

Bateman v. Armstrong Int'l

United States District Court for the Southern District of Florida
August 31, 2021, Decided; August 31, 2021, Entered on Docket
CASE NO.: 20-61953-CIV-SINGHAL

Reporter

2021 U.S. Dist. LEXIS 166424 *

DAVID BATEMAN and DOROTHY BATEMAN, Plaintiffs, v. ARMSTRONG INTERNATIONAL, INC.; AURORA PUMP COMPANY; BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, BYRON JACKSON PUMPS, CARRIER CORPORATION; BIGHAM INSULATION & SUPPLY; CRANE CO.; CRANE PUMPS & SYSTEMS, INC.; FLOWSERVE CORPORATION, as successor in interest to Rockwell Automation, Inc.; INGERSOLL-RAND COMPANY; JOHN CRANE, INC.; JOHNSON CONTROLS, INC.; PECORA CORPORATION, Defendants.

Core Terms

Removal, fraudulent joinder, state court, fraudulently, diversity, resident

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For BW/IP, Inc., and its Wholly Owned Subsidiaries, Byron Jackson Pumps, Carrier Corporation, Defendant: Evelyn Fletcher Davis, Todd Carlton Alley, LEAD ATTORNEYS, Hawkins Parnell Thackston and Young, LLP, Atlanta, GA; Jonathan Hernandez, MG+M LAW, Miami, FL.

For Bigham Insulation & Supply Company, Defendant:

Amanda Altman Kessler, LEAD ATTORNEY, United States Attorney's Office, Miami, FL; Rebecca Shull Vinocur, LEAD ATTORNEY, Rebecca S. Vinocur, P.A., Coral Gables, FL; John Barnett Liebman, O'Neill Liebman & Cooper, Winter Park, FL; Jonathan Hernandez, [*2] MG+M LAW, Miami, FL.

For Crane Co., a Delaware Corporation, Crane Pumps & System, Inc., a Delaware corporation, Defendants: Stephen Allan McGuinness, William John Simonitsch, LEAD ATTORNEYS, K&L Gates LLP, Miami, FL; Jonathan Hernandez, MG+M LAW, Miami, FL; Kenn Brotman, K&L Gates, Chicago, IL.

For Flowserve US Inc., as successor in interest to Rockwell Automation, Inc., a Delaware Corporation, Defendant: Dale Jay Spurr, LEAD ATTORNEY, Luks, Santaniello, Petrillo & Jones; Edgardo Ferreyra, Jr., LEAD ATTORNEY, Luks, Santaniello, Petrillo & Cohen, Miami, FL; Stuart L. Cohen, LEAD ATTORNEY, Luks Santaniello, Miami, FL; Jonathan Hernandez, MG+M LAW, Miami, FL.

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For Pecora Corporation, a Pennsylvania Corporation,

Defendant: Thomas Folger Brink, LEAD ATTORNEY,
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Jonathan Hernandez, MG+M LAW, Miami, FL.

Judges: RAAG SINGHAL, UNITED STATES DISTRICT
JUDGE.

Opinion by: RAAG SINGHAL

Opinion

ORDER OF REMAND

THIS CAUSE is before the Court on the Plaintiff's Motion for Remand (DE [22]). The motion has been fully briefed by the parties.¹ Accordingly, the matter is ripe for review.

I. BACKGROUND

On May 8, 2020, Plaintiffs, David Bateman ("Mr. Bateman") and his wife Dorothy Bateman (collectively "Plaintiffs"), commenced this lawsuit in the Seventeenth Judicial Circuit in and for Broward County, Florida against eleven (11) Defendants, including Bigham Insulation & Supply Company, Inc. ("Bigham"), a Florida corporation having a principal place of business in Broward County, Florida. In the initial Complaint (DE [1-2]), Plaintiffs allege that Mr. Bateman developed mesothelioma as a result of his exposure to [*4] Defendants' **asbestos**-containing products while serving in the British Royal Navy from 1967-1975, at sea and in port at various locations, including Port Everglades Shipyard in Fort Lauderdale, Florida and Mayport Shipyard in Jacksonville, Florida. On or about November 27, 2019, Mr. Bateman was diagnosed with malignant mesothelioma, a terminal cancer within the membrane on the lining of the lungs.²

