

**IN THE UNITED STATES COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DENNIS C. WALKER	§	PLAINTIFF
	§	
v.	§	Civil Action No.1:09V487HSO-JMR
	§	
GAIL PETTY-JOHNSON	§	DEFENDANT

**ORDER DENYING DEFENDANT’S MOTION
FOR RECONSIDERATION OF REMAND ORDER**

This cause comes before the Court upon the Motion of Gail Petty-Johnson (“Defendant”), filed September 21, 2009 [13-1], for Reconsideration of the Memorandum Opinion and Order to Remand the above styled and numbered civil action to the Circuit Court of Jackson County, Mississippi. Plaintiff, Dennis Walker (“Plaintiff”), filed a Response in Opposition to Defendant’s Motion on September 24, 2009 [15-1]. Defendant filed a Reply on October 2, 2009 [17-1]. The Court, having considered the pleadings on file, the briefs and arguments of the parties, and the relevant legal authorities, finds that Defendant’s Motion is not well-taken and should be denied.

Defendant states that this Court “did not consider precedent in this division, whereby District Judge Guirola applied the factors set forth in *Brown v. Mutual of New York Life Ins. Co.*, 213 F. Supp. 2d 668 (S.D. Miss. 2002) ... and *Stein v. Gardner*, 2005 WL 1362258 (S.D. Miss. May 20, 2005).” Def.’s Mot. for Reconsideration, fn. 2. While the Court’s opinion did not specifically cite to these

cases, they were in fact closely reviewed and considered as part of the Court's original analysis of the issues presented.

“[T]he burden of pleading the diverse citizenship is upon the party invoking federal jurisdiction, and if the diversity jurisdiction is properly challenged, that party also bears the burden of proof.” *Brown*, 213 F. Supp. 2d at 669. It is noteworthy that the Court in *Brown*, after evaluating the factors weighing in favor of and against a particular domicile, observed that the facts did not “necessarily point strongly to one state or the other.” *Id.* at 671. In the end, the Court found diversity lacking and remanded the case. *See id.* at 672.

With respect to *Stein*, indeed the Court there did make a finding of Pennsylvania residency after it decided that numerous factors weighing in favor of Pennsylvania residency were present. These included the plaintiff being registered to vote in Pennsylvania and having a valid Pennsylvania driver's license. Defendant in this case, however, held a Mississippi driver's license and was registered to vote in Mississippi. In addition, it was clear that, unlike Defendant here, who intends to retain her Mississippi home as a vacation home, Stein had never owned a home in Mississippi.

Defendant professes her intent to make New Jersey her domicile at the time Plaintiff's Complaint was filed. *See* Def.'s Aff. ¶ 14, att. as Ex. “2” to Def.'s Resp. to Mot. to Remand.

[i]t is said that “[i]n determining one's ‘citizenship’ or ‘domicile’ statements of intent are entitled to little weight when in conflict with

facts.’ *Hendry v. Masonite Corp.*, 455 F.2d 955, 956 (5th Cir. 1972)(citing *Welsh v. American Surety Co. of New York*, 186 F.2d 16 (5th Cir. 1951)).

Brown v. Mutual of New York Life Ins. Co., 213 F. Supp. 2d 667, 672 (S.D. Miss. 2002).

The Court agrees that the factual scenario in this case presents a close question.

However, as the Fifth Circuit has clearly stated:

...removal statutes are to be strictly construed, and all doubts are to be resolved in favor of remand. *Eastus v. Blue Bell Creameries, L.P.*, 97 F.3d 100, 106 (5th Cir.1996); *Dodson v. Spillada Maritime Corp.*, 951 F.2d 40, 42 (5th Cir.1992).

Merchants & Farmers Bank v. Fryar, 2009 WL 3188241, *1 (N.D. Miss. October 1, 2009).

Based on the facts presented, this case must be remanded. To the extent Defendant, who originally opposed remand-related discovery, now seeks it, that request is denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED, that the Motion of Gail Petty-Johnson (“Defendant”), filed September 21, 2009 [13-1], for Reconsideration of the Memorandum Opinion and Order to Remand July 24, 2009, should be, and is, hereby **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED, that the above-captioned cause is hereby remanded to the Circuit Court of Jackson County, Mississippi, and that a certified copy of this Order of remand shall be immediately mailed by the Clerk to the clerk of the state court pursuant to 29 U.S.C. § 1447(c).

SO ORDERED AND ADJUDGED, this the 19th day of October, 2009.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE