

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-62034-CIV-SEITZ/O'SULLIVAN**

BRUCE D. BURTOFF,

Plaintiff,

vs.

ALFRED TAUBER, *et al.*,

Defendants.

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ORDER GRANTING MOTION TO REMAND

THIS MATTER is before the Court on Defendants' Motion to Remand *Alfred I. Tauber, Successor Trustee to Laszlo N. Tauber, Deceased v. Bruce Burtoff*, Case No 10-10423 CA (09) (17th Judicial Circuit) [DE-25] to state court. The Motion was filed in response to Plaintiff's Notice [Petition] to Remove and Consolidate Case Based on Supplemental Jurisdiction Under 28 U.S.C. § 1367(a) [DE-22]. This matter arises from an attempt by Defendants to enforce a judgment obtained in Virginia state court against Plaintiff, who is a resident of Florida. Two lawsuits have arisen in Florida as a result of the Virginia judgment. The instant lawsuit was filed by Plaintiff in an attempt to challenge the validity of the Virginia judgment. Defendants removed the instant suit to this Court on October 22, 2010. On December 22, 2010, Plaintiff filed his Notice [Petition] to Remove, which attempts to remove to this Court the state court case styled *Alfred I. Tauber, Successor Trustee to Laszlo N. Tauber, Deceased v. Bruce Burtoff*, Case No 10-10423 CA (09). Defendants filed the case styled *Alfred I. Tauber, Successor Trustee to Laszlo N. Tauber, Deceased v. Bruce Burtoff*, Case No 10-10423 CA (09) to enforce the Virginia

judgment.¹ Because Plaintiff has failed to comply with the removal statutes, the Motion to Remand is granted.

A defendant may remove to federal court a civil case filed in state court if the plaintiff originally could have brought the case in federal court. 28 U.S.C. § 1441(a). However, any defect in the removal procedure is grounds for remand. 28 U.S.C. §1447(c); *see Russell Corp. v. American Home Assurance Co.*, 264 F.3d 1040, 1044 and 1049 (11th Cir. 2001) (citation omitted). Removal statutes are strictly construed and any doubts or ambiguities must be resolved in favor of remand. *See Whitt v. Sherman Int'l Corp.*, 147 F.3d 1325, 1329 (11th Cir. 1998). The removing party bears the burden of demonstrating that removal was proper. *Id.* A party must file its notice of removal within thirty (30) days of service of a pleading which sets forth a basis for removal. 28 U.S.C. §1446(b).

Plaintiff has failed to timely remove the case of *Alfred I. Tauber, Successor Trustee to Laszlo N. Tauber, Deceased v. Bruce Burtoff*, Case No 10-10423 CA (09) (17th Judicial Circuit). The state court case was filed on January 20, 2010. Plaintiff was first served with papers in the state court case on April 6, 2010. The Notice [Petition] of Removal was filed on December 22, 2010, more than eight months after Plaintiff was served with papers in the state court action. Thus, his removal was untimely. Plaintiff's argument that he had up to a year to remove the case misconstrues 28 U.S.C. § 1446(b), which allows removal up to a year after commencement of an action *if* the removal occurs within thirty days of service of the initial papers on the removing party. Because the removal statutes are strictly construed and the removing party has the burden


¹Because the Notice [Petition] to Remove attempted to remove the state court case the Defendants filed to collect the foreign judgment and have it consolidated with the instant case, the Notice [Petition] to Removal was filed in this case and not opened as a separate case.

of establishing that removal is proper, the case of *Alfred I. Tauber, Successor Trustee to Laszlo N. Tauber, Deceased v. Bruce Burtoff*, Case No 10-10423 CA (09) (17th Judicial Circuit) should be remanded.

Accordingly, it is

ORDERED that Defendants' Motion to Remand *Alfred I. Tauber, Successor Trustee to Laszlo N. Tauber, Deceased v. Bruce Burtoff*, Case No 10-10423 CA (09) (17th Judicial Circuit) [DE-25] is GRANTED. The Clerk is directed to remand the case of *Alfred I. Tauber, Successor Trustee to Laszlo N. Tauber, Deceased v. Bruce Burtoff*, Case No 10-10423 CA (09) (17th Judicial Circuit), *see* DE-22, to the Circuit Court of the Seventeenth Judicial District in and for Broward County, Florida.

DONE and ORDERED in Miami, Florida, this 12th day of January, 2011.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record/Pro se parties