

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Estate of James K. Workman by and)
through Robert C. Workman as Personal)
Representative,)
)
Plaintiff,)
)
vs.)
)
State Farm Mutual Automobile Insurance)
Company,)
)
Defendant.)

Civil Action No. 2:25-cv-00035-RMG

ORDER



This matter is before the Court on Plaintiff’s motion to remand. (Dkt. No. 9). Defendant responded to the motion (Dkt. No. 12), and Plaintiff replied (Dkt. No. 13). For the reasons set forth below, the Court grants Plaintiff’s motion to remand. (Dkt. No. 9).

I. Background

On April 14, 2023, Plaintiff filed a civil action against State Farm Mutual Automobile Insurance Company (hereinafter “Defendant” or “State Farm”) and State Farm’s retained law firm, Gallivan, White & Boyd, P.A. (“GWB”) in the Court of Common Pleas for Charleston County, South Carolina, as Case No. 2023-CP-10-01832. Plaintiff alleges that on June 12, 2021, James K. Workman died as a result of an automobile collision caused by Melvin O. Lamb, III, who was driving a vehicle insured by State Farm and owned by his father Melvin O. Lamb, Jr. (Dkt. No. 1-1, at ¶ 3). On June 29, 2021, State Farm allegedly sent letters to Mr. Lamb confirming coverage for the claim related to the collision. (Dkt. No. 1-1, at ¶ 6). Plaintiff alleges that on July 14, 2021, State Farm created a forged and false declarations page to replace the existing declarations page. (Dkt. No. 1-1, at ¶ 7). Plaintiff’s complaint also alleges that State Farm created a false “Certified Policy Record” and on August 16, 2021, GWB and State Farm

used the document in a lawsuit against Plaintiff in an attempt to deny coverage. (Dkt. No. 1-1, at ¶¶ 11-12). Plaintiff alleges that after deposing a corporate representative of State Farm, their scheme was exposed, and State Farm sought to dismiss its own lawsuit. (Dkt. No. 1-1, at ¶¶ 15-16). Plaintiff brought seven causes of action against State Farm and GWB, seeking money damages. (Dkt. No. 1-1).

On May 19, 2023, State Farm removed the case arguing GWB was fraudulently joined to prevent diversity jurisdiction. (Dkt. No. 1-1). Plaintiff moved for remand arguing Defendant did not meet the burden of establishing fraudulent joinder, and the Court agreed, remanding the case on August 2, 2023. (C.A. No. 2:23-cv-02133-RMG, Dkt. No. 31). On September 1, 2023, State Farm and GWB each filed an Answer and a Motion for the Judgment on the Pleadings in state court. (Case No. 2023-CP-10-01832). After the court initially granted the motions and dismissed both State Farm and GWB, Plaintiff moved for reconsideration. (Dkt. No. 1-1 at 1126-1137; 1161-1183). The court entered an amended order granting Plaintiff leave to amend the Complaint to state a cause of action against State Farm and GWB. (Dkt. No. 1-1 at 1227-1260). The court also dismissed with prejudice Robert Workman in his individual capacity, Kelly Workman Tick, and Matthew Workman for lack of standing. (Dkt. No. 1-1 at 1161-1183;1227-1237).

On December 2, 2024, Plaintiff filed an amended Complaint which voluntarily dropped GWB as a defendant. (Dkt. No. 1-1 at 1261-1293). The amended Complaint alleges that State Farm created and used false documents as part of a scheme to intentionally harm Plaintiff and others. (Dkt. No. 1-1 at 1264). Plaintiff's causes of action include abuse of process, fraud, and negligent misrepresentation, and Plaintiff seeks money damages. (Dkt. No. 1-1 at ¶¶ 51-98). Also on December 2, 2024, Plaintiff filed a notice of appeal with respect to the state court's amended order granting judgment on the pleadings to State Farm. (Dkt. No. 1-1 at 1294-95)

On January 2, 2025, State Farm removed the case to this Court based on 28 U.S.C. §§ 1446(b)(3) and 1446(c)(1). (Dkt. No. 1). On January 27, 2025, Plaintiff moved to remand to state court. (Dkt. No. 9). Defendant responded, (Dkt. No. 12), and Plaintiff replied (Dkt. No. 13). The motion is ripe for review.

II. Legal Standard

As the party seeking to invoke the court's jurisdiction after removing a case from state court to federal court, the defendant has the burden of proving jurisdiction upon a plaintiff's motion to remand. *Dixon v. Coburg Dairy, Inc.*, 369 F. 3d 811, 816 (4th Cir. 2004) (citing *Mulcahey v. Columbia Organic Chems. Co.*, 29 F. 3d 148, 151 (4th Cir. 1994)); see *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 73 (1996) (stating that the party seeking to remove a case from state court to federal court bears the burden of demonstrating that jurisdiction is proper at the time the petition for removal is filed). In deciding a motion to remand, the federal court should construe removal jurisdiction strictly in favor of state court jurisdiction. *Id.* "If federal jurisdiction is doubtful, a remand is necessary." *Mulcahey*, 29 F. 3d at 151 (citations omitted), *Pohto v. Allstate Ins. Co.*, No. 10-2654, 2011 WL 2670000, at *1 (D.S.C. July 7, 2011) ("Because federal courts are forums of limited jurisdiction, any doubt as to whether a case belongs in federal or state court should be resolved in favor of state court.").

III. Analysis

State Farm's notice of removal was filed more than one year and eight months after the commencement of the lawsuit. State Farm justifies its late removal by alleging Plaintiff, a citizen of South Carolina, pursued the case against GWB, a citizen of South Carolina, in bad faith to prevent the removal to federal court under diversity jurisdiction. (Dkt. No. 1). State Farm alleges that proof of Plaintiff's bad faith can be found in their refusal to properly litigate a case against GWB.

Section 1446(c)(1) prevents a case from being “removed under subsection (b)(3) on the basis of [diversity] jurisdiction...more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C. § 1446(c)(1). What constitutes bad faith under § 1446(c)(1) is a developing standard among the district courts within the Fourth Circuit. *See Johnson v. HCR Manorcare LLC*, No. 1:15-cv-00189, 2015 WL 6511301, at *4 (N.D.W. Va. Oct. 28, 2015) (“The contours of the bad faith exception are murky in the Fourth Circuit.”). “Although the Fourth Circuit has not deeply explored the contours of the bad faith exception, it is well settled that the plaintiff is the master of her complaint. *Holland v. CSX Transportation, Inc.*, No. 21-cv-00377, 2021 WL 448305, at *2 (S.D. W. Va. Sept. 28, 2021) (citing *Pinney v. Nokia, Inc.*, 402 F.3d 430, 442 (4th Cir. 2005)). Therefore, it “is not inherently bad faith to use strategy to defeat federal jurisdiction.” *Brazell v. Gen. Motors, LLC*, No. 14-cv-04588, 2015 WL 1486932, at *4 (D.S.C. Mar. 30, 2015) (citing *Duck Outfitters v. Nationwide Mut. Ins. Co.*, No. 14-cv-00060, 2015 WL 540149, at *2 (E.D.N.C. Feb. 10, 2015)). “So a defendant alleging bad faith by a plaintiff bears an arduous burden that requires evidence of forum manipulation.” *Holland*, 2021 WL 448305, at *3 (collecting cases). When analyzing bad faith, other courts in this circuit and around the country have adopted the two-step framework outlined in *Aguayo v. AMCO Ins. Co.*, 59 F.Supp.3d 1225, 1275-77 (D. N.M. 2014).

Under the two-step framework outlined in *Aguayo*, a court must first determine whether the plaintiff actively litigated the claims in state court. *Aguayo*, 59 F.Supp.3d at 1275. Failure to actively litigate is bad faith, but actively litigating creates a “rebuttable presumption of good faith.” *Id.* at 1275. For the second step, if the plaintiff has actively litigated the case, then the defendant can attempt to overcome the presumption by presenting direct evidence that the

plaintiff acted solely for the purpose of preventing removal. *Id.* at 1275-76. To rebut the good faith presumption, “[t]he Court wants a smoking gun or close to it.” *Id.* at 1277. Merely pointing to the timing of events is insufficient to show bad faith on the part of the Plaintiff. *See Mullins v. Rish Equipment Co.*, No. 21-cv-00347, 2021 WL 4448296, at *4 (S.D. W. Va. Sept. 28, 2021) (citing *Dutchmaid Logistics, Inc. v. Navistar, Inc.*, No. 16-cv-0857, 2017 WL 1324610, at *14 (S.D. Ohio April 11, 2017)).

