

IN THE SUPREME COURT
OF
THE STATE OF WASHINGTON

Supreme Court No. 93823-7

(Court of Appeals Division I, No. 73956-5-I)

SHANGHAI COMMERCIAL BANK LIMITED,

Respondent,

v.

KUNG DA CHANG and MICHELLE CHEN,

Petitioners.

**RESPONDENT SHANGHAI COMMERCIAL BANK LIMITED'S
SUPPLEMENTAL BRIEF**

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I. INTRODUCTION AND OVERVIEW OF ARGUMENT

The Court of Appeals analyzed the facts under Washington’s most-significant-relationship test and unanimously held that Shanghai Commercial Bank Limited (“SCB”) is entitled to enforce its Washington-recognized Hong Kong judgment against the marital community of Petitioners Kung Da Chang (“Chang”) and Michelle Chen (“Chen”) (collectively, the “Changs”).¹ The Court of Appeals’ analysis is correct and should not be reversed. The Court of Appeals’ opinion crisply applies current Washington law and compellingly warns against abandoning Washington’s 50-year-old most-significant-relationship test.

The Changs ask this Court to reverse on grounds that the most-significant-relationship test should not have been applied. The Changs argue that Washington’s community property law solely should have been applied because the Changs reside in Washington, without regard to any other factors. To agree with the Changs would require this Court to abandon 50 years of precedent in which Washington’s courts have used the most-significant-relationship test to determine which jurisdiction’s laws govern the enforceability of a contract entered into in a foreign jurisdiction. Balancing all the factors of the most-significant-relationship test is critical to protecting the justified expectations of parties and to

¹ *Shanghai Commercial Bank Ltd. v. Kung Da Chang*, 195 Wn. App. 896, 381 P.3d 212 (2016) (hereinafter “*SCB II*”).

preserving the predictability of business relations, particularly with foreign entities. The legal sea change advocated by the Changs would slash a reasoned balancing of multiple factors down to a mechanical one-factor “test”: the residence of the debtors. There is no good reason to do so. The most-significant-relationship test has served Washington well for decades and should continue to be applied to determine whose law governs enforceability of a debt incurred by one spouse in a foreign jurisdiction.

Even if the Court is interested in exploring whether to wholesale jettison its 50-year adherence to the most-significant-relationship test, this is not an appropriate case for that exploration because of one stark fact: the record shows that SCB had no hint whatsoever that it was dealing with a Washington resident. Perhaps if, before a contract is formed, a foreign party is on notice of its counterparty being a Washington resident, an argument could be made that the foreign party should investigate whether the Washington counterparty is married and the consequences of the counterparty’s marital status. But here, with zero evidence of SCB being on notice of Chang being a Washington resident, it makes no sense for this Court to entertain use of this case to abandon a choice-of-law rule that has been in place for 50 years.

For the reasons convincingly explicated in the Court of Appeals’ decision, and for the reasons stated in SCB’s Answer to Petition for

Review, this Court should either affirm or dismiss review as improvidently granted.

II. STATEMENT OF THE CASE

The few facts relevant here are those facts directly related to the disputed legal issue in SCB's second motion for summary judgment. The relevant facts are undisputed and are set out by the Court of Appeals and in SCB's Answer to Petition for Review. Among the key facts are these: All five of the agreements under which Chang borrowed substantial sums from SCB explicitly include a choice-of-law provision selecting Hong Kong law as the governing law, including at the enforcement stage. Specifically, the Terms and Conditions for Bank Accounts and General Services provide that "[t]he validity, construction, interpretation, and enforcement of the Agreement and/or the Relevant Terms and Conditions shall be governed by the laws of HKSAR [Hong Kong Special Administrative Region]...."² Thus, SCB expected Hong Kong law to govern collection. So did Chang.

During exchange of the documentation that forms the parties' agreement, SCB delivered papers to Chang in Shanghai, and Chang signed and returned the executed documents to Shanghai for delivery to SCB in

² Declaration of May Ka Mo in Support of SCB's Second Motion for Summary Judgment ("Mo Decl."), Ex. F at § 19.1. Clerk's Papers ("CP") 172.

