

APPENDIX A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

December 11, 2017

Before

Hon. William J. Bauer, *Circuit Judge*

Hon. Joel M. Flaum, *Circuit Judge*

Hon. Ilana Diamond Rovner, *Circuit Judge*

BOARD OF EDUCATION OF THE CITY
OF CHICAGO,

Plaintiff-Appellee,

No. 17-2834 v.

SHAHEENA KHAN,

Defendant-Appellant.

] Appeal from the United
] States District Court for
] the Northern District of
] Illinois, Eastern Division.

] No. 1:17-cv-05928

] Gary Feinerman,
] Judge.

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is **DISMISSED** for lack of jurisdiction.

This court has consistently reminded litigants that an order remanding a case to state court based on a lack of subject matter jurisdiction or a defect in the removal procedure is not reviewable on appeal, whether or not the decision is correct. *See, e.g., Rubel v. Pfizer, Inc.*, 361 F.3d 1016 (7th Cir. 2004); *Phoenix Container, L.P. v. Sokoloff*, 235 F.3d 352, 354-55 (7th Cir. 2000); *In re Continental Casualty Co.*, 29 F.3d 292, 293 (7th Cir.

-over-

No. 17-2834

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1994).

In the present case, Defendant sought to remove to federal court a proceeding initiated against her by the City of Chicago Board of Education. The district court remanded the case to the City's Board of Education, calling the removal "frivolous." The district court finding of frivolousness was a determination that the case did not engage the jurisdiction of the district court. *See, e.g., Carr v. Tillery*, 591 F.3d 909, 917 (7th Cir. 2010); *Crowley Cutlery Co. v. United States*, 849 F.2d 273, 276 (7th Cir. 1988). In particular, the district court noted that "[t]he Board of Education of the City of Chicago is not a court within the meaning of the removal statute." We agree.

IT IS FURTHER ORDERED that the "Motion to Hold Appeal in Abeyance", "Motion to Intervene", and "Motion to Strike Appellee's Reply, Document 31", filed on November 13, 14, and 22, 2017, respectively, are **DENIED** as moot.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BOARD OF EDUCATION OF THE
CITY OF CHICAGO,

Plaintiff,

-vs-

SHAHEENA KHAN,

Defendant.

Case No. 17 C 5928

Chicago, Illinois
September 5, 2017
9:07 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GARY FEINERMAN

APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 17 C 5928, Board of Education versus
3 Khan.

4 MR. ONYANGO: Good morning, your Honor. Eric Onyango
5 on behalf of defendant Shaheena Khan.

6 THE COURT: Good morning. Is there anybody here on
7 behalf of Board of Education? Nobody's responded. This
8 matter was set for hearing at 9:00 o'clock. It's now after
9 9:00, and I don't have any other cases for which I could pass
10 this one, so I will proceed.

11 I'm going to remand this case to the Board of
12 Education for two reasons, and I'm going to set forth my
13 reasons on the record.

14 The first is that the Board of Education of the City
15 of Chicago is not a court within the meaning of the removal
16 statute. I know that the plaintiff cited *Floeter*, that's
17 F-L-O-E-T-E-R, *versus CW Transportation* 597 F.2d 1100, Seventh
18 Circuit 1979, for the proposition that an administrative
19 agency, under certain circumstances, can be considered a court
20 within the meaning of 28 USC 1441.

21 That case is distinguishable from this one. That
22 case involved the Wisconsin Employment Relations Commission,
23 and the matter there was brought by a group of collective
24 bargaining agreement-covered employees alleging that their
25 employer had violated the terms of the CBA by giving super

1 seniority to two employees. The matter was removed from the
2 Wisconsin Employment Relations Commission to federal district
3 court, and the Seventh Circuit held that the removal was
4 proper even though the Commission was not a court because what
5 was going on in the commission was basically a breach of
6 contract and unfair representation action that could have been
7 brought at either state or federal court as alternative
8 forums. And the Seventh Circuit also noted that the Supreme
9 Court of Wisconsin had held that the Commission was vested
10 with judicial power.

11 Neither of those circumstances are present here. The
12 Board of Education could not have brought its termination
13 action, quote, unquote, in federal district court, and no
14 Illinois court has held that the Chicago Board of Education is
15 vested with judicial power.

