No 25-6193

In Supreme Court of The United States

In Re Gerald Nelson

PETITION FOR A WRIT OF MANDAMUS FROM THE UNITED STATES COURT OF APPEAL THE SECOND CIRCUIT

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QUESTION PRESENTED

This dispute concerns original jurisdiction and subject matter jurisdiction conferred over this action, pursuant to 28 U.S.C. Section 1331 , because Plaintiff-Appellant Gerald Nelson ("Nelson")raised claims under section 301 of the Labor Management Relations Act ("LMRA") .Nelson commenced this action in the Supreme court for the state of New York,County of Kings No. 537/22. On August 25 ,2022 against New York City Transit Authority (' NYCTA "), The case was then removed to federal court by NYCTA on October 12, 2022. December 11, 2023, Nelson filed an Amended Complaint and added Transportation Workers Union Local 100 ("TWU") as a defendant.The District Court dismissed the case based on 12 (b)(6) , failure to state a claim, The Court of Appeals Affirmed, stating: "Nelson challenges the district court jurisdiction.

1. According to the principles established in In re Winn, 213 U.S. 458 (1909), is a writ of mandamus the appropriate remedy for compelling a Circuit court to remand a case to state court when the removal was improper?

2. Under the well-pleaded complaint rule articulated in Caterpillar INC. v. Williams, 482 U.S. 386 (1987), can an employer and union successfully remove a case to federal court if their only argument for federal jurisdiction is a defense of complete preemption under section 301 of the LMRA?

3. What are the jurisdictional boundaries between state and federal courts for section 301 labor cases, as defined by concurrent jurisdiction recognized in Charles Dowd Box Co. v. Courtney 368 U.S. 502 (1962)?

4. Does intentional misrepresentation ,false and misleading statements to establish original jurisdiction meet the high bar for proving fraud upon the court , or is it a lesser form of misconduct?

LIST OF PARTIES

New York City Transit Authority , Transportation Workers Union Local 100

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I . ORDER AND OPINION BELOW

Report and Recommendation 22 -cv-6112 Bloom, United States Magistrate Judge. 08/07/23, Order Adopting Report and Recommendation 09/29/23.
On September 26, 2024 Court of Appeals Second Circuit entered a summary order, that affirmed district court dismissal of Nelson case ,that was removed from state court to federal court under 301 Labor Management Related Act.
The Court of Appeal stated in the summary order that Nelson's case could be removed based on 28 U.S.C. section 1441 (and federal question jurisdiction exists for "all civil actions arising under the Constitution, laws ,or treaties of the United States, " 28 U.S,C. section 1331.(summary order is attached), Writ of certiorari denied on May 27, 2025 , Petition for rehearing denied on October 6, 2025.

II. JURISDICTION

Jurisdiction to grant the writ of mandamus sought by petitioner is conferred on this Court by 28 U.S.C.section 1651 in aid of its jurisdiction pursuant to 28 U.S.C. section 1254.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS

Construed and interpreted, explicitly, Fed. R. Civ. P. 12 (b)(6), hybrid 301/duty of fair representation claim,28 U.S.C. section 1441(a), and 28 U.S.C. section 1331. These provisions are set forth in Nelson's case and in the summary order of the Court of Appeals.

IV. STATEMENT OF THE CASE

On October 12, 2022, NYCTA removed the action to federal court.

On December 11, 2023 ,Nelson filed the Amended Complaint which replead

The claim for breach of contract and duty of fair representation.The Amended

The complaint added TWU as a named party.

On August 7, 2023, Magistrate Judge Bloom issued the R&R. Thereafter,

Nelson timely filed objections to the R&R.

On October 7, 2023 , Nelson filed a motion pursuant to Fed R. Civ. P. 60 (b). The District denied Nelson 60 (b) for lack of subject matter jurisdiction.

On November 29, 2023, Appellant filed a notice of appeal of the Dismissal Order the 60 (b) order.

On September 30, 2024 , Second Circuit affirmed the District . The Second Circuit stated:

"Nelson's complaint explicitly relied on section 301-a federal statute. That gave the federal court jurisdiction and made removal proper."

But Second Circuit summary order is not in accordance with Charles Dowd Box Co., Inc. v. Courtney, 368 U.S. 502 (1962), which held 301 (a) LMRA, 1947, which confers on federal district courts jurisdiction over suits for violation of contracts between employers and labor organization representing employees in Industries affecting interstate commerce, does not divest state courts of jurisdiction over suits.

