

FEBRUARY 2003 CIVIL PROCEDURE QUESTION

Petra, a State W resident, recently patented a new design for a tamper-free bottle cap for soft drinks. She contracted with Dave, who lives in State X, to design a manufacturing process to mass-produce the newly patented bottle caps. Under the contract, Dave was required to relocate to State W, where Petra had leased research and development facilities, and to keep confidential all design and production information concerning the bottle cap.

Dave promptly found someone to rent his home in State X. He moved all his belongings to State W. After working for six months in State W, Dave had perfected the manufacturing process, but when Petra denied Dave's request for additional compensation he quit his job and disclosed the bottle cap manufacturing process to Kola, Inc. ("Kola").

Kola is a regional soft drink bottler incorporated in State Y, with its principal place of business in State W. Kola flooded the market with bottled soft drinks capped with Kola's version of Petra's bottle cap months before Petra could begin production.

When Petra discovered what had happened, she filed suit against Dave and Kola in state court in State W for violation of State W's patent infringement law. Petra's complaint sought damages of \$50,000 from Dave and \$70,000 from Kola. Unknown to Petra's lawyer, a federal patent law enacted shortly before Petra filed suit encompasses the type of claim pleaded by Petra and expressly preempts all state laws on the subject.

Six weeks after being served with the complaint, Kola removed the entire action to the federal district court in State W. Petra immediately filed a motion to remand the case to state court in State W. The district court denied Petra's motion.

Petra immediately filed an appeal of the court's ruling denying Petra's motion to remand with the appropriate federal court of appeals.

1. Did the federal district court rule correctly on Petra's motion to remand the case to state court in State W? Discuss.
2. Should the federal court of appeals entertain Petra's appeal? Discuss.

Answer A to Question 1

I. Did Federal District Court Correctly Rule On Petra's Motion to Remand Case to State W?

Petra filed suit in State W Court against Dave (D) & Kola based on a State W cause of action. State courts are courts of general jurisdiction and thus if State Court had personal jurisdiction over D & Kola the claim was properly filed in State Court W.

A court has pers[onal] juris[diction] if the defendant is a resident, consents to juris, or is subject to the State's long arm statute and meets the constitutional minimum contacts test. Here Kola is a corporation and thus a resident of its state of incorp (Y) and its state of principal place of business (W).

Dave's residence is determined by his domicile and intent. He begins as a resident of State (X). Because of his contract with Petra he agrees to move to State W. It does not appear he intended to make W his domicile as he only rented his home rather than selling it. Also it was uncertain how long his job would take; thus Dave is likely still a resident of X.

State W may still have jurisdiction over Dave under the Const. minimum contacts analysis. Dave moved to State W to do business there and enjoyed the benefits of State W's laws. He received compensation and performed services there. Because of the close contact between the claim and his contacts with State W, personal jurisdiction is fair provided he receives notice.

Removal of Case

A defendant may remove a case to the federal court in the state where the claim was filed provided the case could have initially been filed in federal court and the claim for removal is brought by all defendants within 30 days of filing of the complaint or the pleading which triggered the right of removal.

A Federal District Court is a court of limited jurisdiction, thus it may only hear claims based on federal questions (arising under the U.S. Constitution or statutes) or claims based on diversity of citizenship.

Diversity Jurisdiction

For a federal court to have diversity juris the plaintiff must be of diverse residency from

all defendants and the amount in controversy must exceed \$75,000.

In the instant matter Petra is a resident of State W and so is Kola because of its principal place of business in W. Thus diversity does not exist and federal subject matter jurisdiction doesn't exist.

Additionally, the amount in controversy must exceed \$75,000 based on plaintiff's well-pleaded complaint (reasonable). A plaintiff may aggregate claims against multiple defendants provided the defendants are jointly and severally liable.

Petra's complaint lists damages of \$50,000 against Dave and \$70,000 against Kola. Because the total damages exceed \$75,000 and it is foreseeable that Dave or Kola could be liable for the full amount the \$75,000 jurisdictional amount is met.

Kola cannot remove the action based on diversity because it is not diverse from Petra. Kola may, however, remove based on federal question jurisdiction because of Petra's complaint, though pled under State W law, is really a claim under the new federal patent act. A plaintiff may not avoid federal question jurisdiction, knowingly or inadvertently, by failing to plead the federal statute.

In this case the claim is completely preempted by an express federal law and thus Petra has no claim based on the state statute.

Kola may therefore seek removal to federal court based on federal question jurisdiction.

