



allowed the case to be originally brought in this Court, pursuant to 28 U.S.C. § 1332. *See Fagan Feb. 5, 2008 Decl. ¶ 8.* Plaintiffs reside in New Jersey. Defendants D. Jaffe, M. Jaffe and their companies reside and/or domiciled in New Jersey. *See Fagan Feb. 5, 2008 Decl. ¶ 9.* Defendants M. Rogers and K. Rogers are the only defendants who are not residents of or domiciled in New Jersey. *See Fagan Feb. 5, 2008 Decl. ¶ 9.*

Plaintiffs were in the process of moving to preserve and gain access to limited evidence when Defendants retained counsel whose apparent purpose appears to have been to first threaten plaintiffs accusing them of frivolous litigation and then attempting to stall or delay plaintiffs ability to secure and gain access to evidence, and to prevent and/or enjoin further diminution of assets and/or removal of assets from the jurisdiction. *See Fagan Feb. 5, 2008 Decl. ¶ 10.*

Plaintiffs sought (i) to preserve evidence, including electronically stored and hard copies, which are within Defendants' exclusive custody, possession and/or control, relevant to the claims that are being concealed and are in danger of being destroyed and/or lost; (ii) to compel limited production of certain evidence from defendants' necessary to expeditious resolution of certain procedural matters including but not limited to Motions for Partial Summary Judgment; (iii) to compel Defendants to Identify and disclose insurance coverage for plaintiffs claims; (iv) to require Defendants to provide proof that they notified their insurers of the existence of Plaintiffs' claims; and (v) to compel Defendants D. Jaffe and M. Jaffe (who are both over 80 years of age with health problems) to appear for expedited depositions . *See Fagan Feb. 5, 2008 Decl. ¶ 17.*

It was at that moment that Defendants' counsel filed Notice of Removal attempting to unreasonably and/or vexatiously multiply and/or complicate the proceedings. *See Fagan Feb. 5, 2008 Decl. ¶ 18.* The Notice of Removal is defective for reasons such as:

**First** – The Notice does not contain a “short and plain statement of the grounds for removal” – as required by 28 USC 1446 (a) (*See Amended*



*Summons & Complaint Exh. 1 and Fagan Feb. 5, 2008 Decl. ¶ 18 a);*

**Second** – The Notice of Removal was not accompanied by a Case Information Statement, signed by Defendants’ counsel, which would also have shown the grounds for removal (*See Amended Summons & Complaint Exh. 1 and Fagan Feb. 5, 2008 Decl. ¶ 18 b);* and

**Third** – The Notice of Removal is accompanied by a Notice of Motion (on Short Notice) to Quash Subpoenas (*See Notice of Filing Notice of Removal Exh. 2 and Fagan Feb. 5, 2008 Decl. ¶ 18 c)* which is accompanied by a Certification of Counsel in which Attorney Till states “I am fully familiar with the facts and circumstances surrounding the within matter” (*See Feb. 5, 2008 Certification of Defendants’ Counsel Til Exh. 3, ¶ 1 and Fagan Feb. 5, 2008 Decl. ¶ 18 c)* and which then fails to provide a “short and plain statement of the grounds for removal”, suggests that the requested information and documents from a defendants non-lawyer business manager (Schlossman) and personal bookkeeper (Nowlin) are somehow protected by attorney-client privilege and work product doctrine (*See Feb. 5, 2008 Certification of Defendants’ Counsel Til, Exh. 3 ¶ 6 and Fagan Feb. 5, 2008 Decl. ¶ 18 c)* or are over-broad (*See Feb. 5, 2008 Certification of Defendants’ Counsel Til, Exh. 3, ¶ 7 and Fagan Feb. 5, 2008 Decl. ¶ 18 c)* and was not accompanied by a Memorandum of Law.