Hong Kong.³ No evidence in the record suggests SCB was put on notice that it was dealing with a person residing in Washington. The Court of Appeals correctly held that the record contains not a hint to SCB that it was dealing with a Washington resident.⁴

The Changs defaulted on their debt obligation. In Hong Kong, the parties litigated this obligation in High Court Action No. 806/2009 (“HCA 806”), and SCB prevailed, securing a money judgment. Petitioners’ assertion that they “were not able” to post the usual bond in that lawsuit is not germane to their petition here. That (false) contention was at the heart of their unsuccessful appeals—all the way to the U.S. Supreme Court—from recognition of this judgment. (The Court of Appeals correctly concluded in the first appeal that the Changs actually had refused to provide the Hong Kong Court with information about their ability to post the requisite bond.⁵) Similarly, the Changs’ assertion that they “did not defend” the Hong Kong lawsuit is not germane to their petition (and is not true).⁶

³ Declaration of Kung Da Chang in Support of Respondents’ Opposition to Petitioner’s Second Motion for Summary Judgment (“Chang Decl.”) ¶ 5. CP 289.

⁴ *SCB II*, 195 Wn. App. at 904–05.

⁵ *Shanghai Commercial Bank Ltd. v. Chang*, 183 Wn. App. 1007, 2014 WL 4198391, *3 (2014), *review denied sub nom. Shanghai Commercial Bank v. Kung Da Chang*, 182 Wn. 2d 1006, 342 P.3d 327 (2015), *and cert. denied sub nom. Kung Da Chang v. Shanghai Commercial Bank Ltd.*, 135 S. Ct. 2847, 192 L. Ed. 2d 877 (2015) (hereafter “*SCB I*”).

⁶ *SCB I*, 2014 WL 4198391 at *3.

The HCA 806 judgment encompasses what Washington considers the Changs' marital community, for Hong Kong law exempts only separate property of a spouse, not community property, from judgments titularly entered against one spouse.⁷ That the HCA 806 judgment applies to what Washington considers community property is a fact not challenged by the Changs:

Hong Kong is a separate property jurisdiction, and there is no community property concept/principle. The judgment in High Court of Hong Kong HCA 806 of 2009 against KD Chang is enforceable in Hong Kong against all of KD Chang's assets, which I am given to understand include those assets that would be considered "community property" in Washington, but not against his wife's separate assets.⁸

The Changs do not challenge the Court of Appeals' holding: "Chang did not introduce contrary evidence and does not contest that his and Chen's community property would be subject to the judgment if Hong Kong law applies." *SCB II*, 195 Wn. App. at 906.

III. ARGUMENT

The Changs complain that "Washington law" should have been applied. Their argument fails to recognize that Washington law requires, as the first step, a choice-of-law analysis, a point that the Court of Appeals squarely and convincingly addresses:

⁷ Declaration of Donny Chiu in Support of Petitioner's Second Motion for Summary Judgment ("Chiu Decl."). CP 76.

⁸ Chiu Decl. ¶ 2. CP 77.

Chang skips a step in the correct analysis. When a Washington court bases its judgment on a debt one spouse incurred outside the state, Washington courts use a conflict of laws analysis to decide what law to apply to decide if the judgment can be collected from that spouse's marital community. As required by RCW 6.40A.060(2), we use the same conflict of laws analysis to decide whether the Hong Kong judgment can be enforced against his and Chen's marital community.

SCB II, 195 Wn. App. at 902–03 (citations omitted). The Changs' lament that "Washington law" must be applied and was not applied is simply wrong because the trial court and Court of Appeals did in fact apply Washington law, for it is Washington law that mandates the very choice-of-law analysis that results in application of Hong Kong's substantive law.

