

1a

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1230

RUTH T. MCLEAN,
Appellant

v.

800 DC, LLC, doing business as BIZZIE &
1800DRYCLEAN

(District Court No.: 3-19-cv-17310)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO,
CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ,
KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS, Circuit Judges and
SCIRICA*, Senior Judge

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in

* Judge Scirica's vote is limited to panel rehearing only.

2a

the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,
s/ THOMAS L. AMBRO
Circuit Judge

Dated: March 16, 2021
SLC/cc: Ruth T. McLean
Elizabeth L. Sokol, Esq.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1230

RUTH T. MCLEAN,
Appellant

v.

800 DC, LLC, doing business as BIZZIE & 1800DRYCLEAN

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Civil Action No. 3:19-cv-17310)
District Judge: Honorable Brian R. Martinotti

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 4, 2021

Before: AMBRO, PORTER and SCIRICA, Circuit Judges

(Opinion filed: January 13, 2021)

OPINION*

PER CURIAM.

Pro se appellant Ruth T. McLean appeals the District Court's dismissal of her complaint relating to a judgment entered against her in Michigan state court. For the

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

reasons that follow, we will affirm the District Court's opinion with one modification.

This case stems from a breach of contract and unfair competition action in the 44th District Court in Michigan, relating to a franchise owned and operated by McLean in New Jersey. 800 DC, LLC sued McLean, and after a bench trial in May 2017 in which McLean participated and brought a counterclaim for damages, judgment was entered in favor of 800 DC as well as attorney's fees for 800 DC. McLean did not appeal those decisions. In July 2018, it began domestication and collection efforts for the judgment in New Jersey. In August 2018, McLean sought to dismiss the domesticated judgment in the New Jersey Superior Court, but her motion was denied in September 2018. McLean sought reconsideration, which was denied, and filed another challenge to the judgment in October 2018, which was also denied. McLean did not appeal from any of the above judgments. McLean subsequently initiated bankruptcy proceedings in New Jersey in November 2018, later voluntarily requested dismissal of her petition in September 2019.

Just before McLean dismissed her bankruptcy petition, she filed a complaint in the District Court against 800 DC, challenging the Michigan judgment against her as fraudulent because a process server improperly served her by using misleading documents and arguing that her federal constitutional rights were violated in the course of that proceeding, as she had argued in the Michigan court. She sought relief from the Michigan judgment entered against her and damages from defendant. The District Court held a hearing on McLean's motion for a preliminary injunction, which was denied, and another hearing when defendant moved to dismiss McLean's complaint pursuant to

Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).¹ Subsequently, the District Court granted defendant's motion and dismissed McLean's complaint with prejudice, concluding that it lacked jurisdiction over the dispute pursuant to the Rooker-Feldman doctrine. McLean timely appealed.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's order dismissing McLean's claims. See Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 163 (3d Cir. 2010).

We agree that dismissal of McLean's complaint was proper. On appeal, McLean first argues that the District Court should have enjoined the Michigan judgment against her because she alleges that her rights were violated in the course of those proceedings. See Appellant's Br. at p. 21-22, 34. However, the Rooker-Feldman doctrine precludes federal court review of "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." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). This narrow doctrine is limited to claims where the complained-of injury stems directly from a state court proceeding. See Great W. Mining, 615 F.3d at 167. To the extent that McLean sought to enjoin the Michigan judgment entered against her, which she did not appeal, the District Court properly concluded that it lacked jurisdiction to consider that claim pursuant to the

¹ Defendant's motion was labeled as a motion for summary judgment, but the body of the motion requested dismissal of McLean's complaint under Rules 12(b)(1) and 12(b)(6). On appeal, 800 DC restates that it sought dismissal pursuant to these rules. See Appellee's Br. at p. 5.

Rooker-Feldman doctrine. Malhan v. Sec’y U.S. Dep’t of State, 938 F.3d 453, 458-59 (3d Cir. 2019) (explaining that there has been an effectively final judgment for purposes of the Rooker-Feldman doctrine when a “state action has reached a point where neither party seeks further action” and that “federal district courts are not amenable to appeals from disappointed state court litigants” such that “[a] litigant seeking to appeal a state court judgment must seek review in the United States Supreme Court under 28 U.S.C. § 1257”).

