

ORIGINAL

20-1555
No. _____

In the
Supreme Court of the United States

Ruth McLean
Petitioner

v.

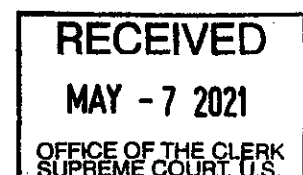
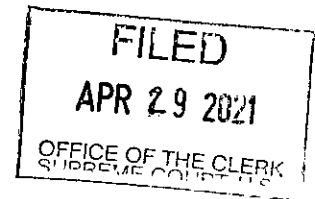
800 DC LLC
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Ruth Thompson el- McLean, the Petitioner, requests this Petition for Writ of Certiorari be granted given the salient issues of a Sui juris litigant objecting to the application of the *Rooker-Feldman Doctrine* where there was fraud within the process and a violation of the due process notice requirement.

Under the Rooker-Feldman doctrine, federal district courts lack jurisdiction to hear cases seeking review of judgments issued by state courts. In this case, the purported foreign state-court judgment was rendered without service and without given the Petitioner the opportunity to defend her interest in the suit, in a jurisdiction that originally lacked personal jurisdiction. The underlying judgment was obtained by fraudulent measures. The question presented, on which the circuits are split, is: Whether the *Rooker-Feldman* doctrine applies when the underlying state-court judgment is void ab initio.

Petitioner respectfully petitions for a writ of certiorari to review the judgment and decision of the District Court and the Court of Appeals for the Third Circuit. The Petition is ripe and the Court must address the issues as to entering decision's that departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. An injustice has occurred and the remedy provided is unconscionable based upon the circumstance regarding the standard thereof.

**I. WHETHER THE DISTRICT COURT CASE
AND APPEAL WERE WRONGFULLY
DISMISSED UNDER THE
ROOKER-FELDMAN DOCTRINE WHEN**

THE ORIGINAL FOREIGN JUDGMENT
WAS VOID AND FRAUDULENTLY
RENDERED IN VIOLATION OF
PETITIONER'S DUE PROCESS THEREBY
CREATING A CONFLICT AMONG THE
CIRCUIT COURTS AS TO THE
APPLICATION OF THE DOCTRINE AND
CONTRARY TO THE SPIRIT OF THE
DOCTRINE?

PARTIES TO THE PROCEEDING

Ruth T. McLean – Petitioner
Respondents DBA 800DC, LLC dba Bizzie and
1800DryClean – (collectively referred to as the
“Respondents”)

CORPORATE DISCLOSURE STATEMENT

The Petitioner and Respondents have no parent companies, non-wholly owned subsidiaries, or affiliates that have issued shares to the public.

STATEMENT OF RELATED CASES

None

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OPINIONS BELOW

The case is presented to this Honorable Court from an appeal from a decision of Third Circuit Court of Appeals, which decision is dated January 13, 2021. (7a-8a). The Third Circuit denied the Petitioner's Petition for Panel Rehearing on March 16, 2021. (1a-2a). The Third Circuit granted the Petitioner's request to extend the time to file a Petition for Rehearing En Banc on March 5, 2021.

The Petitioner had filed an appeal from a decision of the United States District Court for the District of New Jersey dated January 7, 2020 granting dismissal of the Petitioner's Complaint in favor of the Respondents. (5a-6a).

This Writ for Certiorari is timely filed.

JURISDICTION

The statutory provision for this Court's jurisdiction is 28 U.S.C. Section 1254. The Third Circuit Court of Appeals rendered a final decision on January 13, 2021. (1a-2a, 7a-8a).

The District Court of the District of New Jersey had original subject matter jurisdiction under 28 USC § 1332.

This Petition in the Nature of a Writ of Certiorari has been timely filed.

RELEVANT PROVISIONS INVOLVED***a) Fourteenth Amendment, United States Constitution:***

The Due Process Clause of the Fourteenth Amendment provides that no State "shall ... deprive any person of life, liberty, or property, without due process of law...."

b) Rules of Civil Procedure***i) Fed.R.Civ.P. 12 - Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing***

... (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

c) Statutes

**The Fair Debt Collection Practices Act
(FDCPA) (15 USC 1692 et seq.)**

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

STATEMENT**Procedural History**

On August 28, 2019, the Petitioner filed a Complaint in the United States District Court of New Jersey, against 800DC, LLC dba Bizzie and 1800DryClean, the Respondents, alleging fraud, lack of notice, alleging harassment, invasion of privacy, lack of an enforceable foreign judgment, violations of due process, and violations of federal statutes and the Constitution. (28a-38a).

