SANDBERG PHOENIX

CLASS ACTION BLOG

Counterclaim Defendants Are Not Really “Defendants”

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After Citibank filed a debt-collection action against Jackson in state court, Jackson counterclaimed against Citibank and filed third party class action claims against Home Depot and Carolina Water Systems, Home Depot then removed the case to federal court. The district judge remanded the case to state court which the United States Court of Appeals, Fourth Circuit affirmed. Justice Thomas authored the opinion for the five justice majority which affirmed, while Justice Alito wrote a dissenting opinion on behalf of the four dissenting justices. Justice Thomas’ majority opinion held that the case was not removable under either the general removal statute or under Class Action Fairness Act’s (CAFA) removal provisions.

Justice Thomas emphasized that federal courts are courts of limited jurisdiction. Although respectful to his dissenting brethren he referred to their position as “plausible” regarding the general removal statute and “a closer question” regarding the CAFA removal provision – he nonetheless made it clear that Congress did not intend for either statute to allow a counterclaim defendant to remove a class action case to federal court.

Regarding the general removal statue, Justice Thomas held that “the phrase ‘the defendant or the defendants’ in light of the structure of the statute and our precedent, we conclude that §1441(a) does not permit removal by any counterclaim defendant, including parties brought into the lawsuit for the first time by the counterclaim.” (Slip op. at 5-6). In support of that holding, Justice Thomas noted multiple “Federal Rules of Civil Procedure differentiate between third-party defendants, counterclaim defendants, and defendants.” (*Id* at 7) He further bolstered his position by pointing out that, “in other removal provisions, Congress has clearly extended the reach of the statute to include parties other than the original defendant.” (*Id*.) Because Congress expressly allowed removal by others in those provisions, Congress could have done so regarding the general removal statute if it intended to do so. Finally, he cited the court’s holding in *Shamrock Oil & Gas Corp.* v. Sheets, 313 U. S. 100 (1941) which held that “an original plaintiff may not remove a counterclaim against it.” (Slip op. at 4-5) While acknowledging that *Shamrock Oil* was distinguishable on the facts, he reasoned that just as in *Shamrock Oil* “the filing of counterclaims that included class-action allegations against a third party did not create a new ‘civil action’ with a new ‘plaintiff’ and a new ‘defendant.’” (*Id* at 8). Accordingly the *Shamrock Oil* holding applied.

Regarding CAFA's removal provision, Justice Thomas reasoned that the more expansive term "any defendant" found in the CAFA removal provision was not added to authorize counterclaim defendants or third party defendants to remove cases to federal court. To further support that position, he noted that the clause in both the CAFA and general removal provisions rely on removal procedures set forth in §1446. Accordingly, the word "defendant" in each of the three statutes needed to have the same meanings. Because the three statutes had to be interpreted together the CAFA removal statute "does not permit a third-party counterclaim defendant to remove." (*Id* at 11.) Although Justice Alito's dissent argued that the Court's interpretation of the statute "allows defendants to use the statute as a 'tactic' to prevent removal… that result is a consequence of the statute Congress wrote. Of course, if Congress shares the dissent's disapproval of certain litigation 'tactics', it certainly has the authority to amend the statute but we do not."

Justice Alito's dissent is nearly three times longer than Justice Thomas's majority opinion, but garnered only four votes. Justice Alito's analysis began with the CAFA removal provision and suggested that the majority read "an irrational distinction into both removal laws and flouts their plain meaning, a meaning that context confirms and today's majority simply ignores." (Dissent, at 2). A lengthy analysis of the dissent does not seem useful. It would seem most federal courts and civil procedure practitioners will look on the *Home Depot* opinion as simply an extension on the court's 1941 holding in *Shamrock Oil*. Despite Congress's obvious intent to open the federal district courts to more class action litigation when it adopted CAFA, it seems apparent that Justice Thomas and the justices who joined with him are more interested in limiting that access, not expanding it.