No. 18-9389

In The
Supreme Court of the United States

ANTONIA SHIELDS,

Petitioner,

v.

JUDA KLEIN, ET AL.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Should the Court grant certiorari to consider whether Petitioner's claim should have been dismissed, given the District Court's proper finding that no claim was stated because there is no federal question and therefore no federal jurisdiction?

List of Parties

Petitioner: Antonia Shields

Respondent: Juda Klein, named in the caption below as "Juda Klein, of 2150 Eastern Parkway LLC and its Deposit Account, and Juda Klein, of Wade Tower"

Basis for Jurisdiction

There is no jurisdictional basis for a federal court to hear this private landlord-tenant dispute for the reasons discussed herein.

Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations Involved in the Case

There are no such provisions at issue for the reasons discussed herein.

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Statement of the Case

This is a private landlord-tenant dispute based on allegations that the landlord retained a $790 security deposit after Petitioner failed to pay rent. There was no search, no seizure, nor any government action to invoke a federal court's jurisdiction, thereby warranting dismissal at the case's inception.

The District Court issued a February 7, 2019 Decision and Order (the "Decision"), which is Appendix B to the Petition for Writ of Certiorari (all Appendices referenced by letter-designation are annexed to the Petition). The Decision adopted the Magistrate Judge's Report-Recommendation and Order (District Court Dkt. No. 9), which gave the pleadings their most favorable intendment and appropriately determined there is no federal jurisdiction.

Petitioner seeks $3.2 Million in damages because Respondent allegedly continued to hold Petitioner's security deposit (which deposit is evidenced by Appendix G). Appendix L, a "24-Hour demand for Payment of Rent," confirms this dispute was in connection with an eviction process. It also confirms the landlord made an April 5, 2018 rent demand, and contains a note (which appears to be in Petitioner's handwriting) next to a 4/1/2018 $790 rent charge, admitting to non-payment: "Still to be paid 4/9/2018 Antonia W. Shields." Petitioner's conclusory references to Constitutional violations are insufficient because the private landlord is not a state actor. The acts alleged were not under color of law pursuant to 42 U.S.C. § 1983, and this infirmity cannot be cured by leave to replead. The Petition should therefore be denied.

ARGUMENT

I.

THE STANDARD OF REVIEW FOR DISMISSAL WAS SATISFIED

Pursuant to Fed. R. Civ. P. 12(b)(6), an action is subject to dismissal for "failure to state a claim upon which relief could be granted." This rule has an analog in 28 U.S.C. § 1915(e)(2)(B) which directs that where, as here, a plaintiff seeks to proceed *in forma pauperis*, "(2) . . . the court shall dismiss the case at any time if the court determines that -- . . . (B) the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief."

Each criterion is satisfied. The action is frivolous – without basis in existing law – because federal courts have jurisdiction over diversity cases or cases posing a federal question, neither of which applies here. The action fails to state a claim upon which relief may be granted because Petitioner's complaint which seeks to prosecute claims for alleged Constitutional violations is against a private actor – a landlord who is not pled to have (and does not have) any connection to any state actor and was at all times acting in a purely private capacity. (There is also an additional infirmity, which is that Mr. Klein, who was the only Defendant actually named in this action – *see* Judgment, Appendix A – is not even the actual landlord, but rather an owner of the landlord-entity that leased a residence to Petitioner, but for purposes of this matter, the arguments herein have equal applicability to Mr. Klein and to any entity that Petitioner may have been trying to sue through Mr. Klein because neither Mr. Klein nor any entity involved are state actors.)

Conclusory allegations of violations of Constitutional provisions cannot revive this litigation because the provisions advanced by Petitioner do not apply to private actors in this private landlord-tenant dispute over a $790 security deposit and Petitioner's failure to timely pay rent.

Further, while Petitioner attempts to seek monetary relief from Respondent, the District Court was not empowered to grant any such relief because there is no jurisdictional basis upon which relief can be granted against a private actor in a local lease dispute, having no connection with any governmental action.

Petitioner nevertheless argues that there was proper subject matter jurisdiction pursuant to 28 U.S.C. § 1331, citing as a basis for a federal question her contention that her claims relating to her landlord allegedly holding her rent deposit afford relief under the Fourth, Tenth and Fourteenth Amendments to the United States Constitution.

