STATE OF MINNESOTA
IN SUPREME COURT

MoneyMutual, LLC ,

Appellant,

vs.

Scott Rilley, Michelle Kunza, Linda Gonzales and Michael Gonzales, individually and on behalf of the putative classes ,

Respondents.

APPELLATE COURT CASE NUMBER: A14-1307

TRIAL COURT CASE NUMBER: 19HA-CV-14-858

DATE OF COURT OF APPEALS' DECISION FILED: May 18, 2015

PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS

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I. Statement of legal issue and its resolution by the Court of Appeals.

Whether, given the dramatically expanded role of information technology, electronic communications and e-commerce and in view of *Walden v. Fiore*, ___ U.S. ___, 134 S.Ct. 1115 (2014) and *Griffis v. Luban*, 646 N.W.2d 527 (2002), personal jurisdiction exists over an out-of-state defendant who has not targeted Minnesota and where the constitutionally required "minimal contacts" relied upon consist of defendant's national marketing efforts and the plaintiffs' initiation of contact with the out-of-state defendant.

Here, the Court of Appeals published an opinion holding that Minnesota could assert personal jurisdiction over Petitioner MoneyMutual, LLC ("Petitioner"), a Nevada marketing company that does not have any employees, assets, or physical presence in Minnesota, notwithstanding: (1) the absence of contacts initiated or resulting from any conduct by Petitioner aimed at Minnesota; (2) the initiation of contacts by Respondents, who happened to be Minnesota residents, with the Petitioner after Respondents saw Petitioner's national advertising and used Petitioner's interactive website, neither of which targeted Minnesota; and, (3) that Petitioner was not a party to, did not receive payments from, did not have any involvement with, and did not have any knowledge concerning the loan agreements entered into by Respondents and third-party lenders after Petitioner "matched" Minnesota residents, along with residents of other states, with prospective lenders.

The Court of Appeals' published opinion held that Minnesota could assert jurisdiction over Petitioner, a Nevada limited liability company, on the foregoing basis, because unless the foregoing contacts were deemed sufficient to satisfy due process, Minnesota's strong public policy to regulate payday loans and prevent their harmful "effects" in Minnesota would be "circumvent[ed]."

II. Statement of the criteria relied upon to support the petition.

This case presents an important issue for the Supreme Court to decide in order to clarify and impart certainty to the law. The Court of Appeals' published opinion creates a special jurisdictional standard for web-based e-commerce squarely inconsistent with controlling case law, which effectively would allow universal jurisdiction over any defendant who utilizes national advertising and an interactive

website that is accessible to Minnesotans. Such a theory is fundamentally at odds with the constitutional due process protections accorded to non-resident defendants, such as Petitioner.

III. Statement of the case.

Respondents purport to represent a class of Minnesota residents who allege they were induced to enter into illegal loan agreements with unlicensed, third-party short-term lenders, after viewing allegedly deceptive MoneyMutual television advertisements and the moneymutual.com website, through which they submitted loan applications. (ADD:2-3).

Petitioner operates the *moneymutual.com* website. (ADD:2). Petitioner has no physical presence, operations, employees or assets in Minnesota. Petitioner has not contracted for or placed advertising with any Minnesota-based television station or other media outlet, or any station in a surrounding state specifically serving any Minnesota market. (ADD:8-9). No television, radio, print, email or website content has targeted Minnesota or Minnesotans. *Id.*

After consumers interested in a short-term loan initiate contact by submitting personal information through the website, Petitioner's affiliate, PartnerWeekly, circulates the information (along with that of non-Minnesotans) as real-time "leads" to prospective lenders who have contracted to be shown such leads. (ADD:2, 6-7, 9). PartnerWeekly is paid for "leads" accepted by lenders, but not by consumers. (ADD:6-7). Petitioner does not enter into any agreement or have a continuing relationship with consumers. (ADD:11). Petitioner and its affiliates do not loan money, and are unaffiliated with any lenders. *Id.* Petitioner and its affiliates are not involved in any loan transaction, do not know the terms of any such transaction and are not advised of any subsequent loan activity. *Id.*

This action was commenced on or about March 18, 2014 in the Dakota County District Court. Petitioner moved to dismiss Respondents' action for, *inter alia*, lack of personal jurisdiction. (ADD:3). The District Court denied Appellant's Motion by Order issued on July 16, 2014. The Court of Appeals affirmed by opinion filed May 18, 2015.

