

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Stanley Johnson, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Time Warner Entertainment-Advance/
Newhouse Partnership d/b/a Time
Warner Cable, and South Carolina
Electric & Gas Co.,

Defendants.

Civil Action No.: 3 : 15 - cv - 01727 - CMC

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, § 1446, and § 1453, the Defendant Time Warner Entertainment-Advance/Newhouse Partnership (“TWEAN”) and Time Warner Cable Southeast LLC d/b/a Time Warner Cable (“Time Warner Cable”) hereby notice the removal of this action to the United States District Court for the District of South Carolina, Columbia Division.

In support of this action, TWEAN and Time Warner Cable state as follows:

1. The Summons and Class Action Complaint were filed on April 2, 2015, in the Court of Common Pleas for Richland County, State of South Carolina.

2. TWEAN was served on April 9, 2015, by certified mail sent to CT Corporation System in Columbia, SC. Time Warner Cable received notice of this action through service of process on this same date through the same means.

3. Class action diversity exists in this action as follows:

a. Plaintiff alleges that he is a citizen and resident of South Carolina. Compl. ¶ 4.

b. Plaintiff alleges that Defendant TWEAN d/b/a Time Warner Cable is “is a for profit corporation organized under the law of the State of Delaware with its principal place of business in New York. Time Warner Cable sells cable, telephone, and internet services to consumers in South Carolina.” Compl. ¶ 5.

c. Time Warner Cable, the second removing party, is a Delaware entity with its principal place of business in the State of New York.

With respect to Paragraph 5 of the Complaint, Plaintiff is correct in his substantive allegations that the for profit legal entity doing business as Time Warner Cable in South Carolina is a Delaware entity with its principal place of business in New York, and that this entity sells cable, telephone, and internet services in South Carolina. However, the identity of that legal entity is Time Warner Cable Southeast LLC, which is the second removing party and the entity whose conduct is involved in the events alleged with respect to Plaintiff. The current named defendant (TWEAN) does exist, but it is a New York entity that does not do business as Time Warner Cable in South Carolina, that does not sell cable, telephone, or internet services to consumers in South Carolina, and that was not involved in the events with respect to Plaintiff. Diversity for purposes of jurisdiction exists both as to the citizenship of the legal entity currently named in the caption (TWEAN) and the citizenship of Time Warner Cable, the legal entity that is the subject of the substantive allegations in Paragraph 5 of the Complaint and the target of the operative facts of the complaint with respect to Plaintiff.¹

4. In the Class Action Complaint, Plaintiff asserts claims for actual and punitive damages, as well as disgorgement of alleged profits, pursuant to claims of trespass and unjust

¹ As set forth in its answers to local rule interrogatories, counsel is authorized to accept service of an amended complaint to correct the identification of the Delaware legal entity doing business as Time Warner Cable in South Carolina.

enrichment. Plaintiff allege the class includes in excess of 100 putative class members. While TWEAN and Time Warner Cable do not believe Plaintiff or the putative class members are entitled to any recovery, the Class Action Complaint contains no limitation on the amount of actual or punitive damages sought for what is alleged to be in excess of 100 separate instances of intentional trespass. As such, the amount in controversy for purposes of jurisdiction exceeds \$5,000,000 exclusive of interest and costs.

5. Pursuant to 28 U.S.C. § 1332(d)(2), this Court has original jurisdiction over this civil action in which the amount controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which any member of the class of plaintiffs is a citizen of a State different from any defendant.

6. In addition to class action jurisdiction under 28 U.S.C § 1332(d)(2), jurisdiction also exists under 28 U.S.C. § 1332(a) because Defendant South Carolina Electric & Gas Co. (“SCE&G”) has either been fraudulently joined as a defendant or is at most a nominal defendant whose citizenship is to be disregarded for purposes of jurisdiction. In this regard, SCE&G is not a party to any of the claims seeking injunctive or monetary relief, and Plaintiff’s prayer for relief does not seek any relief of any kind from SCE&G. The only cause of action to which SCE&G is a party is the first cause of action seeking declaratory judgment. In that cause of action, SCE&G is mentioned in factual paragraphs, but the only declaratory relief sought is “a declaration that Time Warner Cable’s entry and continued presence on [Plaintiff’s] land is an unlawful trespass.” Compl. ¶ 45. Under these circumstances, the presence of SCE&G as a party defendant has no bearing on the diversity jurisdiction of this Court over this action between citizens of different states in which the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. This notice of removal has been filed by TWEAN and Time Warner Cable within the time period required by 28 U.S.C. § 1446(b) and § 1453(a) as it has been filed within 30 days of receipt of the Summons and Complaint through service of process.

8. Venue in this action is properly laid in this District pursuant to 28 U.S.C. § 1441(a) because the Richland County Court of Common Pleas is located within this District.

9. The Summons and Class Action Complaint, and all other process, pleadings, or orders served in this action are attached to this notice.

10. Concurrent with the filing of this notice of removal, TWEAN and Time Warner Cable have given notice to the Plaintiff and the Clerk of Court for Richland County.

WHEREFORE, Defendant TWEAN and Time Warner Cable Southeast LLC request that this action proceed in this Court as an action properly removed.

s/ Kevin K. Bell

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April 21, 2015