NO. 17-1014

In the Supreme Court of the United States

ALBERT LUTTERODT,

Petitioner,

–v–

EMILY LANE OWNERS ASSOCIATION, INC., ENVISION REALTY GROUP, LLC and JACKSON POTTER,

Respondents.

On Petition for Writ of Certiorari to the Texas Fifth Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Petitioner can meet the jurisdictional requirements for a writ of certiorari where his underlying claims against non-diverse defendants were decided and affirmed in Texas state courts solely on the basis of Texas law, and where his pleadings raised no federal question to invoke jurisdiction.

CORPORATE DISCLOSURE STATEMENT

The Respondent filing this Brief in Opposition, Emily Lane Owners Association, Inc., is not a publicly held corporation; and, no parent company or publicly held corporation owns more than 10 percent of its stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i
CORPORATE DISCLOSURE STATEMENT ii
TABLE OF AUTHORITIES v
JURISDICTION 1
REASONS FOR DENYING THE PETITION 2
NATURE OF THE CASE AND COURSE OF PROCEEDINGS 3
A. Trial Court Proceedings 4
B. Proceedings in the Dallas Court of Appeals 6
C. Lutterodt's Petition for Review to the Texas Supreme Court 6
D. Lutterodt's Bankruptcy Filing 7
E. Lutterodt's Removal to Federal Court 7
F. Denial of Review by the Texas Supreme Court 8
G. The United States Supreme Court 9
FACTUAL MISSTATEMENTS MADE IN THE PETITION 9
ARGUMENTS FOR DENYING THE PETITION 13
I. THE COURT LACKS FEDERAL QUESTION JURISDICTION OVER LUTTERODT'S CASE 13
II. THE PETITION RAISES NO ISSUE THAT WARRANTS A WRIT OF CERTIORARI 18
CONCLUSION 20

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

Order of the Supreme Court of Texas Denying Petition for Review (October 20, 2017) 1a

Memorandum Adopting Report and Recommendation of United States Magistrate Judge (April 27, 2017) 3a

Report and Recommendation of United States Magistrate Judge (March 31, 2017) 11a

Order of the Court of Appeals of Texas Denying Motion for Rehearing (October 5, 2016) 25a

Order of the Court of Appeals of Texas Denying Motion for En Banc Reconsideration (November 15, 2016) 26a

Memorandum Opinion of the Court of Appeals of Texas (June 16, 2016) 27a

Order of the District Court Denying Plaintiff's Motion for New Trial (September 16, 2014) 40a

Plaintiff's Amended Petition to Compel Inspection of Books and Records and Request Relief (August 6, 2013) 41a

Defendants' Answer to Plaintiff's Original Petition (November 20, 2012) 50a

Original Petition to Compel Inspection of Books Records (October 24, 2012) 62a

TABLE OF AUTHORITIES

Page

CASES

Bernhard v. Whitney Nat'l Bank,
523 F.3d 546 (5th Cir. 2008)..... 14, 18

Burton v. Cravey, 759 S.W.2d 160
(Tex. App.—Houston [1st Dist.] 1998,
no writ)..... 3

Caterpillar v. Williams,
482 U.S. 386 (1987)..... 14

Constant v. Webre,
No. 07-3042, 2008 WL 4330251
(E.D. La. Sept. 15, 2008) 14

Huddleston v. Dwyer,
322 U.S. 232 (1944)..... 18

Huie v. DeShazo,
922 S.W.2d 920 (Tex. 1996) 3

In re Lipsky,
460 S.W.3d 579 (Tex. 2015) 13

Merrell Dow Pharm. Inc. v. Thompson,
478 U.S. 804 (1986) 14

United States v. Johnston,
268 U.S. 220 (1925) 18

Vaden v. Discovery Bank,
556 U.S. 49 (2009) 14

Wharf (Holdings) Ltd. v. United Int'l Holdings,
Inc., 532 U.S. 588 (2001)..... 18

