

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

Case Number: 21-10028-CIV-MARTINEZ/BECERRA

WANESHA WRIGHT, *et al.*,

Plaintiffs,

v.

KEY WEST JETSKI, INC., *et al.*,

Defendants,

_____ /

ORDER GRANTING MOTION TO REMAND

THIS CAUSE came before the Court upon Plaintiffs’ Motion to Remand to State Court (“Motion”), (ECF No. 4). Defendants have failed to respond to the Motion, and the deadline to do so has passed.¹ After careful consideration, the Court finds that the Motion is **GRANTED**.

Plaintiffs first filed this action in state court and Defendants removed it to federal court. (*See* Not. Removal, ECF No. 1). Defendants assert two bases for removal: (1) federal diversity jurisdiction, pursuant to 28 U.S.C. § 1332, and (2) admiralty jurisdiction, pursuant to 28 U.S.C. § 1331. (*Id.*) Plaintiffs timely moved to remand this action back to state court, invoking the “savings to suitors” clause. (*See* Mot. Remand, ECF No. 4). Plaintiffs also argue that Defendants’ additional basis for jurisdiction fails because the “forum defendant rule,” codified in 28 U.S.C. § 1441(b)(2), bars Defendants from removing this action. (Mot. Remand, at 2–3, ECF No. 4).

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They possess “only that power authorized by Constitution and

¹ On this basis alone, Plaintiffs’ motion is due to be granted by default pursuant to Local Rule 7.1(c)(1). The Court will nevertheless address the merits of Plaintiffs’ Motion.

statute . . . which is not to be expanded by judicial decree.” *Id.* (citations omitted). The removing party bears the burden of establishing the Court’s jurisdiction. *Id.* Removal statutes must be construed strictly, and any and “all doubts about jurisdiction should be resolved in favor of remand to state court.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999).

Under the “savings to suitors” clause, 28 U.S.C. § 1333(1), a plaintiff may choose its preferred forum to bring an *in personam* maritime claim in either state court or as a civil action in federal court under that court’s original federal admiralty jurisdiction, 28 U.S.C. § 1333. *See Diesel “Repower”, Inc. v. Islander Invs. Ltd.*, 271 F.3d 1318, 1322 (11th Cir. 2001). While the two courts share concurrent jurisdiction, the plaintiff’s choice is important because it affects various procedural aspects and remedies available to the parties, including the right to a jury trial. *Manrique v. Fagan*, No. 08-60501-CIV, 2009 WL 700999, at *2 (S.D. Fla. March 16, 2009). “[T]he saving to suitors clause establishes the right of a party to choose whether to proceed within a [federal] court’s admiralty jurisdiction[,] or general civil jurisdiction when both admiralty and non-admiralty federal jurisdiction exist.” *St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181, 1195 n.5 (11th Cir. 2009). “[T]he Saving to Suitors Clause gives rise to a presumption that a party who exercises his saving to suitors rights is entitled to his choice of forum.” *Royal Caribbean Cruises*, 664 F. Supp. 2d at 1278–79 (citing *Suzuki of Orange Park, Inc. v. Shubert*, 86 F.3d 1060, 1063 (11th Cir. 1996)).

In some circumstances, a defendant may remove a case filed in state court to federal court. For instance, a defendant may properly remove a case by alleging federal diversity jurisdiction, 28 U.S.C. § 1332. *See* 28 U.S.C. § 1441. If a defendant removes the case pursuant to this statute, the plaintiff’s right to a jury trial—secured by first filing the action in state court—is preserved in federal court. *See Lewis v. Lewis & Clark, Inc.*, 531 U.S. 438, 445 (2001); *Manrique*, 2009 WL

700999, at *2. However, where a defendant removes a case *solely* on the basis of admiralty jurisdiction, it deprives the plaintiff of her common law remedy of trial by jury. *Manrique*, 2009 WL 700999. In that case, where the sole basis of removal is admiralty jurisdiction, the savings to suitors clause specifically functions to prevent the plaintiff from being deprived of her right to a trial by jury and permits her to remand the case back to state court. *DeRoy v. Carnival Corp.*, 963 F.3d 1302, 1314 (11th Cir. 2020) (citing *Armstrong v. Ala. Power Co.*, 667 F.2d 1385, 1388 (11th Cir. 1982)) (“if the plaintiff elects to file a maritime case in state court, that case may not be removed to federal court solely on the basis of admiralty jurisdiction.”). On the other hand, where there is an independent basis for jurisdiction that supports a jury trial, such as diversity, pursuant to the savings to suitors clause, a federal court may adjudicate an *in personam* maritime action and afford the parties non-maritime “at-law” remedies, including jury trial, making removal permissible. *See Atl. & Gulf Stevedores, Inc. v. Ellerman Lines*, 369 U.S. 355, 359–60 (1962); *Manrique*, 2009 WL 700999.

