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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GREAT AMERICAN INSURANCE COMPANY,

Plaintiff,

—against—

ARCH REAL ESTATE HOLDINGS, LLC, JEFFREY SIMPSON, JARED CHASSEN, WIGGIN AND DANA LLP, GRIFFIN LLP, and OFFIT KURMAN PA,

1:25-cv-02375 (MKV)

Defendants.

**ARCH REAL ESTATE HOLDINGS, LLC AND JARED CHASSEN'S
REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
MOTION TO REMAND**

Interpleader Defendant Arch Real Estate Holdings, LLC ("AREH"), by its attorneys, Olshan Frome Wolosky LLP, and Interpleader Defendant Jared Chassen ("Chassen"), by his attorneys, Schwartz Law PLLC, (together, the "Joining Movants") hereby submit the following reply memorandum of law in further support of the motion brought by Interpleader Plaintiff Great American Insurance Company's ("GAIC") (ECF No. 9), and joined by AREH and

Chassen (ECF No. 10), seeking an order remanding this proceeding to its original forum in the Supreme Court of the State of New York, County of New York (the “Motion”).

ARGUMENT

I. SIMPSON’S ATTEMPT TO REMOVE WAS DEFECTIVE AND IMPROPER

Simpson’s opposition, signed by both him and his counsel, fails to address any of the defects in his removal raised in the Motion. That failure is fatal to the opposition because Simpson has the burden to show that his removal was proper and that the Court has subject matter jurisdiction over the action. *Montefiore Med. Ctr. v. Teamsters Local 272*, 642 F.3d 321, 327 (2d Cir. 2011).

Simpson’s opposition makes clear that he treats removal as a moving target, cycling through removal theories to see if one works. Removal does not work that way. Simpson cannot rely on a basis not stated at the time of removal. *CBS Inc. v. Snyder*, 762 F. Supp. 71, 73, 1991 WL 66326 (S.D.N.Y. 1991) (“The prior decisions have made a distinction between an ‘imperfect’ or ‘defective’ allegation and a wholly missing allegation.”); *Mir v. Naz*, No. 21-CV-6340 (MKB), 2021 WL 5771670, at *3 (E.D.N.Y. Dec. 6, 2021) (“Although Defendant now claims that the Court has jurisdiction over this action based on diversity jurisdiction, because he does not assert diversity jurisdiction as a ground for jurisdiction in his Notice of Removal, the Court cannot exercise subject matter jurisdiction on this basis.”). On the contrary, all doubts are resolved against removability, (*Somlyo v. J. Lu-Rob Enters., Inc.*, 932 F.2d 1043, 1045-1046 (2d Cir. 1991) (citations omitted)), because removal “implicates significant federalism concerns . . .” *Tisdale v. A.G. Edwards & Sons (In re NASDAQ Mkt.-Makers Antitrust Litig.)*, 929 F Supp. 174, 178 (S.D.N.Y. 1996). Federal courts have an independent duty to “ensure that they do not lack subject matter jurisdiction, even if the parties fail to identify any jurisdictional defect . . .”

Behrens v. JPMorgan Chase Bank, N.A., 96 F.4th 202, 206-207 (2d Cir. 2024) (emphasis removed); *Travelers Ins. Co. v. Carpenter*, 411 F.3d 323, 328 (2d Cir. 2005).

A. Simpson’s opposition does not address any of the defects raised in the Motion.

Simpson’s opposition does not address any of the procedural and substantive defects of his removal. In the Motion, Joining Movants pointed out that:

