State and Local Government

by Caroline Johnson Levine

Removing State Cases to Federal Forums

Litigants in state courts often consider whether it is beneficial to seek adjudication of a case in a federal forum to obtain a favorable outcome pursuant to federal court case precedent. However, a party seeking removal of a state case into a federal forum must comply with federal procedural and statutory requirements. A recent U.S. Supreme Court ruling in *Dart Cherokee Basin Operating Company, LLC v. Owens*, 574 U.S. ——, 135 S.Ct. 547 (2014), eloquently explained whether proof of federal jurisdiction is required in the initial stages of a state class action seeking removal into federal court.

Brandon Owens was a royalty owner, who filed a class action in state court in order to "represent a class of royalty owners who were underpaid royalties from [Dart Cherokee Basin Operating Company, LLC] or [Cherokee Basin Pipeline, LLC's] working interest

"[A]s specified in § 1446(a), a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation." —Justice Ruth Bader Ginsburg, *Dart Cherokee Basin Operating Company, LLC v. Owens,* 574 U.S. ——, 135 S.Ct. 547, 554 (2014).

Kansas wells."[1] The petition alleged "breach of contract and unjust enrichment claims;" however, it did "not state a specific amount as [to] damages."[2] Subsequently, Dart sought to remove the action to federal court in the U.S. District Court for the District of Kansas. To achieve federal jurisdiction, Dart relied on the Class Action Fairness Act (CAFA), which requires a party to file a notice of removal in federal court "containing a short and plain statement of the grounds for removal."[3] Dart pursued a federal adjudication of this state matter because "CAFA gives federal courts jurisdiction over certain class actions, defined in § 1332(d)(1), if the class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds $5 million."[4]

Dart alleged in its notice of removal that all three of CAFA's requirements existed in this case and that the amount in controversy was satisfied because the "purported underpayments to putative class members totaled more than $8.2 million."[5] However, Owens argued that the case should be remanded to state court because Dart's notice of removal did not include any evidence that the amount in controversy actually exceeded $5 million dollars. Dart responded to Owens' motion for remand by filing a declaration, which "included a detailed damages calculation indicating that the amount in controversy, *sans* interest, exceeded $11 million."[6]

The District Court granted Owens' motion for remand because that court believed that the U.S. Court of Appeals for the Tenth Circuit requires that a "court narrowly construes removal statutes, and all doubts must be resolved in favor of remand."[7] Specifically, the District Court held that "for removal to be proper, the defendant must set forth facts supporting the assertion that the amount in controversy is satisfied."[8] Further, the District Court held that "the amount in controversy must be affirmatively established on the face of either the petition or notice of removal."[9] The District Court argued that this evidence could be provided through the use of "interrogatories obtained in state court prior to the removal, or affidavits or other evidence submitted to the federal court."[10] Finding that Dart failed to provide evidence in the petition or notice of removal, the District Court was guided by its belief that the Tenth Circuit held a "strong presumption against removal, [and] remanded [this case] to state court for lack of subject matter jurisdiction."[11]

Dart "petitioned the Tenth Circuit for permission to appeal"[12] the District Court's order; however, a Tenth Circuit panel denied review. Importantly, remand orders are generally not reviewable on appeal; however, CAFA does provide an exception to this rule.[13] Dart continued to assert that it was entitled to a federal adjudication of this action and petitioned the U.S. Supreme Court for a writ of

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certiorari. The question put forth to the Supreme Court was "[w]hether a defendant seeking removal to federal court is required to include evidence supporting federal jurisdiction in the notice of removal, or is alleging the 'short and plain statement of the grounds for removal' enough" to remove a state case to federal court.[14]

The Supreme Court "granted certiorari to resolve a division among the Circuits on the question presented,"[15] where the U.S. Fourth Circuit Court of Appeals did not require affirmative proof in the petition or notice of removal, and the Seventh Circuit and Tenth Circuit did require proof in one of those pleadings.[16]

The court began its analysis by explaining that by "design, § 1446(a) tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure," by requiring a short and plain statement for removal.[17] Therefore, when a defendant or "plaintiff invokes federal-court jurisdiction, the [] amount-in-controversy allegation is accepted if made in good faith"[18] and "should be accepted when not contested by the plaintiff, [defendant] or questioned by the court."[19] Further, if either party contests the alleged amount in controversy and provides proof through discovery, removal is proper "'if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds' the jurisdictional threshold."[20] Additionally, the Supreme Court found that the District Court erred in asserting that there is a presumption against removal into federal forums because "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court."[21]

