



# Removal and Remand: A Nunc Pro Tunc Order Cannot Cure A Deficiency Based on Lack of Jurisdiction

March 2, 2020

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A nunc pro tunc order is intended to make an order effective as of a date preceding the entry of the nunc pro tunc order. Where a court does not have jurisdiction over a case, such an order has no effect.

A recent United States Supreme Court case, *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano*, 589 U.S. \_\_\_\_ (2020) (*per curiam*), includes a lesson in judicial procedure concerning the interplay between the state and federal court systems as well as a caution to lawyers and clients to proceed carefully when seeking relief. The case involved a state court lawsuit against the Archdiocese of San Juan (the "Archdiocese") over a failed pension fund for Catholic school teachers in Puerto Rico.

The state court had denied a preliminary injunction requiring the payment of pension benefits. The state Court of Appeals affirmed, but the state Supreme Court reversed.

The matter bounced among the state trial court, state appellate court, and state Supreme Court. In the midst of various appeals and state motion practice, at a certain juncture, the Archdiocese removed the matter to the federal district court because a bankruptcy had been filed and, the Archdiocese asserted, federal law should apply.

Subsequently, the bankruptcy case was dismissed and the federal district court decided to return the case to the state court system where upon the state court entered certain seizure orders. At that point the Archdiocese requested a ruling from the United States Supreme Court on the basis that first amendment protection of free exercise of religion was at issue. The solicitor general of the United States also filed a brief concerning first amendment issues, but the United States Supreme Court noticed a procedural flaw that the other parties had not raised.

The United States Supreme Court declined to address the first amendment issues holding that the state court had lacked jurisdiction to issue orders after the proceeding had been removed to the federal district court. As the case had not actually yet been remanded back to the state court when it entered the orders the state court

had no jurisdiction. Thus, the state court acted prematurely and its orders were void. This could not be cured by entry of a nunc pro tunc order.

The United States Supreme Court's opinion in this matter exemplifies the importance of questions of jurisdictional defects. Parties should be very mindful of procedural rules to prevent unfavorable outcomes in litigation.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of bankruptcy law, please contact Michael Traison at [312.860.4230](tel:312.860.4230)

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