

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ATHEISTS, INC.; DENNIS
HORVITZ; KENNETH BRONSTEIN;
MARK PANZARINO; AND JANE
EVERHART,

Plaintiffs,

v.

PORT AUTHORITY OF NEW YORK
AND NEW JERSEY; STATE OF NEW
JERSEY; GOVERNOR CHRIS
CHRISTIE, in his official capacity;
SILVERSTEIN PROPERTIES, INC.;
LOWER MANHATTAN
DEVELOPMENT CORPORATION;
WORLD TRADE CENTER MEMORIAL
FOUNDATION / NATIONAL
SEPTEMBER 11 MEMORIAL AND
MUSEUM; WORLD TRADE CENTER
PROPERTIES, LLC; CHURCH OF THE
HOLY NAME OF JESUS; AND BRIAN
JORDAN,

Defendants.

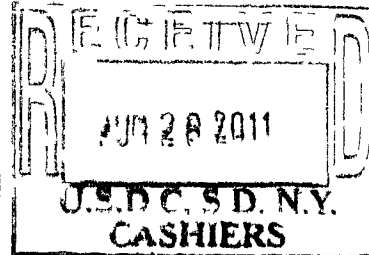
No. 11 Civ. _____

ECF Case

JUDGE BATTS

Removed from the Supreme Court of the
State of New York,
Index No. 11-108670 (Hon. Richard F.
Braun)

11 CIV 6026



NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1441 and
1446, defendants World Trade Center Memorial Foundation / National September 11
Memorial and Museum¹; Lower Manhattan Development Corporation; Port Authority of
New York and New Jersey; Silverstein Properties, Inc.; World Trade Center Properties,
LLC; Church of the Holy Name of Jesus (collectively, "Removing Defendants," and

¹ Plaintiffs have named "World Trade Center Memorial Foundation / National September 11
Memorial and Museum" as a defendant. Plaintiffs appear to be referring to the National
September 11 Memorial & Museum at the World Trade Center Foundation, Inc. At the
appropriate time, that defendant will petition the Court for an order that the pleadings reflect
its correct name.

together with Brian Jordan, the State of New Jersey and New Jersey Governor Chris Christie, “Defendants”)², by and through undersigned counsel, hereby remove the above-captioned action (the “Action”) from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York. As grounds for removal, Removing Defendants state as follows:

SUMMARY

This Court has original jurisdiction over the causes of action for “Violations of the United States Constitution” alleged in this Action pursuant to 28 U.S.C. § 1331, because it “aris[es] under the Constitution, laws, or treaties of the United States.” The Action is therefore removable pursuant to 28 U.S.C. § 1441. This Court has supplemental jurisdiction over the remaining causes of action alleged in this Action pursuant to 28 U.S.C. § 1367(a), because they are so related to the alleged violations of the United States Constitution that they form part of the same case or controversy.

Procedural History and Background

1. On or about July 27, 2011, Plaintiffs American Atheists, Inc., Dennis Horvitz, Kenneth Bronstein, Mark Panzarino, and Jane Everhart (“Plaintiffs”) filed summonses and a complaint captioned *American Atheists, Inc., et al. v. Port*

² Brian Jordan, the State of New Jersey, and New Jersey Governor Chris Christie also are named as defendants in the Action. Those three defendants have not yet expressed a position on whether they will ultimately join in this Notice of Removal. As discussed in paragraph 3, upon information and belief, none of the Defendants have been served with Summonses, the Complaint, or the First Amended Complaint. Accordingly, none of the non-Removing Defendants need join in, or consent to, this Notice of Removal. See, e.g., *Williams v. Int’l Gun-A-Rama*, 416 F.App’x 97, 99 (2d Cir. Mar. 25, 2011); *NXIVM Corp. v. Ross*, 2009 WL 1765240, at *4 (W.D.N.Y. June 22, 2009) (“Although there is a general rule requiring that all defendants consent to removal, an exception exists where ‘the non-joining defendants have not been served with service of process at the time the removal petition is filed.’”) (quoting *Ell v. S.E.T. Landscape Design, Inc.*, 34 F.Supp.2d 188, 194 (S.D.N.Y. 1999)).

Authority of New York and New Jersey, et al., Index No. 11-108670 (the “Complaint”) in the Supreme Court for the State of New York, County of New York (the “State Court”), against Defendants and also Mayor Michael Bloomberg, in his official capacity, and the City of New York.

2. On or about August 15, 2011, Plaintiffs filed a First Amended Complaint bearing the same caption (the “First Amended Complaint”) in the State Court against Defendants. Mayor Michael Bloomberg and the City of New York were no longer named as defendants in the First Amended Complaint.

