United States Court of Appeals for the Fifth Circuit

A True Copy
Certified order issued Aug 16, 2021

Clerk, U.S. Court of Appeals, Fifth Circuit

No. 21-20117

BROOK FOREST COMMUNITY ASSOCIATION, INCORPORATED,

Plaintiff—Appellee,

versus

ERICH WILLIAM NORRIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-2814

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellee's motion to dismiss the appeal as frivolous is GRANTED.

IT IS FURTHER ORDERED that Appellee's motion for attorney fees and costs under FRAP 38 is GRANTED IN PART. Appellant shall pay a sum of $1,000 in fees and costs, and he is WARNED that further frivolous filings may result in additional sanctions.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BROOK FOREST COMMUNITY ASSOCIATION INC,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4:20-CV-2814
ERICH WILLIAM NORRIS,	§	
Defendant.	§	

ORDER REMANDING CASE FOR LACK OF SUBJECT MATTER JURISDICTION

Pending before the Court is a motion to remand filed by Plaintiff Brook Forest Community Association, Inc. ("Brook Forest"). The motion (Dkt. 12) is **GRANTED**, and this case is remanded to County Civil Court at Law No. 3 of Harris County, Texas.[1] The Court lacks subject matter over this lawsuit and all other pending motions are **DENIED AS MOOT**.

Brook Forest, which is a property owners' association, sued Erich William Norris ("Norris") under Texas state law in Texas state court for failing to pay assessments and for violating restrictive covenants. *See* Southern District of Texas Case Number 4:19-CV-703 at docket entry 1-1, pages 5–14. This is the second time that Mr. Norris, who is proceeding *pro se*, has tried to remove the lawsuit to federal court. Mr. Norris's first attempt at removal failed to establish that this Court has subject matter jurisdiction, and the Court remanded the case to state court. *See* Southern District of Texas Case Number 4:19-CV-703 at docket

[1] The state-court cause number is 1113192.

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entry 16. This second attempt is based on the same state court petition that the Court previously considered. Accordingly, the Court finds that this attempt at removal fails for the same reasons that the Court explained in its previous remand order.

The Court understands that Mr. Norris is passionate about his defense of this action and strongly feels that Brook Forest and the state court have treated him unfairly. However, this does not change the fact that the Court has no subject matter over this action and cannot grant him the relief he seeks. Mr. Norris' concerns can and must be litigated in the state trial and appellate courts, not here.

The Court recognizes that Mr. Norris is proceeding *pro se* and that he may not be aware of the Federal Rules of Civil Procedure that apply to this action. Nevertheless, the Court is very concerned that this second attempt at removal may be a misuse of the Federal Rules of Civil Procedure to interfere with the state court's orderly handling of its docket—Mr. Norris mailed his second notice of removal to this Court just two days before the state-court case was set for trial. Dkt. 6-3; Dkt. 6-4; Dkt. 6-5; Dkt. 14 at p. 1; *see also* docket for case number 1113192 in Harris County Civil Court at Law No. 3. The Court cautions Mr. Norris to think very carefully about attempting to remove this case a third time based on arguments that the Court has already found to be unmeritorious. Misuse of the Federal Rules of Civil Procedure to remove a case from state court may subject a plaintiff to monetary sanctions under Rule 11 of the Federal Rules of Civil Procedure or an award of costs and fees under 28 U.S.C. § 1447(c). If requested, a district court may award attorney's fees and impose costs on the plaintiff under Section 1447(c) where the removing party

lacked an objectively reasonable basis for seeking removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 140–41 (2005).

The Court finds that it lacks subject matter jurisdiction over this lawsuit. Brook Forest's motion to remand (Dkt. 12) is **GRANTED**. This case is **REMANDED** to County Civil Court at Law No. 3 of Harris County, Texas.[2] All other pending motions are **DENIED AS MOOT**.

The Clerk is directed to provide a copy of this order to the parties. The Clerk is further directed to send a certified copy of this order via certified mail, return receipt requested, to the County Clerk of Harris County, Texas and the Clerk of County Civil Court at Law No. 3 of Harris County, Texas.

SIGNED at Houston, Texas, on January 29, 2021.

George C. Hanks Jr.

GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE

[2] The state-court cause number is 1113192.

1113192 Ct. 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BROOK FOREST COMMUNITY ASSOCIATION, INC.,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4:19-CV-00703
ERICH WILLIAM NORRIS,	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

On July 9, 2018, Plaintiff Brook Forest Community Association, Inc. ("Brook Forest") sued Defendant Erich William Norris ("Norris") in Harris County Civil Court at Law No. 3. Norris removed Brook Forest's action to federal court based on federal question jurisdiction. Dkt. 1. Before the Court is Brook Forest's Motion to Remand. Dkt. 4. After reviewing the motion, the response, and the applicable law, the Court **GRANTS** the motion and **ORDERS** this case to be **REMANDED** to Harris County Civil Court at Law No. 3.

