

No. 20-5020

IN THE
SUPREME COURT OF THE UNITED STATES

1 Derrick M. Allen Sr.
PETITIONER -

vs.



IRI - LIFT N.C., INC et. Al.
RESPONDANT(S)

PETITION FOR REHEARING

FROM THE RULING OF THE SUPREME
COURT OF THE UNITED STATES

Derrick M. Allen Sr.
#10973
DURHAM County Jail
P.O. Box 771
DURHAM, N.C. 27701

QUESTIONS) PRESENTED

WHETHER PETITIONER COMPLAINT LACK SUBJECT MATTER JURISDICTION; IF PETITION FAIL TO STATE A CLAIM; AND WHETHER UNPUBLISHED OPINION(S) ARE BINDING PRECEDENT?

POINTS OR FACTS OVERLOOKED OR MISCOMPREHENDED BY THE COURTS:

I. DISMISSAL OF COMPLAINT FOR THE LACK OF SUBJECT MATTER JURISDICTION?

FEDERAL COURTS ARE COURTS OF LIMITED JURISDICTION AND CAN ONLY ADJUDICATE THOSE CASE(S) THAT FALL WITHIN ARTICLE III OF THE UNITED STATES CONSTITUTION (SEE U.S.C.A. CONST. ARTICLE III).

- THE DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION OF ALL CIVIL ACTIONS ARISING UNDER THE CONSTITUTION, LAWS, OR TREATIES OF THE UNITED STATES [28 U.S.C. 1331].

(1)

TURN OVER →

• DIVERSITY OF CITIZENSHIP; AMOUNT IN CONTROVERSY. THE DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION OF ALL CIVIL ACTIONS WHERE THE MATTER IN CONTROVERSY EXCEEDS THE SUM OR VALUE OF SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) EXCLUSIVE OF INTEREST AND COSTS, AND IS BETWEEN:

- CITIZEN(S) OF A DIFFERENT STATE
- CITIZEN(S) OF A STATE AND CITIZEN(S) OR

SUBJECTS OF A FOREIGN STATE, EXCEPT THAT THE DISTRICT COURTS SHALL NOT HAVE ORIGINAL JURISDICTION UNDER 28 U.S.C. 1332 OF AN ACTION BETWEEN CITIZEN(S) OF A STATE AND CITIZEN(S) OR SUBJECTS OF A FOREIGN STATE WHO ARE LAWFULLY ADMITTED FOR PERMANENT RESIDENCE IN THE UNITED STATES AND ARE DOMICILED IN THE SAME STATE;

- CITIZENS OF DIFFERENT STATES IN WHICH CITIZENS OR SUBJECTS OF A FOREIGN STATE ARE ADDITIONAL PARTIES; and

- A FOREIGN STATE, DEFINED IN 28 U.S.C. 1603 (a), as PLAINTIFF AND CITIZENS OF A STATE OR OF DIFFERENT STATES, 28 U.S.C. 1332(A).

(2)

DERIVATIVE JURISDICTION."

INsofar as an FEDERAL QUESTION IS CONCERNED, AS IT RELATES TO SUBJECT-MATTER JURISDICTION... THE PLEADER MUST SHOW THAT HE OR SHE HAS ALLEGED A CLAIM FOR RELIEF ARISING UNDER FEDERAL LAW AND THAT THE CLAIM IS NOT FRIVOLOUS.

BAKER V. CARR, 369 U.S. 186, 82 S. CT. 691, 71
ED. 2d 663 (1962).

HEREIN PETITIONER HAS ALLEGED A CLAIM FOR RELIEF ARISING UNDER FEDERAL LAW.

TRI-LIFT INC, INC. IS A BUSINESS THAT MANUFACTURES, SELL AND TEACH FORKlift TRAINING CLASSES.

PETITIONER PAID \$150.00 TO PARTICIPATE IN AN FORKlift COURSE, AND NEVER RECEIVED THE CERTIFICATE OR AN REFOND FOR PARTAKING IN THE FORKlift TRAINING COURSE.

THE SEVENTH AMENDMENT OF THE U.S. CONSTITUTION... IN SUITS AT COMMON LAW, WHERE THE VALUE IN CONTROVERSY SHALL EXCEED TWENTY DOLLARS, THE RIGHT OF TRIAL BY JURY SHALL BE

(3)

TURNOVER →

PRESERVED, AND NO FACT TRIED BY A JURY SHALL BE OTHERWISE RE-EXAMINED IN ANY COURT OF THE UNITED STATES, THAN ACCORDING TO THE RULES OF THE COMMON LAW...

THE SEVENTH AMENDMENT PROVISION GUARANTEEING RIGHT TO JURY TRIAL IN ALL COMMON-LAW ACTION(S) INVOLVING MORE THAN \$20.00 IS EFFECTIVE IN TERRITORIES.

GIRANT V. PILGRIM (1983, CA9) 9

Alaska 241, 95 F2d 562

II. FAILURE TO STATE A CLAIM

A MOTION TO DISMISS ACTION FOR FAILURE TO STATE A CLAIM OR FOR WANT OF SUBJECT MATTER JURISDICTION MAY BE GRANTED ONLY IF IT APPEARS BEYOND DOUBT THAT PLAINTIFF CAN PROVE NO SET OF FACT(S) IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF. Calhoun v. UNITED STATES (1977, SD CA1) 475 F.Supp 1 AFF'd (CA9CA1) 604 F2d 647, CERT. DEN 444-US 1078, 62 L Ed. (4) 2d 761, 100 S.Ct. 1029

III. Unpublished Opinion(s) :

Unpublished opinion(s) are not legal precedent and are merely utilized when there's no case citation on point or to disregard truth and/or to disparage the right(s) of U.S. citizens which infringes, the 14th Amendment - the Equal Protection of Laws :

III. Conclusion

Petitioner has aptly demonstrated, Plaintiff(s) Complaint contain(s) sufficient factual matter to survive a motion to dismiss; also, pursuant to 28 U.S.C. 1331, the District Court shall have original jurisdiction of all civil action(s) arising under the Constitution, laws or treaties of the United States. Moreover, unpublished opinion(s) are unconstitutional.

