UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
GEORGE L. RUSSELL, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

January 15, 2019

MEMORANDUM TO COUNSEL RE: James Coppage v. United States Steel Corporation, et al.
Civil Action No. GLR-18-3823

Dear Counsel:

Pending before the Court is Plaintiff James Coppage's Emergency Motion to Remand this Action to the Circuit Court of Baltimore City with Expedited Treatment, or, in the Alternative, Motion to Amend the Complaint to Join JHB, Inc.'s Directors-Trustees as Additional Defendants, for Leave to Take the Deposition of James Coppage Without Waiving the Right to Remand and to Remand this Matter to the Circuit Court of Baltimore City (ECF No. 9). The Motion is ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will deny the Motion.

This case arises from Coppage's allegations that he was exposed to benzene-containing products during his nearly five decades of working as a newspaper pressman in Baltimore and that his exposure caused Myelodysplastic Syndromes ("MDS"), a blood disease. (Am. Compl. ¶¶ 4–7, 14, ECF No. 1-4).[1] On November 5, 2018, Coppage, a Maryland resident, filed his Complaint against sixteen out-of-state Defendants, including Union Oil Company of California ("Unocal") and Ashland, LLC ("Ashland"),[2] and one company domiciled in Maryland, JHB, Inc. ("JHB"), in the Circuit Court for Baltimore City, Maryland. (Compl. at 1–5, ECF No. 1-2). On November 9, 2018, Coppage amended his Complaint, adding Flint Ink Corporation, another out-of-state Defendant. (Am. Compl. at 5). In his five-count Amended Complaint, Coppage alleges, against all Defendants, negligence and gross negligence (Count I); breach of warranty (Count II); strict liability (Count III); battery (Count IV); and fraudulent misrepresentation (Count V). (Am. Compl. ¶¶ 11–126). Coppage seeks compensatory and punitive damages, along with his costs. (Id. at 49).

[1] In his Motion, Coppage states he is "living with advanced stage cancer." (Mem. Supp. Pl.'s Emerg. Mot. ["Pl.'s Mot."] at 18–19, ECF No. 9-1).

[2] The Complaint also named Defendants United States Steel Corporation ("U.S. Steel"), BASF Corporation, Rycoline Products, Inc., Sun Chemical Corporation, Varn International, Inc., Handschy Industries, LLC, Harcros Chemicals, Inc., T.H. Agriculture and Nutrition, LLC, Phillips North America LLC, EMCO Chemical Distributors, Inc., Shell Oil Company, Shell Oil Products US, Inc., Graphic Packaging International, LLC, and Fujifilm Hunt Chemicals USA, Inc. (Compl. at 1–5).

On December 11, 2018, Unocal and Ashland ("Removing Defendants") removed the case to this Court. (Not. Removal, ECF No. 1). On December 17, 2018, Coppage filed his Motion. (ECF No. 9). On December 21, 2018, Removing Defendants filed an Opposition. (ECF No. 47).[3] Coppage filed a Reply on December 26, 2018. (ECF No. 51). The Court allowed Defendants to file a surreply, which Removing Defendants did, on January 2, 2019. (ECF No. 69).

A defendant may remove a state court action to federal court if the federal court would have original jurisdiction over the action. 28 U.S.C. § 1441(a) (2018). Federal district courts have original jurisdiction over civil actions that arise under federal law, 28 U.S.C. § 1331 (2018), or have an amount in controversy exceeding $75,000, exclusive of interests and costs, and complete diversity of citizenship, 28 U.S.C. § 1332(a) (2018).

Where the removing party invokes diversity jurisdiction, it is that party's burden to demonstrate that diversity is "complete"—in other words, that no defendant in the case is a citizen of the same state as any plaintiff. See Cent. W.Va. Energy Co. v. Mountain State Carbon, LLC, 636 F.3d 101, 103 (4th Cir. 2011) (citing Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 (1996)). Where a defendant seeks to remove a case to federal court, the defendant must simply allege subject matter jurisdiction in his notice of removal. Strawn v. AT&T Mobility, LLC, 530 F.3d 293, 296 (4th Cir. 2008). If, however, the plaintiff challenges removal in a motion to remand, then the defendant bears the burden of "demonstrating that removal jurisdiction is proper." Id. at 297 (emphasis omitted).

The Court must strictly construe removal jurisdiction because it raises significant federalism concerns. Mulcahy v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941)). Accordingly, if federal jurisdiction is doubtful, the Court should grant a motion to remand. Id. (citing In re Business Men's Assur. Co. of America, 992 F.2d 181, 183 (8th Cir. 1993)). On the other hand, "a district court should be cautious in denying defendants access to a federal forum because remand orders are generally unreviewable." Semtek Int'l, Inc. v. Lockheed Martin Corp., 988 F.Supp. 913, 914–15 (D.Md. 1997).