Willy v. Coastal Corp.,
855 F.2d 1160 (5th Cir. 1988) 14

TABLE OF AUTHORITIES—Continued

Page

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I 14, 16

U.S. Const. Art. III, § 2 16

STATUTES

28 U.S.C. § 1257(a) 1, 9

28 U.S.C. § 1331 ..... 13, 16

28 U.S.C. § 1332 13

28 U.S.C. § 1441(b) 17

Texas Property Code 5, 13

JUDICIAL RULES

Sup. Ct. R. 10 19

Sup. Ct. R. 10(a) 19

Sup. Ct. R. 10(b) 19

Sup. Ct. R. 10(c) 19

Sup. Ct. R. 14 ..... passim

Sup. Ct. R. 15 9

Tex. R. Civ. P. 13 15

WEBSITES

www.pacer.gov 7, 8

www.txcourts.gov/5thcoa 6

www.txcourts.gov/supreme 8



JURISDICTION

This Court lacks federal jurisdiction over Petitioner's claims. Petitioner asserts jurisdiction under 28 U.S.C. § 1257(a).[1] However the criteria for limited review of state court judgments are not met in this case. Moreover, Petitioner has failed to comply with this Court's Rule 14, which states that a Petition for Writ of Certiorari shall contain:

> (g) A concise statement of the case setting out the facts material to consideration of the questions presented and also containing the following:
>
> (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with

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[1] 28 U.S.C.§ 1257(a) reads: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

> specific reference to the places in the record where the matter appears (*e.g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

Sup. Ct. R. 14(g)(i) (emphasis added).

Petitioner argues, but cites no specific portion of the trial court record or the rulings on appeal to demonstrate that he timely and properly raised and preserved any federal question at each stage of the state court proceedings.



REASONS FOR DENYING THE PETITION

1. No federal question was presented below, despite the number of questions and issues now raised by Petitioner.[2] A lower federal court previously ruled that no federal jurisdiction exists over the Petitioner's claims.

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[2] The petition contains ten "Questions Presented" plus twenty-seven additional issues identified as "Constitutional Provisions." Many of these are exceedingly vague, and both the Questions and Constitutional Provisions relate to claimed erroneous factual findings, improper procedures, or misapplication of the law by the Texas trial, appeal, and supreme courts.

2. Petitioner failed to carry his burden to present a compelling reason for this Court to review his case.

NATURE OF THE CASE AND COURSE OF PROCEEDINGS

The case began with Petitioner Albert Lutterodt's ("Lutterodt") mandamus action to compel the production of books and records from his homeowners association, Emily Lane Owners Association, Inc. ("Association"), the Association's property management company, Envision Realty Group, LLC ("Envision"), and the property manager, Jackson Potter ("Potter"). (R.App.41a, 62a).[3,4] At one point, Lutterodt owned several properties at Emily Lane, a condominium community located in Dallas County, Texas.[5] In 2008, he began requesting financial documents from Potter, Envision, and the Association, claiming he was concerned about how the Association's money was being spent. (R.App.28a). Lutterodt regularly attended annual meetings, and served as Association treasurer and president in 2010 and 2011, respectively. *Id.* During his tenure, Lutterodt had access to many of the Association's documents.

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[3] A writ of mandamus is a proper Texas procedure to enforce the right to inspect records of a corporation. *See, Burton v. Cravey*, 759 S.W.2d 160, 161 (Tex. App.—Houston [1st Dist.] 1998, no writ), *disapproved on other grounds by Huie v. DeShazo*, 922 S.W.2d 920, 924 (Tex. 1996).

[4] The notation "R.App." refers to the Respondent's Appendix.

[5] Lutterodt owned these properties through a separate entity, Maal Ventures. (RR Vol. 3, 9:4-22).

Id. Lutterodt nevertheless continued to seek additional records, directing his repeated oral and written requests to the board and Potter. *Id.*

While on the board, Lutterodt frequently engaged in emotional outbursts and rants, disrupted meetings, and made it very difficult to conduct board business when things did not go his way. (RR Vol. 3, 59:5-10, 74:21-23; RR Vol. 4, 119:19-20, 120:10-23).[6] The relationship between Lutterodt and the board members/ Potter deteriorated, particularly after Lutterodt lost an election and his seat on the board in January 2012. (R.App.29a). Lutterodt believed that the election had been "rigged" by Potter and one of the board members and refused to acknowledge that he was no longer on the board. *Id.* Still claiming to seek records, Lutterodt filed suit against the Association, Potter, and Envision.