To the extent that McLean also sought and continues to seek damages from 800 DC for fraud and malfeasance by the process server who served her in the Michigan action, McLean has never made allegations in her filings or hearings that 800 DC had any involvement with the process server’s alleged used of misleading documents to fraudulently serve her. Under these circumstances, McLean cannot state a claim against 800 DC for her dissatisfaction with the process server’s actions. See Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 84 (3d Cir. 2011) (explaining that to state a claim, a plaintiff must “plead sufficient factual matter to show that the claim is facially plausible, thus enabling the court to draw the reasonable inference that the defendant is liable for misconduct alleged”) (internal quotation marks and citation omitted); see also Great W. Mining, 615 F.3d at 167 (“When . . . a federal plaintiff asserts injury caused by [a] defendant’s actions and not by the state-court judgment, Rooker-Feldman is not a bar to federal jurisdiction.”). To the extent that McLean also sought to bring federal due process claims against 800 DC, such an action is available only against a state actor pursuant to 42 U.S.C. § 1983, and McLean has never suggested that allegations to

suggest that 800 DC, a private LLC, is a state actor for purposes of § 1983. See Benn v. Universal Health Sys., Inc., 371 F.3d 165, 169-70 (3d Cir. 2004).

Finally, we note that, to the extent that a dismissal under the Rooker-Feldman doctrine was appropriate, the dismissal should have been without prejudice. See N.J. Physicians, Inc. v. President of U.S., 653 F.3d 234, 241 n.8 (3d Cir. 2011) (explaining that dismissals for lack of subject matter jurisdiction are “by definition without prejudice”). Accordingly, we modify the District Court’s order, in part, to dismiss without prejudice that aspect of McLean’s complaint that sought review and rejection of a state court judgment. We affirm the District Court’s dismissal as modified.

United States District Court for the _____ Circuit
District of New Jersey
File Number 3:19-cv-17310

Ruth T. Mclean., Plaintiff

v.

800DC LLC DBA BIZZIE
AND 1800DRYCLEAN.,
Defendant

Notice of Appeal

Notice is hereby given that Ruth T. Mclean, Plaintiff in the above named case,* hereby appeal to the United States Court of Appeals for the third, Circuit for a Judgment

For; Entry 31 The Judgment;

1. Judgment be and hereby granted for the reasons stated on record;
2. Judgment be and hereby is entered in Defendant's favor in the form of a dismissal of Plaintiff complaint, in its entirety, with prejudice;
3. The Plaintiff's "Motion for Writ, Motion for Summary Judgment" (ECF Doc, No. 25) and "Motion to deny Summary Judgment" (ECF Doc. No. 26) be and hereby are dismissed as moot;

with Judgment entered in this action on the January day of 7th, 2020.

By: Ruth T. Mclean

* See Rules 3(c) for permissible ways of identifying appellants.

4a

In pro per. sui juris: Ruth T. Mclean
Address: P.O. Box 137 Plainsboro, NJ

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RUTH T. MCLEAN,

Case No.: 3:19-cv-17310

Plaintiff,

v.

JUDGMENT

800 DC, LLC, ET. AL.,

Defendants,

THIS MATTER having been brought before the Court upon the motion for summary judgment (ECF Doc. No. 19) by the Defendant, 800 DC, LLC, by and through its counsel the Law Offices of Kravis & Wurgaft, P.C., and the Court, having reviewed the moving papers, exhibits, opposition papers, if any, and upon the oral argument of the parties on January 7, 2020, and for good cause shown.

IT IS on this/____Day of
____2020,

ORDERED as follows:

1. The Defendant's motion is hereby GRANTED for the reasons stated on the record;
2. Judgment be and hereby is entered in the Defendant's favor in the form of dismissal of the Plaintiff's complaint; in its entirety, with prejudice;
3. The Plaintiff's "motion for writ, motion for summary judgment" (ECF Doc. No. 25) and

4. “motion to deny summary judgment” (ECF Doc. No. 26) be and hereby are dismissed as moot; and Filing of a signed copy of this Order by the Court via ECF shall constitute service hereof upon all parties to the action.

SO ORDERED

Hon. Brian R. Martinotti

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1230

RUTH T. MCLEAN,
Appellant

v.

800 DC, LLC, doing business as BIZZIE &
1800DRYCLEAN

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Civil Action No. 3:19-cv-17310)
District Judge: Honorable Brian R. Martinotti

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 4, 2021

Before: AMBRO, PORTER and SCIRICA, Circuit
Judges

JUDGMENT

This cause came to be considered on the record
from the United States District Court for the District
of New Jersey and was submitted pursuant to Third
Circuit LAR 34.1(a) on January 4, 2021.

