

No. _____

ORIGINAL

23-7285
IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAR 20 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SABRINA GIBSON,

Plaintiff-Petitioner,

vs.

THOMAS F. ROUPAS, JR. and PARR INVESTMENTS, LLC,

Defendants-Respondents.

On Petition for Certification to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by:

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March 18 2024.

(i)

QUESTION(S) / ISSUES PRESENTED

- i. Whether it was manifest error and significantly prejudicial for the District Court to apply a heightened standard under Federal Rule of Civil Procedure 12(b).

(ii)

LIST OF PARTIES

Petitioner submits that all parties appear in the caption of the case on the cover page, and are listed below for the Court's reference:

Petitioner: SABRINA GIBSON ("Petitioner")

Respondents: THOMAS F. ROUPAS, JR. ("Roupas")

PARR INVESTMENTS, LLC ("Parr")

(collectively referred to as "Respondents")

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<i>Grupo Dataflux v. Atlas Glob. Grp., L.P.</i> , 541 U.S. 567	
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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

The opinion of the highest appellate court to review the merits appears at Appendix A to the petition and is found at *Sabrina Gibson v. Thomas F. Roupas, Jr., et al*, No. 23-1259, dated October 23, 2023. United States Court of Appeals for the Fourth Circuit.

JURISDICTION

The date on which the highest state court decided the merits of the case was October 23, 2023. A copy of that decision appears in Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), which provides: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

CONCISE STATEMENT OF THE CASE

On July 5, 2022, Petitioner filed her Complaint for Damages, alleging multiple acts of harassment, intimidation, stalking, and other unlawful and unconscionable conduct on the part of Appellees against her. Appellees were duly served with the

Complaint and subsequently retained Counsel, who filed their respective appearances. On or about November 10, 2022, Appellees filed their respective motion(s) to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1), (6), or in the alternative, motion for a more definite statement. Petitioner opposed said motion(s). The District Court rendered its decision on February 9, 2023, which dismissed all claims. Timely notice of appeal was filed. The Fourth Circuit Court of Appeals, after full briefing on the merits, rendered its Judgment of Affirmance on October 23, 2023.

PETITIONER'S PRO SE STATUS

Indigent and unrepresented litigants have a right to fair and impartial review of their claims and defenses. An important issue of fairness in our judiciary is raised in this case, in the course of which Petitioner has been a victim of grave injustice and has been forced to represent herself as an indigent, pro se litigant.

Petitioner thus respectfully requests that the statements of her case be given due and equitable consideration, with reasonable lenience, with respect to precedence set by existing case law, to include but not be limited to, the standards of perfection and defense against dismissal. See *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 595, 30 L.Ed.2d 652 (1972) and *Conley v. Gibson*, 355 U.S. 41 at 48 (1957).

REASONS FOR GRANTING THE PETITION

It was manifest error and significantly prejudicial for the Court of Appeals to Affirm the Order of Dismissal.

The District Court clearly deviated from the well-established standard of review when presented with Appellees' respective 12(b)(1) and (6) motions to dismiss.

Rule 12(b)(1)

Under Rule 12(b)(1), a party may seek dismissal based on the court's "lack of subject-matter jurisdiction." Fed. R. Civ. P. 12(b)(1). Subject matter jurisdiction is a threshold issue that relates to the court's power to hear a case and must be decided before a determination on the merits of the case. *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 479-80 (4th Cir. 2005). A motion under Rule 12(b)(1) raises the question of "whether [the plaintiff] has a right to be in the district court at all and whether the court has the power to hear and dispose of [the] claim." *Holloway v. Pagan River Dockside Seafood, Inc.*, 669 F.3d 448, 452 (4th Cir. 2012).

Rule 12(b)(6)

A motion to dismiss filed pursuant to Rule 12(b)(6) "challenges the legal sufficiency of a complaint." *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009). To survive, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). In assessing a claim's plausibility, a court must draw all reasonable inferences in the plaintiff's favor. *Vitol*,

S.A. v. Primerose Shipping Co., 708 F.3d 527, 539 (4th Cir. 2013). (emphasis added).

