

# APPELLATE CASE NOTES

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## INDIVIDUAL DEFENDANT IN AN AUTO PRODUCTS LIABILITY CASE WAS NOT FRAUDULENTLY JOINED THOUGH HE HAD PREVIOUSLY SETTLED HIS CASE WITH THE PLAINTIFFS

*LAWRENCE DUMAS, ET AL. V. ANAND PATEL, ET AL.*

In an interesting decision, the United States District Court for the Western District of Missouri granted the plaintiffs' motion for remand to Jackson County, holding that an individual defendant in an automobile products liability case was not fraudulently joined to defeat federal diversity jurisdiction even though the individual had previously settled his case with the plaintiffs. *Dumas, et al. v. Patel, et al.*, 317 F.Supp.2d 1111 (W.D. 2004).

### RELEVANT FACTS

Janice Dumas died in a motor vehicle accident in December of 2000. In May of 2001, her husband Lawrence Dumas and her two children filed a wrongful death action against Anand Patel, the driver of the other vehicle, in the Circuit Court of Buchanan County. In December of 2002, the plaintiffs and defendant Patel filed a motion to approve a wrongful death settlement for \$50,000.00 in the Circuit Court of Clay County. The Circuit Court granted the motion and approved the settlement. In January of 2003, the plaintiffs and Patel entered into an Agreement to Limit Recovery and Not to Enforce Judgment. Thereafter, plaintiffs filed an action in the Circuit Court of Jackson County asserting claims for product defect and negligence against Hyundai Motor America Corp., and asserting a claim for negligence against Patel. Hyundai removed the case to federal court based on diversity, arguing that the joinder of the resident defendant driver - who already paid the plaintiffs \$50,000.00 - was fraudulent. *Dumas*, 317 F.Supp.2d at 1112-13.

### LEGAL ANALYSIS

#### A. REMOVAL AND REMAND

Removal is authorized by 28 U.S.C. § 1441 and governed by 28 U.S.C. § 1446. Remand of the case to the

state court is required if subject matter jurisdiction is non-existent. If complete diversity is not present between the opposing parties, subject matter jurisdiction is lacking and remand to the state court is mandated. 28 U.S.C. § 1447(c).

The doctrine of fraudulent joinder holds that where joinder of a party is fraudulent and is designed solely to deprive a federal court of jurisdiction, such a party's citizenship does not deprive the party claiming fraudulent joinder of the right to remove the case to federal court:

Joinder is fraudulent, if on the face of the state court complaint, no cause of action lies against the resident defendant. If there is no reasonable basis in fact or law supporting the claim against the resident defendant, or the reviewing court finds that the plaintiff has no real intention of prosecuting the action against the resident defendant, joinder is fraudulent and removal is proper. The burden of proof rests with the removing party.

*Dumas*, 317 F.Supp.2d at 1113.

Judge Sachs pointed out that "while fraudulent joinder is easily defined, it is applied with much more difficulty. Within this circuit the fraudulent joinder standard has been stated in varying ways." *Id.*

Judge Sachs prefaced his analysis with a review of the facts of the case, including the Agreement to Limit Recovery and Not to Enforce Judgment. The Agreement was not a general release of liability, but the parties agreed that any judgment against Patel would not be enforced or executed upon. Further, the agreement expressly released all claims, including garnishment claims, bad faith claims or any other claims against Patel and his insurer. Plaintiffs signed the

agreement, received the \$50,000.00 and Patel agreed to give truthful testimony by deposition and/or at trial concerning the accident. *Id.* at 1114-15.<sup>1</sup>

## B. A REVIEW OF PERTINENT CASE LAW

Judge Sachs initially reviewed the case of *Gable v. Chicago, M., St. P. & P.R. Co.*, 8 F.Supp. 944 (W.D. Mo. 1934) where, after remand, the plaintiff entered into a covenant with defendant to cease prosecution and dismissed the pending Iowa state court case with prejudice. The *Gable* court found there was no distinction between extinguishing a controversy by a voluntary dismissal in court and extinguishing it by a settlement of the controversy out of court. *Id.* at 946. Although *Gable* held that settlement of plaintiff's controversy with a resident defendant establishes complete diversity for removal purposes, the case can be distinguished from the *Dumas* facts because in *Gable* the plaintiff had covenanted not to prosecute her cause of action against the resident defendant and had dismissed the case against him.<sup>2</sup> *Gable*, 8 F.Supp at 945-46.

