federalism.

VI. CONCLUSION

Petitioners respectfully pray that the Washington State Supreme Court grant review of the trial court's jurisdiction. Again, once USCIS approved Respondents Peng Zhang and Bonnie Pan's I-526 application for a Green Card, her capital contribution did not belong to Respondent investors nor Great Ocean; it belonged to the federally approved project where such funds were appropriated and the state trial court interfered with a federally regulated project aimed at creating job creation.

Respectfully submitted this 19th day of December 2018.

s/ *Tuella O. Sykes*
Tuella O Sykes, WSBA#36179
Attorney for Petitioner,
Great Ocean Capital Holding Company

Appendix 1

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

YANLU LIU and AI HUA PAN, husband and wife, residing in King County, Washington; PENG ZHANG and ZHONGYUAN PAN, husband and wife, residing in Ontario, Canada, Respondents, v. GREAT OCEAN CAPITAL HOLDING, LLC, a Washington limited liability company; HUY YING CHEN and XUE PING WANG, husband and wife, residing in Washington state; Appellants.	No. 76576-1-I UNPUBLISHED OPINION FILED: October 15, 2018

VERELLEN, J. — Great Ocean Capital Holding, LLC challenges the trial court's jurisdiction and authority to enter judgment on Zhongyuan Pan's claim under the Washington State Securities Act, chapter 21.20 RCW (WSSA). Great Ocean fails to establish the trial court lacked subject matter jurisdiction or either field or conflict preemption applies.

Great Ocean also argues the trial court erred in granting summary judgment in Pan's favor but fails to establish the existence of a genuine issue of material fact. Great Ocean's other challenges to the trial court's orders striking Great

Ocean's answer and determining Pan was entitled to rescission of her investment are similarly without merit.

Therefore, we affirm.

FACTS

Great Ocean is a United States Citizen and Immigration Service designated regional center for purposes of the EB-5 Immigrant Investor Program. Appellants Huy Ying Chen and Xue Ping Wang, husband and wife, own a majority interest in Great Ocean. Respondents Yanlu Liu and Ai Hua Pan, husband and wife, own a minority interest. Yanlu Liu and Ai Hua Pan are the parents of Zhongyuan Pan.

Pan invested $519,500 in Great Ocean for the purpose of obtaining a visa through the EB-5 Program. The EB-5 Program allows foreign investors and their families to obtain residency in the United States.

In November 2015, Pan and her parents filed a lawsuit against Great Ocean for breach of contract, fraudulent and negligent misrepresentation, violation of the WSSA, violation of the Consumer Protection Act, chapter 19.86 RCW, breach of fiduciary duty, and accounting.[1]

The trial court entered orders granting partial summary judgment on Pan's WSSA claim, striking Great Ocean's answer and affirmative defenses, and entering findings of fact, conclusions of law, and judgment on Pan's WSSA claim. The principal amount of judgment was $519,500 for Pan's initial investment.

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[1] Respondents' claims for breach of contract, fraud, and violation of the Consumer Protection Act were submitted for arbitration. Following partial summary judgment on Pan's WSSA claim, respondents voluntarily dismissed all other claims.

Great Ocean appeals.

ANALYSIS

I. Jurisdiction

Great Ocean contends the trial court lacked subject matter jurisdiction to render judgment in this case.

We review whether a court has subject matter jurisdiction de novo.[2] "'A judgment entered by a court that lacks subject matter jurisdiction is void.'"[3]

"As courts of general jurisdiction, superior courts have long had the 'power to hear and determine all matters, legal and equitable, . . . except in so far as these powers have been expressly denied.'"[4] In light of this broad grant of subject matter jurisdiction, "courts may only find a lack of jurisdiction under compelling circumstances, such as when it is explicitly limited by the Legislature or Congress."[5]

Here, the trial court decided Pan's WSSA claim. Washington State superior courts have subject matter jurisdiction to decide WSSA claims. And Great Ocean fails to offer any compelling authority that the trial court lacked subject matter jurisdiction to render judgment on Pan's WSSA claim. Oddly, Great Ocean cites to

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[2] Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 314, 76 P.3d 1183 (2003).

[3] Cole v. Harveyland, LLC, 163 Wn. App. 199, 205, 258 P.3d 70 (2011) (quoting Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 541, 886 P.2d 189 (1994)).

[4] In re Marriage of Major, 71 Wn. App. 531, 533, 859 P.2d 1262 (1993) (alteration in original) (quoting State ex rel. Martin v. Superior Court, 101 Wash. 81, 94, 172 P. 257 (1918)).

