

**STATE OF MINNESOTA
IN SUPREME COURT**

MoneyMutual, LLC ,

Petitioner,

vs.

Scott Riley, 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 COURT OF APPEALS
DECISION FILED: May 18, 2015

**RESPONSE TO APPELLANT'S PETITION FOR REVIEW OF DECISION OF
COURT OF APPEALS**

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**ATTORNEYS FOR APPELLANT
MONEYMUTUAL, LLC**

I. Statement of Legal Issue and Disposition by Court of Appeals

The Dakota County District Court, the Honorable Martha M. Simonett presiding, held that it had personal jurisdiction over a broker of payday loans that: 1) arranged payday loans to over 1,000 borrowers that it knew were Minnesotans because they indicated on their loan applications that they resided in Minnesota (including Minnesotans who reside in Dakota County); 2) routinely advertised on television broadcast into Minnesota, and has been doing so for years; 3) directly marketed to Minnesotans online by paying to be a “sponsored result” and an “exact match” when someone searches on Google for “payday loan Minnesota” or “payday loan Minneapolis;” and 4) routinely sent emails to persons it knew were Minnesotans to solicit them for payday loans.

The Minnesota Court of Appeals unanimously affirmed. *Rilley v. MoneyMutual, LLC*, 863 N.W.2d 789 (Minn. Ct. App. 2015). In so doing, it noted *inter alia* Petitioner’s “plethora of contacts” with Minnesota, its “active solicitation of Minnesota residents,” the “sheer volume of loan applications” from borrowers who indicated on their applications that they were Minnesotans, and Petitioner’s “business strategy that included a Minnesota market.” *Id.* at 793-94. In addition, the Court of Appeals considered how Petitioner’s website was “used to circumvent Minnesota law.” *Id.* at 795. Based on these (and other) considerations, the Court of Appeals held that Petitioner had sufficient minimum contacts with Minnesota to support personal jurisdiction.

II. Statement of Criteria Relied Upon to Support Petition

Petitioner strains to make the personal jurisdiction issue presented in its Petition interesting or important. It is neither. This is a case where the Petitioner aggressively marketed to Minnesotans, did business with many Minnesotans, and had thousands of contacts with Minnesota. The number of contacts Petitioner has with Minnesota far exceeds the “minimum contacts” necessary to support personal jurisdiction.

III. Statement of the Case

Petitioner MoneyMutual is a prominent broker of payday loans. It is well-known because it engages in widespread marketing on television using a celebrity spokesperson, and its website indicates that its loans have interest rates of up to 1,304%. Its business practices have recently come under scrutiny, as law enforcement actions have been brought by regulators in Pennsylvania and Illinois which allege MoneyMutual violated those states’ payday lending and usury laws. The State of New York recently announced it fined MoneyMutual \$2.1 million, and the federal Consumer Financial Protection Bureau, which has jurisdiction over payday lending, announced it was investigating MoneyMutual. Private lawsuits in other states allege MoneyMutual is engaged in a RICO conspiracy to violate state usury and payday loan laws.

The claims asserted by Respondents are similar. Respondents, who are all Minnesotans, assert that MoneyMutual arranges payday loans to Minnesotans that violate Minnesota’s usury caps on payday lending. Respondents allege that MoneyMutual’s payday loans also violate restrictions under Minnesota law that are designed to prevent borrowers from being caught in the “debt trap” or “cycle of debt” which can be highly

profitable for lenders but financially disastrous to payday loan borrowers. Respondents further allege MoneyMutual arranges payday loans between Minnesotans and lenders that have been ordered to cease lending in Minnesota by the Minnesota Department of Commerce, or have been sued by the Minnesota Attorney General for extending payday loans to Minnesotans that violate Minnesota law, or are otherwise operating illegally. During the pendency of MoneyMutual's appeal, which has now lasted for almost one year, it has continued to flout Minnesota's usury and payday lending laws.

MoneyMutual advertises extensively to Minnesotans. The record below showed that its television advertising is broadcast into Minnesota and viewed by Minnesotans. It also directly markets to Minnesotans online by paying to be a sponsored result when someone searches on Google for "payday loan Minnesota" or "payday loan Minneapolis." Minnesotans then go to its website, where they are required to complete a loan application. MoneyMutual's loan application requires the applicant to provide their home address, telephone number, place of employment, bank name, bank routing and account numbers. Accordingly, Minnesota borrowers indicate on their MoneyMutual loan application that they live in Minnesota, have a Minnesota telephone number, and provide bank information indicating that their bank is in Minnesota.

