

FILED
SUPREME COURT
STATE OF WASHINGTON
12/18/2018 2:33 PM
BY SUSAN L. CARLSON
CLERK

Appellate Court Case # No. 76576-1-I

96655-9

SUPREME COURT NO.

STATE OF WASHINGTON
SUPREME COURT
COA No. 76576-1-I

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

Appellant,

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,

Respondent

PETITION FOR DISCRETIONARY REVIEW

PRO SE for Two of Petitioner
CHEN HUY YING
5112 189th Ave N.E
Sammamish, WA 98074
Phone: (206) 779-8880
Email: hy@nobo.us

TABLE OF CONTENTS TO PETITION FOR REVIEW

I. INTRODUCTION.....-4-

A. Identity of Petitioner.....-4-

B. Standard for Acceptance of review Decision.....-4-

II. ISSUES PRESENTED FOR REVIEW.....-5-

A. Whether the WSSA in exempt could get jurisdiction interfere Congress enacted § 203(b)(5) of the Immigration and Nationality Act (“INA”) for EB 5 program investors?..... -5-

B. Whether COA erred affirmed for this case with WSSA jurisdiction in exemption from RCW 21.040?.....-5-

C. Whether the Trial Court erred striking GOCH’s answer & affirm summon?.....-5-

D. Whether Supreme Court review de novo for a initial Temporally restrain order which violated constitution law?.....-5-

E. Whether RCW 25.15.386 “Right to bring action”_for Washington State RCW limit Liability company should be applied?.....-5-

F. Whether the COA erred relied for 15 U.S.C. § 77r which not applied in EB 5 case -5-

III. ARGUMENT..... -6-

(a) The Trial Court Improperly Conflated the WSSA, SEC and Immigration and Nationality Act (INA). Neither Securities Exchange Commissioner (“SEC”) nor Washington State Security Act (“WSSA”) have jurisdiction to hearing & allegation due a EB 5 investment are not a “security” at all in this case.

(a1) Plaintiffs as a EB 5 applicants intend to obtaining permanent US residency is an entirely non-monetary benefit

(a2) The EB-5 program as a Federal question jurisdiction under 28 U.S.C. §1332

- (a3) The COA may erred for Federal completed diversity jurisdiction in this case
- (a-4) There being no grounds whatsoever for asserting general jurisdiction
- (b) This Court erred ruling for this case with WSSA jurisdiction, Actually all Plaintiffs knew that The WSSA be exempted from RCW 21.040 by Private Placement Memorandum (“PPM”)
- (c) The COA Court erred stated GOCH’s challenges to the Trial Court’s orders for striking GOCH’s answer
- (d) The Supreme Court review de novo when initialed a TRO be void from Ex Parte of Washington Superior Court at December 8, 2015
- (d1) Plaintiffs intend to hold personal service Summon & Complaint until December 11,2015 after Ex Parte TRO be granted at December 8, 2016
- (d2) The Trial Court convert TRO to preliminary injunction should under lack of personal & subject jurisdiction and venue that
- (e) The COA erred no considering for a Washington State RCW limit Liability company RCW 25.15.386
- (f) The COA erred relied for 15 U.S.C. § 77r(c)(1)(A)(i) that State should retain jurisdiction

IV. CONCLUSION.....-8-

TABLE OF AUTHORITIES

CASES

Congress enacted § 203(b)(5) of the Immigration and Nationality Act.....-5-

R.L. Inv Ltd. Partners v. INS, 86 F. Supp.2d 1014, 1016 (D. Haw. 2000).....-6-

Chang v. United States, 327 F.3d 911, 915 (2003).....-6-

United housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975).....-9-

S.E.C. v. Goldfield Deep Mines Co. of Nevada, 758 F.2d 459, 463-64 (9th Cir. 1985).....-9-

S.E.C. v. Aqua- Sonic Prods. Corp., 687 F.2d 577 (2d Cir. 1982).....-9-

Negotiating Comm. V. Thora, 328 F.3d 325, 327 (7th Cir.2003).....-10-

Entick v. Carrington, 19 Howell's St. Tr., Col. 1029, 1065-1066 (1765).....-12-

Melo v. US, 505 F2d 1026.....-13-

Hagans v Lavine 415 U. S. 533.....-13-

Foxhall Realty Law Offices, Inc. v. Telecomm. Premium Servs., Ltd., 156 F.3d 432, 435..-13-

Grable & sons Metal Products, Inc. V. Darue Eng’s & Mfg., 545 U.S. 308 (2005).....-14-

Frederikson v. Poloway, 637 F.2d 1147, 1153-54 (7th Cir.), *cert. denied*, 451 U.S. 1017
(1981).....-13-

State v. Q.D., 102 Wn.2d 19, 23, 685 P.2d 557 (1984).....-13-

Teamasters Nat’l Auto. Transporters Indus. Negotiating Comm. V. Thora, 328 F.3d 325,
327 (7th Cir.2003).....-11-

STATUTES

RCW 21.20.040-11..... -9-

RCW 25.15.386.....-9--14-

CR 60 (b) (3)(5)	-7- -14-
CR 60(b)(5)	-14-

RULES

RAP 13.4	-4-
RAP 13.5	-4 -
11. U.S.C 1332 (a).....	-14 -
8 U.S.C. §§ 1153(b)(5)1186 b.....	-6-
8 C.F.R. §§ 204.6, 216.6.....	-4-
15 U.S.C. § 77r.....	-14-

APPENDIX

Appendix A – The COA Panels’ affirmed the Trial Court order.....	-11-
Appendix B – The Order for motion by Court of Appellate Panel.....	-12-
Appendix H1 -Transcript for Ex Parte Hearing at December 8, 2015 showed violated Connecticut vs. Doehr	-12 –
Appendix I1 - Private Placement Memorandums (“PPM”) Represented WSSA Exemption	-12-
Appendix J1 - Temporally Restrain Order (“TRO”) issued at December 8,2015.....	-12 –
Appendix K1 -Judge Parisan’s permanent injunction order with lack of personal, subject matter jurisdiction and venue.....	-12-
Appendix L1 - Great Ocean Capital Holding LLC- Members list with share percentage.....	-12-

I. INTRODUCTION

In October 1990, Congress enacted § 203(b)(5) of the Immigration and Nationality Act (“INA”) of 1990, which provides that an alien investor may qualify for preferred visa status if the alien is “seeking to enter the United States for the purpose of engaging in a new commercial enterprise,” “which the alien has established,” and “which will benefit the United States economy and create fulltime employment for not fewer than 10 United States citizens” or lawful aliens. U.S.C. § 1153(b)(5)(A); *R.L. Inv Ltd. Partners v. INS*, 86 F. Supp.2d 1014, 1016 (D. Haw. 2000).

Because the immigrant investor program is the fifth preference in the “employment-based” visa preference category, it is commonly referred to as the “EB-5” program. The EB-5 program grants lawful permanent resident status in the United States to those who make qualifying investments under the Immigrant Investor Law, 8 U.S.C. §§ 1153(b)(5)1186 b; 8 C.F.R. §§ 204.6, 216.6, *Chang v. United States*, 327 F.3d 911, 915 (2003).

It is undisputed that EB-5 investors as Plaintiffs in this case are motivated by their desire for U.S. permanent residency status rather than a financial return.

