



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ANDREW J. HENDERSON v. HON. FRANK W. MOSKOWITZ
CV-24-0215-PR**

PARTIES:

Petitioner/Defendant: Andrew J. Henderson (“Henderson”)
Respondent: Judge Frank W. Moskowitz, Superior Court, Maricopa County
*Real Party in Interest/
Plaintiff:* Rob Sullivan (“Sullivan”)

BACKGROUND:

This appeal arises out of Sullivan’s lawsuit in superior court against Henderson and his company, Nomad Capitalist USA, LLC (“Nomad”), alleging that the defendants committed consumer fraud under A.R.S. § 44-1522, breached the implied covenant of good faith and fair dealing, and were unjustly enriched.

The dispute centers on an agreement Sullivan entered with Nomad to provide him with services regarding foreign residency, relocation, and investment advice. Henderson was not a party to that agreement. The gist of Sullivan’s claims is that Nomad and its representatives—including Henderson—misled him about the services it was performing, as well as the qualifications of the agents allegedly performing the services.

Nomad and Henderson brought separate motions to dismiss the case, arguing (among other things) that a forum selection clause in the agreement said that any dispute under or related to the agreement could be brought only in the courts in Hong Kong, S.A.R. China. The agreement specifically provided that “[e]ach party . . . consents to exclusive jurisdiction and venue in the jurisdiction of Hong Kong, S.A.R. China.”

The superior court granted Nomad’s motion based on the terms of the forum selection clause, meaning that if Sullivan wished to sue Nomad, he would have to do so in the Hong Kong courts. It denied Henderson’s motion, however, on the ground that he could not assert rights under that clause because he was not a party to the agreement.

Henderson challenged the denial of his motion to dismiss in a special action he filed in the Court of Appeals. A special action gives an appellate court the discretion to consider a ruling that otherwise would not be appealable because it does not fully resolve the underlying lawsuit. The Court of Appeals exercised that discretion here by declining to accept special action jurisdiction.

Henderson now seeks review of the Court of Appeals’ and superior court’s decisions. He contends that under the “alternative estoppel theory” or, alternatively, under the “closely related party doctrine,” he is entitled to enforce the forum selection clause against Sullivan because he is “closely related” to Nomad as its Chief Executive Officer and owner. If he is correct, then he would be entitled to a dismissal of the lawsuit against him, although Sullivan could refile it in the Hong Kong courts.

ISSUE:

The Supreme Court has asked the parties to address the following issue:

Whether the Court should adopt the “closely related party doctrine” or the “alternative estoppel theory” to allow a nonsignatory to an agreement to enforce a forum selection clause.

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