I. BACKGROUND

Brook Forest's original petition alleges that Norris owns property in a subdivision governed by restrictive covenants, and that Norris has violated the restrictive covenants by failing "to repaint faded siding and trim, remove two window [AC] units . . . , remove mildew from the mailbox, remove the trailer that is stored in the driveway, and mow, edge and otherwise maintain the lawn on a regular basis." Brook Forest's causes of action

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arise under the Texas Property Code section 202.004(b), which permits property owners' associations to initiate litigation affecting the enforcement of a restrictive covenant. Brook Forest seeks injunctive relief, compensatory damages, and foreclosure on a lien it holds against Norris's property, all pursuant to the Texas Property Code.

Norris removed based on federal question jurisdiction, asserting that the activities about which Brook Forest complains implicate constitutional liberty interests. He argues that Brook Forest's complaint raises a federal question because enforcing the restrictive covenants would deprive him of equal protection of the laws in violation of the Fourteenth Amendment and the Civil Rights Act of 1964. He argues this Court has original jurisdiction under 28 U.S.C. sections 1331, 1343(a)(3), and 1443(1).

Brook Forest argues that this Court should remand the action because Norris's removal was untimely, procedurally defective, and lacking any basis for federal subject-matter jurisdiction.

II. ANALYSIS

A defendant may remove an action from state court to federal court only if the action is one over which the federal court has original jurisdiction. 28 U.S.C. § 1441(a). Federal court jurisdiction is limited by the Constitution and federal statutes. *See, e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 372 (1978) ("[T]he jurisdiction of the federal courts is limited not only by the provisions of Art. III of the Constitution, but also by Acts of Congress."). Without subject-matter jurisdiction, a federal court lacks the power to adjudicate a claim. *See Stockman v. Federal Election Comm'n*, 138 F.3d 144,

151 (5th Cir. 1998). The party invoking federal jurisdiction has the burden of establishing that federal jurisdiction exists. *Id.*

Federal subject matter jurisdiction is limited to cases that either "aris[e] under the Constitution, laws or treaties of the United States" (federal question jurisdiction) or involve an amount in controversy exceeding $75,000, excluding costs and interest, where diversity of citizenship exists (diversity jurisdiction). 28 U.S.C. §§ 1331, 1332. Norris removed this case based on federal question jurisdiction.

Whether a claim "arises under" federal law is determined by reference to the "well-pleaded complaint." *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986). The Court limits its inquiry to "what necessarily appears in the plaintiff's statement of his own claim . . . unaided by anything alleged in anticipation [or] avoidance of defenses which it is thought the defendant may interpose." *Venable v. La. Workers' Comp. Corp.*, 740 F.3d 937, 942 (5th Cir. 2013) (quoting *Taylor v. Anderson*, 234 U.S. 74, 75–76 (1914)).

An action can "arise under" federal law under Section 1331 in two ways: (1) the party asserts a federal cause of action, or (2) the party asserts a state cause-of-action claim that "necessarily raises a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Venable*, 740 F.3d at 941 (quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005)).

A state-law cause of action does not raise a federal issue simply because the parties may ultimately litigate a federal issue. *Venable*, 740 F.3d at 942–43. "[A] right or

immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action." *Gully v. First Nat'l Bank in Meridian*, 299 U.S. 109, 112 (1936).

The Court remands this case because there is no basis for federal subject-matter jurisdiction over Brook Forest's claims. Brook Forest's original petition does not assert any federal cause of action. It asserts only state-law claims under the Texas Property Code. Resolving Brook Forest's claims will not necessarily entail the resolution of a disputed, substantial federal issue.

Norris asserts that this Court has original jurisdiction over this case pursuant to 28 U.S.C. section 1343(a)(3), which grants district courts "original jurisdiction of any civil action authorized by law to be commenced by any person . . . to redress the deprivation, under color of any State law . . . of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." 28 U.S.C. § 1343(a)(3). Brook Forest commenced this action, not Norris. Brook Forest's complaint does not seek to redress the deprivation of equal rights of citizens. Therefore, Section 1343 does not confer original jurisdiction over Brook Forest's claims.