When if Plaintiffs complaints are not a foundation based on “securities” then neither Washington State Securities Act (“WSSA”) nor Securities & Exchange Commissioner (“SEC”) under 15 U.S.C. § 77r have no jurisdiction with no authorities to pursuit this case, especially this case affect seriously to public disguise about Washington State Court have general jurisdiction over federal matter jurisdiction of Immigration and Nationality Act (“INA”), which will misapplied by many of EB 5 investors under visa retrogression statue to pushing their case into State Court system. *Frederikson v. Poloway*, 637 F.2d 1147, 1153-54 (7th Cir.), *cert. denied*, 451 U.S. 1017 (1981) (dismissal because no security involved)

Beside this is not a securities, the investment from EB 5 pilot program are under Federal question jurisdiction with exemption to registered with the Securities and Exchange Commission (the “SEC”) and Washington State Securities Act (“WSSA”) see **Appendix II**. In other words, claims that are based on limited jurisdiction of federal law are to be heard in federal courts. In addition, federal courts exercise “diversity jurisdiction”

over cases (i) where the amount in controversy (generally, the damages the plaintiff claims) exceeds \$75,000, and (ii) the parties are citizens of different states—in legal jargon, where there is “diversity of citizenship.”

This Court should examine this appeal case de novo for original Temporal Restrain Order (“TRO”) in December 8, 2015, which also be ignored by the Trial Court. The initial TRO with violation constitution law for Due Process Clause of the 14th Amendments. Eventually, this case Summon & Complaint issued Case Number: 15-2-28694-3 from King County Superior Court Clerk office at November 30, 2015 (Dock No-1) and Summon & Complaint received by Defendant at December 11, 2015 after Ex parte TRO be granted at December 8, 2016 (Dock No. -8) (**Appendix jj**). Although the Superior Court Commissioner Honorable Carlos Velategui warned Plaintiff violated Due Process Clause of the 14th Amendment of Connecticut vs. Doebr, 501 U.S. 1 (1991) (**Appendix HH at page 17-18**) but TRO still be issued. The worse circumstance that Plaintiff * & Plaintiffs’ Counsel act in bad faith to cheated Commissioner Carlos Velategui stated Plaintiffs could only attached Defendants’ business escrow account (**Appendix HH at page 18 line 20**) but when Counsel presented a propose order for Commissioner signature was not only attach Defendants escrow accounts but all Defendants business accounts. (**Appendix II**) * in Eastwest Bank. Which cause serious damaged for business operation with almost casualties for ship operation.

*At TRO order stated at page 4 line 3-4 stated at (1) withdrawing, wiring, transferring, expending, or debiting fund from any and all account owned by GREAT OCEAN CAPITAL HOLDING, LLC at East West Bank, This includes but is not limited to account ending in 5167. 5167 was a escrow account at that time.

On date of December 18, 2015, The Trial Court converted TRO to preliminary injunction hearing, which was under lack of personal & subject jurisdiction and venue, Judge Suzanne R. Parisan biased abused her discretion with Judge signature crossed out “This Court has personal and subject matter jurisdiction and venue is proper “ for issued her order, Which meaning judge’s order lack of jurisdiction to convert TRO for preliminary injunction order (**Appendix K1**) including WSSA. therefore, that order must be void under CR 60 (b) (3)(5).

This case lasting for almost 3 years but continuing spin and not resolved with

personal & subject matter Jurisdiction. The Supreme Court need to review “lack of personal & subject matter jurisdiction and venue before substantive merit.

* Plaintiff as EB 5 applicants intend to withdraw dismiss their application due face China visa retrogression and her parent own financial problems and forced CHENS refund her EB 5 investment, which CHENS asked if they must withdraw their application if their EB 5 fund return. They refused and insisted take both of “green card” & “money back” and CHENS can not break the law and refused then they created this law suit.

See below:

II. IDENTIFY OF PETITIONERS

Defendants/Petitioner, Huy Ying Chen & Wang Xue Ping, (hereinafter referred to as “CHENS”) through Pro Se, hereby petitions the Supreme Court of Washington State, pursuant to Washington State. RAP rule 13.4 for discretionary review the decision designated in Appendix A and Appendix B as order denied by COA’s Panel of the Court of Appeals Division 1 of dated October 15, 2018 **Appendix A** and order denied CHENS’ reconsideration **Appendix B** dated November 19, 2018 for case No. 76576-1-I

III. STANDARD FOR ACCEPTANCE OF REVIEW

The Petitioner seek discretion review of the denied order for motion for modify ruling by Court of Appellate Division 1 (“COA”) Chief Administration Clerk / Commissioner & Panel of the Court of Appeals Division 1 on dated of October 08, 2018 and also denied Petitioner reconsideration at November 7, 2018, A true and correct copy of the Order denied is attached to the Notice for Discretionary Review as **Appendix A** to this motion.

Pursuing RAP 13.4 (b) "A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the

Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

With " RAP 13.4(b)(1)(3)(4). Petitioner alleged the case must applied under a procedural proceeding law of lack of jurisdiction & lack of standing without substantive merit law.

V. ISSUES PRESENTED FOR DISCRETIONARY REVIEW

The issues for this discretion review presenting to the Supreme Court are for COA's Panel affirmed The Trial Court order and denied Petitioner's reconsideration.

The issues as follows:

- A. Whether the WSSA in exempt could get jurisdiction interfere Congress enacted § 203(b)(5) of the Immigration and Nationality Act ("INA") for EB 5 program investors?
- B. Whether COA erred affirmed for this case with WSSA jurisdiction in exemption from RCW 21.040?
- C. Whether the Trial Court erred striking GOCH's answer & affirm summon?
- D. Whether Supreme Court review de novo for an initial Temporally restrain order which violated constitution law?
- E. Whether RCW 25.15.386 "Right to bring action" for Washington State RCW limit Liability company should be applied?
- F. Whether the COA erred relied for 15 U.S.C. § 77r which not applied in EB 5 case.

IV. ISSUES PRESENTED WITH LEGAL ARGUMENT

(a) The Trial Court Improperly Conflated the WSSA, SEC and Immigration and Nationality Act (INA). Neither Securities Exchange Commissioner (“SEC”) nor Washington State Security Act (“WSSA”) have jurisdiction to hearing & allegation due an EB 5 investment are not a “security” at all in this case:

(a1) Plaintiffs as an EB 5 applicants intend to obtain a permanent US residency is an entirely non-monetary benefit which cannot reasonable be characterized as a “profit,” and is non-transferable, only conferring value to the recipient. Similar to Forman, EB-5 investors are motivated by their desire to “use or consume” something, in this case the benefits and privileges of U.S. permanent residency. When if Plaintiffs complaints not a foundation based on “securities” then WSSA or SEC have no jurisdiction or ground to pursuit. *Frederikson v. Poloway*, 637 F.2d 1147, 1153-54 (7th Cir.), cert. denied, 451 U.S. 1017 (1981) (dismissal because no security involved).

