

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.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 GREGORIA CASTILLO, an individual by Case No.: 3:24-cv-02302-RBM-
AHG and through her Guardian ad Litem Gina 12 Castillo, ORDER: 13 Plaintiff, (1) GRANTING
MOTION TO 14 v. REMAND TO STATE COURT 15 EDMUND CASTILLO, an individual, (2)
DENYING APPLICATIONS TO 16 Defendant. PROCEED IN DISTRICT COURT 17
WITHOUT PREPAYING FEES OR COSTS AS MOOT 18 19 [Docs.

2, 7, 10] 20 21 22 Pending before the Court is Plaintiff Gregoria Castillo, by and through her
Guardian 23 ad Litem Gina Castillo; Cross-Complainant Gina Castillo, as Successor Trustee of
the 24 Gregoria G. Castillo Separate Property Trust Dated November 18, 2004; Cross-Defendant
25 Gina Castillo, as Guardian ad Litem for Plaintiff Gregoria Castillo; Cross-Defendant Gina 26
Castillo, an individual; Cross-Defendant Brittany Castillo; Cross-Defendant Glenn 27 Castillo;
and Cross-Defendant Andrew Castillo’s (collectively, the “Moving Parties”) 28 Motion to Remand
the Action to State Court (“Motion to Remand”), which was filed on 1 January 7, 2025.

(Doc. 7.) 2 On February 6, 2025, purported Cross-Defendant Ezra Lemus filed an Opposition 3 to
the Motion to Remand (“Opposition”). (Doc. 11.) On February 11, 2025, the Moving 4 Parties file
a Reply to the Opposition (“Reply”). (Doc. 12.) 5 The Court finds this matter suitable for
determination without oral argument 6 pursuant to Civil Local Rule 7.1(d)(1).

For the reasons discussed below, the Moving 7 Parties’ Motion to Remand is GRANTED and
purported Cross-Defendant Ezra Lemus’ 8 pending Applications to Proceed in District Court
Without Prepaying Fees or Costs are 9 DENIED AS MOOT. 10 I. BACKGROUND 11 A.
Plaintiff’s Second Amended Complaint1 12 On October 15, 2024, Plaintiff Gregoria Castillo, by

and through her Guardian ad Litem Gina Castillo, (“Plaintiff”) filed a Second Amended Verified Complaint (“SAC”) against Defendant Edmund Castillo (“Defendant”) for (1) elder abuse, (2) quiet title, (3) cancellation of instrument, (4) intentional misrepresentation, (5) negligent misrepresentation, (6) unjust enrichment, (7) breach of fiduciary duty, (8) constructive trust, (9) ejectment, (10) accounting, and (11) declaratory relief in the Superior Court of California, County of San Diego (“San Diego Superior Court” or “SDSC”).² (See Doc.

7-19 at 10–21 [SAC].) In this section, the Court summarizes Plaintiff’s allegations, not conclusions of law or fact by the Court. Cross-Complainant Gina Castillo, as Successor Trustee of the Gregoria G. Castillo Separate Property Trust Dated November 18, 2004, also filed a Cross Complaint against Defendant (“Cross Complaint of Gina Castillo”).

(See Doc. 7-1 at 25–37.) The allegations in the Cross Complaint of Gina Castillo are nearly identical to those alleged in the SAC. (See *id.*) It is not apparent from the record before this Court why Gina Castillo filed two separate complaints in her different capacities or how the Cross Complaint of Gina Castillo is relevant to the present Motion to Remand.

Accordingly, the Court will not address the 1 In her SAC, Plaintiff alleges that she has “dementia and has been declining cognitively for many years.” (*Id.* ¶ 8.) Indeed, Plaintiff alleges that, on December 7, 2021, 3 she had a stroke, which left her “mentally incapacitated.” (*Id.* ¶ 9.)

As a result, her 4 daughter, Cross-Defendant Gina Castillo, “began to assist her mother in her needs, 5 including handling her financial affairs.” (*Id.*) 6 Gina Castillo discovered that her brother, Defendant, had been taking, hiding, 7 appropriating, obtaining, and retaining Plaintiff’s money and property by withdrawing 8 money from her accounts, paying personal expenses from her accounts, and taking loans 9 against Plaintiff’s property located at 6252 Lolly Lane, San Diego, CA 92114 (the “Subject 10 Property”), which forced the Subject Property into foreclosure.