Norris also asserts that this Court has jurisdiction pursuant to 28 U.S.C. section 1443(1), which permits a defendant to remove a civil action "[a]gainst any person who is denied or cannot enforce in [state court] a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof." 28 U.S.C. § 1443(1). To remove a case under § 1443(1), the removing party

must show that (1) "the right allegedly denied it arises under a federal law providing for specific rights stated in terms of racial equality," and (2) "the removal petitioner is denied or cannot enforce the specified federal rights in the state courts due to some formal expression of state law." *State of Tex. V. Gulf Water Benefaction Co.*, 679 F.2d 85, 86 (5th Cir. 1982). Norris has not shown in his removal papers that he has been denied rights under a federal law providing for specific civil rights stated in terms of racial equality or that he cannot enforce such federal rights, if there were any, in state court. *See Varney v. Georgia*, 446 F.2d 1368, 1369 (5th Cir. 1971) (holding removal under § 1443(1) was improper because "Varney's contentions have nothing to do with racial equality").

Neither Brook Forest's state court petition nor Norris's notice of removal provides a basis for federal jurisdiction over this case. It must be remanded.

III. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff Brook Forest's Motion to Remand. Dkt. 4. Accordingly, the Court **ORDERS** this case to be **REMANDED** to Harris County Civil Court at Law No. 3. The Clerk of the Court will promptly deliver a copy of this Memorandum Opinion and Order to the County Clerk of Harris County, Texas.

SIGNED this day 19th day of February, 2020.

George C. Hanks Jr.
George C. Hanks Jr.
United States District Judge

United States Court of Appeals for the Fifth Circuit

No. 21-20117

BROOK FOREST COMMUNITY ASSOCIATION, INCORPORATED,

Plaintiff—Appellee,

versus

ERICH WILLIAM NORRIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-2814

ON PETITION FOR REHEARING EN BANC

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

Appendix
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Cause No. 1113192

BROOK FOREST COMMUNITY ASSOCIATION, INC. Plaintiff,	§	IN THE COUNTY CIVIL
v.	§	COURT AT LAW NO. 3
ERICH WILLIAM NORRIS, Defendant.	§	HARRIS COUNTY, TEXAS

FINAL JUDGMENT

On this date, the Court called this case to trial. Plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., appeared through its attorney of record and announced ready for trial. Defendant ERICH WILLIAM NORRIS did not appear for trial.

All matters in controversy, legal and factual, were submitted to the court for its determination. The court heard the evidence and arguments of counsel and announced its decision for Plaintiff.

The Court hereby RENDERS judgment for Plaintiff, Brook Forest Community Association, Inc.

IT IS ACCORDINGLY ORDERED, ADJUDGED and DECREED that Plaintiff, Brook Forest Community Association, Inc. recover from the Defendant, Erich William Norris, judgment for:

1. Defendant ERICH WILLIAM NORRIS is permanently enjoined from violating the Restrictions for the Subdivision by maintaining the residence on the Premises in its current complained-of condition;

2. Defendant shall repaint the faded siding and trim on his home, after obtaining ARC approval; remove the two window A/C units from the front upstairs windows; remove the mildew from the mailbox and home; remove the trailer that is stored in the driveway and store out of public view; and mow and maintain the lawn on a regular basis; all of which shall be completed within ~~thirty (30)~~ *ninety (90)* days of the date of this Judgment. For any

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item requiring approval by the ARC, an acceptable application to the ARC shall be submitted within thirty (30) days of the date of this Judgment and the repair shall be completed within ~~thirty (30)~~ *sixty (60)* days of receiving approval.

3. Defendant ERICH WILLIAM NORRIS shall pay to the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., $4,570.93 as the total amount due on the assessment account of the Premises through August 5, 2020 that is secured by the plaintiff's lien on the Premises;

4. Defendant ERICH WILLIAM NORRIS shall pay to the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., its reasonable attorney's fees in the amount of Six Thousand Six Hundred Twenty Dollars and 75/100 ($6,620.75);

5. Plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., have **FORECLOSURE** of its lien created by the provisions of the Restrictions on the amounts described in numbers 3 through 4 above on the following described property owned by the Defendant ERICH WILLIAM NORRIS:

Lot Twelve (12), in Block Seventy-Five (75), of Brook Forest, Section Three (3), a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 232, Page 127, of the Map Records of Harris County, Texas, more commonly known as 15803 Clearcrest Drive, Houston, Texas 77059;

6. An *Order of Sale* shall issue to any sheriff or any constable within the State of Texas, directing the sheriff or constable to seize and sell the Premises the same as under execution, in satisfaction of this *Final Default Judgment* subject to any superior liens provided for in the Restrictions or at law, if any; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the Defendant, as in the case of ordinary executions. If any surplus remains after the payment of the sums adjudged to be due, it shall be paid to Defendant;

7. Defendant ERICH WILLIAM NORRIS shall pay to the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., additional attorney's fees in the amount of five hundred fifty dollars and 00/100 ($550.00) for enforcement of this judgment through foreclosure;