IV. A brief argument in support of petition.

The Court of Appeals published opinion, if allowed to stand, will have a wide-sweeping effect on the exercise of personal jurisdiction over foreign companies that utilize nationwide advertising and the internet. The Supreme Court should review the Court of Appeals published opinion, as it is not consistent with Minnesota law that predated the recent emergence of internet commerce or recent United States Supreme Court jurisprudence that reinforced that the primary focus of any personal jurisdiction analysis must be the defendant's purposeful contacts with the forum state – not fortuitous contacts that are caused by residents of the forum state.

Petitioner respectfully requests that the Supreme Court rule on this important issue and definitively confirm that in the context of an increasingly "virtual" economy, specific jurisdiction still must be based upon a defendant's own contacts with the forum state, and not the contacts of plaintiffs and third-parties with the forum, regardless of "harmful effects" on such plaintiffs and Minnesota's interest in providing a forum to enforce its policies. *See West Am. Ins. Co., supra,* 337 N.W.2d at 679-680 (characterizing the state's interest "irrelevant" to jurisdiction) Petitioner respectfully submits that the potential economic and legal implications to out-of-state businesses engaged in internet business caused by the deviation established by the Court of Appeals' published opinion make the issue ripe for review.

This Court has long acknowledged United States Supreme Court jurisprudence as "evidenc[ing] a dramatic shift in the constitutional theoretical underpinnings of personal jurisdiction" "by underlining the significance of territoriality and de-emphasizing the relative importance of 'fairness' to the defendant," in an attempt to "to slow the inexorable expansion of jurisdiction in state courts. . . ." *West Am. Ins. Co. v. Westin, Inc.*, 337 N.W.2d 676, 678-679 (Minn. 1983). The "minimum contacts" jurisdictional inquiry must always focus on the "relationship among the defendant, the forum and the litigation. This tripartite relationship is defined by the defendant's contacts with the forum *state*, not by the defendant's contacts with *residents* of the forum." *Id.,* at 679 (emphasis in original) (internal citations and quotations omitted); *see Griffis, supra,* 646 N.W.2d at 532. The internet and information technology have revolutionized how information is communicated and commerce is conducted in the United States. But the constitutional

limits of personal jurisdiction remain the same, and courts caution against using technological progress as an excuse to loosen those requirements. *See, e.g., Advanced Tactical Ordinance Systems, LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 802-803 (7th Cir. 2014) (cautioning against basing personal jurisdiction on the existence of an "interactive website" and using contacts formed in internet commerce to "'eviscerate the constitutional limits on a state's power to exercise jurisdiction over nonresident defendants'" and thereby open a path to universal jurisdiction so that "a plaintiff could sue everywhere." (internal citation omitted)). *Walden* itself warns that careful consideration remains to be given the role of "virtual" contacts in the "minimum contacts" inquiry which, it reminds, "principally protects the liberty of the nonresident defendant, not the interests of the plaintiff." *Walden v. Fiore, supra,* 134 S.Ct. at 1125 n. 9.

The Court of Appeals' published opinion ignores these admonitions and circumvented the constitutionally-mandated requirement that Petitioner must have engaged in contacts *expressly aimed* by Respondent at Minnesota in order for personal jurisdiction to exist. Instead, the Court of Appeals wrongfully based its decision that personal jurisdiction exists over Petitioner on contacts resulting from interaction initiated by Respondents, as well as Petitioner's advertising and website – neither of which targeted Minnesota. This is not and cannot be the law.

