

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-30175  
Summary Calendar

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Louis E. Forneris, Jr.,

Plaintiff-Appellant,

VERSUS

Specialty Equipment Co., Inc.,  
ET AL.,

Defendant-Appellees.

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Appeal from the United States District Court  
For the Eastern District of Louisiana

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(CA 93-2980-L)

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(September 16, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges:

PER CURIAM:\*

We have carefully reviewed the briefs, the record excerpts, and relevant portions of the record itself, and have concluded:

A. On the subject of fraudulent joinder to defeat diversity jurisdiction, that the district court was correct in

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\*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

concluding that there was no possible theory upon which the plaintiff could recover against General Refrigeration (the non-diverse defendant), and that General Refrigeration had therefore been fraudulently joined in plaintiff's original petition and that its citizenship should be disregarded for purposes of determining diversity of citizenship upon removal;

- B. On the subject of jurisdictional amount, that the allegations of damages in the plaintiff's original state court petition covered a variety of claimed damages but were not specific as to amount; that in their removal petitions, the defendants alleged generally that the amount in controversy exceeded \$50,000; that neither in his motion to remand, nor in his first supplemental and amended complaint, nor in his first memorandum in support of his motion to remand, did the plaintiff assert the lack of jurisdictional amount or specifically allege damages in a quantity less than \$50,000; that at no time did plaintiff file any separate affidavit asserting that his damages were in an amount less than \$50,000, and that it was not until his second memorandum in support of his motion to remand that the plaintiff even raised the issue as to lack of jurisdictional amount; and that under these circumstances, the district court did not err in refusing to remand the case, see Asociacion National DePescadores v. Dow Quimica, 988 F.2d 559 (5th Cir. 1993); and
- C. For the reason thoroughly discussed and set forth in the district court's memorandum filed under date of January 24,

1994, the trial court was correct in granting defendant's motion for summary judgment.

Accordingly, we AFFIRM the final judgment of the district court filed on January 24, 1994, as amended by the judgment of the district court filed on March 2, 1994.