

No. 11 – 2115

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHARON V. GALLOWAY

APPELLANT

V.

BEVERIDGE AND DIAMOND PC et al

APPELLEES

Appeal from the United States District Court for
The District of Columbia

No. CIV. 1:11-cv-02115-UNA

APPELLANTS BRIEF

Sharon V. Galloway



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JURISDICTIONAL STATEMENT

This Appeals Court has jurisdiction over this appeal pursuant to 28 U.S.C. §1291. Plaintiff/Appellant filed her Complaint on November 1, 2011, in the District Court for the District of Columbia. The Plaintiff/Appellant seeks relief and remand to prevent possible injustice, and the barring of various District Court for the District of Columbia actions as unconstitutional. Pursuant to 28 U.S.C. §§ 1331, and 1334, the District Court has jurisdiction over this case. Because the Order of the District Court is vague and not under Rule, the Plaintiff/Appellant is left to guess why the District Court dismissed based on “lack of subject matter jurisdiction.” Federal courts' actual subject-matter jurisdiction derives from Congressional enabling statutes, such as 28 U.S.C. §§ 1330-1369 and 28 U.S.C. §§ 1441-1452. (removal from state courts due to diversity requirement; 28 U.S.C. § 1332) The Plaintiff/Appellant filed a timely notice for Appeal December 19, 2011, date stamped December 21, 2011. This Appeal is from the appealable Order from the United States District Court for the District of Columbia, final Order dated December 13, 2011.

STATEMENT OF ISSUES

- 1) The District Court For The District of Columbia dismissed the Plaintiff/Appellents Complaint without a hearing. The District Court erroneously concluded that it lacked subject matter jurisdiction and improperly

dismissed the action under no color of law, or rule, making this appeal difficult, and the pro se litigant must now guess the reason for dismissal.

- 2) It is the duty of the Defendants/Appellees to raise the issue of “lack of subject matter jurisdiction”, or an affirmative defense. Not the Court.

STATEMENT OF THE FACTS

The original toxic tort complaint from which this particular action arises was titled “Galloway v Johnson Metropolitan Termite and Pest Control Inc, et al, but that complaint also included the Dow Chemical Company and Dow Agro sciences, case No. 03-C-03-006103 in the Baltimore County, Maryland, Circuit Court. This case was dismissed at Summary Judgment due to a statutes of limitations issue only. The Plaintiff/Appellant appealed.

It was during the course of the appellate proceedings at the Maryland Court of Special Appeals level, that the Appellant pro se discovered that the attorneys representing Dow and who wrote and signed the briefs, were not admitted to practice law in the state of Maryland. The Plaintiff/Appellant filed motions to have Dows briefs stricken due to the illegality regarding this unauthorized practice of law. The Maryland Court of Special Appeals rubber stamped denied the Appellants motions that regarded the unauthorized practice of law by the Dow lawyers, and by involvement and contribution, the lawyer for Johnson, and denied

the Appellants motion for reconsideration without a hearing or opinion, or a citation to law. (ie; rubber stamped and not signed)

Indefensibly, Dow had actual knowledge of the issue of unauthorized practice of law, didn't answer this issue in motion, and relied upon their inflated argument regarding the "statutes of limitation". The two lawyers from Indiana wrote and signed the briefs without even trying to hide the fact that one Indiana lawyer was admitted to the Maryland Bar to assist the attorney of Record, Robert Brager only, and the other lawyer came out of nowhere. (page 34 - list of exhibits attached to the Plaintiffs Complaint) From the Plaintiffs Complaint in the Washington DC District Court;

56 - Indiana Lawyers: From the Order from the Circuit Court signed April 2, 2004 ; Joseph Eaton of the law firm Barnes and Thornburg located in Indianapolis, Indiana, was admitted pro hac vice for the "limited purpose of appearing and participating in this case as *co counsel for Robert Brager* under Rule 14 of the Rules Governing Admission to the Bar of Maryland."

57 - Joshua Fleming, who was then also of the law firm Barnes and Thornburg located in Indianapolis, Indiana, signed the Respondents Brief as "counsel" with Mr. Eaton.

58 - The Appellee/Respondents brief came directly from Mr. Flemings office in Indiana, not from an office in Maryland.

59 - Joshua Fleming is not admitted to the Bar of Maryland, and did not request for admission by pro hac vice before *or after* notice by the Plaintiffs motions to dismiss Dows illegal pleadings, briefs, and other legal documents in the appellate courts. (knowledge) Joshua Fleming is not and was not admitted to practice law in Maryland.