Moreover, in relying on Petitioner's media advertising which was neither contracted for with any Minnesota media nor aimed at Minnesota, the Court of Appeals ignored a well-established distinction in Minnesota between a foreign entity's advertising specifically done through Minnesota media and aimed at a Minnesota market, versus advertising accessible in Minnesota but not conducted through Minnesota media or targeted at Minnesota. *Compare BLC Insurance Co. v. Westin, Inc.*, 359 N.W.2d 752 (Minn. Ct. App. 1985), *with Janssen v. Johnson*, 358 N.W.2d 117 (Minn. Ct. App. 1984).

Further, the Court of Appeals' opinion incorporated an incorrect reading of the United States Supreme Court's recent decision in *Walden v. Fiore* and erroneously applied the so-called "effects" test of *Calder v. Jones*, 465 U.S. 783 (1984), in a manner rejected by both *Walden* and this Court's earlier decision in *Griffis*.

The United States Supreme Court emphasized in *Walden* that the "minimum contacts" necessary to satisfy due process in *all* specific jurisdiction cases must be contacts which the defendant itself has created with the forum state, and may *not* be those resulting from plaintiff's or a third-party's "fortuitous" residence in or contacts with the forum state. *Walden* further made clear, as did *Griffis*, that the United States Supreme Court's decision in *Calder* did not authorize an exercise of jurisdiction merely because allegedly tortious conduct had "effects" in the forum state. Both cases noted that the tortious conduct in *Calder* – libel – was expressly aimed at the *forum state*. Further, post-*Walden* case law confirms that defendant's own contacts created with the forum state, and not with residents or third-parties, are dispositive when performing the long-accepted five-factor jurisdictional test originally adopted by this Court from the Eighth Circuit. *See Fastpath, Inc. v. Arbela Techs. Corp.,* 760 F.3d 816 (8th Cir. 2014).

Lastly, *State by Humphrey v. Granite Gate Resort, Inc.,* 568 N.W.2d 715 (Minn. Ct. App. 1997), *aff'd*, 576 N.W.2d 747 (Minn. 1998), cannot support the Court of Appeals' published opinion. *Granite Gate* predates the subsequent growth and prominence of new information technology and internet-based commerce; and *Granite Gate's* jurisdictional analysis, which wrongly elevated Minnesota's interest in a Minnesota forum to equal dignity with "minimum contacts," has since been discredited by *Walden* and *Griffis*. Indeed, the Court of Appeals in *Granite Gate*, in expressly limiting its decision to the specific facts before it, stated that "[i]t will undoubtedly take some time to determine the precise balance between the rights of those who use the Internet to disseminate information and the powers of the jurisdictions in which receiving computers are located to regulate for the general welfare." *Id.* at 718. Approximately twenty years have passed since the *Golden Gate* decision and Petitioner respectfully submits that the time is right to revisit the issue.

The Court of Appeals' published opinion improperly promulgates a theory of universal jurisdiction dependent not on "minimum contacts," but only upon state residents' accessibility to national advertising and the internet, and Minnesota's interest in regulating conduct causing harmful "effects." This published opinion should not stand as the defining precedent in the field.

Dated: June 17, 2015

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AFFIDAVIT OF SERVICE

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STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Wayne Marshall, being first duly sworn upon oath, states that on the 17th day of June, 2015, he served a copy of the following:

1. The original Petition for Review of Decision of Court of Appeals; and

2. Addendum to Petition for Review of Decision of Court of Appeals;

Upon:

Attorneys for Plaintiffs/Respondents:

Michelle Drake
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Via hand delivery at the address above.

Wayne Marshall

Subscribed and sworn to
before me this 17th day
of June, 2015.

Notary Public

JENNIFER LYN GORDON
Notary Public-Minnesota
My Commission Expires Jan 31, 2016

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