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# Supreme Court Limits Counterclaim Defendants' Ability to Remove Suits to Federal Court


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The Supreme Court recently clarified that third-party counterclaim defendants — parties who were not defendants in the original action, but were brought in as third-party defendants by virtue of the original defendant's counterclaims — lack the authority to remove their class claims from state to federal court. *Home Depot U.S.A. Inc. v. Jackson, No. 17–1471* (available at: https://www.supremecourt.gov/opinions/18pdf/17-1471_e2p3.pdf), slip op. at 1 (U.S. May 28, 2019). Justice Thomas, writing for a five-Justice majority that included Justices Ginsburg, Breyer, Sotomayor and Kagan, noted that neither the general removal statute nor the removal provision of the Class Action Fairness Act (CAFA) provides any support for the theory that the term "defendant" in those statutes also encompasses "counterclaim defendant." *Id.*

The key takeaways from the case are:

- Those forced to defend class claims brought by the original defendants via counterclaims cannot remove their claims to federal court under CAFA.

- The Court's opinion is not limited to class actions — it applies to individual claims asserted via counterclaim in state court as well.

- While the opinion may have far-reaching consequences for counterclaim defendants, the majority has punted to Congress to remedy any fallout by amending the text of the relevant removal statutes, if it chooses.

- The opinion did not alter removal options for traditional defendants in any way. If a party faces class or individual claims by virtue of the claims that started a suit, it can still remove under the general removal statute and CAFA if it meets the relevant removal requirements.

## Background

Plaintiff Citibank, N.A., filed a debt-collection action against George Jackson in a North Carolina state court. Slip op. at 3. In response, Jackson filed a class action counterclaim against Citibank, the original plaintiff, and two additional parties: Home Depot and Carolina Water Systems. *Id.* In his class counterclaim, Jackson alleged that a scheme between the three entities induced consumers to purchase products at inflated prices in violation of North Carolina law. *Id.* at 3-4. Citibank soon thereafter dismissed its claims against Jackson, the original defendant, and Home Depot promptly removed the case from state court to federal district court. *Id* at 4. Jackson moved to remand, arguing a third-party counterclaim-defendant like Home Depot did not have the authority to remove the case to federal court. *Id.* The federal district court granted Jackson's motion to remand, and the Fourth Circuit affirmed. *Id.* Home Deposit successfully petitioned the Supreme Court for certiorari to determine whether a new party, impleaded by the original defendant as a counterclaim defendant, qualifies as a "defendant" with removal rights under either 28 U.S.C. § 1441(a), the general removal statute, or CAFA.

## Majority Opinion

The five-Justice majority first looked to whether the general removal statute, 28 U.S.C. § 1441(a), permitted removal by a third-party counterclaim defendant. *Id.* at 5. Home Depot argued that because it is a "defendant" to a "claim," it qualified as a defendant under this

statute. *Id.* The majority disagreed, emphasizing that while the term "defendant" itself was broad, the term must be read in context with the statute. *Id.* "Considering the phrase 'the defendant or the defendants' in light of the structure of the statute and our precedent, we conclude that § 1441(a) does not permit removal by any counterclaim defendant, including parties brought into the lawsuit for the first time by the counterclaim." *Id.* at 5-6.

The Court's statutory interpretation analysis unfolded in three parts. First, the Court stressed that the removal statute refers to "civil action[s]" and not "claims," notwithstanding Home Depot's argument to the contrary. *Id.* at 6. Second, the Court pointed to the language of the Federal Rules of Civil Procedure, noting that Rules 12 and 14 distinguished between plaintiffs, defendants, third-party plaintiffs and third-party defendants, making it difficult to interpret "defendant" in § 1441(a) to also cover "third-party defendant." *Id.* at 7. Finally, the Court noted that Congress has, in other removal statutes, explicitly provided for broader removal rights, and that it did not do so here. *Id.* For example, 42 U.S.C. § 1452(a) allows any party in a civil action to "remove any claim or cause of action" over which a federal district court would have bankruptcy jurisdiction, and 42 U.S.C. §§ 1454(a) and (b) provide that any party may remove a civil action related to "patents, plant variety protection, or copyrights." *Id.* These rationales led the Court to affirm and broaden its 1941 decision in *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941), where it held that a counterclaim defendant that was the original plaintiff had no right of removal under a predecessor statute to § 1441.

