

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

<b>DIANESE, INC., GAETANO DIANESE, and</b>	:	<b>CIVIL ACTION</b>
<b>ROSEMARIE DIANESE,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
<b>et al.,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 01-2520</b>

Reed, S.J.

February 27, 2002

**MEMORANDUM**

Now before the Court are the notices of removal filed by plaintiffs in this case (Doc. Nos. 157, 158, 163, 166, 167). Plaintiffs have removed the following cases from state court: (1) Verizon America, Inc. v. Dianese, Inc., No. 01-1947, Court of Common Pleas of Carbon County; (2) Verizon Pennsylvania, Inc. v. Dianese, Inc., No. 01-2627, Court of Common Pleas of Carbon County; (3) Discover Bank v. Dianese, No. 1116-2002, Court of Common Pleas of Luzerne County; (4) Commonwealth of Pennsylvania v. Dianese, 306-02, Court of Common Pleas of Luzerne County; and (5) Washington Mutual Bank v. Dianese, 1260-02, Court of Common Pleas of Luzerne County. These removals were pursuant to 28 U.S.C. §§ 1446 (b), 1441 (c), 1367(a), and Federal Rules of Civil Procedure 18, 19 and 22.<sup>1</sup> For the reasons set forth below, this Court remands the removed cases to state court.

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<sup>1</sup> In addition to these grounds for removal as asserted for all of the removed actions, plaintiffs further attempt to remove Washington Mutual Bank pursuant to diversity jurisdiction under 28 U.S.C. § 1332(a)(1), and Commonwealth pursuant to federal question jurisdiction under 28 U.S.C. § 1331.

## Legal Standard

Federal courts have a *sua sponte* obligation to plumb their jurisdiction. See Employers Ins. of Wausau v. Crown Cork & Seal Co., 905 F.2d 42, 45 (3d Cir. 1990); see also Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999) (holding that a district court may “address the question of jurisdiction, even if the parties do not raise the issue”) (quoting Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995)). Therefore, I am bound to determine whether this Court may exercise jurisdiction over these removed cases.

The removal of cases from state to federal court is governed by 28 U.S.C. § 1441, which limits removal to those cases in which “the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441 (a); Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 7-8, 77 L. Ed. 2d 420, 103 S. Ct. 2841 (1983). Original jurisdiction may be found where the parties are diverse and the amount in controversy exceeds \$ 75,000; nevertheless, removal based upon such jurisdiction is appropriate only if the defendant is not a citizen of the State in which the action was brought. See 28 U.S.C. §§ 1332 (a), 1441(b); Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68-9, 136 L. Ed. 2d 437, 117 S. Ct. 467 (1996). If these requirements are not met, removal is appropriate only if the case falls within the district court's original "federal question" jurisdiction: "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §§ 1331, 1441(b); Franchise Tax Bd., 463 U.S. at 8.

## Analysis

Plaintiffs have not established a key element of removal under § 1441; this Court’s original jurisdiction over the actions brought in state court.

**28 U.S.C. §§ 1331, 1332**

Plaintiffs attempt to remove Washington Mutual Bank v. Dianese pursuant to diversity jurisdiction under 28 U.S.C. § 1332(a)(1). Removal premised upon diversity of citizenship is appropriate only if the defendant is not a citizen of the State in which the action was brought. See 28 U.S.C. § 1441(b); Lewis, 519 U.S. at 68-9. Washington Mutual was brought against plaintiffs in the Court of Common Pleas in Luzerne County, Pennsylvania. Because plaintiffs are citizens of Pennsylvania, (Am. Compl. at ¶¶ 4-6), the action is not subject to removal to federal court.

Plaintiffs further assert 28 U.S.C. § 1331 as grounds for removal of Commonwealth of Pennsylvania v. Dianese. A review of the underlying state court papers attached to the relevant notice of removal reveals that the action in Commonwealth relates to an appeal by plaintiffs of a conviction for the failure to purchase a building permit pursuant to an ordinance of the city of Hazleton. This action therefore does not arise from federal law as required under §1331. Accordingly, there is no federal jurisdiction over Commonwealth pursuant to § 1332.

Plaintiffs do not assert that diversity jurisdiction pursuant to 28 U.S.C. § 1332, nor federal question jurisdiction pursuant to 28 U.S.C. § 1331, exist in any of the remaining removed actions.

**28 U.S.C. § 1367**

As previously stated in this Court's Orders of August 16, 2001 (Doc. No. 90) and December 27, 2001 (Doc. No. 132), supplemental jurisdiction under § 1367 is not original

jurisdiction, it is its converse.<sup>2</sup> See Rutt v. Prudential Ins. Co. of Am., No. 96-3658, 1996 U.S. Dist. LEXIS 7132, at 8 (E.D. Pa. May 21, 1996). Accordingly, plaintiffs may not remove a state court action solely pursuant to 28 U.S.C. § 1367. Moreover, even if supplemental jurisdiction could in rare circumstances justify the removal of an inextricably related case, this is not such a rare circumstance. See id. The parties that filed these cases in state courts are simply seeking moneys owed to them by plaintiffs. Even if the instant case also relates in some way to some of those moneys, this does not make it so closely intertwined as to require this Court to hear the case. I cannot conclude that the actions removed by plaintiffs are part of the same case or controversy presented in this case.

