

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

APR 6 - 2007

Michael N. Milby, Clerk

KEN FREELAND

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VS.

CAUSE NO.: 4:07-CV-01102

JANE TUCKER BRADLEY, DUANE
BRADLEY AND LESTER RADKE

PLAINTIFF'S MOTION TO REMAND ON GROUND OF LACK OF FEDERAL QUESTION

Plaintiff in the above case removed to this Court by the aforesaid Defendants, moves to remand the above matter to the 280th District Court of Harris County, Texas, the Court in which this matter was pending at the time of such removal, upon the following grounds:

1. Plaintiff denies the allegations of the Petition for Removal that this Court that Plaintiff has alleged "claims involving federal question jurisdiction." While plaintiff has duly noted that the effect of the tortious acts of the defendants has been the infringement of various constitutionally guaranteed liberties, no civil rights claims against the defendants have been filed. Rather, defendants have been charged with conspiracy and defamation, which are properly judicable within the jurisdiction of the 280th Judicial District Court of Harris County, Texas. Claims by Plaintiff are made on the ground of damage to his reputation, community standing and ability to represent the members of the Pacifica Foundation/ KPFT who voted him into his current office as a member of a Local Station Board. The examination and adjudication of such claims is well within the competence of the aforementioned District Court of Harris County.

While it can be argued that many tortious acts to infringe on the constitutional rights of their victims, if this fact were used to justify removal of all such claims to Federal Court, there would be no end to the backlog of cases demanding the attention of the Federal Court, and State Courts (and State law) would be rendered superfluous.

2. Plaintiff emphatically denies having committed any "assault," as alleged by Defendants in their Notice of Removal. None has ever been adjudicated, and their conspiracy to perpetrate this false claim is in fact the basis of the defamation claim against defendants.
3. Plaintiff denies that Defendants have been "fraudulently joined" and that these are "sham" defendants... they are in fact the very individuals who conspired to defame Plaintiff, as demonstrated by evidence and testimony already submitted and to be submitted as this cause is continued. The claim by Defendants that the Pacifica Foundation is the real defendant and must by a named party to this lawsuit (see their Plea in Abatement) was *overruled* by Judge Tony Lindsay (along with other frivolous motions filed by Defendants to dismiss the cause) in course of the proceedings in the 280th Judicial District Court of Harris County, Texas on 30 March 2007. This argument is groundless, and has already been dismissed by the lower Court. It therefore does not require further refutation here.
4. Plaintiff denies claim by Defendants that injunctive relief cannot be obtained from Defendant

Duane Bradley:

a) Defendants claim that Duane Bradley is not the owner of the property in question. In fact, in the memorandum Duane Bradley himself states that he has filed with the Houston Police Department (Plaintiff's Exhibit 2), Duane Bradley represents himself as "owner or agent of the property," therefore authorized to issue the ban.

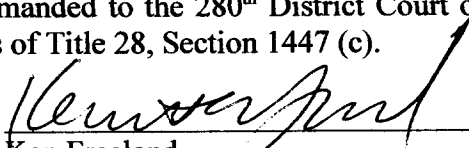
b) Defendants claim that "the authority to allow Plaintiff on the property lies exclusively with the owner of the property, the Pacifica Foundation..." yet this is contradicted by Defendants' Exhibit 2, the notarized affidavit by Defendant Duane Bradley himself in which he states: "My decision to ban Ken Freeland from radio station property was based on my authority as General Manager and my responsibility in that position..." Defendant Duane Bradley here properly asserts that he has the authority to ban individuals from the property as agent of the Pacifica Foundation, and in fact exercised that authority. And since this ban was, by his own admission, his decision, it is likewise within his purview to lift the ban, if so ordered by the Court. Either the Defendant's affidavit is falsely sworn, or the argument of Defendants that "The decision to remove and ban Plaintiff from radio station premises was made by parties not before this court" is falsely reported.

