

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOSEPH F. KEATING, MARIE L.
KEATING,

Plaintiffs,

-vs-

Case No. 6:12-cv-220-Orl-28GJK

INGERSOLL-RAND COMPANY,

Defendant.

ORDER

This case is before the Court on Plaintiffs' Motion to Remand; and/or To Join Non-Diverse Defendant, Air Centers of Florida, Inc. and Remand (Doc. No. 19) filed May 17, 2012. The United States Magistrate Judge has submitted a report recommending that the motion be granted.

After an independent *de novo* review of the record in this matter, and consideration of Defendant's objections to the Report and Recommendation (Doc. 61),¹ the Court agrees

¹ The Court has also reviewed the voluminous other filings related to the Report and Recommendation, specifically, a) Plaintiffs' response to Defendant's objections (Doc. 68) (*filed one day late*); b) Defendant's filing of additional documents in *reply* to Plaintiffs' response to Defendant's objections (Doc. 72) (unauthorized) (*filed over one month after objections filed*); c) Defendant's Motion for Court to Receive Further Evidence Concerning the Report and Recommendation (Doc. 60); d) Defendant's Notice of Filing Affidavit of Robert Jordan on Behalf of Geneis VII, Inc. and Communication From Joe Giannacco on Behalf of Pelican Sales, Inc. in Support of Defendant's Motion for Court to Receive Further Evidence (Doc. 67) (*filed one month after Defendant's motion*); e) Plaintiffs' Corrected Response to Defendant's Motion for Court to Receive Further Evidence (Doc. 71) (*filed one day late*); f) Defendant's Motion to Strike Plaintiffs' Response to Defendant's Motion for Court to Receive Further Evidence (Doc. 70); and g) Plaintiffs' Response to Defendant's Motion to Strike (Doc. 73).

entirely with the findings of fact and conclusions of law in the Report and Recommendation.

Therefore, it is **ORDERED** as follows:

1. That the Report and Recommendation filed November 16, 2012 (Doc. No. 55), made after the Magistrate Judge held an evidentiary hearing on this matter, is **ADOPTED** and **CONFIRMED** and made a part of this Order.

2. The Court finds that Plaintiffs are seeking to join Air Centers of Florida, Inc. ("Air Centers") for legitimate purposes, rather than to defeat federal jurisdiction.

3. The Court finds that Plaintiffs have not been dilatory in filing its motion to remand and join Air Centers to the action.

4. The Court finds that Plaintiffs may be significantly prejudiced if the Motion to Remand is denied as they would be required to prosecute separate suits in federal and state court even though such simultaneous cases arise out of the same underlying facts. This could subject Plaintiffs to inconsistent verdicts and would waste judicial resources. On the other hand, Defendants have failed to show they will be prejudiced if the Motion to remand is granted.

5. Plaintiffs' Motion to Remand (Doc. 19) is **GRANTED**.

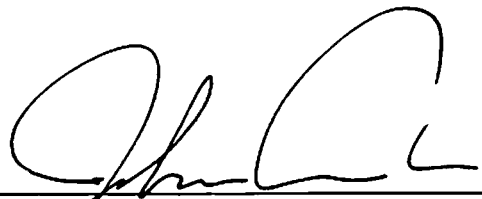
6. This case is remanded to the Eighteenth Judicial Circuit Court for Brevard County, Florida, case number 05-2011-CA-052464.

7. Defendant's Motion for Court to Receive Further Evidence Concerning the Report and Recommendation (Doc. 60) is **DENIED**.

8. Defendant's Motion to Strike Plaintiffs' Response to Defendant's Motion for Court to Receive Further Evidence (Doc. 70) is **DENIED**.²

9. The Clerk of the Court is directed to remand this case to the Eighteenth Judicial Circuit Court for Brevard County, Florida, case number 05-2011-CA-052464, and to thereafter close this file.

DONE and **ORDERED** in Chambers, Orlando, Florida this 29 day of January, 2013.



JOHN ANTOON II
United States District Judge

Copies furnished to:

United States Magistrate Judge
Counsel of Record

² Defendant argues the one day late response should be stricken but does not argue how it has been prejudiced by such tardiness. In light of this and the filings made by Defendant without authorization and after a period of time had passed from its original filings (Doc. 67, 72), the motion is denied.