In conducting the choice-of-law analysis, the trial court and the Court of Appeals properly analyzed the facts under Washington's most-significant-relationship test and determined that Hong Kong has the most significant relationship. That analysis is correct and should not be reversed. Nor should this Court abandon the most-significant-relationship test and look only at the residence of debtors to determine whether Washington community property law applies. Even if this Court is interested in exploring whether in some instances the debtors' residence should be the sole determinant of whose law applies, the Court should not use this case as the vehicle to make such exploration, for the record

contains no evidence that SCB had even a hint that it was dealing with a Washington resident.⁹

A. Washington Courts Should Continue to Balance All of the Factors of the Most-Significant-Relationship Test to Determine Whose Substantive Law Applies

To decide whose substantive law applies to the issue of whether the judgment against Chang can be enforced against his marital community, the Court of Appeals properly considered all of the factors of Washington's most-significant-relationship test and determined that Hong Kong's substantive law applies. Washington has a long history of using the most-significant-relationship test to determine whose law applies. The Court of Appeals' decision to consider all the factors is correct and should not be reversed.

The Changs suggest that Washington's community property law solely should apply because they live in Washington. While a party's place of residence is part of one factor that the courts consider as part of the most-significant-relationship test, Washington courts should continue to consider **all** of the factors. There is no good reason to abandon the other factors of the most-significant-relationship test when deciding whether the debt incurred by one spouse outside of Washington can be enforced against community property. To the contrary, consideration of

⁹ *SCB II*, 195 Wn. App. at 904–05.

all the factors of the most-significant-relationship test is necessary to protect the justified expectations of parties and to serve other important public policies.

1. Washington Has a Long History of Using the Most-Significant-Relationship Test

For 50 years, Washington courts have been balancing the factors of the most-significant-relationship test to determine whose law applies when there is a conflict of law. *See Mulcahy v. Farmers Ins. Co. of Washington*, 152 Wn.2d 92, 100, 95 P.3d 313 (2004) (“Since 1967, Washington courts have adhered to and applied the most significant relationship test to contract choice of law issues.”). Washington abandoned the *lex loci contractus* rule, which provided that the place of a contract’s execution should determine whose law applied, and adopted the most-significant-relationship test because considering multiple factors—instead of just one—allows courts to reach results that are “less arbitrary and more just.” *Baffin Land Corp. v. Monticello Motor Inn, Inc.*, 70 Wn.2d 893, 900, 425 P.2d 623 (1967). This Court should not abandon 50 years of precedent by chopping the choice-of-law analysis down to one factor alone—the non-signing spouse’s place of residence—because considering that factor alone would be just as arbitrary as the *lex loci contractus* rule that Washington rejected in 1967.

The Changs have not provided this Court with a good reason to abandon the other factors of the most-significant-relationship test. Importantly, the Changs have not shown that a full balancing of all the factors is incorrect and harmful, a showing that is a prerequisite for reversing precedent. *See Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (“The doctrine of stare decisis ‘requires a clear showing that an established rule is incorrect and harmful before it is abandoned.’”). Rather than producing “incorrect and harmful” results, use of the multiple-factor most-significant-relationship test produces results that are “less arbitrary and more just.” *Baffin*, 70 Wn.2d at 900.

2. Public Policy Weighs Strongly in Favor of Considering All of the Factors of the Most-Significant-Relationship Test

The most-significant-relationship test requires courts to consider a number of factors designed to protect the justified expectations of parties. *See* Restatement (Second) of Conflict of Laws § 188 cmt. c, at 578 (1971) (emphasizing the protection of “justified expectations”); Restatement (Second) of Conflict of Laws § 6(2), at 10 (1971) (identifying “the protection of justified expectations” as being relevant to choice of law); *Husseman ex rel. Ritter v. Husseman*, 847 N.W.2d 219, 226 (Iowa 2014) (noting that the “underlying goal” of the most-significant-relationship test is “preserving justified expectations”). Protecting the justified

expectations of parties is critical to contract law and ensuring the predictability of business relations, especially for a foreign-trade-dependent state such as Washington.

