

A national cosmetics retailer incorporated and headquartered in State A bought makeup manufactured by a company incorporated and headquartered in State B. The contract contained a forum-selection clause providing that any dispute between the parties would be resolved in a state or federal court located in State B. After delivery, the retailer discovered that the makeup was contaminated and could not be sold.

The retailer filed a complaint against the company for breach of contract in a state court in State B for \$1 million. The company filed a notice of removal with the federal court in State B 14 days after being served with process. The retailer immediately filed a motion to remand.

Is the federal court likely to grant the retailer's motion?

- A. No, because the forum-selection clause allows the parties to file suit in state or federal court.
- B. No, because the parties are diverse and the amount in controversy exceeds \$75,000.
- C. Yes, because the company is a citizen of State B.
- D. Yes, because the manufacturer's notice of removal was untimely.

Explanation:

A **defendant can remove** a suit from **state court to federal court** if the case falls within the federal court's original subject-matter jurisdiction. Original jurisdiction arises from either:

- federal-question jurisdiction – when a claim arises under the U.S. Constitution, a treaty, or federal law (not seen here) *or*
- diversity jurisdiction – when the amount in controversy exceeds \$75,000 and the opposing parties are **citizens** of different states.

A party (usually the plaintiff) can seek to return the case to state court by filing a **motion to remand**.^{*} One basis for remand is the **home-court-advantage rule** (ie, forum-defendant rule). This rule **prohibits removal** when (1) subject-matter jurisdiction arises from **diversity jurisdiction** and (2) a **defendant is a citizen** of the state **where the case was filed**.

Here, diversity jurisdiction exists since the amount in controversy is \$1 million and the retailer and company are citizens of different states (States A and B, respectively). But since the company is a citizen of State B—where the case was filed—the home-court-advantage rule prohibits removal to federal court **(Choice B)**. Therefore, the federal court will likely grant the retailer's motion to remand the case to state court.

^{*}A motion for remand places the burden on the defendant to prove by a preponderance of the evidence that removal was proper.

(Choice A) A forum-selection clause is a contractual provision that designates the location and/or court where any dispute between the parties must be adjudicated. Although such clauses are generally enforceable, federal courts strictly follow the rules regarding removal—including the home-court-advantage rule—over these clauses.^{**}

(Choice D) The defendant must file a notice of removal in federal court within 30 days after receiving the initial complaint or service of the summons—whichever period is shorter. Therefore, the company timely filed the notice of removal 14 days after being served with process.

^{**}To enforce a forum-selection clause requiring that a dispute be resolved in federal court, a defendant would need to move to dismiss the state court action. If the state court dismisses the action, the plaintiff would then need to refile the case in federal court.

Educational objective:

The home-court-advantage rule prohibits removal from state to federal court when (1) the federal court's subject-matter jurisdiction arises from diversity jurisdiction and (2) a defendant is a citizen of the state where the case was filed.

References

- 28 U.S.C. § 1441(b)(2) (forum-defendant rule for removal).

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Requirements for removal to federal court