(*Id.*) Plaintiff further 11 alleges that Defendant convinced Plaintiff to sign a deed giving him an interest in the 12 Subject Property. (*Id.* ¶¶ 9–10.) 13 B. Defendant’s Cross Complaint 14 On July 10, 2023, Defendant, proceeding pro se, filed a Verified Cross Complaint 15 for (1) declaratory relief; (2) quiet title; (3) partition; (4) ejectment; (5) trespass; (6) fraud 16 by intentional misrepresentation; (7) fraud by negligent misrepresentation; (8) abuse of 17 process; (9) violations of the RICO Act; (10) unjust enrichment; (11) temporary restraining 18 order and injunctive relief; (12) violation of civil rights, (13) conspiracy against civil rights, 19 (14) violations of 18 U.S.C. § 1083, (15) violations of 8 U.S.C. § 1324c, (16) forcible 20 detainer, and (17) conversion of furniture and personal belongings (“Cross Complaint”) 21 against Gina Castillo; Gregoria Castillo, as Trustee of the Gregoria G. Castillo Separate 22 Property Trust Dated November 18, 2004; Gregoria Castillo, an individual; ROE 1 as 23 Trustee of the Gregoria G. Castillo Separate Property Trust Dated November 18, 2004; 24 Glenn Castillo; Brittney Castillo; Andrew Castillo;

Michael Casperson; Carlos Morales; 25 Matson Knudson; and ROES 1–50 (collectively, the “Cross Defendants”).³ (See Doc.

11 26 27 28 3 1 at 19–63.)² C. Amendment to Cross Complaint 3 On October 14, 2024, Defendant filed an Amendment to his Cross Complaint under 4 California Code of Civil Procedure § 474 using Optional Form SDSC CIV-012. (Doc. 11 5 at 67.)

The Amendment provides, “X-complainant, being ignorant of the true name of a 6 defendant when the cross-complaint in the above-named case was filed, and having 7 designated X-defendant in the cross-complaint by the fictitious name of ROE 1 and having 8 discovered the true name of cross-defendant to be EZRA LEMUS (previously sued as ROE 9 1) amends the X-complaint by inserting such true name in place of such fictitious name 10 wherever it appears in the X-complaint.” (Id.)

The Amendment notes that a court order is 11 required once the case is at issue. (Id.)¹² D. Notice of Removal 13 On December 11, 2024, purported Cross-Defendant Ezra Lemus, proceeding pro se, 14 filed a Notice of Removal, attempting to remove the case against him to this Court pursuant 15 to 28 U.S.C. § 1441(c) and 28 U.S.C. § 1331. (Doc. 1 at 1.)

In his Notice of Removal, 16 Lemus asserts that Defendant’s Cross Complaint includes federal causes of action. (Id. at 17 2.) Lemus also asserts that this Court may exercise supplemental jurisdiction over the 18 related state law claims under 28 U.S.C. § 1367. (Id.)

Finally, Lemus asserts that his 19 Notice of Removal is timely because he was not served with Defendant’s Cross Complaint 20 until November 26, 2024.⁴ (Id. at 3.)²¹ E. Motion to Remand 22 On January 7, 2025, the Moving Parties filed the instant Motion to Remand. (Doc. 23 7.)

The Moving Parties argue that removal is improper because (1) Defendant never 24 obtained a court order adding Ezra Lemus as a Cross-Defendant (Doc. 7-1 at 6–7) and (2) 25 the other named Cross-Defendants did not consent to removal (id. at 3–6). Alternatively, 26 27 4 The timeliness of Lemus’ Notice of Removal is not at issue, and the Court need not 28 1 the Moving Parties argue that state law claims asserted in Plaintiff’s SAC, Defendant’s 2 Cross Complaint, and the Cross Complaint of Gina Castillo should be severed from 3 Defendant’s federal crossclaims and remanded to the San Diego Superior Court.⁵ (Id. at 4 3–6, 8–9.)

