

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO**

MANUEL R. SUAREZ JIMENEZ, ET AL.,

Plaintiffs,

v.

COMISION ESTATAL DE ELECCIONES,
ET AL.,

Defendants.

CIVIL NO. 04-2288 (DRD)

OPINION AND ORDER

Before the Court is defendants' petition for removal. (Docket No. 1) Without deciding whether to grant the petition for removal, for the reasons set forth herein, the judgment of the Supreme Court of Puerto Rico in the case of Manuel R. Suarez Jimenez et al. v. Comision Estatal de Elecciones et al., CT-2004-4 (2004), is **VOID AB INITIO**.

Background

On November 18, 2004, at 1:56 p.m., Mr. Manuel R. Suarez and others filed a certification petition before the Supreme Court of Puerto Rico, regarding the order issued by the Puerto Rico Superior Court, San Juan Part, in the case of Manuel R. Suarez Jimenez, et al., v. Comision Estatal de Elecciones, et al., Civ. Num. T.P.I. KPE-04-3568. (Docket No. 1, Ex. 2.)

On Saturday, November 20, 2004, at 11:09 a.m., defendant Thomas Rivera Schatz filed a notice of removal before this Court claiming that pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, this Court has original jurisdiction over the action brought before the state courts. (Docket No. 1) On that same day, at 11:48 a.m., defendant Rivera Schatz filed a notice of removal before the Supreme Court of Puerto Rico. Afterward, at 4:16 p.m., Ms. Marta Font filed an urgent motion asking the Supreme Court to expedite its adjudication of the case in disregard of the notice of removal.

It was subsequently, during the evening hours, that the Supreme Court of Puerto Rico issued

a *per curiam* order ruling on the merits of the case as well as other matters not before it. See Manuel R. Suarez Jimenez, et al., v. Comision Estatal de Elecciones, et al., ___ D.P.R. ___ (2004) CT-2004-0004.¹ There is no date-stamp for the order. Three of the justices of the Supreme Court dissented and refused to file their dissent because they understood that the automatic stay provisions of the law prevented them from acting further. See Manuel R. Suarez Jimenez, et al., v. Comision Estatal de Elecciones, et al., ___ D.P.R. ___ (2004), CT-2004-0004 (Judgment at 2.) This Court now considers whether the order issued by the Puerto Rico Supreme Court may stand notwithstanding its issuance after the filing of the notice of removal.

Discussion

A defendant seeking removal must “file in the district court of the United States for the district and division within which such action is pending a notice of removal...” 28 U.S.C. § 1446(a) (2004). In a civil action, the filing of the notice “shall effect the removal and the State court shall proceed no further unless and until the case is remanded.” Id. at § 1446(d). In fact, a state court has a “duty ... to proceed no further in the cause.” Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882); Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 842 (1st Cir. 1988).

Since 1882, courts have consistently held that upon the filing of the petition for removal, the jurisdiction of the state court absolutely ceases, and that of the federal court immediately attaches. Steamship, 106 U.S., at 122-23. Accordingly, upon the filing of the notice of removal, unless and until remand, all further proceedings in state court are void *ab initio* because they are in fact *coram non judice*. Id.; see Hyde Park Partners, 839 F.2d, at 842 (hearing and temporary restraining order issued by state court void *ab initio* where entered following removal to federal court); Polyplastics, Inc. v. Transconex, Inc., 713 F.2d 875, 880 (1st Cir. 1983) (citing E.D. Systems Corp. v. Southwestern Bell Telephone, 674 F.2d 453, 458 (5th Cir. 1982) and Arango v. Guzman Travel Advisers Corp., 621 F.2d 1371, 1374, 1375 (5th Cir. 1980) for the proposition that post-removal

¹ In a concurring opinion by Justice Fuster at Footnote 1, the legality of the removal was decided as untimely, notwithstanding that from the date of filing at the trial court and to the date of the Supreme Court decision, only five days had elapsed.

proceedings in state court are void *ab initio* once the case is removed); Sweeney v. Resolution Trust Corp., 16 F.3d 1, 4 (1st Cir. 1994) (“purported judgment” entered by state court void *ab initio* where entered following removal to federal court); Hernandez-Lopez v. Com. of Puerto Rico, 30 F.Supp.2d 205, 211 (D. P.R. 1998); accord In re diet Drugs, 282 F.3d 220, 231-232 (3d Cir. 2002); State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957); Ward v. Resolution Trust Corp., 972 F.2d 196, 198 (8th Cir. 1992); California ex rel. Sacramento Metropolitan Air Quality Management Dist., v. United States, 215 F.3d 1005, 1011 (9th Cir. 2000).

Without determining whether to grant the petition for removal, this Court nonetheless notes that the complaint appears to allege colorable federal claims. At paragraph 26, the complaint alleges that the equal protection clause covers and protects plaintiffs’ votes. Moreover, the notice appears to have been timely filed within the thirty days granted by statute to remove a case. 28 U.S.C. § 1446(b).