Importantly, the Supreme Court felt it was important to correct what it viewed as "an abuse of discretion for the Tenth Circuit to deny Dart's request for review. Doing so froze the governing rule in the circuit for this case and future CAFA removal notices, with no opportunity for defendants in Dart's position responsibly to resist making the evidentiary submission."[22] Therefore, the court found that "if the Circuit precedent on which the District Court relied misstated the law, as we hold it did, then the District Court's order remanding this case to the state court is fatally infected by legal error." Because the court has the authority to review the Tenth Circuit's denial of Dart's appeal of the District Court's remand order, for abuse of discretion, the Supreme Court embraced the opportunity to "correct the erroneous view of the law the Tenth Circuit's decision fastened on district courts within the Circuit's domain."[23]

In *Dart*, the Supreme Court concluded that "as specified in § 1446(a), a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation."[24] Accordingly, the Supreme Court held that the removal statute, 28 U.S.C. § 1446, clearly provides that the required short and plain statement in the petition or notice of removal "need not contain evidentiary submissions."[25] ⊙

Endnotes

[1]*See Owens v. Dart Cherokee Basin Operating Co., LLC*, 2013 WL 2237740 at *1 (D. Kan.).

[2]*Id.*

[3]*See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. ——, 135 S.Ct. 547, 551 (2014), *quoting*, 28 U.S.C. § 1446(a).

[4]*Id.* at 552; *see also* § 1332(d)(2), (5)(B); *see also Standard Fire Ins. Co. v. Knowles*, 568 U.S. ——, 133 S.Ct. 1345, 1348, 185 L.Ed.2d 439 (2013).

[5]*Id.*

[6]*Id.*

[7]*See Owens,* 2013 WL 2237740 at *1, citing *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1289 (10th Cir. 2001).

[8]*Id.*, citing *Frederick v. Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1247 (10th Cir. 2012).

[9]*Id.*, citing *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995).

[10]*See Owens,* 2013 WL 2237740 at *2.

[11]*Id.* at *5.

[12]*See Dart Cherokee Basin Operating Co., LLC,* 574 U.S. ——, 135 S.Ct. at 552.

[13]*Id.*; *see also* 28 U.S.C. § 1453(c)(1)(2014).

[14]*Id.*

[15]*Id.* at 553.

[16]*E.g. Ellenburg v. Spartan Motors Chassis Inc.*, 519 F.3d 192, 200 (4th Cir. 2008), *Spivey v. Vertrue Inc.,* 528 F.3d 982, 986 (7th Cir. 2008) and *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995).

[17]*See Dart Cherokee Basin Operating Co., LLC,* 574 U.S. ——, 135 S.Ct. at 553.

[18]*Id.*; *see, e.g., Mt. Healthy City Bd. of Ed. v. Doyle,* 429 U.S. 274, 276, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977) ("'[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith.'") (quoting *St. Paul Mercury Indemnity Co. v. Red Cab Co.,* 303 U.S. 283, 288, 58 S.Ct. 586, 82 L.Ed. 845 (1938).

[19]*Id.*; citing *McPhail v. Deere & Co.,* 529 F.3d 947, 953 (2008) (requiring proof by defendant but not by plaintiff "bears no evident logical relationship either to the purpose of diversity jurisdiction, or to the principle that those who seek to invoke federal jurisdiction must establish its prerequisites").

[20]*Id.* at 553-54 (Finding that this "provision, added to § 1446 as part of the Federal Courts Jurisdiction and Venue Clarification Act of 2011 (JVCA), clarifies the procedure in order when a defendant's assertion of the amount in controversy is challenged. In such a case, both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied."); 28 U.S.C. § 1446(c)(2)(B).

[21]*Id.* at 554; *see also Standard Fire Ins. Co.,* 568 U.S. ——, 133 S.Ct. 1345, 185 L.Ed.2d 439 (2013).

[22]*Id.* at 557; *see also* n. 7 ("Caution is in order when attributing a basis to an unreasoned decision. But we have not insisted upon absolute certainty when that basis is fairly inferred from the record."); *see also Taylor v. McKeithen,* 407 U.S. 191, 193, n. 2, 92 S.Ct. 1980, 32 L.Ed.2d 648 (1972) (*per curiam*) (rejecting "possible, but unlikely" basis for unreasoned decision); *see also Nixon v. Fitzgerald,* 457 U.S. 731, 742–743, 102 S.Ct. 2690, 73 L.Ed.2d 349 (1982) (facing an unreasoned court of appeals decision, we projected what the court of appeals "appears to have" reasoned).

[23]*Id.* at 558.

[24]*Id.* at 554.

[25]*See Dart Cherokee Basin Operating Co., LLC,* 574 U.S. ——, 135 S.Ct. at 551.