In articulating the standard to determine jurisdiction, Judge Sachs opined that removal analysis in a summary judgment context looks beyond the allegations of the complaint to the underlying facts and determines whether plaintiffs have a meritorious claim against the resident defendant. Judge Sachs cautioned that in those instances where a court "pierces the pleadings" and considers factual and legal materials outside the pleadings, it should only consider whether these materials establish facts that support the claim, not whether the facts would entitle the resident defendants to summary judgment. *Dumas*, 317 F.Supp.2d at 1115.

Following a review of the facts and the Agreement entered between plaintiffs and Patel, Judge Sachs noted that it was debatable whether Patel's continued presence in the action had any practical consequence given the terms of the Agreement which barred execution on any judgment plaintiffs may receive at trial as to Patel. However, Judge Sachs noted two significant cases in Missouri that supported a finding of proper joinder.

In *McDowell v. Kawasaki Motors Corp.*, 799 S.W.2d 854 (Mo. App. 1990), a motorcyclist who was injured in a collision with a truck brought a personal injury action against the truck driver and the motorcycle manufacturer. After a jury returned a verdict for the plaintiff, the trial court granted the manufacturer's motion for new trial. The plaintiff appealed and the cause was reversed and remanded with direction to reinstate the jury's verdict. *McDowell*, 799 S.W.2d at 855.

In *McDowell*, the plaintiff and the truck driver had entered into a settlement agreement limiting plaintiff's recovery to \$50,000.00 and requiring the truck driver to confess liability and remain as a party defendant in the case. *Id.* at 858. Despite a complete release of the case against the truck driver, the trial court did not sever the settled aspects from the trial against the manufacturer.<sup>3</sup> The appellate court ruled that it was not error to try the case on the theory of joint tort-feasors liable for an indivisible injury. *Id.* at 862-63. The court further held that it was not error to deny the manufacturer's motion to sever for trial plaintiffs' claims against the two defendants. *Id.*

While recognizing that *McDowell* did not determine the effect that joinder of a settling party had on state versus federal jurisdiction, Judge Sachs found it significant in that it allowed joinder of a party who had entered into a Section 537.065 agreement, for purposes of apportionment of fault or joint and several liability.

Judge Sachs also relied on *Carter v. Tom's Truck Repair Inc.*, 857 S.W.2d 172 (Mo. banc 1993) which involved a "Mary Carter" agreement with one of several tort-feasors.<sup>4</sup> In *Carter*, the Missouri Supreme Court found legitimacy in the "need for a single jury to apportion fault among all potentially culpable parties and thereby promote judicial economy and preclude inconsistent verdicts." *Id.* at 177.

Judge Sachs concluded that the precise rationale of these two cases may not apply, but that "does not demonstrate the unsoundness of plaintiffs' preference to have a co-defendant in court." *Dumas*, 317 F.Supp.2d at 1117. He pointed out that the parties did not develop or seek to rebut the tactical usefulness of keeping a case against Patel joined with the case against Hyundai:

Absent joinder of all culpable parties in this litigation, it seems possible that the jury might be tempted to limit damages or go off on a tangent in assessing fault. Instructions to disregard Patel's responsibility might not be wholly effective. This may create some incentive, apart from forum-shopping, for a case framed in the present manner.

*Dumas*, 317 F.Supp.2d at 1117.

