

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

SEC v. Charles Johnson, Jr.

SEC v. Charles Johnson · No. 09-5399 · Decided September 22, 2011

SUMMARY

The United States Court of Appeals for the District of Columbia Circuit denied a petition for rehearing and amended language in its June 28, 2011 opinion. The amendment addressed preservation of an objection to venue and whether an alleged venue error was harmless.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Per Curiam; David B. Sentelle, Chief Judge; Ruth Bader Ginsburg, Circuit Judge; Brett M. Kavanaugh, Circuit Judge
JURISDICTION	Federal
DECIDED	September 22, 2011
DOCKET	09-5399
DISPOSITION	other
PROCEDURAL POSTURE	The court considered an appellee's petition for rehearing of its June 28, 2011 opinion and, on its own motion, amended that opinion.
PRECEDENTIAL VALUE	Published per curiam order amending a prior appellate opinion; the text does not state a separate precedential designation.
PARTIES	Chris Benyo v. Securities and Exchange Commission, Charles Johnson, Jr., Michael Kennedy, et al.

TOPICS

appellate procedure

venue

harmless error

preservation of error

civil procedure

PRACTICE AREAS

appellate procedure

administrative law

civil procedure

QUESTIONS PRESENTED

- Whether the petition for rehearing should be granted.

2. Whether the court's June 28, 2011 opinion should be amended to clarify the significance of Benyo's preserved venue objection and the relationship between the venue error and the merits.

HOLDINGS

1. The petition for rehearing was denied.
2. The court amended its prior opinion to state that Benyo preserved his objection to venue at every opportunity and that the venue error would be harmless to him only if the court also ruled in his favor on the merits.

KEY QUOTATIONS

“Here, as we have seen, Benyo preserved his objection to venue at every opportunity and the error in venue would be “harmless” to him, in the sense in which we used that term in Whittier, only if we were also to rule in his favor on the merits.” (Page 2)

FACTUAL BACKGROUND

The amended language concerned an alleged venue error and appellant Chris Benyo's objection to venue. The court stated that Benyo had preserved his venue objection at every opportunity and that the venue error would be harmless to him only if the court also ruled in his favor on the merits.

PROCEDURAL HISTORY

The appeal was docketed under No. 09-5399 and arose from district court case No. 1:05-cv-00036-GK. After issuing an opinion on June 28, 2011, the court received a petition for rehearing filed August 12, 2011, denied the petition, and amended a paragraph of its prior opinion concerning venue and harmless error.

DISPOSITION

other

CASES CITED

- Freeman v. Bee Mach. Co., 319 U.S. 448, 453 (1943)
- Whittier

OPINION

PER CURIAM.

United States Court of Appeals F O R T H E D I S T R I C T O F C O L U M B I A C I R C U I T
_____ No. 09-5399 September Term 2011 1:05-cv-00036-GK Filed On: September 22,
2011 Securities and Exchange Commission, Appellee v. Charles Johnson, Jr., Appellee Chris
Benyo, Appellant Michael Kennedy, et al., Appellees BEFORE: Sentelle, Chief Judge, and
Ginsburg and Kavanaugh, Circuit Judges ORDER Upon consideration of the petition for rehearing

filed by appellee on August 12, 2011, and the response thereto, it is ORDERED that the petition be denied.

It is FURTHER ORDERED, on the court's own motion, that the opinion issued June 28, 2011, be amended as follows: Slip Op. p. 11, first full paragraph, beginning at line 7, delete the following: "Although we noted there in a dictum that none of the parties had been prejudiced by the error, id. at 30, we actually held objections to venue must be "timely and sufficient" and no party had made and preserved that objection, id. at 31; see Freeman v. Bee Mach.

Co., 319 U.S. 448, 453 (1943) (venue must be "seasonably asserted")." United States Court of Appeals F O R T H E D I S T R I C T O F C O L U M B I A C I R C U I T _____ No. 09-5399 September Term 2011 And insert in lieu thereof: "We noted there in a dictum that none of the parties had been prejudiced by the error, id. at 30: not the plaintiffs, because they had failed to make and preserve a timely objection to venue, and not the Government, because we ruled in its favor on the merits of its appeal.

Here, as we have seen, Benyo preserved his objection to venue at every opportunity and the error in venue would be "harmless" to him, in the sense in which we used that term in Whittier, only if we were also to rule in his favor on the merits." Per Curiam FOR THE COURT: Mark J. Langer, Clerk BY: /s/ Jennifer M. Clark Deputy Clerk Page 2