5 In his Opposition, Ezra Lemus responds that there are five federal causes of action 6 in Defendant’s Cross Complaint warranting removal. (Doc. 11 at 3–11.) Lemus also 7 argues that amendment under California Code of Civil Procedure § 474 does not require a 8 court order (id. at 5–7) and that Defendant Edmund Castillo joined in the removal, which 9 is all that is required (id. at 10).⁶ 10 II.

LEGAL STANDARD 11 A. Presumption Against Removal 12 “At the core of the federal judicial system is the principle that the federal courts are 13 courts of limited jurisdiction. A review of the federal court’s jurisdiction is a threshold 14 question which must be answered prior to the disposition of each case before it. Even 15 though not raised by the parties, lack of jurisdiction may be considered by the court, at any 16 stage of the proceedings.” *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th 17 Cir.

1979) (citation omitted). 18 “The removal jurisdiction of the federal courts is derived entirely from the statutory 19 authorization of Congress. We look to federal law to determine whether the elements of 20 21 22 5 Because the Court finds that removal is improper, the Court will not address this 23 severance argument below. 6 Lemus also asserts that he and Defendant were not served with the Motion to Remand 24 (Doc.

11 at 7), that the Moving Parties’ affidavit is not notarized (*id.* at 7–9), and that the 25 Moving Parties did not comply with Civil Local Rule 26.1 (*id.* at 9). However, as set forth below, the Court need not reach these arguments because Lemus has not met the procedural 26 requirements for removal. See *Libhart*, 592 F.2d at 1064 (“We look to federal law to 27 determine whether the elements of removal jurisdiction have been established under the statutes, keeping in mind that removal statutes are strictly construed against removal.”) 28 1 removal jurisdiction have been established under the statutes, keeping in mind that removal 2 statutes are strictly construed against removal.” *Id.* (citations omitted); see also *Gaus v. 3 Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.

1992) (“We strictly construe the removal statute 4 against removal jurisdiction.”) (citations omitted). “Federal jurisdiction must be rejected 5 if there is any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566 6 (citing *Libhart*, 592 F.2d at 1064). 7 B. 28 U.S.C. § 1441(a) 8 “[A]ny civil action brought in a State court of which the district courts of the United 9 States have original jurisdiction, may be removed by the defendant or the defendants, to 10 the district court of the United States for the district and division embracing the place where 11 such action is pending.” 28 U.S.C. § 1441(a) (emphasis added).

Interpreting the terms 12 “civil action,” “the defendant,” and “the defendants,” in 2019, the Supreme Court found 13 that a “third-party counterclaim defendant is not a ‘defendant’ who can remove under 14 § 1441(a).” *Home Depot U. S. A., Inc. v. Jackson*, 587 U.S. 435, 440–44 (2019) (“Home 15 Depot”). 16 Further, “[w]hen a civil action is removed solely under section 1441(a), all 17 defendants who have been properly joined and served must join in or consent to the 18 removal of the action.” 28 U.S.C. § 1446(b)(2)(A).

This often referred to as the “rule of 19 unanimity.” See *Ettlin v. Harris*, No. SACV 13–1515–DOC (JPRx), 2013 WL 6178986, 20 at *2 (C.D. Cal. Nov. 22, 2013) (citations omitted). 21 C. 28 U.S.C. § 1441(c) 22 “If a civil action includes—(A) a claim arising under the Constitution, laws,

or 23 treaties of the United States ..., and (B) a claim not within the original or supplemental 24 jurisdiction of the district court or a claim that has been made nonremovable by statute, the 25 entire action may be removed if the action would be removable without the inclusion of 26 the claim described in subparagraph (B).” 28 U.S.C. § 1441(c)(1).

In such cases, “the 27 district court shall sever from the action all claims described in paragraph (1)(B) and shall 28 remand the severed claims to the State court from which the action was removed.” *Id.* 1 § 1441(c)(2). “Thus, under § 1441(c)(2), any removed claims that are not within the 2 Court’s original or supplemental jurisdiction must be severed and remanded.” *Nahat v. 3 Ballet San Jose, Inc.*, Case No. C 13–2896 SBA, 2013 WL 5934705, at *3 (N.D.

