



Leasing Angels, Inc. v. Brown

2024 | Cited 0 times | W.D. Tennessee | May 7, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION LEASING ANGELS, INC.,

Plaintiff/Counter-Defendant,

No. 2:24-cv-02001-SHL-cgc v. DARRELL BROWN,

Defendant/Counter-Plaintiff.

ORDER GRANTING MOTION TO REMAND

Brown filed his response on March 22, 2024. (ECF No. 18.) For the reasons set forth below,

GRANTED.

BACKGROUND LAI is a real estate firm in Memphis, Tennessee, specializing in matching renters with residential properties. (ECF No. 1-1 at PageID 3 4.) LAI hired Brown as Regional Operations Director for the State of Tennessee on March 16, 2023. (Id. at PageID 5.) Upon accepting the role, Brown signed a Confidentiality, Non-Competition and Non-Solicitation Employment for twelve months after his employment with LAI. (Id. at PageID 5 7, 16 25.) The Agreement also included a forum selection clause in which the parties agreed that any legal action relating to the Agreement would take place in state court in Shelby County, Tennessee. (Id. at PageID 4, 24.) On September 30, 2023, Brown voluntarily terminated his employment with LAI. (Id. at PageID 6.) On October 6, LAI learned that Brown had accepted a role with a competitor real estate firm, Cornerstone Residential. (Id.) On November 15, LAI filed its Complaint against Brown in Shelby County Circuit Court, bringing the following claims: breach of contract, violation of the Defend Trade Secrets Act, violation of the Tennessee Uniform Trade Secrets Act, and unjust enrichment/equitable forfeiture. (Id. at PageID 6 11.) On January 2, 2024, bringing this case before this Court. (ECF No. 1 at PageID 1.) Attached to that Notice was

plaint (ECF No. 1-1 at PageID 31 39), along with a Counter- id. at PageID 40 46). In the Counter-Complaint, Brown alleges that LAI did not compensate him for working through lunch breaks, at night, and overtime, and that LAI misclassified him as an independent contractor. (Id. at



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PageID 40, 42 43.) actually attached. (ECF No. 1 at PageID 1.) Brown did submit a Civil Cover Sheet indicating

that his basis for removal is the FLSA claim in his Counter-Complaint. (ECF No. 1-3 at PageID 49.) In turn, LAI filed its Motion to Remand on March 7, 2024, arguing that (1) the FLSA

jurisdiction does not arise when a complaint on its face states alternative federal-law and state-law theories to support a state-law claim. (ECF No. 17 at PageID 92.) 1

1 Although LAI does not argue in its Motion to Remand that the Agreement included a irrevocably consented and submitted to the jurisdiction and venue of the Shelby County, -1 at PageID 4.) r knowledge of

because the Complaint includes a claim under the federal Defend Trade Secrets Act, 18 U.S.C. § 1836, giving the Court original jurisdiction over a federal question. (Id. at PageID 99.) counterclaim (ECF No. 1-3 at PageID 49), the Court GRANTS

LEGAL STANDARD On a motion to remand, the defendant bears the burden of establishing that removal was proper. *Long v. Bando Mfg. of Am., Inc. Her Majesty the Queen in Right of the Province of Ontario v. City of Detroit*, 874 F.2d 332, 339 (6th Cir. 1989) (citing *Wilson v. USDA*, 584 F.2d 137, 142 (6th Cir. 1978)). To remove a civil action from state

statement of the terms borrowed from the *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014) (quoting 14C Wright et al., *Federal Practice and Procedure* § 3733, at 639 41 (4th ed. 2009)). Finally, the well-pleaded-complaint rule does not allow a counterclaim to serve as the basis for a jurisdiction. *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 826 (2002).

ANALYSIS Brown offers (1)

As is explained in more detail below, both arguments fail.

A. FLSA Counterclaim

U.S.C. § 1446(a). However, even if the Court were to construe the Civil Cover Sheet as that

short and plain statement, that form which includes space for a party to list multiple alternate bases for removal -3 at PageID 49.) But a counterclaim cannot serve as the basis for federal question jurisdiction. See *Vornado*, 535 U.S. at 826.

Further, Brown FLSA counterclaim can serve as a basis for jurisdiction because it arises from actions that are claims for breach of contract and breach of trade secrets does not carry the day for two



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reasons.

place. On the contrary, these claims arise from different sets of facts the Complaint from an -1 at PageID 5 6) and the Counter- work completed before his termination (id. at PageID 41 43). Second, Brown cites no case law to support the argument that federal question jurisdiction arises when a federal counterclaim shares interlocking facts with the original state-court pleading. Even if these claims did arise fr counterclaim, no matter how related to or otherwise intertwined with the matters asserted in the , No. 5:11CV0521, 2011 WL 1374988, at *2 (N.D. Ohio Apr. 12, 2011). B. Federal Jurisdiction Arising from Federal Claim in Defend Trade Secrets Act claim gives the Court original jurisdiction over a federal question.

(ECF No. 18 at PageID 100.) However, that argument is untimely because Brown had the burden to plead any alternative basis for removal within thirty days of the receipt of the initial state cour after this thirty- Passenger Corp., 881 F. Supp. 919, 924 (S.D.N.Y. 1995).

However, a court may make an exception to the thirty- proposed amendments are technical in nature or merely serve to clarify what was contained in ourt will not generally make an exception to allow a Id. (quoting Stuart v. Adelphi Univ., No. 94 Civ. Notice as a notice of removal (ECF No. 1 at PageID 1), the Defend Trade Secrets Act is not

mentioned either in the Notice or on the Civil Cover Sheet. Months later, Brown may not now raise that claim as a new ground for removal. (Id.) Further, Brown has not acknowledged that a clerical error occurred in failing to attach the

include the notice of removal, but instead raises a separate, alternate basis for removal. (ECF No. 18 at PageID 100.) The Court can only work with the filings that are before it. Therefore, because Brown 28 U.S.C. § 1446(a), the Court finds that it lacks jurisdiction to hear this case.

CONCLUSION For the reasons stated above, the Court GRANTS -Complaint is DISMISSED without prejudice. If Brown still wishes to bring his Counter-Complaint, he must file it as a separate action.

IT IS SO ORDERED, this 7th day of May, 2024.

s/ Sheryl H. Lipman SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