It was only due to a phone conversation with Melvin Hirshman of the Maryland Attorney Grievance Commission, that the Plaintiff/Appellant discovered

that there is no “automatic waive in for Washington D.C. lawyers” (quote Hirshman) and the “headers” on all the stationary used by the Dow lawyers did not meet the requirements of Maryland law regarding areas of practice, thereby creating an offense and violating Maryland rule. (*See Attachments: last page ““if an attorneys letterhead is a misrepresentation, that is a violation of professional conduct.”*) This meant the entire lawsuit up to and including the Summary Judgment was primarily represented by an out of state lawyer, with no pro hac vice. This means, the answers to the Complaint, the correspondence, various motions, and the deposition were performed by a lay person representing a corporation. The corporations Dow Chemical Company and Dow AgroSciences LLC, was represented in the underlying civil suit was by a lay person, a person not admitted to the Maryland Bar, which is illegal in the state of Maryland.

The Plaintiff/Appellants Complaint in the District Court for the District of Columbia spells out the significant timeline, and by the Court denying a hearing, thereby abrogating all Discovery, and a response from the Defendants/Appellees... (who no doubt will protest the statute of limitations again, because that’s all they have to deflect the actual and recorded unauthorized practice of law issues that have never been properly addressed in any court), the District Court denied the Appellant access to the courts, and due process. The Appellent respectfully states to this Court that this is fact as reflected by the Record.

ARGUMENT

1) The District Court for the District of Columbia dismissed the Plaintiff/Appellants' Complaint without a hearing. The District Court erroneously concluded that it lacked subject matter jurisdiction and improperly dismissed the Plaintiffs Complaint under no color of law, or rule, making this appeal difficult, and the pro se litigant must now guess the reason for dismissal.

Answer: This appeal action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of the rights secured by the Constitution and laws of the United States, and as a preemption claim that is pursuant to the decision of the United States Supreme Court in *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (holding that a plaintiff presenting a pre-emption claim "presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve" even in the absence of a cause of action under 42 U.S.C. § 1983).

The Plaintiff/Appellant seeks review by This Appeals Court because the Order by the United States District Court for the District of Columbia dismissing the Plaintiff/Appellants Complaint is unsupported by rule, there was no hearing, the defendants/Appellees did not respond to the Plaintiffs Complaint at all, and the allegations contained within the District Courts Order are incorrect. The Plaintiff/Appellants Fourteenth Amendment right to due process of law was denied

when the district court failed, on its own initiative, to allow or order a hearing on the issues contained within the Plaintiff/Appellants complaint.

The United States District Court for the District of Columbia failed in its Constitutional duty to the Plaintiff/Appellant by accepting the pro se Complaint under different law than any other Complaint. This would not be “equal protection under the law”. This would be discrimination.

The District Court also did not cite to rule or case law regarding the “lack of subject matter jurisdiction”, so the Appellant pro se can only assume that this *could possibly* be relative to Fed Rule 12 (6) (b) and relies upon; Legal Standard –

Federal Rule of Civil Procedure 8 provides the general standard of pleading and only requires that a complaint “contain a short plain statement of the claim showing that the pleader is entitled to relief.” *Fed. R. Civ. P. 8(a)(2)*. Rule 8 does not require “detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (internal quotations omitted). In deciding a motion to dismiss under Rule 12(b)(6), “a court should assume the veracity” of “well-pleaded factual allegations,” and construe reasonable inferences drawn from those factual allegations in the plaintiff’s favor. *Id. at 1950*; see also *District of Columbia Retirement Bd. v. United States*, 657 F. Supp. 428, 431(D.D.C. 1987).

Also in evaluating whether the plaintiff has carried her burden, courts may consider matters beyond the pleadings, but must still review the complaint liberally and accept all reasonable inferences favorable to the plaintiff. *Davis v. United States*, 569 F. Supp. 2d 91, 94 (D.D.C. 2008).

“The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a

complaint.” *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993).
“We therefore accept all factual allegations in the complaint as true and give the pleader the benefit of all reasonable inferences that can be fairly drawn therefrom.” *Wisniewski v. Johns-Marville Corp.*, 759 F.2d 271, 273 (3d Cir. 1985).

The Appellant has met the burden of evidence as stated in the Complaint and by the attachments that clearly and exactly address the factual and documented allegations of unauthorized practice of law contained within the Plaintiff/Appellants complaint. Therefore the Appellants claim is ripe:

Ripeness exists where the controversy is “definite and concrete, touching the legal relations of parties having adverse interests.” *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240-41 (1937). Where a plaintiff seeks a declaratory judgment, the Constitution requires “a real and substantial controversy admitting of specific relief through a decree of conclusive character.” *Id.* at 241.

