

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

AFG COMPANIES, INC.,

Plaintiff,

§ Civil Action No. 4:25-cv-01272-O

GENUINE LIFETIME, LLC, et al,

Defendants.

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR REMAND

Plaintiffs Automotive Financial Group, Inc. and AFG Companies, Inc. (together, "AFG") file this Reply in support of their Motion for Remand, and respectfully show the Court as follows:

I. INTRODUCTION

Genuine Lifetime, LLC (“**Genuine Lifetime**”) and Tyler Luck (“**Luck**”) improperly attempted to remove part of this case without the consent or joinder of their co-defendant, Travis Gates (“**Gates**”) (collectively with Genuine Lifetime and Luck, “**Defendants**”). Genuine Lifetime and Luck attempted this disallowed partial removal despite the time period for any removal having passed over a year ago and despite lacking any statutory basis for removal jurisdiction.

Genuine Lifetime and Luck removed a non-removable case (while attempting to leave their co-defendant Gates—who has the same counsel—behind) because they do not like the 48th District Court of Tarrant County’s decision that the Genuine Lifetime, Luck, and Gates’ claims and defenses are substantially similar such that the cases should be consolidated. [See ECF 11 pp. 6–7 (the “**Response**”) (asserting without any proper basis an improper motive for AFG to seek

consolidation)]. Having lost that argument in the underlying case, Defendants seek a second bite at that apple before this Court.

For the reasons set forth herein and in AFG's Motion for Remand and accompanying Brief in Support, the Court should deny Defendants' attempt to side-step the decision of the 48th District Court of Tarrant County and grant AFG's Motion for Remand.

II. **ARGUMENTS & AUTHORITIES**

Defendants argue that consolidation was both proper and timely. To do so, Defendants ignore clear law disallowing partial removal, create new orders from the underlying 48th District Court that do not exist, and insist that this Court must overrule the 48th District Court's order consolidating two cases. Defendants are wrong in each instance.

A. Removal of this Case was Improper.

1. Defendants attempted an improper partial removal.

Defendants concede that they attempted an improper partial removal. [ECF 11 p. 6]. Defendants have not provided any authority allowing the Court to ignore the impropriety of a partial removal. [See ECF 6 pp. 6–7 (demonstrating that a partial removal is improper, and the legal effect thereof is a removal of the entire state-court action)]; *Mid-Century Ins. Co. v. Philadelphia Indem. Ins. Co.*, No. 3:11-CV-2835-N, 2012 WL 12358929, at *5 (N.D. Tex. June 12, 2012) (Attempts at partial removal effect a removal of the entire state-court action, requiring the Court to “analyze whether it has jurisdiction over the entirety of the action as it existed at the time the Notice of Removal was filed.”).

2. Genuine Lifetime and Luck cannot ignore Gates for diversity jurisdiction purposes
“[A]ll defendants who have been properly joined and served must join in or consent to the removal of the action” when removal is sought under 28 U.S.C. § 1441(a). 28 U.S.C.A. §

1446(2)(A). As demonstrated in the Motion—and ignored in the Response—all parties have not joined in or consented to this removal. Gates, an in-state defendant represented by the same counsel as Genuine Lifetime and Luck, neither joined nor consented to the removal. The Court should end its analysis here and grant the Motion. *Getty Oil Corp., a Div. of Texaco, Inc. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1262 (5th Cir. 1988) (holding that a removal petition is defective if all defendants who are properly joined and served are not included in the petition). Moreover, Gates’ existence in this case means that there is *not* complete diversity amongst plaintiffs and defendants. Accordingly, there is no basis for removal and the Court should remand this case.

Rather than address the lack of diversity raised in the Motion, Defendants attempt to re-argue their opposition to the consolidation of the 17th District Court Case into the 48th District Court Case. [ECF 11 p. 6 (“[t]here is no colorable argument that consolidation of these matters [referring to the 17th District Court Case and the 48th District Court Case] was an attempt to increase efficiency and duplicative legal proceedings” and that the two cases “share no common parties or claims and do not require the Court to consider common questions of law.”)] These arguments were made to, *and rejected by*, the 48th District Court when it rendered its Order consolidating the cases. Defendants could have—but did not—file a motion for reconsideration in the 48th District Court Case; they should not be permitted to allege error by the underlying court as a basis for removal.

Likewise, Defendants’ attempts to equate the 48th District Court’s consolidation of the cases to fraudulent joinder is nonsense. Fraudulent joinder exists only: (1) when there was actual fraud in the pleading of jurisdictional facts; or (2) when the plaintiff is unable to establish a cause of action against the non-diverse defendant in state court. *Williams v. Homeland Ins. Co. of New York*, 18 F.4th 806, 812 (5th Cir. 2021). The existence of “even a single valid cause of action

against in-state defendants requires remand of the entire case to state court.” *Id.* at 815. Defendants present no argument, and certainly no evidence, to support a claim for fraudulent joinder because there was no fraudulent joinder. Rather, two substantially similar cases were consolidated. [ECF 4-6 at pp. 57–58]. Defendants’ attempt to have this Court act as a state-level appellate court to overturn the 48th District Court on the same issue by presenting less than half of the pleadings, [*see* ECF 4-2–4-6 (omitting over one year’s worth of filings from the 48th District Court Case)], should be disregarded entirely.