A. Trial Court Proceedings

Lutterodt filed his original state court action in the 134th Judicial District Court of Dallas County, Texas on October 24, 2012.[7] (R.App.62a). By his plead-

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[6] The notation "RR Vol. 3" refers to Volume 3 of the Reporter's Record in the appeal of the Texas district court case to the Dallas Court of Appeals and the subsequent petition for review filed in the Texas Supreme Court. The volume number is followed by the page and line numbers in the format: XX:A-Z, or a descriptive exhibit number that references a trial exhibit (*e.g.,* Pl. Ex. X or EL Ex. Y).

[7] Lutterodt had previously filed an action in the Dallas County justice courts against Potter, Envision, and several individual board members, but that case was dismissed for lack of jurisdiction.

ings, Lutterodt sought the following: (1) the issuance of a writ of mandamus, and (2) an award of attorneys' fees under the Texas Property Code. (R.App.64a-65a). All defendants answered, and Envision and Potter (but not the Association) filed a counterclaim for defamation. (R.App.52a-53a).

On August 6, 2013, Lutterodt amended his original petition to add a claim for breach of fiduciary duty as to Potter and several board members who were sued individually but never served. (R.App.41a). This pleading, Lutterodt's live pleading at the time of trial, sought (1) issuance of a writ of mandamus; (2) an award against Potter and the board members for their alleged breaches of fiduciary duty; and (3) an award of attorneys' fees under the Texas Property Code. (R.App.44a-47a).

After a three-day trial, the jury rendered a verdict in favor of the Association, Envision, and Potter. Following a series of amended and corrected judgments, the Dallas County District Court entered its final judgment.[8] Lutterodt filed a motion for new trial that was denied. (R.App.40a). He then timely filed a notice of appeal to the Fifth District Court of Appeals in Dallas, Texas.

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[8] The Appendix to Lutterodt's Petition for Writ of Certiorari does not accurately reflect the final judgment entered by the Dallas County District Court, which consists of the July 21, 2014 Amended Judgment in favor of the Association and a September 14, 2014 Corrected Final Judgment in favor of Envision and Potter. The Dallas Court of Appeals' opinion explains which documents constitute the final judgment in the underlying case (R.App.29a-30a, n.1).

B. Proceedings in the Dallas Court of Appeals

The Dallas Court of Appeals issued a memorandum opinion and judgment (dated June 16, 2016) affirming the trial court's judgment. (R.App.27a). Lutterodt filed a motion for rehearing, which was denied on October 5, 2016. (R.App.25a). Lutterodt's subsequent motion for *en banc* reconsideration was likewise denied on November 15, 2016. (R.App.26a).[9]

C. Lutterodt's Petition for Review to the Texas Supreme Court

On December 29, 2016, Lutterodt filed a motion to extend time to file a petition for review with the Texas Supreme Court. The Court granted the motion and extended Lutterodt's deadline for filing from December 30, 2016 to January 30, 2017.[10]

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[9] The opinion of the Texas Court of Appeals affirming the trial court's judgment was not reported, but can be found at No. 05-14-01329-CV, 2016 WL 3381919, *Lutterodt v. Emily Lane Owners Ass'n., Inc.* (Tex. App.—Dallas June 16, 2016, pet. denied). The Texas Court of Appeals opinion denying rehearing (dated October 5, 2016) and the opinion denying *en banc* reconsideration (dated November 15, 2016) may be accessed on the court's web page (www.txcourts.gov/5thcoa).

[10] This deadline was subsequently extended because Lutterodt filed a bankruptcy action and then removed the case to the United States District Court in Sherman, Texas (discussed above). Lutterodt also requested two further extensions of time from the Texas Supreme Court because (1) he needed time to search for new counsel, and (2) he encountered technical issues with filing. Lutterodt finally filed his Petition for Review on September 7, 2017.

D. Lutterodt's Bankruptcy Filing

On January 17, 2017, while his petition for review to the Texas Supreme Court was still pending, Lutterodt filed a Voluntary Petition for Individuals Filing Bankruptcy (Chapter 13) in the Northern District of Texas, Dallas Division.[11]

E. Lutterodt's Removal to Federal Court

On January 26, 2017, Lutterodt removed his pending appeal at the Texas Supreme Court to the United States District Court for the Eastern District of Texas, Sherman Division.[12] The Association and Potter and Envision moved to remand because the removal was procedurally defective and the federal district court lacked subject matter jurisdiction.