Magistrate Judge Hummel's finding on this issue (as adopted by the District Court) is entirely correct and is dispositive in favor of affirming dismissal. As the District Court noted, the Magistrate found that even applying a liberal reading, the Complaint "failed to satisfy the under color-of-state-law element required for a Section 1983 claim," based on the proper determination that "[t]here is no indication that [D]efendant, as the owner of the rental complex where plaintiff resided, was a 'willful participant' in a joint activity with the State, or any way established a 'close nexus' with the State." Appendix B at 2 (*quoting Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970)) (internal quotation marks omitted). Because of the absence of

this foundational element of a Section 1983 claim – there are no allegations against a state actor – the District Court further noted that the Magistrate was correct in finding that granting leave to amend would be futile. *Id.*

The District Court also correctly relied on the fact that "section 1983 is a statutory vehicle that provides a person redress for violations guaranteed by the Constitution or federal laws." Appendix B at 5-6, noting that under *Cornejo v. Bell*, 592 F.3d 121, 127 (2d Cir. 2010), Section 1983 provides "'a method for vindicating federal rights elsewhere conferred,' including under the Constitution." (*quoting Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979) (internal quotations omitted).

Petitioner has also argued (including before the Second Circuit on her still pending appeal) that a Section 1983 claim was established because Respondent is alleged to be a member of "two non-public domestic U.S. corporations." This appears to be what Petitioner is suggesting when she references Appendix K on page 10 of the Petition. Putting aside that Petitioner did not name any entity as a defendant below, even if she did, the fact that an entity is incorporated by or registered with the state does not convert such an entity to a state actor for federal question/Section 1983 purposes. *Cf.* 28 U.S.C. § 1349 ("The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock").

The District Court's reasoning is in accord, noting first that Petitioner "failed to allege any conduct that could be liberally construed as joint activity with the

State," and that "even if the LLCs are organized in New York and Defendant is a member of the LLCs, the mere fact of organization does not transform an entity into a state actor." Appendix B at 6 (*citing Doug Grant, Inc. v. Great Bay Casino Corp.*, 232 F.3d 173, 189 (3d Cir. 2000)).

The District Court then noted that it is "well settled that a private [entity] is not a state actor simply because it is subject to state regulation." *Id.* (*quoting Pennsylvania General Energy Company, LLC v. Grant Township*, No. 14-209ERIE, 2017 WL 1215444, * 6 (W.D. Pa. Mar. 31, 2017) (brackets in original; internal quotations omitted), and *citing Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 (1974) ("The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment") and *White v. St. Joseph's Hosp.*, 369 Fed. Appx. 225, 226 (2d Cir. 2010) (licensing by state alone does not render the license holder a state actor)).

The District Court's proper finding that there is no federal claim alleged was thus squarely supported by well-settled law precluding the invocation of Constitutional redress for non-Constitutional violations. That proper finding also renders Petitioner's additional contentions moot, given that her remaining arguments rest on the erroneous premise that this case has a Constitutional law foundation, including Petitioner's discussion of warrants (in the context of unreasonable searches and seizures) and her invocation of historic federal precedents (*Roe v. Wade,* 410 U.S. 113 (1973)) and (*Marbury v. Madison*, 5 U.S.137 (1803)), which have no bearing here.

Lastly, Petitioner objects to the application of 28 U.S.C. § 1915's standards to this case on the ground that this statute applies to prisoners and she is not a prisoner. As a threshold matter, even if that argument were legally correct, it does not change the fact that Petitioner's pleading fails to satisfy the analog to subsection (ii) of this statute, as embodied in Fed. R. Civ. P. 12(b)(6), such that, applying either that Rule of Federal Civil Procedure or the "in forma pauperis" provision of Section 1915, the result would be the same.

Legally, however, the District Court was correct in applying Section 1915's standards to rule that Section 1915 not only applies to non-free U.S. citizens (*i.e.*, prisoners) but that it also applies to non-prisoners as well, including allowing for a *sua sponte* dismissal. *See* Appendix B at 5 (*citing Lister v. Dep't of Treasury*, 408 F. 3d 1309, 1312 (10th Cir. 2005), *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n. 1 (11th Cir. 2004), *Haynes v. Scott*, 116 F.3d 137, 140 (5th Cir. 1997), *Floyd v. U.S. Postal Serv.*, 105 F.3d 274, 275 (6th Cir. 1999), *Salgado-Toribio v. Holder*, 713 F.3d 1267, 1270 (10th Cir. 2013), *Newsome v. EEOC*, 301 F.3d 227, 231 (5th Cir. 2002)).

Whether analyzed under 28 U.S.C. § 1915 or Fed. R. Civ. P. 12(b)(6) (or Fed. R. Civ. P. 12(b)(1) for that matter (allowing for dismissal for lack of subject matter jurisdiction)), the District Court's holding was entirely correct. Petitioner failed to state a claim for relief that would invoke federal jurisdiction because she has not asserted a claim against any state actor, such that the conduct complained of fails to satisfy the "color of law" requirement of Section 1983. This defect cannot be remedied by leave to replead because this is a private landlord-tenant dispute.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Dated: White Plains, New York
June 24, 2019

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