

No.

IN THE
Supreme Court of the United States

DORA L. ADKINS,
Petitioner,

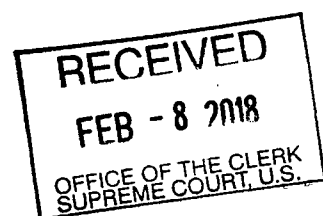
v.

HBL, LLC,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Dora L. Adkins
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QUESTIONS PRESENTED

- 1) Whether the United States Court of Appeals for the Fourth Circuit erred when it found no reversible error to the non-final Orders for abused of discretion to amend the complaint.
- 2) Whether the United States Court of Appeals for the Fourth Circuit erred when it did not remand for further proceedings a case dismissed *without prejudice* that could have been saved by an amended complaint.
- 3) Whether the United States Court of Appeals for the Fourth Circuit erred when it found no reversible error that the District Court did lack subject matter jurisdiction over Adkins' claims.
- 4) Whether the United States Court of Appeals for the Fourth Circuit further erred when it denied Petitioner's Petition for Rehearing and Rehearing En Banc for abuse of discretion to amend the complaint.
- 5) Whether the District Court violated Adkins' rights when Adkins was "Ordered" **not** to file any further pleadings in the case or that she would face sanctions.

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PARTIES TO THE PROCEEDING

The parties in the United States Court of Appeals for the Fourth Circuit were HBL, LLC and Dora L. Adkins, pro se.

TABLE OF AUTHORITIES

Cases:

Murray and Massey v. Consecos, Incorporated and Consecos Services, L.L.C., (7th Cir. 2006).....	5
Penteco Corp. Ltd. Partnership–1985A v. Union Gas Sys., Inc., 929 F.2d 1519, 1521 (10th Cir. 1991).....	5

Statutes and Regulations:

Rules 13.1 and 29.2

28 U.S.C. § 1257(a)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DORA L. ADKINS,

Petitioner,

v.

HBL, LLC,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner, Dora L. Adkins, respectfully asks that a writ of certiorari issue to review the judgment of dismissal filed on November 30, 2017 and the denial filed on January 2, 2018 by the United States Court of Appeals for the Fourth Circuit.

PER CURIAM BELOW

The Per Curiam of the United States Court of Appeals for the Fourth Circuit, was filed on November 30, 2017 and is attached as Pet. Appendix A, pg. 18. The United States Court of Appeals for the Fourth Circuit's order denied the petition for rehearing and rehearing en banc is attached as Pet. Appendix B, pg. 19. There was no transcript and/or written statement of facts of the trial court's order that ORDERED the following: The Order," Dated July 18, 2017 dismissed the Complaint *without prejudice* for not satisfying §1332 requirement for subject matter jurisdiction and Adkins was ordered that Leave from the Court to file a Second Amended Complaint would be denied and to not to file any further pleadings in the case is attached as Pet. Appendix C, pg. 20.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the United States Court of Appeals for the Fourth Circuit for which petitioner seeks review was issued on November 30, 2017. The United States Court of Appeals for the Fourth Circuit denied petitioner's petition for rehearing and rehearing en banc is attached as Pet. Appendix B, pg. 19. This petition is filed within 90 days of the United States Court of Appeals for the Fourth Circuit's denial of rehearing and rehearing en banc, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions and Statutes involved may be applicable as it relates to fear of filing a Motion to Reconsider and/or a Motion for Leave from the Court to Amend a Compliant.

STATEMENT OF CASE

Adkins filed a Complaint on July 7, 2017 in the District Court against HBL LLC for four Counts which included Conspiracy, Breach of Contract, Gross Negligence, Intentional Infliction of Emotional Distress and Punitive Damages. Pet. App. C, pg. 20.

On Saturday, August 19, 2016, Ms. Adkins took her 240-C Mercedes-Benz to Mercedes-Benz of Tyson's Corner for the replacement of 3-tires that were completely and totally bald. Adkins' 240-C Mercedes-Benz was washed by Mercedes-Benz of Tyson's Corner as a complimentary wash; with a noticeable crack on the L/F Marker Lens Cover that caused an opening to the inside of the vehicle. While the 240-C Mercedes-Benz was in the possession of the Mercedes-Benz of Tyson's Corner approximately \$2,000.00 worth of Adkins' jewelry was stolen out of Adkins' vehicle.

May 31, 2017, Adkins went to the Mercedes-Benz of Tyson's Corner to have some partial work completed regarding the front suspension. The vehicle had been at the Mercedes-Benz of Silver Springs, MD dealership for service from mid-April

2017 through May 31, 2017, but the service was not completed. The Mercedes-Benz of Silver Springs, MD dealership did not offer a Loaner vehicle to Adkins.

