

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5625
Summary Calendar

FOSTER BARNES and
ROSALIND P. BARNES,

Plaintiffs-Appellees,

versus

MARGARET S. LAMPKIN,

Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Texas
(SA-91-CV-494)

April 16, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Margaret Lampkin, *pro se* and *in forma pauperis*, appeals from the district court's order remanding this case to state court. We

AFFIRM.

I.

In 1984, Lampkin purchased a house in San Antonio, Texas, from Foster and Rosalind Barnes. The Barneses maintained a vendor's

¹ Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

lien on the house, instituted foreclosure proceedings in state court after Lampkin's mortgage payments became past due, and eventually obtained a judgment in their favor.² Thereafter, a justice of the peace granted judgment in favor of the Barneses in a forcible entry and detainer proceeding. While Lampkin's appeal from that judgment was pending in county court, the Barneses filed a second forcible entry and detainer action before the same justice of the peace, and obtained a judgment on May 8, 1991. Lampkin also appealed from that judgment, but the record does not reveal the status of that appeal.

Lampkin filed a petition for removal on May 23, 1991.³ The parties consented to final disposition by the magistrate judge. The magistrate judge, *sua sponte*, remanded the case to state court.

II.

Although an order remanding a case to the state court from which it was removed generally is unreviewable on appeal, we may review the remand of cases purportedly removed under 28 U.S.C. § 1443. 28 U.S.C. § 1447(d); *see also Robertson v. Ball*, 534 F.2d 63, 66 n.5 (5th Cir. 1976). Lampkin contends that removal was proper, because she alleged violations of 42 U.S.C. §§ 1981 and

² The foreclosure proceedings were stayed when Lampkin filed a bankruptcy petition under Chapter 13; but the bankruptcy court dismissed Lampkin's petition for failure to make payments under the plan.

³ In her petition for removal, Lampkin specified that she was removing only the first forcible entry and detainer case. On May 24, the county court reversed the judgment in favor of the Barneses in that case. But, on June 19, the county court vacated its May 24 judgment.

1982 (guaranteeing racial equality with respect to contractual obligations and housing).

For removal of a case under § 1443 to be proper, "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" and "that the removal petitioner is `denied or cannot enforce' the specified federal rights `in the courts of [the] state.'" ***Johnson v. Mississippi***, 421 U.S. 213, 219 (1975) (citations omitted).

Lampkin alleged in her removal petition that "State Officials are acting IN CONCERT AND UNDER THE GUISE OF THE COLOR OF LAW to deprive the defendant of her RIGHTFUL PROPERTY WITHOUT EQUALITY OF LAWS DUE TO THE COLOR OF HER SKIN BEING THAT OF BLACK AND HER LACK OF FORENSIC SKILLS AND FINANCIAL STATUS OF INDIGENCY." She further alleged that she "has not and will not be given the proper due process of law in the State Courts."

Lampkin's conclusory allegations are insufficient to support removal under § 1443. Liberally construed, her pleadings allege (1) a conspiracy between the state justice of the peace and the Barneses attorney (neither of whom are parties) to deprive her of her homestead, and (2) that state rules of appellate procedure were violated by the institution of the second forcible entry and detainer proceeding during the pendency of the appeal of the first such proceeding. Lampkin has not alleged that the state courts treat black defendants differently from members of any other racial groups in forcible entry and detainer proceedings, nor has she

alleged that any federal law expressly designed to guarantee racial equality has been violated by the alleged breaches of state rules of appellate procedure. See *Georgia v. Spencer*, 441 F.2d 397, 398 (5th Cir.), cert. denied, 403 U.S. 934 (1971) (an allegation that due process was denied when state procedural rules were violated is insufficient to effect removal under § 1443).

We conclude that removal was improper under § 1443. Accordingly, the case was properly remanded to state court.

III.

The judgment of the district court is

AFFIRMED.