

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

G & E FARMS, INC., and
HOMBRE, INC.,

Plaintiffs,

Vs.

No. 11-1353-SAC

FARM IMPLEMENT &
SUPPLY CO., INC.,

Defendant.

MEMORANDUM AND ORDER

The case comes before the court on the plaintiffs' motion to remand this case to the state District Court of Johnson County, Kansas, from which it was removed. (Dk. 38). When the notice of removal was filed in this case, the only defendant was New Holland Agriculture c/o CNH America, LLC, ("CNH") and complete diversity of citizenship existed in this action involving more than \$75,000. Approximately five months later, the plaintiffs moved to amend their complaint to join a non-diverse defendant, Farm Implement & Supply Co., Inc. ("Farm Implement"), but this motion failed to address the applicable concerns of 28 U.S.C. § 1447(e). (Dk. 22). Nonetheless, the motion was granted as unopposed. (Dk. 24). On April 24, 2012, the parties filed a stipulation dismissing the plaintiffs' claims against the defendant CNH with prejudice. (Dk. 33).

The only remaining defendant Farm Implement has answered

admitting it is a Kansas corporation. (Dk. 35). The notice of removal asserts the plaintiffs, G & E Farms, Inc. and Hombre, Inc., are Kansas corporations. (Dk. 1). Thus, there is no complete diversity. According to the plaintiffs' motion, Farm Implement does not object to the remand. (Dk. 39, ¶ 11).

By the terms of 28 U.S.C. § 1447(e), when the joinder of a non-diverse party is permitted, the court is to remand the action. *See McPhail v. Deere & Co.*, 529 F.3d 947, 951 (10th Cir. 2008). Moreover, 28 U.S.C. § 1447(c) provides that, “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” On the facts as presented under the governing law, the court agrees with the parties that a remand is necessary.

IT IS THEREFORE ORDERED that the plaintiff's motion to remand (Dk. 38) is granted, and this case is remanded to the District Court of Thomas County, Kansas, from which it was removed. The Clerk of the Court shall mail a certified copy of this remand order to the Clerk of the District Court of Thomas County, Kansas.

Dated this 25th day of June, 2012, Topeka, Kansas.

s/ Sam A. Crow
Sam A. Crow, U.S. District Senior Judge