No. 17-5417

In The

Supreme Court of the United States

DORA L. ADKINS,

Petitioner,

v.

PUBLIC STORAGE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.1, Petitioner Dora L. Adkins respectfully petitions for rehearing of the Court's December 4, 2017 decision.

ARGUMENT

I. PETITIONER ADKINS PLEAD FACTUAL CONTENT IN BOTH THE COMPLAINT AND THE PROPOSED AMENDED COMPLAINTS.

In general, whether a complaint sufficiently states a claim upon which relief can be granted is governed by the Supreme Court's plausibility pleading framework. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Both Iqbal and Twombly, however, pertain to whether a complaint contains sufficient factual matter to proceed beyond dismissal. *See Iqbal*, 556 U.S. at 678 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."); *Twombly*, 550 U.S. at 570 ("[W]e do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face."). There are no facts to support Petitioner's Complaint failed to state a plausible claim for relief. To begin with, the "Final Order," stated the following without a reference page number to the Complaint "that an unknown person left an unknown chemical in

or near her storage locker." The "Final Order" stated Ms. Adkins' Complaint failed to state a plausible claim for relief:

> "Drawing all reasonable inferences in Plaintiff's favor; Plaintiff's Complaint fails to state a plausible claim for relief. Plaintiff's allegations that an unknown person left an unknown chemical in or near her storage locker, and that the fumes from the chemical caused her to suffer two migraine headaches, are at best conclusory and unsupported. Moreover, the Court is unable to discern any contractual provision that Defendant would have breached had events transpired as Plaintiff claims. Plaintiff similarly fails to plead facts that would give rise to a common law duty on Defendant's part to support a claim for negligence. Plaintiff's proposed amended complaint, with its allegations of intentional poisoning, compounds rather than cures this deficiency." (Pet. Appendix B, App. 4).

The Complaint provided no facts that presented the following: "an unknown person left an unknown chemical in or near her storage locker." The allegation of intentional poisoning was added by Ms. Adkins in the Proposed Amended Complaint because it takes time for Ms. Adkins to provide all of the facts surrounding a complaint involving alleged attempted premeditated murder of Ms. Adkins.

II. ABUSE OF DISCRETION AFFECTED SUBSTANTIAL RIGHTS OF ADKINS WHEN NONE OF ADKINS' MOTIONS TO AMEND THE COMPLAINT WERE HEARD BY THE COURT.

Ms. Adkins in the case of *Dora L. Adkins v. Public Storage* was never allowed her day in court for a case filed by Ms. Adkins as a civil case but the pleadings are geared more towards a criminal case. Ms. Adkins was sprayed inside the rented storage unit with toxic chemicals like a farmer sprays his crop with pesticides which clung to Ms. Adkins' skin, hair, clothing, and got inside Ms. Adkins' car and contaminated all of Ms. Adkins' belongings inside the storage unit. The worst harm to Ms. Adkins was to her lungs from the inhalation of chemicals and also the chemicals entered into Ms. Adkins' blood stream which causes permanent damage. Had Ms. Adkins had her day in Court, Public Storage would not be confused as to which supplement and/or proposed amended complaint were filed with the District Court. Nor would the District Court be confused about which pleadings were submitted in the Complaint.

In a civilized society, this Honorable Court should not allow Public Storage to commit an alleged crime of attempted premediated murder of Ms. Adkins with the use of toxic chemicals; especially, that abuse of discretion by the District Court exists.

III. THE UNITED STATES DISTRICT COURT OF VIRGINIA – ALEXANDRIA DIVISION ERRED IN ITS "FINAL ORDER" THAT GRANTED RESPONDENT'S MOTION TO DISMISS AND DISMISSED ADKINS' COMPLAINT WITH PREJUDICE; AND DENIED ADKIKNS' MOTIONS TO AMEND THE COMPLAINT.