Cal. Nov. 4 1, 2013). 5 Applying the Supreme Court’s decision in *Home Depot*, federal circuit and district 6 courts have found that “only a defendant to the original action may seek to remove a case 7 under § 1441(c).” *Bowling v. U.S. Bank Nat’l Ass’n*, 963 F.3d 1030, 1040 (11th Cir. 2020). 8 Thus, “third-party counterclaim defendants may not remove under 28 U.S.C. [§] 1441(c).” 9 *Championship Prop.*

LLC v. Coan, No. 20-13728, 2022 WL 4455208, at *2 (11th Cir. Sept. 10 26, 2022); see also *St. Luke #2, LLC v. Hermes Health All., LLC*, 644 F. Supp. 3d 289, 298 11 (E.D. La. 2022) (“[B]ecause [§] 1441(a) and 1441(c) both frame removal in terms of 12 ‘defendants’ in ‘civil actions,’ this Court agrees ... that there is no basis to interpret [§] 13 1441(c) as allowing third-party defendants to remove a civil action when [§] 1441(a) 14 clearly does not.”); *Williamson v. Cestaro*, No. 21-2465, 2021 WL 2075727, at *3 15 (E.D.N.Y.

May 24, 2021) (holding that “the Supreme Court’s reasoning in *Home Depot* 16 supports the conclusion that third-party counterclaim defendants cannot remove actions 17 under Section 1441(c).”); 14C *Charles Alan Wright & Arthur R. Miller, Federal Practice 18 and Procedure* § 3730 n.4 (4th ed. 2022) (“*Home Depot*, in holding that third-party 19 counterclaim defendants cannot remove under Section 1441(a), abrogated ... precedent 20 allowing removal of claims against third-party counterclaim defendants under [§] 21 1441(c).”).

22 Additionally, “[o]nly defendants against whom a claim described in paragraph 23 (1)(A) has been asserted are required to join in or consent to the removal under paragraph 24 (1).” 28 U.S.C. § 1441(c)(2). 25 D. Removal Procedure 26 “A motion to remand is the proper procedure for challenging removal.” *Moore– 27 Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir.

2009) (citing 28 U.S.C. 28 § 1447(c)). “The removal statute is strictly construed, and any doubt about the right of 1 removal requires resolution in favor of remand.” *Moore-Thomas*, 553 F.3d at 1244 (citing 2 *Gaus*, 980 F.2d at 566). “The presumption against removal means that ‘the defendant 3 always has the burden of establishing that removal is proper.’” *Id.* (quoting *Gaus*, 980 F.2d 4 at 566).

5 “An order remanding the case may require payment of just costs and any actual 6 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). 7 “An order remanding a case to the State court from which it was removed pursuant to 18 8 U.S.C. § 1441 is not reviewable on appeal or otherwise. See id. § 1447(d). 9 III. DISCUSSION 10 As set forth below, the Court finds that removal is improper because: (A) third-party 11 counterclaim defendants may not remove under 28 U.S.C. § 1441(c); (B) nonparties have 12 no right to remove an action; and (C) Ezra Lemus did not garner the required consent prior 13 to removal.

14 A. Lemus is Not a “Defendant” Under 28 U.S.C. § 1441(c) 15 As set forth above, purported Cross-Defendant Ezra Lemus removed this action to 16 this Court pursuant to 28 U.S.C. § 1441(c). (Doc. 1 at 1.) However, in the wake of the 17 Supreme Court’s decision in Home Depot, federal circuit and district courts have decided 18 that third-party counterclaim defendants, like Lemus, may not remove under § 1441(c).

19 See e.g., *Bowling*, 963 F.3d at 1040; *St. Luke #2, LLC*, 644 F. Supp. 3d at 298. The Moving 20 Parties’ Motion to Remand must be granted on this basis alone. Notwithstanding this 21 ruling, the Court briefly addresses the Parties’ primary arguments below. 22 B. Lemus is Not a Party Capable of Removal 23 As set forth above, the Moving Parties argue that removal is improper because 24 Defendant never obtained a court order adding Ezra Lemus as a cross defendant pursuant 25 to California Code of Civil Procedure § 474.

(Doc. 7-1 at 6–7.) Lemus responds that a 26 court order is not required. (Doc. 11 at 5–7.) 27 Under California law, “[w]hen the plaintiff is ignorant of the name of a defendant, 28 he must state that fact in the complaint ... and such defendant may be designated in any 1 pleading or proceeding by any name, and when his true name is discovered, the pleading 2 or proceeding must be amended accordingly” Cal. Civ.