In response, Respondents filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(1) and (6) on October 19, 2019. The Respondents alleged defense protections under Title 28 U.S.C. § 1257 Rooker-Feldman Doctrine.

A Writ of Petition for Extraordinary Relief was filed November 14, 2019. On January 7, 2020, the District Court granted the Respondents' Motion to dismiss with prejudice. (5a-6a). The Petitioner filed a Notice of Appeal to the Third Circuit Court of Appeal on January 31, 2020. (3a-4a). The decision was affirmed on January 13, 2021. (7a-8a). Rehearing En Banc was denied on March 16, 2021. (1a-2a).

This Writ for Certiorari is timely filed.

Factual Background

The Petitioner resides in Plainsboro, New Jersey. The Respondents are a Michigan company. The Petitioner, her ex-husband (Conrad Mclean), and Respondents executed a franchise agreement commencing for a dry cleaning pick up and delivery service; the contract date was from January 13, 2005

with an expiration date January 13, 2015. Ex-husband terminated the contract by 2009. The Petitioner terminated the agreement August 20, 2013, due to the Respondents' failure to comply with the terms of the agreement as well as infringement.

In April 2015, the Respondents filed a lawsuit against the Petitioner, her ex-husband and her New Jersey business, C2 Group LLC, in the State of Michigan 44th Judicial District alleging breach of contract of the Franchise Agreement and unfair competition. The Respondents' Michigan lawsuit alleged that the ex-husband was driving a van for a business he did not own and breach of contract for early termination. The ex-husband did not work since May 2010 and the Petitioner since August 2013 - years before the lawsuit was filed. Petitioner made special appearances to Michigan court under threat, duress, and coercion to object to the notice of default. The Petitioner only appeared after her ex-husband informed her of the Michigan default judgment. Until that time, Petitioner had never succumbed to the jurisdiction of Michigan. Appearances to object to lack of notice and void judgment were unsuccessful, thus, a fraudulent judgment was entered against the Petitioner and her C2 company for \$11,967.00, plus costs. The claim against ex-husband was dismissed, since he had moved an hour away from the territory. The case should have dismissed at this point, since it was built on hearsay of someone seeing the ex-husband driving a van. However, the Respondents continued to pursue to case, despite objections. The Respondents were also awarded \$5,000.00 in attorneys' fees on August 7, 2017. The Respondents did not attend any trial prior to a judgment being rendered in Michigan.

The Petitioner was never served a copy of the Michigan complaint, as admitted by the process server, Anabela Pinto. All court documents evidenced that the Petitioner was not served and not provided notice of the Michigan lawsuit rendering the decision void ab initio. The Petitioner never domiciled, never went, never operated a business in Michigan, and thus, the foreign court's unproven jurisdiction competency to render a judgment against a New Jersey resident was questionable.

In July 2018 the Respondents filed the foreign Michigan judgment in New Jersey Superior Court. Once again the Petitioner objected to the validity of the foreign judgment by filing a Motion to Dismiss, however, the objections were dismissed on September 25, 2018. The Petitioner's Motion to Reconsider was also denied. The Petitioner's Motion to Vacate the Foreign Judgment was denied on December 7, 2018. The Petitioner began to receive notices along with an information subpoena to submit social security number, all bank accounts and assets with threats of jail time to comply from "Wuguft" collection agency regarding the Michigan judgment. The Petitioner sought to object to the validity and enforceability of the Michigan Court's jurisdiction over the Petitioner, to no avail.

The Petitioner was forced to seek protection in the U.S. Bankruptcy Court for the District of New Jersey on November 21, 2018. The Respondents filed an Objection to the Bankruptcy. The Petitioner voluntarily dismissed the bankruptcy in September 2019. The Petitioner refers to the procedural history set forth above.

REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT CASE AND APPEAL WERE WRONGFULLY DISMISSED UNDER THE ROOKER-FELDMAN DOCTRINE WHEN THE ORIGINAL FOREIGN JUSGMENT WAS VOID AND FRAUDULENTLY RENDERED IN VIOLATION OF PETITIONER'S DUE PROCESS THEREBY CREATING A CONFLICT AMONG THE CIRCUIT COURTS AS TO THE APPLICATION OF THE DOCTRINE AND CONTRARY TO THE SPIRIT OF THE DOCTRINE.

The most important point for Rooker-Feldman purposes is that it allows an original action in equity to attack a prior judgment, which appears consistent with general federal equity practice. Whether the substantive bases for equitable relief are met is a matter wholly separate from jurisdiction. This Court has acknowledged the possibility of circumstances federal courts would be justified in creating exceptions and not affording state court judgments as much preclusive effect as would the state courts. See *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 386 (1985). Though the Court has expressly limited the doctrine's application, *Lance v. Dennis*, 546 U.S. 459 (2006), and though the Court has warned that overextending the doctrine risks "overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738," lower courts have nevertheless continued to apply the doctrine "beyond the contours of the Rooker and Feldman cases." *Exxon Mobil Corp. v.*

Saudi Basic Indus. Corp. 544 U.S. 280, 283-84 (2005). This is precisely what the district court and the Third Circuit have done in Petitioners' case.

According to the *Rooker-Feldman* doctrine, lower federal courts lack subject matter jurisdiction to engage in appellate review of state court determinations or to evaluate constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding. *Port Authority Police Benev. Ass'n Inc. v. Port Authority of New York and New Jersey Police Dept.*, 973 F. 169, 177 (3d Cir. 1992). The policy underlying the *Rooker-Feldman* doctrine is based on the concept that a litigant should not be able to challenge state court orders in federal courts as a means of relitigating matters that already have been considered and decided by a court of competent jurisdiction. The *Rooker-Feldman* doctrine also applies where a lower federal court is asked to conduct a review of a state court judgment for errors in construing federal law or constitutional claims that are inextricably intertwined with, or impacts the validity of, the state court judgment. The litmus test that a federal court must apply is whether the relief requested in the federal action would effectively reverse the state court decision or void its ruling. There must be clarification among the Circuit to discuss when the original foreign state decision was obtained by fraud without notice, and is, thus, void.

Further, after the voidable judgment was entered, the Petitioner claimed violations of fair debt collection practices. It is undisputed that the Respondents' violations of the federal statute under The Fair Debt Collection Practices Act (FDCPA) (15 USC 1692 et seq.), were never addressed. FDCPA was designed to eliminate abusive, deceptive, and unfair

debt collection practices in order to protect consumers from abuses in debt collection. In her complaint, the Petitioner alluded to the harassment and improper treatment by the collection agency in violation of the federal statute – none of which were presented in the Michigan courts.

Further, redress for fraud as for lack of the jurisdiction has no expiration date. The Petitioner's complaint filed at the District Court is not an appeal of the Michigan case, instead, it is a complaint that seeks to redress an injury caused by extrinsic fraud upon the court and violation of due process by failing to comply with the rules of personal service, and thus the Motion to Dismiss was erroneously entered.

According to the Rooker-Feldman doctrine, lower federal courts lack subject matter jurisdiction to engage in appellate review of state court determinations or to evaluate constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). *Port Authority Police Benev. Ass'n Inc. v. Port Authority of New York and New Jersey Police Dept.*, 973 F. 169, 177 (3d Cir. 1992). The purpose of this doctrine is to "prevent[] 'inferior' federal courts from sitting as appellate courts for state court judgments." *In re Knapper*, 407 F.3d 573, 580 (3d Cir. 2005).

The Supreme Court's observation that "the lower federal courts have variously interpreted the Rooker-Feldman doctrine to extend far beyond the contours of the Rooker and Feldman cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion

law under 28 U.S.C. § 1738." *Exxon*, at 283. *Exxon* and its progeny are instructive with regard to the proper application of the Rooker-Feldman doctrine. In *Exxon*, the United States Supreme Court clarified the reach of the Rooker-Feldman doctrine by narrowing its application to its original intent: The Rooker-Feldman doctrine is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions. *Id.* at 284. However, "[i]f a federal plaintiff present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Exxon*, 544 U.S. at 293 (quoting *Gash Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)); accord *Noel v. Hall*, 341 F.3d 1148, 1163-64 (9th Cir. 2003).