Here, Defendants removed this case to federal court alleging both federal admiralty jurisdiction and diversity jurisdiction. Plaintiffs have invoked their savings to suitors rights and moved for remand to state court. While it is true that in this case the Court has concurrent jurisdiction with the state court, removal is improper if the sole basis for removal is the Court’s admiralty jurisdiction. Thus, the primary issue before the Court is whether diversity jurisdiction also exists. If so, then Defendants have an independent basis for jurisdiction, and they may proceed in federal court. *See Ellerman Lines*, 369 U.S. at 359–60. If not, the case must be remanded. *See DeRoy*, 963 F.3d at 1314.

Jurisdiction based on diversity of citizenship exists in civil actions where the amount in controversy exceeds \$75,000 and the action is between “citizens of different States.” 28 U.S.C. §

1332(a)(1). Diversity jurisdiction requires complete diversity between named plaintiffs and all defendants. *BankUnited v. Blum*, No. 14-81232-CIV, 2015 WL 328241, at *1 (S.D. Fla. Jan. 26, 2015) (citing *Strawbridge v. Curtiss*, 7 U.S. 267 (1806)). Notwithstanding, it is well-settled that under the forum-defendant rule, a civil action may not be removed on the basis of diversity jurisdiction under § 1332(a) “if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such an action is brought.” 28 U.S.C. § 1441(b)(2); *Tillman v. R.J. Reynolds Tobacco*, 253 F.3d 1302, 1305 (11th Cir. 2001) (noting that for removal to be proper, “no defendant can be citizen of the state in which the action was brought”) (citation omitted); *Plombco Inc. v. TBC Retail Grp., Inc.*, No. 13-81026-CIV, 2013 WL 5863571, at *1 (S.D. Fla. Oct. 31, 2013). “Thus, even though a federal court may have original jurisdiction over an action, the forum defendant rule forbids removal[.]” *Masterson v. Apotex, Corp.*, No. 07-61665-CIV, 2008 WL 2047979, at *1 (S.D. Fla. May 13, 2008).

Here, Plaintiffs filed this case in the Circuit Court for the Sixteenth Judicial Circuit, in and for Monroe County, Florida. (ECF No. 1-1, at 4–19). Defendant Key West Jetski, Inc. is a Florida Corporation with its principal place of business in Key West, Florida. (Not. Removal ¶ 5). Defendant Sunset Watersports, Inc. is also a Florida Corporation with its principal place of business in Key West, Florida. (*Id.*) Finally, Defendant Connor Kwasniewski is a resident of the State of Florida. (*Id.*) Because all Defendants are citizens of the state Florida, which is the state in which the action was brought, removal based on diversity is improper pursuant to the “forum defendant rule.” *Tillman*, 253 F.3d at 1305.

Having established that Defendants cannot remove this action based on diversity jurisdiction, Defendants’ sole basis for removal is admiralty jurisdiction. Allowing removal of this action solely on the basis of admiralty jurisdiction would deprive Plaintiffs of their right to

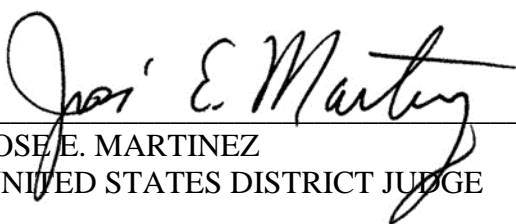
jury trial, which is precisely the result that the savings to suitors clause seeks to prevent. *See DeRoy*, 963 F.3d at 1314. Accordingly, remand is appropriate. *Id.*

For the foregoing reasons, it is

ORDERED AND ADJUDGED that:

1. Plaintiffs' Motion to Remand to State Court, (ECF No. 4), is **GRANTED**.
2. This case is **REMANDED** to the Circuit Court for the Sixteenth Judicial Circuit in and for Monroe County, Florida.
3. This case is **CLOSED**, and all pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of March, 2021.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Becerra
All Counsel of Record