

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

|   |   |                                  |
|---|---|----------------------------------|
| <b>RC LODGE, LLC, et al.,</b>             | ) |                                  |
|   | ) |                                  |
| <b>Plaintiffs,</b>                        | ) |                                  |
|   | ) |                                  |
| <b>v.</b>                                 | ) | <b>CIVIL ACTION 12-0112-WS-M</b> |
|   | ) |                                  |
| <b>SE PROPERTY HOLDINGS, LLC, et al.,</b> | ) |                                  |
|   | ) |                                  |
| <b>Defendants.</b>                        | ) |                                  |

**ORDER**

By order dated July 16, 2012, the Court granted the plaintiffs’ motion to remand. (Doc. 59). The plaintiffs subsequently filed a motion for costs and fees under 28 U.S.C. § 1447(c). (Doc. 61). The removing defendant has filed a response in opposition and the plaintiffs a reply, (Docs. 63, 64), and the motion is ripe for resolution.

The defendant argues that the plaintiffs’ motion is fatally untimely because it was not filed until after the case was remanded for lack of subject matter jurisdiction. (Doc. 63 at 12-14). Every appellate decision brought to the Court’s attention, however, has ruled against the defendant’s position. *See Bryant v. Britt*, 420 F.3d 161, 164-66 (2<sup>nd</sup> Cir. 2005); *Wisconsin v. Hotline Industries, Inc.*, 236 F.3d 363, 365 (7<sup>th</sup> Cir. 2000); *Stallworth v. Greater Cleveland Regional Transit Authority*, 105 F.3d 252, 257 (6<sup>th</sup> Cir. 1997); *Mints v. Educational Testing Service*, 99 F.3d 1253, 1257-59 (3<sup>rd</sup> Cir. 1996); *Moore v. Permanente Medical Group, Inc.*, 981 F.2d 443, 445 (9<sup>th</sup> Cir. 1992); *Coward v. AC and S, Inc.*, 91 Fed. Appx. 919, 921-22 (5<sup>th</sup> Cir. 2004). The two unreasoned lower court decisions on which the defendant relies do not outweigh the wealth of reasoned appellate authority to the contrary.

“An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). “Absent unusual circumstances, courts may award attorney’s fees under §

1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). The plaintiffs’ brief and superficial argument, which simply places out of context certain innocuous words and phrases used in the order of remand, (Doc. 61 at 2-3), falls far short of meeting this standard. Accordingly, the motion for costs and fees is **denied**.

DONE and ORDERED this 14<sup>th</sup> day of August, 2012.

s/ WILLIAM H. STEELE  
CHIEF UNITED STATES DISTRICT JUDGE