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Federal Procedure - Realignment of Parties in Non-Diversity Case

David D. Dowd, Jr S.Ed.
University of Michigan Law School

FEDERAL PROCEDURE—REALIGNMENT OF PARTIES IN A NON-DIVERSITY CASE —Plaintiff (S_1), a surety for the subcontractor, brought an action against the subcontractor and the prime contractor to compel them to set off their respective counterclaims in order to diminish the liability of S_1. The subcontractor had another surety (S_2) on a different obligation arising out of the same construction job, and the prime contractor, uncertain where liability should be placed, impleaded S_2. On S_1's motion to vacate the impleader order, *held,* denied, and the court on its own motion directed realignment of the parties, ruling that the main issue was division of liability between the subcontractor's two sureties, S_1 and S_2, to the prime contractor. The prime contractor was made plaintiff and the other parties, the subcontractor, S_1 and S_2, defendants, with the result that all matters in controversy could be settled in one action with one trial. In directing this order, the court stated that it relied on its inherent power to require realignment for convenience and expediency. *Travelers Indemnity Co. v. J. S. Ramstad Construction Co.,* (D.C. Alaska 1954) 118 F. Supp. 423.

This appears to be the first time that parties have been realigned in a non-diversity case. Realignment of parties is employed by the federal courts to determine whether diversity jurisdiction, alleged by the plaintiff, actually exists. The court will examine the plaintiff's arrangement of the parties by considering the real interests of the parties in relation to the matter in controversy.[1] If, after realignment, adverse parties are discovered to be citizens of the same state, the federal court will dismiss the case for lack of jurisdiction. As the principal case arose in the District Court for the Territory of Alaska, a finding of diversity of citizenship was not necessary, for that court, having been created by Congress,[2] has general jurisdiction.[3] Thus the principal case is unique in that the doctrine of realignment of parties is utilized, not to test the alleged diversity of citizenship jurisdiction, but solely for the sake of convenience and the demands of reality.[4] Without citing any authority, the court based its decision on the belief that it has inherent power[5] to require realignment of parties for the sake of convenience[6] and expediency. Inquiry seems proper to determine whether

[1] See Indianapolis v. Chase National Bank, 314 U.S. 63, 62 S.Ct. 15 (1941), the leading case on the subject. See also 3 MOORE, FEDERAL PRACTICE §19.03 (1948).

[2] A court created by Congress for a territory has been considered a legislative, rather than constitutional, court. See Mookini v. United States, 303 U.S. 201, 58 S.Ct. 543 (1938).

[3] 48 U.S.C. (1952) §101 provides: "There is established a district court for the District of Alaska, with the jurisdiction of district courts of the United States and with general jurisdiction in civil, criminal, equity, and admiralty causes. . . ."

[4] The court asserted that the complaint of the original plaintiff, the surety, was actually a defensive pleading because of the facts of the case. Apparently then the court did not feel it was restrained from shifting the surety from the position of plaintiff to that of defendant.

[5] The exact statement of the court is as follows: "The Court is fully aware of the extraordinary nature of this step and that the doctrine of realignment has been used only in diversity cases. I am of the opinion, however, that the Court has inherent power to require the parties to align themselves properly for convenience and expediency." Principal case at 427.

[6] A comparison in terms of the convenience motivation might be made with the possibility of change in venue under the forum non conveniens doctrine.

something more definite than inherent power can be advanced as a basis for the court's decision. First, it is significant that nowhere in the Federal Rules is there a provision for the realignment of parties to determine whether there actually is jurisdiction based on diversity of citizenship. Yet the power of the federal courts to realign for this purpose is established, and it is suggested that a reference to inherent power in that context would not be questioned. Secondly, the whole approach of the Federal Rules of Civil Procedure is an attempt to facilitate the processes of effective litigation with as much efficiency and convenience as possible.[7] Thus, it can be argued that this unique use of realignment is in accord with the general objectives of the Federal Rules. An attempt to pinpoint this particular realignment use in the Federal Rules[8] leads to rules 13 and 19, which give rise to an inference of such power in the court. Rule 13 deals with counterclaims and cross-claims, while rule 19 involves the necessary joinder of parties. More explicitly, rules 13(h)[9] and 19(b)[10] both give the court the power to order additional parties into the lawsuit. The power to order in these additional parties carries with it the power to align them in terms of their interests in the litigation.[11] Thus if the court can order in additional parties and align them according to their interests, it would seem that by inference the court has the power to align parties already present in accord with their true interests in the context of counterclaims and cross-claims litigation. It is to be noted that both rules, 13(h) and 19(b), link the power to order in new parties with the concept of "complete relief."[12] In the principal case convenience was more responsible for the realignment than the thought of "complete relief," although the court apparently believed complete relief could be achieved more readily by the realignment. However, it is doubtful that realignment on the grounds of convenience will be used in diversity cases, since in many instances it would destroy the requisite diversity.[13]

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[7] See Lesnik v. Public Industrials Corp., (2d Cir. 1944) 144 F. (2d) 968.

[8] The Federal Rules of Civil Procedure are applicable in the District Court of Alaska, 48 U.S.C. (1952) §103(a).

[9] Rule 13(h), Federal Rules of Civil Procedure, 28 U.S.C. (1952). "When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action."

[10] Rule 19(b), Federal Rules of Civil Procedure, 28 U.S.C. (1952). "When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of parties before it, the court shall order them summoned to appear in the action. . . ."

[11] See Slauson v. Standard Oil Co., (D.C. Wis. 1939) 29 F. Supp. 497, in which a party in interest was ordered by the court to be listed as an involuntary plaintiff.

[12] See note 9 supra.

[13] Rule 82, Federal Rules of Civil Procedure, 28 U.S.C. (1952) is applicable to this discussion as it states: "These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein." Query whether the court could realign for convenience *after* diversity is established?