

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Philip A. Brimmer

Civil Action No. 22-cv-01419-PAB

CHAD SANFORD,

Plaintiff,

v.

EMPLOYERS MUTUAL CASUALTY COMPANY d/b/a EMC INSURANCE,

Defendant.

ORDER

The Court takes up this matter *sua sponte* on the Notice of Removal to United States District Court for the District of Colorado [Docket No. 1].

“The party invoking federal jurisdiction bears the burden of establishing such jurisdiction as a threshold matter.” *Radil v. Sanborn W. Camps, Inc.*, 384 F.3d 1220, 1224 (10th Cir. 2004). Plaintiff’s complaint names Employers Mutual Casualty Company dba EMC Insurance (“EMC”) as the defendant. Docket No. 6 at 1. The complaint was filed in Arapahoe County District Court. *See id.* Nevertheless, EMCASCO Insurance Company (“EMCASCO”), a non-party, has removed this case from state court. *See* Docket No. 1. EMCASCO admits that EMC is a company distinct from EMCASCO. Docket No. 3 at 1, ¶ 1. The notice of removal states that it is filed by “the incorrectly named Defendant, Employers Mutual Casualty Company dba EMC Insurance, and properly named insurer EMCASCO Insurance Company.” Docket No. 1 at 1. However, the notice is signed only by counsel for EMCASCO. *Id.* at 6.

Additionally, EMCASCO refers to itself as the only defendant throughout the notice of removal. See, e.g., *id.* at 4 (“Defendant, EMCASCO, is now . . .”). Accordingly, the Court finds no basis for EMCASCO’s assertion that the notice of removal is also filed by EMC.

Under 28 U.S.C. § 1441(a), only a defendant may remove a civil action from state court to federal court. “A non-party, even one that claims to be a real party in interest, lacks the authority to institute removal proceedings. . . . Because USAA CIC was not named as a defendant in the state court case, it ha[s] no ability to remove or participate in the removal of this case.” *Gay v. United Servs. Auto. Assoc.*, 2021 WL 2392425, at *3 (W.D. Okla. June 11, 2021). Removal by EMCASCO was accordingly improper.¹

EMCASCO additionally filed a motion to amend the case caption, stating that plaintiff incorrectly named the defendant. Docket No. 3. EMCASCO states that EMC, the named defendant, “is a separate entity not involved with Plaintiff’s claims in this matter.” *Id.* at 1, ¶ 1. Instead, EMCASCO argues that the correct entity for plaintiff’s claims is EMCASCO. *Id.*, ¶ 2. However, it is well settled that the plaintiff is the master of his or her complaint. See *Hansen v. Harper Excavating, Inc.*, 641 F.3d 1216, 1220 (10th Cir. 2011) (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)). Plaintiff sued EMC, not EMCASCO. See Docket No. 6. EMCASCO cites no authority for a court to “amend” a case caption by effectively dismissing one defendant and

¹ The Court notes that, even if the notice was properly filed, it does not contain any allegations about the citizenship of EMC. See *generally* Docket No. 1. It is therefore defective.

substituting another. Moreover, EMCASCO provides no basis for a non-party to file such a motion.

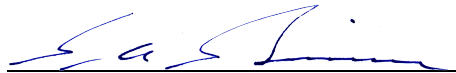
Because removal in this case was improper, the Court will remand this case. It is therefore

ORDERED that this case is **REMANDED** to the District Court for Arapahoe County, Colorado where this case was filed as Case No. 2022CV30873. It is further

ORDERED that this case is closed.

DATED June 14, 2022.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Philip A. Brimmer", is written over a horizontal line.

PHILIP A. BRIMMER
Chief United States District Judge