

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Castillo v. Castillo

Castillo · No. 3:24-cv-02302-RBM-AHG · Decided August 21, 2025

SUMMARY

The United States District Court for the Southern District of California grants the motion to remand Castillo v. Castillo to state court. The court holds that a third-party counterclaim defendant may not remove under 28 U.S.C. § 1441(c), that purported Cross-Defendant Ezra Lemus was not a named party capable of removal, and that the required consent to removal was not obtained. The court denies pending applications to proceed without prepaying fees or costs as moot and orders the case administratively closed.

CASE DETAILS

COURT	United States District Court for the Southern District of California
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 21, 2025
DOCKET	3:24-cv-02302-RBM-AHG
DISPOSITION	remanded
PROCEDURAL POSTURE	A purported cross-defendant removed a California state-court action to federal court under 28 U.S.C. § 1441(c). The named parties moved to remand.
STANDARD OF REVIEW	Removal statutes are strictly construed against removal, and the removing party bears the burden of establishing that removal is proper. The court may consider lack of jurisdiction at any stage.
PRECEDENTIAL VALUE	Unpublished, nonprecedential district-court order

TOPICS

- subject matter jurisdiction
- civil procedure
- federalism
- pleadings

PRACTICE AREAS

- Civil procedure
- Federal jurisdiction
- Removal and remand

QUESTIONS PRESENTED

1. Whether a third-party or cross-claim defendant may remove an action under 28 U.S.C. § 1441(c).
2. Whether a nonparty who has not been properly added as a cross-defendant may remove the action.
3. Whether the removing party obtained the consent required for removal under 28 U.S.C. § 1441(c)(2).

HOLDINGS

1. A third-party counterclaim defendant may not remove an action under 28 U.S.C. § 1441(c); only a defendant to the original action may invoke the removal authority.
2. A nonparty has no right to remove an action.
3. Removal was improper because Lemus did not obtain the required consent of the cross-defendants against whom federal claims were asserted.

KEY QUOTATIONS

“A motion to remand is the proper procedure for challenging removal.” (Opinion at 4)

“a ‘third-party counterclaim defendant is not a ‘defendant’ who can remove under § 1441(a).” (Opinion at 5)

“As a nonparty, Lemus cannot remove the action.” (Opinion at 7)

“Lemus has not garnered the required consent, and removal is improper.” (Opinion at 9)

FACTUAL BACKGROUND

Gregoria Castillo, through her guardian ad litem, alleged that Edmund Castillo misappropriated her money and property, incurred personal expenses from her accounts, took loans against her real property, and induced her to sign a deed conveying him an interest in that property. Edmund filed a cross-complaint against multiple cross-defendants, asserting numerous claims, including federal RICO and civil-rights claims. He later attempted to substitute Ezra Lemus for a fictitiously named Roe defendant, but no court order authorizing that amendment appeared in the record.

PROCEDURAL HISTORY

Gregoria Castillo filed a second amended complaint in the Superior Court of California for San Diego County asserting state-law claims. Edmund Castillo filed a cross-complaint asserting state and federal claims and later attempted to amend it to substitute Ezra Lemus for a fictitious Roe defendant, but the record contained no state-court order permitting the amendment. Lemus, proceeding pro se, filed a notice of removal; the district court granted the motion to remand and directed the Clerk to remand the action and administratively close the case.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Clerk was ordered to remand the action to the Superior Court of California, County of San Diego, and administratively close the federal case. The pending applications to proceed without prepaying fees or costs were denied as moot.

CASES CITED

- *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)
- *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
- *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 440–44 (2019)
- *Ettlin v. Harris*, No. SACV 13-1515-DOC (JPRx), 2013 WL 6178986, at *2 (C.D. Cal. Nov. 22, 2013)
- *Nahat v. Ballet San Jose, Inc.*, No. C 13-2896 SBA, 2013 WL 5934705, at *3 (N.D. Cal. Nov. 1, 2013)
- *Bowling v. U.S. Bank National Ass'n*, 963 F.3d 1030, 1040 (11th Cir. 2020)
- *Championship Property LLC v. Coan*, No. 20-13728, 2022 WL 4455208, at *2 (11th Cir. Sept. 26, 2022)
- *St. Luke #2, LLC v. Hermes Health Alliance, LLC*, 644 F. Supp. 3d 289, 298 (E.D. La. 2022)
- *Williamson v. Cestaro*, No. 21-2465, 2021 WL 2075727, at *3 (E.D.N.Y. May 24, 2021)
- *Woo v. Superior Court*, 75 Cal. App. 4th 169, 175 (1999)
- *Magrath v. Marsh & McLennan Cos., Inc.*, No. CV 19-6915 PA (GJSx), 2019 WL 3889463, at *2 (C.D. Cal. Aug. 16, 2019)
- *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009)
- *Chiang v. Afifi*, Case No. 23-cv-06235-DMR, 2024 WL 901758, at *2 (N.D. Cal. Feb. 9, 2024)

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