

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

RODNEY BURNETT,

Plaintiff,

-vs-

Case No. 6:09-cv-553-Orl-22DAB

**EVERGREEN AVIATION GROUND
LOGISTICS ENTERPRISE, INC.,
EVERGREEN AVIATION, INC.,
EVERGREEN JET, INC., EVERGREEN
HOLDINGS, INC., EVERGREEN
AVIATION SERVICES, LLC,
EVERGREEN DEFENSE & SECURITY
SERVICES, INC., EVERGREEN
AVIATION LIMITED, EVERGREEN
HOLDINGS GROUP, LTD., EVERGREEN
HOLDINGS INTERNATIONAL, LLC,
EVERGREEN INTERNATIONAL
AIRLINES, INC., EVERGREEN
MAINTENANCE CENTER, INC.,
EVERGREEN INTERNATIONAL
AVIATION, INC. and EVERGREEN
HELICOPTERS, INC.,**

Defendants.

_____ /

ORDER

This cause came on for consideration without oral argument on the following motion filed herein:

MOTION: DEFENDANT, EVERGREEN AVIATION GROUND LOGISTICS ENTERPRISE, INC.'S NOTICE OF STRIKING NOTICE OF CONSENT TO REMOVAL (Doc. No. 8)

FILED: March 31, 2009

THEREON it is ORDERED that the motion is DENIED.

Defendant Evergreen Aviation Ground Logistics Enterprise, Inc. (“Evergreen Eagle”) moves¹ to strike the Notice of Consent to Removal by Evergreen Jet, Inc. and Evergreen Aviation, Inc. (Doc. No. 5) which Evergreen Eagle itself had submitted to the Clerk as an exhibit to its Notice of Removal. The Clerk of Court docketed the Notice of Consent to Removal as a separate docket entry according to the Clerk’s procedures. Evergreen Eagle has argued in its Notice of Removal that Evergreen Jet, Inc. and Evergreen Aviation, Inc. are fraudulently joined as Defendants. *See* Doc. No.1.

Evergreen Eagle contends that it “did not intend to file” the other Defendants’ Notice of Consent as a separate pleading. The alleged harm in having the Notice of Consent as a separate pleading is that counsel for Evergreen Jet, Inc. and Evergreen Aviation, Inc. believes it is “formal appearance in the matter.” Evergreen Aviation, Inc. was served via its registered agent in Delaware. *See* Doc. No. 1 ¶ 14. Evergreen Jet, Inc. is the successor to Evergreen Aviation, Inc. as of November 12, 2007. *See* Doc. No. 1 ¶ 15. Neither of these Defendants has filed an Answer, according to the record filed in this Court.

Filing of the Notice of Consent in the docket does not waive any pre-existing issues of propriety of service or personal jurisdiction over these Defendants. Those issues are completely independent and must be asserted by a separate pleading pursuant to the Federal Rule of Civil Procedure 12. Defendants also believe that the filing by Illinois counsel may violate the Local Rules. As of now, however, Illinois counsel has not made any filing or acted to appear and defend any party. In order to defend a party in this Court, counsel is subject to the Local Rules of this Court and he must act accordingly, should he choose to do so.

DONE and **ORDERED** in Orlando, Florida on April 2, 2009.

David A. Baker

DAVID A. BAKER
UNITED STATES MAGISTRATE JUDGE

¹Evergreen Eagle’s counsel attempted to give “notice of removal” of the Notice of Consent, which counsel does not have the authority to do.

Copies furnished to:

Counsel of Record