

SCOTUS Ruling Continues Trend Confirming that Removal to Federal Court is the Exception

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By: James W. Sandy

Today, in a [unanimous opinion](#), the US Supreme Court ruled that the improper dismissal of a non-diverse defendant meant the district court lacked diversity jurisdiction and remanded the case back to the state court. This is the latest in a series of recent Supreme Court decisions making it clear that removal is the exception, not the rule.

The case is *Hain Celestial Group, Inc., ET AL. v. Palmquist Individually and as Next Friend of E.P., A Minor, ET AL.*

What Happened?

The respondents fed their child baby food manufactured by the petitioner that they purchased at a national grocery store. Unfortunately, their child developed serious developmental disorders that the respondents linked to the baby food, and they ultimately sued both the manufacturer and the grocery store in the Texas state court.

The manufacturer removed the case to federal court and argued in its removal paperwork that the grocery store, a Texas citizen for diversity purposes, had been improperly joined. The district court agreed and denied the respondents' motion to remand.

Eventually, the case proceeded to trial, where the manufacturer prevailed. The respondents appealed, arguing that the grocery store had been improperly dismissed and that the district court lacked jurisdiction. The Fifth Circuit agreed, and the manufacturer appealed to the US Supreme Court, which accepted its cert. petition.

What Did the Court Decide?

Writing for the unanimous court, Justice Sotomayer found that the erroneous dismissal of the non-diverse defendant before final judgment could not cure the jurisdictional defect that existed at the time of removal.

As Justice Sotomayer noted, federal courts are courts of limited jurisdiction, and a circuit court will consider a district court’s jurisdiction based “on the state of facts that existed at the time of filing.” Thus, “[i]f the court of appeals concludes that the district court lacked jurisdiction over the case when it was filed in or removed to federal court, then the court of appeals typically must vacate any judgment on the merits.”

As Justice Sotomayer explained, there is an exception to this general rule – if a district court cures a jurisdictional defect **before** a final judgment is entered, then the circuit court need not vacate that final judgment on the basis that the district court lacked jurisdiction. However, the court found that this limited exception did not apply here because:

1. the decision to dismiss the non-diverse defendant was in error; and
2. it was interlocutory – meaning it did not dismiss the entire case and “lingered through judgment,” which mandated vacating the district court’s decision and remanding it back to the state court.

Efficiency considerations cannot circumvent this general rule either, as Justice Sotomayer found that the court “has never held that a district court can create jurisdiction through its own mistakes. A rule to the contrary would permit courts to enlarge their jurisdiction beyond the limits Congress imposed.”

The court also rejected the manufacturer’s attempt to dismiss the non-diverse party under Rule 21 of the Federal Rules of Civil Procedure. That rule permits a court to “add or drop a party on just terms.” But as the court found, this rule is not designed for one defendant to seek dismissal of another defendant in a case – “[t]he identity of the party asking for the dismissal is important because “[t]he plaintiff is ‘the master of the complaint,’” and generally has the right to choose whether to proceed in federal or state court.”

Permitting the use of Rule 21 in this manner would force the respondents to litigate the case in federal court against their wishes and despite their right to control the forum for their lawsuit. Thus:

The Palmquists exercised their right to choose a state forum by purposefully and properly joining a nondiverse defendant against whom they could not proceed in federal court, and diligently asserted that right by promptly moving to remand the case to state court. Rule 21 does not permit a court or a defendant to override their choice in these circumstances.

What Does it Mean?

Today’s opinion makes removing a lawsuit to federal court potentially more difficult for defendants. Typically, there are two ways to remove a case filed in state court to federal court:

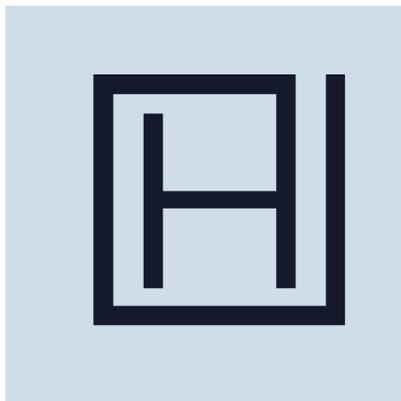
1. diversity jurisdiction exists (meaning all of the defendants are from a different state than the named plaintiffs); or
2. the complaint asserts a federal question.

Oftentimes, a plaintiff may add a non-diverse defendant to a lawsuit in hopes of defeating diversity jurisdiction and keeping a case in state court. Defendants have a few tools at their disposal to try and circumvent that (including asserting improper or fraudulent joinder as the defendant argued here).

However, as this case makes clear, if the defendant's attempt to get a non-diverse defendant was erroneous, that is a jurisdictional defect that cannot be cured in the future, even if a final judgment is entered at a time when the parties are completely diverse.

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Authors



James W. Sandy

Partner

📞 216-247-8509

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