There are three well-recognized elements of Article III standing: First, an "injury in fact," or an "invasion of a legally protected interest" that is "concrete and particularized." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Second, a "causal connection between the injury and the conduct complained of[.]" *Id.* And third, a likelihood "that the injury will be redressed by a favorable decision." *Id.* at 561, 112 S.Ct. 2130. The Petitioner had standing to bring her causes of action

against the Respondents. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To avoid dismissal under Rule 12(b)(6), a complaint must provide "enough factual matter" to allow the case to move beyond the pleading stage of litigation; the pleader must "nudge his or her claims across the line from conceivable to plausible."

Phillips v. Cnty. of Allegheny, 515 F.3d 224, 234-35 (3d Cir. 2008).

The Supreme Court has instructed that, if "a federal plaintiff present[s] [an] independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011). Therefore, although a state court decision is not reviewable by lower federal courts, a statute or rule governing that decision may be challenged in an independent federal action. *Id.* at 532-33. In *Skinner*, the Supreme Court held that the Rooker-Feldman doctrine did not bar a separate claim that Texas's DNA access statute, as construed by the Texas courts, was unconstitutional. *Id.* At minimum, the unfair debt collection allegations were never addressed in any court.

The Petitioner alleged independent claims separate from the state cases, claims that could never have been presented in the Michigan case: unfair debt collection practices, fraud, violations of the long arm statute, full faith and credit, and due process. See *Taylor v. Federal National Mortgage Association*, 374 F.3d 529, (2004), that held that

"[while the Rooker-Feldman doctrine bar federal subject matter jurisdiction over issues raised in state court, and those inextricably intertwined with such issues, 'an issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings.'" *Id.* The "reasonable opportunity" inquiry focuses not on ripeness, but on difficulties caused by "factor[s] independent of the actions of the opposing parties] that precluded" a plaintiff from bringing federal claims in state court, such as state court rules or procedures.

Long v. Shorebank Development, 182 F.3d 548, 558 (1999). Thus, the Petitioner has raised separate and distinct causes of action that have not been adjudicated.

Other Circuit Courts would render an opposite decision than this jurisdiction. In *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995) and *Fontana Empire Center v. City of Fontana*, 307 F.3d 987, 995(9th Cir. 2002), held that federal courts have jurisdiction to hear a collateral attack on a state-court judgment if the trial courts of that state would have jurisdiction to hear the collateral attack. In our facts, the Petitioner is not appealing the Michigan case to the federal courts. Instead, she is complaining on the fraud of the process, constitutional violations, and the scrupulous acts for the collection of the debt. The substance of the Petitioner's federal complaint has not been addressed.

Moreover, since Michigan entered a default judgment, then according to other Circuits, the substance of the state court complaint have never been reviewed, and thus, the federal court had proper jurisdiction. See *Sung Cho v. City of New York*, 910

F.3d 639, 644 (2d Cir. 2018); *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 84 (2d Cir. 2005)). Circuits have concluded that *Rooker-Feldman* does not bar federal complaints where the state court decision "did not pass on the merits of the case". *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1076 (10th Cir. 2004); *Whiteford v. Reed*, 155 F.3d 671, 674 (3d Cir. 1998).

The United States Supreme Court has stated that the fundamental right protected by the due process clause under the Fourteenth Amendment is the right to adequate notice and an opportunity to be heard before any state action depriving one of life, liberty or property. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950); U.S. Const. XIV. To succeed in an action alleging a denial of procedural due process, in violation of a property interest, a plaintiff must demonstrate that he had a protected property interest, that he was deprived of that interest, and that she was afforded less procedure than was due; *Mullane, supra Jones v. Flowers*, 126 S. Ct. 1708 (2006).

