

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

PATRICK KELLY, Individ., *et al.*, *

Plaintiffs, *

v. * Case No.

RX REMEDIES, *et al.* *

Defendants. *

* * * * *

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants, Rx Remedies, Inc., John Powers, Meredith Priddy, James Tracy Taylor, Daniel Powers, and Brent Berisford, by Adam M. Spence, Esq., Garrett E. Brierley, Esq., and SPENCE | BRIERLEY, their attorneys, file this Notice of Removal to this Court of a civil action from the Circuit Court for Baltimore City, Maryland, captioned *Patrick Kelley, et al v. RX Remedies, et al*, Case No.: 24-C-19-003016. As grounds therefor, Defendants state as follows:

1. On or about May 28, 2019, an action was commenced in the Circuit Court for Baltimore City, Maryland, captioned *Patrick Kelly, et al v. RX Remedies, et al*, Case No.: 24-C-19-003016 (the “Circuit Court Lawsuit”).

2. This action is removable because this Court has original jurisdiction over this matter on the grounds that copyright infringement and/or defenses thereto invoke federal question jurisdiction and supplemental jurisdiction pursuant to 28 U.S.C. § 1338 & 1367.

3. Specifically, Plaintiffs' allege in their Complaint that Defendants "unilaterally and intentionally transferred *all, substantially all or most of the valuable business and property* of [Emerald Green Ventures]/BioRemedies to [Defendant RX Remedies]..." contrary to "[Emerald Green Ventures]/BioRemedies' ownership rights over said business and property. See State Court Lawsuit Complaint, attached as Exhibit A, at ¶¶ 22-23 (Emphasis added).

4. Plaintiffs' Complaint further alleges that

Defendants are [] personally and directly conflicted and committed to their unauthorized and illegal formation of RxR and *the unauthorized and illegal misappropriation of EGV/bioRemedies' funds and tangible and intangible property* in connection with the formation of that entity protection for EGV /bioRemedies inventory and the bioRemedies name.

Complaint at ¶ 17 (Emphasis added).

5. Based on these facts, Plaintiffs assert several causes of action against Defendants arising from their transfers of such tangible and intangible property: conversion; unjust enrichment; constructive fraud based on breach of fiduciary duty, violation of the Maryland trade secret act, fraud, concealment and civil conspiracy. See Complaint.

6. These claims arise, in part, over disputed copyright ownership rights vis-à-vis the parties.

7. Again, the Complaint alleges that Defendants unlawfully transferred "*all, substantially all or most of the valuable business and property, including without limitation EGV/bioRemedies' ... tangible and intangible business property,*" which implicates copyright issues. Complaint at ¶ 22.

8. The Complaint then alleges that Defendants formed "a competitive business using, among other things, EGV/bioRemedies' trade secrets, tangible and intangible property ..." Complaint at 53, 56 & 57.

9. As set forth more fully below, such intangible property includes copyrighted marketing materials and website text that Defendants used after leaving BioRemedies (based on their ownership of same). Defendants intend to assert as a defense copyright ownership granted to them as part of their employment.

10. Plaintiffs may counter that the allegations do not specifically state copyright claims. Ordinarily, under the “well-pleaded complaint rule,” federal question jurisdiction must be apparent from the face of the pleading, without any reference to possible defenses to the case. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). Further, “[g]enerally, federal preemption is a defense to plaintiff’s action, and as such, ‘it does not appear on the face of a well pleaded complaint.’”

11. “There is an exception, however, to the well-pleaded complaint rule. ‘[W]hen a federal statute wholly displaces the state-law cause of action through complete pre-emption,’ the state claim can be removed based on defenses. *Id* at 207.

12. Copyright is one such exception, permitting the Court to remove a case because federal law so completely preempts state law that it effectively converts Plaintiff’s claims to federal claims. *Rosciszewski v. Arete Associates, Inc.*, 1 F.3d 225, 231 (4th Cir. 1993).

13. Even if the complaint does not provide details of the plaintiffs' claims sufficient for removal, the defendant may remove within 30 days of receiving “an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). The “other paper” requirement “is broad enough to include any information received by the defendant, whether communicated in a formal or informal manner.” *Sawyer v. Union Carbide Corp.*, CV CCB-16-118, 2016 WL 1585888, at *2 (D. Md. Apr. 20, 2016)(Blake)(unpublished), *rev'd sub nom.* (on other grounds) *Sawyer v.*

Foster Wheeler LLC, 860 F.3d 249, 2017 (4th Cir. 2017)(Defendant asserted statutory Federal Officer removal). *See also Yarnevic v. Brink's, Inc.*, 102 F.3d 753, 755 (4th Cir. 1996).

14. In this regard, Defendant Taylor received a letter on June 18, 2019 that Plaintiff Kelly had directed to BioRemedies investors. In that letter, Mr. Kelly raised his considerable concerns regarding Defendants' purported theft of trademarked and copyrighted materials leading to the instant lawsuit, stating:

- [REDACTED]
- [REDACTED]
- [REDACTED]

A copy of this letter is attached as Exhibit B (Emphasis added).

15. Coupling Plaintiff Kelly's clear statements in this letter of copyright infringement with the allegations of the Complaint as to Defendants' theft and use of "*all, substantially all or most of the valuable business and property, including without limitation EGV/bioRemedies' ... tangible and intangible business property,*" it is clear that the instant lawsuit involves copyright infringement of bioRemedies' public facing website, a federal question. Complaint at ¶¶ 22.

16. When viewing the Complaint in light of Plaintiff Kelly's letter, this case is properly removable under federal question jurisdiction pursuant to 28 U.S. Code § 1338.

17. In compliance with 28 U.S.C. § 1446(b)(2)(B), this Notice of Removal is timely, having been timely filed within 30 days of Defendants' first notice of the State Court Lawsuit.

Defendants first became aware of the Circuit Court Lawsuit on June 10, 2019, when several Defendants were personally served with the Complaint.

18. In compliance with 28 U.S.C. § 1441(a), this action is properly removed to the United States District Court for the District of Maryland (Baltimore Division), which is the “district and division embracing the place where [the] action is pending.”

19. In compliance with 28 U.S.C. § 1446(a) and LR 103.5(a), a copy of all process, pleadings, and orders served upon the removing Defendants in the State Court Lawsuit are attached and filed herewith as follows:

Exhibit A – State Court Complaint
Exhibit C – State Court Civil Case Information Report
Exhibit D - State Court Summons for Defendants, collectively

See also Local Rule 103.5(a) Certification filed herewith.

20. No Motions are pending in the State Court Lawsuit.

21. In compliance with 28 U.S.C. § 1446(d), a *Notice of Filing of Notice of Removal* removing the State Court Lawsuit to this Court will be (a) filed with the Clerk of the Court in the State Court Lawsuit and (b) served on counsel for the Plaintiffs together with this Notice of Removal.

22. By filing this Notice of Removal, Defendants do not waive their right to seek to compel arbitration, or to object to jurisdiction over the person, or venue, and specifically reserve the right to assert any defenses and/or objections to which they may be qualified to assert.

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