In the case at bar, a notice of removal was filed on Saturday, November 20, 2004, in the Supreme Court of Puerto Rico at 11:48 a.m. Later that day, at 4:16 p.m., a motion was filed, specifically requesting that the Supreme Court expedite its decision irrespective of the filing of the notice of removal. This Court need go no further. As the decision was issued after the filing of the notices of removal, the Puerto Rico Supreme Court had no jurisdiction. “Decisions by local courts, including the Supreme Court of Puerto Rico, that have lost jurisdiction once a case has been removed--or even while the district court is deciding whether removal was proper or not--cannot stand.” Hernandez-Lopez v. Com. of Puerto Rico, 30 F.Supp.2d 205, 211 (D. P.R. 1998).

The decision of the Puerto Rico Supreme Court constitutes a willful dereliction of the federal law requiring an absolute abstention from further acting in a removed case, contrary to the stay provisions of the law, until the federal authorities decide the removal. See 28 U.S.C. § 1446(d). If this Court does not protect its jurisdiction, chaos will ensue in the District of Puerto Rico, where lower courts and any quasi-judicial administrative agency will have authority to defiantly follow this decision of the Puerto Rico Supreme Court and determine federal jurisdiction, all against wholly contrary pronouncements consistently issued by the Supreme Court of the United States, since at

least 1882. Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882).

In light of the foregoing, the decision of the Supreme Court of Puerto Rico, Manuel R. Suarez Jimenez, et al., v. Comision Estatal de Elecciones, et al., ___ D.P.R. ___ (2004) CT-2004-0004, is void *ab initio*. The Supreme Court of Puerto Rico remains without jurisdiction in this matter, as of the instant the notice of removal was filed, until this Court should determine the propriety of jurisdiction and/or of a remand.²

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 23rd day of November 2004.

S/ DANIEL R. DOMINGUEZ
DANIEL R. DOMINGUEZ
U.S. DISTRICT JUDGE

² A detailed chronology of the case in the Supreme Court is attached hereto as Exhibit 1.

SEQUENCE OF EVENTS:

In the case of Manuel R. (“Manny”) Suarez, et al., v. Comisión Estatal de Elecciones, CT-2004-0004 before the Puerto Rico Supreme Court.

1.	Certification Petition filed before the Puerto Rico Supreme Court regarding civil case <u>Manuel Suarez, et al., v. Comisión Estatal de Elecciones, et al., Civ. Num. T.P.I KPE-04-3568.</u>	Nov. 18	1:56 p.m.
2.	<u>Resolution of the Supreme Court</u> : granting defendants until November 19, 2004 at 3:00 p.m. to file their respective responses to the certification petition ³ .	Nov. 19	no hour indicated
3.	<u>Request for Extension of Time</u> : filed by Thomas Rivera Schatz.	Nov. 19	2:39 p.m.
4.	<u>Request for Extension of Time</u> : filed by the State Elections Commission.	Nov. 19	no hour indicated
5.	<u>Resolution of the Supreme Court</u> : ruling on requests for extension of time and granting defendants until Saturday November 20, 2004, at 12:00 noon to file their pleadings ⁴ .	Nov. 19	no hour indicated
6.	<u>Appearance by Gerardo A. Cruz, Electoral Commissioner for the Popular Democratic Party</u> : filed by co-defendant Gerardo A. Cruz.	Nov. 19	4:39 p.m.
7.	<u>Informative Motion pursuant to Rule 50 of the Rules of the Puerto Rico Supreme Court</u> : filed by all plaintiffs.	Nov. 19	4:39 p.m.
8.	<u>Informative Motion to amend case title</u> : filed by all plaintiffs.	Nov. 19	4:41 p.m.
9.	<u>Informative Motion certifying fax numbers of the appearing parties’ attorneys</u> : filed by all plaintiffs.	Nov. 19	4:42 p.m.
10.	<u>Motion to Amend Table of Contents of the Certification Petition and Requesting Urgent Remedies</u> : filed by all plaintiffs.	Nov. 19	4:43 p.m.
11.	<u>Appearance by the State Electoral Commission</u> : filed by the State Electoral Commission.	Nov. 20	11:40 a.m.
12.	<u>Motion to Supplement Appearance</u> : filed by Gerardo Cruz, Electoral Commissioner of the Popular Democratic Party.	Nov. 20	11:43 a.m.

³ Was sent by fax to parties.

⁴ Was sent by fax to parties.

	NOTICE OF REMOVAL FILED BY DEFENDANT THOMAS RIVERA SCHATZ IN U.S. DISTRICT COURT, Civ. No. 04-2288(DRD).	Nov. 20	11:09 a.m.
13.	NOTIFICACIÓN DE TRASLADO (NOTICE OF REMOVAL): filed by Thomas Rivera Schatz in the Puerto Rico Supreme Court.	Nov. 20	11:48 a.m.
14.	<u>Motion to Intervene:</u> filed by Marta Font	Nov. 20	12:33 p.m.
15.	<u>Motion to Intervene:</u> filed by Efraim Cintrón García, Esq.	Nov. 20	1:44 p.m.
16.	<u>Motion Requesting Urgent Adjudication of the Case and Advising of the Frivolous Removal:</u> filed by intervenor Marta Font.	Nov. 20	4:16 p.m.
17.	Per Curiam Opinion and Order issued by the Puerto Rico Supreme Court.	Nov. 20	no hour indicated