

IN THE UNITED STATES DISTRICT COURT
for the Fifth Circuit

No. 94-10503
(Summary Calendar)

RICHARD LINDSAY,
Plaintiff-Appellant,
versus
FORD MOTOR COMPANY, ET AL.,
Defendants,
FORD MOTOR COMPANY,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:91-CV-2575-T)

(November 22, 1994)
Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

In this Texas diversity case, plaintiff-appellant, Richard Lindsay, appeals three orders of the district judge which resulted in the dismissal of defendant, Ford Motor Company, on the basis of the enforcement of an alleged settlement agreement and which also resulted in the remand of the case to state court. Finding a lack of diversity of citizenship between the parties, we conclude that the district court had no subject matter jurisdiction to adjudicate

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the issue of the alleged settlement or to dismiss Ford based upon the alleged settlement agreement. We vacate the order granting Ford's motion to enforce the settlement agreement and the "interlocutory judgment" which dismissed Ford. The remand order itself is unappealable. The case has been remanded to state court, where it will remain, with Ford again a defendant. The issue of the alleged settlement can be adjudicated by the state court.

FACTS

On October 28, 1991, Richard Lindsay filed suit against Ford Motor Company, Chevron Commercial, Inc., and Broadway Ford Truck Sales, Inc., in Texas state court for injuries Lindsay allegedly suffered while operating a wrecker. Plaintiff alleged no federal cause of action. Instead, his claims involve purely Texas tort law and products liability principles.

Plaintiff, Lindsay, is a citizen of Texas. Defendant, Ford Motor Company, is a Delaware corporation with its principal place of business in Michigan. Thus, for purposes of determining whether diversity of citizenship exists, Ford is considered a citizen of both Michigan and Delaware.¹ Defendant, Chevron Commercial, Inc., was incorporated in Illinois and has its principal place of business there; thus, it is a citizen of Illinois. Defendant,

¹28 U.S.C. § 1332(a) provides in pertinent part that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$50,000, exclusive of interest and costs, and is between--(1) citizens of different States;" 28 U.S.C. § 1332(c) provides that "[f]or the purposes of this section and section 1441 of this title--(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business"

Broadway Ford Truck Sales, Inc., is a citizen of Missouri because it is a Missouri corporation with its principal place of business in Missouri.

On December 2, 1991, Ford removed the case to federal district court pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441(a).² On August 24, 1992, the district court granted plaintiff's motion for leave to join an additional party. On September 8, 1992, Lindsay filed his first amended complaint adding Claude F. Parker and Casa View Wrecker Service, Inc., as defendants. Claude F. Parker is an individual domiciled in Texas and is thus a citizen of Texas. Casa View Wrecker Service, Inc., is a Texas corporation.

Defendants, Broadway Ford and Chevron Commercial, subsequently were dismissed on joint motions for non-suit, leaving only Ford, Casa View and Parker as defendants.

Lindsay and Ford later entered into settlement negotiations. In late 1993, Ford contends that it made Lindsay a \$19,500 settlement offer, which Ford maintains Lindsay accepted in a signed writing. Ford maintains that Lindsay then changed his mind and would not honor his agreement to settle. Lindsay's attorney, Rodney Gappelberg, moved to withdraw as his counsel of record, citing the settlement dispute (particularly Lindsay's refusal to honor the settlement agreement) as the reason for his withdrawal. The district court permitted Gappelberg to withdraw.

²28 U.S.C. § 1441(a) provides generally that a civil action brought in a state court of which the federal district courts have original jurisdiction may be removed by the defendant or defendants to the U.S. district court for the district and division embracing the place where the action is pending.

Ford subsequently filed a motion to enforce the settlement agreement. After a hearing, the district court concluded that a binding settlement agreement had been entered into between the parties. The judge issued an order to enforce the agreement and entered a so-called "interlocutory judgment" dismissing Ford from the suit on April 20, 1994. That same day, the district court entered a remand order, remanding the case back to Texas state court, citing lack of subject matter jurisdiction due to no diversity of citizenship.

Plaintiff has appealed the order to enforce the settlement agreement, the judgment dismissing Ford, and the order of remand.

DISCUSSION

Appellate jurisdiction

On appeal, Ford argues that this Court has no appellate jurisdiction in this case. As to the remand order, Ford's contention is correct. Ford points out that an order of remand is unappealable. Title 28 U.S.C. § 1447(d) provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise," except in civil rights cases. Clearly this is not a civil rights case. Thus, the remand order *per se* is not reviewable by this Court. The remand order of April 20, 1994, remanding this case back to state court shall stand.

However, Ford is not correct in saying that we have no appellate jurisdiction over any other aspect of this appeal. We do have appellate jurisdiction as to the order granting Ford's motion

to enforce the settlement agreement and the so-called "interlocutory judgment" dismissing Ford pursuant to the settlement. Ford contends that we lack jurisdiction because the order and judgment resulted in the dismissal of only one of the three defendants. Thus, Ford argues that the district court's order and judgment are interlocutory and, therefore, unreviewable.

Pursuant to 28 U.S.C. § 1291, the courts of appeals may review only "final decisions" of the district courts. In a case involving multiple parties and multiple claims, as this case does, an order of a district judge is final only if the order adjudicates all the claims and the rights and liabilities of all the parties, or if the court certifies pursuant to 28 U.S.C. § 1292 and Fed. R. Civ. P. 54(b) that no just reason exists for delaying the entry of a final judgment and expressly orders the entry of that judgment as final. In this case, there has been no certification by the district court that the appealed judgment and order are final. Thus, the order enforcing the settlement agreement and the so-called "interlocutory judgment"³ dismissing Ford are appealable only if they have the effect of a final judgment. We conclude that they do. All "claims, rights and liabilities" of the parties have been adjudicated by the district court. Ford has been dismissed, and the case, with its remaining defendants, has been remanded to state court. The federal district court has nothing left to adjudicate.

³The district court's appellation "Interlocutory Judgment" on the appealed-from judgment dismissing Ford is not dispositive of whether this judgment operates in fact as an unappealable interlocutory order or is instead a final adjudication of all claims before the district court.

Rule 54(b) and § 1292 apply only when the district court retains jurisdiction after dismissing a portion of the action. Allen v. Ferguson, 791 F.2d 611, 614 (7th Cir. 1986). Thus, we conclude that the order enforcing the settlement agreement and the judgment dismissing Ford, when viewed in light of the subsequent remand order, are final decisions within the meaning of 28 U.S.C. § 1291 and thus fall within the appellate jurisdiction of this Court.

This holding is supported by ample authority, including the decision of the United States Supreme Court in City of Waco v. United States Fidelity & Guaranty Co., 293 U.S. 140, 55 S.Ct. 6, 79 L.Ed. 244 (1934). Waco involved a suit originally filed in state court by a Texas citizen against two other Texas citizens. One of the Texas defendants filed a third-party demand against a Maryland entity. The third-party defendant removed the state action to federal district court, claiming a separable controversy existed between it and the third-party plaintiff. The federal district court agreed that the dispute between the third-party plaintiff and the third-party defendant was a separable controversy. The court then granted plaintiff's motion to dismiss the cross-claim because the third-party defendant was an unnecessary and improper party. Finally, the court remanded the cause to state court due to a lack of subject matter jurisdiction. The United States Supreme Court concluded that the motion to dismiss was an appealable order, although the subsequent remand order itself was unappealable. Other courts in analogous cases have taken a similar view. See Allen v. Ferguson, supra, and cases cited therein.

District court's subject matter jurisdiction

Having successfully hurdled the threshold matter of appellate jurisdiction, we are confronted with yet another gateway that must be traversed--that of the subject matter jurisdiction of the district court to adjudicate the motion to enforce the settlement agreement and to enter the judgment dismissing Ford.

Upon close examination of the record and the briefs filed in this case, the issue of subject matter jurisdiction seems to have been overlooked below by all concerned. Neither the plaintiffs nor the defendants ever excepted to the jurisdiction of the district court in their pleadings or via a 12(b) motion, nor do they raise the issue in their briefs. Nonetheless, it is clear to us that the district court lacked subject matter jurisdiction to adjudicate the alleged settlement issue and to dismiss Ford.

The courts of appeals have a continuing duty to inquire into the basis of jurisdiction in the district court and to satisfy themselves that the district court had jurisdiction to entertain the action. Warren G. Kleban Engineering Corp. v. Caldwell, 490 F.2d 800 (5th Cir. 1974). Thus, we properly raise the issue of subject matter jurisdiction *sua sponte*.

As explained *supra*, the judicial power of the United States will extend to this controversy only if the requirements of 28 U.S.C. § 1332 are met. The jurisdiction of the federal district court is not plenary; instead, the district courts are courts of limited subject matter jurisdiction. Such jurisdiction extends only to such bounds as are warranted by the United States

Constitution⁴ and shaped by the legislation of Congress. The parties may not, by silence or agreement, confer upon the federal courts that jurisdiction which Congress has withheld. Warren G. Kleban, 490 F.2d at 803, n.2.

This is a diversity suit, involving no federal question. Congress has set the limitations of diversity jurisdiction in 28 U.S.C. § 1332, requiring diversity of citizenship and more than \$50,000 in controversy. The amount in controversy in the instant case clearly and indisputably exceeds the \$50,000 jurisdictional amount. Our opinion focuses instead on the diversity requirement of 28 U.S.C. § 1332 as well as the similar constitutional mandate. Because the federal district courts are courts of limited subject matter jurisdiction, not all cases may be heard by them. In a civil suit involving purely state claims, complete diversity between the parties is required. See Strawbridge v. Curtiss, 3 Cranch 267, 2 L.Ed. 435 (U.S. 1806).

