2026 Tex. Bus. 64

The Business Court of Texas,
Third Division

THE BAKERY LLC and KEN MEDIA LLC, *Plaintiffs,*	§	
v.	§	Cause No. 26-BC03A-0027
NATERRA INTERNATIONAL, INC., *Defendant.*	§	

Syllabus[*]

The Court holds that removal was timely because the 30-day clock did not begin to run until the defendant filed the counterclaims that first placed the action within the Court's amount-in-controversy jurisdiction. *See* Tex. Gov't Code § 25A.006(f)(1)(A)–(B) and Tex. R. Civ. P. 355(c)(2)(A). Pre-suit threats to assert counterclaims valued above the jurisdictional threshold do not, alone, establish the business court's jurisdiction over an action in which those counterclaims have not yet been (and might never have been) pleaded.

[*] The syllabus was created by court staff and is provided for the convenience of the reader. It is not part of the Court's opinion, does not constitute the Court's official description or statement, and should not be relied upon as legal authority.

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Opinion & Order Denying Motion to Remand

¶1 Before the Court is Naterra International, Inc.'s Motion to Remand. The Court **DENIES** the motion and holds that Plaintiffs' removal was timely because it occurred within 30 days after Defendant pleaded counterclaims that first placed the total amount in controversy over $5 million.

Background

¶2 On May 19, 2026, Plaintiffs filed this suit on sworn account, asserting Defendant owed $1,350,507 for services provided. On July 1, Defendant filed counterclaims alleging more than $60 million in damages. On July 29, Plaintiffs removed the action to this Court, asserting that the action arose out of a qualified transaction and, with the addition of Defendant's counterclaims, the total amount in controversy exceeded $5 million. Defendant now seeks remand on the ground that the removal was untimely.

Analysis

¶3 When removal is not agreed, a party typically must file its notice of removal within 30 days after the later of the date it: (A) was served or (B) "discovered, or reasonably should have discovered, facts establishing the business court's jurisdiction over the action."[1] Plaintiffs assert that their removal was timely under (B) because it was within 30 days of when Defendant added the counterclaims that put the amount in controversy within this Court's jurisdictional requirements.

¶4 Defendant does not dispute that Plaintiffs removed within 30 days of the date Defendant filed its counterclaims or that the case is within this Court's amount-in-controversy jurisdiction. Instead, Defendant contends that the removal was untimely because, in response to a pre-suit demand letter, Defendant threatened to file its counterclaims and asserted the value of those counterclaims to be over $60 million. Thus, Defendant says Plaintiffs knew or should have known the amount in

[1] TEX. GOV'T CODE § 25A.006(f)(1)(A)–(B); *see also* TEX. R. CIV. P. 355(c)(2)(A). This general rule is subject to a caveat not applicable here. *See* TEX. GOV'T CODE § 25A.006(f)(2) (addressing certain cases in which a temporary injunction is already pending); TEX. R CIV. P. 355(c)(2)(B) (same).

controversy exceeded $5 million before Defendant filed its counterclaims—and in fact, before Plaintiffs filed suit.[2]

¶5 The Court holds that the removal was timely. There is no basis in the record on which the Court could conclude that it had jurisdiction over this action before Defendant filed its counterclaims, much less that Plaintiffs knew or should have known of facts establishing such jurisdiction. "[T]his Court has jurisdiction over this action only if *the claims in the suit*, collectively,"[3] meet the Court's amount-in-controversy threshold, which is determined by "the total amount of all joined parties' claims."[4] Counterclaims that have not been pleaded generally are not "claims in the suit" nor part of what has been "joined" in the action—even if they might be brought in the future and even if a party has threatened to bring them.[5] A

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[2] Defendant's Mot. to Remand at 2–5.