PETITIONER REQUEST FOR THIS COURT
TO (ALLOW PETITIONER TO PROCEED
IN FORMA PAUPERIS, AND GRANT HIS PETITION
FOR WRIT OF CERTIORARI [REHEARING] THERE'S ONE
COURT [THE UNITED STATES SUPREME COURT] THAT'S
BESTOWED WITH THE INSIGHT TO RECTIFY
LOWER COURTS), MIS-INTERPRETATION OF -
LAW CONDUCTING AN OUTSIGHT WHICH CONJURES
UP THE WORD.... PROSPERITY; MOVING FORWARD.

Derrick M. Allen Sr.

DERRICK M. ALLEN SR.

#10973

DURHAM COUNTY JAIL

P.O. Box 771

DURHAM, N.C.

27701

No. **20-5020**

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Derrick B. Allen Sr. — PETITIONER
(Your Name)

vs.
Tri-lift NC Inc. et. al — RESPONDENT(S)

Supreme Court, U.S.
FILED
JUN 25 2020
OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE 4TH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Derrick B. Allen Sr.
(Your Name)

P.O. Box 51368
(Address)

Durham, N.C. 27717-1368
(City, State, Zip Code)

(919) 450-7497
(Phone Number)

RECEIVED
JUL - 6 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

PETITIONER, DERRICK ZU. ALLEN SR., RESPECTFULLY SUBMIT THIS PETITION FOR WRIT OF CERTIORARI FOLLOWING THE UNPUBLISHED ~~OPINION~~ PER CURIUM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, DISMISSING PETITIONERS APPEAL.

QUESTIONS PRESENTED..... WHETHER PETITIONER COMPLAINT LACK ~~OF~~ SUBJECT MATTER JURISDICTION; IF PETITIONER FAIL TO STATE A CLAIM; AND TOO WHETHER UNPUBLISHED OPINIONS ARE BINDING PRECEDENT IN THIS CIRCUIT?

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TRI-LIFT NORTH CAROLINA INC, NICKOL HAINES,
Hailey Fuller, BOB Bond and KAREN Bonds.

RELATED CASES

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TABLE OF AUTHORITIES CITED

CASES

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- *STEM V. GOMEZ* (2016, CAS TEX) 813 F3d 205, 41 BNA IER ~~CASE~~ CAS 103.
- *AMERICAN AUTO. INS. CO. V. FREUNDT* (1939, CA7 ILL) 103 F2d. 613.
- *ASHCROFT V. IGBAL*, 556 U.S. 662 (2009); 129 S.Ct. 1937, 173 L.Ed. 2d. 868, 77 U.S.L.W. 4387, 2009
- *Conley V. Gibson* 335 U.S. 41 (1957).... 45-46
- *HUPMAN V. COOK*, 640 F.2d 497, 501 n7 (4TH Cir. 1981); *REYNOLDS and RICHMAN Supra.*"
- *KING V. BLANKENSHIP*, 636 F.2d. 70 at 72 (4TH Cir. 1980)

STATUTES AND RULES

28 U.S.C. 1331

42 U.S.C. 1983

OTHER

RULE OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT 18(d)(i) -- AN UNPUBLISHED OPINION MAY BE CITED FOR WHAT PRECEDENTIAL VALUE IT MAY HAVE, *Id.* 18(d)(iii).

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 20-1107; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 1:19-cv-00851; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 01/07/20.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 06/23/20, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE EQUAL PROTECTION OF LAWS
GUARANTEED BY 14TH AMENDMENT;
SECTION ONE.

STATEMENT OF THE CASE

PETITIONER PARTICIPATED IN A FORK-LIFT TRAINING CLASS. PETITIONER PAID \$150.00 AND NEVER RECEIVED THE FORK-LIFT TRAINING CERTIFICATE -- EVEN AFTER AMPLE ATTEMPTS TO HAVE THE CERTIFICATE RE-ISSUED, BUT TO NO AVAIL.

REASONS FOR GRANTING THE PETITION

THIS WRIT SHOULD BE ISSUED, BECAUSE

1) IN ORDER TO SURVIVE A MOTION TO DISMISS COMPLAINT MUST CONTAIN SUFFICIENT FACTUAL MATTER ACCEPTED AS TRUE TO STATE A CLAIM OF RELIEF THAT IS PLAUSIBLE ON ITS FACE; CLAIM HAS FACTUAL PLAUSIBILITY WHEN PLAINTIFF PLEADS FACTUAL CONTENT THAT ALLOWS THE COURT TO DRAW AN REASONABLE INFERENCE THAT THE DEFENDANT IS LIABLE FOR MISCONDUCT.

(2) UNPUBLISHED OPINIONS ARE NOT BINDING PRECEDENT AND ARE MERELY ACCEPTED WHEN THERE'S NO CASE CITATION ON POINT.

(3) LASTLY, THE DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C.

1331(~~1331~~) -- THE DISTRICT COURT SHALL HAVE ORIGINAL JURISDICTION OF ALL CIVIL ACTIONS ARISING UNDER THE CONSTITUTION, LAWS OR TREATIES OF THE UNITED STATES.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derrick Z. Allen Sr.

Date: 06/25/2020