On May 31, 2017, Daniel Rodriquez, Director for the Service Department for the Mercedes-Benz of Tyson's Corner entered into a Verbal Contract with Adkins' to have the 240-C Mercedes-Benz towed from the Mercedes-Benz of Silver Springs, MD dealership to its dealership for work regarding the front suspension of approximately \$2,763.72, mainly because Adkins was promised a loaner vehicle by Mr. Rodriquez while the services were being completed.

Adkins entered into a Contract with HBL, LLC on August 19, 2016 when Adkins took her vehicle in for services for the replacement of 3-tries and the required alignment. Adkins entered into a Verbal Contract with HBL, LLC on May 31, 2017, when Daniel Rodriquez, Director for Service agreed verbally with Adkins to allow Adkins to tow her vehicle from the Mercedes-Benz of Silver Springs, MD dealership to the Mercedes-Benz of Tyson's Corner dealership to perform the work on the front suspension. Adkins explained to the Director for Service that she did not have \$6,000.00 for all the work to be completed but could pay \$3,000.00

On August 19, 2016, Adkins learned from Pete Onderchain, Service Director for Koon's Tysons Toyota, located at 8610 Leesburg Pike, Vienna, VA 22182, that 3-tires on Adkins' vehicle were completely worn and bald. Adkins took Mr. Onderchain's suggestion to take the vehicle to the Mercedes-Benz of Tyson's Corner to purchase three new tires.

When Adkins took the 240-C Mercedes-Benz into the Mercedes-Benz of Tyson's Corner dealership, Adkins had already been informed by the owner for the Mercedes-Benz of Arlington and Mercedes-Benz of Alexandria that she could no longer bring the 240-C Mercedes-Benz in for services nor for the purchase of any new vehicles because Adkins had brought suit in the Year 2013 against the Mercedes Benz of Arlington for services not been performed and/or improperly performed.

Adkins' personal belongings were inside the vehicle. On August 19, 2016, Adkins was not given an opportunity to take her personal belongings out of the 240-C Mercedes-Benz before it was quickly driven from the Service Lane for Mercedes-Benz of Tyson's Corner for the service requested. Adkins realized her jewelry was gone the moment the vehicle was provided back to Adkins because Malcolm Drakeford, Service Advisor who had assisted Adkins did not want to further assist Ms. Adkins. Mr. Drakeford advised Adkins that anyone could process the payment and paperwork for the services but Adkins insisted she would wait for Mr. Drakeford who had processed Adkins' 240-C Mercedes-Benz in on Saturday, August 19, 2016 and who Adkins had been communicating with via email regarding her vehicle while it was at the Mercedes-Benz of Tyson's Corner dealership. Adkins immediately reported the problem to the Director for Service for Mercedes-Benz of Tyson's Corner regarding the vehicle being washed with a noticeable crack on the L/F Marker Lens Cover that caused an opening to the vehicle.

The former Director for Service for the Mercedes-Benz of Tyson's Corner dealership raised his voice in a very demeaning tone and told Adkins to sue the Mercedes-Benz of Tyson's Corner dealership; and made a scene by informing all of the employees in the nearby Service Lane area for the Mercedes-Benz of Tyson's Corner that Adkins had a lawsuit against Mercedes-Benz of Tyson's Corner. The former Service Director for the Mercedes-Benz of Tyson's Corner dealership instructed all the employees to take a good look at Adkins. Adkins shared how upset she was with Mr. Drakeford as Mr. Drakeford and Adkins looked over the loaner vehicle Adkins returned.

Adkins left the Mercedes-Benz of Tyson's Corner dealership in tears from a severe injury of Emotional Distress that her property had been stolen from inside the vehicle and from the treatment Adkins had endured in front of approximately 8-10 employees for the Mercedes-Benz of Tyson's Corner.

May 31, 2017, Adkins had the vehicle towed through Mercedes-Benz Roadside Service by AM / PM Towing by Alex Marcus for \$162.00 after Adkins was told by Mr. Rodriguez, Service Director for the Mercedes-Benz of Tyson's Corner dealership that she could have the partial repairs of approximately \$3,000.00 completed at Mercedes-Benz of Tyson's Corner.

Adkins took the 240-C Mercedes-Benz to the Mercedes-Benz of Chantilly dealership on December 2, 2017, the only Mercedes-Benz dealership in Northern Virginia Adkins believed she could obtain service to the vehicle. Adkins had

problems with services not been performed and/or improperly performed at the Mercedes-Benz of Chantilly dealership when Adkins went in for 3-services which included a Virginia State Inspection, an oil change and to have the heating and cooling checked because it stopped working. Adkins filed a lawsuit against the Mercedes-Benz of Chantilly dealership.

In or about July 2016, and out of desperation, Adkins took the 240-C Mercedes-Benz to the Mercedes-Benz of Arlington dealership when the air condition and/or heating systems would not work, but the GM for the Mercedes-Benz of Arlington dealership informed Adkins he could not assist Adkins.

In or about January 2017, after Adkins got a ticket from a police officer for the Fairfax County Police Department for having an expired Virginia State Inspection sticker, Adkins took the vehicle back to the Mercedes-Benz of Arlington dealership and was told by the GM for the Mercedes-Benz of Arlington dealership that she could not obtain the services to the vehicle because of prior lawsuits. Adkins took the 240-C Mercedes-Benz to EXXON Service Station while knowing that the EXXON Service Station is without parts for a Mercedes-Benz. Adkins' vehicle was improperly inspected for the Virginia State Inspection by Dan Dien, Inspector for EXXON when Adkins was told she only needed the replacement of 3-lights and L/F Marker Lens. Adkins was also informed by Mr. Dien that the "Rust Lip" was missing when the New Brake Pad had been replaced on the vehicle.

Adkins had new brake pads replaced in or about November 2015 by Mercedes-Benz of Tyson's Corner.

In January 2017, Adkins took the vehicle to Mercedes-Benz of Richmond, VA and obtained an improper inspection for Virginia State Inspection when Adkins was informed that the Brakes were not part of Virginia State Inspection and the Service Director informed Adkins he was not sure what a "Rust Lip" was when Adkins explained she was informed it was missing when the new brakes pads were installed by Mercedes-Benz of Tyson's Corner. Out of complete desperation Adkins took the vehicle to the Euro Motorcars Mercedes-Benz of Bethesda, MD located at 7020 Arlington Rd., Bethesda, MD 20814, to attempt to comply with the Virginia State Inspection provided by EXXON and to avoid a fine by the Court for not having the sticker because at the time Adkins believed that 3-lights and L/F Marker Lens were the only issue causing the rejection of the Virginia State Inspection. Adkins after complying with the requirements for the Virginia State Inspection completed by EXXON, Adkins took her vehicle back to the EXXON Service Station but Mr. Dien was not there and Ms. Adkins was informed by his replacement that the Virginia State Inspection would have to be completed all over because the 15-day deadline had passed to just check what caused the prior Virginia State Inspection rejection. Adkins left and went to a Shell Service Station for a Virginia State Inspection of the rejection by the EXXON Service Station and was told by Naya,

Inspector, that the front right suspension had “play.” Naya indicated she would not charge Adkins nor placed a Second Rejection sticker on the windshield.

Euro Motorcars Mercedes-Benz of Bethesda, MD replaced the cracked L/F Marker Lens and 3-other light bulbs but not without service issues. Adkins needed an estimate of repairs for the requested services Mercedes-Benz of Chantilly dealership partially provided on December 2, 2017, so Adkins took the vehicle to Mercedes-Benz of Silver Springs, MD. Adkins was certain she would prevail in a lawsuit against Mercedes-Benz of Chantilly dealership or Mercedes-Benz of Tyson’s Corner that she would allow the damages lost to Mercedes-Benz Tyson’s Corner just remain losses.

Adkins is without a vehicle and/or transportation for the first time in Ms. Adkins’ life and it has caused Ms. Adkins extreme emotional distress to not be able to function in essence mainly due to the Mercedes-Benz dealership’s Gross Negligence. Adkins learned on May 31, 2017 that the vehicle had not been started at the Mercedes-Benz Silver Springs, MD dealership and Adkins’ vehicle would not start when the vehicle was dropped off at Mercedes-Benz of Tyson’s Corner.

Adkins contacted the Mercedes-Benz Roadside Service Department and Mercedes-Benz of Tyson’s Corner received the call because Adkins was near the Mercedes-Benz of Tyson’s Corner dealership. The employee for Mercedes-Benz Tyson’s Corner got inside of Adkins’ vehicle and shifted the Manuel automatic vehicle as if it was gears for a shift; he shifted the gears from the left side to the

