

An artist from State A sold his paintings over the internet to an art collector from State B. The total purchase price amounted to \$80,000. The collector sent \$20,000 to the artist as a down payment but claims that she never received any of the paintings. As a result, the collector sued the artist in a state court in State B for breach of contract to recover her down payment.

The artist filed an answer in which he alleged that all of his paintings were properly delivered to the collector and that the collector is attempting to defraud him. He also filed a counterclaim to recover \$60,000 based on a federal statute that prohibits fraud in sales across state lines.

If the collector seeks to remove the case to a federal court in State B, is she likely to succeed?

- A. No, because the collector is attempting to remove an action that has been filed in her home state.
- B. No, because the collector is not qualified to remove the case to federal court.
- C. Yes, because the artist's counterclaim is based on an alleged violation of a federal statute.
- D. Yes, because the total amount in controversy is \$80,000 and the parties are citizens of different states.

## Explanation:

**Only a defendant** has the **power to remove** a case from **state to federal court** when the case falls within the federal court's original subject-matter jurisdiction. Original jurisdiction, which must be established on the face of a plaintiff's complaint, can arise from either:

- diversity jurisdiction – when the **amount in controversy** exceeds \$75,000 and the opposing parties are citizens of different states *or*
- federal-question jurisdiction – when the plaintiff asserts a claim that arises under the U.S. Constitution, a treaty, or federal law.

Here, the collector (plaintiff) sued the artist (defendant) in state court. The artist then filed a counterclaim that alleged a violation of a federal statute prohibiting fraud in sales across state lines. But as the Supreme Court held in *Shamrock Oil & Gas Corp. v. Sheets*, a defendant's **counterclaim does not transform a plaintiff into a defendant** for removal purposes.\* Since the collector remains the plaintiff for removal purposes, she is not qualified to remove the case to federal court **(Choice C)**.

Even the artist, as the defendant, could not remove this case since the collector's complaint did not establish original jurisdiction. Her breach-of-contract claim arises under state (not federal) law, so the federal court lacks federal-question jurisdiction. And though the artist and collector are citizens of different states, the federal court lacks diversity jurisdiction since the collector demanded only \$20,000 in damages. The \$60,000 demanded in the artist's counterclaim is not counted in determining whether the amount in controversy is satisfied **(Choice D)**.

\*Congress created a narrow exception to this rule when it enacted 28 U.S.C. § 1454, a **special removal rule** that permits removal by any party (including a plaintiff) when a federal patent or copyright claim is asserted.

**(Choice A)** The home-court advantage (ie, forum-defendant) rule prohibits removal when the federal court's original jurisdiction is based on diversity jurisdiction and a *defendant* is a citizen of the state where the case was filed. But since the collector is the *plaintiff*, her residence in State B has no bearing on whether removal is proper.

## Educational objective:

Only a defendant has the power to remove a case from state to federal court. A defendant's counterclaim does not transform a plaintiff into a defendant for removal purposes.

## References

- 28 U.S.C. § 1441 (removal requirements).
- 28 U.S.C. § 1446 (removal procedure).

- *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 107–08 (1941) (holding that a counterclaim does not change a plaintiff to a defendant for removal purposes).

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### Requirements for removal to federal court



