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

AGF COMPANIES INC,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:25-cv-01272-O**
	§	
GENUINE LIFETIME, LLC, et al	§	
	§	
	§	
	§	
Defendants.	§	

ORDER

Before the Court are Plaintiff's Motion for Remand and Brief in Support (ECF Nos. 5, 6); Defendants' Response (ECF No. 11); Plaintiff's Reply (ECF No. 12); and Defendants' Motion to Transfer Venue (ECF No. 13). After considering the briefing and the applicable law, the Motion to Remand (ECF No. 5) is **GRANTED**. The Motion to Transfer Venue (ECF No. 13) is **DENIED as moot**.

I. BACKGROUND

Automotive Financial Group, Inc. ("AFG") filed suit in the 48th District of Tarrant County on April 25, 2024, seeking damages from Travis Gates ("Gates") for misappropriation of trade secrets, breach of fiduciary duty, breach of contract, and tortious interference. *See AFG Companies, Inc. v. Travis Gates*, Cause No. 048-352249- 24 (the "48th District Case"). AFG is a citizen of Texas as it was incorporated in, and its principal place of business is, Texas. Gates, a citizen of Texas, filed counterclaims and a third-party petition in the 48th District Case. AFG also filed suit in the 17th District of Tarrant County on April 30, 2024, seeking damages for breach of

contract against Tyler Luck and Genuine Lifetime, LLC. *See AFG Companies, Inc. v. Genuine Lifetime, LLC and Tyler Luck*, Cause No. 017-352358-24 ("17th District Case"). AFG filed a Motion to Consolidate in the 48th District Case, and Judge Taylor of the Tarrant County 48th Judicial District consolidated the cases, ruling from the bench on the Motion on October 8, 2025, and issued a follow-up written order on October 11, 2025. Tyler Luck, and Genuine Lifetime, LLC removed from the 48th Judicial District to federal court on November 10, 2025, only removing the 17th District Case and parties. AFG filed a motion to remand on November 21, 2025, which is now ripe for the Court's review.

II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction and must have statutory or constitutional power to adjudicate a claim. *See Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). To that end, federal courts have an independent duty, at any level of the proceedings, to determine whether it properly has subject matter jurisdiction over a case. *Ruhgras AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) ("[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level."). "Motions for remand are governed by 28 U.S.C. § 1447(c), which provides that '[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.'" *Denley Group, LLC v. Safeco Ins. Co. of Indiana*, No. 3:15-CV-1183- B, 2015 WL 5836226, at *1 (N.D. Tex. Sept. 30, 2015) (citing 28 U.S.C. § 1447(c)).

28 U.S.C. § 1441(a) permits the removal of "any civil action brought in a [s]tate court of which the district courts of the United States have original jurisdiction." The statute allows a defendant to "remove a state court action to federal court only if the action could have originally been filed in federal court." *Anderson v. Am. Airlines, Inc.*, 2 F.3d 590, 593 (5th Cir. 1993). In

policing the precise boundaries of their limited jurisdiction, federal courts strictly construe the removal statute because "removal jurisdiction raises significant federalism concerns." *Willy v. Coastal Corp.*, 855 F.2d 1160, 1164 (5th Cir. 1988). Therefore, "any doubts concerning removal must be resolved against removal and in favor of remanding the case back to state court." *Cross v. Bankers Multiple Line Ins.*, 810 F. Supp. 748, 750 (N.D. Tex. 1992). The removing party has the burden of proving federal jurisdiction and, if challenged, that the removal was procedurally proper. *See Garcia v. Koch Oil Co. of Tex. Inc.*, 351 F.3d 636, 638 (5th Cir. 2003). The right to remove depends upon the plaintiff's pleading at the time of the petition for removal. *Pullman Co. v. Jenkins*, 305 U.S. 534, 537–38 (1939); *Cavallini v. State Farm Mutual Auto Ins.*, 44 F.3d 256, 264 (5th Cir. 1995).

Diversity jurisdiction requires that each plaintiff be diverse from each defendant. *Getty Oil Corp., a Div. of Texaco, Inc. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1258 (5th Cir. 1988); 28 U.S.C. § 1332(a). "A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the state in which such action is brought." 28 U.S.C. § 1441(b)(2).

