

Supreme Court Alert: The Court Holds That Third-Party Counterclaim Defendants Cannot Remove Cases to Federal Court

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In a 5-4 decision last week, Justice Thomas joined Justices Ginsburg, Breyer, Sotomayor, and Kagan to hold that two removal statutes, the general removal provision and the removal provision in the Class Action Fairness Act of 2005 (“CAFA”), prevent third-party defendants from removing a suit from state to federal court.¹ Importantly, the Court held that only *original* defendants named in the complaint have the authority to remove under either statute, even in the circumstance where a third-party defendant who was previously uninvolved in the case and had no role in selecting the forum was added to the action.

Background

Citibank initiated a debt-collection action in North Carolina state court against a consumer for charges he incurred on a Home Depot credit card.² Shortly thereafter, the consumer answered the complaint and filed his own claims: a counterclaim against Citibank and third-party class-action claims against Home Depot and Carolina Water Systems for claims arising out of an alleged scheme between Home Depot and Carolina Water Systems to induce homeowners to buy water treatment systems at inflated prices.³

After Citibank dismissed its claims against the consumer, Home Depot filed a notice of removal to federal court.⁴ The consumer moved to remand to state court, arguing that precedent barred removal by a “third-party/additional counter defendant like Home Depot.”⁵ The District Court granted the motion to remand and the Fourth Circuit affirmed, holding that neither the general removal provision, 28 U.S.C. § 1441(a), nor the removal provision in CAFA, 28 U.S.C. § 1453(b), allowed Home Depot to remove the class-action claims filed against it.⁶

The Court’s Analysis

¹ *Home Depot U.S.A., Inc. v. Jackson*, No. 17-1471, 2019 WL 2257158 (U.S. May 28, 2019). The two statutes are: 28 U.S.C. § 1441(a) and 28 U.S.C. § 1453(b).

² *Id.* at *3.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* (citing *Jackson v. Home Depot U.S.A., Inc.*, 880 F.3d 165, 167-171 (4th Cir. 2018)).

The Supreme Court considered whether either 28 U.S.C. §§ 1441(a) or 1453(b) allows a third-party counterclaim defendant to remove a lawsuit to federal court or whether removal authority is limited to the original defendant under those statutes.⁷

The Court began by analyzing the plain language of § 1441(a). The statute itself allows “the defendant or the defendants” to remove “any civil action” from state court to federal court when the federal district court has “original jurisdiction” over the action.⁸ Significantly, the Court concluded that “the defendant” to the “civil action” over which the district court has “original jurisdiction” is limited to the defendant to the original complaint, not a party named as a defendant in a counterclaim.⁹ The Court pointed to multiple sources in support of its interpretation of the term “defendant” having such a limited scope. First, the Federal Rules of Civil Procedure differentiate between third-party defendants, counterclaim defendants, and defendants.¹⁰ Second, in other removal statutes, Congress explicitly extended removal authority to parties other than the original defendant, but not in § 1441(a).¹¹ Third, the Court previously held in *Shamrock Oil & Gas Corp. v. Sheets* that a counterclaim defendant who was the original plaintiff is not one of “the defendants” for the purposes of § 1441(a), and therefore there was no reason to reach a different conclusion for a counterclaim defendant who was not originally part of the suit.¹² Finally, the Court determined that a broader interpretation would make little sense when read with other removal provisions, such as § 1446(b)(2)(A).¹³

In a similar vein, the Court concluded that CAFA’s removal provision, 28 U.S.C. § 1453(b), does not permit a third-party counterclaim defendant to remove. CAFA “provides district courts with jurisdiction over ‘class action[s]’ in which the matter in controversy exceeds \$ 5,000,000 and at least one class member is a citizen of a State different from the defendant.”¹⁴ The statute states that “[a] class action may be removed . . . without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.”¹⁵ This statute, the Court found, only alters the following two rules regarding removal: if at least one defendant is a citizen of the forum state,

⁷ See *Home Depot*, 2019 WL 2257158, at *3.

⁸ *Id.* at *2 (quoting 28 U.S.C. § 1441(a)).

⁹ *Id.* at *4.

¹⁰ See Fed. R. Civ. P. 14, 12(a)(1)(A)-(B).

¹¹ *Home Depot*, 2019 WL 2257158, at *5.

¹² *Id.* (citing 313 U.S. 100 (1941)).

¹³ *Id.* at *5. Section 1446(b)(2)(A) provides that “[w]hen a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.”

¹⁴ *Home Depot*, 2019 WL 2257158, at *2 (alteration in original).

¹⁵ *Id.* at *5-6 n.4 (quoting 11 U.S.C. 1453(b)) (alteration in original).

the action cannot be removed;¹⁶ and all defendants must consent to removal.¹⁷ But it does not alter § 1441(a)'s limitation on *which parties* can remove, suggesting Congress's intent to leave the scope of § 1441(a) as-is.¹⁸

Ultimately, the Court acknowledged that its interpretation allows defendants/counterclaim plaintiffs to tactically prevent removal by third-party defendants, but in the Court's view that result is a consequence of the statute Congress wrote.¹⁹ If Congress disagrees with this outcome, Justice Thomas wrote, it can rewrite the statute.²⁰

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¹⁶ *Id.* at *6.

¹⁷ *Id.*

¹⁸ *See id.*

¹⁹ *Id.* The dissent opined that the majority read an irrational distinction into both removal statutes, ignoring their plain meaning and the greater context. *Home Depot*, 2019 WL 2257158, at *7 (Alito, J., dissenting). Justice Alito wrote that CAFA allows removal by third-party defendants because they fall within the scope of "any defendant," and also interpreted § 1441(a) to allow third-party defendants to remove. *Id.* at *8, 15.

²⁰ *Id.* at *6.