In this case is most analogous to *United housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975)* where the Supreme Court found that the “investment” was motivated overwhelmingly by non-monetary factors and therefore not a **security**. In *United Housing Foundation, Inc. v. Forman* a case concerning the offer and sale of interests in a cooperative housing project, the Court made it clear that the desire to secure income or profit is a determining factor in whether allocated funds can be appropriately characterized as an “investment.” In addition, the Court determined that such interests were not “securities,” partly because “the investors were attracted *solely* by the prospect of acquiring a place to live, and not by financial returns on their investments (emphasis added).” Nevertheless, the Trial Court effectively disregarded this case clear subjective motivation, *Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975)* thrusting Forman to the side, and instead focusing on post-Forman rulings - *S.E.C. v. Goldfield Deep Mines Co. of Nevada*, 758 F.2d 459, 463-64 (9th Cir. 1985) and *S.E.C. v. Aqua- Sonic Prods. Corp.*, 687 F.2d 577 (2d Cir. 1982), cert. denied, 459 U.S. 1086 (1982), both of which held that investments made primarily for tax benefits satisfied the expectation of profits prong under *Howey*.

(a2) The EB-5 program as a Federal question jurisdiction under 28 U.S.C. §1332 vest Federal Court with limited jurisdiction to hear cases that “arise under” federal law.

The COA stated that Washington State have general jurisdiction but not for Congress enacted with indication. *Teamsters Nat’l Auto. Transporters Indus. Negotiating Comm. V. Thora*, 328 F.3d 325, 327 (7th Cir.2003) (“Federal Courts are Courts of limited jurisdiction and may only exercise jurisdiction where it is specifically authorized by federal statute.”) and EB-5 as Federal question jurisdiction that WSSA can not substituted.

(a3) The COA may erred for Federal completed diversity jurisdiction in this case and lack of personal jurisdiction issue, as below that WSSA should have no jurisdiction.

Article III, section 2 of the U.S. Constitution provided the basic framework for diversity jurisdiction, with this case four of plaintiff Liu Yuen Lu with expired limited permanent resident card (“expire green card”), Pan Ai Hua (“expired green card”), Pan Zhong Yuan (“People Republic of China Citizen “PRC citizen”) and Zhang Peng (“PRC Citizen”) vs. Defendants of Great Ocean Capital Holding LLC**, Chen Huy Ying (U.S. Citizen) and Xue Ping Wang* (permanent resident card) **(Appendix L1)**.

**Great Ocean Capital Holding LLC have 4 managing member 1. Liu YanLu (“expire green card”) live in Washington State Snohomish County, 2. Pan Ai Hua (“expire green card”)” live in Washington State, Snohomish County 3. Chen Huy Ying (U.S. Citizen) 4. Wang Xue Ping (permanent resident card).

This is completely a diversity jurisdiction with multiple Plaintiffs or multiple Defendants with domicile. This also need to be addressed that two Plaintiffs with PRC nationality and domicile at Toronto, Ontario, Canada and both of them refused to attend Defendants Counsel “deposition” for both of them cannot get visa to come in U.S.A that are a lack of personal jurisdiction also.

(a-4) There being no grounds whatsoever for asserting general jurisdiction, when cause of action Federally with Congress indicates. WSSA lack of jurisdiction at all.

Foxhall Realty Law Offices, Inc. v. Telecomm. Premium Servs., Ltd., 156 F.3d 432, 435 (2d Cir. 1998) (citation omitted) State Court are court of general jurisdiction and are accordingly presumed to have jurisdiction over federally –created cause of action unless

Congress indicates otherwise, whereas federal courts are court of limited jurisdiction which thus require a specific grant of jurisdiction.”) *abrogated on other grounds by Grable & sons Metal Products, Inc. V. Darue Eng’s & Mfg.*, 545 U.S. 308 (2005).

Jurisdiction is the power and authority of the Court: The motion could be brought up in any time under lack of subject matter jurisdiction of a Federal question jurisdiction, neither procedural law nor substantive law. It is simply a limitation on the power of a court to act as a court.

(b) The Trial Court erred ruling with WSSA jurisdiction, in fact of all Plaintiffs knew that The WSSA be exempted from RCW 21.040 by Private Placement Memorandum (“PPM”) at (Appendix I1- page 13) which for both parties signed and agreed:

Please refer to PPM which clearly notice & stated that WSSA be exempted from RCW 21.20.040

FOR WASHINGTON RESIDENTS: THIS OFFERING HAS NOT BEEN REVIEWED OR APPROVED BY THE WASHINGTON SECURITIES ADMINISTRATOR, AND THE SECURITIES OFFERED HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT (THE “ACT”) OF WASHINGTON CHAPTER 21.20 RCW AND MAY BE TRANSFERRED OR RESOLD BY RESIDENTS OF WASHINGTON ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THE INVESTOR MUST RELY ON THE INVESTOR’S OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED, IN MAKING AN INVESTMENT DECISION ON THESE SECURITIES.

When if a “securities” be registered for WSSA, the administrator refers to the office or agency that has complete responsibility for administrating the securities laws of the State. Then this person has jurisdiction over the registration of professionals and securities, make rules and issue orders, and deny suspend, or revoke registrations. The administrator can be where the offer is made, received, and acted on. At this case that WSSA be exempted and

no registered in Washington State or national wide, therefore WSSA or SEC can't have jurisdiction at all.

(c) The COA Court erred stated GOCH's challenges to the Trial Court's orders striking GOCH's answer and determining Pan was entitled to rescission of her investment are similarly without merit.

As discuss above about PPM of EB 5 jurisdiction, which will not allow rescission for EB 5 investment when their EB 5 application of I-526 be presented into USCIS. The truth circumstance that CHENS even agreed to return Pan's EB 5 investment if Plaintiff withdraw their EB 5 Permanent Resident Card application, but Plaintiffs refused with because they want both "green card" and required "investment return", which gives no alternative for only CHEN break Congress enacted § 203(b)(5) of the Immigration and Nationality Act U.S.C. § 1153. Plaintiff required CHENS return their I-526 fund in secret, which CHENS refused. As a designator of USCIS approval Regional center LLC must obey restrict law.

When jurisdiction consistently has been raised up in Trial Court, but Trial Court consistently 'ignored" and biased adopt opposite Counsel's propose order without judge own burden. The law clearly said when jurisdiction be brought up then must be hold and jurisdiction can not be conferred. " Entick v. Carrington, 19 Howell's St. Tr., Col. 1029, 1065-1066 (1765). "Once jurisdiction is challenged, the Court cannot proceed when it clearly appears that the Court lacks jurisdiction, (with this case when the TRO was issued there was no service of the complaints and or summon served yet under due process violated with Connecticut vs. Doehr of 14th amendments. "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." Hagans v Lavine 415 U. S. 533. Melo v. US, 505 F2d 1026. The court has no authority to reach merits, but, rather, should dismiss the action."

(d)The Supreme Court review de novo when initialed a TRO be void from Ex Parte of Washington Superior Court at December 8, 2015, which violated United State constitution laws for due process clause 14th amendment and the Trial Court judge

issue preliminary injunction order lack of personal & subject jurisdiction.

d-1. Plaintiff filed Summon & Complaint with Case Number: 15-2-28694-3 at November 30, 2015 (docket No. 1), Plaintiffs intend to hold personal service Summon & Complaint until December 11,2015 after Ex Parte TRO be granted at December 8, 2016 (**Appendix jj**). Because their intention clearly to stopped Defendants' fair chance for TRO hearing, which violated constitution law

d-2 During the Trial Court convert TRO to preliminary injunction under lack of personal and subject jurisdiction and venue. Judge Suzanne R. Parisan biased and with her own pen crossed out "this court with personal & subject matter jurisdiction and venue" to issued her order, meaning she may have no jurisdiction to grant her preliminary injunction order (**Appendix K1**). therefore, that order must be void for CR 60 (b) (3)(5).