[5] Id. at 534.

a federal regulation addressing preemption of state laws in the area of chemical facility anti-terrorism standards.[6] Great Ocean makes the conclusory argument that a state trial court does not have jurisdiction over matters touching on immigration. But this is not an immigration case, and Great Ocean cannot establish lack of subject matter jurisdiction simply because of Great Ocean's status as a United States Citizen and Immigration Service designated regional center or the nature of the EB-5 program.

The trial court did not lack jurisdiction to render judgment against Great Ocean on Pan's WSSA claim.

II. Preemption

Great Ocean argues the trial court's authority to enter judgment on Pan's WSSA claim is preempted by federal law.

A state law can be preempted in two ways: (1) field preemption (express or implied) or (2) conflict preemption.[7] "If Congress indicates an intent to occupy a given field (explicitly or impliedly), any state law falling within that field is preempted; even if Congress has not indicated an intent to occupy a field, state law is still preempted to the extent it would actually conflict with federal law."[8] "Such a conflict occurs (1) when compliance with both laws is physically

[6] See Br. of Appellant at 22-23 (citing 6 C.F.R. § 27.405).

[7] Inlandboatmen's Union of the Pac. v. Dep't of Transp., 119 Wn.2d 697, 701, 836 P.2d 823 (1992).

[8] Id.

impossible, or (2) when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[9]

Here, Great Ocean fails to establish field preemption. The federal statutes cited by Great Ocean do not expressly or impliedly address a Washington State superior court's authority to hear a WSSA claim.[10]

As to conflict preemption, Great Ocean argues the return of Pan's investment stands as an obstacle to the purpose of the EB-5 program to foster foreign investment and job creation. But Great Ocean fails to cite any compelling authority to support this argument.

Additionally, under 15 U.S.C. § 77r(c)(1)(A)(i), states retain the authority "under the laws of such [s]tate to investigate and bring enforcement actions, in connection with securities or securities transactions . . . with respect to—fraud or deceit."

We conclude Pan's WSSA claim is not preempted by federal law.

III. Partial Summary Judgment—WSSA Claim

Great Ocean contends the trial court erred in granting partial summary judgment on Pan's WSSA claim.

We review an order granting summary judgment de novo.[11] "The moving party has the burden of showing that there is no genuine issue as to any material

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[9] Id. at 702.

[10] See Br. of Appellant at 27 (citing 15 U.S.C. § 771(a)(1) (Federal Energy Administration Comptroller General, powers and duties)).

[11] CR 56(c); Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

fact."[12] A response to a summary judgment motion "'must set forth specific facts showing that there is a genuine issue for trial.'"[13]

"To establish liability under the WSSA, the purchaser of a security must prove that the seller and/or others made material misrepresentations or omissions about the security, and the purchaser relied on those misrepresentations or omissions."[14]

On May 6, 2016, Pan filed a motion for partial summary judgment on her WSSA claim. Specifically, Pan requested "an Order holding that: (1) The statements in the Private Placement Memorandum ("PPM") were materially misleading; (2) That Plaintiffs' reliance on the statements made in the PPM was reasonable."[15]

The court addressed the two issues separately. On June 3, 2016, the trial court granted Pan's motion for partial summary judgment as to the first issue and determined Great Ocean's statements in the PPM that it "had secured an [e]ighty (80) year lease with the Port of Longview were material, false, and misleading."[16] On September 27, 2016, the court granted the motion as to the second issue and

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[12] Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 70, 170 P.3d 10 (2007).

[13] State v. Mandatory Poster Agency, Inc., 199 Wn. App. 506, 517, 398 P.3d 1271 (quoting CR 56(e)), review denied, 189 Wn.2d 1021 (2017).

[14] Stewart v. Estate of Steiner, 122 Wn. App. 258, 264, 93 P.3d 919 (2004) (citing RCW 21.20.010(2)).

[15] Clerk's Papers (CP) at 414-15.