Ripeness is a constitutional prerequisite to a federal court’s exercise of jurisdiction. *Fed. Election Comm’n v. Cent. Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 51 (2d Cir. 1980). A case must be ripe before a federal court has jurisdiction to grant either injunctive or declaratory relief. *Williamson v. Village of Margaterville*, 1993 WL 133719 at 1 (N.D.N.Y. April 23, 1993) (citing *Int’l Tape Mfrs. Ass’n v. Gerstein*, 494 F.2d 25 (5th Cir. 1974))

In Constitutional law, “ripe” refers to a law case appealed from a state or federal court and that all other avenues for determining the case have been exhausted, there is a real controversy, and the law needs to be settled on one or more issues raised by the case. Such is the case at bar here.

2) It is the duty of the Defendants/Appellees to raise the issue of “lack of subject matter jurisdiction”, or any defense. Not the court.

Answer : Plaintiff provided recorded and documented factual allegations including the Affidavit of Defendant/Appellee Robert Brager Esquire, as supportive attachments to her Complaint. The Court should have assumed the genuineness and then allowed Discovery and allowed the Defendants to reply. Only then could the Court determine whether if there is an entitlement to relief. Instead, the Court unconstitutionally decided this case on its own initiative without input from any party by way of a hearing or motions to dismiss, and then made this vague and unsubstantiated determination. The “Plaintiffs Motion for Reconsideration and Request to Amend the Complaint” was denied without memorandum or opinion.

The Defendants/Appellees more than likely would have asked for a more definite statement if they thought the Complaint lacked “subject matter jurisdiction”, or any number of defenses under Fed. Rule 12 (b) (1-7). When considering a motion to dismiss under 12(6)(b), a district court must accept the factual allegations made by the non-moving party as true and “draw all inferences in the light most favorable” to the non-moving party.

In order to survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, U.S., 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Although the declaratory judgment now sought by the Plaintiff/Appellant is a statutory remedy rather than a traditional form of equitable relief, (as stated in the Complaint) further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. The “controversy” must necessarily be “of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts.” *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 325, 56 S.Ct. 466, 473, 80 L.Ed. 688, 699 (1936). The existence or nonexistence of any right, duty, power, liability, privilege, disability, or immunity or of any fact upon which such legal relations depend, or of a status, may be declared. The petitioner must have a practical interest in the declaration sought and all parties having an interest therein or adversely affected must be made parties or be cited. When declaratory relief will not be effective in settling the controversy, the court could decline to grant it. But the fact that another remedy would be equally effective affords no ground for declining declaratory relief.

The defendant’s actions constituted an illegal enterprise in acts or threat of acts in violation of Civil Rico Federal Racketeering Act USC 18, 1961-1963 et seq. The following are particular violations that would be unearthed during Discovery and for the court to consider before illegitimate dismissal: 18 USC 241: Conspiracy against Rights of Citizens: 18 USC 3: Accessory after the fact,

knowing that an offense has been committed against the United States, relieves, receives, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment. 18 USC 242: Deprivation of Rights color of law of rights protected under the Constitution of the U.S. 18 USC 512: Tampering with a witness 18 USC 1341: Mail fraud 18 USC 1343: Wire fraud 18 USC 1503: Obstruction of justice 18 USC 1510: Obstructing of criminal investigation 18 USC 1513: Retaliating against a witness, victim or informant 18 USC 1951: Interference with interstate commerce 18 USC 1621: and Perjury 18 USC 1001: Fraud

The demand for relief as outlined in the Plaintiff/Appellants Complaint states the declaratory judgment desired as to the rights of the Plaintiff/Appellant. Sufficient evidence exists as demonstrated by the attachments to the Plaintiffs Complaint that support the Appellants appeal here. By dismissal of the Plaintiffs/Appellants Complaint, the District Court is complicit in the cover up and favoritism towards attorneys. Section 1985(3) under Title 42 reaches both conspiracies under color of law and conspiracies effectuated through purely private conduct. In this case Plaintiff is alleging a class-based, invidiously discriminatory animus is behind the conspirators' action as the court records reflect. That actionable cause is the treatment of a non-lawyer pro se litigant as a distinct "class-based subject" of the Court, wherein denial of equal protection of the laws and

denial of due process was clearly the product of bias and prejudice of the Court. See *Griffen v. Breckenridge*, 403 U.S. 88,102 (1971).

The District court has jurisdiction because there are federal constitutional and statutory provisions involved, the parties are citizens of different states, and the amount of property rights in controversy exceeds \$75,000.00 US, excluding interests and costs.

Subject matter jurisdiction is the court's authority to decide the issue in controversy such as a contracts issue, or a civil rights issue. Subject matter jurisdiction can never be presumed, waived, or constructed, even by mutual consent of the parties, and it has two parts:

- (1) The statutory or common law authority for the court to hear the case, and
- (2) The appearance and testimony of a competent fact witness - in other words, sufficiency of pleadings

Under Article III, §2 of the U.S. Constitution, “standing” exists as long as a Plaintiff has suffered “injury in fact,” the injury is “fairly traceable” to the defendant, and the injury would be “redressed” by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); see also *Ass’n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 151-53 (1970) (hereinafter, “ADAPSO”); *Ass’n of Data*

Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150, 151-53 (1970). “[S]tanding in no way depends on the merits of the plaintiff’s contention that particular conduct is illegal.” *Warth v. Seldin*, 422 U.S. 490, 500 (1975)(emphasis added); see also *ADAPSO*, 397 U.S. at 153. Whether the plaintiff has a legally cognizable interest and whether the defendants are liable for the conduct alleged are questions that go to the merits. See *ADAPSO*, 397 U.S. at 153, 158.

