

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer**

Civil Action No. 09-cv-02743-PAB-BNB

STANLEY CONVERGENT SECURITY SOLUTIONS, INC., a Delaware corporation,

Plaintiff,

v.

DOUGLAS NORTON, an individual, and
J. GREG WHEELER, an individual,

Defendants.

ORDER REMANDING CASE TO STATE COURT

Defendants Norton and Wheeler removed this case from the District Court for Arapahoe County, Colorado asserting the diversity-based jurisdiction of this Court.

Both defendants allege that they are citizens of the state of Colorado. The removal statute states that

[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. *Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.*

28 U.S.C. § 1441(b) (emphasis added).

In response to an order to show cause [Docket No. 5], defendants have indicated that plaintiff is unwilling to waive this procedural defect. *Cf. Am. Oil Co. v. McMullin*, 433 F.2d 1091, 1093 (10th Cir. 1970) (holding that improper removal under §1441(b) may be waived where a plaintiff acquiesces, participates in a case, and fails to

object in a timely manner). As a result, defendants seek to withdraw their notice of removal and have the case remanded to state court [Docket No. 11]. It is, therefore,

ORDERED that defendants' motion to withdraw their notice of removal and remand the case to state court [Docket No. 11] is GRANTED. This case is REMANDED to the District Court for Arapahoe County, Colorado where it was filed as case number 09CV2331.

DATED December 11, 2009.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge