

Third Circuit Clarifies Authority to Review Remand Orders

January 17, 2023

Source: New Jersey Federal Practice Alert

In a recent precedential opinion authored by Circuit Judge Patty Shwartz, Dirauf v. Berger (3d Cir. Dec. 28, 2022), a panel of the United States Court of Appeals for the Third Circuit clarified when it has jurisdiction to review a vacatur order of a remand decision and whether an appeal of a remand decision may be mooted by a later state court order dismissing remanded parties from the case. The panel also reviewed whether the district court erred in failing to explain why it declined to exercise supplemental jurisdiction when remanding the matter to state court. Ultimately, the panel determined it retained jurisdiction for the appeal and that the district court did not abuse its discretion in remanding the matter, and thus affirmed.

The Dirauf lawsuit alleged fraud in a real estate venture. Its complaint, filed by a number of foreign plaintiffs, alleged one federal RICO claim and over a hundred state law claims against New Jersey and foreign defendants. Defendants removed to federal court; the next day, Plaintiffs voluntarily dismissed their federal claim and later requested a “prompt remand to the state Superior Court,” with a remand order entered by the district court judge *sua sponte* that same day. The remand order explained that the Court must examine its own subject matter jurisdiction; federal question jurisdiction had been mooted by dismissal of the RICO claim; and that diversity jurisdiction was lacking.

Two weeks later, Defendants moved under Rule 60(b) to vacate the remand order. The District Court denied this motion, concluding remand was proper and explaining (1) diversity jurisdiction did not apply in suits between alien plaintiffs and defendant groups consisting of alien defendants and forum defendants; (2) it was not required to explain why it declined supplemental jurisdiction, though its “rationale should have been clear from the surrounding circumstances”; and (3) it correctly exercised its discretion to remand. Defendants appealed.

The appellate panel first reviewed whether it had appellate jurisdiction to review the vacatur order, explaining that remands under 28 U.S.C. § 1447 for lack of subject matter jurisdiction or a defect in removal procedure are not reviewable, while remands consistent with 28 U.S.C. § 1367 wherein a court declines to exercise supplemental jurisdiction over state law claims are.

Given this, the court analyzed whether the District Court’s remand occurred under § 1447 or consistent with § 1367, reviewing both the remand and vacatur orders, and determined it was an exercise of discretion and thus reviewable. Among other things, the vacatur order indicated that the District Court had declined to exercise supplemental jurisdiction; that the complaint contained over a hundred state law claims and the matter had been in federal court only a few days, making the decision to not exercise supplemental jurisdiction facially warranted; and that, had the remand occurred under § 1447, the District Court would have lacked jurisdiction to take

any action in the case thereafter, but did so by issuing the vacatur order, which showed that it had not been deprived of jurisdiction.

The panel then reviewed whether the appeal had been mooted by the state court's later order dismissing the foreign defendants from the case, concluding that it had not. For "mootness," a "live controversy" must be absent and the parties must no longer have a "legally cognizable interest in the outcome." But the foreign defendants had been dismissed without prejudice and the time to appeal the dismissal had not passed, meaning a live controversy remained.

Finally, the appeal claimed the District Court erred by failing to explain why it declined to exercise supplemental jurisdiction. However, the Third Circuit panel determined that failure to set forth a basis for dismissing state claims is not a grounds for reversal when clearly based on a statutorily enumerated basis for declining jurisdiction. It then concluded that the District Court had clearly declined to exercise supplemental jurisdiction based on the dismissal of all claims over which it had original jurisdiction, which could be "readily determined." Thus, it was not reversible error for the court to not state its specific reasons for declining to exercise supplemental jurisdiction, nor an abuse of discretion to not vacate the remand order.

The panel also reviewed and rejected several other arguments concerning the District Court's exercise of its discretion.

A copy of the opinion can be found at the following link.