

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO.: 3:14-cv-577

US AIRLINE PILOTS ASSOCIATION,

Plaintiff,

vs.

ROGER VELEZ, on behalf of himself
and all similarly situated former America
West Pilots, and LEONIDAS, LLC,

Defendants.

NOTICE OF REMOVAL

(28 U.S.C. §§ 1331, 1332, 1367, 1441, and 1446)

TO: THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA; THE GENERAL COURT OF JUSTICE, SUPERIOR COURT DIVISION, MECKLENBURG COUNTY, NORTH CAROLINA, AND ALL PARTIES AND ATTORNEYS OF RECORD:

Defendants Leonidas, LLC (“Leonidas”), and Roger Velez (“Velez,” and collectively with Leonidas, the “Defendants”) by and through their undersigned counsel and pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441, and 1446, hereby jointly file their Notice of Removal of this civil action from the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina (the “Superior Court”), to the Charlotte Division of the United States District Court for the Western District of North Carolina.

As grounds for removal, Defendants respectfully show unto the Court the following:

1. On September 16, 2014, the Plaintiff filed Case No. 14-CvS-17206 (the “Lawsuit”) in the Superior Court, by way of a Complaint styled *US Airline Pilots Association, Plaintiff, v. Roger Velez, on behalf of himself and all similarly situated former America West Pilots, and Leonidas, LLC, Defendants* (the “Complaint”). The Superior Court is located within

the Charlotte Division of the Western District of North Carolina. A true and accurate copy of the Complaint (with any private identifying information having been redacted) is attached hereto as Exhibit 1.

2. Velez was served with a copy of the Complaint and a Summons (the “Velez Summons”) on September 20, 2014. A true and accurate copy of the Velez Summons is attached hereto as Exhibit 2.

3. Leonidas was served with a copy of the Complaint and a Summons (the “Leonidas Summons”) on September 22, 2014. A true and accurate copy of the Leonidas Summons is attached hereto as Exhibit 3.

4. In addition to the foregoing, out-of-state counsel for the Defendants received a copy of the Complaint on September 16, 2014. However, such counsel were not authorized to accept, and did not accept, service on behalf of either of the Defendants.

5. This Notice of Removal is timely filed within thirty (30) days of receipt by each of the Defendants of the initial pleading setting forth the claim for relief upon which this action is based, through service or otherwise, pursuant to 28 U.S.C. § 1446(b). Neither Defendant has previously filed any pleading in this action.

6. The Complaint filed in the Lawsuit and the Summonses issued in connection therewith, copies of which are attached hereto as Exhibits 1-3, inclusive, constitute all of the process and pleadings served upon the Defendants in the Lawsuit. Neither Defendant is aware of any orders or other process or pleadings served in the Lawsuit.

7. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because complete diversity of citizenship exists between the Plaintiff and the Defendants and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

Additionally, this Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

Complete Diversity of Citizenship Exists Between the Parties

8. The Plaintiff alleges in its Complaint that it is a private, unincorporated non-profit association existing and operating under the laws of North Carolina, with its principal place of business located in North Carolina. Upon information and belief, the Plaintiff is currently a citizen and resident of Mecklenburg County, North Carolina.

9. Currently and at the time the Complaint was filed, Leonidas is and was a limited liability company established under the laws of Arizona, with its principal place of business located in Arizona. Leonidas is currently, and was at the time the Complaint was filed, a citizen of Arizona, and at no time was Leonidas a citizen of North Carolina. Currently and at the time the Complaint was filed, the members of Leonidas, and their respective states of citizenship and residence both currently and at the time the Complaint was filed, were and are as follows:

- a. Rodney Brackin: Arizona
- b. Lee Fife: South Carolina
- c. Edward O. Bollmeier: Arizona
- d. Loyal H. Diehl, III: Arizona
- e. Patrick O'Neill: Arizona
- f. David Button: Arizona
- g. Mark Burman: Arizona
- h. John Bostic: Arizona
- i. Brian Stockdell: Arizona
- j. Eric Ferguson: Texas

- k. George Maliga: Arizona
- l. Michael Soha: Washington
- m. Johan Nh De Vicq: Maryland
- n. David P. Simmons: Missouri
- o. Don Addington: Arizona
- p. Kevin Horner: Missouri
- q. Kenneth Holmes: Arizona
- r. Roger Velez: Arizona
- s. Terrence Qureshi: Arizona
- t. Jeffrey Koontz: California

10. At no relevant time were any of the individuals set forth in the above Paragraphs 9(a)-(t), inclusive, citizens or residents of the state of North Carolina.

11. As set forth in Paragraph 9(r) above, currently and at the time that the Complaint was filed, Velez is and was a citizen and resident of the State of Arizona. At no time has Velez been a citizen or resident of the state of North Carolina.