[16] CP at 2062.

determined "Pan [r]easonably relied on materially false and misleading statements set forth in the PPM."[17]

"A 'material fact' is one 'to which a reasonable [person] would attach importance in determining his [or her] choice of action in the transaction in question.'"[18] A "misrepresentation" is a false statement regarding an existing fact.[19]

Here, the PPM provides information about Great Ocean's investor-funded projects. At issue are the statements contained in the PPM concerning a lease with the Port of Longview and Great Ocean's plans to build a cold storage facility:

> The Project currently consists of approximately 65 acres of land for long term 80 years lease (40 years plus 40 years right's extension) from Port of Longview with 500,000 Sq. Ft. warehouse for further project re-development, that is entitled and ready for the construction of 500,000 Sq. Ft packinghouse and CA (Cold Atmospheres) cold-storage warehouse at Port of Longview, Washington.[20]

The PPM also describes the packinghouse as "shovel ready."[21] But in response to interrogatories, Great Ocean admitted that "Great Ocean and Huy Ying Chen did not enter into a contractually binding lease agreement with the Port of Longview."[22] Despite this response, Great Ocean argues the statements in the PPM were not

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[17] CP at 1162.

[18] Guarino v. Interactive Objects, Inc., 122 Wn. App. 95, 114, 86 P.3d 1175 (2004) (alterations in original) (quoting Aspelund v. Olerich, 56 Wn. App. 477, 481-82, 784 P.2d 179 (1990)).

[19] Havens v. C & D Plastics, Inc., 124 Wn.2d 158, 182, 876 P.2d 435 (1994) (negligent misrepresentation claim).

[20] CP at 57.

[21] CP at 52.

[22] CP at 435.

false because they had in fact entered into a "pre-contract" with the Port of Longview.

Great Ocean's briefing rests on semantics rather than meaningful authority or argument. Great Ocean cites minutes from a February 26, 2013 meeting between Great Ocean and representatives from the Port of Longview and argues the meeting minutes constitute a "pre-contract."[23] The meeting minutes memorialize that "[Port of Longview] agree lease maximum years for 80 years."[24] But the minutes also state "[Port of Longview] will provide a fair lease price," clear evidence that Great Ocean had not yet secured an enforceable lease. At the February 26, 2013 meeting, the lease was discussed, not finalized.

As to materiality, Pan submitted a declaration stating, "If my father and I knew the statement from PPM and Chen were not true, we would not invest money into the project."[25]

Great Ocean fails to establish the existence of a genuine issue of material fact as to whether the statements in the PPM were materially misleading.

As to the second issue, whether Pan reasonably relied on the statements, under the WSSA, the investor must also show the reliance was reasonable "'under the surrounding circumstances.'"[26] In general, whether reliance is reasonable is a

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[23] CP at 1208.

[24] CP at 1212.

[25] CP at 2078.

[26] Federal Home Loan Bank v. Barclays Capital, Inc., 1 Wn. App. 2d 551, 565, 406 P.3d 686 (2017) (quoting FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 175 Wn. App. 840, 868, 309 P.3d 555 (2013), aff'd, 180 Wn.2d 954 (2014)), review granted, 190 Wn.2d 1018 (2018).

factual inquiry.[27] But "if reasonable minds could reach only one conclusion, summary judgment on this element is proper."[28]

To determine whether reliance is reasonable, we apply the factors from Stewart v. Estate of Steiner.[29] No individual factor is necessarily dispositive.[30] "The factors are:

> '(1) the sophistication and expertise of the plaintiff in financial and securities matters, (2) the existence of longstanding business or personal relationships; (3) access to the relevant information, (4) the existence of a fiduciary relationship, (5) concealment of the fraud, (6) the opportunity to detect the fraud, (7) whether the plaintiff initiated the stock transaction or sought to expedite the transaction, and (8) the generality or specificity of the misrepresentations.'"[31]

In opposition to Great Ocean's motion for summary judgment, Pan submitted a declaration that she "viewed Captain Chen as my uncle."[32] She also stated, "Captain Chen was a family friend and at that time I did not have any reason to believe what he told us was not the truth."[33] Pan acknowledged that she did some translating work for Great Ocean, but she stated she "did not create the content of the documents."[34] "Ultimately, while I may have had access to some of Great Ocean's records, I did not have complete access to all of its records."[35]

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[27] Id.

[28] Id.

[29] 122 Wn. App. 258, 93 P.3d 919 (2004).

[30] Barclays, 1 Wn. App. 2d at 568 (citing Stewart, 122 Wn. App. at 274).

[31] Id. (quoting Stewart, 122 Wn. App. at 274).

[32] CP at 2079.

[33] Id.

[34] CP at 2081.

[35] CP at 2082.

