

U. S. Supreme Court Holds that Third-Party Defendants to Counterclaims Cannot Remove Class Actions to Federal Court

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In a 5-4 decision in *Home Depot U.S.A. Inc., v. Jackson*, 587 U.S. __ (2019), the United States Supreme Court held that a third-party counterclaim defendant does not qualify as a “defendant” under the general removal statute, 28 U.S.C. § 1441(a) or under the Class Action Fairness Act of 2005 (“CAFA”) and therefore cannot remove class action claims to federal court under either statute.

Brief Background

This case started when a bank filed a debt collection action against George Jackson in state court for charges that Jackson incurred on a Home Depot credit card. Jackson then filed an individual counterclaim against the bank and third-party class action claims against Home Depot U.S.A., Inc. and Carolina Water Systems, Inc. alleging that Home Depot and Carolina Water Systems improperly induced homeowners to buy water treatment systems at inflated prices.

After the bank dismissed its claims against Jackson, Home Depot filed a notice of removal to federal court under both the general removal statute and CAFA. Jackson moved to remand to state court. The district court granted his motion, and the United States Court of Appeal for the Fourth Circuit granted Home Depot permission to appeal and affirmed the district court’s decision remanding the case to state court.

Home Depot filed a petition for a writ of certiorari with the Supreme Court, which the Court granted.

The Supreme Court’s Decision

The Supreme Court analyzed the text of both the general removal statute and CAFA and concluded that both statutes only intended for defendants sued by the original plaintiff to an action to be able to remove the case to federal court.

The general removal statute provides that “the defendant or the defendants” in a “civil action” may remove to federal court. As a result, the Court held that it did not matter that Home Depot was a defendant to a claim asserted against it because the statute refers to “civil actions, not claims.” *Id.* at 6. The Court acknowledged that the dissent’s view that the term “defendant” is a “person sued in a civil proceeding” was a plausible reading of the statute but concluded that it was not the best interpretation.

The Court found that whether CAFA permitted a counterclaim defendant to remove was a closer question because CAFA allows “any defendant” to a “class action” to remove to federal court. Despite the seemingly broader language, the Court concluded that the definition of “defendant” under CAFA was no different than under the general removal statute. The Court explained that while CAFA modified other provisions of the general removal statute by allowing a defendant to remove without the consent of other defendants and relaxing the diversity requirement, CAFA did not expand the types of parties eligible to remove a class action.

The majority opinion was written by Justice Thomas and joined by Justices Breyer, Ginsburg, Kagan, and Sotomayor and the dissent was written by Justice Alito and joined by Chief Justice Roberts and Justices Gorsuch and Kavanaugh.

Implications

As the majority tacitly acknowledged and the dissent vigorously argued, limiting the definition of “defendant” in this manner could lessen the impact of CAFA. As the dissent points out, theoretically a plaintiff could prevent a defendant from removing a class action to federal court if the plaintiff asserts the class claims as a counterclaim in a pre-existing lawsuit. That being said, if such tactics are used to prevent removal, the Court was clear that it will be up to Congress to amend the statute.

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