

Does “Any Defendant” Really Mean “Any Defendant”?

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The U.S. Supreme Court to Address Whether Counterclaim Defendants Can Remove Class Action Claims Under CAFA

On September 27, 2018, the United States Supreme Court granted the petition for writ for certiorari in *Home Depot U.S.A., Inc. v. Jackson*, No. 17-1471 (“*Home Depot*”), to address two issues: (1) whether, under the federal Class Action Fairness Act (“CAFA”), a third-party defendant can remove to federal court class action claims that are brought as counterclaims by the defendant/third-party plaintiff; and (2) whether the Supreme Court’s holding in *Shamrock Oil & Gas Co. v. Sheets* [1] — that an original plaintiff may not remove a counterclaim against it — extends to third-party counterclaim defendants. [2] Resolution of these issues by the Supreme Court may have significant implications for any counterclaim or third-party defendant (and possibly any counterclaim defendant) seeking to remove a class action or a mass action from state to federal court.

Under CAFA, “any defendant” in a state court class action is permitted to remove the action to federal court if certain jurisdictional requirements are satisfied [3]. Under long-standing jurisprudence, however, the Supreme Court in *Shamrock Oil* held that a plaintiff who becomes a counterclaim defendant is not considered a “defendant” that is permitted to remove an action under the traditional removal statutes [4].

Although *Shamrock Oil* involved a predecessor to the current removal statutes (including CAFA), federal courts reviewing removed cases by counterclaim defendants pursuant to CAFA have reached the same conclusion expressed in *Shamrock Oil* [5]. Similarly, courts have held that a third-party defendant brought into the case after it is filed is not considered a “defendant” entitled to remove a matter to federal court under CAFA [6]. Removal as a “defendant” in these circumstances has been found to be impermissible because plaintiffs who become counterclaim defendants, or newly added third-party defendants to a counterclaim, are not considered original defendants because “original defendants” are only those parties joined by the original plaintiff [7].

The *Home Depot* case began as a debt collection action in North Carolina state court against the respondent, George Jackson. In response to the collection action, Jackson filed a class-action consumer protection counterclaim against (1) the plaintiff (a credit card company) and (2) Home Depot and Carolina Water Systems, Inc., who were not parties to the original collection action. Thereafter, the original plaintiff voluntarily dismissed its affirmative debt collection claims against Jackson, and Home Depot removed the counterclaims to federal court pursuant to CAFA [8].

In removing the action, Home Depot argued that it should be considered a “defendant” in the class action because it was never a plaintiff in any claim associated with the original case in state court and all of the other prerequisites to a CAFA removal were met [9]. In response, Jackson sought to remand the case back to state court, and amended the complaint to remove the original plaintiff from the counterclaim [10]. The district court granted the motion to remand, finding that Home Depot, as a third-party defendant, was not an “original defendant” entitled to seek removal. [11] Home Depot appealed to the Fourth Circuit, which affirmed the district court’s decision, relying on the precedent set forth by the Supreme Court in *Shamrock Oil* [12].

The Supreme Court’s grant of certiorari in *Home Depot* is unique because there is no apparent circuit split on this issue. To date, all the circuit courts that have weighed in on the issue recognize *Shamrock Oil* as *stare decisis* and decline to treat counterclaim defendants (including third-party defendants) as original “defendants” within the meaning of the removal statutes. It is expected that the Supreme Court will clarify the reach of *Shamrock Oil* as applied to CAFA removals by counterclaim defendants and third-party defendants, and will confirm how courts should interpret the phrase “any defendant” under CAFA. If the Supreme Court were to broadly interpret the phrase “any defendant,” it could effectively overturn *Shamrock Oil* and open up the federal courts to hear claims that have, at least since *Shamrock Oil*, not been removable. As such, the Supreme Court’s decision in *Home Depot* could have a far-reaching impact on the ability of businesses and financial institutions to remove class action counterclaims and third-party counterclaims under CAFA. K&L Gates will continue to monitor the *Home Depot* matter and will report on future developments on this important class action issue.

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