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July 17, 2019

**VIA ECF**
Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp.*, No. 18-15502; *County of Marin v. Chevron Corp.*, No. 18-15503; *County of Santa Cruz v. Chevron Corp.*, No. 18-16376

Dear Ms. Dwyer:

Appellees write pursuant to Federal Rule of Appellate Procedure 28(j) to notify the Court of the Third Circuit's decision in *Claus v. Trammell*, No. 18-3800, 2019 WL 3064601 (3d Cir. July 12, 2019) (per curiam) (attached as Exhibit A). The decision is relevant to the scope of this Court's jurisdiction to review the remand order here.

Consistent with this Court's precedent in *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006), and prior Third Circuit precedent, the court in *Claus* explained that under 28 U.S.C. § 1447(d), it had "jurisdiction to review the District Court's remand order only to the extent that appellants maintain that removal was proper under § 1443," the civil rights removal provision. 2019 WL 3064601, at *1 (citing *Davis v. Glanton*, 107 F.3d 1044, 1047 (3d Cir. 1997)). "To the extent that appellants challenge the District Court's remand order with respect to any other basis for removal," the court held, "we will dismiss this appeal for lack of jurisdiction." *Id*. at *1.

The decision is relevant to the jurisdictional question addressed in Appellees' Motion for Partial Dismissal (Doc. 41 at 14-15) and to Appellants' suggestion that the Third Circuit would deviate from its 1997 precedent in *Davis* in light of the Removal Clarification Act of 2011, *see* Opposition to Motion for Partial Dismissal (Doc. 52 at 11); Appellants' Opening Br. 21. To the contrary, as this decision demonstrates, the Third Circuit has routinely applied the same rule before and after the 2011 Act, consistent with the law of other circuits. *See, e.g.*, *Farzan v. Farzan*, 753 Fed. Appx. 120, 121 (3d Cir. 2019) (per curiam); *Olick v. Pennsylvania*, 739 Fed. Appx. 722, 724 (3d Cir. 2018) (per curiam); *Santander Bank v. Hosang*, 640 Fed. Appx. 198, 200-01 (3d Cir. 2016) (per curiam); *Delaware v. Burr*, 523 Fed. Appx. 895, 897 (3d Cir. 2013) (per curiam); *Brown v. Wiltbank*, 479 Fed. Appx. 417, 418 (3d Cir. 2012) (per curiam); *Pennsylvania v. Randolph*, 464 Fed. Appx. 46, 46-47 (3d Cir. 2012) (per curiam).

Sincerely,

/s/ Kevin K. Russell
Kevin K. Russell
Goldstein & Russell, P.C.
Counsel for Appellees in Nos. 18-15499, 18-15502, and 18-15503

cc: All counsel of record (via ECF)

# Exhibit A

2019 WL 3064601
Only the Westlaw citation
is currently available.
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure
32.1 generally governing citation of
judicial decisions issued on or after
Jan. 1, 2007. See also U.S.Ct. of Appeals
3rd Cir. App. I, IOP 5.1, 5.3, and 5.7.
United States Court of
Appeals, Third Circuit.

William H. CLAUS, IV
v.
George K. TRAMMELL, III;
Stephanie Parker, Appellants

No. 18-3800
|
Submitted Pursuant to Third
Circuit LAR 34.1(a) May 17, 2019
|
(Opinion filed: July 12, 2019)

On Appeal from the United States District Court for the District of Delaware (D. Del. Civil Action No. 1:18-cv-01125), District Judge: Richard G. Andrews

**Attorneys and Law Firms**

Paul G. Enterline, Esq., Georgetown, DE, for Plaintiff-Appellee

George K. Trammell, III, Pro Se

Stephanie Parker, Pro Se

Before: MCKEE, COWEN, and RENDELL, Circuit Judges

OPINION *

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

***1** Pro se appellants George K. Trammell III and Stephanie Parker appeal the District Court's remand of their state court ejectment action. [1] For the reasons that follow, we will affirm the District Court's judgment to the extent of our jurisdiction and dismiss this appeal in all other respects.

1 Appellants have also filed a number of motions for "judicial notice" which make substantive arguments about the merits of the underlying state court action, as well as motions for a restraining order and for leave to file an additional supplemental appendix.

In June 2018, appellee filed a complaint for ejectment from a property against appellants in the Delaware Superior Court for Sussex County. Soon after, appellants removed the ejectment action to federal court. On appellee's motion, the District Court remanded the matter back to state court because it concluded that it lacked subject matter jurisdiction over appellants' case. Appellants sought reconsideration, which was denied. Appellants then filed this appeal while state court proceedings resumed.

Our jurisdiction in reviewing a remand order is limited. As relevant here, 28 U.S.C. § 1447(d) provides that

> [a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section ... 1443 of this title shall be reviewable by appeal or otherwise.

We thus have jurisdiction to review the District Court's remand order only to the extent that appellants maintain that removal was proper under § 1443. See Davis v. Glanton, 107 F.3d 1044, 1047 (3d Cir. 1997). To the extent that appellants challenge the District Court's remand order with respect to any other basis for removal, or the District Court's related reconsideration decision, we will dismiss this appeal for lack of jurisdiction. See id.; see also Agostini v. Piper Aircraft Corp., 729 F.3d 350, 355-56 (3d Cir. 2013).

Removal under § 1443(1) is appropriate when a state court defendant "is being deprived of rights guaranteed by a federal law 'providing for ... equal civil rights' " and cannot enforce those rights in state court.[2] See Davis, 107 F.3d at 1047. Although appellants repeatedly claim to have been somehow subjected to racial discrimination in state court in their filings, they appear to have removed the underlying ejectment action primarily because they disagree with the state court's unfavorable decisions in the removed case and related cases about the underlying property.[3] Appellants have not identified any Delaware law that would preclude them from vindicating their federal rights or otherwise shown that the Delaware courts could not enforce those rights. See Johnson v. Mississippi, 421 U.S. 213, 219-22, 95 S.Ct. 1591, 44 L.Ed.2d 121 (1975).

2 Appellants do not argue that removal could have been proper under 28 U.S.C. § 1443(2) and, in any case, that provision is inapplicable here. See 28 U.S.C. § 1443(2) (permitting removal where a civil action has been initiated against a defendant "[f]or any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.").

3 To the extent that appellants filed a notice of removal in an attempt to seek review of decisions that the Delaware state courts have made regarding the underlying property at issue, we note that the Rooker-Feldman doctrine bars such action in any event. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005) (explaining that the Rooker-Feldman doctrine applies to cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments").

***2** Further, the federal rights invoked in appellants' filings under 42 U.S.C. §§ 1983 and 1985 do not specifically provide for racial equality, as required by § 1443(1), but rather provide for rights generally applicable to all persons. See, e.g., State of Georgia v. Rachel, 384 U.S. 780, 792-93, 86 S.Ct. 1783, 16 L.Ed.2d 925 (1966) (contrasting laws specifically targeting racial equality, such as the Civil Rights Act of 1964, with those that confer equal rights to all, such as 42 U.S.C. § 1983 and the due process clause, for purposes of removal under § 1443). Accordingly, the District Court did not err in remanding appellants' case, and we will affirm the District Court's judgment to the extent of our jurisdiction[4]

4 Additionally, we deny all of appellants' pending motions.

## All Citations

--- Fed.Appx. ----, 2019 WL 3064601 (Mem)

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