- Simpson’s purported removal was untimely under 28 U.S.C. § 1446(b)(1). *See* ECF No. 10, at 2. Simpson’s opposition ignores this.
- Simpson did not obtain necessary consents from the interpleader defendants, including from Joining Movants, as required by 28 U.S.C. § 1446(b)(2)(A). *See id.* Simpson’s opposition ignores this.
- Simpson filed a Notice of Removal that did not comply with the procedural requirements of 28 U.S.C. § 1446(a), failing to file a short concise statement of the grounds of removal or to include all the pleadings, process, and orders with the notice of removal. *See id.* Simpson’s opposition ignores this.
- Simpson identified no pleaded federal claims in this interpleader action. *See id.* Indeed, Simpson still has not provided the Court a copy of the pleadings or orders in this action. Simpson’s opposition ignores this.
- Simpson improperly attempted to change his theory of removal to diversity jurisdiction ex post facto. *See id.* Simpson’s opposition ignores this.
- Simpson, and the other defendants, including the Joining Movants, are home-state defendants, which precludes removal based upon purported diversity jurisdiction under 28 U.S.C. § 1441(b)(2). *See id.* Simpson’s opposition ignores this.

B. Simpson’s opposition does not establish a legitimate new alternative basis for removal.

Instead of addressing any of the half dozen issues requiring remand raised in the Motion and the relevant statutes, Simpson’s opposition asks the Court to exercise removal jurisdiction because he wants to file another pleading alleging a wide-ranging conspiracy theory. His proposed “omnibus complaint” would present federal RICO claims “based on a body of evidence that has emerged in the State Court record.” Simpson Opp. at 8. Simpson’s most recent gambit also fails. Even if Simpson were to now assert a federal claim, it would not confer subject matter jurisdiction over this interpleader action because “the presence or absence of subject matter jurisdiction is determined based on the complaint in effect at the time of removal.” *Gan v. Hillside Ave. Assocs.*, No. 01 CIV. 8457 (AGS), 2001 WL 1505988, at *2 (S.D.N.Y. Nov. 26, 2001). Further, as a defendant in this case, even if he attempted to assert federal claims, these would be counterclaims, which would not confer federal jurisdiction because federal jurisdiction cannot rest upon “an actual or anticipated counterclaim.” *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009); *see also Newco Family LLC v. Haider*, No. 23-CV-8921 (LTS), 2023 WL 7413712, at *6 (S.D.N.Y. Oct. 18, 2023) (remanding the action because an “attempt to raise counterclaims or defenses under the FHA and other federal laws cannot serve as the basis for removing the state court rent dispute to federal court”).¹

¹ Simpson expresses a desire to consolidate this action with at least two other actions he removed: *Simpson et. al. v. Chassen et. al.*, 1:25-cv-02372 (LTS) which has been pending in state court since August 2023, and *Chassen et. al. v. Simpson et. al.*, 1:25-cv-02373(JHR)(HJR), which has been pending in state court since September 2024. First, the former case has already been remanded to the state court, (ECF 34), and the latter has a pending remand motion. ECF 14-16. Second, Simpson cannot seek consolidation in opposition to the Motion. Simpson did not move or cross-move to consolidate, and, regardless, he “does not meet [his] burden to demonstrate that the actions should be consolidated.” *SS&C Tech. Holdings, Inc. v. Arcesium LLC*, No. 22-CV-02009 (TMR-OTW), 2024 WL 64781, at *4 (S.D.N.Y. Jan. 5, 2024). He fails to even attach any of the pleadings in any of the actions from which the Court could attempt to determine what claims are asserted in these various proceedings. He “does not address the potential for prejudice to the defendants of the actions,” the impacts on discovery, or even the standard for consolidation. *Id.* Simpson does not explain his “failure to move to consolidate before removal.” *Linzy v. Uber Tech., Inc.*, No. 21-cv-5097 (AJN), 2022 WL 375595, at *3 (S.D.N.Y. Feb. 8, 2022) (discussing *McDermott Inc. v. Indus. Risk Ins., et al.*, Civ.A. 03-402, 2003 WL 21362330, at *6 (E.D. La. June 10, 2003)). Nor does Simpson address the unique

Simpson also claims that “subject matter jurisdiction [of this interpleader action] is related to the disposition of the bankruptcy appeal,”(ECF No. 19, Simpson Opp. at 8), namely his pending appeal of the dismissal of the bad-faith bankruptcy he filed on behalf of JJ Arch LLC in March 2024. The Bankruptcy Court dismissed the bankruptcy entirely on October 11, 2024, because it found that Simpson filed it in both subjective and objective bad faith, and then grossly mismanaged the company. *In re JJ Arch LLC*, 663 B.R. 258 (Bankr. S.D.N.Y. 2024).

