

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JILL KLENOTA,

Plaintiff,

v.

VANDERBILT MORTGAGE AND
FINANCE INC, ANTHONY N.
PAGONES and JANE DOE PAGONES,
and the marital community thereof; and
WINDERMERE REAL ESTATE CO., a
corporation,

Defendants.

VANDERBILT MORTGAGE AND
FINANCE, a corporation,

Third-Party Plaintiff,

v.

ANTHONY N. PAGONES and JANE
DOE PAGONES, and the marital
community thereof; and WINDERMERE
REAL ESTATE CO., a corporation,

Third-Party Defendants.

CASE NO. C15-0789-JCC

ORDER REMANDING CASE

This matter comes before the Court on Plaintiff's Motion to Remand (Dkt. No. 29),
Defendant Vanderbilt's Response (Dkt. No. 36), and Plaintiff's Reply (Dkt. No. 43). Having

1 thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument
2 unnecessary and hereby GRANTS the motion and REMANDS the above-captioned matter to the
3 King County Superior Court for the reasons explained herein.

4 **I. BACKGROUND**

5 Plaintiff Jill Klenota brought the above-captioned matter against Defendant Vanderbilt
6 Mortgage and Finance, Inc. ("VMF") in King County Superior Court on April 23, 2015 alleging
7 that she suffered injury when she fell on property owned by VMF. (Dkt. No. 1-1 at 5-6.) VMF
8 removed the case to this Court. (Dkt. No. 1.) The basis for removal was diversity jurisdiction;
9 Plaintiff Klenota is a Washington resident and VMF is a Tennessee corporation with its principal
10 place of business in Tennessee. (*Id.*)

11 During discovery, it was determined that VMF's real estate agent, Anthony Pagonos, as
12 well as his company, Windermere Real Estate Co., provided Ms. Klenota permission to be on the
13 property. (Dkt. No. 11 at 4.) VMF asserted that this permission was given outside the scope and
14 course of Mr. Pagonos's agency and that, accordingly, Mr. Pagonos and Windermere would
15 share any liability attributed to VMF. (*Id.*). Accordingly, the parties submitted a stipulated
16 motion to add a Third-Party Complaint against Mr. Pagonos and Windermere, which the Court
17 granted. (*Id.*; *see also* Dkt. Nos. 14 and 15.) Subsequently, Ms. Klenota brought a motion to
18 amend her complaint to add first-party claims against Mr. Pagonos and Windermere. (Dkt. No.
19 18.) VMF did not oppose her motion, and the Court granted it. (Dkt. No. 23.)

20 **II. DISCUSSION**

21 **A. Standard of Review**

22 A party to a civil action brought in state court may remove that action to federal court if
23 the district court would have had original jurisdiction at the time of both commencement of the
24 action and at removal. *See* 28 U.S.C. § 1441(a); 14B Charles Alan Wright & Arthur R. Miller,
25 Federal Practice and Procedure § 3723 (4th ed. 2013). Once removed, the case can be remanded
26 to state court for either lack of subject-matter jurisdiction or for defects in the removal procedure.

1 28 U.S.C. § 1447(c). Although there are time limits on most bases for objecting to removal, a
2 challenge to this Court’s subject-matter jurisdiction may be brought at any time. 28 U.S.C.
3 § 1447(c).

4 **B. Complete Diversity**

5 Diversity of citizenship requires that the matter in controversy exceed \$75,000 and that
6 all parties to the action are “citizens of different states.” 28 U.S.C. § 1332(a). Diversity
7 jurisdiction requires “complete diversity”—*i.e.*, that each plaintiff is diverse from each
8 defendant. *Teledyne v. Kone Corp.*, 892 F.2d 1404, 1408 (9th Cir. 1990). The inclusion of
9 Defendants Pagonos and Windermere—each Washington citizens—defeats complete diversity in
10 this case as Ms. Klenota is also a Washington citizen. (Dkt. No. 15 at 4.)

11 In opposition to Plaintiff’s motion to remand, VMF argues that the Court should dismiss
12 Ms. Klenota’s claims against Mr. Pagonos and Windermere or revisit its decision to join them.
13 (Dkt. No. 36 at 5.) However, as Ms. Klenota pointed out, the time to raise this legal argument
14 would have been in opposition to her motion to amend, not now. Moreover, VFM was the first
15 party to assert that Mr. Pagonos’s involvement “is central to the facts and legal issues at hand” in
16 this case. (Dkt. No. 11 at 5.) The Court is not persuaded by VFM’s efforts to now assert
17 otherwise in an effort to prevent remand.

18 **III. CONCLUSION**

19 For the foregoing reasons, Plaintiff’s motion to remand (Dkt. No. 29) is GRANTED. The
20 Clerk of the Court is directed to remand this case to King County Superior Court.

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1 DATED this 30th day of December 2015.

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5 A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

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8 John C. Coughenour
9 UNITED STATES DISTRICT JUDGE

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