

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

BARRY A. DUBIN, D.D.S.	:	CIVIL ACTION
	:	
v.	:	
	:	
PRINCIPAL FINANCIAL GROUP and	:	
DAVID HENNINGS, C.F.E.	:	NO. 01-079

MEMORANDUM ORDER

Plaintiff instituted this action by filing with the Prothonotary of the Philadelphia Common Pleas a praecipe for a writ of summons. Consistent with Pa. R. Civ. P. 404, plaintiff served defendants with the writ of summons by certified mail-return receipt requested. The writ of summons informed defendants that plaintiff had commenced an action against them for "libel, slander, defamation, tortious interference with contract and business relationships and bad faith." It set forth no facts upon which plaintiff's claims were based or any monetary amount plaintiff sought to recover. It did not state the citizenship of the parties.

On November 30, 2000, plaintiff filed a copy of the complaint and, according to the Certificate of Service, served a copy of the complaint on defendants' Philadelphia counsel by mail. On January 5, 2001, defendants jointly filed a Notice of Removal pursuant to 28 U.S.C. § 1441. Plaintiff filed a motion for remand on January 25, 2001.

The parties do not dispute that they are of diverse citizenship and that the amount in controversy exceeds

\$75,000.00, exclusive of interest and costs. The court thus has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

The critical issue raised by plaintiff's remand motion is whether or not defendants timely filed their removal notice. A notice of removal must be filed "within thirty days of the receipt . . . 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." 28 U.S.C. § 1446(b). Plaintiff argues that the writ of summons was sufficient to trigger the removal period and even if it was not, the removal notice was filed in any event more than thirty days after plaintiff provided them with the complaint.

An initial pleading that does not demonstrate a basis for federal jurisdiction within its four corners will not trigger the time limit for removal. See Foster v. Mutual Fire, Marine & Inland Ins. Co., 986 F.2d 48, 54 (3d Cir. 1993). Plaintiff's writ of summons on its face provided no information upon which one could determine the existence of federal jurisdiction. The writ did not trigger the removal period. See, e.g., Smith v. Nike Retail Servs. Inc., 1998 WL 195913, *1-2 (E.D. Pa. Apr. 9, 1998); Textile Chem. Co. v. Aetna Casualty & Surety Co., 1997 WL 537408, *1 (E.D. Pa. Aug. 5, 1997); McBride v. Rey, 1997 WL 416265, *3 (E.D. Pa. July 8, 1997).

This action was commenced when plaintiff filed and served the praecipe for a writ of summons. See Pa. R. Civ. P. 1007 (action commenced in Pennsylvania by filing with prothonotary praecipe for a writ of summons or complaint); Pa. R. Civ. P. 404 (providing for valid service of a foreign defendant by mailing writ or complaint in a form recognizing receipt). Plaintiff's subsequent filing of a complaint and mailing of a copy to defendants' counsel in Philadelphia was consistent with the Pennsylvania Rules of Civil Procedure. See Pa. R. Civ. P. 440 (copies of papers other than original process to be served by mailing same to attorney's address). In these circumstances, the time for defendants to remove commenced upon counsel's receipt of the complaint. See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 353 (1999) ("if the defendant is served with the summons but the complaint is furnished to the defendant sometime after, the period for removal runs from the defendant's receipt of the complaint").

Defendants filed their removal notice on January 5, 2001. Unless defendants received the complaint on or after December 6, 2000, the removal was untimely. Defendants state that plaintiff "allegedly" mailed the complaint to defense counsel on December 5, 2000 and it was received on December 8, 2000. There is no showing, however, that the complaint was not mailed until December 5. To the contrary, in the motion for

remand and the Certificate of Service attached to the complaint, plaintiff represents that the complaint was mailed to defendants' Philadelphia counsel on November 30, 2000, the day it was filed. Defendants have submitted no postmarked envelop or other evidence to controvert this. There has been no showing or suggestion as to why it would take eight days, or six, for delivery of a mailing between addresses within the same zip code area.

ACCORDINGLY, this day of April, 2001, **IT IS**
HEREBY ORDERED that defendants shall have seven days to produce evidence that plaintiff's complaint was not delivered until December 6, 2000 or later, or plaintiff's motion will be granted.

BY THE COURT:

JAY C. WALDMAN, J.