

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
LOUISIANA, LAFAYETTE DIVISION

Donna Smith et al. v. Walmart Inc. et al.

Smith v. Walmart · No. 6:25-CV-01197 · Decided December 2, 2025

SUMMARY

This Report and Recommendation addresses Plaintiffs’ motion to remand a premises-liability action against Walmart, Inc. and employee Vernon Pitts, Sr. The court recommends denying remand, concluding that Pitts was improperly joined because the pleadings did not allege that he breached an independent personal duty under Louisiana law, thereby preserving diversity jurisdiction.

CASE DETAILS

COURT	United States District Court for the Western District of Louisiana, Lafayette Division
WRITING FOR THE COURT	Carol B. Whitehurst, United States Magistrate Judge
JURISDICTION	United States District Court for the Western District of Louisiana, Lafayette Division
DECIDED	December 2, 2025
DOCKET	6:25-CV-01197
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved to remand a removed diversity action, arguing that Louisiana defendant Vernon Pitts, Sr. was properly joined and therefore destroyed diversity jurisdiction. The magistrate judge issued a report and recommendation recommending denial of the motion.
STANDARD OF REVIEW	On a motion to remand, the removing party bears the burden of establishing federal subject-matter jurisdiction. For improper joinder, the removing party must carry a heavy burden to show either actual fraud in pleading jurisdictional facts or that there is no reasonable basis for predicting that the plaintiff might recover against the nondiverse defendant. Contested factual issues and ambiguities of state law are resolved in the plaintiff's favor. The court may pierce the pleadings and consider summary-judgment-type evidence, but it applies a standard closer to Rule 12(b)(6) than to summary judgment.

PRECEDENTIAL VALUE	Unpublished report and recommendation; not a final merits judgment and subject to district-judge review under 28 U.S.C. § 636(b)(1)(C) and Rule 72(b).
PARTIES	Donna Smith, Ambrose Smith v. Walmart Inc., Vernon Pitts, Sr.

TOPICS

subject matter jurisdiction joinder premises liability civil procedure

PRACTICE AREAS

civil procedure premises liability personal injury remedies

QUESTIONS PRESENTED

1. Whether Pitts was improperly joined because the petition failed to state a reasonable basis for predicting that the plaintiffs could recover against him under Louisiana law.
2. Whether Pitts's citizenship should be disregarded for purposes of diversity jurisdiction.
3. Whether the plaintiffs' motion to remand should be denied.

HOLDINGS

1. Pitts was improperly joined because the petition alleged only generalized employment-related safety responsibilities and did not allege that he owed Donna Smith an independent personal duty, had relevant personal contact with her, or personally breached a duty that caused her injuries.
2. Pitts's Louisiana citizenship may be disregarded for determining subject-matter jurisdiction because he was improperly joined.

KEY QUOTATIONS

“When a defendant removes a case to federal court on a claim of improper joinder, the district court’s first inquiry is whether the removing party has carried its heavy burden of proving that the joinder was improper.” (at Part I)

“To demonstrate improper joinder of resident defendants, the removing defendants must demonstrate either: (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.” (at Part I)

“We do not determine whether the plaintiff will actually or even probably prevail on the merits of the claim, but look only for a possibility that the plaintiff might do so” (at Part I)

“Personal liability cannot be imposed upon the officer, agent, or employee simply because of his general administrative responsibility for performance of some function of employment. He must have a personal duty towards the injured plaintiff, breach of which specifically caused the plaintiff’s damages.” (283 So. 2d at 721)

FACTUAL BACKGROUND

Donna and Ambrose Smith sued Walmart and Walmart employee Vernon Pitts, Sr. in Louisiana state court after Donna allegedly slipped and fell on a foreign substance in a Walmart aisle. They alleged that Pitts negligently failed to inspect, maintain, clean, or warn about the hazardous condition. Pitts was alleged to be a Louisiana domiciliary, like the plaintiffs, while Walmart asserted that Pitts was improperly joined because the petition did not allege an independent personal duty or conduct sufficient to impose individual liability.

PROCEDURAL HISTORY

Plaintiffs filed a Louisiana state-court petition for damages after Donna Smith allegedly slipped and fell on a foreign substance in a Walmart store. Walmart removed the action under 28 U.S.C. §§ 1332, 1441, and 1446, asserting that Pitts, a nondiverse defendant, was improperly joined. Plaintiffs moved to remand, and the motion was referred to the magistrate judge for a report and recommendation.

DISPOSITION

other

REMAND INSTRUCTIONS

The report and recommendation recommends denying Plaintiffs' Motion to Remand. Parties were advised that objections under 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b) must be filed within fourteen days after service.

CASES CITED

- De Aguilar v. Boeing Co., 47 F.3d 1404, 1408 (5th Cir. 1995)
- Garcia v. Koch Oil Co. of Texas, Inc., 351 F.3d 636, 638 (5th Cir. 2003)
- Smallwood v. Illinois Central Railroad Co., 385 F.3d 568, 573, 576 (5th Cir. 2004) (en banc)
- Gasch v. Hartford Accident & Indemnity Co., 491 F.3d 278, 281 (5th Cir. 2007)
- Crockett v. R.J. Reynolds Tobacco Co., 436 F.3d 529, 532 (5th Cir. 2006)
- Guillory v. PPG Industries, Inc., 434 F.3d 303, 308-09, 312 (5th Cir. 2005)
- McKee v. Kansas City Southern Railway Co., 358 F.3d 329, 334-36 (5th Cir. 2004)
- Travis v. Irby, 326 F.3d 644, 648-49, 650-51 (5th Cir. 2003)
- Canter v. Koehring Co., 283 So. 2d 716, 720-21 (La. 1973)
- Kemp v. CTL Distribution, Inc., 440 F. App'x 240, 246 (5th Cir. 2011)
- Esco v. Smith, 468 So. 2d 1169, 1175 (La. 1985)
- Kaiser Aluminum & Chemical Sales v. Avondale Shipyards, 677 F.2d 1045, 1050 (5th Cir. 1982)
- Douglass v. United Services Automobile Association, 79 F.3d 1415 (5th Cir. 1996) (en banc)