III. ANALYSIS

AFG asks for the Court to remand the case and for attorney's fees. The Court addresses each in turn.

A. Motion to Remand

The Court **GRANTS** AFG's Motion to remand because Defendants cannot remove only part of the case, and not all defendants are diverse from all plaintiffs. *Arango v. Guzman Travel Advisors Corp.*, 621 F.2d 1371, 1376 (5th Cir. 1980); *Getty Oil Corp.*, 841 F.2d at 1258. The Fifth

Circuit has construed 28 U.S.C. § 1441(a) "to effect the removal of the entire action in multi-party suits." *Arango*, 621 F.2d at 1376. Thus, a party cannot remove only a portion of a case or the claims contained in a particular complaint. *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) ("The Court . . . agrees that the term 'civil action' in section 1441(a) encompasses an entire state-court action rather than merely one third-party complaint.") When a "partial removal" is attempted, the legal effect is to remove the entire state-court action, thereby 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." *Mid-century Ins. Co.*, 2012 WL 12358929 (citing *Dillon v. Mississippi*, 23 F.3d 915, 918–19 (5th Cir. 1994)).

AFG argues that Defendants improperly instituted a partial removal.[1] Defendants contend that removing only the parties and claims from the initial 17th District case was proper because AFG's Motion for Consolidation in the state court proceedings "amounts to form manipulation" and "mirrors improper joinder scenarios where courts sever to prevent abuse."[2] The Court agrees with AFG.

This case is not analogous to improper joinder scenarios. Improper joinder requires a showing that "(1) there was actual fraud in the pleading of jurisdictional facts; or (2) 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) (citing *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (en banc)). Defendants do not allege either.

The Fifth Circuit has also been willing to find that an unappealed state court "severance decision was tantamount to a finding of improper joinder." *Crockett v. R.J. Reynolds Tobacco Co.*,

[1] Br. in Supp. Mot. Remand 6–8, ECF No. 6.
[2] Defs.' Resp. 6, ECF No. 11.

436 F.3d 529, 533 (5th Cir. 2006). Consequently, "[i]f the severance creates a civil action that satisfies the requirements for diversity jurisdiction, that action is removable." 14C CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FED. PRAC. & PROC. JURIS. § 3723 (Rev. 4th ed.); *see also Hoyt v. Lane Constr. Corp.*, 927 F.3d 287, 297 (5th Cir. 2019), *as revised* (Aug. 23, 2019). However, "[a] party whose presence in the [state court] action would destroy diversity must be dropped formally, as a matter of record, to permit removal." 14C CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FED. PRAC. & PROC. JURIS. § 3723 (Rev. 4th ed.); *see also Williams*, 18 F.4th at 815 ("*any* viable cause of action against a diversity-destroying party requires the entire case to be remanded.") (emphasis in original). Here, the state court did not severe a non-diverse party; rather, the state court consolidated two cases and *added* a non-diverse party. To the extent Defendants allege the Court should act as an appellate court for the state court decision, overturn the motion to consolidate, sever the claims, then evaluate if diversity exists, they ask for something improper: "[f]ederal courts do not sit as appellate courts to review state court judgments," *Krempp v. Dobbs*, 775 F.2d 1319, 1322 (5th Cir. 1985), and "precedent makes clear that we look at jurisdiction at the time of removal, not after a federal court severance." *Williams*, 18 F.4th at 816; *accord. Flagg v. Stryker Corp.*, 819 F.3d 132, 137 (5th Cir. 2016).

Therefore, the Court "analyze[s] whether it has jurisdiction over the entirety of the action as it existed at the time the Notice of Removal was filed." *Mid-century Ins. Co.*, 2012 WL 1358929 at *5 (quoting *Levert-St. John, Inc.*, 2006 WL 1875494, at *2). At the time of removal, Plaintiff AFG and Defendant Gates were both citizens of Texas. Thus, there is not complete diversity, and the Court does not have jurisdiction. 28 U.S.C. § 1332(a); *Getty Oil Corp., a Div. of Texaco, Inc. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1258 (5th Cir. 1988).

