

No. 17-7663

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

PETITIONER'S REPLY TO HBL, LLC'S OPPOSITION TO
PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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JURISDICTION

This Court has jurisdiction under 28 U.S.C.S. § 1254(1) to hear this appeal.

BRIEF IN REPLY TO HBL, LLC OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner Dora L. Adkins (“Petitioner”) respectfully submits this brief in reply to Respondent, HBL, LLC’s brief in opposition for writ of certiorari (“Petition”).

HBL, LLC’S COUNTER-STATEMENT OF THE CASE

For the most part, the facts articulated regarding the District Court and the Fourth Circuit in the Counter-Statement section are accurate; except, that the Petition in all respects should be denied, but instead granted.

REASONS WHY THE PETITION SHOULD BE GRANTED

- I. Petitioner’s Brief in reply corrected the statutory provision jurisdiction that confers jurisdiction for this Court.

“Per Supreme Court Rule 14, this Honorable Court has jurisdiction under 28 U.S.C.S. § 1254(1) to hear this appeal.”

- II. The Fourth Circuit did err in finding no error in the District Court’s ruling that subject matter jurisdiction was lacking.

The District Court properly found that Petitioner’s complaint failed to satisfy diversity jurisdiction under 28 U.S.C. § 1332 but did not allow the Petitioner to amend the deficiency. It is a fact that the actual damages were approximately \$36,701.67 but the District Court failed to take into consideration that the amount *in controversy* can be a combination of compensatory damages and punitive damages. The punitive damages were for \$10-MILLION dollars and not for

\$50,000,000 million dollars. \$10-MILLION dollars for punitive damages were not utterly frivolous, outlandish, and absurd and/or provided as bad faith allegations by the Petitioner.

III. The Fourth Circuit did err in finding no error in the District Court's denial of Petitioner's motion for leave to file a second amended complaint.

The District Court provided clear reasons why Petitioner's complaint was deficient in failing to bring claims within the jurisdiction of the Court but Petitioner's was not allowed to make the corrections without the fear of sanctions. The complaint was one of the most well-pled complaint submitted by the Plaintiff and ONLY needed a section for Diversity which was easily curable by simply stating the two parties were from different states and the *in-controversy* amount used by the Petitioner was a combination of compensatory damages of \$36,701.67 and punitive damages of \$10-Million.

"Futility, as well as repeated failures to cure deficiencies by previous amendments are proper bases for which to deny additional leave. See Forman v. Davis, 371 U.S. 178, 181 (1962)." The case law cited is great but it does not apply to the Petitioner's complaint who attempted to cure the deficiencies in the complaint but was met with the fear of sanctions.

IV. The Fourth Circuit did err by reviewing and ruling on Petitioner's appeal from the District Court's orders.

It is a fact that Petitioner cited 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); case law in the Petition which indicated that when a District Court dismisses a case *without prejudice*, it is not a final order; thereby, precluding the Fourth Circuit's jurisdiction over the appeal, and; therefore, the Fourth Circuit should have remanded the case back to the District Court for further proceedings.

"In Goods v. Central Virginia Legal Aide Society, Inc., 807 F.3d 619 (4th Cir. 2015), the Court considered whether an order dismissing a case *without prejudice* was a final order under 28 U.S.C. § 1291. Id. At 623." "The court determined that if the plaintiff could not have saved the case by amending the complaint, then appealing the order is permissible. Id. On the other hand, if leave to amend would easily correct whatever issue existed, appeal is not an option. Id. At 624."

"Here Petitioner could have amended her complaint to cure the deficiencies laid out by the District Court." The Petitioner was ordered not to file a "Motion to Reconsider" or a "Motion to file a Second Amended Complaint" and/or any further pleadings in the case of *Dora L. Adkins v. HBL, LLC*. Therefore, Judge Ellis improperly denied Petitioner's third attempt to amend her complaint as futile. As such, the dismissal in this case was not a final order, and not appealable to the Fourth Circuit.

V. Petitioner's Petition did not violate Supreme Court Rule 14(4) and therefore should be reviewed.

While Petitioner disagrees that the Petition is incomprehensible and lacked any basic. The Petition presented an adequate understanding of the points considered. The Fourth Circuit clearly erred when it ruled on Petitioner's Appeal

which was not a final order because the complaint could have been curried through an amended complaint. What is requested is for the Petition to be granted and remanded to the District Court for further proceedings.

VI. The Fourth Circuit did err by denying Petitioner's Petition for Rehearing and Rehearing En Banc.

There is a uniformity issue between decisions of different Circuits because the Petitioner cited in Petitioner's Petition pointed to an Appeal that was remanded back to the District Court to confirm whether or not diversity existed between the two parties. The different circuits vary to the magic number of 'how many' amended complaints should be granted.

VII. The District Court did violate Petitioner's rights by admonishing Petitioner not file a third amended complaint and/or any other further pleadings.

Petitioner was provided two options by the District Court which included moving the case to the State Court or to file an Appeal. When Petitioner opted to move the case to the State Court the District Court denied the request submitted by the Petitioner. Petitioner soon afterward filed an Appeal with the Fourth Circuit.

Petitioner in *Dora L. Adkins v. Whole Foods Market Group, Inc.*, which was filed in September 2017, as a perfected amended complaint and filed as a *matter of course* under Diversity pleadings. In the case of *Dora L. Adkins v. Whole Foods Market Group, Inc.*, which is unrelated to *Dora L. Adkins v. HBL, LLC*, the diversity and *in-controversy* amount was appropriately provided by the Petitioner in the amended complaint to the District Court.

VIII. Petitioner did not fail to cite any compelling reason warranting this Court's review.

The “compelling reason” for this Honorable Court to grant cert as required by Rule 10 is that an exceptional federal question exists in that Petitioner complied with the District Court’s Orders as it related to the two options provided and was denied the right to have the case remanded by the Fourth Circuit back to the District Court *because of* its lack of jurisdiction to non-final orders, mainly because the complaint could have been easily curried of deficiencies through amendment.

CONCLUSION

For the forgoing reasons the Petition should be granted.

Dated: March 21, 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" and last name "Adkins" clearly distinguishable.

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