A Motion to Dismiss the complaint for failure to state a claim is reviewed as *de novo.* The court accepts all allegations of the complaint as true and construes the facts in the light most favorable to the plaintiff. *Harry v. Marchant*, 237 F.3d 1315, 1317 (11th Cir. 2001). Motion for leave to amend the complaint is reviewed on abuse of discretion standard. *Technical Resource Servs. v. Dornier Medical Sys.*, 134 F.3d 1458, 1464 (11th Cir. 2000). Public Storage's Motion to Dismiss the Complaint for Failure to State a Claim was granted without leave to amend, which presents a question of whether the District Court abused its discretion. Courts are encouraged to grant leave liberally in furtherance of justice, and declining to grant leave is reviewed for Abuse of Discretion. The United States Supreme Court has advised that a plaintiff should be allowed the opportunity to test a claim on the merits if the facts and circumstances underlying the claim suggest that it may be a proper subject of relief. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). Consequently, the District Court's determination granting the Motion to Dismiss for Failure to State a Claim must be reviewed *de novo*, but the underlying question

of leave to amend must be reviewed for Abuse of Discretion.

IV. THE FOURTH CIRCUIT ERRED WHEN IT DID NOT REMAND AND REVERSE FOR FURTHER PROCEEDINGS THE DECISION OF THE UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF VIRGINIA – ALEXANDRIA DIVISION; ITS "FINAL ORDER" DENIED ALL OF ADKINS' MOTIONS TO REQUEST LEAVE FROM THE COURT TO AMEND THE COMPLAINT.

Abuse of Discretion existed in the United States District Court for the Eastern District of Virginia – Alexandria Division's "Final Order," because all of the Motions to Amend were ruled on ALL together in the "Final Order." The District Court erred by not allowing Ms. Adkins her day in Court to be heard on the non-dispositive Motions that were properly noticed before the Court. The District Court abused its discretion by not granting Ms. Adkins time to amend in a case claiming extreme emotional distress and intentional poisoning in the proposed amended complaint.

"A trial judge's ruling on a motion to amend a complaint will be reviewed on appeal for an abuse of discretion. *See N. Am. Specialty Ins. Co. v. Bergeron Land Dev., Inc.*, 745 So.2d 359 (Fla. 4th DCA 1999); *Life Gen. Sec. Ins. Co. v. Horal*, 667 So.2d 967, 969 (Fla. 4th DCA 1996). Florida Rule of Civil Procedure 1.190(a), which governs amendments prior to trial, provides in pertinent part that leave of court to permit amendments of

pleadings 'shall be given freely when justice so requires.'" The public policy of Florida favors liberality in permitting amendments to pleadings so that the resolution of disputes will be on their merits.

Under the rule, a test of prejudice is the primary consideration in determining whether a motion for leave to amend should be granted, and leave to amend should not be denied unless the privilege has been abused or the pleading is clearly not amendable. *New River Yachting Center v. Bacchiocchi*, 407 So.2d 607, 609 (Fla. 4th DCA 1981), rev. denied, 415 So.2d 1360 (Fla.1982).

Leavitt v. Garson, 528 So.2d 108, 110 (Fla. 4th DCA 1988). Amendments should be liberally granted, particularly when the motion is made prior to the hearing on a motion for summary judgment. *See Soucy v. Casper*, 658 So.2d 1017, 1018 (Fla. 4th DCA 1995) (citing *Smith v. Barrett*, 564 So.2d 582 (Fla. 4th DCA 1990), and *Leavitt v. Garson*).

According to the landmark case on this topic, *Foman v. Davis*, 371 U.S. 178, the Court may deny a motion to amend for the following reasons: (1) undue delay, (2) bad faith or dilatory motive by the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party, (5) and futility of the amendment. *See also Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330-331 (1971). Subsequent federal cases, in multiple circuits, regarding amendments to pleadings have identified another factor for consideration,

judicial economy. *Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1163 (5th Cir. 1982) ("In keeping with the purposes of the rule, the court should consider judicial economy and whether the amendments would lead to expeditious disposition of the merits of the litigation"); *Perrian v. O'Grady*, 958 F.2d 192, 195 (7th Cir. 1992) (justification for denying leave includes prejudice to judicial system and public's interest in prompt resolution of disputes, even if there is no prejudice to the opposing party).