Judge Sachs concluded that Defendant Hyundai has the burden of showing fraudulent joinder and noted that it faces a particularly difficult task when the claim against the resident co-defendant is apparently worth more than the \$50,000.00 settlement. Because the procedural maneuvering was not contrary to Missouri law, and could have some tactical purpose, the District Court granted the plaintiffs' motion for remand to Jackson County. *Dumas*, 317 F.Supp.2d at 1117.

## CONCLUSION

In cases in which a defendant has alleged fraudulent joinder of a resident defendant, the removing party bears a heavy burden of demonstrating fraudulent joinder. To meet this burden, defendant must show either that there is no possibility that the plaintiffs would be able to establish a cause of action against the in-state defendant in state court or that there has been outright fraud in the plaintiffs' pleading of jurisdictional facts.

In this case, even though the plaintiffs entered into an Agreement which barred execution on any judgment that might be received at trial as to the resident defendant, the Court refused to find that his joinder was fraudulent. The Court noted that a tactical purpose may exist for leaving the resident defendant in the case. The Court's decision hinged, in part, on the heavy burden that rests with the removing

party in cases alleging fraudulent joinder. Because defendant Hyundai failed to establish that Patel was an inappropriate party, the court lacked diversity jurisdiction.

In determining whether remand was appropriate, the *Patel* Court evaluated the factual allegations in the light most favorable to the plaintiffs and resolved any uncertainties in controlling substantive law in favor of the plaintiffs. Significantly, in reaching the conclusion that joinder was not fraudulent, the *Patel* Court determined that the plaintiffs need not have a "winning case" against the allegedly fraudulently joined defendant, but rather, need only have a possibility of stating a legitimate cause of action in order for joinder to be proper. ■

#### ENDNOTES:

1. Section 537.065 RSMo authorizes this type of settlement agreement which provides that a plaintiff and a defendant may agree to limit any recovery at trial to specific assets or the insurance contract.

2. The Agreement entered into between the parties expressly reserved the plaintiffs' right to prosecute the claims against Patel. Patel and his insurer expressly agreed to appear and defend the action and specifically acknowledged that "the purpose of this agreement is to allow claimant to continue any litigation against Anand P. Patel and any and all other parties potentially liable...". Patel filed an answer in state court, did not move to dismiss the action and filed no affirmative defenses. Plaintiffs' Motion for Remand, *Dumas, et al. v. Patel, et al.*, Case No. 404-CV-72, at pages 5-6.

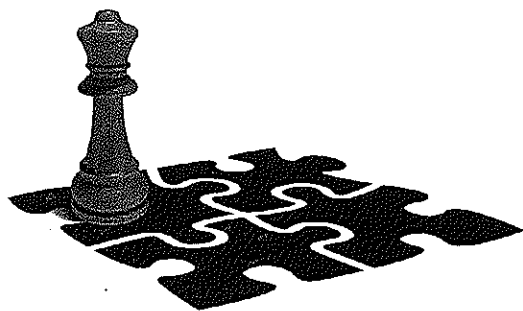
3. In *McDowell*, the settlement agreement conformed to the provisions of Section 537.060, RSMo. The effect of the settlement was not only to conclude the amount of the truck driver's liability to plaintiffs, but also to give immunity to the truck driver from any claims by the motorcycle manufacturer for contribution. *McDowell*, 799 S.W.2d at 858.

4. In *Carter*, the plaintiff entered into a "Mary Carter" agreement whereby Consolidated agreed to appear and defend. Defendant Tom's Truck Repair claimed Consolidated was improperly joined due to the agreement. On appeal, Tom's Truck Repair claimed error in the trial court's refusal to either dismiss Consolidated from the case or to realign the parties to make Consolidated a plaintiff. The Missouri Supreme Court held that Consolidated, even though its liability had been limited by agreement, remained a proper party. *Carter*, 857 S.W.2d at 176-77.

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