

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Rosalyn Angela Windham El v. Mercidel Howard, et al.

Windham · No. 24-cv-09344-DMR · Decided April 9, 2025

SUMMARY

The United States District Court for the Northern District of California grants Rosalyn Angela Windham El’s application to proceed in forma pauperis but questions whether the court has subject matter jurisdiction. The court concludes that the complaint does not establish federal-question jurisdiction and that the parties do not appear to be diverse because they are all alleged to be California residents. The court orders Windham to explain by May 9, 2025 why the action should not be dismissed for lack of subject matter jurisdiction.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Donna M. Ryu
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 9, 2025
DOCKET	24-cv-09344-DMR
DISPOSITION	other
PROCEDURAL POSTURE	Self-represented plaintiff filed a complaint seeking ejectment concerning real property and applied to proceed in forma pauperis. The court granted IFP status but issued an order to show cause regarding subject matter jurisdiction before any final dismissal.
STANDARD OF REVIEW	The court independently examined subject matter jurisdiction and screened the IFP complaint under 28 U.S.C. § 1915(e)(2).
PRECEDENTIAL VALUE	Unknown; district court order to show cause with no reported citation.
PARTIES	Rosalyn Angela Windham El v. Mercidel Howard, Mikkela Rose-Marie Sweet, Joyce Annette Howard

TOPICS

- subject matter jurisdiction
- civil procedure
- constitutional law
- ejectment

PRACTICE AREAS

civil procedure

constitutional law

real estate

QUESTIONS PRESENTED

1. Whether the complaint established federal-question jurisdiction under 28 U.S.C. § 1331.
2. Whether the complaint established diversity jurisdiction under 28 U.S.C. § 1332.
3. Whether the court should require plaintiff to show cause why the action should not be dismissed for lack of subject matter jurisdiction.

HOLDINGS

1. The complaint did not establish federal-question jurisdiction because it did not allege a constitutional violation or a claim arising under an identifiable federal law or treaty.
2. The complaint did not presently establish diversity jurisdiction because all parties appeared to be California citizens and the complaint did not show complete diversity.
3. Because it was not clear that the court had subject matter jurisdiction, plaintiff was ordered to explain in writing why the case should not be dismissed for lack of subject matter jurisdiction.

KEY QUOTATIONS

“Federal courts are courts of limited jurisdiction, and a “federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.”” (at 1)

“A case “arises under” federal law when federal law either (1) “creates the cause of action” or (2) “the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.”” (at 2)

“With a few exceptions, such as the provisions of the Thirteenth Amendment, constitutional guarantees of individual liberty and equal protection do not apply to the actions of private entities.” (at 2)

FACTUAL BACKGROUND

Windham claimed to be a Moorish American National and the trustee or fiduciary of a fee-simple property at 2943 Chestnut Street in Emeryville, California. She sought to eject alleged squatters and others associated with the property. The complaint identified Windham as domiciled in California and alleged that the individual defendants were also residents of California, while relying on Article I, Section 10, Clause 1 of the Constitution and Moorish-citizenship theories as purported jurisdictional bases.

PROCEDURAL HISTORY

Windham filed the complaint and an IFP application in federal district court. After reviewing the financial affidavit, the court found her economically eligible to proceed without prepaying fees. The court determined that the allegations did not presently establish federal-question or diversity jurisdiction and ordered Windham to explain by May 9, 2025 why the action should not be dismissed.

DISPOSITION

other

CASES CITED

- Denton v. Hernandez, 504 U.S. 25, 32 (1992)
- Stock W., Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989)
- Franchise Tax Bd. v. Constr. Laborers Vacation Tr., 463 U.S. 1, 27-28 (1983)
- Rivet v. Regions
- Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001)
- Edmonson v. Leesville Concrete Co., 500 U.S. 614, 619 (1991)
- Ingram El v. Crail, No. 18-cv-1976-MCE-EFB PS, 2019 WL 3860192 (E.D. Cal. Aug. 16, 2019)

OPINION

Windham v. Howard

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 ROSALYN ANGELA WINDHAM EL, Case No. 24-cv-09344-DMR 8 Plaintiff, ORDER TO
SHOW CAUSE RE:

9 v. SUBJECT MATTER JURISDICTION

10 MERCIDEL HOWARD, et al., 11 Defendants. 12 Self-represented Plaintiff Rosalyn Angela
Windham El (“Windham”) filed a complaint and 13 an application for leave to proceed in forma
pauperis (“IFP”). [Docket Nos. 1, 2.] Windham 14 alleges that she is a Moorish American
National and “ancient American Inhabitant Executor 15 Fiduciary and Successor Trustee of [a]
Trust in Fee Simple Absolute,” a property with address 16 2943 Chestnut St, Emeryville CA
94608. [See Docket No. 1 (“Compl.”) at ECF 8.] The 17 complaint seeks the ejection from this
property of “all squatter persons, principle, agents, heirs and 18 assign named on the grant deed
and all current improvements” [id.], presumably the two 19 individual Defendants who are alleged
to reside at the 2943 Chestnut St property [id. at 2].1 20 The court considers Windham’s complaint
and IFP application pursuant to 28 U.S.C. 21 § 1915(a). A court may allow a plaintiff to prosecute
an action in federal court without 22 prepayment of fees or security if the plaintiff submits an
affidavit showing that he or she is unable 23 to pay such fees or provide such security. See 28
U.S.C. § 1915(a). The court’s grant of a 24 plaintiff’s application to proceed IFP, however, does
not mean that a plaintiff may continue to 25 prosecute the complaint. A court is under a continuing
duty to dismiss a case filed without the 26 1 The two Defendants are named Mercidel Howard and
Mikkela Rose-Marie Sweet in the case 27 caption but identified as Mercidel Howard and Joyce
Annette Howard in the complaint itself. 1 payment of the filing fee whenever it determines that the

action “(i) is frivolous or malicious; 2 (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a 3 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). If the court 4 dismisses a case pursuant to section 1915(e)(2)(B), the plaintiff may still file the same complaint 5 by paying the filing fee. This is because the court’s section 1915(e)(2)(B) dismissal is not on the 6 merits, but rather an exercise of the court’s discretion under the IFP statute. See *Denton v. 7 Hernandez*, 504 U.S. 25, 32 (1992). 8 Having evaluated Windham’s financial affidavit, the court finds that she has satisfied the 9 economic eligibility requirement of 28 U.S.C. § 1915(a) and grants her application to proceed IFP. 10 Federal courts are courts of limited jurisdiction, and a “federal court is presumed to lack 11 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v. 12 Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citations omitted). A federal court 13 may exercise either federal question jurisdiction or diversity jurisdiction. Federal question 14 jurisdiction under 28 U.S.C. § 1331 requires a civil action to arise under the constitution, laws, or 15 treaties of the United States. A case “arises under” federal law when federal law either 16 (1) “creates the cause of action” or (2) “the plaintiff’s right to relief necessarily depends on 17 resolution of a substantial question of federal law.” *Franchise Tax Bd. v. Constr. Laborers 18 Vacation Tr.*, 463 U.S. 1, 27-28 (1983). A federal district court has diversity jurisdiction where 19 the parties are diverse and “the matter in controversy exceeds the sum or value of \$75,000, 20 exclusive of interests and costs.” 28 U.S.C. § 1332. On her form complaint, Windham has 21 checked boxes indicating that the bases for federal court jurisdiction are both federal question and 22 diversity of citizenship. [Compl. at 3.] 23 The court lacks federal question jurisdiction over this action. Federal question jurisdiction 24 under 28 U.S.C. § 1331 requires a civil action to arise under the constitution, laws, or treaties of 25 the United States. “[T]he presence or absence of federal-question jurisdiction is governed by the 26 ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal 27 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Rivet v. Regions 1 (1987))*. In this case, in the section for federal question jurisdiction, the complaint states only 2 “Article I Section 10 Clause 1[:] No State shall make any thing but gold and silver Coin a Tender 3 in Payment of Debts.” Windham cites this clause of the constitution as supporting the 4 “particulars” of the alleged Moorish American “prehistoric acquisition of land” and existence of a 5 “private express trust [Prophet Noble Drew Ali] created for the Moors in 1928,” which is the “fee 6 simple absolute.” [Compl. at ECF 8, 14.] However, the complaint does not allege a constitutional 7 violation, nor could it against two private individuals.² While the attached affidavit describing the 8 fee simple absolute references various legal citations, the ejectment sought by the complaint does 9 not arise under the U.S. Constitution or an identifiable law or treaty of the United States. 10 Windham and the Defendants also do not appear to have diversity of citizenship. A natural 11 person’s state of citizenship is determined by the state of domicile. See *Kanter v. Warner-Lambert 12 Co.*, 265 F.3d 853, 857 (9th Cir. 2001). “A person’s domicile is her permanent home, where she 13 resides with the intention to

remain or to which she intends to return.” Id. Windham alleges that 14 she is domiciled in California. [Compl. at 1, 3.] She indicates that the two individual Defendants 15 are residents of 2943 Chestnut St, Emeryville, California, in one page of the complaint and 16 residents of “California Corporation 1850” on another page. [Id. at 2, 3-4.] Because all three 17 parties appear to be residents of California, the parties are not diverse, and the court concludes that 18 it does not have diversity jurisdiction over this action under 28 U.S.C. § 1332.3 19 As it is not clear that the court has jurisdiction over this action, by no later than May 9, 20 2025, Windham shall explain in writing why this case should not be dismissed for lack of subject 21 22 2 The U.S. Constitution generally does not provide a remedy for constitutional violations against private individuals. “With a few exceptions, such as the provisions of the Thirteenth Amendment, 23 constitutional guarantees of individual liberty and equal protection do not apply to the actions of private entities.” *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991). Rather, these 24 protections “apply in general only to action by the government.” Id. 25 3 To the extent Windham may seek to rely on her Moorish citizenship to bypass the diversity requirement, courts have not been receptive to such arguments. See, e.g., *Ingram El v. Crail*, No. 26 18-cv-1976-MCE-EFB PS, 2019 WL 3860192, (E.D. Cal. Aug. 16, 2019) (“Plaintiff’s Moorish citizenship argument is a frivolous attempt to establish diversity jurisdiction where none exists, 27 and the ploy is not new.” (collecting cases)). 1 matter jurisdiction. If Windham fails to respond by that date or her response fails to establish a 2 basis for subject matter jurisdiction, the court may prepare a report and recommendation 3 recommending dismissal of the case. 4 The court refers Windham to the section “Representing Yourself” on the Court’s website, 5 located at <https://cand.uscourts.gov/pro-se-litigants/>, as well as the Court’s Legal Help Centers for 6 unrepresented parties. Parties may schedule an appointment by calling 415-782-8982 or emailing 7 fedpro@sfbar.org. 8 9 IT IS SO ORDERED. 10 Dated: April 9, 2025 11 _____ Donna M. Ryu 12 Chief Magistrate Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27