The Court also concluded that CAFA's removal provision, codified at 28 U.S.C. § 1453(b), cannot be interpreted to allow for removal of class claims by third-party counterclaim defendants when traditional claims could not be removed under § 1441. *Id.* at 9. CAFA was only meant to modify the circumstances in which removal of class claims is appropriate, the Court held, not alter the limit on who can remove in the first instance. *Id.* CAFA broadened removal options in two ways: (1) it eliminated the prohibition on removal if the defendant was a citizen of the state in which the action was brought and (2) it removed the requirement that every defendant must consent to removal. *Id.* at 10. Neither of these provisions altered the definition of "defendant," meaning that "defendant" under CAFA cannot encompass more parties than "defendant" under § 1441(a). *Id.*

## Dissent

In his dissent, Justice Alito, joined by Chief Justice Roberts and Justices Gorsuch and Kavanaugh, began by stressing the importance of the removal process as a tool to help defendants avoid the perceived prejudices of state court. Slip op. at 1 (Alito, J.,

dissenting). The dissenting justices noted that, regardless of their procedural status, counterclaim defendants "are defendants to legal claims" indistinguishable in any meaningful respect from traditional defendants:

> Neither chose to be in state court. Both might face bias there, and with it the potential for crippling unjust losses. Yet today's Court holds that third-party defendants are not "defendants." It holds that Congress left them unprotected under CAFA and §1441. This reads an irrational distinction into both removal laws and flouts their plain meaning, a meaning that context confirms and today's majority simply ignores.

*Id.* at 2. Justice Alito examined the history of CAFA and noted that several federal district courts have described a removal prohibition for counterclaim defendants as a "loophole" or litigation "tactic." *Id.* at 7. According to the dissent, there is no evidence that Congress intended this result when it passed CAFA and that the majority's "uncharitable reading" has led to a "bizarre result." *Id.* at 8.

Justice Thomas summarily dismissed the concerns raised by the dissenting Justices, noting that "if Congress shares the dissent's disapproval of certain litigation 'tactics' it certainly has the authority to amend the statute. But we do not." *Id.*

## Implications

Perhaps the most obvious implication of the Court's opinion is that it has, to some extent, undermined the purpose of the Class Action Fairness Act. In enacting CAFA in 2005, Congress specifically noted that certain class action practices by state and local courts over the course of the previous decade "undermine[d] the national judicial system" by "keeping cases of national importance out of Federal court; sometimes acting in ways that demonstrate bias against out-of-State defendants; and making judgments that impose their view of the law on other States and bind the rights of the residents of those States." Class Action Fairness Act of 2005, S. 5, 109th Cong. § 2(a)(4).

CAFA was enacted to make it easier for defendants to avoid these state court abuses by easily removing class actions to federal court. The Court's opinion in *Home Depot* effectively denies CAFA protections to parties who, throughout no fault of their own, face class claims in a state court by virtue of the original defendant's counterclaims.

Ultimately, while this opinion will force counterclaim defendants to litigate class claims in state court for the immediate future, Justice Thomas took care to explain the limited nature of the Court's rationale. At the end of the majority opinion, Justice Thomas noted

that the Court's opinion may very well result in unsavory litigation tactics designed to trap parties in state court. Justice Thomas simply noted that those concerns were not the Court's to resolve; rather, the Court's role was limited to interpreting the statutory text. Justice Thomas went on to point out that if Congress shared the concerns of Justice Alito and his fellow dissenters regarding the policy implications of the Court's opinion, then Congress can easily remedy the situation by amending the relevant removal statutes.

At bottom, this opinion turns on the relatively limited jurisdiction of the federal courts, which only have the authority to hear a case when a statute grants that authority. Congress thus has substantial power to determine the types of cases eligible for removal from state court, and the parties that may effect removal. Here, Justice Thomas has explicitly called on Congress to act if it is not satisfied with the Court's opinion. Given the consequences of this opinion, and its obvious conflict with the purpose of CAFA, Congress may very well effectively overrule or at least modify this opinion via legislative action.

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