

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EVERETT HOGGE AND PRISCILLA HOGGE,  
Plaintiff,  
v.  
A W CHESTERTON COMPANY,  
Defendant.

No. C07-02873 MJJ

**ORDER GRANTING PLAINTIFFS’  
MOTION TO REMAND**

Before the Court is Plaintiffs Everett Hogge and Priscilla Hogge (“Plaintiffs”) Motion to Remand.<sup>1</sup> Defendant John Crane Inc. (“Defendant”) opposes the motion. The Court having considered the parties’ arguments and upon good cause shown **GRANTS** Plaintiffs’ motion.

Pursuant to 28 U.S.C. § 1441(a), a defendant in a civil action may remove a case from state court to federal district court if the district court has subject matter jurisdiction over the case. The district court has subject matter jurisdiction over a case if there is diversity of citizenship between the parties or if the action is founded on a claim arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1441(b); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332 (diversity jurisdiction); *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1393 (9th Cir. 1988). Section 1441(b) further provides that if the basis for federal jurisdiction is diversity of citizenship, removal is available only if no defendant is a citizen of the forum state. As the party seeking to

---


<sup>1</sup>Docket No. 16.

1 remove the action, the defendant bears the burden of establishing that subject matter jurisdiction  
2 exists. *Ethridge*, 861 F.2d at 1393. Because the Court strictly construes the removal statute against  
3 removal, if there is any doubt as to the existence of federal jurisdiction, the Court should remand the  
4 matter to state court. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

5 Because the record before the Court does not establish that binding settlement agreements  
6 have eliminated all non-diverse Defendants from the state court action, complete diversity did not  
7 exist as of the time of removal. Accordingly, this Court is without subject matter jurisdiction. For  
8 the foregoing reason, the Court **GRANTS** Plaintiffs' Motion to Remand.

9  
10 **IT IS SO ORDERED.**

11  
12 Dated: June 8, 2007

13   
14 MARTIN J. JENKINS  
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28