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Supreme Court Holds That Third-Party Defendants May Not Remove Class Action Counterclaims To Federal Court

Home Depot U.S.A., Inc. v. George W. Jackson, No. 17-1471

Decided May 28, 2019

Today, the Supreme Court held 5-4 that when a defendant in a state court action files a counterclaim against a third party as a class action, the third-party defendant may not remove the class action counterclaim to federal court.

Background:

Citibank filed an action in state court to collect on a credit card debt. In response, the debtor filed a class action counterclaim under state consumer protection law against Citibank and named Home Depot—a third-party retailer not previously involved in the case—as an additional defendant. Relying upon the Class Action Fairness Act of 2005 (CAFA), which permits "any defendant" to remove certain state class actions to federal court, *see* 28 U.S.C. § 1453(b), as well as the general removal provision, 28 U.S.C. § 1441(a), Home Depot sought to remove the case to federal court. A federal district court concluded that Home Depot could not do so because Home Depot was not a defendant in the original debt-collection action and therefore was not a "defendant" within the meaning of the removal statute. The Fourth Circuit affirmed.

"[T]he limits that Congress has imposed on removal show that it did not intend to allow all defendants an unqualified right to remove."

Justice Thomas,
writing for the majority

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Issue:

Does a third-party defending itself against a class action counterclaim qualify as a "defendant" under the general removal provision or the removal provision of CAFA, such that the third-party may remove the case from state to federal court?

Court's Holding:

No. The term "defendant" in the removal statutes means only "the party sued by the original plaintiff," not a counterclaim defendant or third-party joined in the case by a defendant.

What It Means:

- The Court explained that district courts determine whether a civil action is removable to federal court by assessing whether the *action*—not the *claim*—could have been filed originally in federal court. As a result, the Court reasoned, removal must be based on the complaint, not any later-filed counterclaims or third-party claims.

- The Court emphasized that "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.'" Instead, the "defendant" for purposes of removal was the party sued by the original plaintiff. The Court thus extended to *third-party counterclaim defendants* its longstanding holding in *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941), that an *original plaintiff* may not remove a state court counterclaim to federal court.

- The Court concluded that CAFA did not require a different result: CAFA was "intended only to alter certain restrictions on removal"—such as the requirement that all defendants agree to removal—"not [to] expand the class of parties who can remove a class action." The Court thus held that the word "defendant" had the same meaning in CAFA as in the general removal provision.

- The decision was authored by Justice Thomas and joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan. Justice Alito authored a dissent on behalf of the four remaining Justices. Although "counterclaim class actions" are relatively rare, Justice Alito cautioned that the Court's decision could encourage more plaintiffs to structure their class actions as counterclaims in state courts in an attempt to circumvent the protections afforded by CAFA

and to avoid litigating in a federal forum. The majority emphasized that authority to amend the statute to preclude such litigation tactics rests with Congress, not the Court.

As always, Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho
+1 214.698.3233
aho@gibsondunn.com

Mark A. Perry
+1 202.887.3667
mperry@gibsondunn.com

Related Practice: Class Actions

Theodore J. Boutrous, Jr.
+1 213.229.7804
tboutrous@gibsondunn.com

Christopher Chorba
+1 213.229.7396
cchorba@gibsondunn.com

Theane Evangelis
+1 213.229.7726
tevangelis@gibsondunn.com