On appeal, Great Ocean does not address the Stewart factors and does not specifically contend Pan failed to establish reasonable reliance. Rather, Great Ocean attempts to address reasonable reliance by arguing that Pan is barred from recovery under WSSA due to her various misrepresentations. But the individual arguments concerning Pan's alleged misrepresentations are conclusory and speculative.[36]

First, Great Ocean argues Pan misrepresented her date of entry into the United States. Great Ocean speculates Pan had actual knowledge of the preliminary nature of the lease agreement because she happened to be in the United States at the time of the February 2013 meeting between Great Ocean and the Port of Longview. Great Ocean accurately cites Guarino v. Interactive Objects, Inc. for the proposition that actual knowledge would defeat a WSSA claim[37] but fails to present specific evidence to support the contention that Pan was present at the meeting.

Second, Great Ocean argues Pan misrepresented herself as a "sophisticated" and "accredited" investor in the subscription agreement she signed. In her declaration, Pan stated, "I did not have any reason to believe what [Chen] told us was not the truth" and "I assumed that Great Ocean had a lease."[38] Great Ocean contends these statements reveal Pan was not a sophisticated or

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[36] See Boguch v. Landover Corp., 153 Wn. App. 595, 610, 224 P.3d 795 (2009)) ("a party resisting summary judgment cannot satisfy his or her burden of production merely by relying on conclusory allegations, speculative statements, or argumentative assertions").

[37] 122 Wn. App. 95, 113, 86 P.3d 1175 (2004).

[38] CP at 2079.

accredited investor because she "blindly invested $500,000.00 without conducting any due diligence."[39] But Great Ocean provides insufficient citation to the record to establish a misrepresentation and insufficient citation to authority to establish that Pan's alleged misrepresentation bars recovery. This conclusory argument is not persuasive.

Great Ocean fails to establish the existence of a genuine issue of material fact whether Pan's reliance on the statements in the PPM was reasonable. As a result, we conclude the trial court did not err in granting Pan's motion for partial summary judgment on the WSSA claim.

IV. Striking Answer

Great Ocean argues the trial court erred in striking its answer and affirmative defenses based on the failure to supplement its answers to discovery.

We review a motion to strike made in conjunction with a motion for summary judgment de novo.[40]

Before imposing a harsh discovery sanction, a trial court is required to consider the factors from Burnet v. Spokane Ambulance:

> A trial court may impose only the most severe discovery sanctions upon a showing that (1) the discovery violation was willful or deliberate, (2) the violation substantially prejudiced the opponent's ability to prepare for trial, and (3) the court explicitly considered less severe sanctions.[41]

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[39] Br. of Appellant at 37.

[40] Southwick v. Seattle Police Officer John Doe, 145 Wn. App. 292, 297, 186 P.3d 1089 (2008).

[41] Teter v. Deck, 174 Wn.2d 207, 216-17, 274 P.3d 336 (2012) (citing Burnet v. Spokane Ambulance, 131 Wn.2d 484, 496-97, 933 P.2d 1036 (1997)).

"Findings regarding the Burnet factors must be made on the record."[42]

Here, the court sufficiently addressed the Burnet factors in its order striking defendants' answer and affirmative defenses entered on November 28, 2016.[43]

We conclude the trial court did not err in granting the motion to strike.

V. Judgment

Great Ocean challenges the trial court's award of damages, arguing that Pan's failure to make a demand under RCW 21.20.430 precludes any award of damages.

Under RCW 21.20.430(2):

> Any person who buys a security in violation of the provisions of RCW 21.20.010 is liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security, together with any income received on the security, upon tender of the consideration received, costs, and reasonable attorneys' fees, or if the security cannot be recovered, for damages. Damages are the value of the security when the buyer disposed of it, and any income received on the security, less the consideration received for the security, plus interest at eight percent per annum from the date of disposition, costs, and reasonable attorneys' fees.

"The unambiguous language of RCW 21.20.430(2) provides that a defrauded seller may sue for rescission to recover the security."[44]

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[42] Id. at 217.

[43] The court determined the violation was willful, the refusal to provide discovery frustrated the ability to prosecute plaintiffs' claims, the court's use of monetary sanctions was ineffective, and striking portions of the answer was the least harsh effective remedy available.

[44] Helenius v. Chelius, 131 Wn. App. 421, 432, 120 P.3d 954 (2005).

