

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

H. GERARD HEIMBECKER	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 01-6140
	:	
555 ASSOCIATES et al.,	:	
Defendants.	:	

ORDER

AND NOW, this day of February, 2003, upon consideration of the “Objections to Notice of Removal,” and the accompanying “Memorandum in Support of Objections to Notice of Removal,” filed by Plaintiff H. Gerard Heimbecker on December 19, 2001 (**Docket Entry No. 7**), it is hereby ORDERED and DECREED that the Objections to Notice of Removal is treated as a Motion to Remand, and that this Motion to Remand is DENIED for the following reasons.

Plaintiff’s Complaint, filed in the Court of Common Pleas of Delaware County on November 5, 2001, includes (1) two counts alleging breach of contract (Counts 1 and 7), (2) one count alleging breach of the implied duty of good faith and fair dealing (Count 2), (3) four counts alleging a violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-1968 (Counts 3-6), and (4) a count seeking punitive damages (Count 8). Defendants timely filed a Notice of Removal pursuant to 28 U.S.C. § 1441(a), alleging that the case is removable because the Complaint alleges causes of action against Defendants that are within the original jurisdiction conferred on the District Courts of the United States by 28 U.S.C. § 1331. On December 19, 2001, Plaintiff filed with this Court “Plaintiff’s, H. Gerard

Heimbecker Objections to Notice of Removal,” and an accompanying “Memorandum in Support of Objections to Notice of Removal,” arguing that removal is “unwarranted and unnecessary.”

Plaintiff’s Memorandum in Support of Objections to Notice of Removal at 2.¹

Plaintiff’s Objections to Notice of Removal shall be treated as a Motion to Remand pursuant to 28 U.S.C. § 1441(c), or, in the alternative, pursuant to 28 U.S.C. § 1367(c). 28

U.S.C. § 1441(c) provides:

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.

28 U.S.C. § 1441(c). Under this section, in a removed case involving both federal question and state law claims, a district court has the authority to remand to state court the state law claims if “the federal question claims removed by the defendant [are] ‘separate and independent’ from the state law claims.” Borough of West Mifflin v. Lancaster, 45 F.3d 780, 786-87 (3d Cir. 1995). If, however, the federal question claims are not separate and independent, § 1441(c) “cannot apply.” Id. Here, Plaintiff relies upon the “same series of events” for all counts in his Complaint, including the RICO count, and, therefore, the federal claim is not separate and independent pursuant to § 1441(c) and this Court has no authority under § 1441(c) to remand the state law claims. See id.

¹ In his “Memorandum in Support of Objections to Notice of Removal,” Plaintiff cites Tafflin v. Levitt, 493 U.S. 455 (1990), in which case the Supreme Court held that state courts have concurrent jurisdiction over civil RICO claims. The issue here is not whether the state court has concurrent jurisdiction over Plaintiff’s civil RICO claim, but whether this Court should remand some or all of Plaintiff’s claims to the state court following removal by Defendant.

Remand of state law claims in a removed case may also be accomplished pursuant to 28 U.S.C. § 1367(c). Subsection (a) of § 1367 provides that “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 [the original jurisdiction claims] that they form part of the same case or controversy.” 28 U.S.C. § 1367(a). Subsection (c) of § 1367 delineates four categories of such claims which the district courts may nevertheless decline to adjudicate:

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection

(a) if--

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). “[T]he discretion bestowed by § 1367(c) exists with respect to removed claims as well as claims filed initially in the district court.” Borough of West Mifflin, 45 F.3d at 787. Therefore, in a removed case involving federal claims and state claims over which the district court has supplemental jurisdiction, a district court may decline to exercise supplemental jurisdiction over the state claims and remand those claims to state court. Id. at 787-88.

Subsection (c)(3) of § 1367 is clearly inapplicable here, in that the Court has yet to rule upon the pending motions to dismiss filed by Defendants. The Court finds that subsections (c)(1) and (c)(4) are likewise inapplicable. Subsection (c)(2), which permits a district court to decline to exercise supplemental jurisdiction over a claim which “substantially predominates over the claim . . . over which the district court has original jurisdiction,” 28 U.S.C. § 1367(c)(2),

provides a “limited exception to the operation of the doctrine of pendent jurisdiction – a doctrine that seeks to promote judicial economy, convenience, and fairness to litigants by litigating in one case all claims that arise out of the same nucleus of operative fact.” Borough of West Mifflin, 45 F.3d at 789.

When a district court exercises its discretion not to hear state claims under § 1367(c)(2), the advantages of a single suit are lost. *For that reason, § 1367(c)(2)’s authority should be invoked only where there is an important countervailing interest to be served by relegating state claims to the state court.* This will normally be the case only where “a state claim constitutes the real body of a case, to which the federal claim is only an appendage,” – only where permitting litigation of all claims in the district court can accurately be described as allowing a federal tail to wag what is in substance a state dog.

Id. (citation omitted) (emphasis added).

As noted above, Plaintiff relies upon the “same series of events” for all counts in his Complaint, including the RICO count. Where there is a “common nucleus of operative facts,” and there does not appear to be a “persuasive, reasoned elaboration” for declining to exercise pendent jurisdiction, “the dictates of ‘judicial economy, convenience, fairness to the parties, and comity,’ are better served by recognizing pendent jurisdiction.” Sparks v. Hershey, 661 F.2d 30, 33 (3d Cir. 1981). At this juncture, the Court does not perceive a “persuasive, reasoned elaboration” for declining to exercise pendent jurisdiction, id., nor does this Court perceive “an important countervailing interest to be served by relegating Plaintiff’s state law claims to the state court,” Borough of West Mifflin, 45 F.3d at 789. In fact, there is at least one compelling reason for exercising pendent jurisdiction over the state law claims: namely a more expeditious resolution of these state law claims than would occur were these claims, which were initially filed in state court on November 5, 2001, remanded back to the state court at this late date. For

these reasons, the Court concludes that declining to exercise supplemental jurisdiction over the state law claims, pursuant to 28 U.S.C. § 1367(c), would be inappropriate.

In summary, Plaintiff's "Objections to Notice of Removal" is treated as a Motion to Remand, and the Motion to Remand is denied.

BY THE COURT:

Legrome D. Davis