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

DAVID and DONNA REED,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	NO. 99-109
v.	:	
	:	
FLEMMING FOODS EAST, INC.,	:	
FLEMMING COMPANIES, INC., and	:	
LOUIS ISRAELOW and JULIUS FISHMAN	:	
d/b/a BLAIR ROAD REALTY COMPANY,	:	
	:	
Defendants.	:	

M E M O R A N D U M

Buckwalter, J. March 3, 1999

Presently before this Court is a motion by Plaintiffs to remand this civil action to state court. On March 18, 1998, Plaintiffs instituted an action in the Court of Common Pleas of Philadelphia County alleging injuries sustained by David Reed at a food warehouse maintained by DiGiorgio Corporation. See Reed v. DiGiorgio Corp., White Rose Food Div., No. 1921 (Phila. C.C.P. Mar. Term 1998). During the course of discovery, DiGiorgio indicated that the warehouse was owned by Louis Israelow and Julius Fishman, who had leased the building to Flemming Foods East, Inc. Thus, on December 10, 1998, Plaintiffs instituted the instant action. See Reed v. Fleming Foods East, Inc., et al., No. 674 (Phila. C.C.P. Dec. Term 1998). On January 8, 1999, Defendant Flemming Companies, Inc. ("Flemming") removed the case, invoking this Court's diversity jurisdiction. Flemming Foods East, Inc., Israelow and Fishman

did not join in the removal. While Defendant Flemming contends that Flemming Foods East, Inc. is not a legal entity, see Def.'s Mem. at 2, the Court recognizes Flemming Foods East, Inc. as a party to this action insofar as Defendant has presented only a bare allegation as to its non-existence accompanied by no evidentiary support. On February 3, 1999, Plaintiffs filed a motion to remand, claiming that the case had been improperly removed. Plaintiffs contend that the removal petition is defective because Defendant Flemming failed to allege that the remaining defendants had not been served in the state court action and that Defendants Israelow and Fishman were non-residents.

Removal of cases from state court is governed by 28 U.S.C. §§ 1441-1452. Removal is a statutory right, and defendants must comply strictly with the procedures to effect removal. See Lewis v. Rego Co., 757 F.2d 66, 68 (3d Cir. 1985). While ordinarily all defendants must join in a removal petition, there are exceptions to that rule. See Weinrach v. White Metal Rolling and Stamping Corp. & Sears, Roebuck and Co., No. CIV.A. 98-3293, 1999 WL 46627, at *1 (E.D. Pa. Jan. 6, 1999). One such exception arises when a non-resident defendant has not been served the complaint at the time the removing defendants filed their petition. See id. In that case, the removal petition will be effective provided it alleges that the defendant who did not join in the removal was not served in the state proceeding. See Lewis, 757 F.2d at 68.

In the present case, not all of the Defendants have joined in filing the notice of removal. Defendant Flemming's notice of removal is defective on its face as the petition did not allege that Defendants Israelow, Fishman, and Flemming Foods East, Inc. had not been served in the state proceeding. The notice of removal addressed the residency of, but not service upon,

Defendants Israelow or Fishman. As Defendant provided no explanation as to why these defendants were not joined, the Court concludes that the language of the petition is insufficient to bring it within the non-service exception. Thus, because the failure of all defendants to join in the removal petition is "a defect in removal procedure" within the meaning of § 1447(c), see Balazik v. County of Dauphin, 44 F.3d 209, 213 (3d Cir. 1995), the motion to remand will be granted. Moreover, as the notice of removal is deficient as it fails to allege that the non-joining defendants were not served, it is unnecessary for the Court to address whether the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

For the foregoing reasons, Plaintiffs' motion to remand is **GRANTED**. An appropriate order follows.

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d/b/a BLAIR ROAD REALTY COMPANY,	:	
	:	
Defendants.	:	

O R D E R

AND NOW this 3rd day of March, 1999, upon consideration of the motion of Plaintiffs David and Donna Reed for Remand (Docket No. 3) and Defendant Flemming Companies, Inc.'s Response (Docket No. 4), it is hereby ORDERED that the motion is GRANTED, in accordance with the accompanying memorandum.

A certified copy of this order and accompanying memorandum shall be mailed by the Clerk of the Court to the Court of Common Pleas of Philadelphia County, Pennsylvania. Additionally, the Clerk of Court shall mark this case CLOSED.

BY THE COURT:

_____
RONALD L. BUCKWALTER, J.