Here, everything about the interaction between Chang and SCB indicated that the parties expected Hong Kong law to apply. The underlying contracts *specified* that Hong Kong law would govern both the interpretation of the parties' agreement and enforcement of its terms.¹⁰ Chang *knew* that he was dealing with a Hong Kong bank, that the subject account was located in Hong Kong, and that all the underlying financial transactions that led to the loan that resulted in the underlying HCA 806 judgment involved accounts in Hong Kong.¹¹ In contrast, Chang hid the fact he was from Washington, routing the signed documents through Shanghai instead of sending them directly from Washington.¹²

Public policy of not encouraging debt avoidance: Abandoning the most-significant-relationship test and looking only at the non-signing spouse's place of residence would allow debtors to avoid their obligations by, at the time of contracting, hiding the fact that they reside in

¹⁰ Mo Decl., Ex. F at § 19.1. CP 172

¹¹ Mo Decl., Exs. A–F (loan transaction documents establishing that the bank is incorporated and headquartered in Hong Kong). CP 144–83. *See also* Declaration of Stephen Hsieh in Support of Petitioner's Second Motion for Summary Judgment ("Hsieh Decl."), Ex. B at ¶¶ 25, 148, 149 (sworn witness statement submitted in connection with HCA 806 establishing that the loan occurred in Hong Kong). CP 86–89.

¹² Chang Decl. ¶ 5. CP 289.

Washington, as Chang did. For good reasons, this Court held in *Pacific Gamble Robinson Co. v. Lapp*, 95 Wn.2d 341, 347, 622 P.2d 850 (1980), that this “state has no policy interest in” being “a sanctuary for fleeing debtors.”

Public policy of not undermining foreign trade: Preserving parties’ expectations is also critical for maintaining foreign trade relations. A non-legislative policy shift signaling antipathy toward foreign parties would send a message that Washington is a dangerous jurisdiction with traps for the wary and unwary alike. As the Court of Appeals noted, “Washington also has a strong economic interest in preserving foreign trade relations, an area where the enforcement of foreign-made contracts necessarily plays a substantial role.” *SCB II*, 195 Wn. App. at 905–06.¹³ In an era of national hostility towards foreign trade, the worst possible move by a foreign-trade-dependent state such as Washington would be to

¹³ Citing Jon Talton, *State Would Lose If We Turn Against Trade*, SEATTLE TIMES, June 11, 2016, <http://www.seattletimes.com/business/state-would-lose-ifwe-turn-against-trade/> (“Washington is the nation’s highest exporter per capita and one in three jobs are directly or indirectly tied to trade.”). See also Jon Talton, *The High Stakes of Trump’s First Meeting with Xi*, SEATTLE TIMES, April 5, 2017, <http://www.seattletimes.com/business/economy/the-high-stakes-of-trumps-first-meeting-with-xi/> (“Washington [is] America’s most trade-dependent state. Exports per capita are far beyond any state.... But in the age of Donald Trump and ‘America First,’ Washington is potentially America’s most trade-vulnerable state.”); Ashley Stewart, *EXCLUSIVE: ‘Trade Should Not be a Dirty Word:’ Candidates Jay Inslee, Bill Bryant on Trade and TPP*, PUGET SOUND BUSINESS JOURNAL, October 24, 2016, <http://www.bizjournals.com/seattle/news/2016/10/24/jay-inslee-bill-bryant-trade-elections-governor.html> (Governor Inslee describing aspects of Washington’s public policy favoring foreign trade, including the work of the State Trade Expansion Program).

create a reputation for hostility toward foreign obligations—yet that would be the deleterious result of rejecting the most-significant-relationship test when evaluating enforcement of a foreign obligation against community property.