Here, the trial court concluded, "The purpose and intent of the remedies set forth in RCW § 21.20.430 is rescission of the investment," and Pan was entitled to a return of her initial investment of $519,500.[45]

Great Ocean contends the trial court erred in determining Pan was entitled to rescission of her investment because she failed to demand a return of her investment prior to initiating her lawsuit.[46]

RCW 21.20.430(4)(b) provides:

> No person may sue under this section if the buyer or seller *receives* a written rescission offer, which has been passed upon by the director before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at eight percent per annum from the date of payment, less the amount of any income received on the security in the case of a buyer, or plus the amount of income received on the security in the case of a seller.[47]

Great Ocean fails to point to any evidence it issued a written rescission offer to Pan. Rather, Great Ocean argues Pan was not entitled to judgment because she never demanded return of her capital contribution. Great Ocean does not cite any authority to support the argument that Pan must make a demand before filing a lawsuit under the WSSA.

We conclude the trial court did not err in determining Pan was entitled to rescission and awarding a principal judgment amount of $519,500.

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[45] CP at 1338.

[46] Although Great Ocean frames the issue in terms of the adequacy of the court's findings of fact, it is not a true sufficiency challenge but rather a restatement of Great Ocean's theory that Pan is not entitled to rescission.

[47] (Emphasis added.)

VI. Motion to Strike

In Great Ocean's reply brief, Great Ocean renews its motion to strike respondents' brief.

On March 15, 2018, Great Ocean moved to strike respondents' brief and to remand to the trial court for RAP 9.11 proceedings. On April 5, 2018, Commissioner Neel denied the motion and directed Great Ocean to include such a motion in its briefing to the panel.

In the original motion, Great Ocean argued respondents improperly supplemented the record on appeal without complying with RAP 9.11. Great Ocean claimed the respondents improperly supplemented the record with evidence that Pan withdrew her EB-5 application and evidence that she demanded return of her investment prior to filing the lawsuit.

Because respondents have not complied with RAP 9.11, we decline to consider this evidence because it is not part of the record on appeal.[48] The absence of this evidence has no impact on the outcome of the merits of Great Ocean's appeal.

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[48] Harbison v. Garden Valley Outfitters, Inc., 69 Wn. App. 590, 593-94, 849 P.2d 669 (1993) ("RAP 9.11 is a limited remedy under which this court may direct that additional evidence may be taken if all of the following six criteria are met: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.") (quoting RAP 9.11(a)).

VII. Fees on Appeal

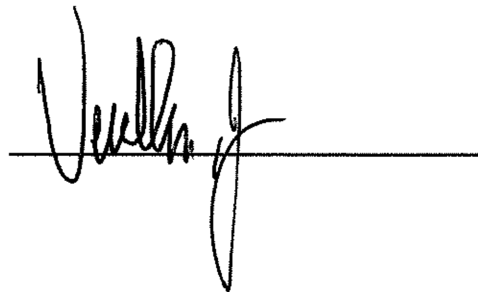
Pan seeks fees on appeal under the subscription agreement and RAP 18.1.

"RAP 18.1(b) requires more than a bald request for attorney fees on appeal."[49] The request must be accompanied by citation to authority, argument, and citation to the record.[50]

Here, Pan claims the subscription agreement contains a fee clause but provides no citation to the record identifying such a provision.[51]

We deny Pan's request for fees on appeal.

Therefore, we affirm.



WE CONCUR:

[49] Thweatt v. Hommel, 67 Wn. App. 135, 148, 834 P.2d 1058 (1992).

[50] Gardner v. First Heritage Bank, 175 Wn. App. 650, 677, 303 P.3d 1065 (2013).

[51] See In re Estate of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) (courts are not obligated "to comb the record" where counsel has failed to support arguments with citations to the record).

Appendix 2

FILED
11/19/2018
Court of Appeals
Division I
State of Washington

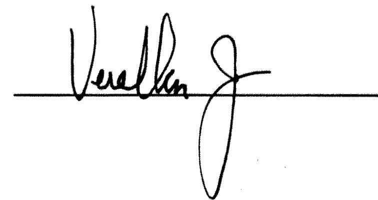
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

YANLU LIU and AI HUA PAN, husband and wife, residing in King County, Washington; PENG ZHANG and ZHONGYUAN PAN, husband and wife, residing in Ontario, Canada, Respondents, v. GREAT OCEAN CAPITAL HOLDING, LLC, a Washington limited liability company; HUY YING CHEN and XUE PING WANG, husband and wife, residing in Washington state; Appellants.	No. 76576-1-I ORDER DENYING MOTIONS FOR RECONSIDERATION

Appellant Great Ocean through its counsel and appellant Chen pro se each filed a motion for reconsideration of the court's October 15, 2018 opinion. Following consideration of the motions, the panel has determined they should be denied. Now, therefore, it is hereby

ORDERED that appellant Great Ocean's and appellant Chen's motions for reconsideration are denied.

