REMAND/MADE JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PLUSH LOUNGE LAS VEGAS, LLC, Plaintiff, v. ADMIN LALJI, STEPHEN J. ROUGHLEY, THADDAS L. ALSTON, LARCO INVESTMENTS LTD., MAPLE LEAF PROPERTY MANAGEMENT INC., HOTSPUR GLOBAL LTD., HOTSPUR RESORTS NEVADA, INC., Defendants.	No CV 08-8394-GW (JTLx) **DECISION AND ORDER re APPLICATION FOR REMAND**

I. Introduction

On November 4, 2008, plaintiff Plush Lounge Las Vegas, LLC ("Plaintiff" or "Plush Lounge") filed this action against defendants Amin Lalji, Stephen J. Roughley, Thaddas L. Alston, Larco Investments Ltd., Maple Leaf Property Management Inc., Hotspur Global Ltd., and Hotspur Resorts Nevada, Inc. ("Hotspur Resorts") (collectively "Defendants") for fraud, negligent misrepresentation, intentional interference with contract, conversion and unfair competition. On December 19, 2008, Defendants removed this matter to federal court on the basis of diversity of the parties.

A number of motions have been filed. Plaintiff has applied to have the case remanded back to state court because there is a lack of complete diversity. See Docket Item Number ("Doc. No.") 23. Defendants have filed: 1) a motion to dismiss the

Complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6) and a motion to strike under FRCP 12(f) (see Doc. No. 9); 2) a motion to transfer this action to the District of Nevada pursuant to 28 U.S.C. § 1404(a) (see Doc. No. 26); and 3) except for Hotspur Resorts, a motion to dismiss for lack of personal jurisdiction pursuant to FRCP 12(b)(2) (see Doc. No. 10).

As this Court finds that there is not complete diversity herein, it will remand the matter back to state court. Consequently, it need not address Defendants' motions.

II. Legal Standard

A suit filed in state court may be removed to federal court by the defendant or defendants if the federal court would have had original subject matter jurisdiction over that suit. 28 U.S.C. § 1441(a); Snow v. Ford Motor Co., 561 F.2d 787, 789 (9th Cir. 1977). A motion to remand is the proper procedure for challenging removal. See 28 U.S.C. § 1447(c). Courts construe the removal statute strictly against removal, and any doubts must be resolved in favor of remand. Boggs v. Lewis, 863 F.2d 662, 663 (9th Cir. 1988). The defendant always bears the burden of establishing that removal is proper. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "Federal juris-diction must be rejected if there is any doubt as to the right of removal in the first instance." Id.

III. Discussion

A. Background

The Complaint herein avers that Plush Lounge "is a limited liability company, duly organized and validly existing under the laws of the state of California." See ¶ 3 of Complaint attached as Exhibit A to Notice of Removal, Doc. No. 1. Defendant Roughley is alleged to be "an individual residing in Nevada and doing business in Angeles County [sic], California" (Id. at ¶ 5), and Hotspur Resorts "is a purported corporation allegedly organized and existing under the laws of Nevada . . . ." See Id. at ¶ 10.

In support of its application for remand, Plush Lounge submitted the Declaration

of John C. Kirkland (the general outside counsel for Plush Lounge) who states (and provides documentary evidence from the State of Nevada Secretary of State) that "since October 2008, the managing member of Plush [Lounge] has been PLLV Holdings, LLC, a Nevada limited liability company." See ¶ 2 of Doc. No. 24-2. Plaintiff has also included the Declaration of Roland Katavic who states he is a citizen of Nevada and has been a member of PLLV Holdings, LLC, since October 2008. See Doc. No. 25, at ¶ 3. Plaintiff argues that since there are Nevada citizens on both sides of this litigation, there is no diversity jurisdiction.

A little litigation history is appropriate here. Prior to this action, Plush Lounge had brought a lawsuit against Hotspur Resorts. See Plush Lounge Las Vegas, LLC, v. Hotspur Resorts Nevada, Inc., Case No. CV-06-2626 (C.D. Cal.). In that case, Hotspur Resorts took the position that Plush Lounge had to be treated as a Nevada citizen because it was (at that time) a limited liability company with one or more members who were citizens of Nevada. See e.g. Hotspur Resorts' Notice of Motion and Motion to Dismiss Supplemental Claims in CV-06-2626, which is attached as Exhibit 1 to Plaintiff's Reply Memorandum herein, Doc. No. 32-2.

