

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

VANESSA HARPER, in her own right and as administratrix of the estate of Ethel Thornton, deceased	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 04-2231
	:	
WESTFIELD APARTMENTS, <u>et al.</u>	:	

MEMORANDUM AND ORDER

Kauffman, J.

March 30, 2005

Plaintiff brings this action for negligence (Count One), survival (Count Two), violations of 42 U.S.C. § 1983 (Count Three), and attorney’s fees (Count Four) against Defendants Westfield Apartments, Arnold Galman and Partners, The Galman Group, Westfield Partners, the City of Philadelphia (“the City”), Donald Horvath (“Horvath”), and Frederick Cureton (“Cureton”). Now before the Court is Plaintiff’s Motion for Remand. For the reasons that follow, the Motion will be denied.

I. BACKGROUND

Plaintiff initiated this action by writ of summons in the Court of Common Pleas of Philadelphia County on April 7, 2004. The City was served with the writ on April 15, 2004. The Docket Report reflects that Horvath and Cureton were served with the Complaint on April 21, 2004 and April 26, 2004, respectively. The Complaint was served on the City on May 10, 2004.

On May 21, 2004, the City, Cureton and Horvath (“City Defendants”) filed a timely Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446. Plaintiff then filed the instant

motion to remand on June 1, 2004, arguing that the Notice of Removal was defective because it was filed without the consent of all defendants. On June 3, 2004, Defendants The Galman Group, Westfield Apartments, Arnold Galman and Partners, and Westfield Partners filed a written consent to removal. That same day, the City Defendants amended their Notice of Removal to assert that all defendants had given their consent.

II. LEGAL STANDARD

“A defendant or defendants desiring to remove any civil action...from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal[.]” 28 U.S.C. § 1446(a). The notice of removal must be filed within thirty days of “receiving a writ of summons, praecipe, or complaint, which in themselves provide adequate notice of federal jurisdiction[.]” Foster v. Mut. Fire, Marine & Inland Insur. Co., 986 F.2d 48, 54 (3d Cir. 1992) (interpreting 28 U.S.C. § 1446(b)). All defendants must consent to removal to federal court. Lewis v. Rego Co., 757 F.2d 66, 68 (3d Cir. 1985) (“Section 1446 has been construed to require that when there is more than one defendant, all must join in the removal petition.”).

III. ANALYSIS

Whether remand is appropriate in this case depends on when the thirty days permitted for removal began to run.¹ Plaintiff argues that the time period expired prior to the City Defendants’ obtaining the consent of the other defendants on June 3, 2004. The time limits that apply to one defendant do not necessarily govern all. The City did not have adequate notice of federal

¹ Plaintiff’s challenge to removal is strictly procedural. It is uncontested that the Complaint presents a federal claim. See 28 U.S.C. § 1331.

jurisdiction until May 10, 2004 when it was served with a copy of the Complaint.² See Murphy Bros., Inc. v. Mechetti Pipe Stringing, Inc., 526 U.S. 344, 354 (1999). Accordingly, it was entitled to a full thirty days thereafter to determine whether it would remove, regardless of when the thirty day period for removal or consent to remove began for the other defendants. See Zollner v. Swan, 2003 WL 22097457, at *2-3 (E.D. Pa. May 13, 2003); Marano Enter. v. Z-Teca Rest., 254 F.3d 753, 756 (8th Cir. 2001) (holding that later-served defendants have thirty days from the date of service to file a notice of removal with the unanimous consent of their co-defendants, even where their first-served co-defendants did not file a notice of removal within thirty days of service on them); Brierly v. Alusuisse, 184 F.3d 527, 533 (6th Cir. 1999). Even if the time for removal for all other parties had expired, they would not be barred from consenting to the City's Notice of Removal. See Zollner, 2003 WL 22097457 at *2-3. The City's Amended Notice of Removal with the consent of all other defendants was filed within the thirty day time limit and thus satisfies both the time and the unanimity requirements.

IV. CONCLUSION

Because the Amended Notice of Removal filed on June 3, 2004 satisfies both the timeliness and unanimity requirements of 28 U.S.C. § 1446(b), Plaintiff's Motion for Remand will be denied. An appropriate Order follows.

² The summons served on the City on April 15, 2004 did not provide "adequate notice of federal jurisdiction." Foster, 986 F.2d at 54; Macklin v. City of Philadelphia, 2000 WL 502464, at *1 (E.D. Pa. Apr. 27, 2000) ("It is at best unclear whether the amorphous invocation of 'civil rights' in the Summons provides Defendants with notice of a federal cause of action."); Ruiz v. Philadelphia Housing Auth., 1997 WL 28698 at *2 (E.D. Pa. Jan. 24, 1997). The summons merely stated that the suit will involve a "civil rights" claim. See Opposition Brief at 5. It does not indicate whether that claim is based on federal or state law. Id.

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ORDER

AND NOW, this 30th day of March, 2005, upon consideration of Plaintiff's Motion to Remand (docket no. 3), the response thereto, and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.