UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
                                                     :
   MICHELLE BOYER,   :
                                   Plaintiff,   :
                                                     :   22 Civ. 7992 (LGS)
                  -against-   :
                                                     :   ORDER
   THE STOP & SHOP SUPERMARKET   :
   COMPANY LLC, ET AL.,   :
                                   Defendants.   :
                                                     :
---X

LORNA G. SCHOFIELD, District Judge:

   WHEREAS, on September 19, 2022, Defendants filed a notice of removal (the "Notice")

(Dkt. No. 1).

   WHEREAS, the Notice refers to removing "Defendants," plural. This appears to refer to

Defendant The Stop & Shop Supermarket Company LLC and Defendant Stop & Shop. The

Notice alleges that the third, non-diverse Defendant has been dismissed from the case and

presumably does not join in the removal, nor could it as a New York citizen. *See* 28 U.S.C. §

1441(b)(2). However, the Notice addresses the citizenship of only one allegedly diverse Stop &

Shop Defendant, and it is not clear which one is being addressed or whether Defendant(s)

maintain that the two Stop & Shop entities are actually the same entity.

   WHEREAS, assuming that the allegedly diverse Defendant is a limited liability company,

its citizenship depends on the citizenship of its member(s). While the Notice alleges the current

citizenship of Defendant's sole member -- a corporation with citizenship in Delaware and

Massachusetts -- the Notice fails to allege its citizenship "both at the time the original action is

filed in state court and at the time removal is sought to federal court." *Adrian Family Partners I,*

L.P. v. ExxonMobil Corp., 79 F. App'x 489, 491 (2d Cir. 2003) (summary order); *see also United*

Food & Com. Workers Union, Loc. 919 v. CenterMark Props. Meriden Square, Inc., 30 F.3d 298,

301 (2d Cir. 1994). It is unlikely but not impossible that a Defendant's citizenship has changed

in the ten months since this case was filed, and federal courts "are not free to speculate on the

citizenship of" parties for purposes of removal. *CenterMark*, 30 F.3d at 302.

WHEREAS, the Notice of Removal also alleges that this action was not removable when

it was initially filed or until the non-diverse Defendant was dismissed pursuant to a motion for

summary judgment. Again it is possible, but by no means certain, that an exception applies to the

general rule that "the involuntary dismissal of non-diverse parties does not make an action

removable." *Quinn v. Aetna Life & Cas. Co.*, 616 F.2d 38, 40 n.2 (2d Cir. 1980); *accord*

Correnti v. Bertram D. Stone Inc., No. 13 Civ. 3698, 2013 WL 5231863, at *5 (S.D.N.Y. July 17,

2013).
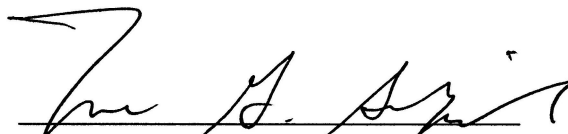
WHEREAS, "[i]n light of the congressional intent to restrict federal court jurisdiction, as

well as the importance of preserving the independence of state governments, federal courts

construe the removal statute narrowly, resolving any doubts against removability." *Platinum-*

Montaur Life Scis., LLC v. Navidea Biopharms., Inc., 943 F.3d 613, 617 (2d Cir. 2019) (internal

quotation marks omitted).

WHEREAS, a District Court may *sua sponte* remand a case for a procedural defect within

thirty (30) days of the filing of the Notice of Removal, and may *sua sponte* remand a case at any

time for lack of subject matter jurisdiction. *Mitskovski v. Buffalo & Fort Erie Pub. Bridge Auth.*,

435 F.3d 127, 131 (2d Cir. 2006); *see Valentin v. Dollar Tree Stores, Inc.*, No. 21 Civ. 3647,

2021 WL 2852039, at *1 (S.D.N.Y. July 8, 2021).

WHEREAS, if a "notice of removal and the underlying state-court record failed to

establish whether the parties to this action were completely diverse," the district court should

"remand[] the case to state court." *Platinum-Montaur*, 943 F.3d at 618. It is hereby

ORDERED that the matter is remanded to state court. Pursuant to 28 U.S.C. § 1447(c),

the Clerk of Court is respectfully directed to mail a certified copy of this Opinion and Order to

the Supreme Court of the State of New York, Bronx County. The Clerk of Court is further

directed to close the case.

Dated: September 21, 2022
       New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE