

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

SHIRLEY COLLINS,	:	
	:	
Plaintiff,	:	
v.	:	Civil No. 3:04cv557 (MRK)
	:	
KOHL'S DEPARTMENT STORES, INC.,	:	
	:	
Defendant.	:	

**RULING AND ORDER**

Pending before the Court are Plaintiff Shirley Collins' Motion for Joinder [doc. #7], Motion for Remand to State Court [doc. #8], and Motion to Amend Complaint [doc. #13]. This action arises from alleged injuries Ms. Collins suffered as a result of shelves falling on her while she was on the premises of Defendant Kohl's Department Stores, Inc. ("Kohl's"). Ms. Collins filed suit against Kohl's in Superior Court, Judicial District of New London, Connecticut. Defendant filed a Notice of Removal [doc. #1] on March 24, 2004 in the above-captioned matter following receipt of the Summons and Complaint on March 12, 2004. *See* Notice of Removal at 1. Plaintiff Shirley Collins filed an Objection to Defendant's Notice of Removal and Notice of Addition of Parties and Request for Remand to State Court [doc. ## 7, 8] ("Objection to Removal") on April 12, 2004. Ms. Collins objected to removal primarily on the grounds that she intended to name an additional party, whose identity was ascertained after commencement of the suit, in a proposed amended complaint that would destroy diversity jurisdiction, the basis upon which Defendant purported to remove this matter from state court. *See* Objection to Removal at 2; *see also* Notice of Removal ¶ 6.

During a July 19, 2004 telephonic conference with the parties, the Court gave Ms. Collins

leave to file a Motion to Amend Complaint [doc. #13], which she filed on July 20, 2004 along with a proposed Amended Complaint. Count Three of the proposed Amended Complaint seeks to join as a defendant, Donna Campion, Assistant Manager at Kohl's, for negligence.<sup>1</sup> See Proposed Amended Complaint at 7-8. Ms. Campion allegedly resides in New London, Connecticut. *Id.* at 8. Since Ms. Collins is a Connecticut resident, the addition of Ms. Campion would destroy diversity jurisdiction. See 28 U.S.C. § 1332(a); see also, *Herrick Co., Inc. v. SCS Communications*, 251 F.3d 315, 322 (2d Cir. 2001) ("Diversity jurisdiction is available only when all adverse parties to a litigation are completely diverse in their citizenships."). Section 1447(e) of Title 28 of the United States Code states:

If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

28 U.S.C. § 1447(e). Ms. Collins seeks joinder of Ms. Campion and remand of this case to state court. See Objection to Removal at 1-2.

"Joinder and remand under 1447(e) must first satisfy Fed. R. Civ. P. 20, which permits a joinder of multiple defendants in one action 'if there is asserted against [the defendants] any right to relief in respect of or arising out of the same transaction or occurrences and if any question of law or fact common to all defendants will arise in the action.'" *Hunt v. Stryker Corp.*, No. 03 Civ. 7385 (RWS), 2004 WL 502186, at \*2 (Mar.10, 2004) (quoting Fed. R. Civ. P. 20(a)) (citation omitted). Count Three alleges that it was Ms. Campion's duty as Assistant Manager to ensure the safety of the customers who patronized Kohl's, and that it was Ms. Campion's breach of her duty to monitor the safety of the premises, including the shelves that collapsed on Ms. Collins, that

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<sup>1</sup> Neither Kohl's nor Ms. Campion filed responses to Ms. Collins' motions.

resulted in injury to Ms. Collins. *See* Proposed Amended Complaint at 8-9. There is no question, therefore, that joinder of Ms. Campion in this case satisfies Rule 20.

Furthermore, the Court is satisfied that where, as here, joinder would destroy diversity, considerations of fundamental fairness nevertheless support joinder and remand under 28 U.S.C. 1447(e). The factors to consider in assessing fundamental fairness are: "(1) any delay, as well as the reason for delay, in seeking joinder; (2) resulting prejudice to defendant; (3) likelihood of multiple litigation; and (4) plaintiff's motivation for the amendment." *Nazario v. Deere & Company*, 295 F. Supp. 2d 360, 363 (S.D.N.Y. 2003). Ms. Collins did not delay in seeking joinder, notifying the Court of her desire for joinder and remand on April 12, 2004, less than a month after Kohl's removed this case. There is no demonstrable prejudice to Kohl's or Ms. Campion in granting joinder and remand, and neither has not expressed to the Court otherwise. In addition, joinder and remand would diminish the likelihood of multiple litigation against multiple parties, and would therefore promote efficiency. Finally, there is no indication that Ms. Collins' request for joinder "is motivated primarily by a desire to force a remand to the forum of [her] choice." *Hunt*, 2004 WL 502186, at \*2. Ms. Collins' justification for joinder does not betray an improper motivation. Ms. Collins states that, the "Notice of Removal was filed simultaneously with the appearance, providing no time for discovery and subsequent investigation in order to name all the appropriate parties. The Plaintiff has now obtained the name of the defendant manager that appears to have been on duty that day and seeks to include her as a separate defendant." *Objection to Removal* at 1-2. The Court does not find a basis upon which to gainsay Ms. Collins' explanation, and neither Kohl's nor Ms. Campion has urged the to do so.

Since Kohl's has not offered an alternative basis for federal jurisdiction, the Court hereby GRANTS Ms. Collins' Motions for Joinder and Remand to State Court [docs. ## 7, 8] pursuant to 28 U.S.C. § 1447(e). *See also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966) (stating that under the Federal Rules generally, "the impulse is toward the broadest possible scope of action consistent with fairness to the parties, joinder of claims, parties, and remedies is strongly encouraged.).

In sum, the Court GRANTS Plaintiff's Motion to Amend Complaint [doc. #13], Motion for Joinder [doc. #7], and Motion to Remand to State Court [doc. #8]. The Clerk is directed to docket the proposed Amended Complaint attached to the Motion to Amend Complaint [doc. #13], and then remand the case to state court and close this file.

IT IS SO ORDERED.

/s/ Mark R. Kravitz  
United States District Court

Dated at New Haven, Connecticut: August 26, 2004.