United States Court of Appeals for the Fifth Circuit

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Fifth Circuit
FILED
November 3, 2026
Thomas B. Plunkett, III
Clerk

No. 25-60491

CATHERINE E. GUERDAN; ASHLEY C. GUERDAN,

Plaintiffs—Appellants,

versus

STATE AUTOMOBILE MUTUAL INSURANCE COMPANY, *individually and doing business as* STATE AUTO INSURANCE COMPANIES, *doing business as* MERIDIAN INSURANCE COMPANY; MERIDIAN SECURITY INSURANCE COMPANY, *individually and doing business as* STATE AUTO INSURANCE COMPANIES; CALIBER HOME LOANS, INCORPORATED; PENNYMAC LOAN SERVICES, L.L.C.; JOHN AND JANE DOE DEFENDANTS A, B, C, D, AND E; COMMUNITY BANK OF MISSISSIPPI; JASON SYKES, *individually and as agent of Community Bank of Mississippi and as an agent of State Automobile Insurance Company and Meridian Security Insurance Company*; M.B.I. HOLDINGS, L.L.C., *formerly known as* M.B.I. GROUP, L.L.C.; MICHAEL BISHOP, *individually and as agent of* M.B.I. HOLDINGS, L.L.C.; ULIST L.L.C.; LINDA BURLESON, *individually and as agent of* ULIST L.L.C.; BRAD BURLESON, *individually and as agent of* ULIST L.L.C.,

Defendants—Appellees,

ASHLEY C. GUERDAN; CATHERINE E. GUERDAN,

Plaintiffs—Appellants,

versus

COMMUNITY BANK OF MISSISSIPPI; JASON SYKES, *individually and as agent of Community Bank of Mississippi*; M.B.I. HOLDINGS, L.L.C., *formerly known as* M.B.I. GROUP, L.L.C.; MICHAEL BISHOP, *individually and as agent of* M.B.I. HOLDINGS, L.L.C.; ULIST L.L.C.; LINDA BURLESON, *individually and as agent of* ULIST L.L.C.; BRAD BURLESON, *individually and as agent of* ULIST L.L.C.; CALIBER HOME LOANS, INCORPORATED; PENNYMAC LOAN SERVICES, L.L.C.; JOHN AND JANE DOE DEFENDANTS A, B, C, D, AND E,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC Nos. 3:22-CV-144, 3:23-CV-556

Before RICHMAN, HAYNES, and DOUGLAS, *Circuit Judges*.

PER CURIAM:[*]

A large oak tree fell on Ashley and Catherine Guerdan's house. Their insurer denied coverage because their fire policy did not cover windstorm damage. The Guerdan sisters sued eleven defendants, seven of whom were nondiverse, and later sued nine of them again. After the two cases were removed to federal court, the district court dismissed the nondiverse defendants with prejudice, finding that the Guerdans' claims against them were barred as a matter of law and that they were thus improperly joined. The Guerdans appealed. We REVERSE and REMAND with instructions to remand the cases to state court.

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[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I

Ashley and Catherine Guerdan, two Mississippi residents, bought a house together in May 2018. The sisters used the services of Brad and Linda Burleson (and their agency, Ulist LLC) to purchase the home. According to the Guerdans, the Burlesons persuaded the sisters to use the services of several others in the purchase of their home, including Jason Sykes, a loan officer with Community Bank of Mississippi ("Community Bank"). Sykes then allegedly obtained insurance on the Guerdans' home through Michael Bishop; M.B.I. Holdings, LLC; State Automobile Mutual Insurance Company ("State Auto"); and Meridian Security Insurance Company ("Meridian"). Meridian issued a dwelling fire policy to the sisters. The fire policy, which automatically renewed in May 2019, did not provide coverage for wind damage. The Guerdans allege that Community Bank sold the mortgage note to Caliber Home Loans, Inc. ("Caliber") and that Caliber then sold the mortgage note to Pennymac Loan Services, LLC ("Pennymac").

In April 2020, a large tree fell on the Guerdans' house. Meridian investigated and concluded that no insurance coverage existed for the loss under the fire policy. Litigation ensued.

II

In February 2022, the Guerdans, each a citizen of Mississippi, sued eleven named defendants in state court over the lack of insurance coverage. ("*Guerdan I*"). The eleven defendants included four diverse defendants: Meridian; State Auto; Caliber; and Pennymac, and seven nondiverse (*i.e.*, Mississippi citizen) defendants: Community Bank; Sykes; M.B.I. Holdings, LLC; Bishop; Ulist LLC; and Brad and Linda Burleson.

Meridian and State Auto removed the case to federal court asserting diversity jurisdiction. Meridian and State Auto asserted that the Guerdans

fraudulently joined all parties other than Meridian and State Auto to defeat diversity jurisdiction. Meridian and State Auto otherwise asserted that the amount in controversy was met and that there was complete diversity between the Guerdan sisters, Meridian, and State Auto.

