

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

KYLEEA THOMAS	:	CIVIL ACTION
	:	
v.	:	NO. 04-4288
	:	
FRIENDS REHABILITATION PROGRAM, INC., et al.	:	

MEMORANDUM AND ORDER

Kauffman, J.

July 11, 2005

Now before the Court is Plaintiff Kyleea Thomas’s Motion to Remand. For the reasons that follow, the Motion will be granted and the case will be remanded to the Court of Common Pleas of Philadelphia.

I. BACKGROUND

Assuming the truth of the allegations in Plaintiff’s Complaint, the relevant facts are as follows. On the evening of March 31, 2002, Plaintiff was returning to her apartment in the Penn Towne Apartment Complex (“Penn Towne”). Upon entering the front door of her building, she observed Cornelius Cheeseboro (“Cheeseboro”), whom she recognized as the tenant from Apartment A, sitting in the stairway leading up to her apartment. Complaint ¶¶ 70, 71. As Plaintiff passed Cheeseboro on the stairway, he stood up, grabbed her from behind, placed a knife to her throat and forcibly led her down the stairs to the basement, where he sexually assaulted and raped her. Id. ¶¶ 72 - 74. Cheeseboro then forced Plaintiff to accompany him to various points in the city, and ultimately to an abandoned church, where he stabbed Plaintiff numerous times. He left her there, believing she was dead. Id. ¶ 80. Plaintiff was able to find

help and was transported to the Emergency Room at Thomas Jefferson Hospital, where she was treated for her wounds. Id. ¶ 82.

Within hours, Cheeseboro was arrested by local police. He was charged with possession of an instrument of crime, attempted murder, simple assault, aggravated assault, terroristic threats, kidnapping, unlawful restraint, false imprisonment, rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, indecent assault, indecent exposure, endangering the welfare of a child, and corruption of a minor. While awaiting trial, he committed suicide. Id. ¶ 84.

Plaintiff's Complaint alleges that Defendants Friends Rehabilitation Program ("FRP") and First American Registry, Inc. ("FAR") bear much of the responsibility for Cheeseboro's attack. At the time of the attack, FRP both owned and managed Plaintiff's apartment complex. Id. ¶ 16. As part of its agreement with the Philadelphia Housing Authority and pursuant to United States Department of Housing and Urban Development ("HUD") regulations, FRP had an obligation to screen all prospective tenants, including a criminal background check. Id. ¶ 24. FRP also had an announced policy denying tenancy to all persons who have been convicted of any sex offense. Id. ¶ 29.

When Plaintiff's guardian, Nathan Austin, rented the apartment in which he and Plaintiff resided, FRP agents represented that criminal background checks were performed on all prospective tenants and that the complex "did not rent apartments to criminals." Id. ¶ 34. Nevertheless, Cheeseboro received a fully executed written lease agreement for his apartment before any background check was conducted. Id. ¶ 39. Eventually, FRP did arrange for Defendant First American Registry ("FAR") to carry out a background check. That check,

however, failed to uncover Cheeseboro's lengthy criminal history, which included "eleven arrests, multiple convictions, and incarceration in the state penitentiary on a sentence of five to fifteen years for rape and sexual assault." Id. ¶¶ 41, 44, 47. As a result of FAR's failure to uncover Cheeseboro's criminal history, he was allowed to continue his tenancy, thereby setting the stage for his attack on Plaintiff several months later. Id. ¶ 49.

On August 9, 2004, Plaintiff commenced the present action in the Court of Common Pleas of Philadelphia. Her complaint asserts claims against FRP for negligence, breach of contract, fraudulent misrepresentation, negligent misrepresentation, and intentional and reckless conduct. She also asserted claims against FAR for negligence and breach of contract. Claims for negligent and intentional infliction of emotional distress were asserted against both defendants.

On September 10, 2004, FAR and FRP separately removed Plaintiff's action to this Court. FRP subsequently joined in FAR's removal petition so that the case could proceed in a single action. FAR's Opposition Memorandum at 8. Plaintiff has now moved to remand the action to the Court of Common Pleas of Philadelphia.

II. LEGAL STANDARD

A defendant in a state court action may remove his or her case to a United States District Court so long as that court has original jurisdiction over the action. 28 U.S.C. § 1441. The defendant, as the removing party, has the burden of showing that federal jurisdiction exists. See Pullman Co. v. Jenkins, 305 U.S. 534, 540 (1939). "Because lack of jurisdiction would make any decree in the case void and the continuation of the litigation in federal court futile, the removal statute should be strictly construed and all doubts should be resolved in favor of remand." Abels v. State Farm Fire & Casualty Co., 770 F.2d 26, 29 (3d Cir. 1985). Thus, "if

there is any doubt as to the propriety of removal, the case should not be removed to federal court.” Brown v. Gov’t of the Virgin Islands, 75 F.3d 860 (3d Cir. 1996).

III. ANALYSIS

Defendants contend that this Court has original jurisdiction over this matter because it raises a federal question, and thus falls under 28 U.S.C. § 1331, which confers original jurisdiction to district courts over “all civil actions *arising under* the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331 (emphasis added). The Supreme Court has made clear that “the question whether a claim ‘arises under’ federal law must be determined by reference to the ‘well pleaded complaint.’” Merrell Dow Pharms., Inc. v. Thompson, 478 U.S. 804, 808 (1986) (quoting Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 9-10 (1983)). A well-pleaded complaint can raise a federal question either by (1) asserting a cause of action that was “created by federal law;” or (2) including a state-law claim that “implicates significant federal issues.” Grable & Sons Metal Products, Inc. v. Darue Eng’g & Mfg., 2005 WL 1383603 (U.S. June 13, 2005).

All parties agree that the Complaint is limited to state-law claims. Thus, the question before the Court is whether Plaintiff’s state-law claims involve “not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.” Id. at 4. Defendants argue that Plaintiff’s negligence claims depend on analysis of the HUD regulations codified at 24 CFR §982.307, and thus arise under federal law.

In Merrell Dow Pharmaceuticals, Inc. v. Thompson, the Supreme Court held that “a complaint alleging a violation of a federal statute as an element of a state cause of action, when

Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim” arising under federal law. 478 U.S. 817. That is precisely the case here. Moreover, the Supreme Court has recently referred to a state-law negligence claim that cites a federal statute to establish a defendant’s duty to the plaintiff as the classic example of what does *not* raise a federal question. Grable & Sons, 2005 WL 1383694 at *7.

FAR contends that Plaintiff’s complaint also raises a federal question under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §1681, et seq., because compliance with the FCRA essentially would be an affirmative defense to Plaintiff’s negligence claims.¹ However, “a defense that raises a federal question is inadequate to confer federal jurisdiction.” Merrell Dow, 478 U.S. at 807.

IV. CONCLUSION

The federal issues involved in Plaintiff’s state law claims are not sufficiently substantial to confer subject matter jurisdiction. Accordingly, this action will be remanded to the Court of Common Pleas of Philadelphia. An appropriate order follows.

¹ Plaintiff has not asserted FAR’s failure to comply with the FCRA as grounds for her negligence claim.

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AND NOW this 11th day of July, upon consideration of Plaintiff's Motion to Remand (docket no. 6), Defendants' opposition thereto, and pursuant to 28 U.S.C. § 1447(c), it is **ORDERED** that the motion is **GRANTED** for the reasons stated in the accompanying Memorandum. Accordingly, the above-captioned action is **REMANDED** to the Court of Common Pleas of Philadelphia. The Clerk of the Court shall mark this case **CLOSED**.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.