Here, Appellees argued that the District Court lacked subject matter jurisdiction over the case because, according to Appellees, (1) Petitioner Gibson failed to properly allege diversity jurisdiction and the credible jurisdictional damages amount; and (2) that Petitioner Gibson improperly requested that this Court review a final state-court decision. Both of these claims were without merit.

It is well established that diversity is determined at the time of the commencement of the action. *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570-71 (2004) ("This time-of-filing rule is hornbook law (quite literally) taught to first-year law students. . . ." (footnote omitted)). Petitioner, at the time of the commencement of this action, was a resident of Virginia. Defendants were citizens of North Carolina. "Plaintiff and Defendants are from different states and therefore diverse." See *Navy Fed. Credit Union*, 972 F.3d at 352. Diversity jurisdiction thus existed, as the District Court found.

As to the amount in controversy, "The black letter rule 'has long been to decide what the amount in controversy is from the complaint itself, unless it appears or is in some way shown that the amount stated in the complaint is not claimed in good faith.'" *Choice Hotels Intern., Inc. v. Shiv Hosp/ L.L.C.*, 491 F.3d 171, 176 (4th Cir. 2007); see also *Burdick v. Teal*, No. 1:02CV727, 2003 WL 1937118, at *1 (M.D.N.C. Apr. 22, 2003) ("[W]here the amount in controversy is clearly and unambiguously set forth in good faith on the face of the complaint, that amount should control."). Only if, "from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed. . . [then] the suit will be dismissed." *St. Paul*

Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938). Here, Petitioner clearly claimed at least \$75,000.00 in damages, and Appellees proffered nothing to rebut this claim, and thus the amount-in-controversy requirement was met for the purposes of subject matter jurisdiction. Thus, dismissal under Rule 12(b)(1) was not warranted.

Contrary to the lower court's contentions, Petitioner proffered sufficient facts to support denial of a 12(b)(6) motion to dismiss. As is Appellees' demonstrated history, their respective motion(s) to dismiss were replete with legal jargon all put forth in an effort to escape accountability for the wrongful conduct they chose to undertake. This case is not just about the 2020 Order from the Guilford County District Court. As adequately alleged in the Complaint, multiple acts of intimidation, harassment, and other unlawful conduct occurred after the 2020 Order from the Guilford County District Court. As adequately alleged, the claims brought forth could not be barred under the doctrine of res judicata, since they pertain to events which occurred after the entry of the Guilford County Order. Specifically, the Complaint alleges that the harassment only heightened after the dismissal of the Guilford County case. Further, due to the harassment, Petitioner was forced to stay at various hotels in an attempt to be free from her harassers, who continuously found ways to harass Petitioner. Petitioner had received numerous calls at odd hours, such as at 3:00 a.m., wherein Appellees and/or their associates would threaten to either post, upload, or reveal Petitioner's text messages, photos, emails, phone records and even private family matters if Petitioner reported the stalking and surveilling behavior. Clearly these events happened after the adjudication of the state court case and therefore were not subject to dismissal here under the Rooker-Feldman Doctrine, as

the lower courts erroneously found.

The lower courts erred by not adhering to the well-established rule that the Complaint is to be construed liberally. "A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case." *Hall-El v. United States*, No. 1:11CV1037, 2013 WL 1346621, *2 (M.D.N.C. Apr. 3, 2013) (citing *Erickson*, 551 U.S. at 94, 127 S.Ct. 2197). Pleadings "should not be scrutinized with such technical nicety that a meritorious claim should be defeated." *Gordon v. Leake*, 574 F.2d 1147, 1151 (4th Cir. 1978).

Accordingly, the petition for Writ of Certiorari should be granted as it has been demonstrated that the lower courts failed to adhere to the applicable standard of review of a dismissal motion under Rule 12(b).

CONCLUSION

For the reasons herein, the petition for writ of certiorari should be granted.

Dated: March 18, 2024.

Respectfully submitted,



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