Michigan Law Review

Volume 51 | Issue 1

1952

FEDERAL PROCEDURE-JURISDICTION-EFFECT OF DISCLAIMER IN DIVERSITY OF CITIZENSHIP CASES

Richard W. Pogue S. Ed.
University of Michigan Law School

FEDERAL PROCEDURE—JURISDICTION—EFFECT OF DISCLAIMER IN DIVERSITY OF CITIZENSHIP CASES—Plaintiff partnership brought suit in a federal court, alleging that defendants were citizens of Kentucky, and that all partners but one were non-citizens of Kentucky. The Kentucky partner was named as a defendant because of his refusal to join the other partners in the action, whereupon he filed an answer and disclaimer, in which he disclaimed any interest in the suit. Other defendants answered contesting the jurisdiction of the court on the ground that the Kentucky partner was required to be joined with the parties plaintiff, thus destroying the necessary diversity of citizenship. The district court dismissed the Kentucky partner, ruled that it had jurisdiction, and proceeded to judgment for plaintiffs. On appeal, *held,* affirmed. Jurisdiction based upon diversity of citizenship, though originally lacking because of the presence of indispensable parties, may be acquired upon dismissal of such parties, if because of disclaimer they are not indispensable at the time of the dismissal. *Grant County Deposit Bank v. McCampbell,* (6th Cir. 1952) 194 F. (2d) 469.

In determining whether jurisdiction based upon diversity of citizenship has been properly invoked, the federal courts will look beyond the pleadings and realign the parties in accordance with their real interests, even though such rearrangement destroys jurisdiction.[1] In the principal case such realignment was necessary, since each partner is an indispensable party to an action brought to enforce a partnership claim.[2] This move by the court destroyed diversity jurisdiction, for the citizenship of a partnership depends on the citizen-

[1] Indianapolis v. Chase National Bank, 314 U.S. 63, 62 S. Ct. 15 (1941); Hamer v. New York Railways Co., 244 U.S. 266 at 274, 37 S. Ct. 511 (1917).

[2] Vinal v. West Virginia Oil & Land Co., 110 U.S. 215, 4 S. Ct. 4 (1884); Snodgrass v. Broadwell, 12 Ky. 250 at 252, 2 Litt. 353 (1822); Charne v. Essex Chair Co., (D.C. N.J. 1950) 92 F. Supp. 164. As explained in the latter case, the theory behind this rule is that "Under the Uniform Partnership Act No. 25 . . . a partner's interest in partnership assets is that of a co-owner. The absent partner's interest would therefore seem to be a joint interest within the meaning of Rule 19(a) such as would be directly affected legally by the adjudication."

ship of each individual partner,[3] and jurisdiction is lost if any plaintiff and defendant are citizens of the same state. The question presented is whether jurisdiction must be determined on the basis of conditions present at the time suit is instituted, or whether jurisdiction, although originally lacking, may subsequently be acquired upon dismissal of the otherwise indispensable party because of his disclaimer of interest in the action. As an initial proposition, it would appear technically correct to hold that a court which does not have jurisdiction in the first instance cannot later acquire it, since the court has no power to consider further proceedings in the case.[4] It has long been established, however, that if diversity jurisdiction does not exist because of the inclusion of parties not indispensable to the action, jurisdiction may be acquired by dismissal of such parties.[5] Cases supporting this position proceed on the assumption that no jurisdiction is acquired until dismissal of the party whose citizenship is fatal to jurisdiction,[6] and it does not seem an undue extension of these holdings to apply the same principle to a case in which a party originally indispensable is made an unnecessary party by his own voluntary act, and is dismissed from the suit.[7] There is authority holding that an indispensable party, whether an assignor,[8] heir,[9] or partner,[10] becomes an unnecessary party by virtue of his disclaimer. The actual disclaimer from suit, however, is the vital factor; even if the otherwise indispensable party files a disclaimer, jurisdiction will not be acquired if he continues as a party to the suit and is not dismissed.[11] Since it is the dismissal which changes the nature of the case, it would seem that the issue of the indispensability of the party is important as of the time of the dismissal, and it is submitted that conditions existent at the commence-

[3] See Great Southern Fire Proof Co. v. Jones, 177 U.S. 449, 20 S. Ct. 690 (1900).