Looking only at the non-signing spouse's place of residence would essentially—and without notice or reasonable expectation—burden foreign contracting parties with the duty to ferret out the residence of Washington-resident counterparties *and* the duty to ascertain marital status. It is not reasonable to ask foreign parties to make this investigation when, as here, the foreign party has *no reason to believe the contracting party is a Washington resident*. Foreign entities will have no reason to suspect they need to investigate the residence of the other party or guarantor to ensure the enforceability of judgments on a contract made and performed in the foreign entity's jurisdiction. Foreign entities will expect that if the contract specifies which jurisdiction's law applies and all of the activity relating to the contract occurs in that jurisdiction, then that jurisdiction's law will govern enforcement of the contract. And foreign entities will not have an understanding of community property law (adopted by only nine states).

In contrast, had the Changs wanted Washington's community property rules to apply, they could have alerted SCB, pre-contract, that

they insist on Washington substantive law applying to enforcement. Better, the Changs could have refused Chang's signature without a term limiting enforcement to Chang's separate property. At the least, they could have made it known to SCB that they were Washington residents who expected Washington law to apply.¹⁴

Courts should continue to consider all the factors of the most-significant-relationship test.

3. This Court Should Not Reduce the Most-Significant-Relationship Test to a Review of the Non-Signing Spouse's Residence If the Foreign Party Has No Reason to Believe the Contracting Party Is a Washington Resident

It makes no sense, and would be unfair, to require SCB, a foreign party with no reason to believe that it was dealing with a Washington resident, to investigate Chang's residence and his marital status to ensure, before contracting, that it would be able to enforce a judgment on the contract against Chang's community property. As the Court of Appeals aptly noted:

Chang **knew** he was dealing with a Bank in Shanghai and that the documents included Hong Kong choice-of-law provisions. Conversely, the record contains **no indication**

¹⁴ This is the critical difference between this case and *Potlatch No. 1 Fed. Credit Union v. Kennedy*, 76 Wn.2d 806, 459 P.2d 32 (1969). *Potlatch* hinged on the Court's determination that the creditor **knew** that it was dealing with Washington residents and thus expected or should have expected Washington law to come into play. "Plaintiff credit union, on the other hand, was aware that it was dealing with Washington residents." 76 Wn.2d at 813.

that the Bank knew it was dealing with Washington residents; the documents Chang signed were all addressed to his father's residence in Shanghai and he returned them to his father, not the Bank, after signing. Chang's father and his advisors used the borrowed money in Hong Kong to pay debt incurred there and having no connection to Washington.

SCB II, 195 Wn. App. at 904–05 (emphasis added). Nothing about the parties' interaction would have indicated to SCB that it *should* inquire about Chang being a Washington resident.

In contrast, this Court's decision to apply Washington law in *Potlatch No. 1 Fed. Credit Union v. Kennedy*, 76 Wn.2d 806, 459 P.2d 32 (1969), hinged on the fact that the creditor knew it was dealing with Washington residents and thus expected, or should have expected, Washington law to come into play:

Plaintiff credit union, on the other hand, was aware that it was dealing with Washington residents. It also knew that the property covered by the chattel mortgage executed by Roy H. Kennedy and his wife was located in Washington. It was also likely that most, if not all, of the community property of A. V. Kennedy and Vivian Kennedy would be situated in Washington. Therefore, if plaintiff had considered the matter, it would have been fairly certain that any execution of a judgment on the note or mortgage would have to be in Washington court.

Potlatch, 76 Wn.2d at 813. Unlike the creditor in *Potlatch*, SCB was not, at the time of contracting, “fairly certain that any execution of a judgment on the note or mortgage would have to be in Washington court.” *Id.* Indeed, SCB first sought enforcement on the debt in Hong Kong court—it

was only the Changs' evasive tactics that forced SCB to pursue a remedy here in Washington.

Even though Chen did not sign the agreement between Chang and SCB, relative to SCB she was in a much better position to avoid exposing the community to enforcement. SCB had no reason to suspect Chang was a Washington resident, especially because Chang routed documents through Shanghai.¹⁵ Chen, on the other hand, lived with Chang, had been married to him for many years (and is still married to him), and presumably had unfettered communications with him. In short, Chen was in a better position to know that her husband was obtaining a loan that could encumber their community property than the bank was to know that Chang lived in Washington.

In the situation where a foreign party does not know that it is contracting with a Washington resident, and has no reason to believe that it might be, the issue of whose law applies should not depend solely on the residence of the counterparty. The instant case is not one that gives this Court any reason to throw overboard 50 years of choice-of-law analysis.

B. There Is Strong Precedent for Enforcing a Judgment Against One Spouse Against the Community

For nearly a century, this Court has held to the rule “[t]hat a judgment rendered upon a community obligation in an action to which the

¹⁵ Chang Decl. ¶ 5. CP 289; *SCB II*, 195 Wn. App. at 904–05.

wife is not a party is enforceable against the community property....”
Manche v. Russell, 121 Wn. 65, 66–67, 207 P. 955 (1922).

More important here is that this Court has repeatedly applied all the factors of the most-significant-relationship test and come to the conclusion that a separate obligation may be enforced against community property. *Pacific Gamble*, 95 Wn.2d at 349–50 (separate contract debt enforceable against community where the law of the state with most significant relationship to the transaction would allow enforcement against that property); *Pacific States Cut Stone Co. v. Goble*, 70 Wn.2d 907, 908–09 (1967) (same); *Komm v. Dep’t of Soc. & Health Servs.*, 23 Wn. App. 593, 599, 597 P.2d 1372 (1979) (holding that because “either spouse may effectively manage the community,” a judgment against one spouse for child support is enforceable against the marital community); *deElche v. Jacobsen*, 95 Wn.2d 237, 246, 622 P.2d 835 (1980) (separate tort debt enforceable against community where separate property is insufficient).¹⁶

This body of law is powerful guidance for the Court in two principal respects. First, these precedents, particularly *Pacific States* and *Pacific Gamble*, are on-point. The plain fact is that this Court has applied the most-significant-relationship test in order to require community

¹⁶ As explained cogently by the Court of Appeals, 195 Wn. App. at 902–03, and as further analyzed in SCB’s Answer to Petition for Review at 8–10, RCW 6.40A.060(2) does not erase the requisite step of determining whose law applies. See also SCB brief in the Court of Appeals (Corrected Brief of Respondent) at 26–29.

property to answer for a separate debt because a foreign jurisdiction had the most significant relationship and, like in Hong Kong, the foreign jurisdiction's policy was that community assets are available to satisfy a debt of one spouse.

Second, and equally important, all of the above-cited precedents (along with various statutes) collectively make clear that Washington's policy of protecting community property is not a fundamental public policy and regularly yields to competing interests—including satisfying expectations of contracting parties. Given that this Court itself has been explicit in recognizing that the protection of community property is not a fundamental public policy, it is not possible, without legislative action, for the policy to suddenly become paramount. In *Pacific Gamble*, this Court bluntly acknowledged the circumscribed character of the policy:

[T]he Washington policy in favor of the protection and predictability of the marital property provisions is not always followed strictly, but has been modified by this court and the legislature in some circumstances.

...

[I]t is clear that neither this court nor the legislature currently adheres to the rule that the marital property, including the wages of a debtor spouse, are under all circumstances to be insulated from the claims of a creditor on a separate debt.

95 Wn. 2d at 347 n.2. *See also SCB II*, 195 Wn. App. at 905 (“Washington thus lacks a strong public policy of protecting marital communities from the separate debts of one spouse.”).¹⁷

C. The Court of Appeals Properly Applied the Choice-of-Law Analysis and Determined that the HCA 806 Judgment Is Enforceable Against Community Property

The Court of Appeals correctly applied the most-significant-relationship test. The test endorsed by the Restatement and adopted by Washington analyzes five factors: (a) place of contracting; (b) place of negotiation of the contract; (c) place of performance; (d) location of the subject matter of the contract; and (e) domicile, residence, nationality, place of incorporation and place of business of the parties. Restatement (Second) of Conflict of Laws § 188 (1971); *Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 666, 230 P.3d 625 (2010); *SCB II*, 195 Wn. App. at 903–04. The courts below correctly found that Hong Kong plainly dominates the contacts. *SCB II*, 195 Wn. App. at 903–04.

