

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

DIANESE, INC., GAETANO DIANESE, and	:	CIVIL ACTION
ROSEMARIE DIANESE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
et al.,	:	
	:	
Defendants.	:	NO. 01-2520

Reed, S.J.

February 27, 2002

MEMORANDUM

Now before the Court is the motion of Selective Insurance Company of America, Selective Way Insurance Company and Selective Insurance Group, Inc. (collectively, “the Selective Defendants”) to remand (Doc. No. 173) the action removed by plaintiffs pursuant to a notice of removal (Doc. Nos. 152). Plaintiffs have removed from state court Selective Ins. Co. v. Dianese, Inc., No. 02-02, Superior Court of New Jersey (Sussex County), pursuant to 28 U.S.C. §§ 28 U.S.C. § 1332(a)(1), 1446 (b), 1441 (c), 1367(a), and Federal Rules of Civil Procedure 18, 19 and 22. For the reasons set forth below, the motion of the Selective Defendants to remand will be granted.

Legal Standard

The removal of cases from state to federal court is governed by 28 U.S.C. § 1441, which limits removal to those cases in which “the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441 (a); Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 7-8, 77 L. Ed. 2d 420, 103 S. Ct. 2841 (1983). Original jurisdiction may be found where

the parties are diverse and the amount in controversy exceeds \$ 75,000; removal based upon such jurisdiction is appropriate only if the defendant is not a citizen of the State in which the action was brought. See 28 U.S.C. §§ 1332 (a), 1441 (b). If these requirements are not met, removal is appropriate only if the case falls within the district court's original "federal question" jurisdiction: "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §§ 1331, 1441(b); Franchise Tax Bd., 463 U.S. at 8.

Analysis

Plaintiffs have not established a key element of removal under § 1441; this Court's original jurisdiction over the claims brought in state court. Plaintiffs have attempted to remove Selective Ins. Co. v. Dianese, Inc. pursuant to diversity jurisdiction under 28 U.S.C. § 1332(a)(1). To qualify for diversity jurisdiction, the amount in controversy must exceed \$75,000. See 28 U.S.C. § 1332(a). According to the underlying state court complaint attached to the relevant notice of removal, the amount in controversy in Selective Ins. Co is \$17,528.99; this does not reach the minimum jurisdictional requirement for federal court under §1332. Consequently, there is no jurisdiction over Selective Ins. Co. pursuant to §1332.

As previously stated in this Court's Orders of August 16, 2001 (Doc. No. 90) and December 27, 2001 (Doc. No. 132), supplemental jurisdiction under § 1367 is not original jurisdiction, it is its converse.¹ See Rutt v. Prudential Ins. Co. of Am., No. 96-3658, 1996 U.S.

¹ 28 U.S.C. § 1367 (a) provides:

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Dist. LEXIS 7132, at 8 (E.D. Pa. May 21, 1996). Accordingly, plaintiffs may not remove a state court action solely pursuant to 28 U.S.C. § 1367. Moreover, even if supplemental jurisdiction could in rare circumstances justify the removal of an inextricably related case, this is not such a rare circumstance. See id. The Selective Defendants are simply seeking moneys owed to them by plaintiffs. Even if the instant case also relates in some way to some of those moneys, this does not make it so closely intertwined as to require this Court to hear the case. I cannot conclude that the actions removed by plaintiffs are part of the same case or controversy presented in this case.

Nor do 28 U.S.C. §§ 1441(c)² or 1446(b)³ allow for removal of the above-referenced state court actions. Removal pursuant to § 1441(c) requires the joinder of “otherwise non-removable claims” to a claim arising under federal law over which this Court would have jurisdiction pursuant to 28 U.S.C. § 1331. See 28 U.S.C. §1441(c). There has been no such joinder of claims in the above-referenced state court action; no federal claims have been asserted therein. Removal pursuant to § 1446(b) is permitted only when filings in the state court actions, such as amended pleadings or motions, make apparent “that the case is one which is or has become removable.” See 28 U.S.C. § 1446(b). Plaintiffs have failed to show that any such papers were filed in the above-referenced state court action.

² 28 U.S.C. § 1441(c) provides, in pertinent part:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

³ 28 U.S.C. § 1446(b) provides, in pertinent part:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

Plaintiffs also argue that jurisdiction exists because their defense to the state court action is part of Civil Action No. 01-2520. A case may not be removed solely on the basis of a defense that implicates federal law, although the federal defense may be asserted in state court. See Caterpillar, Inc. v. Williams, 482 U.S. 386, 393, 96 L. Ed. 2d 318, 107 S. Ct. 2425 (1987); Lazorko v. Pennsylvania Hosp., 237 F.3d 242, 248 (3d Cir. 2000), cert. denied, ___ U.S. ___, 150 L. Ed. 2d 719, 121 S. Ct. 2552 (2001). Thus, the fact that plaintiffs believe their defense in the state court action is premised upon their claims of a RICO conspiracy in Civil Action No. 01-2520, is not sufficient for the removal of the state court action to federal court.

In addition, “[the Federal Rules of Civil Procedure] shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein.” Fed. R. Civ. P. 82; Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 370, 57 L. Ed. 2d 274, 98 S. Ct. 2396 (1978) (superseded on other grounds by statute) (“It is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction.”). Consequently, Federal Rules of Civil Procedure 18, 19 and 22 do not empower a federal district court with subject matter jurisdiction. They merely provide procedural devices for more efficient case management in actions over which the Court already has proper subject matter jurisdiction. Therefore, they alone cannot serve as grounds for removal of the state court actions.

Further, but not in derogation of the jurisdictional conclusions set forth above, it should be noted that 28 U.S.C. § 1446 requires that a removing party file the notice of removal in the district court for the district within which such state action is pending. The case removed by plaintiffs was pending in the Superior Court of New Jersey, which lies within the District of New Jersey. See 28 U.S.C. § 110. Thus, even if the above-discussed jurisdictional problems did not

exist, this Court would have to remand the case for improper venue.

Conclusion

The remand statute provides: “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447 (c). The Court lacks subject matter jurisdiction over the removed case; thus, it must be remanded.⁴

⁴ The Selective Defendants correctly observe that plaintiff Gaetano Dianese also lacked standing to remove the state court action wherein only Dianese, Inc. was a named party. Nevertheless, because the Court concludes that it lacks subject matter jurisdiction over the removed case in any event, the state court action will be remanded on that ground.

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Plaintiffs,	:	
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COMMONWEALTH OF PENNSYLVANIA,	:	
et al.,	:	
	:	
Defendants.	:	NO. 01-2520

ORDER

AND NOW, this 27th day of February, 2002, upon consideration of motion of Selective Insurance Company of America, Selective Way Insurance Company and Selective Insurance Group, Inc. (collectively, "the Selective Defendants") to remand (Doc. No. 173), the notice of removal filed by plaintiffs (Doc. No. 152), and for the reasons set forth in the foregoing memorandum, **IT IS HEREBY ORDERED** that the motion of the Selective Defendants to remand to state court is **GRANTED**. Selective Ins. Co. v. Dianese, Inc., No. 02-02, Superior Court of New Jersey (Sussex County) (Doc. Nos. 152) is hereby **REMANDED** under 28 U.S.C. § 1447 (c) for want of subject matter jurisdiction and the clerk of the Court shall forthwith return all case papers and files to the Clerk of Court of the Superior Court of New Jersey (Sussex County).

LOWELL A. REED, JR., S.J.