

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

MELISSA O'DONNELL, a minor, : CIVIL ACTION  
through her parents, Gerald and :  
Suzie O'Donnell :  
v. :  
SEARS, ROEBUCK & CO., MASON CORP. :  
and F&F CONSTRUCTION CORP. : No. 98-2165

O R D E R - M E M O R A N D U M

AND NOW, this 15th day of May, 1998, this action is remanded to the Court of Common Pleas, Philadelphia County.<sup>1</sup> 28 U.S.C. § 1447(c).

The notice of removal, filed April 23, 1998 by defendant F&F Construction, contains two defects in removal procedure. First, the notice of removal does not include a copy of "all process ... served upon such defendant or defendants in such action." See 28 U.S.C. § 1446(a).<sup>2</sup> Second, only one defendant, F&F Construction Corp., requested removal. It is impossible to tell whether the other two defendants, Sears, Roebuck & Co. and Mason Corp. join in F&F's notice. Because "removal generally requires unanimity among the defendants," see Balazik v. County of Dauphin, 44 F.3d 209 (3d Cir. 1994) (citing Chicago, R.I.&P. Ry. Co. v. Martin, 178 U.S. 245, 247, 20 S. Ct. 854, 855, 44 L.Ed. 1055 (1900)), the failure of all defendants to join in removal is "a

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<sup>1</sup> No. 4804, March Term, 1998.

<sup>2</sup> The notice includes only a copy of the complaint.

defect in removal procedure within the meaning of § 1447(c).” Balazik, 44 F.3d at 213. Upon such a defect, the court on its own motion may remand an action within 30 days of the filing of the notice of removal. See Air-Shields, Inc. v. Fullam, 891 F.2d 63, 65 (3d Cir. 1989) (district court may remand sua sponte because of a defect in removal procedure if done with the 30-day rule of 28 U.S.C. § 1447(c)).

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Edmund V. Ludwig, J.