On consideration whereof, it is now hereby

8a

ORDERED and **ADJUDGED** by this Court that the judgment of the District Court entered January 7, 2020, be and the same is hereby affirmed with a modification. Costs taxed against the appellant.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/Patricia S. Dodszeit
Clerk

Dated: January 13, 2021

OFFICE OF THE CLERK

United States Court of Appeals
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov
TELEPHONE
215-597-2995

PATRICIA S. DODSZUWEIT
CLERK

January 13, 2020

Ruth T. McLean
P.O. Box 137
Plainsboro, NJ 08536

Elizabeth L. Sokol, Esq.
Kostopoulos Rodriguez
550 West Merrill Street
Suite 100
Birmingham, MI 48009

RE: Ruth McLean v. 800 DC LLC
Case Number: 20-1230
District Court Case Number: 3-19-cv-17310

ENTRY OF JUDGMENT

Today, January 13, 2021 the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the

11a

petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/Carmella
Case Manager
267-299-4928

STATEMENT OF FACTS

Plaintiff Ruth McLean's ("McLean") Complaint arises out of a judgment entered against her following a two-day trial in the 44th District Court of the State of Michigan, and the efforts of the Defendant, 800 DC, LLC d/b/a 1800DRYCLEAN ("800DC"), to collect on that judgment.

McLean fully participated in the Michigan state court proceedings as well as in the New Jersey state court proceedings to domesticate and collect on the judgment. Her Complaint's jurisdictional and various random challenges based on "Due Process," "Venue" and "Civil Rights" have been considered and denied at each stage, without appeal. She has also attempted to avoid the judgment by way of a bankruptcy filing which was recently dismissed at her request. This Complaint reflects her latest attempt to avoid responsibility for the debt owed by her and, for the reasons set forth herein, should be dismissed in its entirety.

I. Michigan State Court Proceedings

The Defendant herein, 800 DC, LLC, D/B/A BIZZIE, and 1800DRYCLEAN ("800 DC")'s complaint in the 44th District Court in Michigan set forth claims of breach of contract and unfair competition with respect to a dry cleaning pick-up and delivery franchise owned and operated by the within Plaintiff, Ruth McLean, in the City of Plainsboro, State of New Jersey. The Defendant's claim in Michigan was made against McLean pursuant to the terms of the Franchise Agreement dated January 14, 2005, as a result of her multiple and repeated failures to comply with the its terms, including but not limited to (A) failing to timely

pay royalties and other sums required under the Agreement, and (B) failing to comply with the post-termination obligations under the Agreement.¹

McLean entered into the Agreement on January 14, 2005 with 1-800- DryClean, LLC. On July 9, 2012, 800 DC purchased substantially all of the assets of the 1-800-DryClean franchise system, including without limitation the Franchise Agreement and the 1-800-DryClean trademark, from the prior franchisor.²

McLean voluntarily terminated the Franchise Agreement on August 20, 2013. Following that termination, 800 DC learned that she continued to engage in dry cleaning operations under the name "Black Tie Cleaners" in violation of the non-competition provisions contained in the Franchise Agreement at ¶¶ 13.B and 13.D. Based on these breaches of contract, on May 29, 2014, 1-800-DryClean sent McLean written notice thereof and demanded that she cease and desist such conduct and further, that she pay royalties which would have been paid during that time period, had she not unilaterally terminated the Agreement.

McLean was initially represented by counsel in the Michigan proceedings, however after counsel's motion challenging the jurisdiction and venue was denied, counsel withdrew from the proceedings. McLean thereafter represented herself. Following discovery and various summary disposition motions filed by both sides, the parties appeared for a bench trial which was conducted on May 12, 2017. Judgment

¹ Ruth McLean's ex-husband and her company, The C2 Group, were also signatories to the Franchise Agreement and were named as Defendants in the 44th District Court action. They are not parties to this proceeding.

² McLean's challenge to the standing of 800DC to pursue breach of the Franchise Agreement was rejected by the 44th District Court.

was entered in the amount of \$11,967.00. See Exhibit "A." The counterclaim asserted by McLean was dismissed on its merits. In addition, on August 7, 2017, the Michigan court entered an order awarding 800 DC attorneys' fees in the amount of \$5,000.00 under the terms of the Franchise Agreement. See Exhibit "C."

McLean did not seek appellate review of any of the orders or judgments entered by the 44th District Court, despite the availability of an appeal by right under Michigan Court Rule 7.103.³

II. New Jersey State Court Proceedings

Following entry of the Michigan judgments, 800 DC, LLC began domestication and collection efforts in the State of New Jersey. On July 20, 2018, the office of the undersigned filed a Certification with the Clerk of the Superior Court of the State of New Jersey for domestication of the June 30, 2017 and August 7, 2017 judgments of the 44th District Court of the State of Michigan. See Exhibit "F."

Thereafter, the Clerk sent McLean a Notice To Judgment Debtor ("Notice") informing here that a judgment entered in the State Michigan had been properly recorded in the State of New Jersey pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA"), as of July 20, 2018. Ex. "B." The Notice identified the within Defendant as the creditor and identified the undersigned as the creditor's attorney. Id.

³ MCR 7.103(A)(1) provides: Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following...a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere.

On August 6, 2018, McLean filed a motion to dismiss the domesticated judgment in the New Jersey Superior Court, County of Middlesex. The motion was fully briefed and following argument on September 21, 2018, on September 25, 2018, the Court denied McLean's motion. See Exhibit "G." No appeal was taken by McLean.

On or about September 27, 2018, McLean filed a motion to reconsider the Court's order of September 25, 2018, denying her requests for relief. On October 26, 2018, the Court denied McLean's motion, stating (1) that it was not in compliance with the Rules of Court and (2) that it merely repeated previous arguments. See Exhibit "H." No appeal was taken by McLean.

On October 30, 2018, McLean filed a third challenge to 800 DC's properly domesticated judgment. On December 7, 2018, the Court again denied McLean's motion. See Exhibit "I." Judge Lisa M. Vignuolo, J.S.C. included in her Order a Statement of Reasons that recounted (1) the prior Orders she had entered denying McLean's requests for relief, (2) indicated that McLean now sought "identical relief for the third time," and (3) that McLean, by way of correspondence of November 13, 2018 from the Civil Assignment Judge, had been directly informed that "the proper recourse concerning the denial of [McLean's] Motion for Reconsideration [was] to file an appeal." *Id.* To date, no appeal has been taken by McLean, and the time within which she had to appeal any of the New Jersey Superior Court orders denying her requests for relief has expired.

III. District of New Jersey Bankruptcy Proceedings

Following these defeats in New Jersey Superior

Court, McLean filed a Petition for Bankruptcy on November 21, 2018, at Case No: 18-33057-MBK in the U.S. Bankruptcy Court for the District of New Jersey. See Exhibit "D." Her initial filing was defective and a show cause was entered compelling her to remedy that defect as well as a later show cause regarding her failure to make required payments. On January 3, 2019 her bankruptcy petition was dismissed due to her failure to make required payments. The order dismissing was vacated on motion by McLean on January 24, 2019.

Following reinstatement of her bankruptcy petition, McLean filed a variety of motions and objections to avoid her various creditors, including 800DC. On May 31, 2019, the Bankruptcy Court denied McLean's motion to object to the claim of 800DC. See Exhibit "E." Following multiple motions to challenge her proposed plan filed by other creditors, McLean filed a motion to voluntarily dismiss her own bankruptcy petition, which was granted on September 11, 2019.

However, even before the bankruptcy petition was dismissed, on August 26, 2019, McLean filed her complaint before this Court alleging damages of over \$500,000.00 arising out of 800 DC's lawsuit in Michigan and the ensuing efforts to collect on its judgment.

LAW AND ARGUMENT

I. Standard of Review

Fed. R. Civ. P. 12(b)(1) permits dismissal of a complaint for lack of subject matter jurisdiction. In evaluating such a motion, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court

from evaluating for itself the merits of jurisdictional claims.” *Mortensen v First Fed Sav & L Ass’n*, 549 F2d 884, 891 (CA 3, 1977) Further, the plaintiff bears the burden of proof that jurisdiction does, in fact, exist. *Hartig Drug Co Inc v. Senju Pharm Co Ltd*, 836 F3d 261, 268 (CA 3, 2016). Moreover, all courts “have an independent obligation to determine whether subject-matter jurisdiction exists.” *Great W Mining & Mineral Co v. Fox Rothschild LLP*, 615 F3d 159, 163 (CA 3, 2010), citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006). See, e.g., *In re Madera*, 586 F3d 228 (CA 3, 2009) (Affirming sua sponte dismissal by bankruptcy court on *Rooker-Feldman* doctrine for claim seeking review of state court foreclosure.)

Fed. R. Civ. P. 12(b)(6) permits dismissal of a complaint where it fails to state claim upon which relief can be granted. In evaluating a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court may consider only the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the complainant’s claims are based upon those documents. *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). Further, in deciding a motion to dismiss, courts may consider “matters incorporated by reference or integral to the claim.” *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir.2006).

II. The Rooker-Feldman Doctrine precludes re-litigation of the State court proceeding in this Court.

Plaintiff’s complaint asks this Court to second-guess the jurisdictional and other procedural

challenges which she raised and lost in the Michigan action and did not appeal. Such federal review of state court judgments is prohibited under the *Rooker-Feldman* doctrine.⁴

The *Rooker-Feldman* doctrine derives from 28 U.S.C. § 1257. That provision provides that only that the Supreme Court of the United States, and not the lower federal courts, has jurisdiction to review a state court decision. Section 1257 states, in relevant part:

[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States....