(e)The COA erred no considering for a Washington State RCW limit Liability company RCW 25.15.386

The COA erred stated "CHENS" own a majority interest in GOCH and Respondents Yanlu Liu and Ai Hua Pan, husband and wife, own a minority interest" but not applied with Washington State RCW limit Liability company RCW 25.15.386:

RCW 25.15.386 Right to bring action.

A member may bring a derivative action to enforce a right of a limited liability company if: (1) The member first makes a demand on the members in a member-managed limited liability company, or on the managers of a manager-managed limited liability company, requesting that they cause the limited liability company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or (2) A demand would be futile.

Plaintiff filed a lawsuit with violated RCW 25.15.386 The Plaintiffs of "LIU" is both Plaintiffs and Defendants position. LIU brought up this case must be futile.

(f) The COA erred relied for 15 U.S.C. § 77r(c)(1)(A)(i) that State should retain jurisdiction but since The EB 5 program not in connection with “securities”, therefore, neither SEC nor WSSA have jurisdiction:

15 U.S.C. § 77r (c) Preservation of authority

*(1) Fraud authority Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, **in connection with securities or securities transactions** [2]*

Please noted: 15 U.S. Code § 77r (a) (1) (A)(B) - Exemption from State regulation of securities offerings should only apply for Securities

Pursuant 15 U.S. Code § 77r (a) Scope of exemption Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof — (1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that— (A) **is a covered security**; or (B) will be a covered security upon completion of the transaction;

Pursuit 15 U.S.C. § 77r(a)(2)(A)(B)

*(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of— (A) **with respect to a covered security described in subsection (b)**, any offering document that is prepared by or on behalf of the issuer; or (B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o–3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or*

Pursuit 15 U.S.C. § 77r(a)(3)(b)(A)(B)(C)

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities For purposes of this section, the following are covered securities:

(1) Exclusive Federal registration of nationally traded securities A security is a covered security if such security is—

(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

(C) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

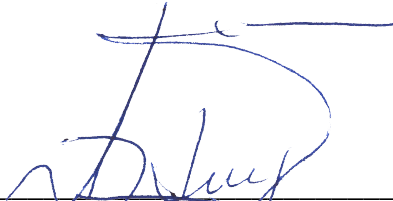
(2) Exclusive Federal registration of investment companies A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

This EB 5 case exempt register from WSSA and SEC and not classified as a “security” therefore 15 U.S.C. § 77r(c)(1)(A)(i) cannot applied neither WSSA or SEC have jurisdiction.

VII. CONCLUSION

Petitioner based on the foregoing facts, statutory authority herein and in the briefings on file with the Court, CHENS motion for should be granted for lack of personal & subject matter jurisdiction and venue on appeal.

Respectfully submitted this 18th day of December 2018.



By: **HUY YING CHEN** as Pro Se
Dated: December 18, 2018
At: Sammamish, Washington

Appendix A

The COA Panels' affirmed the Trial Court order

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle

DIVISION I
One Union Square
600 University Street
98101-4170
(206) 464-7750
TDD: (206) 587-5505

October 15, 2018

Courtney Diane Bhatt
MDK Law
777 108th Ave NE Ste 2000
Bellevue, WA 98004-5146
cbhatt@mdklaw.com

James P Ware
MDK Law Associates
777 108th Ave NE Ste 2000
Bellevue, WA 98004-5146
jware@mdklaw.com

Huy Ying Chen
5112 189th Avenue NE
Sammamish, WA 98074

Huy Ying Chen
7554 185th Ave N.E.
Suite 200
Redmond, WA 98052
hy@nobo.us

Xue Ping Wang
5112 189th Avenue NE
Sammamish, WA 98074

Tuella O Sykes
Law Offices of Tuella O Sykes PLLC
600 Stewart St Ste 1300
Seattle, WA 98101-1255
tos@tuellasykeslaw.com

Xue Ping Wang
7554 185th Avenue N.E.
Suite 200
Redmond, WA 98052
hy@nobo.us

CASE #: 76576-1-I
Yanlu Liu, et al, Respondents v. Great Ocean Capital Holding, LLC, et al, Appellants
King County, Cause No. 15-2-28694-3 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Therefore, we affirm."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

A handwritten signature in black ink, appearing to read "R.D. Johnson", with a long horizontal line extending to the right.

Richard D. Johnson
Court Administrator/Clerk

LAW

Enclosure

c: The Honorable Suzanne Parisien

2018 OCT 15 AM 8:35

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,)	No. 76576-1-I
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.)	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.

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

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

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

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

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

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

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 claim³⁷ 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

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]

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

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.

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.

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

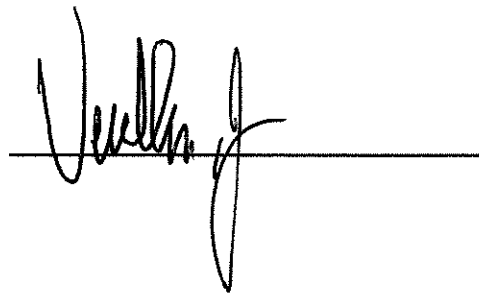
Pan seeks fees on appeal under the subscription agreement and RAP 18.1.

“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.

A handwritten signature in black ink, appearing to read "Vellmer", is written over a horizontal line.

WE CONCUR:

A handwritten signature in black ink, appearing to read "Chen, J.", is written over a horizontal line.A handwritten signature in black ink, appearing to read "Mann, ACS", is written over a horizontal line.

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 B

The Order Denied Reconsideration by COA Panel

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

November 19, 2018

Courtney Diane Bhatt
MDK Law
777 108th Ave NE Ste 2000
Bellevue, WA 98004-5146
cbhatt@mdklaw.com

James P Ware
MDK Law Associates
777 108th Ave NE Ste 2000
Bellevue, WA 98004-5146
jware@mdklaw.com

Huy Ying Chen
5112 189th Avenue NE
Sammamish, WA 98074

Huy Ying Chen
7554 185th Ave N.E.
Suite 200
Redmond, WA 98052
hy@nobo.us

Xue Ping Wang
5112 189th Avenue NE
Sammamish, WA 98074

Tuella O Sykes
Law Offices of Tuella O Sykes PLLC
600 Stewart St Ste 1300
Seattle, WA 98101-1255
tos@tuellasykeslaw.com

Xue Ping Wang
7554 185th Avenue N.E.
Suite 200
Redmond, WA 98052
hy@nobo.us

CASE #: 76576-1-I
Yanlu Liu, et al, Respondents v. Great Ocean Capital Holding, LLC, et al, Appellants

Counsel:

Enclosed please find a copy of the Order Denying Motions for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

78174-0-1
Page 2 of 2

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

A handwritten signature in black ink, appearing to read "R.D. Johnson", with a long horizontal flourish extending to the right.

