



One of the explicit exceptions to the rule of the well pleaded complaint is section 1443(1). Section 1443(1) provides for removal in any suit:

[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.

28 U.S.C. § 1443(1). Puddington's claims, however, do not fall into the exception created by section 1443(1).

"The right of removal by a defendant for the protection of civil rights under § 1443 . . . is a very restricted one." Moore's Federal Practice, supra, para. 0.165, at 429. The Supreme Court has held that removal under section 1443(1) is appropriate only if the defendant can establish both prongs of a two-prong test:

"First, it must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.' Georgia v. Rachel, 384 U.S. [780,] 792 [(1966)]. Claims that . . . will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination, will not suffice.

Second, it must appear, in accordance with the provisions of § 1443(1), that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of [the] State.' This provision normally requires that the 'denial be manifest in a formal expression of state law,' Georgia v. Rachel, supra, at 803, such as a state legislative or constitutional provision, "rather than a denial first made manifest at the trial of the case. Except in the unusual case where 'an equivalent basis could be shown for an equally firm prediction that the defendant would be "denied or cannot enforce" the specified federal rights in the state court, id. at 804, it was to be expected that the protection of federal constitutional or statutory rights could be effected in the pending state proceedings, civil or criminal.

Johnson v. Mississippi, 421 U.S. 213, 219-20 (1975).

Puddington can satisfy neither of these prongs. The majority of Puddington's constitutional claims are "provisions of general applicability," such as the due process or the contract clauses. Puddington fails the second prong of the test as well. She has made no allegations that would lead the Court to believe that she will be unable to protect her rights in the state court proceeding.<sup>4</sup>

An additional, more general, problem with Puddington's attempt to use section 1443(1) as the basis for removal is that her specific civil rights claims are based on gender, not race. The Fourth Circuit has consistently held that "[a]llegations of sexual discrimination are not cognizable under § 1443(1)." Wilkins v. Rogers, 581 F.2d 399, 403 (4th Cir. 1978); see also Johnson, 421 U.S. at 219 ("[I]t must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.'") (emphasis added) (citation omitted)).

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<sup>4</sup> Even this statement implies a much wider scope for section 1443(1) than is appropriate. Removal is appropriate only where the state suit itself constitutes the infringement on the specific federally protected right and there is no indication that that right can be protected at the state trial level or on appeal. Compare Georgia v. Rachel, 384 U.S. 780 (1966) (removal permitted where black defendants prosecuted for trespass in attempting to receive service at a private restaurant; section 201(a) of the Civil Rights Act created a federal statutory right to service in a place of public accommodation) with City of Greenwood v. Peacock, 384 U.S. 808 (1966) (removal denied to black defendants prosecuted for obstructing public streets, disturbing the peace and other offenses during a civil rights (voting) protest); see also Emigrant Sav. Bank v. Elan Management Corp., 668 F.2d 671, 673-76 (2d Cir. 1982) ("[T]he scope of the intended expansion [of § 1443] was limited to statutes containing explicit anti-prosecution language . . . .").

### III. Diversity of Citizenship

While the real basis of Puddington removal is her asserted federal question, there is also some mention of diversity as a basis for removal. Removal based on diversity is justified only if there is a lack of complete diversity. 28 U.S.C. § 1441(b) ("Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."). In the instant case, four of the five original defendants were residents of Virginia. Two of these, the trustees, may be nominal or formal parties. The other two, however, have a very real and direct interest in the state proceeding. As holders of the deed of trust, a sale of the property will directly affect their interest in that property. Further, they have a direct interest in establishing who has priority to whatever funds are derived from a sale of that property.

Pro se defendant Puddington is notified that she has a right to appeal this decision. If she chooses to appeal, she must file a notice of appeal with the Clerk of this Court within thirty (30) days from the entry of the accompanying Order, pursuant to Fed. R. App. P. 4(a).

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to the pro se defendant and all counsel of record.

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DATE

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UNITED STATES DISTRICT JUDGE