After receiving all this information indicating that the applicant is a Minnesotan, if MoneyMutual approves the application, MoneyMutual then arranges a payday loan between the Minnesotan and a payday lender in its network. MoneyMutual does this by selling "leads" to the lenders in its network. In the case of Minnesota borrowers, MoneyMutual sells information about Minnesotans who completed its online application

to the payday lenders, presumably by sending the lender the borrower's application, including the borrower's address and contact information. MoneyMutual then sends an email to approved borrowers that states "Congratulations! You have been matched with [lender], one of the lenders in the MoneyMutual network."

When a Minnesotan pays off a payday loan she obtained through MoneyMutual, it then solicits that Minnesotan for more payday loans by sending emails offering special deals or promotions, or more generally promoting MoneyMutual's payday loans. For example, MoneyMutual sent one Minnesotan 42 emails in a three month period after she received her first payday loan through MoneyMutual. These emails urged her to "hurry now and don't miss this exclusive offer" and to "[c]heck out this premium daily offer" and that "[t]his exclusive offer is private and discreet." Importantly, MoneyMutual sends these emails to borrowers it knows are Minnesotans because they provided their address, telephone number, and bank account numbers on their payday loan applications. MoneyMutual has arranged payday loans to over 1,000 Minnesotans.

Based upon all of the above facts, the Dakota County District Court held that Petitioner had "purposefully availed itself of the benefits and protections of Minnesota" such that exercising personal jurisdiction was consistent with due process. May 18, 2015, Dakota County District Court Memorandum and Order at 7.

IV. Brief Argument in Response to Petition

The facts alleged in the Complaint easily satisfy Minnesota's "minimum contacts" criteria. The Minnesota Supreme Court uses a five factor analysis in conducting a minimum contacts due process analysis. *See Juelich v. Yamazaki Mazak Optonics Corp.*,

682 N.W.2d 565, 570 (Minn. 2004). The five factors are: (1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of the parties. *Id.* The Minnesota Supreme Court has repeatedly emphasized that, in close cases, “doubts should be resolved in favor of retention of jurisdiction.” *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992); *Butler v. JLA Indus. Equip., Inc.*, 845 N.W.2d 834, 840 (Minn. 2014) (quoting *Hardrives, Inc. v. City of LaCrosse*, 240 N.W.2d 814, 818 (Minn. 1976)).

Petitioner ignores these fundamental principles of personal jurisdiction. Instead, Petitioner cites to a body of case law sometimes referred to as the “effects only” line of personal jurisdiction cases. These are cases where a party is sued in a forum that it has no direct contacts with, but where the party allegedly caused harm to a resident of the forum. *See Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002); *Walden v. Fiore*, 134 S. Ct. 1115 (2014). While these are interesting and difficult cases, they do not have the slightest relevance where the party has *thousands of direct contacts with the forum*, as Petitioner does here. As the Court of Appeals correctly held, “this is not one of those cases.” *Rilley*, 863 N.W.2d at 793 (distinguishing *Walden v. Fiore*, 134 S. Ct. 1115 (2014)). The fact that Petitioner relies on cases that are so clearly inapposite shows the lack of merit to the Petition.

Accordingly, the Petition is meritless and should be denied, and the lengthy delay during which Petitioner continues to violate Minnesota law should come to an end.

Dated: July 6, 2015

NICHOLS & KASTER, PLLP

By: _____

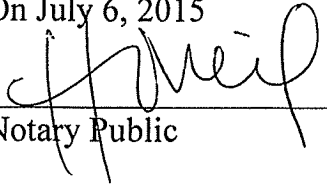

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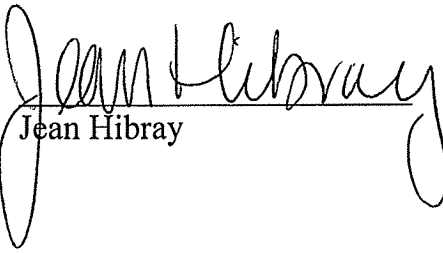
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Subscribed and sworn to before me
On July 6, 2015



Notary Public


Jean Hibray