Richard D. Johnson
Court Administrator/Clerk

Enclosure

c: Reporter of Decisions

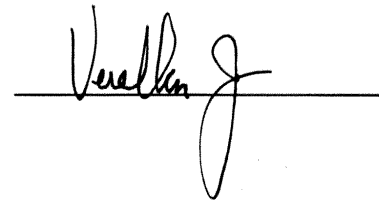
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

YANLU LIU and AI HUA PAN,)	No. 76576-1-I
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,)	ORDER DENYING
LLC, a Washington limited liability)	MOTIONS FOR
company; HUY YING CHEN and)	RECONSIDERATION
XUE PING WANG, husband and wife,)	
residing in Washington state;)	
)	
Appellants.)	

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 H1

**Transcript for Ex Parte Hearing at 12.18, 2015 violated
constitution law - Connecticut vs. Doehr**

*e*FFICIENT[®]

YOUR ELECTRONIC FILES HAVE ARRIVED!

In the Matter of:



YANLU LIU and AI HUA PAN

vs.

GREAT OCEAN CAPITAL HOLDING, LLC

VERBATIM REPORT OF PROCEEDING

December 08, 2015



Full-sized and condensed transcripts in pdf format



Easy to view on your mobile devices



Copy and paste and retain transcript formatting



Adobe Reader is the only software necessary



Search across all transcripts and exhibit files with a single query



Easy access, hyperlinked exhibits and word index

1 SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

2

3 YANLU LIU and AI HUA PAN,)

4 husband and wife residing in)

5 King County, Washington; PENG)

6 ZHANG and ZHONGYUAN PAN,)

7 husband and wife residing in)

8 Ontario, Canada,)

9 Plaintiffs,)

10 vs.) 15-2-28694-3 SEA

11 GREAT OCEAN CAPITAL HOLDING,)

12 LLC, a Washington limited)

13 liability company; HUY YING)

14 CHEN and XUE PING WANG,)

15 husband and wife residing in)

16 Washington State,)

17 Defendants.)



18

19 VERBATIM REPORT OF PROCEEDING

20 BEFORE THE HONORABLE

21 CARLOS VELATEGUI

22

23 DECEMBER 8, 2015

24 TRANSCRIBED FROM RECORDING BY:

25 CHERYL J. HAMMER, RPR, CCR 2512



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFFS:

JAMES P. WARE
MDK Law Associates
777 108th Ave NE, Suite 2000
Bellevue, Washington 98004
425.455.9610
jware@mdklaw.com



1 news or the local news with regard to EB5
2 applications? So he's just some guy who has a
3 contract with your clients and he doesn't appear to be
4 living up to the terms of the contract? Do you have a
5 contract dispute?

6 MR. WARE: Well, we also have a fraud
7 under the Washington Securities Act.

8 THE COURT: And what's the fraud?

9 MR. WARE: The fraud is a material
10 misrepresentation in the PPM, which is the lease.

11 THE COURT: But your evidence of the
12 existence or nonexistence of that -- of that lease is
13 hearsay.

14 MR. WARE: But in addition, Your
15 Honor, that if in fact there was actually a lease, the
16 project would have started by now.

17 THE COURT: Well, that's what you'd
18 like to argue. I don't know that.

19 MR. WARE: That is -- as someone
20 seeking a TRO, I don't need to definitively prove my
21 case.

22 THE COURT: But you have to prove
23 irreparable injury.

24 MR. WARE: Right.

25 THE COURT: And you have to prove the



1 exigent circumstances. Without that, you have
2 nothing.

3 MR. WARE: The exigent --

4 THE COURT: **Doehr versus Connecticut.**

5 There's a Ninth Circuit Court of Appeals that say
6 contract disputes are unconstitutional and Mr.
7 Kronenberg, a lawyer who got a prejudgment attachment
8 on real estate, ended up being the defendant, as I
9 recall, once the Court of Appeals said he had no right
10 to the attachment of the property on nothing more than
11 his complaint.

12 MR. WARE: But if the escrow, if it's
13 in an escrow account, then it is not the --

14 THE COURT: Is your client in charge
15 of the escrow account?

16 MR. WARE: No. And that's the
17 concern, is that my client has no access; doesn't even
18 know what's left in the escrow account.

19 THE COURT: Mm.

20 MR. WARE: But if it is truly an
21 escrow account, then it should be Ms. Pan's money --
22 funds in --

23 THE COURT: So you want the court to
24 manage a contract dispute between these two parties?

25 MR. WARE: This is not a contract



1 dispute. Again, Your Honor, it's still, it's a
2 securities act --

3 THE COURT: Well, where is --

4 MR. WARE: -- violation.

5 THE COURT: Why doesn't the securities
6 commission come in and grab the account if they think
7 there's violations here?

8 MR. WARE: Because under the
9 securities act an individual has a private cause of
10 action.

11 THE COURT: So they just default to
12 individual private people?

13 MR. WARE: Well, it depends on if the
14 --

15 THE COURT: Or they don't have enough
16 yet to go after Mr. Chen?

17 MR. WARE: Well, I don't know if
18 there's been an investigation, what the status of that
19 investigation is.

20 Again, if we limit it to the escrow
21 account.

22 THE COURT: The problem you're having
23 is that the six figure number that's rolling around in
24 my brain for the bond you're going to have to post.

25 MR. WARE: If it's limited --



Appendix I1

Private Placement Memorandums ("PPM")

Represented WSSA Exemption

*Excludes \$40,000 per Unit for Offering costs and migration services. The retained United States immigration attorney will separately charge immigration legal expenses.

Our objective is to realize capital appreciation and income streams from our investments in the agricultural produce equipment and transportation. We pursue that our investments will typically shorten the transportation channel with lower cost of agricultural produce export. We intend to invest only in projects where at least seven thousand four hundred ninety two (7,492*) or more U.S. jobs from direct, indirect and induce, can be created. (See “business for Objectives, Strategies and Proposed Activities”). There can be no assurance these objectives will be achieved.

We are organized as a “private investment company” claiming exemptions from registration under Section 3(c) (9) of the Investment Company Act of 1940, as amended, and applicable state law or the applicable law of other non-U.S. jurisdictions. We are offering Units of Investing Membership Interest (the “Units”) to non-U.S. Persons and/or others who also qualify as “accredited investors” in accordance with Sections 4(2), 4(6), Regulation D Rule 506, and/or Regulation S Rule 903 of the Securities Act of 1933, as amended (the “Act”) and applicable state law or the applicable law of other non-U.S. jurisdictions. This document is our confidential private placement memorandum (this “Memorandum”). This is not a public offering.

The Company has not been registered under the Act and may not be offered or sold in the United States or to U.S. persons unless the securities are registered under the Act, or an exemption from the registration requirements of the Act is available. Hedging transactions involving the Units may not be conducted unless in compliance with the Act.

*The total jobs creation should be 7492 with 749 members’ investors allow but the company lower ratio for only 196.

*Minimum investment for non-U.S. Persons seeking an EB-5 immigration visa from USCIS may be increase up to (2) Unit (USD \$1,000,000) in the event our Sponsoring Member willing such maximum upon receipt of approval as a regional center by USCIS and if the facility is located within a Targeted Employment Area (TEA) or a Rural Area (RA). Units may also be otherwise fractionalized in our Sponsoring Member’s sole and absolute discretion.

