

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

SUSAN GRAVIANO FEINSTEIN by and through her guardian ad litem Mitchell Feinstein, and MITCHELL FEINSTEIN, individually and as guardian ad litem for Susan Graviano Feinstein,

Plaintiffs,

v.

CUNARD LINE LIMITED; CARNIVAL PLC d/b/a CARNIVAL U.K.; PRINCESS CRUISE LINES, LTD., doing business in New York as PRINCESS CRUISES, a Bermuda corporation; PETER TAYSUM, an individual; JAMES HARNETT, an individual; GRANT BROWN, an individual; SOPHIE-ELLA HOWES, an individual, and DOES 1-100, inclusive,

Defendants.

x
: Civil Action No.
:
:
:
: **NOTICE OF REMOVAL TO**
: **THE UNITED STATES**
: **DISTRICT COURT FOR**
: **THE EASTERN DISTRICT**
: **OF NEW YORK**

TO: TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1332 (Diversity), §1367 and §1441(b) (Removal Jurisdiction), Defendant GRANT BROWN, by and through his attorney, Robinson Brog Leinwand Greene Genovese & Gluck P.C., respectfully gives this notice of removal of an action now pending in the Supreme Court of the State of New York, County of Kings, to the United States District Court, Eastern District of New York in Brooklyn. As grounds for removal, Defendants respectfully set forth the following:

I. INTRODUCTION

1. This lawsuit arises out of a cruise voyage onboard the Cunard ocean liner *Queen Mary 2*, which is a United Kingdom registered vessel. Specifically, while on the cruise Plaintiff SUSAN GRAVIANO FEINSTEIN sought medical attention on three occasions. Plaintiff claims that the ship's medical staff failed to properly diagnose her condition and that later in the cruise she suffered multiple heart attacks which have left her in a coma. Plaintiff's husband

MITCHELL FEINSTEIN is her personal representative and has also sued on his own behalf for loss of consortium and support.

2. Plaintiffs have named as defendants four members of the ship's British medical staff, Dr. PETER TAYSUM, Dr. JAMES HARNETT, nurse SOPHIE-ELLA HOWE and nurse GRANT BROWN. They also name as defendants CUNARD LINES LIMITED, CARNIVAL PLC d/b/a CARNIVAL U.K. (the owner and operator of the *Queen Mary 2*), and PRINCESS CRUISE LINES LTD. doing business in New York as Princess Cruises, a Bermuda Corporation (a separate cruise line which does not own or operate *Queen Mary 2* and which has no involvement with the medical center or medical staff onboard *Queen Mary 2* at any time relevant hereto).

3. Plaintiffs' lawsuit was filed in the Supreme Court for the County of Kings and was captioned *SUSAN GRAVIANO FEINSTEIN et. al. v. CUNARD LINE LIMITED, et. al.*; Index No. 503757/2013.

II. REMOVAL IS PROCEDURALLY PROPER

4. Concurrently with the filing of this Notice of Removal, Defendants are filing a Notice of Filing Notice of Removal with the Clerk of the Supreme Court in and for Kings County, which filing will include a copy of this Notice of Removal. A copy of Defendants' Notice of Filing Notice of Removal is attached as Exhibit "1".

A. Removal is Timely

5. Defendant has timely filed the within Notice of Removal within 30 days after Defendant Grant Brown, who is the removing defendant, first received notice of this Action when served with the Complaint via mail service in the United Kingdom on May 1, 2014. This removal is therefore made pursuant to 28 U.S.C. § 1446(b), within 30 days of Defendant BROWNS first receipt of this action. This removal is also made within one year after the Complaint was filed. *See also*, 28 U.S.C. § 1446(b); *Murphy Bros. v. Michetti Pipe Stinging, Inc.*, 526 U.S. 344, 348 (1999). Removal is therefore timely.

B. Pleadings, Process and Orders

6. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders in this action are attached as Composite Exhibit “2”. Specifically, these items include:

A. On or about July 5, 2013, Plaintiffs SUSAN GRAVIANO FEINSTEIN and MITCHELL FEINSTEIN commenced their action in the Supreme Court for the County of Kings by filing a Verified Complaint therein entitled *SUSAN GRAVIANO FEINSTEIN by and through her guardian ad litem Mitchell Feinstein, and MITCHELL FEINSTEIN, individually and as guardian ad litem for Susan Graviano Feinstein v. CUNARD LINE LIMITED; CARNIVAL PLC d/b/a CARNIVAL U.K.; PRINCESS CRUISE LINES, LTD., doing business in New York as PRINCESS CRUISES, a Bermuda Corporation; PETER TAYSUM, an individual; JAMES HARNETT, an individual; GRANT BROWN, an individual; SOPHIE-ELLA HOWES, an individual, and DOES 1-100, inclusive*, Index No. 503757/2013. A true and correct copy of Plaintiffs’ Summons, Verified Complaint, Certificate of Merit, and Ex Parte Order Extending Plaintiffs’ Time to Serve the Summons and Verified Complaint are attached hereto and incorporated herein by reference collectively as Exhibit “2.”

B. The Summons and Verified Complaint were served on Defendant GRANT BROWN in the United Kingdom via mail service on May 1, 2014. This notice of removal constitutes this Defendant’s first responsive pleading. BROWN’s response to the Verified Complaint is due on May 31, 2014. BROWN is the party initiating this removal and all defendants to this action consent to the removal.

