

answer the first question in the negative, and therefore remand the entire case, we need not reach the second and third questions.

Removal of cases from state courts is governed by 28 U.S.C. §§ 1441-1452. Section 1441(a) provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants" Under § 1446(b), a defendant must file a notice of such removal:

within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever is shorter.

Because removal statutes are an infringement on the power of the states, they "must be strictly construed in favor of state court jurisdiction." Landman v. Borough of Bristol, 896 F. Supp. 406, 408 (E.D. Pa. 1995) (citing Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990)). Accordingly, any doubts concerning the removal procedure should be resolved in favor of remand. Id. (same). In addition, it is well-established that, despite the ambiguity of the term "defendant or defendants," removal requires that the defendants unanimously join or consent to the removal. See, e.g., Balazik v. County of Dauphin, 44 F.3d 209, 213 (3d Cir. 1995), Lewis v. Rego Co., 757 F.2d 66, 68 (3d Cir. 1985); Davidson v. National R.R. Passenger Corp., No. CIV.A. 00-1226, 2000 WL 795881, at *2 (E.D. Pa. June 9, 2000).¹

¹ There are several exceptions to the unanimity rule not at issue in this case. The general rule may be disregarded when (1) the non-joining defendant is a nominal party; (2) a defendant been fraudulently joined; or (3) when a non-resident defendant has not been served at the time the removing defendants filed their petition. Weinrach v. White Metal Rolling & Stamping Corp., No. CIV.A. 98-3293, 1999 WL 46627, at *1 (E.D. Pa. Jan. 6,

Here, it is undisputed that the Red Cross did not obtain the consent of the other defendants to remove this case from state court. Instead, in its Notice of Removal, the Red Cross contended that it was not required to obtain its co-defendants' consent because it was the only party entitled to remove the case. As an initial matter, it is clear that there is no jurisdictional bar to removal by the Red Cross. The Red Cross's federal charter allows it to "sue and be sued" in federal court, and therefore, confers "arising under" jurisdiction of Article III of the Constitution. See American Nat'l Red Cross v. S.G., 505 U.S. 247, 264, 112 S. Ct. 2465, 120 L. Ed. 2d 201 (1992) (holding that specific statutory grant by Congress gave Red Cross arising under jurisdiction of Article III). The jurisdictional issue, however, does not automatically resolve the procedural question of whether the Red Cross must still comply with the unanimity rule.

The Red Cross cites several cases in which courts have held that only those defendants who are entitled to remove an action to federal court themselves must consent to another defendant's removal. See, e.g., Moscovitch v. Danbury Hosp., 25 F. Supp. 2d 74 (D. Conn. 1998); Parisi v. Rochester Cardiothoracic Assocs., No. CIV-91-6387T, 1992 WL 470521 (W.D.N.Y. June 29, 1992); see also Roe v. Little Co. of Mary Hosp., 815 F. Supp. 241 (N.D. Ill. 1992); Hill v. City of Boston, 706 F. Supp. 966 (D. Mass. 1989). These courts have adopted what is generally known as a "refined" unanimity rule, which provides that a removing party need not

1999) (quoting Balazik, 44 F.3d at 213 n.4).

obtain the consent of a co-defendant who would not be allowed to remove if it were the sole defendant. The justification most commonly expressed for this refined approach is that it is unfair to "enable a plaintiff to defeat removal entirely by serving those defendants without a removal right at least thirty days before serving those defendants with a right to remove." Parisi, 1992 WL 470521, at *2.

The majority of courts, however, have rejected the so-called refined approach. See, e.g., Doe v. Kerwood, 969 F.2d 165, 167-69 (5th Cir. 1992) (rejecting Red Cross's refined approach as conflicting with Chicago, Rock Island & Pac. Ry. v. Martin, 178 U.S. 245, 20 S. Ct. 854, 44 L. Ed. 1055 (1900),² and therefore, holding that removal petition was procedurally defaulted because consent of all defendants not obtained); Mayo v. Christian Hosp. Northeast-Northwest, 962 F. Supp. 1203, 1205-06 (E.D. Mo. 1997) (rejecting refined approach in favor of unanimity rule); Mullins v. Hinkle, 953 F. Supp. 744, 750-51 (S.D. W.Va. 1997) (same); Gibson v. Inhabitants of Brunswick, 899 F. Supp. 720, 721 (D. Me. 1995) (same); Collins v. American Red Cross, 724 F. Supp. 353, 358-60 (E.D. Pa. 1989) (rejecting Red Cross's argument that it did not have to obtain consent of co-defendants to remove). Many of the courts adhering to the unanimity rule have expressed concern that adoption of the refined approach would allow a single defendant among many to impose its choice of forum on not

² In Martin, the Supreme Court held that a case had been properly remanded to the state court after the defendants, a group of federally appointed receivers, failed to obtain the consent of all defendants, despite the fact that only the receivers would have been able to remove the case. Id. at 251.

only unwilling plaintiffs, but unwilling co-defendants as well. See, e.g., Gibson, 899 F. Supp. at 721 (noting similar reasoning in Chaghervand v. Carefirst, 909 F. Supp. 304 (D. Md. 1995) and Whitcomb v. Potomac Physicians, P.A., 832 F. Supp. 1011 (D. Md. 1993)). Others have criticized the opposing courts' fear about abusive manipulation of service as being exaggerated. See, e.g., Kerwood, 969 F.2d at 169 (noting that such abuse by plaintiffs can be remedied by the equitable powers of the court on a case-by-case basis).

