

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Crowe v. Coleman

113 F.3d 1536 (11th Cir. 1997) · No. No. 96-8116 · Decided May 21, 1997

SUMMARY

The Eleventh Circuit held that removal based on alleged fraudulent joinder was improper because the plaintiffs had an arguable continuing-nuisance claim against the Georgia-resident defendant under Georgia law. The court reversed the denial of remand, vacated the summary judgment, and directed that the case be remanded to state court without deciding the ultimate merits of the nuisance claim.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Edmondson, Circuit Judge; Black, Circuit Judge; Roney, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	May 21, 1997
DOCKET	No. 96-8116
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the denial of their motion to remand a removed state-court action and the district court's grant of summary judgment to resident defendant Daniel Coleman.
STANDARD OF REVIEW	The court reviewed the denial of remand and fraudulent-joinder determination under the rule that the removing party bears a heavy burden to show either no possibility of a cause of action against the resident defendant or fraudulent pleading of jurisdictional facts. Allegations and factual uncertainties were construed in plaintiffs' favor, and the court considered the record while limiting the inquiry to whether the claim was arguable rather than deciding its ultimate merits.
PRECEDENTIAL VALUE	published_binding
PARTIES	Arthur L. Crowe, Jr., Edith Crowe Ingram, Eleanor Ingram Kiefling v. Daniel Coleman, Crown Central Petroleum Corporation, Crown Stations, Inc.

TOPICS

subject matter jurisdiction

civil procedure

summary judgment

appellate procedure

standard of review

PRACTICE AREAS

civil procedure

removal and remand

diversity jurisdiction

environmental torts

nuisance

QUESTIONS PRESENTED

1. Whether Coleman was fraudulently joined because plaintiffs could not possibly establish a cause of action against him under Georgia law.
2. Whether plaintiffs' unamended verified complaint could reasonably be read to allege an arguable nuisance claim against Coleman despite labeling the alleged conduct a trespass.
3. Whether the record and Georgia law foreclosed any possibility of liability against Coleman for failing to abate continuing contamination he did not initially create.
4. Whether plaintiffs' counsel's statements at appellate oral argument made any error in denying remand harmless.
5. Whether the district court's grant of summary judgment for Coleman could stand after the case was required to be remanded.

HOLDINGS

1. A federal court must remand a removed case when, after resolving factual and legal uncertainties in the plaintiff's favor, there is even a possibility or reasonable basis for predicting that state law might impose liability on the resident defendant.
2. Under liberal notice pleading, plaintiffs' verified complaint could reasonably be read to allege that Coleman allowed gasoline from his property to intrude onto and continue contaminating plaintiffs' property, supporting an arguable nuisance claim.
3. The district court improperly resolved the remand motion by effectively deciding disputed factual and substantive issues that went beyond determining whether plaintiffs' claim was frivolous or fraudulent.
4. Ambiguous statements by plaintiffs' counsel at appellate oral argument did not make the district court's denial of remand harmless.
5. The award of summary judgment to Coleman was vacated because the case had to be remanded to state court.

KEY QUOTATIONS

“If there is even a possibility that a state court would find that the complaint states a cause of action against any one of the resident defendants, the federal court must find that joinder was proper and remand the case to state court.” (at 1541)

“For a remand, the plaintiff's burden is much lighter than that: after drawing all reasonable inferences from the record in the plaintiff's favor and then resolving all contested issues of fact in favor of the plaintiff, there

need only be "a reasonable basis for predicting that the state law might impose liability on the facts involved." (at 1549)

"In the remand context, the district court's authority to look into the ultimate merit of the plaintiff's claims must be limited to checking for obviously fraudulent or frivolous claims." (at 1550)

"If removal is doubtful, we remand the case." (at 1554)

FACTUAL BACKGROUND

Plaintiffs owned Georgia land adjoining property formerly operated as a gasoline service station by Crown and later owned by Daniel Coleman. They alleged that gasoline released from underground storage tanks on the adjoining property contaminated their land and continued to migrate onto it. Coleman became owner after the tanks were removed and denied causing any petroleum release, while plaintiffs alleged that the continuing contamination created a nuisance that Coleman failed to abate after notice.

PROCEDURAL HISTORY

Plaintiffs sued Crown Stations, Crown Central Petroleum, and Georgia resident Daniel Coleman in the Superior Court of Cobb County, alleging that gasoline contamination migrated from defendants' property onto plaintiffs' land. Defendants removed the action to federal district court on the ground that Coleman had been fraudulently joined to defeat diversity jurisdiction. The district court denied remand, denied plaintiffs' motion to amend as futile, and granted summary judgment for Coleman. The Eleventh Circuit reversed the denial of remand and vacated the summary judgment because the case had to be returned to state court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to remand the case to the Superior Court of Cobb County, Georgia. The summary judgment entered for Coleman was vacated. The court expressed no view on the ultimate merits of the nuisance claim.

CASES CITED

- Cabalceta v. Standard Fruit Co., 883 F.2d 1553, 1561 (11th Cir. 1989)
- B, Inc. v. Miller Brewing Co., 663 F.2d 545, 548-50 & n.9 (5th Cir. Unit A 1981)
- Coker v. Amoco Oil Co., 709 F.2d 1433, 1440-41 (11th Cir. 1983)
- Georgetown Manor, Inc. v. Ethan Allen, Inc., 991 F.2d 1533 (11th Cir. 1993)
- Parks v. The New York Times Co., 308 F.2d 474, 477-78 (5th Cir. 1962)
- Cowart Iron Works, Inc. v. Phillips Construction Co., Inc., 507 F. Supp. 740, 744 (S.D. Ga. 1981)
- Bobby Jones Garden Apartments v. Suleski, 391 F.2d 172, 176-77 (5th Cir. 1968)
- C&S Trust Co. v. Phillips Petroleum Co., 385 S.E.2d 426, 428 (Ga. App. 1989)

- Hoffman v. Atlanta Gas Light Co., 426 S.E.2d 387, 391 (Ga. App. 1992)
- Cox v. Cambridge Square Towne Houses, Inc., 239 Ga. 127 (1977)
- Rozar v. Mullis, 85 F.3d 556, 563 (11th Cir. 1996)
- United States v. Gerber, 994 F.2d 1556, 1558 (11th Cir. 1993)
- Glick v. White Motor Co., 458 F.2d 1287, 1291 (3d Cir. 1971)