[3] *C Ten 31 LLC ex rel. SummerMoon Holdings LLC v. Tarbox*, 2025 Tex. Bus. 1, ¶ 30, 708 S.W.3d 223, 236 (3rd Div.) (emphasis added). In this context, "the Texas Business Court has recognized that '[a] civil action is a lawsuit.'" *C Ten 31*, 2025 Tex. Bus. 1, ¶ 26, 708 S.W.3d at 235 (quoting *Tema Oil & Gas Co. v. ETC Field Servs., LLC*, 2024 Tex. Bus. 3, ¶ 15, 705 S.W.3d 226, 231 (1st Div.)); *see also In re Durant*, 720 S.W.3d 438, 442 (Tex. App.—15th Dist. 2025, no pet.); *SafeLease Ins. Servs. LLC v. Storable, Inc.*, 2025 Tex. Bus. 6, ¶ 9 & n.9, 707 S.W.3d 130, 132–33 (3d Div.) (collecting cases). To determine the amount in controversy, then, the Court typically looks to the aggregate value of "all claims properly joined before the Court" in a given lawsuit. *C Ten 31*, 2025 Tex. Bus. 1, ¶ 25, 708 S.W.3d at 234; *see also id.* at ¶ 30, 708 S.W.3d at 236. Here, then, the amount in controversy includes the value of both Plaintiffs' and Defendant's claims. *See Sun Metals Grp., LLC v. Yu*, 2026 Tex. Bus. 1, ¶ 3, 2026 WL 37435, at *1 (1st Div.) ("An action encompasses all claims and counterclaims."); *Sun Metals Grp., LLC v. Yu*, 2025 Tex. Bus. 48, ¶ 4 n.1, 2025 WL 3515409, at *1 (1st Div.) (mem. op.).

[4] TEX. GOV'T CODE § 25A.004(i).

[5] *See SafeLease Ins. Servs.*, 2025 Tex. Bus. 6, ¶ 9, 707 S.W.3d at 132–33 (observing that the Court cannot have jurisdiction over an action before the filing of a petition because, before the petition is filed, the action does not exist); *see also* TEX. R. CIV. P. 97 (requiring counterclaims to be pleaded).

party who threatens counterclaims and attributes a value to them may elect to bring such counterclaims once suit is filed but may also elect to forgo some or all of them or to bring different or additional counterclaims. And they may determine that their claims have greater or lesser value than initially asserted. Typically, a court's jurisdiction cannot be predicated on hypothetical future events that *might* occur.

¶6 The amount in controversy in this action before Defendant filed its counterclaims was the amount put at issue by Plaintiffs' claims—the only claims asserted in the suit at that time. No party alleges that amount was within this Court's jurisdictional limits.

¶7 Defendant's reliance on *DrinkPAK, LLC v. PRIII/Crow Building C, LP*[6] is misplaced. There, the Court held that the defendants' notice of removal was untimely when the defendants (1) knew that the amount in controversy *for the claims plaintiff initially pleaded* exceeded the jurisdictional threshold, but (2) still failed to remove within 30 days of filing or service.[7] In other words, the removal deadline was triggered when the defendants knew or reasonably should have known that the claims actually pleaded by the plaintiff satisfied this Court's amount-in-controversy

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This is not to suggest that pre-suit demands can never be a basis for establishing an amount in controversy; on the contrary, they may be compelling evidence when an evidentiary inquiry into the amount in controversy is required. *See, e.g.*, *DrinkPAK, LLC v. PRIII/Crow Bldg. C, LP*, 2026 Tex. Bus. 27, ¶¶ 10, 13, 2026 WL 1347499, at *3 (8th Div.) (mem. op.). The key is that they are evidence of the value of claims actually pleaded in the action.

[6] 2026 Tex. Bus. 27, 2026 WL 1347499 (8th Div.) (mem. op.).

[7] *Id.* at ¶¶ 7–10, 2026 WL 1347499, at *2–3.

minimum, independent of the defendants' later-filed counterclaims.[8] Here, in contrast, no party asserts that Plaintiffs' original suit on sworn account sought damages within this Court's jurisdictional minimum.

¶8 The *DrinkPAK* Court correctly observed that "[f]iling a counterclaim does not create a new action," and therefore does not restart the removal deadline for previously filed claims.[9] But filing counterclaims *can* bring an existing action within this Court's amount-in-controversy jurisdiction when the previously filed claims did not, alone, satisfy the amount-in-controversy requirement. That is not what happened in *DrinkPAK*, where the action was already within the Court's jurisdiction, but is what happened here.

¶9 Further, as Plaintiffs point out, if the Court were to adopt Defendants' approach, a defendant who threatened counterclaims before suit could merely wait more than 30 days after the plaintiff's petition to file their counterclaims and thus deprive all other parties of any timely opportunity to remove. This Court has already rejected this outcome as unworkable,[10] and that is equally true here.

Conclusion

¶10 For these reasons, the Court DENIES the Motion.

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[8] *Id.* at ¶¶ 8–9, 14–17, 2026 WL 1347499, at *2–4.

[9] *Id.* at ¶ 14, 2026 WL 1347499, at *4.

[10] *See SafeLease Ins. Servs.*, 2025 Tex. Bus. 6, ¶ 10, 707 S.W.3d at 133.

Date signed: September 15, 2026

Hon. Melissa Andrews
Judge of the Texas Business Court,
Third Division