Proc. Code § 474. “After the 3 responsive pleadings are filed an amendment to a complaint, including an amendment to 4 add a defendant, requires leave of court.” *Woo v. Superior Ct.*, 75 Cal. App. 4th 169, 175 5 (1999) (citations omitted); see also Cal. Civ. Proc. Code §§ 472–73 (outlining California’s 6 pleading amendment procedures). Indeed, optional form SDSC CIV-012, titled 7 “Amendment to Complaint,” which was completed and filed by Defendant, specifically 8 notes that a court order is required for amendment under California Code of Civil 9 Procedure § 474 once the case is at issue and includes a section to be completed by the San 10 Diego Superior Court Judge or the Commissioner of the Superior Court.

(Doc. 11 at 67; 11 see also Doc. 1-4 at 2, 4.) 12 Here, there is no indication that Defendant ever obtained a court order permitting 13 him to name Ezra Lemus as a cross-defendant in his Cross Complaint. Indeed, in each of 14 the forms provided by Lemus, the section to be completed by the San Diego Superior Court 15 is blank. (See Doc. 11 at 67; Doc. 1-4 at 2, 4.)

Thus, Lemus is not yet a named cross 16 defendant in this action. As a nonparty, Lemus cannot remove the action. See *Magrath v. 17 Marsh & McLennan Cos., Inc.*, No. CV 19-6915 PA (GJSX), 2019 WL 3889463, at *2 18 (C.D. Cal. Aug. 16, 2019) (“[D]istrict courts have repeatedly held that because a nonparty 19 ... is not a ‘defendant’ under the removal statute, [a] nonparty has no right to remove the 20 action.”).

21 C. Consent 22 Under 28 U.S.C. 1441(c), “[o]nly defendants against whom a claim described in 23 paragraph (1)(A) has been asserted are required to join in or consent to the removal under 24 paragraph (1).” 28 U.S.C. § 1441(c)(2); see also *id.* § 1441 (c)(1)(A) (referring to claims 25 “arising under the Constitution, laws, or treaties of the United States”).

Here, Defendant 26 asserts federal cross claims “arising under the Constitution, laws, or treaties of the United 27 States.” *Id.* § 1441(c)(1)(A). (See also Doc. 11 at 19–20 (alleging causes of action for 28 “violation and conspiracy to participate in violation of RICO,” “violation of civil rights,” 1 || “conspiracy against civil rights,” violations of 18 U.S.C. § 1038, and violations of 8 U.S.C. 2 ||§ 1324c).)

Each of these federal cross claims is brought against every named Cross 3 ||Defendant. (See *id.* at 53, 58-60.) Thus, under 28 U.S.C. § 1441(c), Lemus needed to 4 || obtain the consent of the Cross Defendant before filing his Notice of Removal. Lemus has 5 || not garnered the required consent, and removal is improper. See *Libhart*, 592 F.2d at 1064. 6 IV. CONCLUSION 7 Based on the foregoing, the Moving Parties’ Motion to Remand (Doc.

7) is 8 ||GRANTED. The Court ORDERS the Clerk of the Clerk to REMAND this action to the 9 ||San Diego Superior Court and administratively close the case. 10 Additionally, Plaintiff’s pending Applications to Proceed in District Court Without 11 || Prepaying Fees or Costs (Docs. 2, 10) are DENIED AS MOOT. See *Chiang v. Afifi*, Case 12 23-cv-06235-DMR, 2024 WL 901758, at *2 (N.D.

Cal. Feb. 9, 2024), report and 13 || recommendation adopted, Case No. 23-cv-06235-JD, 2024 WL 897836 (N.D. Cal. Mar. 1, 14 || 2024) (“For the reasons above, the court recommends that this action be remanded to the 15 || Alameda County Superior Court, the IFP application and motion to remand be denied as 16 || moot, and that the Clerk be ordered to close the case file.”).

17 IT IS SO ORDERED. 18 || DATE: August 21, 2025 19 Get smu, ☐☐ itergys ☐ 20 HON. RUTH BERMUDEZ'MONTENEGRO UNITED STATES DISTRICT JUDGE 21 22 23 24 25 26 27 28
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