

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**MICHAEL WILLIAMSON,
et al.,**

Plaintiffs,

vs.

**Case No. C2-06-292
Judge Edmund A. Sargus, Jr.
Magistrate Judge Terence P. Kemp**

**RECOVERY LIMITED
PARTNERSHIP,
et al.,**

Defendants.

ORDER

On April 18, 2006, the Franklin County Court of Common Pleas entered an Order consolidating the *Williamson* action (Case No. 06CVH03-4469), with two previously filed cases, *The Dispatch Printing Co. v. Recovery Limited Partnership* (Case No. 05CVH04-4220), and *The Dispatch Printing Co. v. Gilman D. Kirk* (Case No. 05CVH10-11795). Following the state court's order consolidating the matters, Defendants timely removed the action to this Court pursuant to 28 U.S.C. § 1441 on the basis of federal-question jurisdiction. As set forth in the Court's January 29, 2009 Opinion and Order, Defendants and the *Williamson* Plaintiffs entered into various contracts in connection with and in furtherance of a maritime commercial venture and the exercise of subject-matter jurisdiction over the *Williamson* Plaintiffs' claims is proper, given that maritime claims arise under federal law. Both sets of Plaintiffs sought an accounting. Assuming that the case became a single case once it was consolidated in state court, and, because the *Williamson* Plaintiffs raised a federal claim, the removal was proper.

At that time, under 28 U.S.C. § 1441(c), remand of the *Dispatch* Plaintiffs' state-law claims would have been permissible only if they were "separate and independent" from the federal claims raised by the *Williamson* Plaintiffs.¹ See *Porter v. Roosa*, 259 F. Supp. 2d 638 (S.D. Ohio 2003); *Fullin v. Martin*, 34 F. Supp. 2d 726 (E.D. Wis. 1999).

On December 23, 2008, however, the *Dispatch* Plaintiffs amended their complaint, deleted reference to their claim for an accounting, and now allege breach of contract related to the entities' operating and partnership agreements and breach of fiduciary duty.² The *Dispatch* Plaintiffs seek a dissolution of the corporation and partnership, and request that the Court impose a receivership. The question that arises is whether the Court may continue to exercise subject-matter jurisdiction now that the common accounting issue is resolved and the *Dispatch* Plaintiffs have pleaded new claims that bear no relationship to the federal claims brought by the *Williamson* Plaintiffs. As one court has noted:

The jurisdictional problem arises from the limits Article III places upon the federal question jurisdiction of this Court; specifically, the limits placed upon the Court's

¹ 28 U.S.C. § 1441(c) provides as follows:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

Generally, the test for whether claims are "separate and independent," as referenced by the statute, is whether the claims arise "from an interlocked series of transactions" or whether they involve a "different wrong" or a "different set of facts" than does the claim over which the Court clearly has jurisdiction. See, e.g., *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 9-10 (1951); *Union Planters Nat'l Bank v. CBS, Inc.*, 557 F.2d 84, 89 (6th Cir. 1977); *Lewis v. Louisville & Nashville R.Co.*, 758 F.2d 219, 221 (7th Cir. 1985).

² The *Dispatch* Plaintiffs' claims for breach of fiduciary duty arise from their status as investors, and are not associated with the *Williamson* Plaintiffs' claims as creditors.

ability to hear state law claims which are joined with a federal claim falling within the Court's original jurisdiction. The Supreme Court of the United States interprets Article III as requiring any such state law claim to bear a certain logical and factual relationship to the federal claim. If there is no such relationship, the state law claims fall outside of the federal court's subject matter jurisdiction. This doctrine—previously referred to as the doctrine of pendent jurisdiction but now codified by Congress under the name supplemental jurisdiction—leaves no room for the removal of “separate and independent” state law claims to federal court.

Fullin, 34 F. Supp. 2d at 729. The Court is concerned whether the claims of the *Dispatch* Plaintiffs arise from the same circumstances as the claims of the *Williamson* Plaintiffs. If they do not, the Court questions whether under Article III it has jurisdiction. Further, now that the common demand for an accounting is complete, the Court has concern why it should exercise its discretionary supplemental jurisdiction.

The parties are therefore **ORDERED** to brief;

- (A) Whether the Court has subject-matter jurisdiction over the *Dispatch* Plaintiffs' claims as set forth in their December 23, 2008 Amended Complaint, and whether such claims should be severed from the *Williamson* Plaintiffs' case and remanded to state court;
- (B) Assuming that the Court has supplemental jurisdiction over the *Dispatch* Plaintiffs claims, whether it should decline to exercise such jurisdiction.

Because these issues implicate whether the Court has jurisdiction to hear the remainder of this case, these matters must be resolved before proceeding to a hearing regarding the appointment of a receiver. The **HEARING** set for **FEBRUARY 9, 2009** is **VACATED**.

The parties shall file **SIMULTANEOUS BRIEFS** on the issues herein by **MONDAY, FEBRUARY 9, 2009**. Each party may thereafter submit a **RESPONSE** on or before **MONDAY, FEBRUARY 16, 2009**.

IT IS SO ORDERED.

2-2-2009
DATED


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE