

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN FERTILITY AND REPRODUCTIVE
SURGERY ASSOCIATES, S.C., et al.

Plaintiffs,

vs.

Case No. 14-cv-00168

FEMPARTNERS OF WISCONSIN, INC., et al.

Defendants.

REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION TO REMAND

Plaintiffs Wisconsin Fertility and Reproductive Surgery Associates, S.C. and Drs. Olive and Pritts (hereinafter "Wisconsin Fertility") offer the following in brief reply to Defendants' Brief in Opposition to Plaintiffs' Motion for Remand. It is worth noting that Defendants rather cavalierly accuse Plaintiffs of fraudulent joinder and of deceiving this Court without providing any evidence or substantive argument to support these contentions. Wisconsin Fertility filed suit against the various FemPartners entities and joined each as indicated in the pleadings in good faith and nothing put forth by Defendants challenges that presumption.

Defendants argue that Wisconsin Fertility's motion should fail "because they are essentially suing themselves." (Dckt. #17, p. 2). To make such an argument completely ignores well-established law that limited partnerships are entities entirely separate from the identity of the individual partners. *In re Allcat Claims Serv., L.P.* 356 S.W.3d 455, 463 (Tex. 2011). It appears that Defendants are effectively asking this Court to ignore legal entity theory and deny Plain-

tiffs' motion, an argument which merits no further discussion other than to indicate that Plaintiffs are quite plainly not suing themselves. Plaintiffs are suing the limited partnership.

Defendants have also argued that Plaintiffs have not alleged any claims against the partnership. Wisconsin Fertility will not unnecessarily repeat its previous arguments except to briefly state that the limited partnership can only act through the will of the general partner, which is also a Defendant in this action. The actions of the general partner on behalf of the Partnership bring the Partnership into the conspiracy to defraud the Plaintiffs, as the Plaintiffs have clearly alleged in the Complaint. As such, the Partnership itself is liable to the limited partners for its own actions in conspiring with the FemPartners entities. The Partnership is not aligned in interest with the Plaintiffs, since it is effectively a vehicle for the fraudulent actions of the general partner. Plaintiffs have made numerous demands of the Partnership including that it relinquish funds and documents. These requests have been denied, ostensibly because the Partnership is aligned with the Defendant general partner.

While Defendants indicate that under Texas law the Partnership is not an "indispensable party," that most certainly does not mean that Plaintiffs cannot sue the Partnership. Such an inquiry would be more relevant if the Partnership itself were absent from the case or were trying to intervene on its own accord, both of which actions would result in the destruction of diversity jurisdiction. Under those circumstances, it would be more relevant to inquire whether the Partnership is an indispensable party. As it stands, however, the fact that the Partnership may not be "indispensable" does not mean its joinder is improper.

If the Court determines that the Partnership should be dismissed from the case to preserve diversity jurisdiction, then the Court will have no jurisdiction over the Partnership's assets. Plaintiffs have argued that they are entitled to those assets, which are still purportedly in the Partnership's designated bank accounts. Plaintiffs have already asked for and obtained

relief against the Partnership in the form of a temporary injunction in Dane County Circuit Court, ordering that the Partnership freeze its accounts and provide Plaintiffs documents to which they are entitled. This Court absolutely must have jurisdiction over the Partnership and its assets in order to effect complete relief among the parties to this action.

Plaintiffs' joinder of the Partnership is not fraudulent unless Defendants can show that there is "no possibility that plaintiff can state a cause of action against the resident defendant in state court." *S.A. Auto Lube v. Jiffy Lube International*, 842 F.2d 946, 950 (7th Cir. 1988)(emphasis added). Defendants have simply not made such a showing, especially considering that all issues of fact and law must be resolved in favor of the Plaintiffs and their choice of forum. *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 764 (7th Cir. 2009).

This Court should grant Plaintiffs' motion and remand this case to Dane County Circuit Court.

CONCLUSION

For all of the reasons stated above, Plaintiffs respectfully request that the Court grant their Motion to Remand and return this matter to Dane County Circuit Court.

Dated this 28th day of April, 2014.

HALEY PALMERSHEIM, S.C.

/s/Cathleen A. Dettmann
Kevin J. Palmersheim
Wisconsin State Bar #1020726
Cathleen A. Dettmann
Wisconsin State Bar #1048315
Attorneys for Plaintiffs and Counterclaim
Defendants
1424 N. High Point Road, Ste. 202
P.O. Box 628005
Middleton, WI 53562-8005
(608) 836-6400
palmersheim@hplawoffice.com
dettmann@hplawoffice.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN FERTILITY AND REPRODUCTIVE
SURGERY ASSOCIATES, S.C., et al

Plaintiffs,

vs.

Case No. 14-cv-168-slc

FEMPARTNERS OF WISCONSIN, INC., et al

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2014, I electronically filed the following document with the Clerk of the Western District of Wisconsin, using the ECF system:

- Reply Brief in Support of Plaintiffs' Motion to Remand.

HALEY PALMERSHEIM, S.C.

/s/ Cathleen A. Dettmann

Kevin J. Palmersheim

Wisconsin State Bar #1020726

Cathleen A. Dettmann

Wisconsin State Bar #1048315

Attorneys for Plaintiffs and Counterclaim

Defendants

1424 N. High Point Road, Ste. 202

P.O. Box 628005

Middleton, WI 53562-8005

(608) 836-6400

palmersheim@hplawoffice.com

dettmann@hplawoffice.com