8. Defendant ERICH WILLIAM NORRIS shall pay to the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., additional attorney's fees in the amount of seven hundred dollars and 00/100 ($700.00) should the Defendant file a *Motion for New Trial* that is subsequently denied or overruled;

9. Defendant ERICH WILLIAM NORRIS shall pay to the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., additional attorney's fees in the amount of five thousand three hundred twenty dollars and 00/100 ($5,320.00) should the final judgment in this case be unsuccessfully appealed to a State of Texas Appeals Court;

9. Defendant ERICH WILLIAM NORRIS shall pay to the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., additional attorney's fees in the amount of five thousand three hundred twenty dollars and 00/100 ($5,320.00) should the final judgment in this case be unsuccessfully appealed to the Texas Supreme Court; and,

10. Defendant ERICH WILLIAM NORRIS shall pay to the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., all costs of court in the amount of $485.32 and post-judgment interest at the rate of five percent (5%) per annum on the total judgment, until paid in full.

It is further **ORDERED** that the plaintiff, BROOK FOREST COMMUNITY ASSOCIATION, INC., be allowed all such writs and processes as may be necessary to enforce and collect this judgment including all reasonable attorneys' fees incurred in any such proceedings, and that execution issue for this judgment.

This judgment finally disposes of all parties and claims and is appealable.

SIGNED this the _____ day of *8/7/2020*, 2020.

JUDGE PRESIDING

FILED
08/07/2020 2:23:24 PM
Chris Hollins
County Clerk
Harris County, Texas
elopez

Respectfully submitted,

GREGG & GREGG, P.C.
16055 Space Center Blvd., #150
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Telephone: (281) 480-1211
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BY: */s/ Tamara R. Gaines*
TAMARA R. GAINES
State Bar No. 24089152
Attorney for Plaintiff

Per Curiam

SUPREME COURT OF THE UNITED STATES

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN, PUERTO RICO *v.* YALI ACEVEDO FELICIANO, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

No. 18–921. Decided February 24, 2020

PER CURIAM.

In 1979, the Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan created a trust to administer a pension plan for employees of Catholic schools, aptly named the Pension Plan for Employees of Catholic Schools Trust (Trust). Among the participating schools were Perpetuo Socorro Academy, San Ignacio de Loyola Academy, and San Jose Academy.

In 2016, active and retired employees of the academies filed complaints in the Puerto Rico Court of First Instance alleging that the Trust had terminated the plan, eliminating the employees' pension benefits. The employees named as a defendant the "Roman Catholic and Apostolic Church of Puerto Rico," which the employees claimed was a legal entity with supervisory authority over all Catholic institutions in Puerto Rico. App. to Pet. for Cert. 58–59, 152–153 (emphasis deleted).[1] The employees also named as defendants the Archdiocese of San Juan, the Superintendent, the three academies, and the Trust.

The Court of First Instance, in an order affirmed by the Puerto Rico Court of Appeals, denied a preliminary injunction requiring the payment of benefits, but the Puerto Rico Supreme Court reversed. The Supreme Court concluded

[1] The petition for a writ of certiorari includes certified translations of the opinions, originally in Spanish, of the Puerto Rico courts. We cite the certified translations.

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that "if the Trust did not have the necessary funds to meet its obligations, the participating employers would be obligated to pay." *Id.*, at 3. But, because "there was a dispute as to which defendants in the case had legal personalities," the Supreme Court remanded the case to the Court of First Instance to "determine who would be responsible for continuing paying the pensions, pursuant to the preliminary injunction." *Ibid.*

The Court of First Instance determined that the "Roman Catholic and Apostolic Church in Puerto Rico" was the only defendant with separate legal personhood. *Id.*, at 239–240. The Court held such personhood existed by virtue of the Treaty of Paris of 1898, through which Spain ceded Puerto Rico to the United States. The Court found that the Archdiocese of San Juan, the Superintendent, and the academies each constituted a "division or dependency" of the Church, because those entities were not separately incorporated. *Ibid.*

As a result, the Court of First Instance ordered the "Roman Catholic and Apostolic Church in Puerto Rico" to make payments to the employees in accordance with the pension plan. *Id.*, at 241. Ten days later, the Court issued a second order requiring the Church to deposit $4.7 million in a court account within 24 hours. The next day, the Court issued a third order, requiring the sheriff to "seize assets and moneys of . . . the Holy Roman Catholic and Apostolic Church, and any of its dependencies, that are located in Puerto Rico." *Id.*, at 223.

