

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

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|-----------------------------|---|--------------------------|
| JOHN SEELY |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CAUSE NO.: 1:07-CV-20-TS |
| |) | |
| JAMES SEELY and GWEN SEELY, |) | |
| |) | |
| Defendants. |) | |

OPINION AND ORDER

The pro se Plaintiff, John Seely, has filed a Petition to Remove State Case to Federal Court and Motion for Preliminary Injunction [DE 2]. He requests that this Court enjoin and restrain the Allen Superior Court from enforcing its order issued on January 30, 2007, which granted the Defendants' motion to compel in Cause Number 02D01-0510-CT-435. It appears that what the Plaintiff actually seeks is an improper review of a state court decision. In any event, the Plaintiff cannot "remove" the state court action.

The federal removal statute provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

28 U.S.C. § 1441(a). The statute contemplates removal by a defendant; it does not allow removal of a suit by the plaintiff who filed the action in state court. *See also* 28 U.S.C. § 1446(a) (setting forth the procedures for removal that a "defendant or defendants desiring to remove . . . from a State court" must follow). In addition, the Plaintiff's Notice of Removal does not demonstrate that this Court would have had jurisdiction over the lawsuit had it been initiated in federal court.

Because it “clearly appears on the face of the notice . . . that removal should not be permitted,” this Court must “make an order for summary remand.” 28 U.S.C. § 1446(c)(4).

For the foregoing reasons, the Plaintiff’s Petition [DE 2] is DENIED and this matter is REMANDED to the Allen Superior Court.

SO ORDERED on February 9, 2007.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT