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Second Circuit Limits the Authority of Federal Magistrate Judges In Connection With Motions to Remand Actions to State Court

In a decision issued on May 28, 2008, the Court of Appeals for the Second Circuit limited the authority of Federal Magistrate Judges by holding that they do not have the power to remand cases to state court. The Second Circuit joined the Third, Sixth and Tenth Circuits in holding that a motion to remand a case back to the state court from which it was removed is considered to be a dispositive matter and not within the authority of a Federal Magistrate Judge.

Williams v. Beemiller, Inc.[1] involved a drive-by shooting. Daniel Williams was shot by Cornell Caldwell. Caldwell confessed to the shooting and pleaded guilty to attempted assault in the first degree. Williams and his father commenced an action in the New York Supreme Court for the County of Erie. They alleged that defendants negligently sold and distributed the firearm used by Caldwell and thus were contributorily negligent for Williams' injuries.

Two defendants, claiming diversity jurisdiction, removed the case to federal court, relying on 28 U.S.C. § 1441(a) and (b). Written consents to the removal were filed shortly after by two other defendants. Consents were not filed on behalf of the remaining defendants. Citing defendants' failure to obtain the requisite consent to removal from all defendants, plaintiffs moved for the remand of the action back to state court and the award of costs pursuant to 28 U.S.C. § 1447(c).

The District Court had referred all nondispositive pretrial matters to a Magistrate Judge in accordance with 28 U.S.C. § 636(b)(1)(A). Concluding that " 'a motion for remand [is] not dispositive as it resolves only the question of whether there is a proper basis for federal jurisdiction to support removal and does not reach a determination of either the merits of a plaintiff's claims or the defendant's defenses or counterclaims,' "[2] the Magistrate Judge entered a decision and order granting the plaintiffs' motion for

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1 2008 WL 2185871 (2d Cir. May 28, 2008).

2 *Id.* at *3.

remand and held plaintiffs were entitled to costs. The Magistrate Judge acknowledged that contrary authority existed on the issue and invited the District Court to treat the decision as a report and recommendation if deemed appropriate. Defendants timely submitted objections to the Magistrate Judge's order. Defendants argued that the District Court should review the order *de novo* as a report and recommendation on a dispositive motion.

The District Court denied defendants' objections. Finding that a motion for remand is a nondispositive issue, the District Court reviewed the decision and order of the Magistrate Judge and found that it was neither "clearly erroneous" nor "contrary to law" under Rule 72(a) of the Federal Rules of Civil Procedure. Defendants filed a notice of appeal with the Second Circuit. The plaintiffs moved, *inter alia*, to dismiss the appeal pursuant to 28 U.S.C. § 1447(d) which prohibits appellate review of an order remanding a case to state court. The Second Circuit denied the motion.

Before turning to the merits of the defendants' appeal, the Second Circuit addressed the issue as to whether it had jurisdiction to hear the case. 28 U.S.C. § 1447(d) provides that "an order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise." Citing *Thermtron Prods., Inc. v. Hermansdorfer*,[3] the Court of Appeals found that § 1447(d) must be construed together with § 1447(c), which provides that "a motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded," and that "only remand orders issued under § 1447(c) and invoking the grounds specified therein that removal was improvident and without jurisdiction are immune from review under § 1447(d)."[4] [emphasis added]

The Second Circuit had not previously addressed the issue as to whether a Magistrate Judge's order remanding a case to state court for lack of subject matter jurisdiction is considered a remand grounded in § 1447(c) and thus not subject to review. The Court relied on rulings in the Sixth and Third Circuits to conclude that a Magistrate Judge's remand order is not grounded in § 1447(c) and thus not barred from review by § 1447(d).[5]

Having decided that it had jurisdiction to hear the case, the Court of Appeals turned to the issue of whether a Magistrate Judge has authority to remand a previously removed case back to state court. The defendants claimed that a remand order cannot be considered merely a "pretrial matter" under

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[3] 423 U.S. 336, 345 (1976), *abrogated on other grounds by Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 715 (1996).

[4] 423 U.S. at 346.

[5] *See Vogel v. U.S. Office Prods. Co.*, 258 F.3d 509, 517-519 (6th Cir. 2001), *In re U.S. Healthcare* 159 F.3d 142, 146 (3d Cir. 1998).

§ 636(b)(1)(A) or a "nondispositive matter" under Rule 72 of the Federal Rules of Civil Procedure because a remand order effectively terminates all proceedings in federal court.

The Second Circuit stated that in general, the powers of Magistrate Judges are construed narrowly due to the constitutional implications of delegating the work of Article III judges to Magistrate Judges.[6] The Court of Appeals looked to its sister circuits in determining that the list of dispositive orders in § 636(b)(1)(A) was non-exhaustive,[7] and that the terms dispositive and nondispositive as used in Rule 72 of the Federal Rules of Civil Procedure "must be construed in harmony with the classification limned in section 636(b)(1)."[8]

Quoting the Third Circuit that "[a]n order of remand simply cannot be characterized as nondispositive as it preclusively determines the important point that there will not be a federal forum available to entertain a particular dispute,"[9] the Second Circuit held that a remand order is "indistinguishable from a motion to dismiss the action from federal court based on a lack of subject matter jurisdiction for the purpose of § 636(b)(1)(A)" and "a magistrate judge presented with such a motion should provide a report and recommendation to the district court that is subject to *de novo* review under Rule 72."[10] The Court held that the District Court thus erred in not giving the order of the Magistrate Judge a *de novo* review.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at (212) 701-3403 or cgilman@cahill.com; Jon Mark at (212) 701-3100 or jmark@cahill.com; John Schuster at (212) 701-3323 or jschuster@cahill.com.

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6 *Gomez v. United States*, 490 U.S. 858, 863-64 (1989).

7 2008 WL 2185871 at 6 (citing (*Phinney v. Wentworth Douglas Hosp.*, 199 F.3d 1, 5-6 (1st Cir 1999); *Rajaratnam v. Moyer*, 47 F.3d 922, 923-24 (7th Cir 1995)).

8 *Phinney*, 199 F.3d at 5-6.

9 *U.S. Healthcare*, 159 F.3d at 145-46.

10 2008 WL 2185871 at *7.