Defendants further argue that remand is not warranted "[b]ecause Plaintiff has acknowledged federal jurisdiction in an analogous case"[3] against it in the District of Wyoming. They are wrong. Subject matter jurisdiction is not waivable, and other cases are irrelevant to whether subject matter jurisdiction exists the present case. What matters is whether there exists $75,000 in controversy and whether plaintiffs are completely diverse from all defendants in the case or controversy before the Court. 28 U.S.C. § 1332(a); *Mas v. Perry*, 489 F.2d 1396, 1398–99 (5th Cir. 1974). As stated above, this Court does not have jurisdiction in this case as Gates is not diverse from AFG.

AFG also correctly argues that removal was not timely as it happened well beyond thirty days after Defendants were served.[4] Defendants contend removal was timely because the consolidation order triggered the revival exception by changing the case, including adding the claims against Gates which "differ significantly from its claim against Genuine and Luck."[5] Defendants are incorrect. "The revival exception provides that a lapsed right to remove an initially removable case within thirty days is restored when the complaint is amended so substantially as to alter the character of the action and constitute essentially a new lawsuit." *Johnson v. Heublein Inc.*, 227 F.3d 236, 241 (5th Cir. 2000). Thus, when the exception applies, it allows defendants an opportunity to remove from state court to "adjudicate a completely different claim." *Id.* at 242 (citing 14C CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FED. PRAC. & PROC. JURIS. § 3732, at 321 (1998)).

The revival exception does not apply here. The claims against Genuine Lifetime and Luck have not changed at all: the consolidation simply added the claims against Gates. Significantly,

[3] Defs.' Resp. 7, ECF No. 11.
[4] Br. in Supp. Mot. Remand 9–10, ECF No. 6.
[5] Defs.' Resp. 7, ECF No. 11.

Defendants attempted to remove only the claims involved in the 17th District Case and omit the consolidated claims involving Gates. In other words, they sought to remove only the claims originally filed in the 17th District Case and leave behind the claims they rely on as triggering the exception. Therefore, Defendants' argument that the revival exception applies is meritless.

B. Motion for Attorney's Fees

A Court "may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 141 (2005).

Defendants unpersuasively argue that attorney's fees are not warranted because 1) "Defendants had an objectively reasonable basis for believing that . . . removal was timely and reasonable" under *Johnson* as the consolidation order "dramatically changed the nature of the statue court actions" and 2) that the parties from the 17th District Case, "Plaintiff AFG and Defendants Genuine and Luck[,] are completely diverse from one another."[6]

At bottom, Defendants removal amounts to an impermissible appeal of the state court judge's consolidation order. *Krempp*, 775 F.2d at 1322. It removed a case with a properly joined in-state defendant, and its attempt to remove only some of the parties is directly contrary to well-established Fifth Circuit precedent. *See Williams*, 18 F.4th at 816. Defendants provided no basis for believing they could remove after a state court consolidated two cases that added a non-diverse defendant. Finally, Defendants' argument that *Johnson* provides "an objectively reasonable basis" for renewing the removal deadline is unserious given that 1) the claims did against the Defendants did not change at all 2) their attempt at partial removal attempted to omit any all the claims that gave rise to changes it cites as the basis for changing the deadline. Because Defendants' removal

[6] Defs.' Resp. 8, ECF No. 11.

lacks an objectively reasonable basis and is nothing more than an attempt to gain an "undeserved tactical advantage of seeing how the case goes in state court before removing," attorney's fees are awarded. *Johnson*, 227 F.3d at 242.

IV. CONCLUSION

Because there is not complete diversity between the parties and had no reasonable basis for removal, the Court **ORDERS** that the case be remanded to the 48th Judicial District Court of Tarrant County, Texas, and **GRANTS** AFG's motion for attorney's fees. AFG is **DIRECTED** to submit its schedule of costs and fees for filing this Motion within seven days of this order. Defendants will have seven days thereafter to file any objection. The Clerk of Court is **DIRECTED** to transmit a certified copy of this Order to the appropriate clerk. Defendants' Motion to Transfer Venue (ECF No. 13) is **DENIED as moot**.

SO ORDERED on this **6th day** of **January, 2026**.

Reed O'Connor
CHIEF UNITED STATES DISTRICT JUDGE