

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 10th day of June, 1998, the Order-Memorandum of May 15, 1998 remanding this action to the Court of Common Pleas, Philadelphia County is vacated.

A non-served, non-resident defendant need not join in the removal petition as long as such information is alleged in the removal petition. Lewis v. Rego Company, 757 F.2d 66, 68 (3d Cir. 1985) (citation omitted). Here, the removal petition addressed the residency of - but not service upon, or entry of appearance by - defendants Sears, Roebuck & Co. and Mason Corp. The petition contained no explanation as to why the other defendants were not joined. This deficiency led to the remand.

In a letter dated May 22, 1998, defendant F&F Construction Corp. subsequently explained that neither Sears, Roebuck & Co. nor Mason Corp. had entered an appearance before the date the notice of removal was required to be filed.¹ Upon this allegation, the removal petition can be deemed effective. See

¹ A check of the docket reveals that neither has done so as of this date.

Lewis, 757 F.2d at 68 (an allegation of non-appearance, while not clearly an allegation of "non-service," is sufficient as an exception to the rule requiring joinder of all defendants in a removal petition); Prowell v. West Chemical Products, Inc., 678 F. Supp. 553, 554 (E.D. Pa. 1988) ("non-service exception" applies when non-joining defendants have not been served in the state proceeding by the time the petition for removal is filed).

Edmund V. Ludwig, J.