On September 25, 2020, Defendants filed a Notice of Removal (DE [1]) pursuant to [28 U.S.C. §§ 1332, 1441](#), and [1446](#), following the deposition of Mr. Bateman on August 28, 2020. On October 19, 2020, Plaintiffs filed the instant Motion to Remand (DE [22]) alleging the

Notice of Removal (DE [1]) was procedurally defective and the Defendants have failed to meet their burden of proving fraudulent joinder, which Defendants deny. Defendants further argue this Court has subject matter jurisdiction over this action because Bingham is no longer a party to this action.³

II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction, with the power to hear only cases authorized by the Constitution or by statute. [Kokkonen v. Guardian Life Ins. Co. of Amer.](#), [511 U.S. 375, 377 \(1994\)](#). A defendant may remove to federal court "any civil action brought in a State court of which the district courts [*5] of the United States have original jurisdiction." [28 U.S.C. § 1441\(a\)](#). District courts have original jurisdiction of cases only when a controversy involves either a question of federal law or "where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States." [28 U.S.C. §§ 1331-1332\(a\)\(1\)](#). "Diversity jurisdiction requires complete diversity; every plaintiff must be diverse from every defendant." [Triggs v. John Crump Toyota, Inc.](#), [154 F.3d 1284, 1287 \(11th Cir. 1998\)](#).

The party that removes a state court action to federal court "bears the burden of proving that federal jurisdiction exists." [Williams v. Best Buy Co.](#), [269 F.3d 1316, 1319 \(11th Cir. 2001\)](#). When a court evaluates "whether the particular factual circumstances of a case give rise to removal jurisdiction, '[it] strictly construe[s] the right to remove' and appl[ies] a general 'presumption against the exercise of federal jurisdiction, such that all uncertainties as to removal jurisdiction are to be resolved in favor of remand.'" [Scimone v. Carnival Corp.](#), [720 F.3d 876, 882 \(11th Cir. 2013\)](#).

"When a case is removed based on diversity jurisdiction," as this case was, "the case must be remanded to state court if there is not complete diversity between the parties, or one of the defendants is a citizen of the state in which the suit is filed, [§ 1441\(b\)](#)." [Stillwell v. Allstate Ins. Co.](#), [663 F.3d 1329, 1332 \(11th Cir. 2011\)](#) (citations omitted). "However, '[w]hen a [*6] plaintiff names a non-diverse defendant solely in order to defeat federal diversity jurisdiction, the district court must ignore the presence of the non-diverse defendant

¹The Court has also reviewed the cases cited in Plaintiff's Notice of Supplemental Authority (DE [57]).

²During the course of this lawsuit, Plaintiff David Bateman passed away (DE [62]).

³Defendants refer to the dismissal of Bingham in Case No. 14-cv-1096-J-39JBT. See (DE [34-10])

and deny any motion to remand the matter back to state court." *Id.* (quoting [Henderson v. Washington Nat. Ins. Co.](#), 454 F.3d 1278, 1281 (11th Cir. 2006)). In such a case, the addition of the non-diverse defendant is considered a "fraudulent joinder."

The Eleventh Circuit has held that "[t]he determination of whether a resident defendant has been fraudulently joined must be based upon the plaintiff's pleadings at the time of removal, supplemented by any affidavits and deposition transcripts submitted by the parties." [Legg v. Wyeth](#), 428 F.3d 1317, 1322 (11th Cir. 2005) (emphasis in original) (quoting [Pacheco de Perez v. AT&T Co.](#), 139 F.3d 1368, 1380 (11th Cir. 1998)). The procedure used to resolve a claim of fraudulent joinder "is similar to that used for ruling on a motion for summary judgment under [\[Federal Rule of Civil Procedure\] 56\(b\)](#)." *Id.* at 1322-23 (quoting [Crowe v. Coleman](#), 113 F.3d 1536, 1538 (11th Cir. 1997)) (additional citations omitted). All questions of fact must be resolved in favor of the plaintiff. *Id.* at 1323 (quoting [Cabalceta v. Standard Fruit Co.](#), 883 F.2d 1553, 1561 (11th Cir. 1989)). However, when the defendants have submitted affidavits that are undisputed by the plaintiff, the court cannot resolve facts in the plaintiff's favor based solely on the unsupported allegations in the plaintiff's complaint. See [Legg](#), 428 F.3d at 1333.

