

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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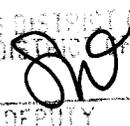
JOSE RODRIGUEZ,
PLAINTIFF,

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V.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY AND RHONDA COX,
DEFENDANTS.

CAUSE NO. 1:20-CV-966-LY

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

ORDER

Before the court in the above-styled and numbered cause is Plaintiff Jose Rodriguez’s Motion to Remand filed October 5, 2020 (Doc. #11), Defendant State Farm Mutual Automobile Insurance Company’s (“State Farm”) response filed October 19, 2020 (Doc. #16), and Rodriguez’s reply filed October 25, 2020 (Doc. #17). Rodriguez filed an original petition on August 20, 2020, in the 98th Judicial District Court in Travis County, Texas. On September 18, 2020, State Farm timely removed the case to this court based on diversity jurisdiction. On September 25, 2020, State Farm filed a Motion to Dismiss (Doc. #5) and an Answer (Doc. #6). Five days later, on September 30, 2020, Rodriguez filed a Second Amended Complaint (Doc. #7) which added Defendant Rhonda Cox, the individual that State Farm assigned to evaluate Rodriguez’s insurance claim, as a nondiverse defendant. Rodriguez now seeks to remand to state court. Having reviewed the pleadings, record, and applicable law, the court will grant the motion to remand.

Joinder of a non-diverse party after removal is scrutinized under the improper-joinder doctrine. To demonstrate improper joinder of resident defendants, the removing defendant must demonstrate either: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.

A court has subject-matter jurisdiction over civil actions between citizens of different states that involve an amount in controversy exceeding \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). Diversity jurisdiction “requires complete diversity—if any plaintiff is a citizen of the same State as any defendant, then diversity jurisdiction does not exist.” *Flagg v. Stryker Corp.*, 819 F.3d 132, 136 (5th Cir. 2016).

Federal Rule of Civil Procedure 15(a)(1) provides that a party may amend its pleading once as a matter of course within: “(A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (t), whichever is earlier.” Fed. R. Civ. P. 15(a)(1).

State Farm relies heavily on *Hensgens v. Deere & Co.* which articulates factors that courts should consider when determining whether to grant a party leave to amend its pleadings in order to join a non-diverse party. 833 F.2d 1179 (5th Cir. 1987). However, the *Hensgens* analysis is inapplicable to this case because no leave was necessary or required for Rodriguez to amend. *See Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 182 (5th Cir. 2018). In deciding whether Cox was properly joined, the court resolves all contested factual issues and ambiguities in favor of the plaintiff. *Id.* Cox was properly joined in this lawsuit as a matter of right under a Federal Rule of Civil Procedure 15(a)(1)(B) amendment that did not require leave of court. *Id.* Cox, a nondiverse defendant, destroys complete diversity and denies this court jurisdiction. *Id.* Accordingly,

IT IS ORDERED that Rodriguez’s motion to remand (Doc. #11) is **GRANTED**. This case is **REMANDED** to the 98th Judicial District Court in Travis County, Texas.

SIGNED this 27th day of October, 2020.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE