

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

HERMAN LAW : CIVIL ACTION
 :
 v. :
 :
 :
 SOUTHEASTERN PENNSYLVANIA :
 TRANSPORTATION AUTHORITY : NO. 01-1993

MEMORANDUM ORDER

This case is presently before the court on plaintiff's motion to remand.¹ Plaintiff initiated this action in the Philadelphia Court of Common Pleas on February 16, 2001 by filing with the Prothonotary a Praecipe for the Issuance of a Writ of Summons. The Writ of Summons was served upon defendant on March 6, 2001. Plaintiff filed and served upon defendant a copy of the complaint on April 12, 2001.

Plaintiff's complaint contained three counts. Counts one and two asserted claims for common law negligence and violations of state and local statutory law. Count three alleged that defendant had violated the Americans with Disabilities Act ("ADA"). Defendant filed its notice of removal with this court on April 23, 2001 on the basis that count three gave rise to federal question jurisdiction. On the following day, April 24, 2001, plaintiff filed an amended complaint in the Common Pleas Court voluntarily dismissing his ADA claim. On the next day,

¹While he clearly seeks a remand, plaintiff's pleading is styled as "Plaintiff's Opposition to Defendant's Petition for Removal and Request to Remand."

April 25, 2001, defendant filed with this court a motion to dismiss count three of plaintiff's complaint. On April 30, 2001 plaintiff submitted a letter to the court consenting to the dismissal of count three of his complaint. On May 2, 2001, plaintiff filed the instant motion.

The removal of an action is not complete until the defendant has given written notice to all adverse parties and filed a copy of the notice with the state court. See 28 U.S.C. § 1446(d). It is unclear from the record before the court when removal was completed and whether plaintiff's amended complaint, filed in state court one day after defendant filed its removal notice, can be considered part of the court record.² Such a determination is unnecessary, however, as the parties have agreed to the dismissal of count three and deletion of this count was the sole basis for plaintiff's amendment.

Count three provided the only basis for federal jurisdiction.³ The court thus has discretion to retain jurisdiction over the supplemental state law claims or to remand the case. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 357 (1988) (district court exercises discretion to remand case after dismissal of federal claims); Trans Penn Wax Corp. v. McCandless,

²The removal notice simply states that defendant promptly will give notice to plaintiff and file such notice with the Court of Common Pleas.

³The parties are not of diverse citizenship.

50 F.3d 217, 233 (3d Cir. 1995) (same). See also Payne v. Churchich, 161 F.3d 1030, 1043 (7th Cir. 1998) (remand preferable when federal claims are dismissed before trial). The court considers judicial economy, convenience, fairness and comity. See Cohill, 484 U.S. at 357; McCandless, 50 F.3d at 233.

Plaintiff's claims arise from defendant's alleged negligent maintenance and operation of a bus wheelchair lift and are predicated on state statutory and common law. This case is in its nascent stage. Both parties sought to eliminate the sole federal claim. There are no apparent reasons of judicial economy, convenience or fairness for retaining jurisdiction, and concerns of comity militate in favor of remand.

ACCORDINGLY, this day of June, 2001, upon consideration of plaintiff's Request to Remand (Doc. #4) and in the absence of any opposition thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and this case is **REMANDED** to the Court of Common Pleas for Philadelphia.

BY THE COURT:

JAY C. WALDMAN, J.