The only remaining limitation is Kola's failure to remove within 30 days and Dave's failure to join in the removal action. Kola may be excused from the 30 day limitation because it was unknown initially that the case arose under a federal statute as opposed to the alleged state law basis.

Because federal juris is based on federal question and not diversity, not all the defendants must join in the removal. There Kola alone could remove.

A last limitation to removal is that a defendant may not seek removal if the case was initially filed in the state court of defendant's residence. Here, that rule doesn't apply because of federal question jurisdiction.

District Court's Refusal to Remand to State Court

The federal district court with proper jurisdiction may refuse to remand a case to state

court. In this instance, the federal court had federal question jurisdiction, thus properly retained jurisdiction.

II. Should a Federal Court of Appeals Hear Petra's Appeal?

A federal court of appeals may only hear an appeal from a final judgment. A final judgment is one where all matters before the district court have been resolved by a final order. The only exception to this rule is for certain interlocutory appeals based on denial or granting of injunctive relief or failure to certify a class in a class action.

Here the denial of remand to state court was not a final judgment. The plaintiff still had ample opportunity to pursue his case in chief against Dave and Kola.

Upon final judgment, if Petra then loses [s]he may raise lack of subject matter jurisdiction of the federal court on appeal, because SMJ is never waived.

Answer B to Question 1

ISSUE I: Did the federal district court rule correctly on Petra's motion to remand?

In this case, plaintiff Petra ("Petra") sued defendants Dave ("Dave") and Kola ("Kola") in state court, alleging violation of state W's patent infringement law. Six weeks later, Kola removed the case to federal court, and Petra immediately moved to remand. The court denied Petra's motion. At issue is whether this ruling denying the motion was proper.

Federal courts are courts of limited jurisdiction, and only have subject matter over cases that either (i) involve a question of federal law (statutory, constitutional, etc), or (ii) diversity jurisdiction exists. Cases that were originally filed in state court (like this case), can only be removed to federal court if (i) they could have originally been filed in federal court, (ii) all defendants agree, (iii) defendant is not a resident of the forum state, and (iv) removal is sought within 30 days of learning of the grounds for removal. It appears that the court was wrong on all of these grounds.

A. Could Case Have been Originally Filed in Federal Court?

This case likely could not have been filed in federal court, because there is likely lack of subject matter jurisdiction. First, there is no federal question subject matter jurisdiction ("SMJ"). Petra's complaint is based on state patent infringement law. It is true that, as an affirmative defense, Dave and Kola will likely claim that Petra's claims are pre-empted by the federal patent law. However, for federal question SMJ, the court looks to plaintiff's well-pleaded complaint to determine whether a federal question is pled. Dave's and Kola's affirmative defenses - - even if they arise under federal law - - are irrelevant for federal question SMJ purposes. Because preemption by the federal patent law is an affirmative defense, it is irrelevant to federal question SMJ. Insofar as Petra's complaint raises no federal question, there is no federal question SMJ.

Second, there are potential problems with diversity. As a rule, diversity jurisdiction exists where: (i) plaintiffs have diverse citizenship from EVERY defendant, and (ii) the amount in controversy is \$75,000. It appears that Petra has met the second element: she has claimed damages of \$50,000 from Dave and \$70,000 from Petra. Amount in controversy is determined by (a) the amount pleaded in good faith in the complaint, and (b) plaintiff can aggregate her claims against multiple defendants to reach the amount in controversy threshold. Because Petra has claimed \$120,000 in damages against both D's combined, and we have no reason to suspect that this damages request was

not made in good faith, Petra has met the amount in controversy requirement.

However, Petra may not be diverse from BOTH Dave and Kola. Dave's residency: To be diverse from Dave, Petra and Dave must be residents of different states. Residency is determined by domicile - - where you live with intent to stay indefinitely. Although present living location is one factor, it may be offset by other factors that suggest that your current state is not your "domicile." In the facts, we are told that (i) Petra is a resident of state W, and (ii) Dave lived in state X (and had a home in state X), and because of the contract, was required to relocated [sic] to State W. The issue is, assuming that state X was Dave's domicile prior to the contract (and we have no facts to suggest otherwise, particularly because he owned a home in state X), did he change his domicile to state W?

