No. 17-1692

IN THE Supreme Court of the United States

MOSTAFA R. AHSAN, Petitioner, V.

STAPLES THE OFFICE SUPERSTORE EAST, INC. AND STAPLES, INC., Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

JEFFREY L. O'HARA Counsel of Record MATTHEW W. BAUER JUSTIN M. VOGEL CONNELL FOLEY LLP One Newark Center 1085 Raymond Blvd. Newark, NJ 07102 (973) 435-5800 johara@connellfoley.com

DOCKET

ALARM

QUESTION PRESENTED

Whether this Court should grant certiorari to decide whether a federal court of appeals may review a district court's denial of a motion for a new trial made on the ground that the verdict is against the weight of the evidence, an issue that has no practical importance generally, and that certainly could not be outcome determinative in this case.

RULE 29.6 DISCLOSURE

Staples the Office Superstore East, Inc., now known as Office Superstore East LLC, is a wholly owned subsidiary of USR Parent Inc., which is not a publicly traded corporation.

Staples, Inc. is a wholly owned subsidiary of Arch Parent, Inc., which is not a publicly traded corporation.

iii TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1
REASONS FOR DENYING THE WRIT 3
A. There Is No Circuit Conflict That Mer- its This Court's Review 4
B. This Case Is A Particularly Poor Vehi- cle For Consideration Of The Circuit Conflict Because The Question Present-
ed Is Not Outcome Determinative
C. The Decision Below Is Correct 11
CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

CASES

Abom y Schola
Ahern v. Scholz, 85 F.3d 774 (1st Cir. 1996)6
Arnez v. TJX Cos., 644 F. App'x 180 (3d Cir. 2016)
Bank of America, N.A. v. JB Hanna, LLC, 766 F.3d 841 (8th Cir. 2014)7
Blu-J, Inc. v. Kemper C.P.A. Grp., 916 F.2d 637 (11th Cir. 1990)6
Bravo v. United States, 532 F.3d 1154 (11th Cir. 2008)
Chicago B. & Q. R.R. Co. v. Chicago, 166 U.S. 226 (1897)
Cline v. Wal-Mart Stores, Inc., 144 F.3d 294 (4th Cir. 1998) 16
Dagnello v. Long Island R.R. Co., 289 F.2d 797 (2d Cir. 1961)14
<i>E. Air Lines, Inc. v. Union Trust Co.,</i> 239 F.2d 25 (D.C. Cir. 1956)
<i>Evans v. Fogarty</i> , 241 F. App'x 542 (10th Cir. 2007) 8
Fairmount Glass Works v. Cub Fork Coal Co.,
287 U.S. 474 (1933) 11
Forrester v. White, 846 F.2d 29 (7th Cir. 1988)5
Gasperini v. Center of Humanities, Inc., 518 U.S. 415 (1996)8, 10, 14

iv

DOCKET A L A R M



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.