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Iqbal Pleading Standard Does Not Apply to Fraudulent Joinder Analysis on Motion to Remand

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In ***Overholt v. Purina Animal Nutrition LLC***, the Honorable Robert Holmes *Bell* was faced with determining whether a defendant was added to the plaintiffs' state court complaint in a fraudulent effort to defeat federal diversity jurisdiction. The Court held that because the plaintiffs had a "colorable" cause of action against the non-diverse defendant, the non-diverse defendant was not fraudulently joined, such that plaintiffs' motion to remand the case to state court was granted.

The Court began its analysis by stating the long-standing rule that, in determining whether federal diversity jurisdiction exists under 28 U.S.C. § 1332, "courts may disregard the citizenship of parties against whom there is no 'colorable' cause of action." Opinion at 2 (citation omitted). The party seeking to remove a matter to federal court has a "particularly heavy burden" of establishing fraudulent joinder, in that courts apply a test "similar to, but more lenient than, the analysis applicable to a Rule 12(b)(6) motion to dismiss." *Id.* at 2-3 (citation omitted). "The question is whether there is arguably a reasonable basis for predicting that the state law might impose liability on the facts involved." *Id.* at 3 (citation omitted).

The most interesting aspect of the opinion is the Court's discussion of the distinction between its fraudulent joinder analysis and the heightened standard for pleading of federal complaints articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Under *Twombly* and *Iqbal*, complaints filed in federal court must allege facts sufficient for the court to conclude that the plaintiff's claim is "plausible." However, the Court held that the *Twombly* and *Iqbal* pleading standards are not applied to state court complaints that are removed to federal court, at least for the purpose of determining whether a non-diverse defendant was fraudulently joined in the action to defeat federal diversity jurisdiction. "Plaintiffs are required to state a 'colorable' claim, not necessarily a claim that needs the stricter 12(b)(6) pleadings requirements under [*Twombly* and *Iqbal*]." Op. at 7-8.

The Court ultimately concluded that "for purposes of the lenient pleading standards applied to motions to remand, [plaintiffs'] factual allegations are sufficiently precise to make at a colorable claim" against the non-diverse defendant. *Id.* at 8.

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