The doctrine itself is named after two Supreme Court decisions, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). In *Rooker*, a party to a state court action that had been affirmed by the state's supreme court brought a bill in equity in federal district court seeking to have the state court judgment declared null and void as being in violation of the

⁴ On October 16, 2019, this Court considered argument on Plaintiff's motion for injunctive relief and denied such relief as her claims failed to demonstrate a likelihood of success, based on *Rooker-Feldman*. As set forth herein, for the same reasons, dismissal of Plaintiff's complaint in its entirety is warranted.

United States Constitution. The plaintiff's allegations in the federal suit were indistinguishable from those usually made in an appeal: they claimed that the state court had given effect to an unconstitutional state statute and had failed to give effect to a prior decision that had become law of the case. See 263 U.S. at 415, 44 S.Ct. 149.

In rejecting the federal action, the *Rooker* Court explained:

It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject matter and the parties; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding.

Thus, any remedy was left to the state court appellate procedure in the first instance, with application for leave to appeal to the United States Supreme Court upon exhaustion of those state appellate avenues.

Sixty years later, in the *Feldman* decision, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206, plaintiffs Marc

Feldman and Edward J. Hickey, Jr., filed suit in federal court challenging the District of Columbia's requirement to attend an ABA accredited law school in order to sit for the D.C. bar exam. Prior to filing then-federal suit, Feldman and Hickey had each unsuccessfully filed suit in the D.C. Court of Appeals for a waiver of the rule based on constitutional and equitable challenges.

In rejecting their efforts to re-assert their challenge in the federal district court based on the Fifth Amendment of the United States Constitution and federal antitrust laws, the Supreme Court ruled that the federal district court lacked jurisdiction over the federal actions, as the D.C. Court of Appeals actions were judicial in nature and therefore, the constitutional challenges were "inextricably intertwined" with the state court actions and thus, not subject to review in federal district court:

[T]he[] allegations that the District of Columbia Court of Appeals acted arbitrarily and capriciously in denying their petitions for waiver and that the court acted unreasonably and discriminatorily in denying their petitions in view of its former policy of granting waivers to graduates of unaccredited law schools required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case. These allegations are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions. *Id.*, at 486, 103

S.Ct. 1303.

This Court has recognized that “a federal action is inextricably intertwined with a state adjudication, and thus barred in federal court under *Feldman*, [w]here federal relief can only be predicated upon a conviction that the state court was wrong.” *Centifanti v. Nix*, 865 F.2d 1422, 1430 (3d Cir.1989), quoting *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (Marshall, J., concurring)).

Here, it cannot be disputed that McLean’s complaint ask this Court to review the ruling of the Michigan court that rejected her jurisdictional and due process arguments. Even if the Michigan district court was wrong in its determinations, McLean’s remedy was to take an appeal within the Michigan court system - not simply asking this Court to re-visit the issues. As noted herein, McLean did not seek any appellate review in the Michigan proceedings and instead, simply ignored the judgment until 800DC began collection efforts.

Likewise, her attempt to have this Court review 800DC’s domestication of the Michigan judgment in New Jersey and collection efforts is not reviewable in this Court, but rather via appeal in the New Jersey state court system, which she has not done and for which time has expired. New Jersey state law; under the Uniform Enforcement of Foreign Judgments Act (UEFJA), recognizes that “merit or substantive defenses, i.e., those that could have been raised prior to entry of judgment, are not addressed by *N.J.S.A. 2A:49A-27*. Litigants seeking to assert merit defenses, other than due process defenses, must do so in the forum state...,” i.e. Michigan. *Sonntag Reporting Serv, Ltd v. Ciccarelli*, 374 NJ Super 533, 540; 865 A2d 747, 751 (2005).

Further, while a judgment-debtor such as McLean "may raise 'due process defenses' in any enforcement action in New Jersey under the UEFJA", review of the New Jersey court's determination is still governed by the New Jersey appellate system. See, e.g., *State of Maine v. SeKap, SA Greek Co-op Cigarette Mfg Co, SA*, 392 NJ Super 227, 235; 920 A2d 667, 672 (2007). Again, this remedy was not pursued by McLean following the New Jersey Superior Court's denial of her challenges to the duly domesticated judgment.

Plainly, here, McLean's remedy was to seek appellate review of those state court judgments in their respective state court systems and lastly, seek review from the United States Supreme Court via 28 U.S.C. § 1257. She did not pursue any such relief, despite presenting jurisdictional and various other constitutional challenges before both of those state courts. For the same reason that injunctive relief was not warranted, Plaintiff's complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) and/or (6).

