

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

DAWN DE MARINO : CIVIL ACTION
v. :
SKY CHEFS, INC., :
d/b/a LSG SKY CHEFS : No. 05-2457

DAWN DE MARINO :
v. :
SKY CHEFS, INC, d/b/a LSG SKY CHEFS and :
LSG LUFTHANSA SERVICE HOLDING AG : No. 05-2808

ORDER-MEMORANDUM

AND NOW, this 28th day of July, 2005, "Plaintiff's Motion to Remand Pursuant to U.S.C. §1447" is denied, defendant Sky Chef, Inc.'s notices of removal having been timely filed. Jurisdiction is diversity, and the requisite amount in controversy is alleged. 28 U.S.C. § 1332.

By writ of summons on January 10, 2005, plaintiff Dawn De Marino commenced an action in the Philadelphia Court of Common Pleas against Sky Chefs, Inc., d/b/a LSG Sky Chefs. The summons noted that plaintiff was a citizen of the Commonwealth of Pennsylvania but did not state where defendant was incorporated or where its principal place of business was located.¹ On May 11, 2005, plaintiff filed a complaint in Common Pleas Court, and defendant Sky Chefs, Inc. filed a removal notice on May 25, 2005 (C.A. No. 05-2457).

On May 11, 2005, plaintiff also filed a second writ of summons in the Philadelphia Court. The summons in the second case again designated CT Corporation as the address for defendant Sky Chefs, Inc., and listed an address in Neu-Isenburg, Germany for defendant LSG Lufthansa Service

¹ The summons listed defendant's address as "CT Corporation System, 123 S. Broad St., Philadelphia, PA." CT was presumably designated as defendant's registered agent for receiving service of process.

Holding AG.² On June 13, 2005, defendant Sky Chefs, Inc. filed another removal notice (C.A. No. 05-2808), stating that it received service of the second summons on May 13, 2005.³

Plaintiff implicitly concedes that the second action was properly removed within the 30-day window allowed by 28 U.S.C. §1446(b). See Fed.R. Civ.P. 6. However, she urges that the first notice of removal was untimely, and that, both cases being related, should be remanded together.

Service of a writ of summons may trigger the 30-day period for filing a removal notice under §1446(b) where the writ “provides adequate notice of federal jurisdiction.” Foster v. Mutual Fire, Marine & Inland Insurance Co., 986 F.2d 48, 53 (3d Cir. 1993).⁴ In determining whether adequate notice has been provided by a summons, Foster rejected a subjective standard based on a defendant’s actual knowledge - the inquiry “begins and ends within the four corners of the pleadings.” Foster, 986 F.2d. at 53, quoting Rowe v. Marder, 750 F.Supp. 718 (W.D. Pa. 1990) .

²Only a summons was filed with the second removal notice, but both plaintiff and defendant Sky Chefs, Inc. agree that the actions are identical except for the added defendant. They request consolidation. See “Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion to Remand Case Pursuant to U.S.C. § 1447” (C.A. No. 05-2808) at 1-2, and “Memorandum of Law of LSG Sky Chefs, Inc. In Support of Its Opposition to Plaintiff’s Motion to Remand Case Pursuant to U.S. C. § 1447” (C.A. No. 05-2457) at 1, 7.

³According to defendant LSG Lufthansa’s separate brief, it was not served until July 6, 2005 - and therefore it has until August 5, 2005 to file its own independent removal notice.

⁴One court recently queried whether Foster was overruled by Murphy Bros. v. Michetti Pipe Stringing Inc., 526 U.S. 344 (1999): MPIII Holdings v. Hartford Casualty Insurance Co., 2005 U.S. Dist. LEXIS 10654 (May 31, 2005) (Shapiro, J.). In Murphy, the Court stated that the period for removal commences only after service of the complaint. It concluded that §1446(b) was intended to provide adequate time for filing removal notices and to operate uniformly in all states. Id., 526 U.S. at 351. Under Murphy, defendant Sky Chef’s initial removal petition was timely filed inasmuch as the notice of removal was filed within 30 days after the complaint was served. Murphy can be distinguished, as it involved an exchange of faxed copies of pleadings prior to formal service (not the case here) so it is not the basis for retaining jurisdiction. Because defendant’s removal notice in the first case was filed timely within the parameters set forth in Foster, it is unnecessary to reach whether Murphy overruled Foster.

On its face, the summons in the first action does not supply adequate notice of federal jurisdiction - in this instance, diversity of citizenship. Although plaintiff's citizenship and the amount in controversy were set forth, the summons did not specify defendant Sky Chefs' place of incorporation or where its principal place of business is located. "CT Corporation" as an address does not provide adequate notice of citizenship to determine if diversity jurisdiction is present on the face of the summons. CT is known to be an entity to facilitate service on out-of-state defendants, Klawiter v. Paper Converting Machine Co., 2002 Dist. LEXIS 1827 (E.D. Pa., Jan. 23, 2002), but it can also serve as a registered agent for service of process for Pennsylvania companies. Whether defendant knew diversity jurisdiction existed is not material. See Foster, 986 F.2d at 54; MP III Holdings v. Hartford Casualty Insurance Co., 2005 U.S. Dist. LEXIS 10654 (E.D. Pa., May 31, 2005). Without adequate notice of diversity on the face of the summons, the 30-day removal period did not commence until the complaint was filed. Therefore, neither notice of removal was belatedly filed and remand would be inappropriate.

Given that the two cases have identical fact questions, consolidation will be ordered.
Fed.R.Civ.P. 42(a).

BY THE COURT:

Edmund V. Ludwig, J.