

**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.

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**ORDER REMANDING CASE TO STATE COURT**

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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