4. Plaintiff denies the relevance of 28 U.S.C. § 1343, since at this time Plaintiff is seeking to recover damages on the basis of tortious actions committed by defendants in conspiracy, not on the basis of deprivation of civil rights. Though this latter effect of defendants' actions is recognized and argued, this fact is not essential to the present case, which consists of tortious actions justiciable within the scope of Texas state law and not requiring resolution of any "Federal question."
5. Plaintiff denies the accusation by Defendants that he has fraudulently joined them in an effort to avoid federal jurisdiction. Defendants joined themselves in their conspiratorial action to defame Plaintiff and prevent his action to the Local Station Board of KPFT and the National Boards of the Pacifica Foundation. Moreover, had this cause been directly presented to this US District Court by Plaintiff, he would surely have been told that it was not the proper jurisdiction to process civil claims against tortious actions by individuals, as Texas State law is adequate to adjudicate and remedy. [Moreover, it was established in *Mecom v. Fitzsimmons Drilling Co.* (284 U.S. 183, 189-9190, 52 S. Ct. 84.76 L. Ed. 233 [1931]) that it is immaterial whether the plaintiff's motive in joining a party was to defeat removal jurisdiction.]
6. Defendants argue in their Notice of Removal that "it can be ascertained from this claim and others that the Plaintiff is seeking money damages above \$75,000." Plaintiff denies this claim. In the same paragraph of their Notice to Remove (12), Defendants concede that "Plaintiff has not pled specific damages for his alleged violation of free speech from Defendants."
 - a) The question of amount in controversy is not relevant since neither of the answering Defendants has diversity of citizenship from that of Plaintiff or of the Texas State District Court. Both, by their own affidavits, are residents of Harris County, Texas, as is Plaintiff.
 - b) The burden of proof to establish the amount in question has not been met by Defendants, as it is not specific in the pleadings of Plaintiff nor in any motion filed by

Plaintiff.

7. Plaintiff conferred directly by telephone with Counsel for the Defendants on 5 April 2007 explaining Plaintiff's position that the Removal to U.S. District Court was inappropriate and that the case did not revolve around a Federal Question, but a matter of Texas State Law. A Certificate of Conference accompanies this Motion to Remand.
8. In contrast to the false implication by the Defendants, this lawsuit was filed by Plaintiff against Defendants because of their conspiratorial behavior in effecting his public defamation, constituting tortious action justiciable under the laws of the State of Texas. This was made clear to the Defendants in their copy of the original petition as it was to the Honorable Tony Lindsay, who deemed the matter appropriate for adjudication by the 280th District Court of Harris County, Texas over which she presides, in accordance with TEX. CIV. PRAC. & REM. CODE Sections 15.002 (a) (1) and (a) (2) and 15.005. The Show Cause hearing for the requested temporary and permanent injunctions against defendant Duane Bradley was well underway in that venue, and was about to be concluded, when Defendants filed notice to remove to Federal Court.
9. As demonstrated in the above arguments, not one single claim made by Defendants in their Notice of Removal has the slightest legal merit. The cause herein was therefore improperly removed. Moreover, the clear purpose of Defendants in seeking to remove this lawsuit to another venue is to delay the course of justice in this cause. Each day that justice is delayed is another day of harm to Plaintiff, and to the members of the Pacifica Foundation/KPFT who elected him to his seat on the KPFT Local Station Board, including the two Foundation members who have joined this lawsuit as Intervenors. This delaying action represents an abuse of the judicial process, reflecting Defendants earlier abuse of the criminal justice system already part of plaintiff's pleadings against them (Defendant Duane Bradley have utilized the Houston Police Department in enforcing an arbitrary and malicious ban against Plaintiff; Defendant Tucker Bradley falsely reported an "assault" to the Houston Police Department), and thereby constitutes a public nuisance.
10. At this writing, (4-6-07) the Plaintiff has received notification that the same frivolous motions introduced by Defendants to dismiss this cause which were summarily overruled by the lower court, are now being reintroduced by Defendants, once again demonstrating the frivolous nature of the Removal of this cause. The 280th District Court of Harris County is the proper venue within which to adjudicate tortious acts such as those committed by these Defendants.
11. The Plaintiff herein further moves the Court to order the payment to the Plaintiff by the Defendants of all costs and disbursements incurred by reason of the removal proceedings.

Wherefore, the Plaintiff prays that this case be remanded to the 280th District Court of Harris County, Texas in accordance with the requirements of Title 28, Section 1447 (c).


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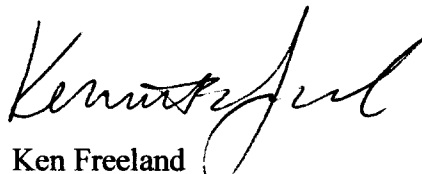
PLAINTIFF'S CERTIFICATE OF CONFERENCE

1. On 5 April 2007 Plaintiff telephoned Mike Martin, counsel for the defendants, and expressed disagreement that there was need for the cause herein to be removed to Federal Court, and challenged the arguments of defendants to that end.

2. Defendants' counsel was informed that Plaintiff intended to request the remanding of the cause to State Court.

3. Defendants' counsel did not agree that the cause should be remanded.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing had been forwarded to all counsel of record via Certified Mail, return receipt requested or Facsimile on this 6 day of April, 2007.

Respectfully submitted,



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