The sisters moved to remand in April 2022. In March 2023, the district court denied the motion for remand and allowed for limited discovery as to the improper joinder. The sisters moved for reconsideration. In June 2023, Community Bank filed a motion to dismiss.

In August 2023, the sisters sued all the defendants but Meridian and State Auto in state court anew. ("*Guerdan II*"). Pennymac removed *Guerdan II* to federal court, and the Guerdans moved to remand. Pennymac filed a motion to consolidate the two cases, which the district court granted in March 2024.

In March 2025, before ruling on the sisters' motion for reconsideration of the remand motion, the district court granted Community Bank's motion to dismiss. The district court then denied the sisters' motion for reconsideration of its denial of their remand motion. Later that month, the district court entered an order denying the Guerdans' motion to remand in *Guerdan II*.

The nondiverse defendants moved for, and the district court granted, an entry of final judgment under FED. R. CIV. P. 54(b). That partial final judgment dismissed the seven nondiverse defendants with prejudice.

The Guerdans appealed, raising four issues: (1) that the district court erred in denying remand in *Guerdan I* because all properly joined and served defendants did not join in or consent to the removal; (2) that defendants failed to establish that the nondiverse defendants were fraudulently joined; (3) that the district court lacked jurisdiction to grant the motion to dismiss of Community Bank of Mississippi and Jason Sykes; and (4) that the district

court erred in dismissing the Guerdans' claims against the nondiverse defendants with prejudice.

III

Our court reviews a district court's denial of a motion to remand de novo. *Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*, 818 F.3d 193, 199 (5th Cir. 2016). The party seeking to remove has the burden to show that federal jurisdiction exists and that removal was proper. *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). When a properly joined defendant is a resident of the same state as the plaintiff, removal based on diversity jurisdiction is improper. 28 U.S.C. § 1441(b)(2).

IV

First, the Guerdans argue that the district court erred in denying their motion to remand *Guerdan I*. The Guerdans assert that two properly served and joined defendants, Caliber and Pennymac, did not consent to the removal. Removing a civil action generally requires that "all defendants who have been properly joined and served must join in or consent to the removal of the action." 28 U.S.C. § 1446(b)(2)(A).

The parties dispute whether this requirement has been met. It is undisputed that Caliber and Pennymac neither joined in nor consented to the removal of *Guerdan I*. The Guerdan sisters assert that Caliber and Pennymac were properly served and joined, and thus their consent was required.

The appellees argue instead that Caliber and Pennymac were neither properly served nor joined. As to service, the appellees argue that while Caliber and Pennymac received service of the original complaint, they did not receive service of the first amended complaint. Appellees assert that because the first amended complaint was the operative complaint when the case was

removed, the consent of Caliber and Pennymac was unnecessary. That is not true. The relevant inquiry is whether the parties had been served at the time of removal. *Cf. Getty Oil. Corp. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1262-63 (5th Cir. 1988). There is no dispute that Caliber and Pennymac each had received service at the time of removal. Caliber and Pennymac were properly served for the purposes of the service requirement in 28 U.S.C. § 1446(b)(2)(A).

In addition, the appellees assert that Caliber and Pennymac were improperly joined, and thus their consent to removal was unnecessary under 28 U.S.C. § 1446. The consent of allegedly improperly joined parties is not necessary for removal. *Jernigan v. Ashland Oil Inc.*, 989 F.2d 812, 815 (5th Cir. 1993). But there is no ground on which to find that Caliber and Pennymac, two diverse parties, were improperly joined. There are "two ways to establish improper joinder: '(1) actual fraud in the pleading of jurisdictional facts or (2) inability of the plaintiff to establish a cause of action against the *non-diverse* party in state court.'" *Smallwood v. Illinois Cent. R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (quoting *Travis v. Irby*, 326 F.3d 644, 646–47 (5th Cir. 2003) (emphasis added)). Neither applies here. There is no dispute that Caliber and Pennymac are not citizens of Mississippi, while the Guerdans are. So actual fraud as to jurisdictional facts does not apply. Nor does the inability of the plaintiff to state a claim because that establishes improper joinder only as to a *nondiverse* party and thus not to Caliber or Pennymac. *Smallwood*, 385 F.3d at 568. Caliber and Pennymac were properly joined parties. Their consent was thus required under 28 U.S.C. § 1446(b)(2)(A).

If properly joined and served defendants fail to consent to the removal, plaintiffs may seek remand. 28 U.S.C. § 1447(c). Plaintiffs waive this procedural defect if they fail to object within thirty days after the notice of removal is filed. *Id.* The notice of removal was filed on March 15, 2022.

