The Supreme Court Rules on Class Action Removal Limits for Third-Party Counterclaim Defendants

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In Home Depot U.S.A., Inc. v. Jackson, No. 17-1471 (May 28, 2019), the Supreme Court of the United States addressed whether third-party counterclaim defendants in class actions have authority under the general removal provision 28 U.S.C. Section 1441(a) or the removal provision in the Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. Section 1453(b), to remove their underlying cases to federal courts. Affirming a Fourth Circuit Court of Appeals ruling that section 1441(a)'s phrase "the defendant or the defendants" and CAFA's reference to "any defendant" refer to any original defendant only, the Supreme Court concluded third-party counterclaim defendants in class actions do not have the authority to remove their cases to federal court under either the general removal provision or CAFA.

Background

In 2016, Citibank, N.A., filed a debt-collection action in state court against George W. Jackson, claiming Jackson had failed to pay for charges on a Citibank-issued credit card. In response to Citibank's complaint, Jackson answered and filed third-party class-action claims against Home Depot U.S.A., Inc. and Carolina Water Systems, Inc. Jackson also filed a counterclaim against Citibank. Citibank thereafter dismissed its claims against Jackson.

Following Citibank's dismissal, Home Depot removed the case to federal court under CAFA. Jackson moved to remand the case to state court and amended his third-party complaint to remove any reference to Citibank. The district court granted Jackson's motion to remand and the Fourth Circuit affirmed, finding that neither the general removal provision of section 1441(a), nor CAFA's removal provision in section 1453(b), permitted Home Depot to remove the class-action claims filed against it.

Home Depot petitioned the Supreme Court for a writ of certiorari to decide whether a third party named in a class-action counterclaim brought by the original defendant can remove if the claim meets CAFA's other jurisdictional requirements. The Supreme Court directed the parties to address whether its "holding in Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941)—that an original plaintiff may not remove a counterclaim against it—should extend to third-party counterclaim defendants."

Writ of Certiorari

The Court first addressed whether the general removal provision in section 1441(a) permits a third-party counterclaim defendant to remove a claim filed against it. Relying on the structure of section 1441(a) and its own precedent, the Supreme
Court concluded that section 1441(a)'s phrase "the defendant or the defendants" does not permit a counterclaim defendant, including those parties brought into the litigation for the first time by a counterclaim, to remove.

The Court determined the statute applies to a defendant in a "civil action" as opposed to the defendant of "claims." The Court noted that section 1441 applies to cases in which the federal courts have original jurisdiction and that a district court "determining whether it has original jurisdiction over a civil action [...] should evaluate whether that action could have been brought originally in federal court." Since the civil action over which the federal court has original jurisdiction "is the action as defined by the plaintiff's complaint,' the defendant' to that action is the defendant to that complaint, not a party named in a counterclaim."

In limiting the statute's removal right to original defendants, the Court also relied on its Shamrock Oil decision. In that case, the Court held that the original plaintiff could not remove a counterclaim under section 1441(a)'s predecessor statute. Absent a compelling reason to change its approach, the Court determined that filing a third-party counterclaim also "did not create a new 'civil action' with a new 'plaintiff' and a new 'defendant.'"

Having concluded that Home Depot is not a "defendant" under section 1441(a), the Court then examined CAFA's removal language in section 1453(b), which allows, in part, removal by "any defendant" to a "class action." The Court rejected Home Depot's view that the statute's reference to a "class action" instead of a "civil action" means that any party sued in a class action can remove under the statute. Instead, the Court found that the two clauses in the statute referring to "any defendant" "simply clarify that certain limitations on removal that might otherwise apply do not limit removal under § 1453(b)."

**Key Takeaway**

The impact of this decision remains to be seen. On its face, the ruling leaves intact the current tactic of trapping third-party counterclaim defendants in state court. What this means is, if a company is brought into litigation as a third-party defendant in state court, it will have to litigate its claims in state court even if class claims carrying significant potential liability are involved. This is a result that many companies typically want to avoid. While the decision runs counter to CAFA's intended purpose of expanding removal in the class context, as the Court aptly noted, Congress "certainly has the authority to amend the statute."