There are other incurable infirmities that made and make removal improper. (*See Fagan Feb. 5, 2008 Decl. ¶ 19*). Defendants’ counsel, who is “*fully familiar with the facts and circumstances surrounding the within matter*” (*See Feb. 5, 2008 Certification of Defendants’ Counsel Til Exh. 3, ¶ 1*) know that the Notice of Removal should never have been filed in the first place. And, the fact that the Notice of Removal is accompanied by a Motion to Quash

Subpoenas exposes the true motive, which is to delay and unreasonably and/or vexatiously multiply the proceedings. (See *Fagan Feb. 5, 2008 Decl. ¶ 22*).

The Notice of Removal is also an attempt to interfere with Plaintiffs' reasonable efforts to (i) locate, secure and preserve evidence relevant to Plaintiffs' cause of action, (ii) preserve the testimony of aged and/or infirm Defendants D. Jaffe and M. Jaffe, (iii) preserve evidence that is at risk of being destroyed and (iv) prevent the ongoing diminution of assets and/or concealment and/or transfer outside the jurisdiction of New Jersey Courts of Defendants assets needed to satisfy Plaintiffs damages. (See *Fagan Feb. 5, 2008 Decl. ¶ 23*).

Plaintiffs have spent and will in the future have to spend significant time, energy and resources, and take time away from other work to respond to this improvidently filed Notice of Removal and to respond to Defendants' ongoing efforts to interfere with the efforts to locate, identify and preserve evidence, to secure deposition testimony from elderly and infirm parties, as well as our efforts to stop alleged improper diminution, concealment and/or transfer of assets. (See *Fagan Feb. 5, 2008 Decl. ¶ 24*).

2) **SUMMARY REMAND SHOULD BE ORDERED**

28 U.S.C. § 1441 (a) provides in pertinent part that *"any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending . . ."* 28 U.S.C. § 1441 further provides that *"removal of an action under this subsection shall be made in accordance with section 1446 of this title"*.

28 U.S.C. § 1446 provides in pertinent part, as follows:

*(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a*



*copy of all process, pleadings, and orders served upon such defendant or defendants in such action. (emphasis added)*  
... (c) (4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand. (emphasis added).

In order for a case to be removable to the district court, it must have original jurisdiction by either a federal question or diversity of citizenship. See 28 U.S.C. §§ 1331, 1332, 1441. "Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Kline v. Security Guards, Inc.*, 386 F.3d 246, 252 (3d Cir. 2004) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). If the case could not have been filed originally in federal court, then removal under 28 U.S.C. § 1441 is improper and remand is appropriate. *Id.* (citations omitted).

This case involves no Federal question and there is no diversity of citizenship. The case is not removable. The Notice of Removal should never have been filed. And Defendants counsel knew or should have known that at the time the Notice of Removal was filed.

**3) COSTS SHOULD BE IMPOSED AGAINST DEFENDANTS' COUNSEL**

28 U.S.C. § 1927 states that "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

At the time the Notice of Removal was filed on Feb. 5, 2008, Defendants' counsel was fully familiar with the facts and circumstances surrounding the within matter" (See Feb. 5, 2008 Certification of Defendants' Counsel Til Exh. 3, ¶ 1). As such, when the Notice of Removal was actually filed Defendants' counsel knew that there was no Federal question involved and there was no complete diversity of citizenship. At the time the Notice of Removal was actually filed, Defendants' counsel knew he was signing and filing a Notice of Removal for a case that

could not have been originally brought in the US District Court. The only logical explanation for Defendants' Counsel's filing of the Notice of Removal, which was accompanied by a Motion to Quash (also allegedly defective on its face), was to unnecessarily and/or vexatiously delay or multiple the proceedings in the hopes of frustrating Plaintiffs from pursuing their causes of action and from attempting to preserve evidence and prevent diminution and/or transfer of assets outside the jurisdiction.

**4) CONCLUSION**

For the foregoing reasons, Plaintiffs' Motion for Summary Remand, Imposition of Costs should be granted in its entirety.

Dated: February 6, 2008  
Short Hills, NJ



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