**28 U.S.C. §§ 1441(c),<sup>3</sup> 1446(b)<sup>4</sup>**

Nor do 28 U.S.C. §§ 1441(c) or 1446(b) allow for removal of the above-referenced state court actions. Removal pursuant to § 1441(c) requires the joinder of “otherwise non-removable

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<sup>2</sup> 28 U.S.C. § 1367 (a) provides:

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

<sup>3</sup> 28 U.S.C. § 1441(c) provides, in pertinent part:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

<sup>4</sup> 28 U.S.C. § 1446(b) provides, in pertinent part:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

claims” to a claim arising under federal law over which this Court would have jurisdiction pursuant to 28 U.S.C. § 1331. See 28 U.S.C. §1441(c). There has been no such joinder of claims in the above-referenced state court actions; no federal claims have been asserted therein. Removal pursuant to § 1446(b) is permitted only when filings in the state court actions, such as amended pleadings or motions, make apparent “that the case is one which is or has become removable.” See 28 U.S.C. § 1446(b). Plaintiffs have failed to show that any such papers were filed in the above-referenced state court actions.

### **Federal Law Defense**

Plaintiffs also argue that jurisdiction exists because their defense to the state court actions is part of Civil Action No. 01-2520. A case may not be removed solely on the basis of a defense that implicates federal law, although the federal defense may be asserted in state court. See Caterpillar, Inc. v. Williams, 482 U.S. 386, 393, 96 L. Ed. 2d 318, 107 S. Ct. 2425 (1987); Lazorko v. Pennsylvania Hosp., 237 F.3d 242, 248 (3d Cir. 2000), cert. denied, \_\_\_ U.S. \_\_\_, 150 L. Ed. 2d 719, 121 S. Ct. 2552 (2001). Thus, the fact that plaintiffs believe their defense in the state court actions is premised upon their claims of a RICO conspiracy in Civil Action No. 01-2520, is not sufficient for the removal of the actions to federal court.

### **State Court Actions**

Plaintiffs further argue that removal of one of the state cases is justified because the state court judges have denied plaintiff Gaetano Dianese the right to represent his corporation, Dianese Inc. Even if there were any merit to the argument that the proper application of a court rule requiring a corporation to be represented by a licensed attorney denied plaintiffs their due process rights, the state court actions would still not be subject to this Court’s jurisdiction. Lower federal

courts possess no power to sit in direct review of state court decisions; the district court may not be called upon to review the state-court decision. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983) (cited in Guarino v. Larsen, 11 F.3d 1151, 1156-57 (3d Cir. 1993)). This Court does not have jurisdiction “over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional.” Feldman, 460 U.S. at 486. Any constitutional complaint that plaintiffs may have over adjudications within state court must be challenged through the state court appellate process. Regardless of the actions by the state court, this Court does not have original subject matter jurisdiction over the claims brought in the removed actions.

### **Federal Rules of Civil Procedure**

In addition, “[the Federal Rules of Civil Procedure] shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein.” Fed. R. Civ. P. 82; Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 370, 57 L. Ed. 2d 274, 98 S. Ct. 2396 (1978) (superseded on other grounds by statute) (“It is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction.”). Consequently, Federal Rules of Civil Procedure 18, 19 and 22 do not empower a federal district court with subject matter jurisdiction. They merely provide procedural devices for more efficient case management in actions over which the Court already has proper subject matter jurisdiction. Therefore, they alone cannot serve as grounds for removal of the state court actions.

## **Improper Venue**

Further, but not in derogation of the jurisdictional conclusions set forth above, it should be noted that 28 U.S.C. § 1446 requires that a removing party file the notice of removal in the district court for the district within which such state action is pending. The cases removed by plaintiffs were pending in the Courts of Common Pleas for Luzerne County and Carbon County, Pennsylvania, both of which lie within the Middle District of Pennsylvania. See 28 U.S.C. § 118 (b). Thus, even if the above-discussed jurisdictional problems did not exist, this Court would have to remand the cases for improper venue.

## **Conclusion**

The remand statute provides: “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447 (c). The removal of these cases is improper, and this Court therefore lacks subject matter jurisdiction over them. Therefore, they must be remanded.

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<b>ROSEMARIE DIANESE,</b>	:	
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<b>Plaintiffs,</b>	:	
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<b>v.</b>	:	
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<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
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	:	
<b>Defendants.</b>	:	<b>NO. 01-2520</b>

**O R D E R**

**AND NOW**, this 27th day of February, 2002, upon consideration of the notices of removal filed by plaintiffs in this case (Doc. Nos. 152, 157, 158, 163, 166, 167), and for the reasons set forth in the foregoing memorandum, **IT IS HEREBY ORDERED**, that the following cases are **REMANDED** under 28 U.S.C. § 1447 (c) for want of subject matter jurisdiction and the clerk of the Court shall forthwith return the files to the relevant state courts from which the actions were removed:

1. Verizon America, Inc. v. Dianese, Inc., No. 01-1947, Court of Common Pleas of Carbon County, (Doc. No. 157);
2. Verizon Pennsylvania, Inc. v. Dianese, Inc., No. 01-2627, Court of Common Pleas of Carbon County, (Doc. No. 158);
3. Discover Bank v. Dianese, No. 1116-2002, Court of Common Pleas of Luzerne County, (Doc. No. 163);
4. Commonwealth of Pennsylvania v. Dianese, 306-02, Court of Common Pleas of Luzerne County (Doc. No. 166); and



5. Washington Mutual Bank v. Dianese, 1260-02, Court of Common Pleas of Luzerne County (Doc. No. 167).

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**LOWELL A. REED, JR., S.J.**