FOR THE PANEL:



Appendix 3

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KING COUNTY, WASHINGTON
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DEPUTY

Courtroom No.: W-764
Honorable Judge Parisien
Hearing Date: January 29, 2016
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

YANLU LIU and AI HUA PAN, Husband and Wife Residing in King County, Washington; PENG ZHANG and ZHONGYUAN PAN, Husband and Wife, Residing in Ontario, Canada. Plaintiffs, vs. GREAT OCEAN CAPITOL HOLDING, LLC, a Washington Limited Liability Company; HUY YING CHEN and XUE PING WANG, Husband and Wife Residing in Washington State. Defendants	**CASE NO.: 15-2-28694-3 SEA** **~~[PROPOSED]~~ ORDER GRANTING MOTION TO COMPEL ARBITRATION ~~AND STAYING ENTIRE ACTION~~** -SRP

This matter came before the court on Great Ocean Capital Holding, LLC ("Great Ocean")'s motion for an order compelling arbitration and staying the entire action. The court has reviewed Great Ocean's motion, the response and the reply and the courts finds that:

1. ~~Defendant Great Ocean, on one hand and Plaintiffs Peng Zhang ("Zhang") and Zhongyuan Pan ("Pan"), on the other, entered an Operating Agreement containing a valid and enforceable arbitration clause.~~ The parties entered into a valid and enforceable agreement to arbitrate the claims of breach of contract; fraud; and violation of the consumer protection act. -SRP

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ORIGINAL

2. Zhang and Pan's causes of action against Great Ocean for breach of contract, fraud and violation of the consumer protection act are subject to arbitration because they relate to the subject matter of the Operating Agreement.

3. The above captioned Plaintiffs other claims against Great Ocean and Defendants Huy Ying Chen and Xue Ping Wang are not severable because they contain identical or similar factual allegations to the arbitrable claims.

4. There is a high likelihood of conflicting rulings if Plaintiffs are permitted to pursue the arbitrable claims in arbitration concurrently with their other claims against Defendants in this court.

NOW THEREFORE, IT IS HEREBY ORDERED THAT ~~Great Ocean on one hand, and Zhang and Pan, on the other , arbitrate the controversies between them in accordance with the Operating Agreement.~~ the above referenced three (3) claims are subject to arbitration. All other claims will be adjudicated in this court, King County Superior Court. -SRP

~~IT IS FURTHER ORDERED THAT the entire above captioned action is stayed pending the completion of the arbitration between the parties.~~

~~IT IS FURTHER ORDERED THAT ______________________________~~

Done in open court this ~~29th Day of January~~ 8th day February 2016.

[signature]

HONORABLE JUDGE SUZANNE PARISIEN

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1 Presented by:

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3

4

5 /s/ Glyn E. Lewis
GLYN E. LEWIS, WSBA #45744
6 Attorney for Defendants

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December 19, 2018 - 2:45 PM

Filing Petition for Review

Transmittal Information

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No.

IN THE WASHINGTON STATE SUPREME COURT

GREAT OCEAN CAPITAL HOLDING, LLC, a Washington limited liability company; HUY YING CHEN and XUE PING WANG, Husband and Wife Residing in Washington State,

Petitioners,

v.

YANLU LIU AND AI HUA PAN, husband and wife residing in King County, Washington; PENG ZHANG and ZHONGYUAN PAN, Husband and Wife residing in Ontario, Canada,

Respondents.

PETITION FROM THE COURT OF APPEALS – DIVISION I
Case Number: 76576-1

CERTIFICATE OF SERVICE

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Attorney for Petitioner,
Great Ocean Capital Holding Company, LLC

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 19, 2018, a true and correct copy of the Petition for Review was served on each of the parties below by Electronic Service via the Washington State Appellate Courts' Secure Portal

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Respectfully submitted this 19th day of December 2018.

s/ *Tuella O. Sykes*
Tuella O Sykes, WSBA#36179
Attorney for Petitioner,
Great Ocean Capital Holding Company

LAW OFFICE OF TUELLA O. SYKES

December 19, 2018 - 2:45 PM

Filing Petition for Review

Transmittal Information

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