The Puerto Rico Court of Appeals reversed. It held that the "Roman Catholic and Apostolic Church in Puerto Rico" was a "legally nonexistent entity." *Id.*, at 136. But, the Court concluded, the Archdiocese of San Juan and the Perpetuo Socorro Academy could be ordered to make contribution payments. The Archdiocese enjoyed separate legal personhood as the effective successor to the Roman Catholic Church in Puerto Rico, the entity recognized by the Treaty

of Paris. Perpetuo Socorro Academy likewise constituted a separate legal person because it had been incorporated in accordance with Puerto Rico law, even though its registration was not active in 2016, when the orders were issued. The two remaining academies, San Ignacio Academy and San Jose Academy, were part of the same legal entity as "their respective parishes," but the employees could not obtain relief against the parishes because they had not been named as defendants. *Id.*, at 167.

The Puerto Rico Supreme Court again reversed, reinstating the preliminary injunction issued by the trial court. The Supreme Court first held that the "relationship between Spain, the Catholic Church, and Puerto Rico is *sui generis*, given the particularities of its development and historical context." *Id.*, at 5. The Court explained that the Treaty of Paris recognized the "legal personality" of "the Catholic Church" in Puerto Rico. *Id.*, at 6.

The Puerto Rico Supreme Court further observed that "each entity created that operates separately and with a certain degree of autonomy from the Catholic Church is in reality a fragment of only one entity that possesses legal personality," at least where the entities have not "independently submitt[ed] to an ordinary incorporation process." *Id.*, at 13–14 (emphasis deleted). "In other words," the Court continued, "the entities created as a result of any internal configuration of the Catholic Church," such as the Archdiocese of San Juan, "are not automatically equivalent to the formation of entities with different and separate legal personalities in the field of Civil Law," but "are merely indivisible fragments of the legal personality that the Catholic Church has." *Ibid.* And Perpetuo Socorro Academy was not a registered corporation in 2016, when the plan was terminated. *Id.*, at 16. Therefore, under the Court's reasoning, the only defendant with separate legal personality, and the only entity that could be ordered to pay the employees' pensions, was the "Roman Catholic and Apostolic Church

in Puerto Rico." *Id.*, at 2.

Two Justices dissented. Justice Rodríguez Rodríguez criticized the majority for "inappropriately interfer[ing] with the operation of the Catholic Church by imposing on it a legal personality that it does not hold in the field of private law." *Id.*, at 29. In her view, the Archdiocese of San Juan and the five other dioceses in Puerto Rico each has its own "independent legal personality." *Id.*, at 52. Justice Colón Pérez likewise determined that, under Puerto Rico law, "each Diocese and the Archdiocese ha[s its] own legal personality" and that no separate "legal personality" called the "Roman Catholic and Apostolic Church" exists. *Id.*, at 80, 90 (emphasis deleted).

The Archdiocese petitioned this Court for a writ of certiorari. The Archdiocese argues that the Free Exercise and Establishment Clauses of the First Amendment require courts to defer to "the Church's own views on how the Church is structured." Pet. for Cert. 1. Thus, in this case, the courts must follow the Church's lead in recognizing the separate legal personalities of each diocese and parish in Puerto Rico. The Archdiocese claims that the Puerto Rico Supreme Court decision violated the "religious autonomy doctrine," which provides: "[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Id.*, at 20 (quoting *Watson* v. *Jones*, 13 Wall. 679, 727 (1872)).

We called for the Solicitor General's views on the petition. 588 U. S. ___ (2019). The Solicitor General argues that we need not "reach [the Archdiocese's] broader theory in order to properly dispose of this case," because a different error warrants vacatur and remand. Brief for United States as *Amicus Curiae* on Pet. for Cert. 13–14 (Brief for United States). Instead of citing "any neutral rule of Puerto Rico

law governing corporations, incorporated or unincorporated associations, veil-piercing, joint-and-several liability, or vicarious liability," the Puerto Rico Supreme Court "relied on a special presumption—seemingly applicable only to the Catholic Church . . . —that all Catholic entities on the Island are 'merely indivisible fragments of the legal personality that the Catholic Church has.'" *Id.*, at 9 (quoting App. to Pet. for Cert. 14). The Solicitor General contends that the Puerto Rico Supreme Court thus violated the fundamental tenet of the Free Exercise Clause that a government may not "single out an individual religious denomination or religious belief for discriminatory treatment." Brief for United States 8 (citing *Murphy* v. *Collier*, 587 U. S. ___ (2019); *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 524–525 (1993); *Fowler* v. *Rhode Island*, 345 U. S. 67, 69 (1953)).