The District Court has erroneously conflated subject-matter jurisdiction “with a plaintiff’s need and ability to prove the defendant bound by the federal law and asserted as the predicate for relief, a merits-related determination.” *Arbaugh*, 546 U.S. at 511. Recently, the Supreme Court has sought to curtail such unrefined dispositions by setting forth a test for distinguishing true jurisdictional requirements and the essential ingredients of a federal claim for relief. See *Reed Elsevier*, 130 S.Ct. at 1244. In *Arbaugh*, the Supreme Court announced a “readily administrable bright line” rule that, unless Congress “clearly states” that a statutory limitation on coverage is jurisdictional, “courts should treat the restriction as non jurisdictional in character.” 546 U.S. at 515-16. The jurisdictional analysis focuses on the “legal character of the requirement,” which is discerned by looking to the statutory text and structure, the practical consequences of characterizing a requirement as jurisdictional, and the Court’s historical treatment of the type of

limitation the statute imposes. *Reed Elsevier, 130 S.Ct. at 1246-48; see also Arbaugh, 546 U.S. at 513-14.*

SUMMARY OF THE ARGUMENT / CONCLUSION

The United States District Court for the District of Columbia has subject-matter jurisdiction over this action. The basic statutory grant of federal-question jurisdiction contained in 28 U.S.C. §1331-1334 provides that the “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” The Plaintiff/Appellants Fourteenth Amendment right to due process of law was denied when the district court failed, on its own initiative, to allow or order a hearing on the issues contained within the Plaintiff/Appellants complaint.

The United States District Court for the District of Columbia failed in its Constitutional duty to the Plaintiff/Appellant by accepting the pro se Complaint under different law than any other Complaint. This would not be “equal protection under the law”. This would be discrimination. The Fourteenth Amendment Due Process Clause and Equal Protection clause (Section 1), expressly declares no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...”

Pleadings in this case are filed by Plaintiff/Appellant pro se, wherein pleadings are to be considered without regard to technicalities. Pro se, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See *Haines v. Kerner* 92 Sct 594, also See *Power* 914 F2d 1459 (11th Cir 1990), also See *Hulsey v. Ownes* 63 F3d 354 (5th Cir 1995). also See *In Re: HALL v. BELLMON* 935 F.2d 1106 (10th Cir. 1991)."

Declaratory relief and remand is necessary to allow the district court to apply the correct standard because the district court did not even attempt to adhere to these rules of procedure in addressing the factual issues that go to the merits of the Plaintiff/Appellants claim. Section 1985(3) under Title 42 reaches both conspiracies under color of law and conspiracies effectuated through purely private conduct. In this case Plaintiff has alleged a class-based, invidiously discriminatory animus is behind the conspirators' action as the court records reflect. That actionable cause is the treatment of a non-lawyer pro se litigant as a distinct "class-based subject" of the Court, wherein denial of equal protection of the laws and denial of due process was clearly the product of bias and prejudice of the Court. See *Griffen v. Breckenridge*, 403 U.S. 88,102 (1971).

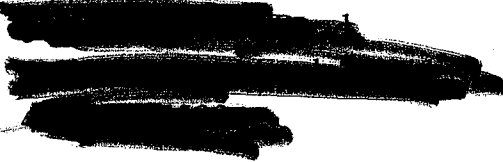
This lawsuit and appeal asks for Relief of all orders made in violation of the law, that Due Process of Law be allowed and any further issue relief as the court deems appropriate. This Appeals Court should therefore reverse and remand for

proper consideration of the merits of the Plaintiff/Appellants claim, and if necessary, (as reserved in the Complaint) to amend the Complaint.

Respectfully Submitted



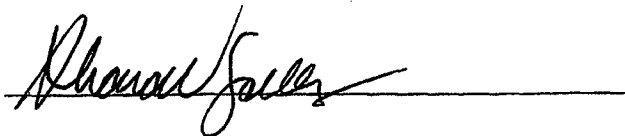
Sharon V. Galloway
Appellant Pro Se



CERTIFICATE OF COMPLIANCE

Certificate of compliance with type volume limitation, typeface and type style requirements. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 3,561 words, as determined by the word-count function of Microsoft Word 2007, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.



Sharon V. Galloway, Appellant pro se