The Magistrate Judge agreed, finding that (1) Lutterodt, as a plaintiff/counter-defendant could not remove a case to federal court; (2) Lutterodt's removal was untimely, coming more than four years after commencement and service of the original action; (3)

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[11] Case No. 17-30208-hdh13. The Bankruptcy Court subsequently entered an order granting Potter's motion for relief from stay as to the pending Texas Supreme Court appeal on July 6, 2017. (Doc. 56) (accessible at www.pacer.gov).

[12] The removed case was styled, Civil Action No. 4:17-CV-00058-ALM-CAN; *Albert Lutterodt v. Jackson Potter, Envision Realty Group, LLC and Emily Lane Owners Association*; In the United States District Court for the Eastern District of Texas, Sherman Division. In response to the notice of removal, the Texas Supreme Court entered a February 7, 2017 order abating Lutterodt's appeal of the trial court's judgment and the appeals court's affirmance of that judgment until such time as federal court issued its final decision.

Lutterodt's attempt to remove was, at its heart, an attempted collateral attack on the state court judgment; (4) there was no subject matter jurisdiction based on diversity because Plaintiff and at least one Defendant were both Texas citizens; (5) federal jurisdiction could not be predicated on Lutterodt's defense to Potter's and Envision's counterclaim for defamation and all of the asserted causes of action arose under Texas law; and (6) the bankruptcy stay did not preclude or prohibit remand of the case to the Texas Supreme Court. (R.App.15a-23a).[13]

The District Judge adopted the Magistrate's report by order issued on April 27, 2017. (R.App.3a). The case was remanded to the Texas Supreme Court.[14]

F. Denial of Review by the Texas Supreme Court

On October 20, 2017, the Texas Supreme Court denied review of the case.[15] (R.App.1a).

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[13] The two documents cited in this Brief may be accessed at www.pacer.gov, and they also appear in the Appendix: (1) Report and Recommendation of United States Magistrate Judge granting Defendants' Motions to Remand (Doc. 40, filed March 31, 2017), and (2) Memorandum Adopting Report and Recommendation of United States Magistrate Judge (Doc. 47, filed April 27, 2017).

[14] Lutterodt never appealed the Sherman District Court's order to the Fifth Circuit. Presumably, he understood the federal courts lacked the ability to hear his case.

[15] The Texas Supreme Court's order denying the petition for review was not reported, but can be accessed on the Court's web page (www.txcourts.gov/supreme), No. 16-1036; *Albert Lutterodt v. Emily Lane Owners Ass'n, Inc., Envision Realty Grp., LLC and Jackson Potter*; In the Supreme Court of Texas.

G. The United States Supreme Court

Lutterodt presents ten separate questions for review by the Court. The three questions relevant to the Association concern interpretation of Texas contracts or the application of Texas procedural or statutory law. The Texas Supreme Court is the final arbiter of such issues, and despite Lutterodt's assertions to the contrary, this Court does not have jurisdiction to review such findings by a Texas court. The remaining seven questions relate to Lutterodt's defenses to the defamation counterclaim filed by Potter and Envision. As noted above, a prior ruling by a federal district court informed Lutterodt that no federal question exists in his case.

FACTUAL MISSTATEMENTS MADE IN THE PETITION

Lutterodt's petition contains numerous factual misstatements, mischaracterizations, and misrepresentations. Supreme Court Rule 15 obligates the Association to point out perceived misstatements made in the petition. The following is a summary of material misstatements contained in the petition that relate specifically to the Association and the Association's brief responses thereto:

- "The United States Supreme Court has jurisdiction due to 28 U.S.C. § 1257(a)." (False).
- The final judgment consists of Amended Judgment in Favor of Emily Lane Owners Association, Inc. (dated July 21, 2014) and Final Judg-

ment (as to Jackson Potter and Envision Realty Group, LLC, dated July 21, 2014). (Inaccurate: the Dallas Court of Appeals specifically determined that the July 21, 2014 judgment as to the Association and the September 15, 2014 corrected judgment as to Potter and Envision are, when read together, the final judgment.).

