

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Lan Tu Trinh – PETITIONER

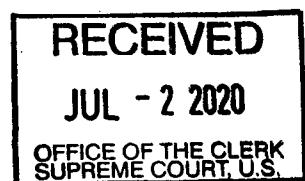
vs.

David Fineman – RESPONDENT

**PETITION FOR FILING PETITION
FOR A WRIT OF CERTIORARI OUT-OF-TIME**

I, Lan Tu Trinh, respectfully request for the U.S. Supreme Court to file my petition for a writ of certiorari out-of-time.

As a pro se litigant, I had asked the Court of Appeals about when the deadline for the petition would be, and they informed me that I could only file after the last entered order. I worked very hard on this petition and have followed the proper procedure as best as I could for being pro se and with very little legal assistance. COVID-19 has made legal assistance even more inaccessible and difficult to obtain, as lawyers have been reluctant to get involved in new cases and printing companies have been totally unresponsive. The COVID-19 pandemic has also caused significant financial strain and life difficulties for me and my family.



For these reasons, I sincerely plead for the Supreme Court of the United States to accept this petition for the Clerk to file my petition for a writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lan Tu Trinh".

Lan Tu Trinh
775 Mustin Lane
Villanova, PA 19085

Dated: June 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2467

LAN TU TRINH,
Appellant

v.

DAVID FINEMAN

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 19-cv-02305)
District Judge: Honorable Cynthia M. Rufe

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 12, 2019

Before: SHWARTZ, RESTREPO and RENDELL, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on November 12, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered June 3, 2019, be and the same is hereby vacated and the matter remanded. All of the above in accordance with the opinion of this Court.

A

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 19-2467

LAN TU TRINH,
Appellant

v.

DAVID FINEMAN

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-02305)
District Judge: Honorable Cynthia M. Rufe

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 12, 2019

Before: SHWARTZ, RESTREPO and RENDELL, Circuit Judges

(Opinion filed November 14, 2019)

OPINION*

PER CURIAM

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

Lan Tu Trinh appeals from an order of the United States District Court for the Eastern District of Pennsylvania, which dismissed for lack of subject matter jurisdiction her complaint against David Fineman.

Trinh's complaint alleged that Fineman was appointed as a receiver in a state court case involving the dissolution of her beauty school. The complaint accuses Fineman of not giving her a proper accounting of the escrow account related to that case and accuses him of "the theft of my properties on behalf of the Court of Common Pleas for Kathleen Trinh's benefit." Dkt. #1 at 6. Both the cover sheet and the complaint itself claim "Federal Question" jurisdiction. The complaint's cover sheet states that the federal question is "investigation, crime," Dkt. #1 at 1, and in the form complaint's area for explaining the basis of the Federal Question Trinh stated: "The courts in Pennsylvania have denied my appeals, so I ask for the district court to hear my case," Dkt. #1 at 2.

The District Court sua sponte dismissed Trinh's complaint without prejudice for lack of subject matter jurisdiction. The Court stated that Trinh "does not allege any claims arising under federal law or that the parties are citizens of different states." Dkt. #3 at n.1. Trinh timely appealed.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291. Our review of the District Court's dismissal for lack of subject matter jurisdiction is plenary. FOCUS v. Allegheny Cty. Court of Common Pleas, 75 F.3d 834, 839-40 (3d Cir. 1996).

As we recently explained in two of Trinh's other appeals, "In order to have subject matter jurisdiction, a District Court must be able to exercise either federal question jurisdiction or diversity jurisdiction. See 28 U.S.C. §§ 1331-1332." Trinh v. Office of Records City of Phila., C.A. No. 18-3473, and Trinh v. Trinh, C.A. No. 18-3485, 2019 WL 30634542, at *1 (3d Cir. July 12, 2019). We further explained that although a District Court may *sua sponte* consider whether a plaintiff has satisfied the burden of alleging facts that show that the Court has jurisdiction, the Court should give the plaintiff an opportunity to be heard before dismissing a complaint for lack of subject matter jurisdiction. Id. at *2 (citing Neiderhiser v. Borough of Berwick, 840 F.2d 213, 216 n.6 (3d Cir. 1988), and Berardi v. Swanson Mem'l Lodge No. 48 of the Fraternal Order of Police, 920 F.2d 198, 200 (3d Cir. 1990)).¹

The District Court properly determined that Trinh's complaint, as filed, does not establish subject matter jurisdiction. Trinh did not base her complaint on diversity jurisdiction (it appears that she and the defendant are from the same state). And Trinh's complaint does not cite any federal statute or constitutional provision that would invoke federal question jurisdiction.

¹ As in the cases involved in those appeals, Trinh paid the filing fees in the District Court, so the screening provisions of 28 U.S.C. § 1915(e) are not applicable.

We are doubtful that Trinh can state a basis for federal subject matter jurisdiction.² See Cardona v. Bledsoe, 681 F.3d 533, 535 (3d Cir. 2012) (“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.”) (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). But because the District Court did not give Trinh the opportunity to respond or amend her complaint to properly allege federal question jurisdiction, see Neiderhiser, 840 F.2d at 216 n.6, we will vacate the District Court’s judgment and remand for further proceedings. On remand, the District Court should provide Trinh with an opportunity to either respond to the issue of jurisdiction or amend her complaints to properly allege federal question jurisdiction. See 28 U.S.C. § 1653; St. Francis Med. Ctr. v. Sullivan, 962 F.2d 1110, 1117 (3d Cir. 1992).

² We note that to the extent Trinh sought to bring a criminal charge against Fineman, a private party has no right to enforce criminal statutes. See Leeke v. Timmerman, 454 U.S. 83, 85-86 (1981) (per curiam). Trinh is also advised that a federal court cannot exercise appellate review over a state court judgment. See Great W. Mining & Mineral Co., 615 F.3d 159, 165-66 (3d Cir. 2010).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAN TU TRINH

Plaintiff,

v.

CIV. ACTION NO. 19-2305

DAVID FINEMAN

Defendant.

FILED MAR - 2 2020

ORDER

AND NOW, this 2nd day of March 2020, upon consideration of the Amended Complaint [Doc. No. 10] and Defendant's Motion to Dismiss [Doc. No. 11], it is hereby ORDERED that:

- 1) The Motion is GRANTED and all claims against Defendant Fineman are DISMISSED WITH PREJUDICE.
- 2) The Clerk is directed to CLOSE this case.

It is so ORDERED.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. Rufe, J.

ENT'D MAR - 3 2020

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<divPlaintiff,

<div

<divCIV ACTION NO. 19-2305

v.

Defendant.

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FILED

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ORDER

By order dated June 3, 2019, this Court dismissed Trinh's Complaint without prejudice for lack of subject matter jurisdiction.¹ Trinh appealed, and the Court of Appeals stated "that Trinh's complaint, as filed, does not establish subject matter jurisdiction."² However, despite explaining that "[w]e are doubtful that Trinh can state a basis for federal subject matter jurisdiction," the court remanded the case to provide Trinh an opportunity to assert a basis for jurisdiction in federal court.³

Trinh then filed an Amended Complaint using the Court's *pro se* form.⁴ The Amended Complaint explains that Trinh and her sister, Kathleen Trinh, co-owned a beauty school. Following a business dispute, Trinh sued Kathleen in the Court of Common Pleas. That court appointed Defendant David Fineman as Receiver to sell the property co-owned by Trinh and her sister and ordered "that the proceeds from the sale shall be placed in an interest bearing escrow account co-signed by Plaintiff's counsel, Defendant's counsel, and by the Receiver."⁵ Trinh

1 Doc. No. 3.

² *Trinh v. Fineman*, 784 F. App'x 116, 117 (3d Cir. 2019).

³ See *id.*

4 Doc. No. 10.

⁵ Exhibit A, Amended Complaint [Doc. No. 10].