16 And the *Floeter* case itself recognized what an
17 extraordinary situation was presented there, a unique
18 situation. It held that -- the Seventh Circuit noted that
19 its holding is limited by the facts of the case, and the facts
20 of this case don't fall within the confines of what the
21 Seventh Circuit set forth in *Floeter* as an appropriate basis
22 for removing an action -- quote, unquote, removing a quote,
23 unquote action from a state administrative agency to federal
24 district court.

25 And the Seventh Circuit, in a case called *Wirtz*

1 *Corporation versus United Distillers and Vintners*, 224 F.3d
2 708, that's from 2000, the Seventh Circuit reaffirmed or
3 reiterated the narrow scope of *Floeter* in that case. That was
4 a case that was, quote, unquote, removed from the Illinois
5 Liquor Control Commission. The district court relied on
6 *Floeter* in saying -- holding that the removal was proper, and
7 the Seventh Circuit reversed.

8 And if the plaintiff's conception in this case of
9 what a court is under 1441(a) were correct, then the removal
10 jurisdiction would be expanded exponentially because any
11 government agency, whether it deals with welfare benefits or
12 employment or licenses or anything, consistent with the
13 constitution, has to give some sort of due process hearing
14 before any benefit is taken away or any job is terminated.
15 And if -- that's all that the Board of Education is doing
16 here; and if that were enough to qualify those state agencies
17 as courts within the meaning of 1441(a), it's difficult to
18 imagine any due-process-like proceeding in a state
19 administrative agency being immune from removal under 1441(a).

20 I'm now going to go to my second reason. And let's
21 say everything that I've said about the Board of Education
22 being a court is wrong. I don't think it's wrong, but let's
23 just assume for the sake of argument that it's wrong and the
24 Board of Education can be a court. There still would be no
25 federal jurisdiction because the Board of Education, if we

1 were to consider the charges brought before the Board as a
2 claim or a case, did not bring a federal claim.

3 The charges that gave the defendant here, the quote,
4 unquote defendant, Khan, notice of the grounds for termination
5 cite only state law, and there's no federal law. So, to the
6 extent that those charges can be construed to be a complaint
7 that was filed in a court, the well-pleaded complaint rule
8 would dictate that the complaint be read to state only state
9 law claims.

10 Now, Khan says that what's really going on here is
11 discrimination in violation of a variety of federal laws,
12 constitutional law and statutory law, and that may or may not
13 be the case. I don't know. But those are -- if we're going
14 to consider the Board of Education's charges to be a
15 complaint, then what Khan is arguing are essentially defenses
16 to the termination; and under the well-pleaded complaint rule,
17 as exemplified by *Panther Brands versus Indy Racing League*,
18 827 F.3d 586, Seventh Circuit 2016, the fact that the
19 defendant has federal defenses to state law claims is not
20 sufficient to invoke federal jurisdiction for purposes of
21 removal.

22 So, for each of those grounds, I'm summarily
23 remanding this case to the Board of Education. I'm going to
24 deny without prejudice all the pending motions. And, of
25 course, Khan is free to present those motions, to the extent

1 that the Board of Education's procedures allow those matters
2 to be presented.

3 And of course, if this case -- if this matter comes
4 to this court under a different guise, say, for example, a
5 retaliatory termination claim where Khan is styled as the
6 defendant -- I'm sorry, as the plaintiff, then, of course,
7 those motions, to the extent they remain pertinent, could also
8 be brought in that kind of a case. Thank you.

9 MR. ONYANGO: Your Honor, may I ask one question?

10 THE COURT: Sure.

11 MR. ONYANGO: There were some proceedings that
12 happened before the Board post-remand. Is the Court doing
13 anything about that?

14 THE COURT: No, because the remand was inappropriate
15 in the first place.

16 MR. ONYANGO: Okay. Thank you.

17 THE COURT: Thank you.

18 (Which were all the proceedings heard.)

19 CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the record of proceedings in the above-entitled matter.

22

23 */s/Charles R. Zandi*

September 12, 2017

24 Charles R. Zandi
25 Official Court Reporter

Date