Under the first prong of the *Aguayo* test, the Court finds that Plaintiff has actively litigated its claims against GWB. Plaintiff hired an attorney expert to provide an affidavit and opinions, Plaintiff served, obtained, and reviewed discovery from GWB, Plaintiff requested GWB to provide overdue discovery responses after remand, Plaintiff filed a motion to compel GWB for its allegedly inadequate discovery responses, and Plaintiff moved to reconsider the order dismissing GWB. (Dkt. No. 9-1 at 7). Plaintiff also alleges that it noticed depositions of multiple State Farm employees used by GWB in its litigation to claim lack of coverage. (Dkt. No. 9-1 at 8).

Defendant attempts to rebut the presumption that Plaintiff litigated its claims against GWB in good faith, alleging that Plaintiff included GWB in the case solely to avoid removal to federal court. State Farm notes that Plaintiff’s abandonment of a case against GWB was not in exchange for any consideration, nor had a settlement even been discussed between the parties. (Dkt. No. 1 at ¶ 24). State Farm claims that Plaintiff’s abandonment of the case could not be based on new information gathered in discovery because no depositions had taken place, and when Plaintiff removed GWB from the complaint, “there had been no change in the information or materials available to Plaintiff through discovery” (Dkt. No. 1 at ¶ 25). State Farm alleges that to the extent discovery requests were made of GWB, “they were nothing more than token

discovery” and were not “aimed at advancing any claim against GWB.” (Dkt. No. 1 at ¶ 26). State Farm claims that for Plaintiff to overcome attorney immunity, it must allege and prove that GWB acted in furtherance of its own interests outside the scope of its representation of State Farm, but that none of the discovery served on GWB sought to reveal GWB’s interests. (*Id.* at ¶¶ 27-28). Lastly, State Farm alleges that despite Plaintiff asking about scheduling depositions of State Farm witnesses, they never inquired about deposing GWB or its witnesses. (*Id.* at ¶ 29). For those reasons, State Farm alleges that Plaintiff did not actively litigate claims against GWB in good faith, and therefore State Farm can remove the case outside the one year limit pursuant to the bad faith exception under 28 U.S.C. § 1446(c)(1).

To determine whether a defendant litigated in good faith or simply engaged in forum shopping, this Court considers other cases involving alleged bad faith forum manipulation. In *Mansilla-Gomez v. Mid-S. Erectors, Inc.*, Plaintiff failed to include any jurisdictional information in his state court complaint, he denied requests for admission determining his citizenship, and he failed to respond to written discovery until after the expiration of the one year bar under § 1446(c)(1). No. 0:14-CV-00308-JFA, 2014 WL 1347485, at *2 (D.S.C. Apr. 3, 2014). The court found that plaintiff did not act in bad faith because “other factors might have motivated Plaintiff’s decisions.” *Id.* See also *Brazell*, 2015 WL 1486932, at *4 (“[A] plaintiff who wants a federal forum can forego valid claims against nondiverse defendants to create complete diversity”)

Here, Plaintiff states that it dropped the claims against GWB for several strategic reasons: the results of discovery and conversations with GWB’s counsel, the order dismissing claims against GWB, the order dismissing the other plaintiff for lack of standing, and conversations with the trial judge who suggested that he consider dropping the claims against GWB. (Dkt. No.

9-2 at 3, 10-12). Allegedly, those factors collectively convinced Plaintiff to make the strategic decision to remove GWB from the Amended Complaint. (*Id.*). Like in *Mansilla-Gomez*, Plaintiff has made litigation decisions that can be explained by reasons other than bad faith forum manipulation.

The Court finds that Defendant has failed to overcome the presumption of good faith established by Plaintiff in litigating the case. This court has previously found that Plaintiff's claims against GWB are not wholly unsubstantial or frivolous. (C.A. No. 2:23-cv-02133-RMG, Dkt. No. 31), and Defendant has not produced direct evidence that Plaintiff acted solely for the purpose of preventing removal. Pointing to the timing of events and inferring motives from discovery decisions and settlement agreements is not tantamount to direct evidence establishing bad faith or forum manipulation.

Therefore, the bad faith exception under 28 U.S.C. § 1446(c)(1) does not apply and Defendant's notice of removal is untimely. (Dkt. No. 1). The Court grants Plaintiff's motion for remand. (Dkt. No. 9).

IV. Conclusion

For the reasons stated above, Plaintiff's motion to remand (Dkt. No. 9) is **GRANTED**. The Court **REMANDS** this action to the Court of Common Pleas, Charleston County, South Carolina.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard M. Gergel
United States District Judge

March 24, 2025
Charleston, South Carolina