Plaintiffs objected that not all defendants consented to the removal in their motion to remand on April 5, 2022, well within the required timeframe. The district court denied this objection without considering the missing consent or joinder of Caliber and Pennymac, a decision we review de novo. *Int'l Energy Ventures*, 818 F.3d at 199.

The removal of *Guerdan I* was procedurally defective, and the Guerdans timely objected. Accordingly, as to *Guerdan I*, the district court's denial of the remand motion is REVERSED, and the case is REMANDED to the district court with instructions to remand the case to state court. The remainder of this opinion applies only to *Guerdan II*.

V

We next consider whether the district court correctly found that the nondiverse defendants were improperly joined in *Guerdan II*. A defendant is improperly joined if "the plaintiff *has not* stated a claim against a defendant that [s]he properly alleges is nondiverse." *Int'l Energy Ventures*, 818 F.3d at 199 (emphasis in original).

To find that the plaintiff has not stated a claim against a nondiverse defendant, the movant must demonstrate that "there is no reasonable basis . . . to predict that the plaintiff might be able to recover against [that] defendant." *Id.* at 200 (quoting *Smallwood*, 385 F.3d at 573). To do this, the court looks at the allegations in the complaint. *Davidson v. Georgia-Pacific, LLC*, 819 F.3d 758, 765 (5th Cir. 2016).

In determining whether there is a "reasonable basis" to predict that the plaintiff might be able to recover, the court performs a FED. R. CIV. P. 12(b)(6)-type analysis. *Smallwood*, 385 F.3d 568 at 573. Ordinarily, if the plaintiff's complaint survives a Rule 12(b)(6) analysis, then there is no improper joinder. *Id.* The court looks at the allegations of the complaint to determine whether there is a claim against the in-state defendant under state

law. *Id.* We apply the federal pleading standard. *Int'l Energy Ventures*, 818 F.3d at 203.

If the complaint satisfies Rule 12(b)(6) but misstates or omits discrete facts that determine the propriety of joinder, the district court may, in its discretion, pierce the pleadings to conduct a factual inquiry. *Smallwood*, 385 F.3d 568 at 573. The district court's decision to pierce the pleadings to determine whether a plaintiff has a reasonable basis of recovery against a nondiverse defendant under state law is reviewed for abuse of discretion. *Id.* The "decision regarding the procedure necessary in a given case must lie within the discretion of the trial court." *Id.*

The burden of persuasion on the party claiming improper joinder "is a heavy one." *Travis*, 326 F.3d at 649. The court views "all unchallenged factual allegations, including those alleged in the complaint, in the light most favorable to the plaintiff" and resolves any "contested issues of fact and any ambiguities of state law" in the plaintiff's favor. *Id.* Any "doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction." *Acuna v. Brown & Root Inc.*, 200 F.3d 335, 339 (5th Cir. 2000).

Applying a de novo standard of review, we review the improper joinder analysis. The first step is to conduct a Rule 12(b)(6) analysis on the face of the pleadings. *Smallwood*, 385 F.3d 568 at 573. If the plaintiffs' complaint plausibly alleges a claim against any nondiverse defendant, there is no improper joinder. *Hart v. Bayer*, 199 F.3d 239, 246-48 (5th Cir. 2000). We find that the complaint meets that standard.

To be sure, as the district court noted, a time-barred claim cannot survive a motion to dismiss. *Jones v. Alcoa*, 339 F.3d 359, 366 (5th Cir. 2003). But the claim must be time-barred on its face. *Id.* ("A statute of limitations may support dismissal under Rule 12(b)(6) where it is evident from the plaintiff's pleadings that the action is barred and the pleadings fail to raise

some basis for tolling or the like."). The Guerdans' claims are not. The Guerdans assert in the amended complaint that they did not receive the insurance policy until after the damage to their home. The amended complaint states that the Guerdans "were not provided with a copy of the State Auto Policy or . . . any other homeowner's insurance policy . . . before the loss. The State Auto policy documents . . . were provided to Plaintiffs for the first time after they gave notice of the subject loss." Accepting their allegations as true, as we are bound to do, the Guerdans' insurance procurement claims accrued when the Guerdans received the policy in April 2020. The time bar does not resolve this case.

Setting aside the time bar, we consider whether any of the Guerdans' claims against any nondiverse defendant could meet the 12(b)(6) analysis. We find that the Guerdans' negligence per se claims against Sykes and Community Bank do.