This investment involves a **high degree of risk** further described in the “Risk Factors” section of this Memorandum. Subscription of these securities should be considered only if you can afford a possible total loss of your investment.

Neither the U.S. Securities and Exchange Commission nor any state securities commission nor any other jurisdiction authority has approved or disapproved of this offering or determined if this Memorandum is truthful or complete. Any representation to the contrary is a criminal offense.

	Price	Commissions	Other Fee & Expenses	Proceed to fund
Per Unit	500,000	0	40,000	500,000
Minimum Investment	500,000	0	40,000	500,000
Maximum Offering	1,000,000 (2 unit)	0	40,000	1,000,000
Expanded Maximum	196	0	3,822,000	98,000,000

FOR VIRGINIA RESIDENTS: THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE VIRGINIA SECURITIES ACT, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS THEY ARE SUBSEQUENTLY REGISTERED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

FOR WASHINGTON RESIDENTS: THIS OFFERING HAS NOT BEEN REVIEWED OR APPROVED BY THE WASHINGTON SECURITIES ADMINISTRATOR, AND THE SECURITIES OFFERED HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT (THE "ACT") OF WASHINGTON CHAPTER 21.20 RCW AND MAY BE TRANSFERRED OR RESOLD BY RESIDENTS OF WASHINGTON ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THE INVESTOR MUST RELY ON THE INVESTOR'S OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED, IN MAKING AN INVESTMENT DECISION ON THESE SECURITIES.

FOR WEST VIRGINIA RESIDENTS: THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE WEST VIRGINIA UNIFORM SECURITIES ACT, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF TO, ANY PERSON OR ENTITY UNLESS THEY ARE SUBSEQUENTLY REGISTERED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

FOR WISCONSIN RESIDENTS: THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE WISCONSIN UNIFORM SECURITIES LAW, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS THEY ARE SUBSEQUENTLY REGISTERED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

FOR WYOMING RESIDENTS: THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE WYOMING UNIFORM SECURITIES ACT, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS THEY ARE SUBSEQUENTLY REGISTERED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. WYOMING REQUIRES INVESTOR SUITABILITY STANDARDS OF A \$250,000 NET WORTH (EXCLUSIVE OF HOME, FURNISHINGS, AND AUTOMOBILES), AND AN INVESTMENT THAT DOES NOT EXCEED 20% OF THE INVESTOR'S NET WORTH.

NOTICE TO RESIDENTS OF OTHER U.S. JURISDICTIONS: THE INTERESTS OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE 1933 ACT, OR THE SECURITIES LAWS OF CERTAIN STATES AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. THE INTERESTS ARE SUBJECT TO RESTRICTION ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE INTERESTS HAVE NOT BEEN APPROVED

Appendix J1

**Temporally Restrain Order (“TRO”) issued at
12.18.2015**

FILED

15 DEC -8 PM 1:21

Judge Parisien
Return Hearing: December 18, 2015 at 3:00 PM
Courtroom: W-764

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Present in Person

EXP01

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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,

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;

Defendants.

NO.: 15-2-28694-3 SEA

TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE

(Clerk's Action Required)

THIS MATTER having come on for presentation upon Motion of Plaintiffs, by and
through the undersigned Attorneys and having considered the following pleadings:

1. Plaintiffs' Motion for a Temporary Restraining Order and Order to Show Cause;
2. Declaration of Yanlu Liu in Support of Motion for Temporary Restraining Order and Preliminary Injunction;
3. Declaration of Zhongyuan Pan in Support of Motion for Temporary Restraining Order and Preliminary Injunction; and
4. The Complaint filed herein;

MDK | LAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 455-9610

1
2 and finding good cause, NOW, THEREFORE:

3 Plaintiffs' Motion for a Temporary Restraining Order is GRANTED as follows:

- 4 1. This Court has personal and subject-matter jurisdiction and venue is proper.
- 5 2. This action involves claims of fraudulent and negligent misrepresentation, fraud under
6 Washington's Securities Act, violation of Washington's Consumer Protection Act, breach
7 of contract, and breach of fiduciary duty regarding Plaintiffs' investment in Great Ocean
8 Capital Holding, LLC.
- 9 3. As set forth in the Complaint, the Declaration of Yanlu Liu, and Zhongyuan "Bonnie"
10 Pan, Zhongyuan Pan invested \$519,500.00 into Great Ocean Capital Holding, LLC as an
11 EB-5 investor. Central to the project's success was an 80 year lease with the Port of
12 Longview that Chen asserted Great Ocean Capital Holding, LLC had secured. Said
13 representations were also made in the PPM presented to Pan. Plaintiffs have learned that
14 the Port of Longview has no records of a lease with Great Ocean Capital Holding, LLC.
- 15 4. Additionally, Plaintiffs have demonstrated that Defendants have transferred money
16 between Great Ocean Capital Holding's account, Chen's personal account, the account of
17 a defunct Alaska LLC, and wired monies overseas. As of November 27, 2015,
18 Defendants wired \$160,000.00 to Indonesia.
- 19 5. Further, Plaintiffs have shown that Defendants have deposited large sums into Great
20 Ocean Capital Holding's business account from unknown sources. However, the
21 transfers were \$500,000.00 each. This is the exact amount of funds each investor
22 invested for "shovel ready" projects.
- 23 6. Plaintiffs have established a clear legal right, at a minimum, to recover a judgment, (and
24 reasonable costs and attorneys' fees) for common law fraud, fraud under Washington's
25 Securities Act, violation of Washington's Consumer Protection Act, breach of contract,
and breach of fiduciary duty.

MDK | LAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 455-9610

- 1 7. Plaintiffs seek to maintain the status quo, to prevent monies from being transferred
2 outside this Court's jurisdiction, and its ability to recover and collect on an eventual
3 judgment.
- 4 8. No harm or prejudice to Defendants will result if this Temporary Restraining Order is
5 entered. Conversely, Plaintiffs (particularly Zhongyuan Pan) will suffer great harm if it
6 is not entered. A judgment for money damages would be worthless if Defendants were
7 able to secrete or hide Great Ocean Capital Holding's assets.
- 8 9. The Court is satisfied that Plaintiffs have established a clear legal and equitable right, a
9 well-grounded fear of immediate invasion of that right, and that the acts complained of
10 will result in actual and substantial injury to Plaintiffs absent entry of this Temporary
11 Restraining Order.
- 12 10. The Court is further satisfied that Plaintiffs have established that no notice to Defendants
13 because Defendants have demonstrated a willingness and ability to transfer large sums of
14 Great Ocean Capital Holding's funds to their personal accounts and to entities and/or
15 persons outside this jurisdiction. Given that Defendants are the only persons who have
16 access to investor funds held at East West Bank, Plaintiffs have established that they have
17 an immediate fear that Defendants will secrete investor funds immediately if notice is
18 given.