- Trial counsel for the Association was Valarie J. Eissler. (Inaccurate: trial counsel was Laura Beckman Hedge. Lutterodt correctly identifies Ms. Hedge as trial counsel on p. 20 of his petition when he quotes from her opening argument.).
- Trial Court Judge Dale Tillery erred by failing to properly instruct the jury on multiple issues. (False—but waived even if accurate).
- "Judge Dale Tillery made several promises he never kept—including promising to limine in on several other issues." (Unclear because no factual basis identified by Lutterodt).
- "[T]he 'declaration' of the Association which contained the specific language that 'the books and records of the HOA must be produced upon demand' was and has been deliberately and intentionally . . . and perhaps fraudulently omitted and not included in the records." (False: the Declaration was a part of the trial court record and the record on appeal. In any event, it is Lutterodt's responsibility to ensure that a record of which he wishes to complain on appeal is complete.).

- "Also note, the 2 binders of records that the HOA produced before they were sued were not presented—they were excluded, along with the 10 boxes of exhibit records." (This statement is vague and fails to identify where Lutterodt contends these records were excluded from. If Lutterodt had concerns about the admission or exclusion of evidence, it was his burden to preserve that error.).
- Lutterodt "was provided very little vendor information and contractor information, and no bank statements or invoices." (Argumentative rather than factual, and Lutterodt cites no support in the record as required by Rule 14.).[16]
- "It remains unclear how much more specific Petitioner needs to be, when he has requested ANY and ALL records in possession of Envision with regard to the HOA." (Argumentative rather than factual, and Lutterodt demonstrated at trial that virtually nothing had satisfied his multiple requests for documents.).[17]
- Few Association records have been produced. (False).[18]

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[16] In fact, the record is to the contrary and shows that Lutterodt received multiple productions of records. *See, e.g.*, RR Vol 3, 70:15-18; RR Supp. Vol. 2, Pl. Ex. 14; RR Vol. 3, 75:10-76:8; RR Supp. Vol. 2, EL Ex. 8; RR Vol. 3, 144:22-145:4; 146:21-147:23; 253:13-16; 254:19-23; 321:2-24; RR Vol. 4, 23:12-24:5; RR vol. 3, 81:13-18; RR Vol. 3, 85:23-86:1.

[17] RR Vol. 3, 236:3-13; 266:4-6; 267:17-20.

[18] *See* fn.16, above.

- "Respondents created several unlawful obstacles to inspection of the documents." (False. Lutterodt's position at trial was that he was entitled to obtain records on his own terms and whenever he wanted them. Other witnesses testified Lutterodt was never denied access to records.).[19]
- "[T]he only limitation on the Owners' right to examine the books and records was for it to be done at a 'reasonable time.'" (Misleading: Lutterodt testified at trial that he expected the Association to produce the records at his convenience and was entitled to see whatever records he requested, any time he demanded.).[20]
- Multiple documents were missing from the nine boxes of documents produced by the Association for inspection by Lutterodt and his CPA. (Lutterodt cites no support in the record as required by Rule 14.).
- "It is clear that Petitioner became very unpopular with his Board of Directors and with Respondents Envision and Jackson Potter over the course of several years' worth of requests for the same documents that have YET to be provided." (Argumentative rather than factual, and Lutterodt cites no support in the record as required by Rule 14.).

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[19] RR Vol. 3, 146:21-147:23; 231: 15-25; 232:8-15; 233:9-18; 253:13-16; 254:19-23; 271:21-23; 278:5-17; 321:2-24; RR Vol. 4, 23:12-24:12; 37:7-19; 101:5-9; 113:13-17; 114:22-25; 125:25-126:3.

[20] (RR Vol. 3, 231:15-25; 232:8-15; 233:9-18).

- "Due to Petitioner's unpopularity, Respondents have maintained from the outset that Petitioner's Writ of Mandamus was filed for the improper purpose of harassment." (Argumentative rather than factual, and Lutterodt cites no support in the record as required by Rule 14.).



