

22-5965

No: _____

IN THE

FILED SUPREME COURT OF THE UNITED STATES

OCT 21 2022

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SUPREME COURT, U.S.A.

Michael C. Smart - PETITIONER

ORIGINAL

vs.

PRIME MORTGAGE & ESCROW, LLC - RESPONDENT (S)

ON PETITION FOR WRIT OF CERTIORARI TO

STATE OF TEXAS, TEXAS JUDICIAL BRANCH
EIGHTH COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

Michael C. Smart

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22 Oct 2022

DATE

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QUESTION PRESENTED

Texas Rule of Civil Procedure 91a (Rule 91a) Dismissal of Baseless Cause of Action, became effective March 1, 2013, and suppose to be similar to Federal Rule of Civil Procedure 12(b)(6); however, there are some key differences including, but not limited to, is the Texas Rule 91a violates the Supremacy Clause and is preempted because it is contrary to U.S. Supreme Court precedent, in *Swierkiewicz v. Sorema N.A.* - 534 U.S. 506, 122 S. Ct. 992 (2002).

Rule 91a2 - Contents of Motion, "a motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reason the cause of action has not basis in law, no basis in fact, or both".

The question presented is:

The petitioner's federal cause of action, 42 USC 1981 and 1982, was dismissed under Rule 91a, for failing to plead specific facts. Was the petitioner's federal rights violated when, *Świerkiewicz v. Sorema N.A.* - 534 U.S. 506, 122 S. Ct. 992 (2002), "a plaintiff does not need to plead specific facts to establish a *prima facie* case in a complaint to survive a motion to dismiss for failure to state a claim"?

LIST OF PARTIES

Petitioner:

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Respondent:

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RELATED CASES

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CONSTITUTIONAL PROVISIONS INVOLVED

19. The Supremacy Clause of the U.S. Constitution mandates that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const., art. VI, cl. 2.

OPINION BELOW

20. The decision by the State of Texas, Eighth Court of Appeal denying Petitioner Smart direct appeal is in **Appendix B**. The State of Texas, Supreme Court denying Petitioner Smart petition for review on August 9, 2022 is in **Appendix A**.

JURISDICTION

21. Petitioner's petition for review to the Texas Supreme Court was denied on August 9, 2022. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Texas Supreme Court's denial of petition for review.

STATEMENT OF THE CASE

22. In January 2021, the petitioner a black disabled combat veteran, and client of Prime Mortgage, LLC. The petitioner posted on social media that Prime Mortgage, LLC did not report the client's monthly mortgage payments to the three credit bureaus, and not reporting to the three credit bureaus interferes with people's ability to go out and get a lower interest rate from a more legitimate mortgage company, and folks are stuck paying higher interest rates to Prime Mortgage, LLC. Ramsey Esper, Lender and Owner of Prime Mortgage, LLC, four days after the petitioner's social media posting, issued the petitioner a default notice followed by other similar notices, including a foreclosure notice, for the petitioner being one month behind on monthly mortgage payment. Therefore, the petitioner paid to cure the default to take the petitioner's house out of default and foreclosure. Additionally, the petitioner did not receive any notices until March 12, 2021, when somebody interested in purchasing the petitioner home from the petitioner before the auction left a copy of the foreclosure notice in the petitioner's mailbox, which the foreclosure auction was scheduled for April 4, 2021. Basically, if the petitioner would have not gotten the foreclosure notice on March 12,

2021, the petitioner home would have been sold from up under the petitioner.

23. In April 2021, the petitioner filed suit in State Court against Ramsey Esper and others, raising state and federal claims. The petitioner dropped state claims for federal claims, 42 USC §§ 1981 and 1982. Ramsey Esper's representatives filed two separate motions under the Texas Rule of Civil Procedure, Rule 91a (Rule 91a), and Dismissal of Baseless Cause of Act. The Judge doing the first hearing denied the first Rule 91a motion hearing finding that the petitioner had a cause of action under 42 USC §§ 1981 and 1982, because of intentional racial discrimination, and but for the petitioner's race being black, the petitioner would not have been issued default notice for being one month behind, when 180 + white client were 7 to 10 months behind on their monthly mortgage payment, which the petitioner race was the reason Ramsey Esper denied the enforcement of contract with all the benefits and privilege, terms and condition of contractual relationship that the + 180 white people enjoyed in the contractual relationship with Ramsey Esper.

24. The Judge a week later, in the second Rule 91a motion hearing under the same cause of action 42 USC §§ 1981 and 1982, decided granted the 91a motion to dismiss when the petitioner failed to articulate how the plaintiff knew the identity of white clients based on their names from a list that the plaintiff had seen on a desk while paying mortgage payment at Prime Mortgage, LLC two years prior. Therefore, when the Judge dismissed the lawsuit the Judge reversed the previous decision that denied the first 91a motion decision to grant the first 91a motion to allow recovery of costs and fees under Rule 91a7.

25. When the Judge issued an order requiring the petitioner to pay fees under Texas 91.7, without providing or issuing a decision on the reason for dismissal of the lawsuit. The petitioner filed an appeal to the State of Texas, Eighth Court of Appeal.

26. The plaintiff filed an appeal to the State of Texa, Eighth Court of Appeal (“Eighth Court of Appeal) informing the Eighth Court of Appeal that the Judge did not issue a decision for dismissing federal cause of actions, 42 USC §§ 1981 and 1982 as baseless, and petitioner was entitled to valid

reason why federal cause of action was dismissed, citing *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990). **See Appendix B**

27. The petitioner filed a petition for review to the Texas Supreme Court, and the Texas Supreme Court denied the petition for review. **See Appendix A**

REASON FOR GRANTING THE WRIT

28. The U.S. Supreme Court should grant the writ, not only because of the Supremacy Clause and this Supreme Court precedent in, in *Swierkiewicz v. Sorema N.A.* - 534 U.S. 506, 122 S. Ct. 992 (2002).

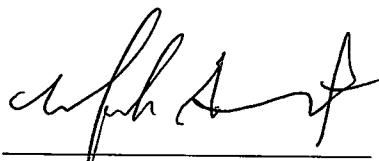
29. The Texas Rule 91a has allowed respondent attorneys to circumvent and ignore the petitioner federal clause of action claims, 42 USC §§ 1981 and 1982. When the respondent's attorney could not offer a reason or any excuse for the petitioner, a black client was issued default notices for being one month behind on mortgage payment, and the respondent has never disputed 180 + white clients who were 7 to 10 months behind on mortgage payment were never issued default notices. Texas Rule 91a allowed the respondent-attorney to ignore the cause of action and attack the complaint,

and have the federal clause of action dismissed. This may be one of the reasons for the U.S. Supreme Court precedent in *Swierkiewicz v. Sorema N.A.* - 534 U.S. 506, 122 S. Ct. 992 (2002), "a plaintiff does not need to plead specific facts that establish a *prima facie* case in a complaint to survive a motion to dismiss for failing to state a claim."

30. The Supreme Court should also grant writ because Rule 91a not only chills people's speech, but also frightens people from pursuing a wrong because of a fear of cost and attorney fee. The Judge in this case went back and reversed the decision made in the first Rule 91a motion hearing to allow the attorney representatives to recover costs and fees under 91a7.

CONCLUSION

31. This Supreme Court should remand back to the State of Texas, to process clauses of action under 42 USC §§ 1981 and 1982.



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