We do not reach either argument because we find that the Court of First Instance lacked jurisdiction to issue the payment and seizure orders. On February 6, 2018, after the Supreme Court of Puerto Rico remanded the case to the Court of First Instance to determine the appropriate parties to the preliminary injunction, the Archdiocese removed the case to the United States District Court for the District of Puerto Rico. Notice of Removal in *Acevedo-Feliciano* v. *Holy Catholic Church*, No. 3:18–cv–01060. The Archdiocese argued that the Trust had filed for Chapter 11 bankruptcy and that this litigation was sufficiently related to the bankruptcy to give rise to federal jurisdiction. *Id.*, at 5–6 (citing 28 U. S. C. §§1334(b), 1452). The Bankruptcy Court dismissed the Trust's bankruptcy proceeding on March 13, 2018. Opinion and Order Granting Motions to Dismiss in *In re Catholic Schools Employee Pension Trust*, No. 18–00108. The Puerto Rico Court of First Instance issued the relevant payment and seizure orders on March 16, March 26, and March 27. App. to Pet. for Cert. 224, 227, 241. But the District Court did not remand the case to the Puerto

Rico Court of First Instance until nearly five months later, on August 20, 2018. Order Granting Motion to Remand in *Acevedo-Feliciano* v. *Archdiocese of San Juan*, No. 3:18–cv–01060.

Once a notice of removal is filed, "the State court shall proceed no further unless and until the case is remanded." 28 U. S. C. §1446(d).[2] The state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not . . . simply erroneous, but absolutely void." *Kern* v. *Huidekoper*, 103 U. S. 485, 493 (1881). "Every order thereafter made in that court [is] *coram non judice*," meaning "not before a judge." *Steamship Co.* v. *Tugman*, 106 U. S. 118, 122 (1882); Black's Law Dictionary 426 (11th ed. 2019). See also 14C C. Wright, A. Miller, E. Cooper, J. Steinman, & M. Kane, Federal Practice and Procedure §3736, pp. 727–729 (2018).

The Court of First Instance issued its payment and seizure orders after the proceeding was removed to federal district court, but before the federal court remanded the proceeding back to the Puerto Rico court. At that time, the Court of First Instance had no jurisdiction over the proceeding. The orders are therefore void.

We note two possible rejoinders. First, the Puerto Rico Court of Appeals suggested that the Archdiocese consented to the Court of First Instance's jurisdiction by filing motions in that court after removal. But we have held that a removing party's right to a federal forum becomes "fixed" upon filing of a notice of removal, and that if the removing party's "right to removal [is] ignored by the State court," the party may "make defence in that tribunal in every mode recog-

[2] "The laws of the United States relating to . . . removal of causes . . . as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the United States District Court for the District of Puerto Rico and the courts of Puerto Rico." 48 U. S. C. §864.

nized by the laws of the State, without forfeiting or impairing, in the slightest degree, its right to a trial" in federal court. *Steamship Co.*, 106 U. S., at 122–123. Such actions do not "restore[ ]" "the jurisdiction of the State court." *Id.*, at 122. So, too, the Archdiocese's motions did not restore jurisdiction to the Court of First Instance.

Second, the District Court remanded the case to the Court of First Instance by way of a *nunc pro tunc* judgment stating that the order "shall be effective as of March 13, 2018," the date that the Trust's bankruptcy proceeding was dismissed. *Nunc Pro Tunc* Judgt. in No. 3:18–cv–01060 (Aug. 8, 2018).

Federal courts may issue *nunc pro tunc* orders, or "now for then" orders, Black's Law Dictionary, at 1287, to "reflect[ ] the reality" of what has already occurred, *Missouri* v. *Jenkins*, 495 U. S. 33, 49 (1990). "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court." *Cuebas y Arredondo* v. *Cuebas y Arredondo*, 223 U. S. 376, 390 (1912).

Put colorfully, "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States* v. *Gillespie*, 666 F. Supp. 1137, 1139 (ND Ill. 1987). Put plainly, the court "cannot make the record what it is not." *Jenkins*, 495 U. S., at 49.

Nothing occurred in the District Court case on March 13, 2018. See Order Granting Motion to Remand in No. 3:18–cv–01060 (noting, on August 20, 2018, that the motion is "hereby" granted and ordering judgment "accordingly"). March 13 was when the Bankruptcy Court dismissed the Trust's proceeding and thus the day that the Archdiocese's argument for federal jurisdiction lost its persuasive force. Even so, the case remained in federal court until that court, on August 20, reached a decision about the motion to remand that was pending before it. The Court of First Instance's actions in the interim, including the payment and

seizure orders, are void.

The Solicitor General agrees that the Court of First Instance lacked jurisdiction but argues that this defect does not prevent us from addressing additional errors, including those asserted under the Free Exercise Clause. That may be correct, given that the Puerto Rico courts do not exercise Article III jurisdiction. But we think the preferable course at this point is to remand the case to the Puerto Rico courts to consider how to proceed in light of the jurisdictional defect we have identified.

The petition for certiorari and the motions for leave to file briefs *amici curiae* are granted, the judgment of the Puerto Rico Supreme Court is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN, PUERTO RICO, PETITIONER *v.* YALI ACEVEDO FELICIANO, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

No. 18–921. Decided February 24, 2020

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring.

