UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Richardson v. Exxon Corp.

491 F. Supp. 201 (M.D. Pa. 1980) · Decided January 14, 1980

SUMMARY

The court considers whether a Pennsylvania resident co-defendant, an Exxon truck driver, was properly joined in a diversity action arising from a fatal truck collision. It holds that the driver was a real party in interest because the complaint asserted a colorable claim against him and Exxon could potentially seek indemnification, so his presence barred removal under 28 U.S.C. § 1441(b); the case was remanded to state court.

CASE DETAILS

COURT	United States District Court for the Middle District of Pennsylvania
WRITING FOR THE COURT	William J. Nealon, Chief Judge
JURISDICTION	Pennsylvania
DECIDED	January 14, 1980
DISPOSITION	remanded
PROCEDURAL POSTURE	The plaintiffs moved to remand a removed diversity action asserting wrongful-death and survival claims against Exxon and its employee-driver.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority outside the Middle District of Pennsylvania.
PARTIES	John T. Richardson, Albert Richardson, Jr. v. Exxon Corp., Eugene J. Sehmoyer

TOPICS

civil procedure · subject matter jurisdiction · wrongful death · vicarious liability · respondeat superior

PRACTICE AREAS

civil procedure · torts

QUESTIONS PRESENTED

1. Whether a properly joined, nonfraudulently sued defendant who is a citizen of the state in which the action was brought precludes removal under 28 U.S.C. § 1441(b).
2. Whether removal may nevertheless be sustained when the in-state defendant is not technically an indispensable party under Federal Rule of Civil Procedure 19.
3. Whether Sehmoyer was a real party in interest against whom the plaintiffs asserted a colorable cause of action.

HOLDINGS

1. A defendant who is a real party in interest and against whom a colorable cause of action is asserted is a party in interest under § 1441(b); that defendant's citizenship in the forum state precludes removal of a diversity action.
2. Remand is not limited to cases in which the in-state defendant is technically an indispensable party under Rule 19; an in-state defendant who is a real party in interest and against whom a colorable claim exists defeats removal.
3. Sehmoyer was a real party in interest because the complaint directly sought relief against him, Exxon could not be held vicariously liable without a cause of action against him, and Exxon could potentially seek indemnification from him.

KEY QUOTATIONS

> *"Jurisdiction cannot be defeated by joining formal or unnecessary parties."* (203)

> *"On the question of jurisdiction, an unnecessary and dispensable party, will not be considered,"* (203)

> *"Schmoyer must be considered a "real party in interest," because the outcome of this suit could be an award of damages against him."* (204)

FACTUAL BACKGROUND

James Richardson was killed on January 4, 1979, when a tractor-trailer driven by Exxon employee Eugene J. Sehmoyer collided with his residence in Dingman Township, Pennsylvania. Richardson's relatives filed wrongful-death and survival claims against both Sehmoyer and Exxon. Sehmoyer was a Pennsylvania resident, and the complaint directly sought relief against him as well as against Exxon under a respondeat superior theory.

PROCEDURAL HISTORY

The action was initially filed in the Pike County Court of Common Pleas and was removed by Exxon and Sehmoyer to the United States District Court for the Middle District of Pennsylvania. The plaintiffs sought remand because Sehmoyer was a Pennsylvania resident and therefore a citizen of the state in which the action was brought. The district court granted the motion and remanded the action to the Pike County Court of Common Pleas.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The action was remanded to the Court of Common Pleas for Pike County, Pennsylvania.

CASES CITED

- Salem Trust Co. v. Manufacturers' Fin. Co., 264 U.S. 182, 44 S. Ct. 266, 68 L. Ed. 628 (1924)
- Strawbridge v. Curtiss, 3 Cranch 267, 7 U.S. 267, 2 L. Ed. 435 (1806)
- Ramada Inns, Inc. v. Rosemount Mem'l Park Ass'n, 598 F.2d 1303 (3d Cir. 1979)
- Pryor v. Chambersburg Oil & Gas Co., 376 Pa. 521, 103 A.2d 425 (1954)
- Builders Supply Co. v. McCabe, 366 Pa. 322, 77 A.2d 368 (1951)
- A. E. Staley Mfg. Co. v. Fishback & Moore, Inc., 353 F. Supp. 578 (E.D. Pa. 1973)
- Aberle Hosiery Co. v. Am. Arbitration Ass'n, 337 F. Supp. 90 (E.D. Pa. 1972), appeal dismissed, 461 F.2d 1005 (3d Cir. 1972)
- Stonybrook Tenants Ass'n, Inc. v. Alpert, 194 F. Supp. 552 (D. Conn. 1961)
- Irving Trust Co. v. Century Export & Import, 464 F. Supp. 1232 (S.D.N.Y. 1979)
- Dailey v. Elicker, 447 F. Supp. 436 (D. Colo. 1978)
- Newman v. Forward Lands, Inc., 418 F. Supp. 134 (E.D. Pa. 1976)
- Glenmede Trust Co. v. Dow Chem. Co., 384 F. Supp. 423 (E.D. Pa. 1974)
- Iowa Pub. Serv. Co. v. Medicine Bow Coal Co., 556 F.2d 400 (8th Cir. 1977)
- Hann v. City of Clinton, 131 F.2d 978 (10th Cir. 1942)

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