Under the doctrine of fraudulent joinder, a district court may "disregard, for jurisdictional purposes, the citizenship of certain non[-]diverse defendants, assume jurisdiction over a case, dismiss the non[-]diverse defendants, and thereby retain jurisdiction." Stratton v. Nationwide Sols., LLC, No. JKB-17-3574, 2018 WL 4679859, at *3 (D.Md. Sept. 28, 2018) (alterations in original) (quoting Mayes v. Rapoport, 198 F.3d 457, 461 (4th Cir. 1999)). The doctrine only applies, however, when the removing party can show either "outright fraud in the plaintiff's pleading of jurisdictional facts or that there is no possibility that the plaintiff would be able to establish a cause of action against the [non-diverse] defendant in state court." Johnson v. Am. Towers, LLC, 781 F.3d 693, 704 (4th Cir. 2015) (internal quotation marks omitted) (quoting Hartley v. CSX Transp., Inc., 187 F.3d 422, 424 (4th Cir. 1999)).

[3] U.S. Steel filed an Opposition to Coppage's Motion on December 21, 2018. (ECF No. 49). In that Opposition, U.S. Steel simply joins in and adopts Removing Defendants' Opposition. It does not present any new or additional arguments.

"The party alleging fraudulent joinder bears a heavy burden—it must show that the plaintiff cannot establish a claim even after resolving all issues of law and fact in the plaintiff's favor." Stratton, 2018 WL 4679859, at *3 (quoting Johnson, 781 F.3d at 704). A plaintiff need only show a "glimmer of hope" of succeeding. Johnson, 781 F.3d at 704 (quoting Mayes, 198 F.3d at 466).

Here, diversity is incomplete on the face of the Amended Complaint because Coppage and JHB are both citizens of Maryland. Nonetheless, Removing Defendants urge the Court to ignore the citizenship of JHB under the fraudulent misjoinder doctrine and deny Coppage's Motion. They argue that JHB had wound up its operations by the time it dissolved in March 2006 and, therefore, is not a proper Defendant to Coppage's suit. Coppage argues that, even though JHB has long been dissolved, Removing Defendants have not demonstrated that JHB wound up its affairs, including the disposition of any insurance. Coppage, therefore, argues that he should be able to sue JHB or its directors-trustees for damages potentially covered by insurance policies.[4] The Court agrees with Removing Defendants.

In Maryland, "when a corporation has forfeited its corporate charter or has been dissolved—whether judicially, administratively, voluntarily or involuntarily—it is generally said to be 'a legal non-entity'" that cannot sue or be sued. Thomas v. Rowhouses, Inc., 47 A.3d 625, 629 (Md.Ct.Spec.App. 2012) (quoting Dual Inc. v. Lockheed Martin Corp., 857 A.2d 1095, 1101 (Md. 2004)). The corporation continues to exist, however, "for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets, and doing all other acts required to liquidate and wind up its business and affairs." Md. Code Ann., Corps. & Ass'ns ["C&A"] § 3-408(b) (West 2018). The corporation's directors are responsible for those activities, C&A § 3-410(a)–(c), and as part of the wind-up, they may sue and be sued in the name of the corporation, C&A § 3-410(c)(3).

This Court synthesized the general rule regarding defunct corporations and the exception for wind-up activities in the analogous context[5] of a forfeited corporation in Clevenger v.

[4] In his Motion, Coppage also argues that the Notice of Removal (the "Notice") is defective because Removing Defendants did not include proof that all of the other Defendants consented to removal. (Pl.'s Mot. at 3–4). In their Opposition, citing to Mayo v. Board of Education, 713 F.3d 735, 742 (4th Cir. 2013), Removing Defendants argue their representation in the Notice that "[a]ll Defendants that undersigned counsel understand to have been properly joined and served have consented to the removal of this action," (Not. Removal ¶ 27, ECF No. 1), is sufficient. (Defs.' Opp'n at 5–6, ECF No. 47). They also explain why they only listed three of their co-Defendants' counsel in the Notice. (Id. at 6 n.6). In his Reply, Coppage does not respond to Removing Defendants' argument on this point. Consistent with the holding in Mayo, the Court is satisfied that Removing Defendants properly obtained the consent of their co-Defendants—except for JHB, which is addressed separately—to remove this action.

[5] As noted above, the Thomas court considered the effect of dissolution and forfeiture on a corporation's legal status interchangeably. 47 A.3d at 629 ("when a corporation has forfeited its corporate charter or has been dissolved—whether judicially, administratively, voluntarily or involuntarily"). Further, the Maryland Code sections that concern the wind-up period after dissolution, C&A § 3-410, and forfeiture, C&A § 3-515, are nearly identical.