To establish fraudulent joinder, "the removing party has the [*7] burden of proving [by clear and convincing evidence] that either: (1) there is no possibility the plaintiff can establish a cause of action against the resident defendant; or (2) the plaintiff has fraudulently pled jurisdictional facts to bring the resident defendant into state court." [Stillwell](#), 663 F.3d at 1332 (quoting [Crowe](#), 113 F.3d at 1538)). "To determine whether the case should be remanded, the district court must evaluate the factual allegations in the light most favorable to the plaintiff and must resolve any uncertainties about state substantive law in favor of the plaintiff." [Crowe](#), 113 F.3d at 1538. "If there is even a possibility that a state court would find that the complaint states a cause of action against any one of the resident defendants, the federal court must find that the joinder was proper and remand the case to the state court." [Stillwell](#), 663 F.3d at 1333 (quoting [Coker v. Amoco Oil Co.](#), 709 F.2d 1433, 1440-41 (11th Cir. 1983), (superseded by statute on other grounds as stated in [Georgetown Manor, Inc. v. Ethan Allen, Inc.](#), 991 F.2d 1533 (11th Cir. 1993))).

III. DISCUSSION

Plaintiff claims this matter was improperly removed arguing the Notice of Removal (DE [1]) is procedurally defective and that the Defendants have failed to meet their burden of proving fraudulent joinder. This Court agrees. The Eleventh Circuit has held that "[t]he determination of whether a resident defendant has been fraudulently [*8] joined must be **based upon the plaintiff's pleadings at the time of removal**, supplemented by any affidavits and deposition transcripts submitted by the parties." [Legg](#), 428 F.3d at 1322 (emphasis added (citation omitted)). Here, Defendants admit removal was not proper pursuant to [28 U.S.C. § 1441 \(b\)\(2\)](#) at the time of the initial pleadings. And Defendants concede in their Notice of Removal (DE [1]) that Bigham is a citizen of Florida. See (Notice of Removal at ¶ 1 p. 2). Defendants do not argue Plaintiffs have fraudulently pled jurisdictional facts with respect to Bigham. Therefore, the second prong of the fraudulent joinder test is not at issue. Instead, Defendants argue Mr. Bateman's deposition reveals Plaintiffs cannot establish a cause of action against Bingham. See [Stillwell](#), 663 F.3d at 1332 (quoting [Crowe](#), 113 F.3d at 1538)). Accordingly, Defendants claim Bingham was fraudulently joined so the matter should not be remanded. This Court does not agree.

Plaintiffs' Complaint contains numerous allegations to plausibly state a claim against Bigham. It cannot be said based upon the facts of this case, that Mr. Bateman's claims are overtly "fraudulent or frivolous" against Bigham. This case is in its infancy and the Court cannot conclude with any degree of certainty that Plaintiffs [*9] have no possibility of recovery against Bingham. The affidavits provided by Defendants do nothing to impugn this conclusion or eliminate the possibility, by clear and convincing evidence that Mr. Bateman was exposed to an **asbestos** containing insulation product sold, marketed, distributed or manufactured by Bigham. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Plaintiff's Motion for Remand (DE [22]) is **GRANTED**. The Clerk of Court is directed to **REMAND** this case to the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. The Clerk of Court is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 31st day of August 2021.

/s/ Raag Singhal

RAAG SINGHAL

UNITED STATES DISTRICT JUDGE

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