

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

ERIK D. RAMSAUR,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 04-6062
	:	
v.	:	
	:	
GEORGE A. MOSSMAN, III	:	
a/k/a/ JAY MOSSMAN	:	
and AKCELERANT INFRASTRUCTURE	:	
SOLUTIONS, L.L.C.	:	
and AKCELERANT HOLDINGS, INC.	:	
and PATRICK D. BAIRD,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, S.J.

February 22, 2005

Presently before the Court is Plaintiff Eric D. Ramsaur's ("Plaintiff") Motion to Remand. Plaintiff requests that the Court remand the current action to the Court of Common Pleas of Chester County. For the reasons set forth below, Plaintiff's motion is denied.

I. BACKGROUND

This action was originally filed on November 29, 2004, in the Chester County Court of Common Pleas. (Pl.'s Mot. at 1.) Defendants filed a Notice of Removal with this Court on December 29, 2004. (Pl.'s Mot. at 1.) Defendants also filed a Notice of Removal with the Chester County Court of Common Pleas on December 30, 2004. (Pl.'s Mot. at 1.) In their Notice of Removal, Defendants asserted that, under 28 U.S.C. § 1441(a), removal was proper

due to diversity of citizenship—given that the Plaintiff is a citizen of Oregon, and all Defendants are citizens of Pennsylvania—and the amount in controversy exceeds \$75,000. (Pl.’s Mot. at 1.) On February 2, 2005, Plaintiff untimely filed a Motion to Remand with this Court, claiming that removal was improper pursuant to 28 U.S.C. section 1441(b) because Defendants are all citizens of Pennsylvania, the State in which the action was brought. (Pl.’s Mot. at 2.)

II. DISCUSSION

Pursuant to 28 U.S.C. § 1332(a)(1), this action is one of original federal jurisdiction based on diversity of citizenship because the parties are citizens of different states, and the amount in controversy exceeds \$75,000. 28 U.S.C. § 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 defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

However, not all actions of original federal jurisdiction are removable. Under 28 U.S.C. section 1441(b), actions for which original federal jurisdiction is based on diversity of citizenship “shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” The present action was removed by Defendants, who are citizens of Pennsylvania, the State in which the action was brought. Thus, removal of this matter by the in-state Defendants was improper pursuant to 28 U.S.C. § 1441(b).

Although Plaintiff identified the in-state defendant defect in his Motion to Remand, he failed to file the Motion within the thirty-day time limit for raising procedural

defects, and therefore, waived the defect. In Korea Exchange v. Trackwise Sales Corp., the Third Circuit held that removal by an in-state defendant is a procedural defect, not jurisdictional. Foulke v. Dugan, 148 F. Supp. 2d 552, 555 (E.D. Pa. 2001)(citing Korea Exchange v. Trackwise Sales Corp., 66 F.3d 46, 50-51 (3d Cir. 1995)). The court also held that pursuant to 28 U.S.C. § 1441(c), an improper removal of a matter by an in-state Defendant, must be addressed in a motion to remand within thirty days after filing the notice of removal. Id. The in-state defendant defect is deemed waived if it is not raised within thirty days. Korea Exchange v. Trackwise Sales Corp., 66 F.3d 46, 50-51 (3d Cir. 1995). Moreover, the Third Circuit further held that a district court does not have the authority to remand a case because of procedural defects in removal. Id. at 48.

In this case, even though Plaintiff articulated the proper basis for remand, his Motion to Remand was untimely filed. Plaintiff filed his Motion to Remand thirty-five days after the Notice of Removal was filed with this Court, and thirty-four days after the Notice of Removal was filed with the Chester County Court of Common Pleas. (Defs.'s Answer at 3.) Thus, because Plaintiff did not raise the in-state defendant defect within thirty days of Defendants' Notice of Removal, Plaintiff waived the defect. Consequently, there is no basis to remand.

III. CONCLUSION

For the reasons stated above, the Motion to Remand is denied. Plaintiff's request for attorney fees is also denied.

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and AKCELERANT HOLDINGS, INC.	:	
and PATRICK D. BAIRD,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 22nd day of February, 2005, upon consideration of Plaintiff's Motion to Remand to the Court of Common Pleas of Chester County (Docket No. 5), Defendants' Answer in Opposition to Plaintiff's Motion to Remand to the Court of Common Pleas of Chester County (Docket No. 7), and Plaintiff's Reply to Defendants' Answer (Docket No. 9), it is hereby **ORDERED** that the Plaintiff's Motion to Remand is **DENIED**.

BY THE COURT:

/s/ Ronald L. Buckwalter

RONALD L. BUCKWALTER, S.J.