CONCLUSION

For all of the foregoing reasons, the Defendant, 800 DC, LLC d/b/a 1800Dryclean, respectfully requests that this Honorable Court enter an order dismissing Plaintiff's complaint, together with any additional relief this Court deems warranted.

Dated: October 18, 2019 KRAVIS & WURGAFT,
P.C.

Attorneys for Defendant

Matthew Wurgaft

23a

201 Washington Street

Newark, NJ 07102

(973) 242-6220 P

(646) 878-9039 F

mwurgaft@kraviswurgafll.co

m

3:19-cv-17310-BRM-LHG MCLEAN v. 800 DC, LLC
et al

Brian R. Martinotti, presiding

Lois H. Goodman, referral

Date filed: 08/28/2019

Date terminated: 01/07/2020

Date of last filing: 03/13/2020

History

Doc No.	Dates	Description
1	<i>Filed:</i> 08/28/2019 <i>Entered:</i> 08/29/2019	Complaint
2	<i>Filed:</i> 08/28/2019 <i>Entered:</i> 08/29/2019	Notice (Other)
3	<i>Filed & Entered:</i> 08/29/2019	Summons Issued
	<i>Filed:</i> 09/09/2019 <i>Entered:</i> 09/10/2019	Set/Reset Motion and R&R Deadlines/Hearings
4	<i>Filed:</i> 09/09/2019 <i>Entered:</i> 09/10/2019 <i>Terminated:</i> 10/16/2019	Motion for Preliminary Injunction
	<i>Filed & Entered:</i> 09/18/2019	Set/Reset Motion and R&R Deadlines/Hearings
5.	<i>Filed & Entered:</i> 09/18/2019 <i>Terminated:</i> 10/16/2019	Motion for Leave to Appear Pro Hac Vice
6	<i>Filed & Entered:</i> 09/18/2019	Waiver of Service Executed
2	<i>Filed & Entered:</i> 09/18/2019	Letter

8	<i>Filed:</i> 09/26/2019 <i>Entered:</i> 09/27/2019 <i>Terminated:</i> 10/16/2019	Motion to Stay
9	<i>Filed:</i> 09/26/2019 <i>Entered:</i> 09/27/2019	Response to Motion
	<i>Filed & Entered:</i> 09/27/2019	Set/Reset Motion and R&R Deadlines/Hearings
10	<i>Filed & Entered:</i> 09/27/2019	Corporate Disclosure Statement (aty)
	<i>Filed & Entered:</i> 09/30/2019	Set/Reset Motion and R&R Deadlines/Hearings
11	<i>Filed & Entered:</i> 10/01/2019	Letter
12	<i>Filed & Entered:</i> 10/01/2019	Order
13	<i>Filed & Entered:</i> 10/04/2019	Response in Opposition to Motion
14	<i>Filed:</i> 10/11/2019 <i>Entered:</i> 10/15/2019	Response (NOT Motion)
15	<i>Filed & Entered:</i> 10/16/2019	Order on Motion for Leave to Appear
16	<i>Filed & Entered:</i> 10/16/2019	Status Conference
17	<i>Filed & Entered:</i> 10/16/2019	Letter
18	<i>Filed & Entered:</i> 10/16/2019	Order on Motion for Preliminary injunction
	<i>Filed & Entered:</i> 10/18/2019	Set/Reset Motion and R&R Deadlines/Hearings
	<i>Filed & Entered:</i> 16/18/2019	QC - Generic Message

19	<i>Filed & Entered:</i> 10/18/2019 <i>Terminated:</i> 01/07/2020	Motion for Summary Judgment
23	<i>Filed & Entered:</i> 10/18/2019	Letter
21	<i>Filed:</i> 10/22/2019 <i>Entered:</i> 10/23/2019	Notice (Other)
22	<i>Filed & Entered:</i> 10/30/2019	Notice (Other)
23	<i>Filed & Entered:</i> 11/04/2019	Notice (Other)
	<i>Filed & Entered:</i> 1/18/2019	Set/Reset Motion and R&R Deadlines/Hearings
24	<i>Filed & Entered:</i> 11/18/2019	Letter
	<i>Filed:</i> 11/20/2019 <i>Entered:</i> 11/21/2019	Set/Reset Motion and R&R Deadlines/Hearings
25	<i>Filed:</i> 11/20/2019 <i>Entered:</i> 11/21/2019 <i>Terminated:</i> 11/26/2019	Motion for Writ
	<i>Filed & Entered:</i> 11/26/2019	QC - Document filed contrary to the Local Rules
	<i>Filed:</i> 12/13/2019 <i>Entered:</i> 12/16/2019	Set/Reset Motion and R&R Deadlines/Hearings
26	<i>Filed:</i> 12/13/2019 <i>Entered:</i> 12/16/2019 <i>Terminated:</i> 01/07/2020	Motion for Summary Judgment
27	<i>Filed & Entered:</i> 01/02/2020	Letter
28	<i>Filed & Entered:</i>	Motion Hearing