Even were this Court inclined to revisit the already-decided consolidation issue, Defendants have presented no basis for the Court to do so. Specifically, Defendants filed with this Court only the filings pertaining to the 17th District Court Case, [*see* ECF 4-2], and omitted nearly all of the filings from the 48th District Court Case from which this case was removed. The reason for these omissions is evident—were the Court to review the same materials as the 48th District Court, it would arrive at the same conclusion and confirm that the cases should have been consolidated (as they were). Regardless, the 48th District Court’s decision consolidating the cases is not before this Court; the cases were consolidated, the parties lack diversity, not all defendants joined or consented to the removal, and Defendants have not shown any proper basis for removal.

3. *This Court Lacks Subject Matter Jurisdiction.*

Defendants argue that Plaintiff AFG Companies Inc.’s decision to not remand a case originally filed in state court in Wyoming should impact the Court’s decision here. Defendants further argue that Plaintiffs’ litigation strategy in this case should be taken into account when determining the Motion. Subject matter jurisdiction is not waivable, and a parties decision in a separate, distinct case, and their litigation strategy is not relevant to the Court’s decision here.

Diversity jurisdiction exists when the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is complete diversity between plaintiffs and defendants at the time of removal. 28 U.S.C. § 1332(a); *Denley Group, LLC v. Safeco Ins. Co. of Indiana*, No. 3:15-CV-1183-B, 2015 WL 5836226, at * 2 (N.D. Tex. Sept. 30, 2015) (emphasis added) (citing *Mas v. Perry*, 489 F.2d 1396, 1398–99 (5th Cir. 1974)). “[I]t is well established that a party’s litigation conduct can neither confer subject-matter jurisdiction on a court nor strip it away.” *Abraham Watkins Nichols Agosto Aziz & Stogner v. Festeryga*, 138 F.4th 252, 258 (5th Cir. 2025).

As evidenced *supra*, Gates is a non-diverse in-state defendant and thus this Court does not have diversity jurisdiction over this case. Contrary to Defendants’ arguments, AFG’s decision not to seek remand *where it was not available in another case* does not confer jurisdiction on *this Court in this case. See id.*

Defendants also argue that they should be allowed to remove this non-removable case because consolidation of the underlying case was improper and the result of Plaintiffs’ “gamesmanship”. [ECF 11 p. 7]. Notably absent from Defendants’ Response is any legal authority supporting their efforts for a second bite at the consolidation apple. Defendants had the opportunity to—and did—raise their claims of “gamesmanship” before the 48th District Court when AFG moved to consolidate the cases. The underlying court rejected those arguments, [ECF 4-6 at pp. 57–58], and Defendants’ disapproval of that decision does not create some new non-statutory basis for this Court to exercise jurisdiction.

Gates was a proper party to this lawsuit at the time of removal and complete diversity of citizenship did not—and does not—exist. Accordingly, this Court does not have subject matter jurisdiction over the case. The Court should grant the Motion and remand this case.

B. Removal Was Untimely Under the Law.

A notice of removal must be filed within 30 days of receipt of the initial pleading or, if not initially removable, within 30 days after receipt of an order from which it may *first* be ascertained that the case has become removable. 28 U.S.C. § 1446(b)(1), (3). Moreover, subsection (c) prohibits removal based on diversity “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.” § 1446(c)(1).

Defendants do not dispute that they are attempting a removal of an initially removable case more than 1 year after its commencement. [See generally ECF 11]. Defendants have not alleged or shown any actions by AFG that would constitute bad faith in order to prevent removal. [See generally ECF 11]. Accordingly, removal of this case was untimely and the Court should grant the Motion on this basis alone.

Defendants instead argue that their deadline to seek removal of the 17th District Court Case under section 1446(b)(1) should only have started to run after that case ceased to exist and was consolidated into the 48th District Court Case. [ECF 11 p. 5]. Put another way, Defendants ask the Court to ignore the clear language in section 1446 requiring a case, if initially removable, to be removed within 30 days of service (or otherwise within 1 year of commencement, if not initially removable but later becoming removable). See § 1446(b)(1), (b)(3), (c). The 17th District Court Case was removable when filed and served; Defendants chose not to do so, and thus have no legal basis to do so now. It is undisputed that the removal occurred more than a year after the underlying case was commenced, and thus removal is expressly prohibited. The Court should end its analysis here.

