

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

JORGE CLAUDIO	:	CIVIL ACTION
Plaintiff,	:	NO. 09-4378
	:	
v.	:	
	:	
MGS MACHINE CORP.	:	
Defendant.	:	

EXPLANATION

On September 25, 2009, Jorge Claudio (“Plaintiff”) filed suit against MGS Machine Corporation (“Defendant”) in this court, invoking diversity jurisdiction, and alleging negligence, strict liability in tort, and breach of warranty. Plaintiff is a citizen of Pennsylvania. Defendant is incorporated and has its principal place of business in Minnesota. On February 14, 2008, while operating a cake-packaging machine at Tasty Baking Company, Plaintiff’s hand became caught in the machine, resulting in injuries to his hand, left shoulder, neck, and back.

On March 26, 2010, Defendant filed a Third-Party Complaint against Tasty Baking Company (“Third-Party Defendant”) (Doc. #14), which it amended on April 13, 2010 (Doc. #18). Defendant claims that Third-Party Defendant made material alterations to the machine operated by Plaintiff, and that Third-Party Defendant should therefore answer for any and all liability that may be entered against Defendant by way of sole liability, joint and several liability, indemnity, and/or contribution. Third-Party Defendant has its principal place of business in Pennsylvania.

On December 22, 2010, Plaintiff filed a Motion to Remand to State Court (Doc. #48). On January 7, 2011, Plaintiff reframed his motion as a Motion to Dismiss for Lack of Subject Matter

Jurisdiction (Doc. #57).¹ In his Motion to Dismiss, Plaintiff argues that there is no federal subject matter jurisdiction because there is no diversity between Plaintiff and Third-Party Defendant, citing Pennsylvania Rule of Civil Procedure 2255. Defendants respond that federal subject matter jurisdiction does not require diversity between a plaintiff and a third-party defendant when there are no direct claims between the two, citing Federal Rule of Civil Procedure 14. Plaintiff replies that Pennsylvania Rule of Civil Procedure 2255 applies in federal court as substantive law pursuant to *Erie*, and renders Third-party Defendant a defendant from which Plaintiff must also be diverse.

Pennsylvania Rule of Civil Procedure 2255(d) reads: “The plaintiff shall recover from an additional defendant found liable to the plaintiff alone or jointly with the defendant as though such additional defendant had been joined as a defendant and duly served and the initial pleading of the plaintiff had averred such liability.” The Supreme Court of Pennsylvania has interpreted this rule to mean that “an additional defendant, when joined as such, becomes immediately subject to plaintiff’s claim in every respect and with the same force and effect as if he had been originally named as a defendant, and even without the necessity of any pleading being filed by the plaintiff against him.” *Sheriff v. Eisele*, 112 A.2d 165, 166 (Pa. 1955).

Federal Rule of Civil Procedure 14(a)(3) states: “The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff.” The Third Circuit has interpreted this rule to mean that “a third-party defendant joined under Federal Rule of Civil Procedure 14 does not become a defendant as against the original plaintiff, so that federal jurisdiction is not

¹In light of Plaintiff’s filing of a Motion to Dismiss, I denied Plaintiff’s Motion to Remand as moot. *See* Order, Feb. 28, 2011, ECF No. 86.

destroyed where those parties are citizens of the same state.” *Spring City Corp. v. Am. Bldgs. Co.*, 193 F.3d 165, 169 (3d Cir. 1999) (citing *Smith v. Phila. Transp. Co.*, 173 F.2d 721, 724 n.2 (3d Cir. 1949)).

The *Erie* doctrine requires a federal court sitting in diversity jurisdiction to apply state substantive and federal procedural law. *See Chamberlain v. Giampapa*, 210 F.3d 154, 158 (3d Cir. 2000) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)). However, one caveat to the *Erie* analysis is that “[w]here a Federal Rule of Civil Procedure provides a resolution of an issue, that rule must be applied by a federal court sitting in diversity to the exclusion of a conflicting state rule so long as the federal rule is authorized by the Rules Enabling Act and consistent with the Constitution.” *Id.* at 159 (citing *Hanna v. Plumer*, 380 U.S. 460, 470 (1965)). Specifically, “a federal court sitting in diversity first must determine whether a Federal Rule directly ‘collides’ with the state law it is being urged to apply. If there is such a direct conflict, the Federal Rule must be applied if it is constitutional and within the scope of the Rules Enabling Act.” *Id.* (internal citations omitted).

In this case, Federal Rule of Civil Procedure 14 directly collides with Pennsylvania Rule of Civil Procedure 2255; the federal rule makes claims by plaintiffs against third-party defendants discretionary, *see* Fed. R. Civ. P. 14(a)(3), while the state rule makes them automatic, *see Sheriff*, 112 A.2d at 166. Furthermore, Federal Rule of Civil Procedure 14 is constitutional and within the scope of the Rules Enabling Act. The Federal Rules are entitled to presumptive validity, *see Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 6 (1987), Plaintiff has not argued that Federal Rule of Civil Procedure 14 violates the Constitution or the Act, and I find the Rule to be constitutional and within the Act’s scope as applied in this instance. *See generally Hiatt v. Mazda*

Motor Corp., 75 F.3d 1252, 1258-60 (8th Cir. 1996).²

Thus, within the ambit of Federal Rule of Civil Procedure 14, Plaintiff has advanced no claims against Third-Party Defendant, with the result that diversity jurisdiction remains, and I will deny Plaintiff's motion to dismiss for lack of subject matter jurisdiction.

S/ANITA B. BRODY
ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to: Copies **MAILED** on _____ to:

²Plaintiff cites two cases where Eastern District of Pennsylvania courts invoked Pennsylvania Rule of Civil Procedure 2255 and considered the citizenship of third-party defendants in determining whether diversity jurisdiction existed. *See Adams v. Ford Motor Corp.*, No. 87-0524, 1987 U.S. Dist. LEXIS 5945 (E.D. Pa. July 1, 1987); *Carey v. Am. Motors Corp.*, No. 87-0100, 1987 U.S. Dist. LEXIS 419 (E.D. Pa. Jan. 23, 1987). These cases arose in the removal and remand context, and the third-party defendants had been joined as additional defendants in state court pursuant to Pennsylvania Rule of Civil Procedure 2255. This case was originally filed in federal court, and Third-Party Defendant was brought in as a third party pursuant to Federal Rule of Civil Procedure 14. The analysis above applies to the posture of this case, and does not necessarily speak to removal and remand scenarios.

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

JORGE CLAUDIO	:	CIVIL ACTION
Plaintiff,	:	NO. 09-4378
	:	
v.	:	
	:	
MGS MACHINE CORP.	:	
Defendant.	:	

ORDER

AND NOW, this __28th ____ day of April, 2011, upon consideration of Plaintiff's Motion to Dismiss (Doc. #57), Defendant's Response (Doc. #69), Third-Party Defendant's Response (Doc. #70), and Plaintiff's Reply (Doc. #72), it is **ORDERED** that Plaintiff's Motion (Doc. #57) is **DENIED**.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to: Copies **MAILED** on _____ to: