

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

E.H. KEEN & SON, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	No. 97-5623
	:	
KAOLIN MUSHROOM FARMS, INC.,	:	
and AMERICAN BUILDING	:	
COMPONENTS, INC.,	:	
	:	
Defendants.	:	

MEMORANDUM

R.F. KELLY, J.

NOVEMBER , 1997

Before this Court are the Motions of Defendant Kaolin Mushroom Farms, Inc. ("Kaolin") and Plaintiff E.H. Keen & Son, Inc. ("Keen") to remand this case to state court. Keen and Kaolin both argue that removal was improper because there is not complete diversity between the parties. For the reasons that follow, the Motions will be granted.

On June 7, 1996, Keen commenced this action against Kaolin in the Court of Common Pleas of Chester County, Pennsylvania. On August 20, 1997, in response to a counterclaim, Keen joined American Building Components, Inc. ("ABC") as an additional defendant. ABC removed the action to this Court based upon diversity jurisdiction. All parties agree that for diversity purposes, Keen and Kaolin are citizens of Pennsylvania and ABC is a citizen of Texas.

"It is axiomatic that the federal judiciary's diversity

jurisdiction depends on complete diversity between all plaintiffs and all defendants." Development Finance Corp. v. Alpha Housing & Health Care, Inc., 54 F.3d 156, 158 (3d Cir. 1995) (citing 28 U.S.C. § 1332; Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806)). In order to remove a diversity action from state court to a federal district court, there must be complete diversity and none of the defendants can be a citizen of the state in which the action was brought. 28 U.S.C. § 1441(b). Complete diversity does not exist where any plaintiff and any defendant are citizens of the same state. Stransky v. American Isuzu Motors, Inc., 829 F. Supp. 788, 790 (E.D. Pa. 1993).

In this case, Keen and Kaolin are both citizens of Pennsylvania. The joining of ABC as a defendant does not create diversity between the parties merely because ABC is a citizen of Texas. Regardless of the citizenship of ABC, this Court does not have jurisdiction. Removal of this case was improper under 28 U.S.C. § 1441(b), which provides that an action cannot be removed when a defendant is a citizen of the state in which the action was originally brought. Kaolin is a citizen of the state in which this suit was originally brought.

ABC argues that Strawbridge's requirement of complete diversity has been overruled, and that removal of this case was proper under 28 U.S.C. § 1441(c). ABC's reliance on § 1441(c) is misplaced. Section 1441(c) provides for removal of an entire

case when non-removable claims are joined to a separate claim "within the jurisdiction conferred by section 1331 of this title." Section 1331 grants federal question jurisdiction. Diversity actions fall under 28 U.S.C. § 1332. Thus, § 1441(c) is inapplicable to removal in this case, because it is not a federal question case.

In summary, removal of this case was improper because there is not complete diversity between the parties. Where the Plaintiff and one Defendant are both citizens of Pennsylvania, this Court does not have diversity jurisdiction. Therefore, this case will be remanded to the Court of Common Pleas of Chester County, Pennsylvania.

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	:	
Defendants.	:	

ORDER

AND NOW, this day of November, 1997, upon
consideration of the Motion of Plaintiff E.H. Keen & Son, Inc.,
and the Motion of Defendant Kaolin Mushroom Farms, Inc., to
remand, it is hereby ORDERED that:

1. the Motion is GRANTED;
2. the case is remanded to the Court of Common Pleas of
Chester County;
3. all other motions are DENIED as moot.

BY THE COURT:

Robert F. Kelly, J.