ARGUMENTS FOR DENYING THE PETITION

I. THE COURT LACKS FEDERAL QUESTION JURISDICTION OVER LUTTERODT'S CASE

Lutterodt's complaints as to the Association are governed entirely by Texas law. They concern his state procedural right to compel inspection of the Association's records via a writ of mandamus and to obtain attorneys' fees under the Texas Property Code. *Id.* These are not, by any measure, issues of important federal concern.[21]

A federal court may exercise jurisdiction over a case where the requirements of either diversity jurisdiction and/or federal question jurisdiction are met. *See* 28 U.S.C. §§ 1331, 1332. As was recognized by the Magistrate Judge in Lutterodt's removal action, diversity jurisdiction does not exist in this matter

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[21] Lutterodt couches the defamation action as implicating federal rights, but like Lutterodt's claims against the Association, Potter's and Envision's defamation counter-claims against Lutterodt arise out of state law. *See In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (listing elements of a defamation claim).

because Lutterodt and at least one Defendant are Texas citizens. (R.App.19a). There is likewise no federal question jurisdiction because when a plaintiff's pleadings set forth only state law claims (as is true with Lutterodt's pleadings), a federal court has jurisdiction only if "(1) the state law claims necessarily raise a federal issue or (2) the state law claims are completely preempted by federal law." *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551 (5th Cir. 2008). Neither element is satisfied in connection with Lutterodt's claims against the Association.

Not even Lutterodt's allegation that his First Amendment rights have been violated in response to Potter's and Envision's defamation claims constitutes a federal question in this case. A defense which raises a federal question and/or that is based on federal law does not establish subject matter jurisdiction. *See, e.g.*, *Caterpillar v. Williams*, 482 U.S. 386, 393 (1987); *Constant v. Webre*, No. 07-3042, 2008 WL 4330251 (E.D. La. Sept. 15, 2008) (citing *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986); *Willy v. Coastal Corp.*, 855 F.2d 1160, 1164 (5th Cir. 1988); *Vaden v. Discovery Bank*, 556 U.S. 49, 60 (2009) ("[A] suit 'arises under' federal law 'only when the plaintiff's statement of his own cause of actions shows that it is based upon [federal law]' . . . .Federal jurisdiction cannot be predicated on an actual or anticipated defense . . . .Nor can federal jurisdiction rest upon an actual or anticipated counterclaim.").

The Magistrate Judge, in ruling to remand Lutterodt's action to the Texas courts, described why the federal district court lacked jurisdiction to hear the case:

> Here, Plaintiff's Original and Amended Petitions seek relief related to Plaintiff's request to inspect the Association's books and records, including a request for a writ of mandamus, claim for breach of fiduciary duty, and attorneys['] fees . . . .Defendants Potter and Envision Realty filed a counterclaim for violation of TRCP 13, for defamation (libel and slander), and for injunctive relief. . . . Each of the asserted causes of action—including the defamation counterclaim against Plaintiff—arise under Texas law: there are no claims that arise under federal law or that depend on the resolution of a question of federal law in any of the operative pleadings filed before the state trial court. Moreover, the presence of a 'federal question' in a defensive argument cannot transform the action into one arising under federal law. Therefore, the Court finds no federal question exists. Accordingly, the Court lacks subject matter jurisdiction over this case, and remand is appropriate for this additional reason.

(R.App.20a-21a).

In response to Lutterodt's zealous objections to the Magistrate's Report and Recommendation, District Judge Amos Mazzant explained exactly why Lutterodt is wrong in his assertions that a federal court can hear virtually any case arising under the U. S. Constitution and laws of the United States:[22]

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[22] Lutterodt's objection to the Magistrate's Report and Recommendation stated, in relevant part:

As previously stated, this suit was originally filed in state court, and after trial judgment was granted in favor of Defendants. Following the judgment of the state court, Plaintiff pursued appeal to the court of appeals, and after denial by the court of appeals, Plaintiff made filings with the Texas Supreme Court and also separately instituted a Chapter 13 Bankruptcy proceeding. Only after filing a request for extension of time to file his Petition for Review with the Texas Supreme Court did Plaintiff seek removal to federal court.