right side instead of from straight up and down for an automatic transmission vehicle. Adkins was watching the employee and asked, "what are you doing" the employee stated that he was trained to shift the gears from the left side to the right side. The employee then tested the battery and informed Adkins that the battery was low and that she needed a new battery. Adkins had left the vehicle running while she made several stops but forgot and turned off the vehicle and the vehicle would not start at the Dunn Loring Metro Station. Adkins telephoned Mercedes-Benz Roadside Service for a second time and the same employee for Mercedes-Benz of Tyson's Corner returned to assist Adkins. Adkins took the employee advice and purchased a new battery from Auto Zone located at 10960 Fairfax Blvd, Fairfax, VA 22030, 703-591-1649, but learned from Auto Zone employee, Davin that the bracket that holds the battery had been cut. Davin from Auto Zone indicated he had never seen anything like that in his lifetime because the bracket is very strong and not easy to cut. The cap and/or cover to the battery was broken and left off the battery. On June 20, 2017, Eurasian Service Shop located at 8501-2B Tyco Road, Vienna, VA 22182 tested the battery in Adkins' vehicle and determined the battery to be in good working condition.

Since the purchase of the 240-C Mercedes-Benz in 2004 from the Mercedes-Benz of Alexandria located in Alexandria, VA, Adkins chose the Mercedes-Benz of Arlington to perform most of the Services and Bodywork to the vehicle. In the Year 2012, Adkins went to the Mercedes-Benz of Alexandria for a battery and Alternator

because Adkins' vehicle was closest to the Mercedes-Benz of Alexandria. In the Year 2013, Adkins went to the Mercedes-Benz of Alexandria for service, mainly for a Virginia State Inspection and oil change and Adkins' vehicle failed the Virginia State Inspection. Adkins filed the 2013 lawsuit against Mercedes-Benz of Arlington when Adkins learned that the services had not been performed and/or improperly performed by Mercedes-Benz of Arlington.

REASONS FOR GRANTING THE PETITION

I

The United States Court of Appeals for the Fourth Circuit's decision warrants review for the following reasons: The District Court's dismissal "Orders" *without prejudice* of Adkins' complaint for lack of subject matter jurisdiction was an error because the District Court did not lack subject matter jurisdiction and an amended complaint could have curried any deficiencies. Adkins' rights were denied with warnings of sanctions and prefilng injunction if she filed a "Motion to Reconsider" or a "Motion to file a Second Amended Complaint" and/or further pleadings in the case of *Dora L. Adkins v. HBL, LLC*.

The dismissal of a complaint for lack of subject matter jurisdiction is not a decision on the merits of that complaint. "In determining whether the requirements of federal diversity jurisdiction have been established, this court must look to the plaintiff's complaint." *See Penteco Corp. Ltd. Partnership-1985A v. Union Gas Sys., Inc.*, 929 F.2d 1519, 1521 (10th Cir. 1991). "Where the pleadings are found wanting,

[however], an appellate court may also review the record for evidence that diversity does exist.” *Id.* Adkins’ First Amended Complaint did show that diversity existed, even though the First Amended Complaint was not accepted by the District Court and at which time, Adkins had been warned not to further file any additional pleadings in the case of *Dora L. Adkins v. HBL, LLC*.

In a Petition for Appeal in the case of *Murray and Massey v. Conseco, Incorporated and Conseco Services, L.L.C.*, (7th Cir. 2006); the Plaintiff was granted its Motion to Amend the Second Amended Complaint. While in the case of *Murray and Massey v. Conseco, Incorporated and Conseco Services, L.L.C.*, (7th Cir. 2006) the District Court did error when the case for lack of jurisdiction was dismissed *with prejudice*; unlike in Adkins’ case the ruling was *without prejudice, and not final orders*.

In a second example of a Petition for Appeal in the case of *Penteco Corporation Limited Partnership--1985a, an Oklahoma Limited Partnership v. Union Gas System, Inc., a Kansas Corporation*, 929 F.2d 1519 (10th Cir. 1991) the Appellate Court decided the following: “On remand, the district court should determine the citizenship of all members of the Penteco partnership, and all other parties, to ascertain whether diversity jurisdiction exists. If proper, amendment of Penteco's complaint to reflect or preserve diversity should be permitted. However, should diversity be lacking, the case must be dismissed.”

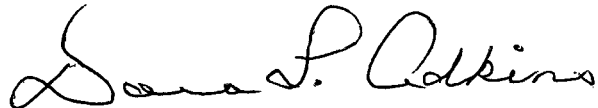
In a summary, because Adkins could have saved her action by amending her complaint, the District Court's orders of dismissal without prejudice were not final and the 4th Circuit Court of Appeals did not have jurisdiction over Adkins' appeal; thus, the Petition for Appeal should have been remanded back to the District Court for further proceedings.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Dated: February 5, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dora L. Adkins". The signature is fluid and cursive, with the first name "Dora" being more prominent and the last name "Adkins" following in a similar style.

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