I join the opinion of the Court but write separately to note other important issues that may arise on remand.

First, the decision of the Supreme Court of Puerto Rico is based on an erroneous interpretation of this Court's old decision in *Municipality of Ponce* v. *Roman Catholic Apostolic Church in Porto Rico*, 210 U. S. 296, 323–324 (1908). The main question decided by the Supreme Court of Puerto Rico below was whether the Catholic Church in Puerto Rico is a single entity for civil law purposes or whether any subdivisions, such as dioceses or parishes, or affiliated entities, such as schools and trusts, are separate entities for those purposes. The Supreme Court of Puerto Rico held that *Ponce* decided that in Puerto Rico the Catholic Church is a single entity for purposes of civil liability. That was incorrect.

The question in *Ponce* was whether the Catholic Church or the municipality of Ponce held title to two churches that had been built and maintained during the Spanish colonial era using both private and public funds. The Church sued to establish that it had title, and the municipality argued that the Church could not bring suit because it was not a juridical person. 210 U. S., at 308–309. After considering the Treaty of Paris, Dec. 10, 1898, 30 Stat. 1754, which ended the Spanish-American War, this Court simply held that the Church was a juridical person and thus could bring

suit. See 210 U. S., at 310–311, 323–324. This Court did not hold that the Church is a single entity for purposes of civil liability, but that is how the Supreme Court of Puerto Rico interpreted the decision. That court quoted *Ponce*'s statement that "'[t]he Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded.'" App. to Pet. for Cert. 7 (quoting 210 U. S., at 323–324). Immediately thereafter it wrote: "Despite this, the intermediate appellate court understood that each division of the Catholic Church in Puerto Rico equals the creation of a different and separate legal entity and did not recognize that legal personality of the Catholic Church." App. to Pet. for Cert. 8.

This is an incorrect interpretation of this Court's decision, and it would have been appropriate for us to reverse the decision below on that ground were it not for the jurisdictional issue that the Court addresses. The assets that may be reached by civil plaintiffs based on claims regarding conduct by entities and individuals affiliated in some way with the Catholic Church (or any other religious body) is a difficult and important issue, but at least one thing is clear: This Court's old decision in *Ponce* did not address that question.

Second, as the Solicitor General notes, the Free Exercise Clause of the First Amendment at a minimum demands that all jurisdictions use neutral rules in determining whether particular entities that are associated in some way with a religious body may be held responsible for debts incurred by other associated entities. See Brief for United States as *Amicus Curiae* on Pet. for Cert. 8–13.

Beyond this lurk more difficult questions, including (1) the degree to which the First Amendment permits civil authorities to question a religious body's own understanding of its structure and the relationship between associated entities and (2) whether, and if so to what degree, the First

Amendment places limits on rules on civil liability that seriously threaten the right of Americans to the free exercise of religion as members of a religious body.

The Court does not reach these issues because of our jurisdictional holding. But they are questions that may well merit our review.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Brook Forest Community Association, Inc.

Plaintiff,

v.

Erich W. Norris.

Defendant (*pro se*).

NOTICE OF REMOVAL TO FEDERAL COURT TO ADDRESS NASCENT ISSUES

August 3, 2020

From

COUNTY CIVIL COURT OF LAW 3

HARRIS COUNTY, TEXAS

CAUSE NO. 1113192

To the Honorable Court:

Defendant, Erich W. Norris, henceforth "I" file this *Notice of Removal* pursuant to 28 U.S.C. §1331, §1343, §1441, §1443, and §1446 to address two (2) **nascent** federal questions of law. This Court has original jurisdiction over this litigation because said

issues arise under the U.S. Constitution and laws of the United States concerning civil rights violations. The filing criteria for removal to this Court have been satisfied.

To wit, Plaintiff, Brook Forest Community Association, Inc., henceforth "BFCA," **failed** to timely comply with State court Judge LaShawn A. William's ORDER FOR TRIAL SETTTING VIA VIDEO CONFERENCE signed June 19, 2020, which ordered BFCA to "immediately" send notification of said order to me by certified mail (See Order, Exhibit A2). BFCA delayed said notification (mailing) for eleven (11) days (See USPS Mail Tracking Log, Exhibit B2). BFCA eventually complied with said order on June 30, 2020 (See Exhibit B2). Said notification contained important information and internet links to protocol and procedure of the scheduled digital (Zoom) trial. There is no excuse for their negligent eleven (11) day delay.