¹⁷ Nor is there any procedural unfairness to enforcing the HCA 806 judgment against the community. It is established Washington law that service of process on either spouse is adequate to enforce a judgment against the community. *See Oil Heat Co. of Port Angeles v. Sweeney*, 26 Wn. App. 351, 356, 613 P.2d 169 (1980). And the Changs cannot claim a lack of notice or opportunity to defend their interests. Indeed, counsel has appeared on Chen’s sole behalf throughout this litigation. CP 19–23. The Changs and their marital community had the opportunity to raise objections to the HCA 806 judgment during the first summary judgment proceeding in this case—all the way to the U.S. Supreme Court. *Res judicata* applies as to recognition of the HCA 806 judgment.

Of these five types of contacts, two strongly favor Hong Kong, an additional two favor Hong Kong, and one is neutral. These contacts are to be evaluated according to their relative importance with respect to the particular issue, *i.e.*, enforcement of a Hong Kong judgment based on a Hong Kong contract with a Hong Kong bank.

Both the place of performance and subject matter of the contract were in Hong Kong. The loan came from a Hong Kong bank, the subject account was located in Hong Kong,¹⁸ and all the underlying financial transactions that led to the loan that resulted in the Hong Kong judgment involved accounts in Hong Kong.¹⁹ The place of contracting also favors Hong Kong. SCB made the offer in Hong Kong; it was transmitted to Shanghai; Chang purports to have signed in Washington (though SCB did not know and could not have known this); and the executed documents were returned from Shanghai.²⁰ Nothing in the record suggests that SCB had any reason to believe there was any Washington connection.²¹

¹⁸ Respondents' Amended Response and Counterclaims ("move his money into various accounts at the Hong Kong branch of SCB"). CP 32:13–14.

¹⁹ Mo Decl., Exs. A–F (loan transaction documents establishing that the bank is incorporated and headquartered in Hong Kong). CP 144–83. *See also* Hsieh Decl., Ex. B at ¶¶ 25, 148, 149 (sworn witness statement submitted in connection with HCA 806 establishing that the loan occurred in Hong Kong). CP 86–89.

²⁰ Chang Decl. ¶ 5. CP 289.

²¹ *SCB II*, 195 Wn. App. at 904–05 ("the record contains no indication that the Bank knew it was dealing with Washington residents").

The place of negotiation also favors Hong Kong. The extent of negotiations was the imposition of terms by a Hong Kong bank, with delivery of those terms to Shanghai. The record does not support the notion that any negotiation occurred in Washington. The Changs' declarations do not assert that they pushed back on any terms before the agreements were executed.²²

The residence of the parties is a wash. SCB is incorporated and headquartered in Hong Kong.²³ Chang—unbeknownst to SCB at the time—resided in Washington.

The Court of Appeals correctly found that the net result of two factors weighing heavily in favor of Hong Kong, an additional two factors weighing in favor of Hong Kong, and one neutral factor is that Hong Kong has the most significant relationship. *SCB II*, 195 Wn. App. at 904. The Court of Appeals' analysis is unassailable.

IV. CONCLUSION

For the foregoing reasons, and for the reasons stated in the Court of Appeals' opinion and in SCB's Answer to Petition for Review, this Court should affirm the Court of Appeals' decision or dismiss the petition as improvidently granted.

²² Chang Decl. ¶ 5. CP 289; Declaration of Clark Chang in Support of Respondents' Opposition to Petitioner's Second Motion for Summary Judgment ¶ 9. CP 210.

²³ Mo Decl., Exs. A–F (loan transaction documents establishing that the bank is incorporated and headquartered in Hong Kong). CP 144–83.

Respectfully submitted this 7th day of April, 2017.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on April 7, 2017, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated:

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