19 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, in accordance
20 with CR 52 and CR 65;

21 PENDING THE RETURN HEARING SET FORTH IN THE FOLLOWING
22 PARAGRAPH, DEFENDANTS GREAT OCEAN CAPITAL HOLDING, LLC, HUY
23 YING CHEN, AND XUE PING WANG, ACTING BY AND/OR THROUGH ANY
24 OTHER PERSON OR ENTITY AND ALL OTHER PERSONS IN ACTIVE CONCERT
25 OR PARTICIPATION WITH THEM RECEIVING ACTUAL NOTICE OF THIS
TEMPORARY RESTRAINING ORDER BY PERSONAL SERVICE OR

MDK | LAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 455-9610

1 OTHERWISE, ARE ALL HEREBY RESTRAINED AND ENJOINED FROM THE
2 FOLLOWING:

- 3 (1) Withdrawing, wiring, transferring, expending, or debiting fund from any and
4 all accounts owned by GREAT OCEAN CAPITAL HOLDING, LLC at **East**
5 **West Bank**. This includes but is not limited to accounts ending in 5167.
- 6 (2) Withdrawing, wiring, transferring, expending, or debiting fund from any and
7 all accounts owned by GREAT OCEAN CAPITAL HOLDING, LLC at **Wells**
8 **Fargo Bank**. This includes but is not limited to accounts ending in 8267.
- 9 (3) Withdrawing, wiring, transferring, expending, or debiting fund from any and
10 all accounts owned by GREAT OCEAN CAPITAL HOLDING, LLC at **JP**
11 **Morgan Chase Bank**. This includes but is not limited to accounts ending in
12 8050.

13 The foregoing provisions are conditioned upon Plaintiffs posting a bond with the Clerk of
14 the Court in the amount of \$ 20,000. Unless extended, this Order shall expire on
15 December 18, 2015 at 3:00 PM.

16 IT IS FURTHER ORDERED that the Defendants, above named, appear before the
17 Honorable Suzanne Parisien 516 Third Avenue, Seattle, WA courtroom W-764 on Friday,
18 December 18, 2015 at the hour of 3:00 PM, to then and there show cause, if they have any, why
19 an ORDER SHOULD NOT BE ENTERED CONVERTING THIS TEMPORARY
20 RESTRAINING ORDER INTO A TEMPORARY INJUNCTION.

21 **DEFENDANTS ARE HEREBY NOTIFIED THAT IF IT SHOULD FAIL TO**
22 **APPEAR BEFORE THE ABOVE STATED COURT AT THE ABOVE STATED DATE**
23 **AND TIME AND THERE SHOW CAUSE WHY THE ORDER SHOULD NOT BE**
24 **ENTERED AND RELIEF GRANTED, SUCH RELIEF REQUESTED MAY BE**
25 **GRANTED AND ENFORCED AS AGAINST DEFENDANT. VIOLATION OF THIS**

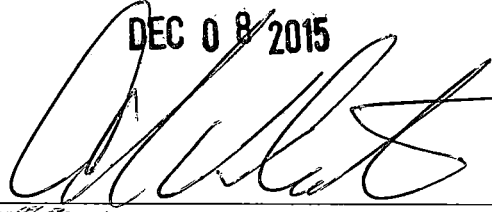
MDK | LAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 455-9610

1 **ORDER WITH KNOWLEDGE MAY FORM THE BASIS FOR A MOTION FOR**
2 **CONTEMPT AND/OR CRIMINAL OR OTHER SANCTIONS.**

3 **SERVICE MAY BE EFFECTED BY SERVING A CERTIFIED COPY OF THIS**
4 **ORDER UPON DEFENDANTS' COUNSEL OF RECORD.**

5 Done in open Court this ____ day of December 2015 at _____ AM/PM


6 **DEC 08 2015**

7 
8
9 ~~JUDGE~~ COURT COMMISSIONER

10 **Commissioner Carlos Velategui**

11
12
13 Presented By:

14 MDK Law:

15 
16 _____
17 JAMES P. WARE WSBA # 36799
18 (425) 455-9610
19 *Attorneys for Plaintiffs*

20
21
22
23
24
25
MDK | LAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 455-9610

Appendix K1

**Judge Parisan's permanent injunction order with lack
of personal, subject matter jurisdiction and venue**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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,

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;

Defendants.

NO.: 15-2-28694-3 SEA
~~ORDER GRANTING~~
PRELIMINARY INJUNCTION
AND ORDER RESCHEDULING
~~TRIAL TO JUNE 27, 2015~~ -ERP

(Clerk's Action Required)

THIS MATTER having come on for presentation upon Motion of Plaintiffs, by and
through the undersigned Attorneys and having considered the following pleadings:

1. Plaintiffs' Motion for a Temporary Restraining Order and Order to Show Cause;
2. Declaration of Yanlu Liu in Support of Motion for Temporary Restraining Order and Preliminary Injunction;
3. Declaration of Zhongyuan Pan in Support of Motion for Temporary Restraining Order and Preliminary Injunction;
4. The Complaint filed herein;

MD&LLAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 455-9610

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 5. Defendants' Response in Opposition to Injunction;
- 6. Declaration of Huy Ying Chen IOO to Plaintiffs' Motion for Injunction;
- 7. Plaintiffs' Reply ISO Motion for Preliminary Injunction;
- 8. Reply Declaration of Yanlu Liu in Support of Motion for Temporary Restraining Order and Preliminary Injunction;
- 9. Declaration of Zhongyuan Pan in Support of Motion for Temporary Restraining Order and Preliminary Injunction; and
- 10. Declaration of Joel F. Murray

and finding good cause, NOW, THEREFORE:

Plaintiffs' Motion for a Preliminary Injunction is GRANTED as follows:

1. ~~This Court has personal and subject matter jurisdiction and venue is proper~~ SRP

2. This action involves claims of fraudulent and negligent misrepresentation, fraud under Washington State Securities Act (WSSA), violation of Washington's Consumer Protection Act, breach of contract, and breach of fiduciary duty regarding Plaintiffs' investment in Great Ocean Capital Holding, LLC. This preliminary injunction specifically involves issues related to Bonnie Pan's investment pursuant to a subscription agreement she executed in June 2014.

3. As set forth in the Complaint, the Declaration of Yanlu Liu, and Zhongyuan "Bonnie" Pan, Zhongyuan Pan invested \$519,500.00 into Great Ocean Capital Holding, LLC as an EB-5 investor. ^{plaintiffs claim that:} Central to the project's success was an 80 year lease with the Port of Longview that Chen asserted Great Ocean Capital Holding, LLC had secured. Said representations were also made in the PPM presented to Pan. ^{SRP} ~~As set forth in the Declaration of Joel Murray, the Port of Longview has confirmed that it does not have a lease with Great Ocean Capital Holding, LLC, Chen, Wang, or any entity affiliated with these companies.~~

RDK | LAW
777 108th Avenue Northeast, Suite 2600
Bellevue, Washington 98004
(425) 455-9610

1 4. Additionally, Plaintiffs have demonstrated that Defendants have transferred money
2 between Great Ocean Capital Holding's account, Chen's personal account, the account of
3 a defunct Alaska LLC, and wired monies overseas. ~~As of November 27, 2015,~~

4 ~~Defendants wired \$160,000.00 to Indonesia.~~ have not yet - SRP
5 5. Defendant Chen has conceded that Defendants ~~did not~~ secure a lease with the Port of
6 Longview as set forth in the PPM and the business plan submitted to the United States - SRP
7 Customs and Immigration Services ("USCIS") to designate the project as a regional
8 center.

