

04-603 GRABLE & SONS METAL PRODUCTS V. DARUE ENGINEERING

DECISION BELOW: 377 F3d 592

LOWER COURT CASE NUMBER: 02-1678

QUESTION PRESENTED:

1. Substantial federal question and original jurisdiction prerequisites for removal to federal district court. 28 U.S.C. §1441(b) allows removal of any state civil action in which the district courts have original jurisdiction wherein the claim is founded on a right arising under the Constitution, treaties or laws of the United States. This Court has routinely held that such removal requires both a substantial federal question and the district court must have original jurisdiction over the action.

The question raised is, when there is a violation by the IRS of 26 U.S.C. §6335(a) by intentionally ignoring the prerequisite provision requiring personal service of notice of seizure before obtaining service by certified mail, whether the defendant in a state quiet title action can remove the action by claiming that the necessary interpretation of 26 U.S.C. §6335(a) as to whether strict compliance or substantial compliance with the statute constitutes a substantial federal question and creates original jurisdiction in the district court.

2. Personal notice provisions in 26 U.S.C. §6335(A) requires strict compliance as opposed to substantial compliance. The courts from virtually the beginning of our country's history have maintained that governmental agents are required to strictly comply with the law when confiscating the property of citizens. A long line of cases have indicated that that IRS agents must strictly comply with the personal service of notice of seizure required by 26 U.S.C. §6335(a). Several Circuit Courts of Appeals have recently chosen to allow violations of said section when the IRS substantially complies with the provision.

The question presented is whether the IRS is required to strictly comply with the personal service provisions of 26 U.S.C. §6335(a), which requires attempted personal service of notice of seizure before the IRS can obtain service through certified mail or, is the IRS allowed to substantially comply with the provisions, especially when the IRS admittedly fails to even attempt to comply with personal service before obtaining service by certified mail.

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 1/7/2005