

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
ROGER VELEZ, on behalf of himself and)
all similarly situated former America West)
Pilots, and LEONIDAS, LLC,)
)
Defendants.)

PLAINTIFF’S MOTION TO REMAND

Pursuant to 28 U.S.C. § 1447(c) and Local Rule 7.1, Plaintiff US Airline Pilots Association (“USAPA”) hereby moves the Court to remand this matter back to the Superior Court of North Carolina, General Court of Justice Division, Mecklenburg County, on the grounds that the Court lacks subject matter jurisdiction and federal question jurisdiction. In support of this Motion, Plaintiff shows the Court as follows:

1. On September 16, 2014, USAPA filed a Complaint for Declaratory Judgment against Defendants Roger Velez (“Velez”), on behalf of himself and all similarly situated former America West Pilots, and Leonidas, Inc. (“Leonidas”) (collectively the “Defendants”), in the Superior Court of North Carolina, General Court of Justice Division, Mecklenburg County, Case No. 14-CVS-17206. Doc. 1-1, Complaint, annexed as Exhibit 1 to Notice of Removal. Velez was served with a copy of the Summons and Complaint on September 20, 2014. Doc. 1-2, Exhibit 2 to Notice of Removal. Leonidas was served with a copy of the Summons and Complaint on September 22, 2014. Doc. 1-3, Exhibit 3 to Notice of Removal.

2. On October 16, 2014, Defendants filed a Notice of Removal to Federal Court in which they purport to remove this action to this Court on the grounds that: (a) complete diversity of citizenship exists between the parties; (b) the amount in controversy, exclusive of interest and costs, exceeds \$75,000; and (c) a federal question exists with respect to Plaintiff's claims. Doc. 1, Notice of Removal.

3. None of the purported reasons for removal are present, and this matter should be remanded back to the Superior Court of North Carolina.

4. As set forth in the Declaration of Robert Streble, USAPA has 927 members who reside in the state of Arizona. Accordingly, because USAPA, as an unincorporated association is a citizen of the state of each of its members, there is no complete diversity of citizenship.

5. As to the amount in controversy, USAPA makes no claim for damages in its Complaint for Declaratory Judgment. Instead, USAPA seeks a declaration as to the validity of certain actions taken by the National Officers. Thus, the amount in controversy does not exceed \$75,000, which is grounds alone to defeat the claim of jurisdiction based upon diversity. Since neither prong of the test for diversity jurisdiction is met, this Court lacks subject matter jurisdiction under 28 U.S.C. §1332.

6. This Court also lacks federal question jurisdiction. USAPA does not allege any claims arising under the Railway Labor Act or the Labor Management Reporting and Disclosure Act, as erroneously purported by Defendants. Moreover, those statutes do not completely preempt USAPA's state law claims. That Defendants raise those statutes as defenses or counterclaims cannot serve as a basis for removal to federal court.

7. 28 U.S.C. §1447 provides that an order remanding a case may require payment of just costs and expenses, including attorneys' fees, incurred as a result of the removal.

8. USAPA submits its supporting brief contemporaneously with this motion pursuant to Local Rule 7.1.

This the 17th day of November, 2014

TIN FULTON WALKER & OWEN, L.L.P.

s/ John Gresham
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION TO REMAND 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 defendants, I hereby certify that the foregoing document was duly served upon counsel for defendants by depositing a copy hereof in a first-class, postage-prepaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

C. Grainger Pierce, Jr.
NEXSEN PRUET, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202

This the 17th day of November, 2014.

s/ John W. Gresham
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