Pursuant to 28 U.S.C. §1446(b), I first *ascertained* **nascent** issues were removable to federal court on July 9, 2020 after receipt of said mailing. July 3, 2020 is the actual date for calculating the thirty (30) day deadline though, because I received official USPS notice of said mailing on July 3, 2020 (See Exhibit B2). Pursuant to 28 U.S.C. §1446(b) and Fed. R. Civ. P. §6, August 3, 2020 is the last day to timely file this *Notice of Removal.*

I. FAILURE TO PROVIDE A JURY TRIAL (CIVIL RIGHT) PURSUANT TO TEXAS CONSTITUTION, ARTICLE V, SECTION 10

TEX. CONST. ART. V, SEC. 10 states: "In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury...."

I officially requested a jury trial in Harris County Civil Court at Law No. 3 on January 14, 2019 in my document *Defendant's Response to Plaintiff's Original Petition* (1st paragraph) and this needs to be emphasized (See Exhibit C2).

The Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 guarantee equal protection of the right to a jury trial. The State of Texas is violating said laws by attempting to force me into a non-jury trial.

Removal to federal court is permitted, pursuant to 28 U.S.C. §1443(1), when "a right under any law... providing for the equal civil rights" is denied in a court of Texas. Thus, removal is permitted because the State of Texas has "denied" my right to a jury trial.

Pursuant to 28 U.S.C. §1343(a)(3), this Court "shall have original jurisdiction of any civil action... to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens ..." Thus, this Court has original jurisdiction to redress the State of Texas' "deprivation" of my right to a jury trial.

Pursuant to 28 U.S. Code §1343(a)(4) and 42 U.S. Code §1983, this Court "shall have original jurisdiction of any civil action... to secure equitable or other relief under any Act of Congress providing for the protection of civil rights..." Thus, this Court has original jurisdiction to "secure equitable" relief and mandate the State of Texas adhere to the Texas Constitution and schedule my case for a jury trial.

II. DIGITAL (ZOOM) TRIALS ARE INFERIOR TO JURY TRIALS AND RAISE FEDERAL CONSITUTIONAL QUESTIONS OF LAW

There is bona fide data and evidence indicating digital (Zoom) trials may render a **disparate** judgment or verdict compared to jury trials. Experts at Northwestern University School of Law discovered that digital (closed circuit) video hearings render disparate judgments when compared to in-person hearings (emphasis added) (See Expert Analysis, Exhibit D2). The alarming data indicated a sixty-five percent (65%) (average) disparate monetary judgment outcome.

The outcome of this lawsuit could result in the foreclosure of my home (emphasis added) and monetary loss. Any potentially disparate treatment is unacceptable and unconstitutional. The Fourteenth Amendment to the United States Constitution, as well as 42 U.S.C. §1983, guarantee equal protection of the right to a jury trial. The State of Texas has violated the U.S. Constitution and federal law by subjecting me to an *inferior*, *clearly questionable*, and *unequal* form of trial.

There is no U.S. Supreme Court precedent squarely on point addressing nascent digital (Zoom) trial court procedures. The federal questions of law they raise concerning 'equal protection' require adjudication in federal court jurisdiction.

III. INJUNCTIVE RELIEF

I officially requested a jury trial for my case in State court on January 14, 2019. Injunctive relief is requested against the State of Texas for its attempt to schedule a non-jury trial. The State of Texas refusal to allow my case to be heard by a jury violates

Texas Constitution, Article V, Section 10. I'm requesting this Court bar any further attempt by the State of Texas to deny my right to a jury trial in State court.

IV. INVOKING THE RIGHT TO A JURY TRIAL

Pursuant to the Seventh Amendment of the United States Constitution and Fed. R. Civ. P. §38 I am invoking my right to a jury trial in federal court to address said nascent issues.

Further pleadings, arguments, and exhibits will be submitted pursuant to the Federal Rules of Civil Procedure. I am currently seeking counsel for legal representation. Much of the state record is already on file in federal court because of earlier federal issues in this case. To comply with federal record filing requirements of state court documents I have only provided nascent ones to avoid redundancy.

Respectfully submitted,

Erich W. Norris

Erich W. Norris (*pro se*)
15803 Clearcrest Dr.
Houston, TX 77059
E-mail: erich@erichnorris.com

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of Defendant's *Notice Of Removal To Federal Court To Address Nascent Issues* will be sent to Harris County Civil Court At Law No. 3 and to Plaintiff's attorney at the addresses below on August 3, 2020 via USPS certified mail pursuant to 28 U.S.C. §1446(d) and Rule 5(b) of the Federal Rules of Civil Procedure.

Harris County Civil Courthouse
201 Caroline - 5th Floor
Houston TX 77002-1900

Attorney for Plaintiff:
Gregg & Gregg, P.C.
16055 Space Center Blvd.
Suite 150
Houston, TX 77062

Erich W. Norris

Erich W. Norris (*pro se*)