ENT'D MAR - 3 2020

asserts, however, that “[t]he purpose of Mr. Fineman’s presence in the case up to now has only been to steal my properties from me in a manner that would be deemed legal.⁶ Specifically, Trinh alleges that Fineman forced her to sell her property and then failed to provide her with a proper accounting of an escrow account containing compensation from the sale. Fineman has moved to dismiss the Amended Complaint for lack of subject matter jurisdiction or, in the alternative, based on quasi-judicial immunity.⁷ Trinh has not responded to the motion to dismiss.⁸

“In order to have subject matter jurisdiction, a District Court must be able to exercise either federal question jurisdiction or diversity jurisdiction.”⁹ As in the original Complaint, Trinh indicated on the Amended Complaint that the basis for federal court jurisdiction was “federal question.”¹⁰ For the field asking for “the basis for federal question jurisdiction,” which specifies that litigants should “list the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case,” Trinh stated that:

The defendant violated my business and property rights by abusing his state power as a receiver. The refusal to show requested evidence of fair proceedings, specifically about the timely and correct handling of money that would be used to justify the seizure of my property and dissolution of my business, is blatant avoidance and disregard for the just application of law. The amount in controversy is also over \$75,000.¹¹

⁶ Amended Complaint [Doc. No. 10] at 6.

⁷ Doc. No. 11.

⁸ Nevertheless, the Court will analyze Trinh’s claims on the merits. *See Ray v. Reed*, 240 F. App’x 455, 456 (3d Cir. 2007).

⁹ *Trinh*, 784 F. App’x at 117.

¹⁰ Amended Complaint [Doc. No. 10] at 3. Besides stating the amount in controversy, Trinh left the section on diversity jurisdiction blank. *See id.* Moreover, as both the Plaintiff and Defendant appear to be domiciled in Pennsylvania, even construing the *pro se* allegations liberally, there would be no basis for diversity jurisdiction. *See Higgins v. Att’y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

¹¹ *Id.*

“[U]nder the longstanding well-pleaded complaint rule … a suit arises under federal law only when the plaintiff’s statement of [her] own cause of action shows that it is based upon [federal law].”¹² Construing Trinh’s Amended Complaint liberally, as the Court must do for a *pro se* plaintiff,¹³ Trinh’s reference to “abusing his state power” can be read as asserting claims pursuant to § 1983 based on the Takings and Due Process Clauses of the Fifth and Fourteenth Amendments.¹⁴

However, as Fineman argues, he is immune from this suit. “The doctrine of judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability.”¹⁵ Moreover, “[t]hose who perform functions closely associated with the judicial process, such as court clerks and prothonotaries, enjoy quasi-judicial immunity when performing a function directly related to the court’s decision-making activities or carrying out a judicial order.”¹⁶ “When judicial immunity is extended to officials other than judges, it is because their judgments are ‘functional[ly] comparab[le]’ to those of judges—that is, because they, too, ‘exercise a discretionary judgment’ as a part of their function.”¹⁷ To determine whether an act is

¹² *Jordan v. Philadelphia Media Network*, 751 F. App’x 239, 242 (3d Cir. 2018) (quoting *Goldman v. Citigroup Global Markets Inc.*, 834 F.3d 242, 253 (3d Cir. 2016)).

¹³ See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

¹⁴ See *Carole Media LLC v. New Jersey Transit Corp.*, 550 F.3d 302, 311 (3d Cir. 2008) (explaining that the “textbook private taking” involves the “naked transfer of property from private party A to B solely for B’s private use and benefit”).

¹⁵ *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 (1993). The Court also notes that to the extent Trinh’s Complaint seeks injunctive relief, § 1983 bars this relief. See *Marn v. McCully Assocs.*, 667 F. App’x 978, 979 (9th Cir. 2016); *Acavino v. Wilson*, 789 F. App’x 308, 309 n.3 (3d Cir. 2020); *Capogrosso v. The Supreme Court of New Jersey*, 588 F.3d 180, 185 (3d Cir. 2009).

¹⁶ *Walton v. Denlinger*, No. 05-5170, 2007 WL 4615960, at *3 (E.D. Pa. Dec. 21, 2007) (citing *Lockhart v. Hoenstine*, 411 F.2d 455, 460 (3d Cir. 1969)).

¹⁷ *Antoine*, 508 U.S. at 436 (citing *Imbler v. Pachtman*, 424 U.S. 409, 423 n. 20 (1976)); see also *Cleavinger v. Samaar*, 474 U.S. 193, 200 (1985).