[4] "A party cannot bring his cause within the jurisdiction of this court, and prosecute it here, merely because at some time in the proceedings the interests and circumstances of the parties may so adjust themselves that this court would have jurisdiction . . . if the suit were brought anew." Adams v. City of Woburn, (D.C. Mass. 1909) 174 F. 192 at 193.

[5] Horn v. Lockhart, 17 Wall. (84 U.S.) 570 (1873); Carneal v. Banks, 10 Wheat. (21 U.S.) 181 at 188 (1825); Thomas v. Anderson, (8th Cir. 1915) 223 F. 41.

[6] In Thomas v. Anderson, supra note 5, the court said at p. 43, "When the trouble is noticed after the suit has been brought, the power of the court to retain jurisdiction by allowing amendments to pleadings and dismissals of those whose presence would oust it has been upheld in the interest of justice and the speedy determination of litigation."

[7] This result was reached in Delaware County v. Diebold Safe Co., 133 U.S. 473, 10 S. Ct. 399 (1890) ("as soon as [the assignors] were made parties in [the circuit court] they disclaimed all interest in the suit; and as no further proceedings were had, or relief sought or granted, against them, their presence was unnecessary.") The opposite result was reached in Adams v. City of Woburn, supra note 4.

[8] Delaware County v. Diebold Safe Co., supra note 7.

[9] Jennings v. Smith, (D.C. Ga. 1917) 242 F. 561.

[10] St. Lewis v. Kansas City, Kan., (D.C. Kan. 1940) 36 F. Supp. 796.

[11] Wetherly v. Stinson, (7th Cir. 1894) 62 F. 173; Equitable Life Assur. Soc. v. Rayl, (8th Cir. 1926) 16 F. (2d) 68. See also Poole v. West Point Butter & Cheese Assn., (D.C. Neb. 1887) 30 F. 513 at 517.

ment should have little relevance.[12] Assuming appropriate disclaimer[13] and dismissal in this type of case, there are policy considerations which might influence a court in its decision as to whether the existence of jurisdiction must turn on conditions present when the action was filed. The holding in the principal case represents a small expansion of diversity jurisdiction, an expansion to which the federal courts generally yield with great reluctance;[14] then, too, abuse in application of the principle is a very possible danger—e.g., in an extreme case wherein all but one or two partners in a firm relinquish any interest in the claim during the pendency of the action, solely for the purpose of having the case tried in the federal courts. On the other hand, the analysis by the court in the principal case has merit as a practical approach, for the alternative holding would require the nondisclaiming partners to begin suit anew (the disclaimant being an unnecessary party at the beginning of the second action and thus no obstacle to obtaining jurisdiction)—it may be argued that this requirement fosters needless litigation. In addition, it seems unwise to hold that jurisdiction is defeated solely because of the previous presence in the suit of a party who no longer has any legal interest involved, inasmuch as the requirement that indispensable parties be joined is designed in part to protect those parties and to dispose of several potential lawsuits in one action.

Richard W. Pogue, S.Ed.

[12] This does not follow from the principle now well established in the converse situation, i.e., that jurisdiction cannot be ousted by subsequent events if it exists at the time when the action is brought (see cases cited in principal case, at 472). That problem, however, is distinguishable from the one here discussed, for once jurisdiction is acquired, there is a strong argument that it should be retained, in the interest of eliminating wasteful relitigation.

[13] In Equitable Life Assur. Soc. v. Rayl, supra note note 11, where the party causing the loss of jurisdiction filed a disclaimer but "no specific finding as to its lack of legal interest is made by the master," the court held that jurisdiction was not saved.

[14] See Frankfurter, "Distribution of Judicial Power Between United States and State Courts," 13 CORN. L. Q. 499 (1928), for the arguments against expansion of diversity jurisdiction. Such abuses could perhaps be treated by the courts as instances of collusion designed to obtain federal jurisdiction.