Under Mississippi law, to prevail on a negligence per se claim, the plaintiff must show that she (1) is a member of the class the statute seeks to protect; (2) that her injuries were of a type the statute sought to avoid; and (3) that the violation of the statute proximately caused or contributed to her injuries. *Snapp v. Harrison*, 699 So. 2d 567, 571 (Miss. 1997). The Guerdans plausibly allege such a claim here. First, the Guerdans plausibly allege that they are members of the class that the Mississippi S.A.F.E. Mortgage Act (Miss. Code § 81-18-27) seeks to protect, namely applicants for a mortgage loan. Second, the Guerdans plausibly allege that their injuries are the type the statute sought to avoid, namely that they were deceived while obtaining a mortgage and that Sykes misrepresented material facts during the mortgage process. Finally, the Guerdans have plausibly alleged that the violation of the statute proximately caused their injuries, as without the alleged deception they would have either (1) not purchased the home or (2) purchased the home with the knowledge that the insurance did not protect their home

against all perils. The Guerdans have plausibly alleged the required elements of a negligence per se claim against Sykes and Community Bank, two in-state defendants and thus have plausibly alleged at least one claim against in-state defendants.

Having found that the complaint survives the applicable Rule 12(b)(6) analysis, we consider whether it was an abuse of discretion for the district court to pierce the pleadings. We find that it was for three reasons.

First, it was procedurally improper. The district court's timing of the decision to pierce the pleadings was an abuse of discretion. The district court abused its discretion in piercing the pleadings *after* denying the plaintiffs' motion for remand. The decision to pierce the pleadings must precede the decision on the remand motion. *See, e.g.*, *Smallwood*, 385 F.3d at 573-574. Otherwise, the district court contravenes our court's edict that the district court "must be certain of its jurisdiction before embarking upon a safari in search of a judgment on the merits." *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 549 (5th Cir. 1981).

Second, the question the district court pierced the pleadings to resolve is not central to the question of joinder. "The purpose of the inquiry is limited to identifying 'the presence of discrete and undisputed facts'" to resolve the remand inquiry. *Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 401 (5th Cir. 2013). The examples our court gave in *Smallwood* include a suit in which a plaintiff improperly joins a nondiverse doctor who never treated her to destroy federal jurisdiction. 385 F.3d at 574 n.12 ("For example, the in-state doctor defendant did not treat the plaintiff patient, the in-state pharmacist defendant did not fill a prescription for the plaintiff patient, [or] a party's residency was not alleged . . . ."). The discrete fact at issue in that case would be whether the doctor treated the plaintiff and thus was properly part of the lawsuit. There is no parallel here, as there is no question that the

nondiverse defendants were each involved in some manner—if minimal—with the Guerdans' purchase and insuring of their home.

Instead, the district court framed the discrete fact as the question of whether Catherine Guerdan signed an online form acknowledging "consent to electronic delivery of the policy." This line of analysis was an abuse of discretion because it was disputed and not specific to the question of joinder. On the latter point, finding that all the insurance-procurement claims accrued in 2018 and were thus untimely in 2022 would doom the Guerdans' claims against the diverse and nondiverse defendants alike. Our court explained in *Smallwood* that when "a showing that . . . there is no reasonable basis for predicting that state law would allow the plaintiff to recover against the in-state defendant[s] necessarily compels the same result for the nonresident defendant, there is no improper joinder; there is only a lawsuit lacking in merit." 385 F.3d at 574.

"A showing that the plaintiff's case is barred as to all defendants is not sufficient" to show improper joinder. *Id.* at 575. But that showing is exactly the showing that the district court relied on here. Although the Guerdans' petition "may have disclosed an absence of good faith on the part of the plaintiffs in bringing the action at all, it did not show a fraudulent joinder" of the in-state defendants. *Chesapeake & O.R. Co. v. Cockrell*, 232 U.S. 146, 153 (1914) (quotation modified). This case very well may be time barred and meritless as a result. But that was not for the district court to decide. The question of the timing of the receipt of the policy was an improper fact question on which to pierce the pleadings and was thus an abuse of discretion.

Third, the volume of discovery required indicates that piercing the pleadings was inappropriate. That "extensive forensic evidence and deposition testimony" was necessary to resolve the question of whether Catherine Guerdan electronically signed the electronic delivery consent form

supports our conclusion that the decision to pierce the pleadings was an abuse of discretion. "[A]ny piercing of the pleadings should not entail substantial hearings . . . . Indeed, the inability to make the requisite decision in a summary manner itself points to an inability of the removing party to carry its burden." *Smallwood*, 385 F.3d at 574. The piercing is meant to be a "simple and quick exposure of the chances of the claim . . . ." *Id.* This, too, supports our finding that the district court abused its discretion.

Having found that the complaint is not time-barred on its face and that the district court abused its discretion in piercing the pleadings to decide otherwise, we REVERSE the judgment of the district court in *Guerdan II* and REMAND with instructions to remand to state court.

VII

For the foregoing reasons, we REVERSE and REMAND the district court's denial of the remand motions in *Guerdan I* and *Guerdan II*, with instructions to remand both cases the state court.