“judicial” the Court must look to “the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.”¹⁸

Although the Third Circuit has not ruled on whether court-appointed receivers are entitled to quasi-judicial immunity, the First,¹⁹ Second,²⁰ Fifth,²¹ Sixth,²² Ninth,²³ Tenth,²⁴ and Eleventh²⁵ Circuits have all held that “receivers are court officers who share the immunity awarded to judges.”²⁶ As the Ninth Circuit explained, “immunity for court-appointed receivers” is premised on the “functional approach to immunity”—“receiver[s] function[] as an arm of the court by making decisions about the operation of a business that the judge otherwise would have to make.”²⁷ Moreover, “[a]bsent broad immunity, receivers would be ‘a lightning rod for harassing litigation aimed at judicial orders.’”²⁸ As set forth in the exhibits to the Amended Complaint, Fineman acted within the scope of his authority—the state court authorized him to

¹⁸ *Stump v. Sparkman*, 435 U.S. 349, 362 (1978).

¹⁹ *Kermit Const. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1, 2 (1st Cir. 1976).

²⁰ *Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72 (2d Cir. 1968).

²¹ *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995).

²² *Smith v. Martin*, 542 F.2d 688, 690 (6th Cir. 1976); *Plassman v. City of Wauseon*, 85 F.3d 629 (6th Cir. 1996).

²³ *Marn*, 667 F. App’x at 979; *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989).

²⁴ *T & W Inv. Co. v. Kurtz*, 588 F.2d 801, 802 (10th Cir. 1978); *Teton Millwork Sales v. Schlossberg*, 311 F. App’x 145, 150 (10th Cir. 2009).

²⁵ *Prop. Mgmt. & Investments, Inc. v. Lewis*, 752 F.2d 599, 603-04 (11th Cir. 1985).

²⁶ *Guetschow*, 869 F.2d at 1303 (collecting cases); *see also Rogers v. Mellman*, No. 16-1832, 2016 WL 3647324, at *2 (D.N.J. July 7, 2016) (“The Court finds that Defendants are entitled to quasi-judicial immunity. All of Rogers’ allegations are based on Mellman’s authorized actions as a court-appointed receiver pursuant to court order. Accordingly, Plaintiff’s complaint must be dismissed.”).

²⁷ *Guetschow*, 869 F.2d at 1303 n.6 (internal quotation and citation omitted); *Schlossberg*, 311 F. App’x at 150 (“[e]nforcing a court order ... is intrinsically associated with a judicial proceeding”) (citation omitted).

²⁸ *Id.* (quoting *Kermit*, 547 F.2d at 3).

sell the property and place the proceeds in an escrow account.²⁹ and thus he is entitled to immunity from Trinh's claim.³⁰

AND NOW, this 2nd day of March 2020, upon consideration of the Amended Complaint and the exhibits thereto [Doc. No. 10], and Defendant's Motion to Dismiss [Doc. No. 11], it is hereby ORDERED that the Motion is GRANTED.

It is so ORDERED.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

²⁹ Exhibit A, Amended Complaint [Doc. No. 10].

³⁰ See *Plassman v. City of Wauseon*, 85 F.3d 629 (“In its March 18, 1993 judgment, the court authorized the receiver to sell all of the personal property on the premises and to obtain a contract for the repair or destruction of the building. Thus, the receiver's actions did not exceed the scope of the authority granted him by court order, and he is entitled to judicial immunity for executing the court's order.”).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2467

LAN TU TRINH,
Appellant

v.

DAVID FINEMAN

(E.D. Pa. No. 2-19-cv-02305)

SUR PETITION FOR REHEARING

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

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 the decision having asked for rehearing, and a majority of the judges of the

* Hon. Marjorie O. Rendell vote is limited to panel rehearing only.

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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/Patty Shwartz
Circuit Judge

Dated: January 3, 2020

Sb/cc: Lan Tu Trinh

Andrew A. Chirls, Esq.

Richard J. Perr, Esq.

**Additional material
from this filing is
available in the
Clerk's Office.**