Factors in favor of change of domicile: (i) he physically relocated to state W, and presumably got new living quarters; (ii) he moved all of his belongings to state W, suggesting that he was in it for the long haul; and (iii) this was not a short term project - - there are no facts to suggest that when Dave relocated to state W, he would only be there for a short time period. Although he quit his job after six months due to a contract dispute, this is not evidence that he had not intended to live in state W indefinitely. Factors against change of domicile: Dave retained his house in state X, and he only rented it out to someone else. This is strong evidence that Dave still considered state X his domicile, and even though he was moving out for a long period of time (as suggested by moving all of his belongings), there is no intent to change domicile. Conclusion: Dave is probably a resident of state X, because of lack of intent to change domicile. Factors that would help, but are not present, are: where is Dave registered to vote, driver's license, etc. In the absence of more facts suggesting that Dave intended to live in state W indefinitely and make it his domicile, he should still be considered a resident of state X.

Kola's residency: A corporation is a resident of two states: (i) its state of incorporation, and (ii) its state where its principal place of business is located. Moreover, principal place of business is defined differently by different courts, and can mean either (i) where its headquarters are located, or (ii) where its main manufacturing plants are located. In the facts, we are told that Kola is incorporated in state Y, and that its principal place of business is state W. Assuming that by "principal place of business" the facts mean that either Kola's HQ or manuf. plants (as the case may be, depending on the jurisdiction) are located in state W, then Kola is a resident of BOTH state Y and W.

Mini-conclusion: There is no federal SMJ. In addition, there is no diversity jurisdiction, because of a lack of complete diversity between plaintiff and defendants: Petra is

resident of state W and Kola is a resident of both states Y & W (and, Dave may be a resident of state W, but likely resident of state X). Because the case could not be originally brought in federal court, removal was improper, and the court should have granted the remand request.

B. All D's must agree

In addition, all defendants must agree to a removal. We have no facts to suggest that Dave consented to the removal. If he didn't, then removal was improper. If he did, this element is satisfied (but, still lose[s] because no jurisdiction). The case should have been remanded to state court as per Petra's timely motion.

C. D cannot be resident of forum state

An additional reason for remand is that the defendant cannot be a resident of the forum state. Removal is a process to protect defendants against "hostile" foreign state courts. Here, Kola, and possibly Dave (though less likely, see above) are residents of state W. As such, removal of this case to state W federal court, with state W defendant(s), was improper. The case should have been remanded to state court as per Petra's timely motion.

D. Motion must be brought within 30 days

A removal motion must be brought within 30 days of discovering the grounds for removal. In this case, Kola moved for removal 42 days after being served with the complaint. Assuming that Kola knew of the grounds for removal at the time it was served, its motion was untimely, and so the court should not have granted removal in the first place. (If Kola did not immediately know of the grounds, which is unlikely, then the original removal may have been timely, but case still should have been remanded because of lack of jurisdiction). The case should have been remanded to state court as per Petra's timely motion.

CONCLUSION: The court erred when it denied the remand motion, because (i) no subject matter jurisdiction, and (ii) proper procedure not followed (all D's didn't agree, untimely motion, D's resident of forum state).

ISSUE II: Should the Federal Court of Appeals entertain Petra's appeal?

Typically, the federal court of appeals can only entertain appeals from final judgments - i.e., from a judgment disposing of the matter, whether because of dismissal, grant of

summary judgment, trial verdict, and the like. There are certain exceptions, however: the federal appeals court can hear certain interlocutory (i.e. not final) appeals involving grants of TRO's and preliminary injunctions (and other pretrial remedies, e.g. attachment), collateral issues, as well as issues where the parties or court would be severely prejudiced - - or the right would no longer exist - - if they had to wait until final disposition to bring their appeal. In such an extraordinary case, where the parties or the court's resources would be wasted, the court can use its inherent writ power to force the trial court to act.

This is one such case. A party can attack subject matter jurisdiction at ANY point in the proceedings - - even on appeal for the first time. Likewise, the court can raise SMJ at any point. If, at any point, the court discovers that it lacks subject matter jurisdiction, the case MUST be dismissed. Moreover, this is a good cause to use the extraordinary writ power, because Petra's entitled to relief is [sic] clear.

In this case, it is conceivable that the parties could go through trial, never raising SMJ, and only on appeal the court discovers the issue and dismisses the case. This would result in a tremendous waste of judicial resources, a waste of the party's resources and time, and could severely prejudice Petra's ability to obtain relief, esp. if the proceedings are lengthy and there is a tremendous delay between now and when the SMJ problem is discovered. As such, the appellate court should entertain the appeal, either through its ability to award collateral relief, or more likely, through its inherent power to grant a writ of mandate in extraordinary circumstances.