

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

RIVER BEND ASSOCIATES INC. AND : 3:04CV467 (WWE)  
GRIFFIN LAND & NURSERIES, INC., :  
Plaintiffs, :  
 :  
v. :  
 :  
CONSERVATION COMMISSION/INLAND :  
WETLANDS AND WATERCOURSES AGENCY :  
OF THE TOWN OF SIMSBURY, ET AL., :  
Defendants :

RULING ON PLAINTIFFS' MOTION FOR REMAND  
AND AWARD OF ATTORNEYS' FEES AND COSTS

This action arises in connection with a plan by the plaintiffs River Bend Associates Inc. and Griffin Land & Nurseries, Inc. (collectively "River Bend") to build a 298 home community on 363 acres in North Simsbury, and the subsequent denial by the defendant Conservation Commission/Inland Wetlands and Watercourses Agency of the Town of Simsbury ("Commission") of a permit which would have allowed River Bend to conduct three regulated activities in or near inland wetlands. River Bend appealed the denial of the permit in the Superior Court of the State of Connecticut, Judicial District of Hartford. The Commission removed the action to this Court on March 18, 2004.

For the reasons set forth below, the plaintiffs' motion for remand will be granted, and the award for attorneys' costs

and fees will be denied.

#### DISCUSSION

On a motion to remand, the court construes all factual allegations in favor of the party seeking the remand.

Metropolitan Property & Casualty Ins. Co. v. J.C. Penney Casualty Ins. Co., 780 F.Supp. 885, 887 (D.Conn. 1991).

Moreover, it is well settled that defendants, as the parties removing the action to federal court, have the burden of establishing federal jurisdiction. Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 97 (1921). Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). This presumption in favor of the plaintiff's choice of forum is especially important when the defendant resides in the chosen forum. Florian v. Danaher Corp. and SNAP-ON Tools Co., 2001 WL 1504493, \*2 (D.Conn. 2001).

The relevant statute governing this action is 28 U.S.C. § 1441, which states in pertinent part that

(a) except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division

embracing the place where such action is pending; and (c) whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State Law predominates.

In addition, "in light of the congressional intent to restrict federal court jurisdiction, as well as the importance of preserving the independence of state governments, federal courts construe the removal statute narrowly, resolving any doubts against removability." Somlyo v. J. Lu-Rob Enters., Inc., 932 F.2d 1043, 1045-46 (2d Cir. 1991).

River Bend's one count complaint alleges that the denial of the permit was illegal under state law for a variety of procedural and substantive reasons. River Bend also states that its complaint includes collateral allegations that in rendering its illegal decision, the Commission violated River Bend's state and federal due process and equal protection rights.

Because River Bend alleges violations of the United States Constitution in its complaint, the Commission was within its rights to remove the action to this Court under § 1441, as the district courts of the United States have original jurisdiction in such matters. However, after a

thorough review of the matter, the Court finds that this action is predominantly a state law issue, and in its discretion, pursuant to 28 U.S.C. § 1441(c), the Court will remand the action back to the Superior Court of the State of Connecticut. The Court does not question that the Commission properly removed this action on the basis of federal question. However, the Court will adhere to the standards set forth above, and in the interest of judicial efficiency and respect for the plaintiff's choice of forum, will refrain from exercising jurisdiction in this matter. Because the Court does not find improper removal, the plaintiff's motion for attorneys' fees and costs will be denied.

CONCLUSION

For the reasons set forth above, the plaintiff's motion to remand (Doc. #13) is hereby GRANTED. The plaintiff's motion for attorneys' costs and fees (Doc. #13) is hereby DENIED.

SO ORDERED this 27th day of July, 2004, at Bridgeport, Connecticut.

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WARREN W. EGINTON, Senior U.S. District  
Judge