The Amount in Controversy, Exclusive of Interest and Costs, Exceeds \$75,000

12. The amount in controversy in this matter is currently, and was at the time the Complaint was filed, in excess \$75,000, exclusive of interest and costs.

13. Despite its decertification as the exclusive bargaining representative of pilots of the former US Airways, Plaintiff is attempting to avoid liquidating its assets, which are far in excess of \$75,000, exclusive of interest and costs, and returning such funds to its members. These funds are therefore the object of the instant litigation.

14. As set forth in the Declaration of Roger Velez attached hereto as Exhibit 4 (the

“Declaration”), the sum that USAPA is trying to retain is in excess of \$11,000,000.

15. Based on the foregoing, the funds that are the object of this litigation exceed the threshold amount of \$75,000, exclusive of interest and costs.

A Federal Question Exists With Respect to Plaintiff’s Claims

16. In addition to the foregoing basis for removal of this action, this Court also has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

17. The substance of the Plaintiff’s Complaint is its argument that it continues to maintain some representational rights following its decertification as an exclusive bargaining representative by the National Mediation Board. (See, e.g., Complaint at ¶¶ 63-66.) As such, the Plaintiff’s claims involve and are founded upon issues arising under the Railway Labor Act, 45 U.S.C. §§ 151, et seq.

18. Plaintiff’s Complaint also seeks to determine rights and obligations founded in the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§ 401, et seq. (“LMRDA”). Section 501 of the LMRDA provides that union officers hold union assets as fiduciaries and authorizes an action against union officers if they act in derogation of their fiduciary obligations. By its Complaint, Plaintiff is seeking to obtain a determination that its officers’ actions (e.g., their failure to dissolve USAPA and return assets to its members and their expenditure of those assets to advance the interests of one portion of USAPA’s membership against the interests of another portion of its members) are not breaches of its officers’ fiduciary duties. That is a question controlled by the LMRDA.

19. Therefore, as an action of a civil nature founded on a claim or right arising under the laws of the United States, this action may therefore be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441(a) and (b).

20. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over any additional claim for relief that may be asserted by the Plaintiff in the Complaint, should it be determined to exist, as the allegations in the Complaint establish that any such purported cause of action derives with the above causes of action from a common nucleus of operative fact.

21. In accordance with 28 U.S.C. § 1446(d), after the filing of this Notice of Removal, the Defendants will give written notice thereof to counsel for the Plaintiff, and will file a copy of this Notice with the Clerk of the Superior Court. Attached hereto as Exhibit 5 is a copy of the Notice of Filing of Notice of Removal (without exhibits), which will be filed (with a filed copy of this Notice) with the Clerk of the Superior Court.

Based upon the foregoing, this action is hereby removed to the Charlotte Division of the United States District Court for the Western District of North Carolina pursuant to 28 U.S.C. §§ 1441 and 1446.

Respectfully submitted, this the 16th day of October, 2014.

/s/ C. Grainger Pierce, Jr.
C. Grainger Pierce, Jr. N.C. Bar No. 27305
Attorney for Defendants
NEXSEN PRUET, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202
Telephone: (704) 339-0304
Fax: (704) 805-4712
E-mail: gpierce@nexsenpruet.com

CERTIFICATION

I, C. Grainger Pierce, Jr., pursuant to 28 U.S.C. § 1446(a), certify that this Notice of Removal is well-grounded in fact and warranted by law, and is otherwise made and filed in accordance with Rule 11 of the Federal Rules of Civil Procedure.

This the 16th day of October, 2014.

/s/ C. Grainger Pierce, Jr.
C. Grainger Pierce, Jr. N.C. Bar No. 27305
Attorney for Defendants
NEXSEN PRUET, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202
Telephone: (704) 339-0304
Fax: (704) 805-4712
E-mail: gpierce@nexsenpruet.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing NOTICE OF REMOVAL with the Clerk of the court using the CM/ECF system. In the event that notification pursuant to the CM/ECF system cannot be sent to counsel for the Plaintiff, John Gresham, I hereby certify that the foregoing document was duly served upon counsel for the Plaintiff in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure by depositing it in the United States Mail, first-class postage prepaid, addressed as follows:

John Gresham
Tin Fulton Walker & Owen
301 East Park Avenue
Charlotte, NC 28203

This the 16th day of October, 2014.

/s/ C. Grainger Pierce, Jr.
C. Grainger Pierce, Jr. N.C. Bar No. 27305
Attorney for Defendants
NEXSEN PRUET, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202
Telephone: (704) 339-0304
Fax: (704) 805-4712
E-mail: gpierce@nexsenpruet.com