

Possinger Law Group

A Professional Limited Liability Company

[o] 206-512-8030

[f] 206-569-4792

PO Box 981, Woodinville, Washington 98072

www.possingerlaw.com

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KENNETH STOKES
COUNTY CLERK
NO: 19-2-07054-0

Monday, March 15, 2021

[Filed with Court]

The Honorable Timothy L. Ashcraft
Superior Court Judge
Pierce County Superior Court
930 Tacoma Ave. S.
Tacoma, Washington 98402

Reference: *Danieli v. King County et al., Pierce Cty. Sup. Ct. # 19-2-07054-0; Update on Status of Pending Motions; Notice of Removal (Federal Claims) filed by King County Defendants (03-05-2021), WDWA Case 3:21-cv_05164-RSM*

Your Honor:

We write to provide the Court with an update of the unexpected developments that have occurred over the last few days since our last hearing on Friday, March 5, 2021 at approximately 9:45 A.M. A few hours after this hearing, the King County Defendants¹ filed Notices of Removal in the United States District Court for the Western District of Washington and simultaneously in the Pierce County Superior Court², notwithstanding the fact that to date, no amended complaint has been filed or served in this case. At this stage, any amended complaint to be filed by the Plaintiff (and later served) is entirely dependent on this Court's decision to act on a motion, and such motion and decision have been further delayed by the Defendants' legally baseless and unnecessary action.

The King County Defendants federal court filings in this case are premature; the filings are also improper for multiple reasons that we plan to address at the proper time and in the proper venues. Significantly, the filings raise serious FRCP 11 and CR 11 issues.

The effect of a premature removal has stripped the Superior Court's jurisdiction to act on issues that were before the Superior Court prior to the Notice of Removal, namely the motions for Supplemental CR 54(b) Findings as well as the Motion for Leave to file a Second

¹ Attorney, Amy Montgomery, on behalf of King County, Regional Animal Control of King County ("RASKC"), Gene Edward Mueller, and Tim Anderson (the King County Defendants), filed Notices of Removal in both the Federal Court for the Western District of Washington and in Pierce County Superior Court on the afternoon of Friday, March 5, 2021.

² The United States District Court for the Western District of Washington Cause Number filed by the King County Defendants in Pierce County Superior Court (i.e. 2:21-cv-00289) is incorrect. This is because the King County Defendants filed their initial federal pleadings incorrectly and the District Court terminated the filing and refiled the federal case under a different cause number (3:31-cv-05163-RSM); the correct federal cause number has not been yet corrected in the Superior Court.

Amended Complaint. In order for Plaintiff to file a Second Amended Complaint, this Court would first have to agree to grant Plaintiff leave and only then could Plaintiff file an amended complaint. Court rules do not allow this Court or the Plaintiff to ignore this sequence. For all practical purposes, the Defendants have essentially jammed a procedural and jurisdictional crowbar into the gears of two separate court systems—the United States District Court and the Superior Court of the State of Washington.

Furthermore, it also appears that the filing of this Notice of Removal may have also caused a jurisdictional and legal issue in the Washington Court of Appeals. Notice of Removal was not provided to that Court, despite the Defendants having a pending motion in the Court of Appeals at the time the removal was filed in United States District Court and the Superior Court. Subsequent orders from the Court of Appeals may now be void.

The Federal Courts do not recognize “tentative” or “provisional” Notices of Removal. Understandably, a federal district court will move forward as though it already has subject matter jurisdiction for a Removal action, based upon the representations and certification of a removing party’s (in this case the King County Defendants’) legal counsel. Based on representations contained her pleadings, the other Defendants in this case have apparently consented to this action.

Counsel for the King County Defendants, Amy Montgomery, has unfortunately created an unnecessarily expensive legal problem for our client and the courts to address and to ultimately unwind in the United States District Court before we will be able to appear before this Court again to hear the motions that this Court planned to address on Friday, March 26, 2021. It is difficult to see any reasonable or good-faith reason that Defendants took this action; though Counsel for all Defendants were given an opportunity to address any jurisdictional or procedural matters at the March 5, 2021 hearing, no indication was provided by Ms. Montgomery or other counsel that a removal would be filed hours later. This legally baseless filing has created additional delay, expense, and unnecessary litigation.

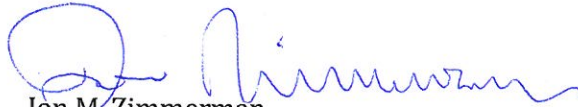
We will reach out to the Court again once the legal issues in the United States District Court have been resolved so that this Court may resume hearing and deciding issues that were appropriately before this Court prior to the Notice of Removal’s filing.

Very truly yours,
POSSINGER LAW GROUP, PLLC.



Jeffrey K. Possinger
Attorney at Law

Very truly yours,
LAW OFFICES OF JON M. ZIMMERMAN, PLLC



Jon M. Zimmerman
Attorney at Law

c: Client
Counsel, Amy Montgomery.
Counsel, Jennifer Stacy.
Counsel, Cheryl Zakrzewski
Counsel, Chad Barnes