C. Although as of the date of this removal the Summons and Verified Complaint are not believed to have yet been served on all named Defendants, undersigned counsel represents all named defendants and all defendants consent to this removal.

C. Venue

7. The appropriate removal court is the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1441(a) because Plaintiffs’ action was originally filed in the Supreme Court of the State of New York in and for Kings County.

D. Consent of All Defendants

8. As noted above, all defendants to this action consent to the removal.

II. THE COURT HAS DIVERSITY JURISDICTION AND REMOVAL IS APPROPRIATE DUE TO DIVERSITY OF CITIZENSHIP

9. As a basis for removal jurisdiction, 28 U.S.C. § 1332 provides that District Courts have original jurisdiction of all civil actions where the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different States or foreign countries. *See* 28 U.S.C. § 1332(a)&(c); *see also Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1557 (11th Cir. 1989). Here, removal is appropriate under 28 U.S.C. § 1332 because complete diversity of citizenship exists as between Plaintiffs on the one hand and Defendants on the other hand, because the amount in controversy exceeds the jurisdictional amount, exclusive of interest and costs, and because removal is made by the removing Defendant within 30 days after he received notice of this lawsuit and within one year after the Complaint was originally filed.

A. Citizenship

10. Plaintiffs SUSAN GRAVIANO FEINSTEIN and MITCHELL FEINSTEIN were, at the time of the filing of this action, and presently remain, residents and citizens of the State of New York. For removal purposes Plaintiffs are therefore considered citizens of New York.

11. Defendant CUNARD LINE LIMITED is a dba of named Defendant Carnival plc (see paragraph 12 below) and is not a legally recognized separate entity. CARNIVAL plc is a United Kingdom corporation with its registered office in London, United Kingdom, and its principal place of business in Southampton, United Kingdom. Accordingly, CARNIVAL plc (and therefore CUNARD LINE LIMITED) is a citizen of the United Kingdom.

12. Defendant CARNIVAL PLC also d/b/a CARNIVAL U.K. is a United Kingdom corporation with its registered office in London, United Kingdom, and its principal place of business in Southampton, United Kingdom. Accordingly, CARNIVAL PLC d/b/a CARNIVAL U.K. is a citizen of the United Kingdom.

13. Defendant PRINCESS CRUISE LINES, LTD. is a Bermuda corporation.

Defendant PRINCESS CRUISE LINES, LTD. was, at the time of the filing of the state court action, and remains, incorporated in Bermuda with its registered office in Bermuda and its principal place of business in Santa Clarita, California. Accordingly, PRINCESS CRUISE LINES LTD. is a citizen of Bermuda.

14. Defendant PETER TAYSUM was, at the time of the filing of this action, and presently remains, a resident of and citizen of the United Kingdom.

15. Defendant JAMES HARNETT was, at the time of the filing of this action, and presently remains, a resident of and citizen of the United Kingdom.

16. Defendant SOPHIE-ELLA HOWES was, at the time of the filing of this action, and presently remains, a resident of and citizen of the United Kingdom.

17. Defendant GRANT BROWN was, at the time of the filing of this action, and presently remains, a resident of and citizen of the United Kingdom.

18. Since Plaintiffs are citizens of New York and since each and every named Defendant is a citizen of a foreign country or state other than New York, complete diversity exists as between Plaintiffs and Defendants.

B. Fictitious Does

19. Defendant DOES 1-100 are wholly fictitious. The Verified Complaint does not set forth the identity or status of any said fictitious defendants, nor does it set forth any charging allegation against any fictitious defendants. The naming of said fictitious defendants does not destroy the diversity of citizenship between the parties in this action and are to be disregarded. 28 U.S.C. §1441(a); *Newcombe v. Adolf Coors Co.*, 157 F.3d. 686, 690-91 (9th Cir. 1988).

C. Amount in Controversy

20. Removal based on diversity of citizenship is proper when the amount in controversy exceeds \$75,000. Here Plaintiff SUSAN GRAVIANO FEINSTEIN currently is, and has been since July 6, 2012, receiving 24-hour daily care, and medical bills provided by Plaintiff's counsel as evidence of claimed damages in this dispute substantially exceed \$75,000. Plaintiffs have also served a Statement of Damages which alleges combined economic damages

in excess of \$50,000,000 for Susan Graviano Feinstein plus non-economic damages in excess of \$10,000,000. Plaintiff Mitchell Feinstein claims non-economic damages in excess of \$3,000,000. The amount in controversy therefore significantly exceeds the \$75,000 threshold for diversity jurisdiction.

TIMELINESS OF REMOVAL

21. This Notice of Removal is timely filed in that it has been filed within thirty (30) days of service of the summons on Defendant GRANT BROWN including copies of the initial pleadings (*see* Exhibit “2”) pursuant to 28 U.S.C. §1446(b), and within one year of the filing of the Verified Complaint. Such summons was served by mail on Defendant GRANT BROWN on May 1, 2014 in the United Kingdom. All defendants named herein are represented in this action by undersigned counsel and do hereby consent to this Notice of Removal.

22. For all the foregoing reasons, this Court has original jurisdiction under 28 U.S.C. §§1332 and 1441(b), and supplemental jurisdiction under 28 U.S.C. §1367(a).

WHEREFORE, Defendants respectfully requests that this action be removed to this Court.

Dated: New York, New York
May 29, 2014

Respectfully submitted,

ROBINSON BROG LEINWAND GREENE
GENOVESE & GLUCK P.C.

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