Defendants claim the judicially created Revival Exception to section 1446(b) applies. In reality, Defendants are asking the Court to create a wholly new judicial exception to section 1446(b). [See ECF 11 p. 4]. The Revival Exception allows for removal after the 30-day deadline where “the plaintiff files an amended complaint that so changes the nature of his action as to constitute “substantially a new suit begun that day.” *Johnson v. Heublein Inc.*, 227 F.3d 236 (5th Cir. 2000). Contrary to Defendants’ claims, that is not the case here. Plaintiffs have not amended their claims against Genuine Lifetime, Luck, or Gates; there is no substantial transformation of the state court case. Indeed, AFG’s claims against Genuine Lifetime and Luck have not changed at all, much less in a manner so transformative as to require the Court to ignore the removal statutes. All that has occurred is a consolidation of two cases into the 48th District Court Case based on that court’s determination that the cases were substantially similar such that they should be consolidated pursuant to Texas law. [ECF 4-6 at pp. 57–58]. Absent any change in AFG’s claims, Defendants ask this Court to allow removal after the statutory deadline because Defendants disagree with the consolidation of the underlying cases. It is worth noting, again, that Genuine Lifetime and Luck could have removed the 17th District Court Case over a year ago but chose not to.

Defendants further ask the court to “[a]ssum[e] the Consolidation and Reset Order triggered Defendants’ new thirty day window” and conclude that Defendants timely removed this case. To be clear, the 48th District Court *did not reset any deadlines*, as was demonstrated in the Motion. [See ECF 6 pp. 10–12]. Defendants refer to the underlying court’s “Order Granting Opposed Motion to Consolidate” as “the Consolidation and Reset Order.” [ECF 11 p. 5]. Defendants have no basis to do so—this language appears nowhere and no reset was granted or

even mentioned in the order. That AFG made this clear in the Motion and Defendants continue to mislead this Court is sanctionable of itself.¹

Defendants' removal of this case was untimely under section 1446(b)(1), (b)(3), and (c).

The Court should decline Defendants' invitation to create a new exception allowing for untimely removal based on the consolidation of unchanged claims more than a year after a case is commenced, and should grant the Motion for Remand.

C. Fees and Costs are Justified Under 28 U.S.C. § 1447(c).

Defendants asserted diversity jurisdiction as a basis for removal of a case wherein there was a non-diverse, in-state defendant—Gates. After AFG's Motion pointed to Gates' presence in the case, and that partial removal was improper and is treated as removal of the entirety of the case, [*see* ECF 6 pp. 6–8 and cases cited therein], Defendants chose again to pretend that Gates is not a party to this case. [*See generally* ECF 11 (failing to address Gates' existence for diversity jurisdiction purposes)]. Defendants removed this case despite having missed every statutory deadline for removal, and chose instead to argue that the inapplicable Revival Exception to the deadlines—which was not asserted in Defendants' Notice of Removal—applied. As demonstrated above, it does not. Moreover, Defendants falsely claimed that an order consolidating two underlying cases was titled “Consolidation and Reset Order” even though the express language of the “Order Granting Opposed Motion to Consolidate” (which includes no language regarding any resets) was included in the Motion for Remand. To provide cover for their baseless removal, Defendants submitted to this Court the pleadings from the 17th District Court Case and only a

¹ Defendants further mislead the Court by claiming that the original lead counsel for Genuine Lifetime and Luck withdrew from the matter on October 25, 2025. [ECF 11 p. 5 n.2]. This is false. McCathern PLLC, who was co-counsel with Buchalter P.C., filed a Motion to Withdraw on that date; this attempt to withdraw was opposed by AFG and the underlying court had ordered additional briefing. McCathern PLLC has not, to date, withdrawn from its representation.

handful of the pleadings from the 48th District Court Case, which was both procedurally improper and a clear attempt to mislead this Court.

Amplifying their malfeasance, Defendants claim that the 48th District Court ordered that the cases which had just been consolidated would be tried separately. [ECF 11 p. 7]. Notably, Defendants did not submit any transcript supporting that claim. In fact, the 48th District Court made no such statement or order, and rather stated that he would make any bifurcation decisions at a later date:

1	that, at this time, I believe consolidation is proper.
2	I'm not one hundred percent sure that we should not have
3	separate trials, but I do agree with Ms. Wright that the
4	proper procedure, if -- if -- if I'm bringing that case
5	from the 17th over here, would be to consolidate, then
6	it would be at a later date, determine whether
7	bifurcation would be proper.

Put simply, Defendants disagree with the 48th District Court's determination that the cases should be consolidated and are hoping that this Court will allow them to partially remove a portion of a case to achieve an outcome expressly denied them in the underlying case. Hoping the Court will ignore clear statutory language is not an objectively reasonable basis for removal; the Court should award AFG its fees pursuant to 28 U.S.C. § 1447(c).

III. **CONCLUSION AND PRAYER**

For the reasons set forth above, AFG respectfully request that the Court grant its Motion for Remand, remand the case to the 48th District Court, Tarrant County, Texas, award AFG their attorneys' fees and costs incurred in bringing this Motion, and grant AFG such other and further relief to which it may show itself justly entitled, whether at law or in equity.

Respectfully submitted,

By: /s/ Shauna J. Wright

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was electronically filed with the Clerk of Court, via the CM/ECF Court Filing System, and was duly served upon all parties entitled to receive notice, in accordance with the Federal Rules of Civil Procedure, this 23rd day of December 2025.

/s/ Shauna J. Wright

Shauna J. Wright