The well-known Strawbridge rule of complete diversity has been consistently interpreted to mean that the citizenship of each defendant must be diverse from that of each plaintiff. A district court cannot exercise diversity jurisdiction if one of the plaintiffs shares the same state of citizenship as one of the defendants. Whalen v. Carter, 954 F.2d 1087, 1094 (5th Cir. 1992);

⁴Article III, § 2 of the United States Constitution provides, in relevant part, that "[t]he judicial Power [of the United States] shall extend . . . to Controversies . . . between Citizens of different States"

Getty Oil Corp. v. Insurance Company of North America, 841 F.2d 1254, 1258 (5th Cir. 1988).

When this case initially was filed in Texas state court, only the plaintiff was a citizen of Texas. But when Lindsay added Casa View and Parker to the suit, diversity was destroyed. From that point forward, the district court lacked subject matter jurisdiction over the case. When Lindsay moved to add Casa View and Parker as additional defendants, the district court had the option of denying joinder or of permitting joinder and remanding the case. Tillman v. CSX Transp., Inc., 929 F.2d 1023 (5th Cir.), cert. denied, 112 S.Ct. 176, 116 L.Ed.2d 139 (1991).

Title 28 U.S.C. § 1447(e) provides: "If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court." In this case, the additional plaintiffs whose joinder destroyed diversity were added on September 8, 1992. However, the case was not remanded until April 20, 1994, over a year and a half after the court's diversity jurisdiction was destroyed. Thus, the district court failed to follow the clear dictate of 28 U.S.C. § 1447(e). The district court erroneously took the Solomonic approach in permitting joinder but failing to remand. It thus retained unwarranted control over the case for over eighteen months, adjudicating the alleged settlement agreement dispute, dismissing Ford, and only then remanding the case to state court.

Once the district court permitted joinder of a non-diverse defendant, it had only the option of remanding the case. Yniques v. Cabral, 985 F.2d 1031 (9th Cir. 1993). The judge should have immediately remanded rather than waiting over eighteen months to relinquish its possession of the case. The district court seems not to have noticed any jurisdictional problem until after it had dismissed Ford and could easily perceive that no diversity existed at all between the parties, as all remaining parties were Texas citizens at that point.

In fact, it appears that the parties as well as the district court may have misunderstood the diversity requirement as mandating only minimal diversity. From the tenor of the briefs as well as the timing of the district court's order of remand,⁵ it seems that the parties and the court believed that diversity jurisdiction existed until Ford was dismissed. Thus, the parties seem to have been under the impression that the federal court had subject matter jurisdiction so long as at least one diverse defendant remained in the suit. Such a belief is erroneous. Minimal diversity confers subject matter jurisdiction only in statutory interpleader cases.⁶ This case, not being one involving statutory interpleader, required complete diversity under the well-settled Strawbridge rule.

Once Casa View and Parker were added as defendants, there was no complete diversity because these two new defendants had the same

⁵Once Ford was dismissed and only Texas defendants remained, the district court remanded the case the same day.

⁶See 28 U.S.C. § 1335.

citizenship as the plaintiff. Of course, the general rule is that diversity is determined at the commencement of the lawsuit, and that once diversity jurisdiction attaches, subsequent events will not oust the district court's jurisdiction.⁷ However, there are exceptions to this rule. Title 28 U.S.C. § 1447(e) makes it clear that in a removal situation such as this where the plaintiff seeks to add a defendant whose joinder would destroy subject matter jurisdiction, the district court's only options are to either deny joinder or to permit joinder and remand the case back to state court. The district court violated 28 U.S.C. § 1447(e) when it permitted joinder and yet retained control over the case for over a year and a half without subject matter jurisdiction, adjudicating the issue of the settlement agreement and dismissing Ford.

In their briefs, the parties primarily have addressed only the merits of the district court's decision to uphold the settlement agreement and dismiss Ford. However, we do not reach the merits of the case because we conclude that the district court had no subject matter jurisdiction to adjudicate the matter. Upon determining that the district court was without jurisdiction to entertain the suit, our only option is to vacate the order and judgment. Warren G. Kleban, 490 F.2d at 803, n.2.

⁷For example, if a party changes its citizenship after commencement of a lawsuit, or if the amount recovered falls short of the jurisdictional amount, the federal court does not lose jurisdiction over a diversity action. See Carlton v. BAWW, Inc., 751 F.2d 781, 785 (5th Cir. 1985) and cases cited therein.

CONCLUSION

We conclude that the order to enforce the settlement agreement and the judgment of dismissal were issued by the district court without subject matter jurisdiction and therefore are VACATED. The remand order shall stand with Ford remaining as a defendant. All further proceedings are subject to the jurisdiction of the state court.