It appears that the Third Circuit has not addressed this issue. And, as noted above, the only district court in this district to have analyzed this specific question rejected the arguments made by the Red Cross in that case, which are largely the same arguments the Red Cross forwards again now. See Collins, 724 F. Supp. at 358-60; see also Matthews v. Key Bank, No. CIV.A. 99-1799, 1999 WL 398716, at *1 (E.D. Pa. June 17, 1999) (noting that it is "not altogether clear" that defendants have to obtain consent of other defendants to remove; comparing cases adopting and rejecting refined approach, but not reaching issue).

Based on our reading of the law, and the rationales supporting the unanimity rule, we agree with those courts who have rejected the refined approach. First, we note that the Red Cross's grant of jurisdiction, by virtue of its federal charter, does not exempt it from complying with the applicable procedural rules for removal. As Kerwood and Collins pointed out, unlike federal instrumentalities such as the FDIC which have their own

specific removal statutes that do not require consent to remove, the Red Cross must remove pursuant to the general removal statute. Kerwood, 969 F.2d at 168; Collins, 724 F. Supp. at 358-59. Therefore, notwithstanding the Red Cross's unique position for jurisdictional purposes, it is still subject to the ordinary procedural requirements under 28 U.S.C. § 1446.³

Second, we do not find persuasive the reasoning that enforcement of the unanimity rule will result in abuse by plaintiffs. There is no indication in the case at bar that those abuses occurred here, and the possibility of such abuse occurring in the future does not justify muddying the waters of a relatively clear procedural rule now.⁴ Conversely, the opposing fear -- that a single defendant could impose its choice of forum on both unwilling plaintiffs and other defendants -- would be nearly a foregone conclusion in many cases were we to adopt the Red Cross's position. Finally, the well-established application

³ On this issue, we find the Roe court's criticism of Kerwood misplaced. See Roe, 815 F. Supp. at 243 (criticizing Kerwood for upholding unanimity rule because jurisdiction of Red Cross is "party-based" and not based upon diversity or a federal question). Contrary to Roe's position, we do not believe that the type of jurisdiction involved disposes of the procedural issue. Rather, we agree with the Kerwood court that "[t]he language of the specific statutory authority for removal is the controlling factor in determining whether a defendant must obtain the consent of co-defendants." Id. at 168. Given that there is no question that the general removal statute applies in this case, we see no reason why that statute should not be applied according to its terms and understood meaning.

⁴ Moreover, at least one court in this district has held that, if a case is removable, any defendant, including one not named in the complaint's federal law count or otherwise able to remove independently, must be permitted to file a notice of removal. Cartwright v. Thomas Jefferson Univ. Hosp., 99 F. Supp. 2d 550, 552-53 (E.D. Pa. 2000) (Dalzell, J.). "A contrary rule would permit a plaintiff to defeat removal by the simple gambit of manipulating the order of service of process on various defendants." Id. at 553 (allowing removal by defendant who had only state claims against her where another, later-served defendant had federal law claim against it). Although Cartwright presented different issues than this case, we note that adoption of the type of rule suggested therein would further mollify concerns about plaintiffs' abuse of service.

of the unanimity rule in this Circuit, see Balazik, 44 F.3d at 213, as well as the Supreme Court's decision in Martin, counsel against adding further exceptions or refinements to the standard removal procedure. For all these reasons, we find that the Red Cross's removal petition is procedurally defective because the consent of all defendants was not obtained. See, e.g., Kerwood, 969 F.2d at 169.⁵ Accordingly, we will grant Plaintiff's Motion to Remand and remand this case to the Court of Common Pleas for Philadelphia County.

CONCLUSION

For the reasons above, we will grant Plaintiff's Motion to Remand. Because we will remand the entire case, we need not address the Commonwealth's Motion to Dismiss. An appropriate order follows.

⁵ We note that Plaintiff also attempts to draw support from Justice Kennedy's concurrence in Wisconsin Dep't of Corrections v. Schacht, 524 U.S. 381, 118 S. Ct. 2047, 141 L. Ed. 2d 364 (1998). In his concurring opinion, Justice Kennedy states that "[r]emoval requires the consent of all of the defendants." Id. at 2054 (citing Martin, 178 U.S. at 248) (Kennedy, J., concurring). We believe that Plaintiff places more weight on this broadly worded statement than it rightly deserves, and we do not rest our decision in this case on that authority. While Justice Kennedy's statement may suggest general support for Plaintiff's position, the issues presented in Schacht are distinct from those presented here and, in any event, that concurring opinion does not have the precedential value Plaintiff ascribes to it.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM E. SHEPARD, :
 :
 Plaintiff, : CIVIL ACTION
 :
 v. : No. 00-CV-6076
 :
 CITY OF PHILADELPHIA, et al. :
 :
 Defendants. :

ORDER

AND NOW, this day of January, 2001, upon
consideration of Plaintiff's Motion to Remand (Document No. 6),
and Defendants' Response thereto, it is hereby ORDERED that
Plaintiff's Motion is GRANTED.

IT IS FURTHER ORDERED that the Commonwealth of
Pennsylvania's Motion to Dismiss (Document No. 5) is DENIED as
MOOT.

BY THE COURT:

J. CURTIS JOYNER, J.