	01/07/2020	
29	<i>Filed & Entered:</i> 01/07/2020	Order
30	<i>Filed & Entered:</i> 01/07/2020	Letter
31	<i>Filed & Entered:</i> 01/07/2020	Order on Motion for Summary Judgment
32	<i>Filed & Entered:</i> 01/31/2020	Notice of Appeal (USCA)
33	<i>Filed & Entered:</i> 02/03/2020	USCA Case Number
34	<i>Filed & Entered:</i> 03/13/2020	Notice (Other)

PACER Service Center			
Transaction Receipt			
06/15/2020 12:49:00			
PACER Login:	appealfww	Client Code:	
Description:	History/ Documents	Search Criteria:	3:19-cv-17310- BRM- LHG
Billable Pages:	2	Cost:	0.20

United States District Court
for the
District of New Jersey
Division

Ruth T. Mclean

) Case No.

Plaintiff(s)

(Write the full name of
each plaintiff who is
filing this complaint. If
the names of all the
plaintiffs cannot fit in
the space above, please
write "see attached" in
the space and attach an
additional page with the
full list of names.)

(to be filled in by the
Clerk's Office)

Jury Trial: (check one)

☒ Yes ☐ No

-v-

800DC, LLC BIZZIE
And 1800DRYCLEAN

Defendant(s)

(Write the full name of
each defendant who is
being sued. If the names
of all the defendants
cannot fit in the space
above, please write "see
attached" in the space
can attach an additional
page with the full list of
names.)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Ruth T. Mclean
 Street Address P.O. BOX 137
 City and County Plainsboro
 State and ZipCode NJ, 08536
 Telephone Number (973) 222 4928
 E-mail Address ruthtmclean@yahoo.com

B. The Defendant(s)

Provide the information below for each defendant named in the Complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

Defendant No. 1

Name 800 DC, LLC, DBA BIZZIE
& 1800DRYCLEAN
 Job or Title (*If known*) Attorney
 Street Address 201 Washington St.
 City and County Newark
 State and Zip Code NJ, 07102
 Telephone Number 973 242 6220
 E-mail Address (*if known*) mwurgalt@kravisfile.com

Defendant No. 2

30a

Name 800 DC LLC, DBA BIZZIE
And 1800DRYCLEAN
Job or Title (If known) . Attorney
Street Address 550 W. Merrill St., ste. 100
City and County Birmingham
State and Zip Code ML 48009
Telephone Number 248-268-7800
E-mail Address (if known) dino@korolaw.com

Defendant No. 3

Name _____
Job or Title (If known) _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address (if known) _____

Defendant No. 4

Name _____
Job or Title (If known) _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address (if known) _____

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. §

1332, a case in which a citizen of one State sues a citizen of another State of nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? (*check all that apply*)

☐ Federal question ☒ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

28 U.S.C. section 1332 Subject Matter Jurisdiction; 28 U.S.C. section 1331 Jurisdiction of the court; Due Process violation: Rule 8(a), F.R. Cv.P Requires that jurisdiction be shown in pleadings. 14th and 5th Constitutional Amendment Due Process Procedural Requirements before Deprivation Of Property

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, (*name*) Ruth T. Mclean, is a citizen of the State of (*name*) New Jersey

b. If the plaintiff is a corporation

The plaintiff, (name) _____,
is incorporated under the laws of the State of (name) _____,
and has
its principal place of business in the State of (name) _____

*(If more than one plaintiff is named in the complaint,
attach an additional page providing the same
information for each additional plaintiff)*

2. The Defendant(s)

a. If the defendant is an individual

The defendant, (name) 800DC, LLC, DBA, BIZZIE & 1800DC, is a citizen of the State of (name) Michigan. Or
is a citizen of (foreign nation) _____

b. If the defendant is a corporation

The _____ defendant, (name) _____,
is incorporated
under the laws of the State of (name) _____,
and has its
principal place of business in the State of (name) _____

Or is incorporated under the laws of (foreign nation) _____,
and has its principal place of business in (name) _____

*(If more than one defendant is named in the complaint,
attach an additional page providing the same
information for each additional defendant.)*

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (*explain*):

Damages: \$500,000

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

Grievances within this lawsuit are against (800 DC LLC DBA BIZZIE and 1800 DRYCLEAN, a Michigan LLC). It stems from a lawsuit they filed on April 15, 2015 in Michigan 44th District Court against me, my ex-husband and my New Jersey business C2 Group LLC. Defendant cited among other charges about my ex-husband driving a van for a business he didn't own and; that we breach their contract by early termination/resigning. My ex-husband vacated after we divorced by May 2010, 5 years prior to the lawsuit and I vacated by August 2013, 2 years prior plus the contract had already expired on January 13, 2015.