In order to establish a procedural due process claim, a plaintiff must establish that "(1) she was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of 'life, liberty, or property,' and (2) the procedures available to him did not provide 'due process of law.'" *Hill v. Borough of Kutztown*, 455 F.3d 225, 233-34 (3d Cir. 2006) (quoting *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000)); see also *Midnight Sessions, Ltd., v. City of Phila.*, 945 F.2d 667, 680 (3d Cir. 1991); *rev'd on other grounds by United Artists Theatre Circuit, Inc. v. Twp. of Warrington, PA*, 316 F.3d 392 (3d Cir. 2003). Therefore, to state a proper claim, a plaintiff must

possess a property interest that is interfered with, and the process afforded to him must be inadequate. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454 (1989).

The issue of having a voided judgment has not been addressed – a judgment based on a procedural violation of the constitution. Lack of jurisdiction and due process violation of lack of proper notice entail an unlawful venue in Michigan – the Michigan Court judgment was void and did not deserve full faith and credit in the New Jersey courts. Nonetheless, the federal issues of fraud upon the courts must be addressed. The public policy implications of the underlying case are serious as to due process and defense of foreign judgments.

In our facts, the Michigan case was not effectively final due to fraud upon the court, lack of service, and violations of due process. The lower courts failed to appreciate that the Petitioner presented independent claims, not the defense of a breach of contract of a franchise agreement. Instead the Courts within the Third Circuit have broadened the applicability of the Doctrine resulting in a deprivation of Petitioner's ability to present merits of her claim. In the matter is withheld, there would be no scrutiny of foreign judgments where there was a lack of personal jurisdiction.

See also *Malhan v. Secretary United States Department of State*, 938 F.3d 453 (3d Cir. 2019), which held that "*Rooker-Feldman* does not apply when state proceedings have neither ended nor led to orders reviewable by the United States Supreme Court." *Id.* The Supreme Court has instructed that, if "a federal plaintiff present[s] [an] independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired

between the parties in state court." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011). Therefore, although a state court decision is not reviewable by lower federal courts, a statute or rule governing that decision may be challenged in an independent federal action. *Id.* at 532-33. In *Skinner*, the Supreme Court held that the Rooker-Feldman doctrine did not bar a separate claim that Texas's DNA access statute, as construed by the Texas courts, was unconstitutional. *Id.* To the extent that the federal action presents "some independent claim," *i.e.*, one that does not implicate the validity of the state court judgment, the doctrine does not apply. *Turner v. Crawford Square Apartments III, L.P.*, 449 F.3d 542, 547-48 (3d Cir. 2006) (quoting *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 292, 125 S. Ct. 1517 (2005)).

The Petitioner has alleged independent claims separate from any state cases. Similar to our case, the Petitioner claims of fraud upon the court: violations of the long arm statute for jurisdiction, full faith and credit, and constitutional due process. See *Taylor v. Federal National Mortgage Association*, 374 F. 3d 529, (2004), that held that "[while the Rooker-Feldman doctrine bar federal subject matter jurisdiction over issues raised in state court, and those inextricably intertwined with such issues, 'an issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings.'" *Id.* The "reasonable opportunity" inquiry focuses not on ripeness, but on difficulties caused by "factor[s] independent of the actions of the opposing parties] that precluded" a plaintiff from bringing federal claims in state court, such as state court rules or procedures. *Long v. Shorebank Development*, 182 F.3d 548, 558

(1999). Thus, the Petitioner has raised separate and distinct causes of action that have not been adjudicated.

The seriousness of Petitioner's constitutional rights and the violation thereof must be considered to be circumstances to warrant a grant of this Writ. Given the nature and purpose of the rules of civil procedure and the constitutional requirements embedded therein, the Petitioner's complaint was wrongfully dismissed and the appeal should have been allowed to proceed. The Petitioner pleads with this Court to grant the Writ given salient public policy issues. The Rooker Feldmen Doctrine has been overly abused to infringe on plaintiffs' pursuit of valid claims.

CONCLUSION

For the foregoing reasons, RUTH T. MCLEAN, the Petitioner, respectfully request that this Honorable Court grant this Petition for Writ for Certiorari or in the alternative vacate the dismissal, remand the case to the trial court, and allow the underlying matter be reviewed by a trier of facts or under authority of 28U.S.C §1631(2006)(stating that "the court shall, if it is in the interest of justice, transfer[a case over which it lacks jurisdiction] to any other court in which the action could have been brought at the time it was filed or notice").

Respectfully Submitted:

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