Further, Simpson previously removed this interpleader proceeding to the Bankruptcy Court. The Bankruptcy Court dismissed and remanded this proceeding, finding that it was “brought before this Court by a purported principal of the Debtor motived by a non-bankruptcy purpose,” (*id.* at 291), and that the claims in this case arise exclusively under New York law. *Id.* at n. 56. Simpson’s appeal from that final dismissal order did not stay the Bankruptcy Court’s dismissal of the bankruptcy or remand of this proceeding. *Tenore v. Frost (In re Tenore)*, No. 24-CV-9729 (CS), 2025 WL 35066, at *2-3 (S.D.N.Y. Jan. 6, 2025) (to obtain a stay of a bankruptcy dismissal pending appeal, party seeking stay must follow Federal Rule of Bankruptcy Procedure 8007 and other requirements). Simpson never sought a stay from the Bankruptcy Court or the District Court hearing his bankruptcy appeal, which remains unperfected since the October 2024 dismissal. See *In re JJ Arch LLC*, Dkt. No. 1:24-bk-10281 (Bankr. S.D.N.Y.

concerns of this insurance case, as “New York courts regularly hold that insurance coverage actions are to be severed from underlying actions.” *Gissim, Inc.v. Scottsdale Ins. Co.*, No. 16-CV-3306 (ILG) (SLT), 2016 WL 7413488, at *3 (E.D.N.Y. Dec. 22, 2016) (citing *Robles v. Microtech Contracting Corp.*, 90 A.D.3d 531 (1st Dep’t 2011)). Third, one of the cases is already remanded, so Simpson could not, in any event, consolidate it. “Fed. R. Civ. Pro. 42(a) allows consolidation only in those cases where the actions to be consolidated are pending before the court. In the present case, the state action is *not* an action “pending before the court.” *DiNardi v. Ethicon, Inc.*, 145 FRD 294, 296 (N.D.N.Y. 1993). Further, such a motion, even were it made, would be premature before the Court determines whether it has subject matter jurisdiction over this action. *Wynn v. AC Rochester*, 273 F.3d 153, 157 (2d Cir. 2001).

Regardless, Simpson cannot create subject matter jurisdiction in this action by positing a hypothetical complaint to be filed in the future. “[S]ubject matter jurisdiction is determined based on the complaint in effect at the time of removal.” *Gan*, 2001 WL 1505988, at *2).

2024), at ECF No. 218 (Notice of Appeal). *See generally In re JJ Arch LLC*, Dkt. No. 1:24-cv-08649 (S.D.N.Y. 2024) (appeal to district court where no stay was sought). Simpson's mere appeal of the bankruptcy dismissal and remand order does not confer on him any right to collaterally attack that order and remove the very case that the Bankruptcy Court remanded.

At bottom, Simpson's opposition provides no evidence that this Court has federal subject matter jurisdiction over this case—and there is none. Simpson does not meet his burden on a remand motion. Accordingly, the Court should grant this motion and remand this action to the Supreme Court of the State of New York, New York County.

CONCLUSION

AREH and Chassen respectfully request that the Court enter an order remanding the originally filed New York State Court interpleader action back to its original forum in Supreme Court of the State of New York, County of New York.

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I, Jeremy M. King, Esq., certify that the foregoing Memorandum of Law contains fewer than 3,500 words, as counted by Microsoft Word's word-processing system, excluding the caption, table of contents, table of authorities and signature block, and that it complies with the applicable word limits.

/s/ *Jeremy King*
Jeremy M. King