3. Upon information and belief, as at the date of filing of this Notice of Removal, Plaintiffs have not served Summonses, the Complaint, or the First Amended Complaint on any of the Defendants. On or around August 25, 2011, certain of the Defendants received notices purporting to be given under section 312-a of the New York Civil Practice Law and Rules and requesting that those Defendants complete and return acknowledgements of receipt to effect service. However, upon information and belief, as of the date of filing of this Notice of Removal, those acknowledgements of receipt have neither been executed by those Defendants nor mailed or delivered to Plaintiffs, and therefore service has not been effected on any of the Defendants.

4. Accordingly, no process, pleadings or orders have been served upon Defendants within the meaning of 28 U.S.C. § 1446(a). Copies of certain pleadings received by Removing Defendants are attached hereto as Exhibit A.

5. In the Complaint, Plaintiffs alleged that the proposed display of a cross-shaped steel beam recovered from the World Trade Center site at the National September 11 Memorial and Museum violates the United States Constitution, the

Constitution of the State of New York, and New York's Civil Rights Act. Plaintiffs allege the same claims in their First Amended Complaint, and further allege violations of the New Jersey Constitution and New Jersey civil rights laws. Removing Defendants deny that there is any merit to any of these claims.

6. Because Defendants have not yet been served, their time to answer the Summonses and First Amended Complaint has not started to commence. None of the Defendants have served or filed an answer.

7. No motions or other proceedings in this Action are pending in the State Court, aside from a motion for an order granting Edwin F. Kagin *pro hac vice* admission to the New York State Bar dated August 12, 2011.

8. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is not being filed more than thirty (30) days after the receipt of the Summonses and Complaint or First Amended Complaint.

9. The action is removable to this Court because the Southern District of New York embraces the place where the State Court action is pending. *See* 28 U.S.C. § 1441(a).

Basis for Removal

A. Federal Question Jurisdiction

10. Removal is proper under 28 U.S.C. § 1441(b), which provides that “Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.”

11. In the first paragraph of the First Amended Complaint, plaintiffs state that they “seek to redress the violation by Defendants, acting under color of state

law, of Plaintiffs' rights, privileges, and immunities secured by the First and Fourteenth Amendments to the United States Constitution . . ." *See* First Amended Complaint ("Am. Compl."), Ex. A ¶ 1. Their first cause of action—for "Violations of the United States Constitution"—further alleges that the display of the steel beam "is facially violative of the First Amendment . . . [and] Section One of the Fourteenth Amendment to the Constitution of the United States." *See* Am. Compl., Ex. A, ¶¶ 48-50. This cause of action "aris[es] under the Constitution, laws and treaties of the United States," and the District Court therefore has original jurisdiction over it pursuant to 28 U.S.C. § 1331.

12. Because there is a "separate or independent claim or cause of action within the jurisdiction conferred by [28 U.S.C. § 1331], the entire case may be removed" under 28 U.S.C. § 1441(c).

B. Supplemental Jurisdiction

13. In addition to their federal constitutional claims, plaintiffs allege violations of the Constitutions of the State of New York and New Jersey, and New York and New Jersey civil rights laws.

14. These state law claims are based on the same common nucleus of operative facts as plaintiffs' federal constitutional claims. Plaintiffs incorporate and rely on precisely the same facts for each and every cause of action that they allege. *See* Am. Compl., Ex. A, ¶¶ 48, 54, 60, 68, 74, 80. The federal and state claims are based upon the same general allegation that the proposed display of the cross-shaped steel beam is an unlawful attempt to promote one specific religion on government land, and that it unlawfully discriminates against persons of other religions and persons who do not believe in religion.

15. The District Court therefore has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a), because they are “so related to claims in the action within . . . original jurisdiction that they form part of the same case or controversy . . .”

Other Procedural Requirements

16. Promptly upon the filing of this Notice of Removal, a true copy of this Notice of Removal will be provided to all adverse parties pursuant to 28 U.S.C. § 1446(d). Pursuant to Fed. R. Civ. P. 5(d), Removing Defendants will file with this Court a Certificate of Service of notice to the adverse parties of removal to federal court.

17. Promptly upon the filing of this Notice of Removal, Removing Defendants are filing a Notification of Filing of Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York, in accordance with 28 U.S.C. § 1446(d).

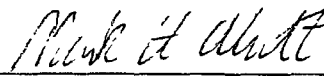
18. Removing Defendants join in this Notice of Removal and consent to the removal of this Action to this Court, subject to and without waiving any defenses and rights available to them, and without conceding that the allegations in the Complaint or the First Amended Complaint state a valid claim under applicable law.

WHEREFORE, Removing Defendants World Trade Center Memorial Foundation / National September 11 Memorial and Museum, Lower Manhattan Development Corporation, Port Authority of New York and New Jersey, Silverstein Properties, Inc., World Trade Center Properties, LLC, and Church of the Holy Name of Jesus remove this Action from the Supreme Court of the State of New York, County of New York, to this Court.

Dated: New York, New York
August 26, 2011

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON &
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This notice is also being submitted on
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