On May 27, 2025 , the Supreme Court of the United States denied Writ of Certiorari.

On October 6, 2025, the Supreme Court of the United States denied Petition for Rehearing.

V. BACKGROUND AND REASON FOR GRANTING THE WRIT

A. Removal of state court 301 labor petition claim without original jurisdiction

The focus of the controversy is original jurisdiction .Whether Congress , in enacting the Labor Management Relation Act of 1947 (commonly referred to as the Taft-Hartly Act)61 Stat. 136, 29 U.S.C. section 141, preempted to the exclusive jurisdiction of the federal courts that the field of litigation involving violations of collective bargaining when interstate would be affected thereby in such a manner that the lower court in this action was without jurisdiction to hear or determine this action .It is well settled that no cause cannot be removed from the state court to federal court, unless it could have been brought in the district court originally. See :Boston C. Mining Co. v. Montana Ore Co. 188 U.S. 632,640 (1903), Ex Parte Wisner, 203 U.S. 449 (1906). NYCTA defense should have been in state court and not removed to federal court. The district court and the Court of Appeal proceeded to decide these issues themselves , even though Nelson sought a motion under 60 (b), and argued in the Court of Appeals that the removal was fraudulent. The record is clear that the Circuit Court and the District court did not have original jurisdiction. Nelson simply was deprived of his day in state court, by the false statements made by NYCTA and TWU.

It is a general principle that a federal Court must confirm its subject matter jurisdiction before ruling on the merits of a case , including a dismissal under rule12 (b)(6) for failure to state a claim. The district court assumed jurisdiction in Nelson's case for the purpose of deciding that there was no valid claim. Jurisdiction must be established as the first order of business. This Court has stated for a Court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so, it is by very definition , an ultra vires act (See Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 84 (1998) .) This is exactly what the district Court did when it adopted the Magistrate R &R In Nelson's case. (See Appendix Magistrate Judge Bloom R&R pg. 5-foote note 4).(See also

State Courts have concurrent jurisdiction. The District and the Court of Appeals in Nelson's case, have established removal of the case. However, there is no law that gives federal courts exclusive jurisdiction. . Section 301 provides that an individual employee may bring suit against its employer for breach of a collective bargaining agreement (citing Delcostello v Intl Blvd of Teamster , 462 U.S 151 , 164-65). Unless there is exclusive federal jurisdiction , state courts are equally competent to apply federal and state law.

301 (a) of the Labor Management Relations Act of 1947 , 61 stat. 156, 29 U.S.C. section 185 p. 180. section 301 reads as follows:

(a) Suits for violations of a contract between an employer and a labor organization representing employees in a an industry affecting commerce As defined in this Act , or between any such labor organization, may be brought in any district court of the United States having jurisdiction on the the parties."

NYCTA removed Nelson's case to federal court knowing that state court had original jurisdiction, because state courts have concurrent jurisdiction. This Court affirmed , holding that because the statute 29 U.S.C.S section 185 stated a case "may" be brought In federal court , such language did not imply exclusive federal jurisdiction.Where no legislative intent existed to find federal jurisdiction was exclusive, the state was free to settle the dispute. (See Charles Dowd Box Co. v. Courtney 368 U.S. 502 ,506,507(1962),).

The legislative history of the enactment of section 301 of the Labor Management Relations Act of 1947 , nowhere suggests that contrary to clear import of the statutory language, Congress intended in enacting section 301 (a) of the Act to deprive a party to a collective bargaining contract of the right to seek redress for its violation in an appropriate state tribunal.

Pocahontas Terminal Corporation v. Portland Building & Construction Trade Council et al ,93 F. Supp. 217,219,220, (1950). Stated:

" To determine whether the Taft-Hartley Act is the real basis of the present proceeding, this Court must ascertain:

(1) Whether the complaint shows a controversy affecting commerce within the meaning of that law;and

(2) Whether alleged illegality of defendants' act, as set forth in the complaint. Necessarily stems from the Taft-Hartley Act.

These questions must be answered from the face of the complaint alone, as filed in the state court, unaided by reference to any other pleadings or to the petition for removal itself.