9 6. Defendant Chen has further admitted that he has transferred investor funds into Great
10 Ocean Capital Holding's generation business account ~~in direct violation of the PPM.~~ - SRP

11 7. Finally Chen has admitted that he has used EB-5 investor funds to lease a boat that is
12 ~~unrelated to the work proposed in the business plan that would have allowed Great Ocean~~ - SRP
13 ~~Capital Holding LLC to maintain its regional center designation. Chen appears to admit~~
14 ~~that these funds are being put towards projects that will not qualify individual investors~~
15 ~~for an EB-5 visa in direct violation of the PPM. Defendant Chen appears to concede that~~
16 ~~his intent is to continue to use investor funds in such a manner until they are fully~~
17 ~~exhausted.~~

18 8. Plaintiffs have shown that Defendants have deposited large sums into Great Ocean
19 Capital Holding's business account ~~from unknown sources. However, the transfers were~~ - SRP
20 ~~\$500,000.00 each. This is the exact amount of funds each investor invested for "shovel~~
21 ~~ready" projects.~~

22 9. ~~Plaintiffs have established a clear legal right, at a minimum, to recover a judgment (and~~ - SRP
23 ~~reasonable costs and attorneys' fees) for common law fraud, fraud under Washington's~~
24 ~~Securities Act, violation of Washington's Consumer Protection Act, breach of contract,~~
25 ~~and breach of fiduciary duty.~~

10. Plaintiffs seek to maintain the status quo in relation to Bonnie Pan's investment of
\$519,500.00 pursuant to her subscription agreement as an EB-5 investor.

MDR | LAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 453-9610

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11. No harm or prejudice to Defendants will result to Defendants from this preliminary injunction because Defendants were obligated to maintain Bonnie Pan's investments in an escrow account until they could be released to a specific "shovel ready" project that would grant her EB-5 investor status.

12. The Court is satisfied that Plaintiffs have established a clear legal and equitable right, a well-grounded fear of immediate invasion of that right, and that the acts complained of will result in actual and substantial injury to Plaintiffs absent entry of the preliminary injunction.

~~13. Given that Great Ocean Capital Holding is likely to lose its regional center designation in Cowlitz County, there is a strong likelihood that the reduced investment threshold from which the project purposes benefited. Accordingly, the Court finds that the evidence strongly suggests that Bonnie Pan cannot qualify as an EB-5 investor with only a \$700,000.00 investment.~~

SDP

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, in accordance with CR 52 and CR 65:

DEFENDANT'S GREAT OCEAN CAPITAL HOLDING, LLC, HUY YING CHEN, AND XUE PING WANG, ACTING BY AND/OR THROUGH ANY OTHER PERSON OR ENTITY AND ALL OTHER PERSONS IN ACTIVE CONCERT OR PARTICIPATION WITH THEM RECEIVING ACTUAL NOTICE OF THIS TEMPORARY RESTRAINING ORDER BY PERSONAL SERVICE OR OTHERWISE, ARE ALL HEREBY RESTRAINED AND ENJOINED FROM THE FOLLOWING:

- (1) Defendants are required to deposit into the Court Registry \$519,500.00 no later than December 21, 2015.
- Defendants are required to establish ^{a blocked} an account at East West Bank ^{for me} ~~(or in the alternative use one of the company's existing accounts)~~ and deposit into said account \$519,500.00. Defendants, their agents, and all persons acting in concert or participation with Defendants or anyone having actual knowledge

MDK LAW
777 108th Avenue Northeast, Suite 2000
Bellevue, Washington 98004
(425) 455-9610

1 of this order shall thereafter be enjoined from withdrawing, secreting,
2 transferring, expending, or debiting any funds from said designated account
3 until further order by this Court. Defendants shall establish said account no
4 later than ^{close of business on} December 21, 2015. Once said account is designated, Defendants
5 shall immediately file documents with this court notifying it and Plaintiffs of
6 the last four digits of said account.

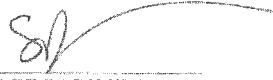
7 ~~The foregoing provisions are conditioned upon Plaintiffs posting a bond with the Clerk of~~
8 ~~the Court in the amount of \$2,000,000. All funds held by the Clerk of the Court as required by the~~
9 ~~TRSO entered in this matter shall be immediately released to Plaintiffs by way of a cashier's check~~
10 ~~payable to Plaintiffs' counsel's IOLTA account for the benefit of Plaintiffs.~~

11 *The TRSO shall remain in place with the exception*
12 *of the transfer of funds in accordance with this Order.*

13 VIOLATION OF THIS ORDER WITH KNOWLEDGE MAY FORM THE BASIS
14 FOR A MOTION FOR CONTEMPT AND/OR CRIMINAL OR OTHER SANCTIONS.

15 SERVICE MAY BE EFFECTED BY SERVING A COPY OF THIS ORDER UPON
16 DEFENDANTS' COUNSEL OF RECORD.

17 Done in open Court this ^{18th} day of December 2015.

18 
19 JUDGE PARIISIEN

20 Presented By:

21 MDK Law:

22
23 
24 JAMES P. WARE WSBA # 36799
25 (425) 455-9610

Attorneys for Plaintiffs

Approved as to form and content
Approved for submission
TEMPORARY RESTRAINING ORDER
ORDER TO SHOW CAUSE
Lin v. Great Ocean Capital Holding, LLC - 5

MDK | LAW
777 108th Avenue Northeast, Suite 2030
Bellevue, Washington 98004
(425) 455-9610

* The issue of expediting
the trial date is
reserved for a later
motion.

The existing bond should be deemed sufficient for purpose of this injunction.

Appendix L1


**Great Ocean Capital Holding LLC- Members list
with share percentage**

Company. The purchaser or assignee shall only be entitled to receive the share of the profits or other compensation by way of income and the return of contributions to which that Member would otherwise be entitled.

CERTIFICATION OF MEMBERS

The undersigned hereby agree, acknowledge and certify to adopt this Operating Agreement.

Signed this 7th day of January, 2013.



Signature CHEN, HUY YING Printed Name
Member, Percent: 33%
Address: 5112 189th Ave N.E Sammamish WA 98074



Signature LIU, YAN LU Printed Name
Member, Percent: 16.5%
Address:



Signature WANG, XUE PING Printed Name
Member, Percent: 34%
Address: 5112 189th Ave N.E Sammamish WA 98074



Signature PAN,ZHONG YUAN Printed Name
Member, Percent: 16.5%
Address:

ANDREA CHEN - FILING PRO SE

December 18, 2018 - 2:33 PM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Yanlu Liu, et al, Respondents v. Great Ocean Capital Holding, LLC, et al, Appellants (765761)

The following documents have been uploaded:

- DCA_Motion_Discretionary_Rvw_of_COA_20181218143300SC149648_2170.pdf
This File Contains:
Motion for Discretionary Review of Court of Appeals
The Original File Name was 4.Supreme Court -D.V vs.MDK 12.18.18.pdf

A copy of the uploaded files will be sent to:

- cbhatt@mdklaw.com
- cdhenry07@gmail.com
- hy@nobo.us
- jware@mdklaw.com
- tos@tuellasykeslaw.com

Comments:

Sender Name: Andrea Chen - Email: andrea@nobo.us
Address:
5112 189th Avenue NE
Sammamish, WA, 98074
Phone: (206) 973-3919

Note: The Filing Id is 20181218143300SC149648