B. Analysis

The parties' respective arguments regarding the existence of diversity jurisdiction (and, specifically, the question of Plaintiff's citizenship) are now diametrically opposed to the positions they took in the prior action. In the previous lawsuit, Plaintiff alleged that it was a limited liability company, "duly organized and validly existing under the laws of the State of California," and that it had no members that were citizens of the state of Nevada. Hotspur Resorts asserted that it had learned during discovery that at least two members of Plush Lounge were citizens of Nevada at the time the action was filed, although both members were subsequently bought out by Plush Lounge.

There is an explanation for the parties' shifts in positions. In its moving papers, Plaintiff asserts that "[s]ince October 2008, the managing member of Plush has been

PLLV Holdings, LLC ["PLLV"], a Nevada limited liability company." Kirkland Decl. ¶ 2. A copy of PLLV's charter is attached as Ex. 1 to the Kirkland Declaration. Also submitted with Plaintiff's moving papers is the Declaration of Roland Katavic, who states that he is a citizen of Nevada and a member of PLLV. Katavic Decl. ¶¶ 2 and 3. Both Plaintiff and PLLV are limited liability companies whose citizenship is determined by the citizenship of their members (and their members' members). See Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006); see also Hicklin Eng'g, L.C. v. Bartell, 439 F.3d 346, 347-48 (7th Cir. 2006) ("The citizenship of a limited liability company is that of its members, and its members may include partnerships, corporations, and other entities that have multiple citizenships. A federal court thus needs to know each member's citizenship, and if necessary each member's members' citizenships.") (citations omitted). Thus, it would appear that Plaintiff is non-diverse from at least Defendant Hotspur Resorts, and that there cannot be removal jurisdiction based on diversity.

Defendants, writing that "any addition of Mr. Katavic . . . is nothing more than a collusive and improper attempt to interfere with diversity jurisdiction" (see Opp. 8:8-9), urge this Court to ignore Katavic's citizenship for the purpose of determining whether diversity exists. Defendants have cited a small array of cases in which courts have "looked through" attempts to avoid federal jurisdiction by disregarding assignments of claims, appointments of administrators, and joinders of sham defendants in order to find that diversity jurisdiction exists. Not a single case has been cited in which a court was permitted to ignore the citizenship of a member of a LLC party, partnership, or unincorporated association, which is what is presented here.

Defendants would have the Court analogize to the "assignment" line of cases exemplified by Kramer v. Carribean Mills, 394 U.S. 823 (1963). It is doubtful, for the reasons discussed below, that this analogy is a fruitful one. Nevertheless, the question merits a brief discussion whether a court may, in order to find diversity jurisdiction, examine the motivation behind an assignment of a claim that ostensibly destroys

diversity.

In Kramer, a Panamanian corporation assigned its cause of action under a contract to a Texas attorney in order to create diversity jurisdiction. Kramer would appear to be distinguishable from this case, if for no other reason, in that a federal statute specifically provides that "[a] district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." 28 U.S.C. § 1359. In Oakley v. Goodnow, 118 U.S. 43, 45 (1886), the Supreme Court wrote: "While . . . the courts of the United States have under the act of 1875 the power to dismiss or remand a case, if it appears that a colorable assignment has been made for the purpose of imposing on their jurisdiction, no authority has as yet been given them to take jurisdiction of a case by removal from a State court when a colorable assignment has been made to prevent such a removal." See also Provident Savings Life Assurance Society v. Ford, 114 U.S. 635, 641 (1885) (colorable assignment of a complete cause of action to defeat removal is effective to give the state court exclusive jurisdiction). Neither Oakley nor Provident has ever been *expressly* overruled or superseded.

Courts, however, have questioned the continuing validity of the Provident line of cases to disregard an administrator appointment which destroyed diversity, see Grassi v. Ciba-Geigy, Ltd., 894 F.2d 181, 184 (5th Cir.1990) (citing Miller v. Perry, 456 F.2d 63 (4th Cir.1972)). In Grassi, the Fifth Circuit wrote that Provident and its progeny "stand . . . for two propositions: First, that federal courts lack the power to look beyond the pleadings in determining the existence of diversity jurisdiction absent specific statutory authorization; and second, that state law and the state court systems will adequately defend a defendant's right to removal jurisdiction against devices designed to defeat it." Id. at 183. Writing that (1) subsequent cases have permitted courts to look beyond pleadings, and (2) the proposition that state courts will adequately defend diversity jurisdiction "has proved untrue in practice," the Fifth Circuit endorsed the Fourth Circuit's view that "the difference between devices

creating and devices destroying diversity was now immaterial." Id. at 184 (citing Miller, 456 F.2d at 66).