Therefore the lawsuit had no merit thus any legitimate claim or entitlement to it. On June 30, 2017 the local traffic court magistrate in Michigan dismissed my pleading and objections to jurisdiction, and proceeded to grant a judgment to seize and deprive me of property totaling \$.16,976.

1 Questioning the court proceedings in Michigan initiated by the Defendant: Infringed on my 14th and 5th Constitutional Amendment Rights for the promise of legality and fair procedure- Due Process before Deprivation of Property; Federal Rules of Civil Procedure Rule (4) Summons (a), (b), (c), (n)(1) were violated that each defendant are to be summon. Including the judge's Subject Matter and in personam jurisdiction to perside.

2 Mentally and financially straining special appearances to come out-of-state were forced under threat, duress, coercion that a default judgment would be granted for not-coming.

3 An affidavit of June 2, 2015 sign by the process server Anabela Pinto sworn certificate shows that I was not served a summons.

4 A court order summons dated April 15, 2015 shows a court seal and sign by the clerk issued with my name and addressed to 35 Dogwood Dr was not delivered. Another summons dated July 15, 2015 issued with my name and address at 35 Dogwood Dr. was not delivered. There was no court order summons issued for me my business C2 or my ex-husband at 201 Schillaci Ln, this was fraud.

5 These acts were harassment and invasion of privacy. Note: My ex-husband who lived an hour away, at 201 Schillaci Ln; contacted me to say documents were dropped off that said I had to come to court or a

default judgment would be granted against me. His mother-in-law was visiting; does not live in his household; lives out of the country; speaks broken English and not a citizen of the United States.

6 His mother-in-law is not a member of my household, at 35 Dogwood. I never lived wife my ex-husband at 201 Schillaci. The business C2 is not located 201 Schillaci Ln, it was at 35 Dogwood. Ms. Pinto-process server, used misleading documents that fraudulently added my name and the C2 business name to my ex- husband address.

7 I never visited Michigan or had a business there. These actions were violations of rules for proper service and a violation of a local magistrate's out-of-state jurisdictional reach. In addition Subject Matter and in personam jurisdiction to enable the magistrate to preside was not disclosed in Defendant's pleadings.

8 By July 2018 Defendant came to New Jersey to domesticate the Michigan Judgment and again my objections to due process and jurisdiction. were dismissed without written explanation.

9 Cause Of Action: Jurisdiction can be challenged at anytime, once its challenged it must be proven on record. Oh October 30, 2018 I sent a Writ of Jurisdictional Challenge with Affidavit to the 800DC, LLC Defendant via certified mail. With a request to respond to my affidavit on a point by point bases in writing or accept a default of their actions, with a default being a full dismissal of any and all related charges as well as specific charges in the case. It was delivered November 1, 2018 with a time to respond of seven (7) days from service date. To-date the Defendant has not responded.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include fee amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

800DC, LLC non-response to my Jurisdictional Challenge shows value. My civil rights to Due Process were deliberately violated. Further the acts of the Michigan judge was unauthorthy to preside and grant a judgement to seize and deprive me of my property. I therefore charge the Defendants for damages stress and mental anguish for me coming out of state, cost of legal aids, court fees: \$100,000/year for every year of harassment and torment inflicted payable within 30 days of a court ruling.

Attached Exhibits:

1. Ms. Pinto-Process Server court seal and court clerk Summons & Affidavit June 2, 2015.
2. Ms. Pinto-Process Server fraudulent Summons & Affidavit August 28, 2015.
- A. Jurisdiction and Due Process pleading to the court November 20, 2015.
3. Court Special Appearances beginning 2015.
4. Default Judgment against my business C2 Group LLC April 29, 2016
5. Michigan Judgment against me June 30, 2017
6. Writ of Jurisdiction Challenge to 800DC, LLC October 30, 2018.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by crusting law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint Otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be Served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 08/26/2019

By Plaintiff _____

Printed Name of Plaintiff McLean-Thompson Ruth

B. For Attorneys

Date of signing: _____

Signature _____ of _____ Attorney

38a

Printed _____ Name _____ of _____ Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____