REASONS FOR GRANTING THE PETITION

The Petition for Rehearing should be granted because the Lower Court abused its discretion when it did not allow Ms. Adkins time to amend the Complaint and to provide additional factual allegations supported by the evidence. Ms. Adkins suffered *9* of *12 GOD's Divine Interventions* due to chemical poisoning and the facts are not always made readily available to Ms. Adkins in the Initial Complaint and/or a First Amended Complaint. What would be wrong for the Courts to allow a Second Amended Complaint and/or a Third Amended Complaint?

I. ABUSE OF THE AMENDMENT PROCESS

No abuse of the amendment process has been shown in the case of *Dora L. Adkins v. Public Storage*. Here, we do not have a virtual endless stream of amendments, all failing to state even a basic cause of

action, such as occurred in *Kohn v. City of Miami Beach*, 611 So.2d 538 (Fla. 3d DCA 1992). There, the plaintiff failed in four attempts to cure defects in his complaint. The Third District stated:

"While there is no magical number of amendments which are allowed, we have previously observed that with amendments beyond the third attempt, dismissal with prejudice is generally not an abuse of discretion. There is simply a point in litigation when defendants are entitled to be relieved from the time, effort, energy, and expense of defending themselves against seemingly vexatious claims. Id. at 539 (citations omitted)." In the case of *Dora L. Adkins v. Public Storage*, Plaintiff attempted to cure the deficiencies as pointed out by Public Storage without hearings on the non-dispositive Motions to Amend.

II. PREJUDICE TO PUBLIC STORAGE

There would have been no prejudice to Public Storage because Ms. Adkins did not get her day in court to properly amend the Complaint. Determining whether to grant leave to amend a pleading is an exercise in the Court's discretion. *State Distributors, Inc. v. Glenmore Distilleries Co.*, 738 F.2d 405, 416 (10th Cir. 1984); *Foman v. Davis*, 371 U.S. 178, 182 (1962) (granting or denying the "opportunity to amend is within the discretion of the District Court"). In making its decision, the Court must consider that the purpose of granting leave to amend is twofold: (1) to facilitate a decision on the merits, and (2) to ensure that all issues related to

a specific transaction or occurrence are before the Court. *Filmtec Corp. v. Hydranautics*, 67 F.3d 931, 935 (Fed. Cir. 1995); *Moore, Federal Practice* (3d ed. 2009), § 15.14[1]; *see also Minter v. Prime Equip. Co.*, 451 F.3d 1196 (10th Cir. 2006).

III. SUFFICIENT FACTS AND EVIDENCE THAT EXISTS IN THE PROPOSED AMENDED COMPLAINT

Ms. Adkins if provided her day in the District Court will cure and perfect the Proposed Amended Complaint of all deficiencies for which relief can be granted for a cause of action for Breach of Contract, Gross Negligence, Intentional Infliction of Emotional Distress and Punitive Damages. Ms. Adkins will be able to present to the District Court the contractual provision that Public Storage breached when it decided to commit a horrific crime against Ms. Adkins by spraying her with a pungent chemical inside one of its storage units paid for by Ms. Adkins. The Proposed Amended Complaint will show how Public Storage watched Ms. Adkins' comings and goings on its monitor/ cameras on the property to cause her death by spraying chemicals directly on Ms. Adkins.

IV. REQUEST FOR GVR

Would the case of *Dora L. Adkins v. Public Storage*, qualify for a GVR; whereby, the Court grants certiorari on rehearing, vacate the decision below and remand this case back to the United States District Court for

the Eastern District of Virginia – Alexandria Division; especially, that the attorneys are not licensed to practice in the United States Supreme Court nor did they respond to the Waiver form that was sent by Ms. Adkins?

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests this Honorable Court to grant her petition for rehearing.

DATED: December 29, 2017

Respectfully submitted,

DORA L. ADKINS

CERTIFICATE OF PETITIONER

Pursuant to Rule 44.2, Petitioner certified that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Petitioner certified that this Petition is presented in good faith and not for delay.

Respectfully submitted,

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