The Ninth Circuit, in dicta, has tentatively embraced the Fifth Circuit's reasoning. In Attorneys Trust v. Videotape Computer Prods., 93 F.3d 593, 598 (9th Cir.1996), it wrote:

> In reaching our conclusion that the nature of the assignment [destroying diversity] must be considered, we do not overlook older Supreme Court decisions regarding removal. See, e.g., Provident Sav. Life Assur. Soc'y v. Ford, 114 U.S. 635, 5 S. Ct. 1104, 29 L. Ed. 261 (1885); see also Carson v. Dunham, 121 U.S. 421, 7 S. Ct. 1030, 30 L. Ed. 992 (1887); Leather Mfrs.' Nat'l Bank v. Cooper, 120 U.S. 778, 7 S. Ct. 777, 30 L. Ed. 816 (1887); Oakley v. Goodnow, 118 U.S. 43, 6 S. Ct. 944, 30 L. Ed. 61 (1886). In those cases, the Court refused to allow removal of an action filed in state court after a diversity-destroying colorable assignment was made, even if it was for collection only. In each of those cases, the Supreme Court indicated that it was loath to interfere with state court jurisdiction, that nothing in the removal statutes referred to removal in such an instance, and that the parties could present their real party in interest objections and their assertions about destruction of federal court jurisdiction as defenses in the state court. See, e.g., Provident, 114 U.S. at 640-41, 5 S. Ct. at 1107.
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> The Fifth Circuit has expressed doubt about the continuing validity of the underlying rationales of those cases. See Grassi, 894 F.2d at 182-85. While the Fifth Circuit's doubts are well grounded, we need not recite them here, nor need we rely upon them.

Even if the Court were to accept the premise that the Court may look behind the collusive *assignment of a claim* in order to find diversity (and it may well be true that the Provident line of cases is obsolete in that limited scenario), it would require a quantum leap in logic to conclude from this that it can examine the motivation behind the assignment of an interest in an LLC (or the addition of a diversity destroying new member into the LLC). All the two scenarios really have in common is the word "assignment." In the "assignment" cases cited by Defendants, the jurisdictional question is answered by deciding who is the real party in interest. See, e.g., Attorneys Trust, 93 F.3d at 599. Here, there is no question that Plush Lounge is the proper party. It is not obvious that any of the cases cited by Defendants even support their argument

that Plaintiff's motivation in adding PLLV Holdings, LLC, as a managing member is relevant to the determination whether diversity jurisdiction exists.[1] This would especially be true here where Plush Lounge was originally a Nevada limited liability company that unsuccessfully attempted to transform itself into a California citizen for purposes of the prior litigation.

IV. Conclusion and Order

For the reasons stated above, Plaintiff's application for a remand of this matter back to state court is granted as there was not complete diversity of the parties.

This action is remanded forthwith.

DATED: This 7th day of December, 2010

GEORGE H. WU
United States District Judge

[1] In Go Computer Inc. v. Microsoft Corp., 2005 U.S. Dist. LEXIS 31404 (N.D. Cal. Nov. 21, 2005), it was noted that the decisions in Grassi and Attorneys Trust involved (and were properly limited to) partial claim assignment situations, especially where the lawsuits were originally filed in federal court. Id. at *6-7. In rejecting Microsoft's contention that diversity was still present even though plaintiff Go Computer was a citizen of the same state as Microsoft because Go Computer been assigned the claim upon which its lawsuit was based, the court stated:

> [B]ecause the Court cannot find that the assignment in question was a partial assignment, because Provident and its progeny have not been overruled, because this case was not originally filed in federal court, see Attorney's [sic] Trust, 93 F.3d at 599, and because the Court must resolve any doubts against removal, the Court concludes that Microsoft has not met its burden to establish that removal jurisdiction exists on the basis of diversity.

Id.