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(1) Counter-Plaintiffs FRAUDENTLY presented materials and information that are FAKE, FALSE, AND DECEPTIVE. (2) Counter-Plaintiffs lack sufficiency and standing to request or invoke the Court's authority to act or Remand on any basis. (3) Counter-Defendant has the right to exercise his Constitutional First Amendment Rights and Subject-Matter Jurisdiction privileges. Counter-Plaintiffs' remand demand is frivolous. (4) Under Article III of the U.S. Constitution, Federal Courts can hear "ALL cases, in law and equity arising under the Constitution and laws of the United States." U.S. Const. Art. III, Sec. 2. The US Supreme Court has interpreted this clause broadly, finding that a Federal Court can hear ANY case in which there is a Federal ingredient.[ ] (5) For Federal Question Jurisdiction to exist, the requirements of 28 U.S.C. § 1331 must also exist. This case meets the requirements. (6) Counter-Plaintiff is NOT a "TRUE-DEFENDANT"—because he originally sued the Counter-Defendant on a claim that has NOTHING to do with the Original Petition. (7) Federal law completely preempts State law in this case. (8) Under local rules, service of a Complaint is NOT required. The date runs from when the complaint is made available through filing.

(R.App.6a-7a).

In the present case, the Court concludes that the Magistrate Judge's findings and conclusions are correct. Plaintiff's Objections are baseless and without statutory or legal support. The Magistrate Judge correctly found that Plaintiff submitted himself to the jurisdiction of the state court when he filed his Petition in Dallas County in 2012. The assertion by Defendants of a counterclaim for defamation did not alter this fact. Simply put, Plaintiff is not entitled to and cannot invoke the federal removal statute because he is not a 'defendant' as set forth in the statute. 28 U.S.C. § 1441(b). Moreover, Plaintiff's removal was untimely; he removed the case more than four years after the commencement of the original action and no amended pleading filed in the interim made the case removable. The Court also lacks subject matter jurisdiction over this litigation because (1) the parties admittedly are not diverse and the amount in controversy does not meet the jurisdictional limit, and (2) there is no federal question. Plaintiff is incorrect in his blanket assertion that a federal court can hear 'ALL Cases, in law and equity, arising under the Constitution and laws or the United States' and/or 'ANY case in which there is a Federal ingredient.' When a plaintiff's pleadings set forth only state law claims, a federal district court has federal question jurisdiction to entertain the action only if '(1) the state law claims necessarily raise a federal issue or (2) the state

> law claims are completely preempted by federal law.' *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 543 [sic], 551 (5th Cir. 2008).[23] The presence of a perceived 'federal question' in a defensive argument—such as Plaintiff's defense to Defendants' defamation claim here—cannot transform the action into one arising under federal law and/or otherwise confer jurisdiction on the Court. Accordingly, the Court overrules Plaintiff's Objections. This case should be remanded to the court from which it was removed—the Texas Supreme Court. (R.App.7a-9a).

II. THE PETITION RAISES NO ISSUE THAT WARRANTS A WRIT OF CERTIORARI

Lutterodt's petition contains nothing that resembles a certiorari-worthy issue. Misapplication of state law is not a sufficient reason for this Court to grant certiorari. *See, e.g.*, *Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944) ("[O]rdinarily we accept and therefore do not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts."); *Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*, 532 U.S. 588, 596 (2001) ("[W]e ordinarily will not consider such a state-law issue, and we decline to do so here."). Nor does this Court grant certiorari "to review evidence and discuss specific facts," as Lutterodt has requested. *United States v. Johnston*, 268 U.S. 220, 227 (1925).

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[23] *Bernhard v. Whitney Nat'l Bank* appears at 523 F.3d 546.

This Court's Rule 10 admonishes that a petition for a writ of certiorari will be granted only for compelling reasons. No such reasons exist in this case, and there is nothing exceptional about the case. Specifically,

- No United States court of appeals has entered a decision that conflicts with another United States court of appeals on the same important matter or decided an important federal question in a way that conflicts with a decision by a state court of last resort. Sup. Ct. R. 10(a).
- No state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. Sup. Ct. R. 10(b).
- No state court or United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10(c).

Rather, all of Lutterodt's questions arise from garden-variety state law claims that are the province of the Texas courts. There are no rulings that merit review by this Court.

CONCLUSION

For the foregoing reasons, Petitioner Albert Lutterodt' petition for writ of certiorari should be denied.

Respectfully submitted,

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