In Armstrong v. Alliance Trust Co., 5 Cir.,126 F.2d 164, 167 (1942), the Court said: In order to sustain the jurisdiction of the United States District Court on the ground of a federal question in a case removed thereto from a state Court. It is not sufficient for the question to be raised in the answer of defendant or in the petition for removal. The federal question must clearly appear on the face of the declaration or complaint as an essential and integral part of the plaintiff's statement of his own case, not an anticipation of a defense that may interposed by an adversary party. A federal question merely incidental or collateral to the main controversy is not the basis of the suit and is not enough to deprive the State court of jurisdiction upon petition of removal by the defendant"

Clearly, NYCTA and TWU knew there was no complete pr-emption under 301 labor management. It is indisputable that state courts have concurrent Jurisdiction. The Magistrate Judge Bloom stated in the R&R ,that NYCTA and TWU stated the defendants indeed lacked subject matter jurisdiction (see appendix Magistrate R&R pg. 11, defendants' motion for lack of subject matter denied).

It is not against the law for Nelson to file a 301 labor management case as a New York Public Employee against his union and a breach of collective bargaining

agreement against a political subdivision in New York State Court.

State Courts have concurrent jurisdiction over Nelson 301 labor management claim (a federal statute). The defendants cannot remove this action to federal court, unless 301 labor management provides exclusive federal jurisdiction. Both state and federal courts have the power to hear these types of cases.

Nelson filed his case in State Court, that court had original jurisdiction. See Charles Dowd 368 U.S. 502 (1962).

This right was taken away from Nelson when NYCTA improperly removed Nelson case.

The idea that federal courts can't "create" jurisdiction is a fundamental tenet of the U.S. federal court power. The courts are constrained by the powers granted to them by Article III of the Constitution and subsequent legislation passed by Congress, as they are courts of limited jurisdiction.

One of the most prominent modern cases emphasizing this strict limitation is Steel Co. v. Citizens for Better Environment, decided in 1998. In this case, the Supreme Court reinforced that subject-matter jurisdiction is an Article III as well as a statutory requirement" and cannot be waived by the parties or created by the

court itself; it must be present from the outset.

This principle is also rooted in the foundational case of Marbury v. Madison (1803), which established that the jurisdiction of the Supreme Court is defined by the Constitution and cannot be expanded by an act of Congress(or by the courts themselves).

While section 301 (a) allows for removal of state-court labor cases to federal court when there is a federal question, it does not eliminate the state court when there is a federal question, it does not eliminate the state original jurisdiction.

Charles Dowd Box Co. v. Courtney (1962) ruling ensured that a federal court's decision is based on the actual terms of the labor contract and not hypothetical ones.

Royal Canin U.S.A., Inc. v. Wullshleger 604 U.S. 22,42,43 (2025), reinforced the importance of proper subject matter jurisdiction in removed cases .

Therefore, the principle that federal courts cannot use hypothetical jurisdiction, stems from the fundamental constitutional requirement for subject-matter jurisdiction as articulated in cases Steel Co. v. Citizens for a Better Environment (1998), which applies across all federal question cases, including those removed under LMRA.

On page 8 of Magistrate Judge Bloom R&R , it states:

" But this argument has two distinct concepts:federal-court subject-matter jurisdiction over a controversy, and the essential ingredients of a federal claim for relief Green, 16 F.4th a 176 (quoting Arbaugh v. Y&H Corp., 546 U.S. 500,503 (2006). In Green , the Second Circuit clarified that whether a plaintiff is an "employee" as defined by the NLRA is not jurisdictional, but rather one of "the requirements of a cause of action under the NLRA...."Id. At 1076. If a plaintiff "cannot allege that he is an employee under the NLRA, his complaint fails to state a claim for violation of the statute" and should be dismissed pursuant to rule 12(b)(6)" Id. at 1075. Therefore, while this Court has jurisdiction over plaintiff's amended complaint, it should nevertheless be dismissed for failure to state a claim.

The District Judge Rachel P. Kovner adopted this analysis from the Magistrate Judge.

But the District Court and the Court of Appeals did not have original jurisdiction.

However, in In re Winn 213 U.S. 458 ,464,465, (1909).

"This Court indisputablely and clearly stated: It is well settled that no cause can be removed from state court to the Circuit Court unless it could originally have been brought in the latter Court".

" The only ground of jurisdiction which is or can be suggested is that the suit was one arising under the Constitution and the and the laws of the United States. 25 State law at L. 433,434.chap. 866, U.S. Comp. Stat. 1901,pp. 508,509. It is the settled interpretation of these words, as used in this statute conferring jurisdiction, that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough , as the law now exists, that it appears that the defendant may find in the Constitution or laws of the United States some ground of defense. Louisville & N.R. Co. v. Mottley, 211 U.S. 149 If the defendant has any such defense to the plaintiff's claim, it may be set up in the state

courts, and, if properly set up, and denied by the highest court of the state, may ultimately be brought to this court for a decision"

The Defendant NYCTA made false statements in their Notice of Removal, this is what NYCTA stated in the introduction Page 2, No.2, Page 4, No. 12 "

"For the reason set forth below , this Court has jurisdiction over this action pursuant to Section 301 of the LMRA, and 28 U.S.C. section 1331,1441 and 1446."

"Because the verified complaint expressly invokes 29 U.S.C.A. 185 as the basis for a claim therein, this Court has original jurisdiction pursuant that provision and 28 U.S.C. section 1331. Therefore this action is properly removed to this Court Pursuant to 28 U.S.C. section 1441".

This Court directly addresses the issue of federal preemption and the impropriety of removal in section 301 (LMRA) cases, effectively stating such cases should have remained in state court if they do not require the interpretation of a collective bargaining agreement ,See Caterpillar Inc. v. Williams 482 U.S. 386,398, 399 (1987). (See also NYCTA excerpt of brief of defendant-Appelee Page 8,9,10, 11,12, Summary of Argument, (B) ,The District Court Had Federal-Question Jurisdiction Under "Complete "Preemption" Doctrine). (In Appendix).

Nelson's claim was filed in state Court , which made him the master of the complaint. This is called the well pleaded complaint rule. It is recorded that

immediately after Nelson amended his complaint. NYCTA and TWU filed an affirmative defense instead of an answer, the reason was Lack of Subject-matter Jurisdiction. (and defendants do indeed raise lack subject matter jurisdiction as an alternative basis for dismissal of plaintiff's amended complaint., see Magistrate Bloom R&R Page 8.)

In Caterpillar, Inc. V. Williams, 482 U.S. 386 (1987) , it clearly states:

> "It is true that , when a defense to a state claim is based on the terms of a of a collective bargaining agreement, the state court will have to interpret that agreement to decide whether the state claim survives.But the presence of a federal question, even a section 301 question, in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule–that plaintiff is master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court.When a plaintiff invokes a right created by a collective bargaining agreementThe plaintiff has chosen to plead what we have held must be regarded as a federal claim, and removal is at the defendant's option . But a defendant cannot , merely by injecting a federal question into an action that assert what is plainly a state law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated.If the defendant could do so, the plaintiff would be master of nothing. Congress has long since decided that federal defenses do not provide a basis for removal. Respondents' claims do not arise under federal law, and therefore may not be removed to federal court."

NYCTA and TWU removed Nelson's case from state court to federal court based on false and misleading statements as a defense, knowing that state court had

original jurisdiction under 301 labor management.

It is clear , as a matter of law, that the Second Circuit Court was without jurisdiction when the summary order was issued. By looking at the R&R made in the District Court.

Nelson case upon its face, no CircuitCourt of the United States (including Second Circuit) had jurisdiction of the controversy, originally or by removal.

In Nelson's case , not even the parties can confer jurisdiction. See Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149 (1908).

NYCTA and TWU motion to dismiss (12 (b)(1), for lack of subject jurisdiction, by itself is self incrimination. (See Magistrate Judge Bloom R&R Page 1, stating " Defendants move to dismiss plaintiff's amended complaint under Federal Rules of Civil Procedure 12 (b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim.") The District Court and Second Circuit did not have original jurisdiction See In re Winn , 213 U.S. 458 (1909).

VI. No Other Adequate Means To Obtain Relief Exist

No other adequate means exist to obtain Nelson requested relief. Nelson has shown above that want of jurisdiction of the Circuit Court appears clearly on the record and in all the lower court Judges decisions and orders. Therefore,it is clear why this Court can issue a writ of Mandamus, are in the alternative a writ of

certiorari. (see In re Winn, 213 U.S. 458,467,468,469 (1909).)

VII. Conclusion

For the foregoing reasons, petitioner prays:

This Court should issue a writ of mandamus to Court of Appeals below, directing it to vacate its summary order September 30 , 2024, and remand the matter to the State Court or in the alternative the Court should treat this petition as a petition for a writ of Certorari.

November 15, 2025

Respectfully submitted

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