Baltimore American Mortgage Corp., JFM-10-1751, 2010 WL 4285214 (D.Md. Oct. 29, 2010). "While Maryland law is clear that a forfeited corporation . . . lacks any capacity to be sued, see C&A § 3-503, Maryland law is equally clear that directors/trustees can be sued in their own names, or in the name of the corporation, for claims related to the winding up of corporate affairs." Clevenger, 2010 WL 4285214 at *2 (citing C&A § 3–515(c)(3)). As a result, "claims against a forfeited corporation are viable as long as the claims by or against the directors/trustees relate to the liquidation or winding up of the corporation and are brought in the individual names of the directors/trustees or 'against a director/trustee in the name of the corporation.'" West v. Koehler, No. RDB-11-3051, 2012 WL 868657, at *4 (D.Md. Mar. 13, 2012) (quoting Clevenger, 2010 WL 4285214, at *2). "In these cases, although the forfeited corporation 'no longer legally exists, its citizenship prior to forfeiture' affects complete diversity." West, 2012 WL 868657, at *4 (quoting Clevenger, 2010 WL 4285214, at *2). Similarly, this Court in Stanback v. Levitas held that, "under [C&A] § 3-515, a corporation, whose charter has been forfeited and which is in the process of 'winding up,' is still 'alive' for purposes of being sued to satisfy its debts and liabilities." 2016 WL 893245, at *2 (D.Md. Mar. 9, 2016) (quoting Thomas, 47 A.3d at 630).

Therefore, in order for Coppage to sue JHB and have the Court consider JHB's citizenship in the diversity jurisdiction analysis, JHB must still be in the process of winding up its affairs, per Stanback, or Coppage's suit must relate to JHB's winding up, per Clevenger.[6] Neither condition is present here.

John H. Burke & Company ("JHB&C"), was a corporation formed under the laws of Maryland in 1950. (Dec. 11, 2018 Boehl Aff. ¶ 2, ECF No. 47-3). In 2001, JHB&C "transferred substantially all of its assets to G.E. Richard Graphic Supplies, Inc.," changed its name to JHB, ceased all operations, and began winding up its affairs (Id. ¶¶ 3–4; Dec. 19, 2018 Boehl Aff. ¶ 2, ECF No. 47-4.). By March 27, 2006, JHB had finished winding up its affairs, "discharging all of its existing debts and obligations" and "collecting and distributing all assets." (Dec. 19, 2018 Boehl Aff. ¶ 3). As of that date, there were no pending lawsuits against JHB, and JHB had no insurance policies. (Id. ¶¶ 4–5). On March 27, 2006, JHB filed Articles of Dissolution with the Maryland State Department of Assessment and Taxation. (Id. ¶ 6).

Based on the two affidavits from a former director-trustee, J. Douglas Boehl, and their supporting documentation, JHB has long since wound up its affairs. As of March 2006, almost thirteen years ago, it had paid all of its debts, obligations and liabilities, distributed property, and resolved any pending suits against the corporation. See Stanback, 2016 WL 893245, at *2. On the question of any insurance policies, Defendants offer Boehl's December 19, 2018 affidavit, which states that, as of the date JHB was wound up, it had no insurance policies. For his part, Coppage speculates that JHB or its predecessor had insurance at some point prior to March 2006. Weighed against Boehl's affidavit, Coppage's mere speculation about insurance coverage, without any evidence, is not "a glimmer of hope" that his claims against JHB may succeed. Johnson, 781 F.3d at 704 (quoting Mayes, 198 F.3d at 466).

[6] As part of his request for relief in the alternative, Coppage seeks to amend his Complaint again by adding JHB directors-trustees, J. Douglas Boehl and Donald J. Boehl, as defendants to fit the Clevenger formula. But, as the Court addresses below, such an amendment would be futile.

Further, Coppage's suit does not relate to JHB's winding up. Coppage sued JHB for torts that allegedly occurred while JHB&C was active; he did not sue JHB for improprieties in its wind-up process. Coppage asserts there might be insurance to cover the alleged torts, but, again, that is mere speculation at this stage. Coppage's suit does not bear a "rational relationship" to JHB's winding up, and therefore does not state a viable claim. See Stanback, 2016 WL 893245, at *2 (quoting Dual Inc., 857 A.2d at 1102).

Because Coppage cannot maintain a viable suit against JHB, JHB is not a proper party in this case, and its inclusion constitutes fraudulent joinder. The Court will, therefore, disregard, for jurisdictional purposes, JHB's Maryland citizenship. Because there is complete diversity between the remaining Defendants and Coppage, the Court will assume jurisdiction over the case, dismiss JHB, and retain jurisdiction. Stratton, 2018 WL 4679859, at *3. Because all remaining Defendants have filed Answers, the Court will issue a scheduling order.

Coppage requested expedited consideration of his Motion. The Court has obliged, mooting Coppage's requests for relief in the alternative. Further, Coppage's doctor's note is too conditional in its characterization of his disease progression to justify scheduling his deposition ahead of the normal schedule. If his health deteriorates in the way he and his doctor fear it might, Coppage shall confer with Defendants and propose an amendment to the forthcoming scheduling order.

For the foregoing reasons, Coppage's Emergency Motion to Remand this Action to the Circuit Court of Baltimore City with Expedited Treatment, or, in the Alternative, Motion to Amend the Complaint to Join JHB, Inc.'s Directors-Trustees as Additional Defendants, for Leave to Take the Deposition of James Coppage Without Waiving the Right to Remand and to Remand this Matter to the Circuit Court of Baltimore City (ECF No. 9), construed as a motion to remand, is DENIED. Despite the informal nature of this memorandum, it shall constitute an Order of this Court, and the Clerk is directed to docket it accordingly.

Very truly yours,

/s/

George L. Russell, III
United States District Judge