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

PELLUMB BALILAJ,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
MARSHALLS, INC. a/k/a and d/b/a	:	
MARSHALLS, et al.,	:	
Defendants.	:	No. 03-5908

MEMORANDUM AND ORDER

J. M. KELLY, J. **MARCH , 2004**

Presently before the Court is a Motion to Remand filed by Plaintiff Pellumb Balilaj ("Plaintiff") and the response thereto filed by Defendants Marshalls, Inc., a/k/a and d/b/a Marshalls, The TJX Companies, Inc., The Marmaxx Group and Marmaxx Group, Inc., USA (collectively, the "Marshalls Defendants"). None of the other captioned defendants have responded to Plaintiff's Motion to Remand.

Previously, Defendant Williams Scotsman, Inc. ("Williams Scotsman") filed a Notice of Removal on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1441, wherein none of the other captioned defendants joined. Defendant Triumph Leasing Company ("Triumph") was served with process,[1] and, at the time Plaintiff filed this Motion to Remand, Defendants Chainlink Logistics Company ("Chainlink Logistics") and Merchandise Movers,

[1] Counsel for Triumph responded informally to the Court by way of a letter dated January 13, 2004, indicating its consent to removal of the matter to this Court.

Inc., and Merchandise Movers, Inc. d/b/a Chainlink Logistics (collectively, the "Merchandise Movers Defendants") had not yet been served with process.[2] Plaintiff now seeks remand of his personal injury action to the Court of Common Pleas of Philadelphia, alleging that there is neither factual basis of record to support the statement in Williams Scotsman's Notice of Removal that there is diversity of citizenship nor unanimity among all the served Defendants to removal of the action to this Court. For the following reasons, Plaintiff's Motion for Remand is **GRANTED.**

I. BACKGROUND

On August 25, 2003, Plaintiff initiated this personal injury action in the Court of Common Pleas for Philadelphia County by Writ of Summons. On October 3, 2003, the Complaint was filed, and Plaintiff effectuated service of process on all defendants except Chainlink Logistics and the Merchandise Movers Defendants. On October 24, 2003, Defendant Williams Scotsman filed a Notice of Removal. On November 24, 2003, Plaintiff filed a Motion to Remand to state court. On December 15, 2003, the Marshalls Defendants filed their response to Plaintiff's Motion to Remand. They are the only defendants to file a response to Plaintiff's

[2] Plaintiff has since filed an Affidavit of Service (Doc. No. 7) indicating that Defendant Chainlink Logistics and the Merchandise Movers Defendants were served on January 12, 2004.

Motion to Remand.

Both Williams Scotsman and Triumph Leasing filed their Answers to Plaintiff's Complaint on October 29, 2003 and January 7, 2004, respectively.

The underlying action arises from alleged personal injuries Plaintiff sustained in the course of his employment while operating a forklift to load merchandise onto a trailer. Plaintiff alleges that as he was backing the forklift out of the trailer, the trailer suddenly separated from the loading dock, and caused the forklift and Plaintiff to fall to the ground. The incident is alleged to have occurred at a northeast Philadelphia facility owned, possessed, operated or otherwise controlled by the Marshalls Defendants.

II. DISCUSSION

A federal district court has original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(a)(1). Where a corporation is a party to a civil action, it "shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." Id. at § 1332(c)(1) (emphasis added).

Pursuant to the removal statute, "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 defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending . . . ." 28 U.S.C. § 1441(a). Accordingly, a defendant must file a notice of removal within thirty days "after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b).

Defendant Williams Scotsman filed its Notice of Removal pursuant to 28 U.S.C. § 1441 alleging complete diversity of citizenship of the parties and an amount in controversy in excess of $75,000.00. Plaintiff disputes neither the timeliness of Defendant Williams Scotsman's Notice of Removal filed on October 24, 2003, well within Section 1446(b)'s prescribed thirty-day period from service of Plaintiff's Complaint on October 3, 2003, nor the amount in controversy. Plaintiff, however, contends that Defendant Williams Scotsman's Notice of Removal is defective as there is no factual basis of record to support its statement that there is diversity of citizenship among the parties. In support of this contention, Plaintiff argues that: (1) the Notice of Removal neither states nor documents the state in which any Defendant is incorporated; (2) the Notice of Removal fails to document any basis for Defendant's principal place of business

averments; (3) Plaintiff's Complaint does not allege the state citizenship of any Defendant; and (4) Plaintiff's Complaint does not allege where any defendant maintains its principal place of business.

A defendant seeking removal bears the burden of proving federal jurisdiction. See Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 222 (3d Cir. 1999). If the citizenship of the parties is not disclosed in the complaint, the case is not removable unless the defendant can affirmatively plead and later prove the existence of diversity. 16 James Wm. Moore et al., Moore's Federal Practice ¶ 107.14 (3d ed. 2002).

Here, Plaintiff's Complaint sets forth addresses for Plaintiff and each of the defendants, without any averments of each of the parties' state of citizenship. Defendant Williams Scotsman's Notice of Removal contains mere recitations of those addresses as follows:

> 3. Defendants, Marshalls, Inc. a/k/a and d/b/a Marshalls, The TJX Companies, Inc., The Marmaxx Group, and/or Marmaxx Group, Inc., USA is a corporation with a principal place of business located at 770-778 Cochituate Road, Framingham, MA 01701.
>
> 4. Defendant, Williams Scotsman, Inc., is a corporation with a principal place of business located at 8211 Town Center Drive, Baltimore, MD 21236.
>
> 5. Defendant, Triumph Leasing Corporation, is a corporation with a principal place of business located at 194 Ayer Road, Littleton, MA 01460.
>
> 6. Defendant, Chainlink Logistics Company, is a

business located at 179 Union Boulevard, Totowa, NJ 07612.

7. Defendants, Merchandise Movers, Inc. and/or Merchandise Movers, Inc. d/b/a Chainlink Logistics, is a corporation with a principal place of business located at P.O. Box 868 West Caldwell, NJ 07007.

(Def. Williams Scotsman's Not. of Removal ¶¶ 3-7 (emphasis added).) In its Notice of Removal, Defendant Williams Scotsman merely pled "a" principal place of business for each of the defendants, rather than "its" principal place of business as required by 28 U.S.C. § 1332(c)(1).

The United States Court of Appeals for the Third Circuit has addressed this very issue, instructing that replacement of "its" with "a" renders a notice of removal technically "defective." Hunt v. Acromed, 961 F.2d 1079, 1082 n.7 (3d Cir. 1992). Revisiting that issue, the Third Circuit later determined that the replacement of "its" with "a" fails to "properly plead diversity jurisdiction." J&R Ice Cream Corp. v. California Smoothie Licensing Corp., 31 F.3d 1259, 1265 n.3 (3d Cir. 1994). Since Defendant Williams Scotsman used precisely the language deemed deficient to plead diversity jurisdiction by the Third Circuit, its Notice of Removal is legally deficient. See Meltzer v. Continental Insur. Co., 163 F. Supp. 2d 523, 526 (E.D. Pa. 2001).

Notably, only the Marshalls Defendants responded to Plaintiff's Motion to Remand, and the extent of their response to

the diversity issue was: “As the documents referenced speak for themselves, any attempt to summarize, interpret or characterize same is denied and strict proof thereof is demanded at trial.” (Marshalls Defs.’ Reply to Pl.’s Mot. to Remand ¶ 8.) While the Marshalls Defendants did not otherwise submit a memorandum of law in support of diversity jurisdiction to justify removal of the action to this Court, they respond that “the Answering Defendants do consent to Defendant Williams Scotsman’s removal of this matter to federal court.” (Id. at ¶ 9.) In their response, however, the Marshalls Defendants allege neither their state of citizenship nor their principal place of business, both of which are facts they are presumed to know, in support of this Court’s diversity jurisdiction. See Fiorentino v. Huntingside Associates, 679 F. Supp. 3, 5 (E.D. Pa. 1987).

We are mindful that the Third Circuit has mandated a policy of strict construction of the removal statutes. Meritcare Inc., 166 F.3d at 217; Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990). In this case, Plaintiff’s Complaint and Defendant Williams Scotsman’s Notice of Removal contain statements only regarding each of the defendants as being a corporation and as maintaining “a” principal place of business located in diverse states, and fail to make any express statement as to any defendants’ citizenship for the record. These statements are mere recitals of address and do not constitute sufficient allegations of citizenship. See Meltzer, 163 F. Supp.

2d at 526.

It also bears noting that none of the defendants in this matter have sought to cure the flawed jurisdictional allegations raised in Plaintiff's Motion to Remand by filing an amended notice of removal. See id. Furthermore, none of the defendants, with the exception of one,[3] sought to file any supporting material with the Court indicating their respective state of incorporation or principal place of business to justify removal.

III. CONCLUSION

Since Defendant Williams Scotsman's Notice of Removal fails to plead diversity jurisdiction sufficiently, and the Defendants have failed to avail themselves of any opportunity to request an amendment to the Notice of Removal, Plaintiff's Motion to Remand is **GRANTED**.[4]

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[3] Triumph was the only defendant to respond, albeit informally, as to its state of citizenship. Triumph's counsel submitted a letter dated January 13, 2004 to the Court indicating its state of incorporation as Massachusetts with its principal place of business in Massachusetts.

[4] Plaintiff also argues that the Notice of Removal fails to allege consent by the other served defendants to removal of the action to this Court, as required by the "rule of unanimity" that all other served defendants join in the notice of removal within the statutory thirty-day period. See Ogletree v. Barnes, 851 F. Supp. 184, 186-87 (E.D. Pa. 1994). Since we grant Plaintiff's Motion to Remand for the defendants' failure to sufficiently allege diversity jurisdiction, we need not address this contention.

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O R D E R

AND NOW, this day of March, 2004, in consideration of the Motion to Remand filed by Plaintiff Pellumb Balilaj ("Plaintiff") (Doc. No. 3) and the response thereto filed by Defendants Marshalls, Inc., a/k/a and d/b/a Marshalls, The TJX Companies, Inc., The Marmaxx Group and Marmaxx Group, Inc., USA (Doc. No. 4), **IT IS ORDERED** that Plaintiff's Motion to Remand is **GRANTED**.

IT IS FURTHER ORDERED that this matter is **REMANDED** to the Court of Common Pleas of Philadelphia County. This Court relinquishes jurisdiction.

BY THE COURT:

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JAMES McGIRR KELLY, J.