

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Dawn Ledwell,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:19-2815-RMG
vs.	)	
	)	
Thomas Ravenel; Haymaker Content, LLC; Bravo Media Productions, Inc.; NBC Universal Media, LLC; Comcast Corporation,	)	
	)	<b>ORDER</b>
Defendants.	)	
	)	
	)	
	)	

This matter comes before the Court on Plaintiff’s motion to remand this action to the Court of Common Pleas of Charleston County from which it was removed on October 3, 2019. Plaintiff argues that the removal was untimely and that the removing parties lack total diversity of citizenship, an essential element in the assertion of federal jurisdiction in this matter. (Dkt. No. 13-1). Defendants Haymaker Content, LLC, Bravo Media Productions, Inc., and Comcast Corporation (hereafter “Non-Resident Defendants”), argue that their removal was timely and that Ravenel, the sole resident defendant, is a nominal defendant as a result of a settlement agreement with Plaintiff. (Dkt. No. 19).

**Legal Standards**

A party seeking to remove a case to federal court from state court must initiate the removal within thirty days of the receipt of the initial pleading in the matter or within thirty days after the receipt of any “amended pleading, motion, order or *other paper* from which it may first be ascertained that the case is one which is or has become removable . . .” 28 U.S.C. § 1446(b)

(emphasis added). Written evidence of a settlement agreement between the plaintiff and the sole resident defendant may constitute “other paper” to trigger the thirty day rule. *Harper v. Carmichael Equip., Inc.*, 2010 WL 2595070, at \*4 (S.D. W.Va. 2010); *Bumgardner v. Combustion Engineering, Inc.*, 432 F. Supp. 1289, 1291 (D.S.C. 1977). Defendant’s knowledge of a settlement between the plaintiff and sole resident defendant “must be with a reasonable degree of certainty.” *Allison v. Meadows*, 2005 WL 2016815, at 3 (S.D. W. Va. 2005). Mere possibility of settlement is not sufficient to trigger the thirty day rule. *Id.*

The Non-Resident Defendants, as the parties seeking to invoke the jurisdiction of the federal courts, carry the burden of proving jurisdiction. All facts and issues of law should be construed strictly in favor of state court jurisdiction and “[i]f federal jurisdiction is doubtful, remand is necessary.” *Smalls v. Great American Lines, Inc.*, 2011 WL 3490007, at 3 (D.S.C. 2011).

It is well-settled that a defendant with “no immediately apparent stake in the litigation either prior to or subsequent to the act of removal” is deemed a nominal party and cannot defeat non-resident defendants’ claim of complete diversity in removal if the only resident defendant is the nominal party. *Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co.*, 736 F.3d 255, 260 (4th Cir. 2013); *Hanahan v. John Hancock Life Ins. Co.*, 518 F.Supp.2d 780, 784 (D.S.C. 2007). The Fourth Circuit has eschewed any fixed test for determining a nominal party, opting for a practical inquiry of whether the litigation can be resolved without affecting the nominal defendant “in any reasonably foreseeable way.” *Hartford Fire Ins. Co.*, 736 F.3d at 260.

## Discussion

### A. The Non-Resident Defendants' Removal was timely

The Non-Resident Defendants removed this litigation to federal court on October 3, 2019, following receipt of a copy of a settlement agreement on September 11, 2019 between Plaintiff and Ravenel, the sole resident defendant, that was executed on July 18, 2019. (Dkt. Nos. 1, 1-1 at 13-23). A copy of the executed settlement agreement was made part of the record that day in an ongoing state criminal proceeding in support of a proposed plea agreement involving Ravenel.

Plaintiff contends that the notice of removal was untimely. She argues that the Non-Resident Defendants should have surmised that a settlement was consummated because Ravenel had not filed an answer or other responsive pleading to the complaint. Further, she argues that Plaintiff's counsel and counsel for the Non-Resident Defendants were in "constant communications" and "could have simply asked" if there was a settlement. (Dkt. No. 13-1 at 12-13). In sum, Plaintiff argues that the non-resident Defendants failed to exercise "due diligence" in ascertaining whether Plaintiff and Ravenel had reached a settlement. (*Id.* at 13).

Plaintiff offers no authority to support her "due diligence" argument. Indeed, this flies in the face of the statutory requirement of "other paper" to trigger a new thirty day rule. The written settlement agreement was made a part of the public record and provided to the Non-Resident Defendants on September 11, 2019, and they timely removed their action to federal court on October 3, 2019.

### B. After consummating the settlement with Plaintiff, Ravenel became a nominal defendant

The settlement agreement between Plaintiff and Ravenel provides that Plaintiff "releases all claims known and unknown against . . . Ravenel" and promises "to dismiss with prejudice" Ravenel as a defendant in this lawsuit. (Dkt. No. 1-1 at 19). The agreement further provides that

Ravenel assigns undescribed potential cross claims he may have against the Non-Resident Defendants to Plaintiff and agrees she may elect to keep him as a party “solely for the purpose” of asserting those cross claims. (*Id.* at 16).

The settlement agreement, by releasing all claims of Plaintiff against Ravenel, renders him a nominal party. Ravenel has no “immediately apparent stake in the litigation,” and he remains in the litigation at Plaintiff’s discretion so that she might in the future assert some unknown claims that Ravenel may have had against the Non-Resident Defendants.


Plaintiff makes multiple arguments regarding why Defendant is not a nominal party and her motion to remand should be granted. First, she argues that all defendants must consent to removal and Ravenel did not grant his consent. (Dkt. No. 13-1 at 9). It is well-settled, however, that a nominal defendant need not consent to removal. *See Hartford Fire Ins. Co.*, 736 F.3d at 260. Second, Plaintiff contends that Ravenel retained the right to pursue punitive damages and emotional distress damages against the Non-Resident Defendants, creating the future possibility he may have some stake in the outcome. Such speculative future actions cannot form the basis of federal jurisdiction. Third, Plaintiff speculates that Ravenel may have entered into a contract with an indemnification agreement and would, consequently, have a stake in the outcome. Again, speculation cannot be the basis of federal jurisdiction, and an action to enforce an indemnification agreement would become ripe only in the event that the Non-Resident Defendants were required to satisfy a settlement or judgment of Plaintiff.

The bottom line is that with the settlement between Plaintiff and Ravenel, Ravenel no longer has any “skin in the game.” With no apparent financial stake in the outcome, he is a classic nominal party and cannot defeat the Non-Residents Defendants’ claim of complete diversity.

### **Conclusion**

Based on the foregoing, Plaintiff's motion for remand of this action to state court (Dkt. No. 13) is **DENIED**.

**AND IT IS SO ORDERED.**

  
Richard Mark Gergel  
United States District Judge

January 2, 2020  
Charleston, South Carolina