

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

RICHARD ALEXANDER)
MURDAUGH, JR.,)
)
Plaintiff,)

v.)

Civil Action No.: 9:24-cv-04914-RMG

BLACKFIN, INC., WARNER BROS.)
DISCOVERY, INC., WARNER)
MEDIA ENTERTAINMENT PAGES,)
INC., CAMPFIRE STUDIOS INC.,)
THE CINEMART LLC, NETFLIX,)
INC., GANNETT CO., INC. and)
MICHAEL M. DEWITT, JR.,)
)
Defendants.)

**DEFENDANTS GANNETT CO., INC. AND MICHAEL M. DEWITT, JR.’S
OPPOSITION TO PLAINTIFF’S MOTION TO REMAND**

Defendants Gannett Co., Inc. (“Gannett”) and Michael M. DeWitt, Jr. (“DeWitt”) (together with Gannett, the “Gannett Defendants”) respectfully oppose the Motion to Remand filed by Plaintiff Richard Alexander Murdaugh, Jr. (Dkt. 41), which seeks to return this case to Plaintiff’s hometown courthouse. Plaintiff admits that he named South Carolina resident DeWitt as a defendant in this matter as part of his “strategy to defeat federal jurisdiction.” Mem. in Support of Mot. to Remand (“Remand Mem.,” Dkt. 41-1) at 8 (citation omitted). The other part of the strategy is to assert an un-pleaded claim of defamation-by-implication against DeWitt and to argue that such a claim necessarily has a “glimmer of hope” of prevailing even though everything DeWitt said during the Netflix Docuseries is true. In this way, Plaintiff claims to have discovered a proverbial “get out of federal court free” card, whereby he – or any other plaintiff – can force litigation into state court by naming a forum defendant and claiming to be

defamed not by what that defendant truthfully said, but by alleged *implications* that, according to Plaintiff, *conceivably* could be drawn from those statements.

This strategy fails because Plaintiff cannot state a claim against DeWitt, as a matter of law, for defamation or defamation-by-implication. Indeed, in trying to manufacture a claim against DeWitt where none exists, Plaintiff is asking this Court to reject settled First Amendment doctrine, disregard controlling Fourth Amendment precedent, and ignore the plain language of the statements that are actually at issue. DeWitt has therefore been fraudulently joined, and Plaintiff's request for remand should be denied.

Because Defendants Netflix, Inc. and The Cinemart LLC have already filed a detailed response in opposition ("the Netflix Opposition") that addresses these legal deficiencies, in the interest of not burdening the court with repetitive briefing, the Gannett Defendants hereby incorporate those arguments by reference. The Gannett Defendants also submit this short, additional response to highlight three particular issues with the Remand Motion that further warrant its denial.

First, Plaintiff effectively concedes that DeWitt's statements are true by asserting that the truth of those statements "matters little" in this case. Remand Mem. at 13-14. Plaintiff makes this remarkable claim – in the face of the Supreme Court's admonition that "[t]he sine qua non of recovery for defamation . . . is the existence of falsehood," *see Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 283 (1974) – because defamatory implications can theoretically arise from true statements. As set forth in the Netflix Opposition, the Fourth Circuit has imposed an "especially rigorous" two-prong test for defamation-by-implication claims arising from *true* statements precisely "because the constitution provides a sanctuary for truth." *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092-93 (4th Cir. 1993). As a result, the truth of DeWitt's statements

matters a great deal, because it triggers the *Chapin* test. Plaintiff does not even acknowledge this test, nor could he possibly satisfy it. *See* Netflix Opp. at 17-22.

Second, Plaintiff suggests that even if the challenged statements are not actionable on their own, he still might have a glimmer of hope of prevailing against DeWitt because “[t]he Netflix Series is rife with references to [Plaintiff] as the individual responsible for Mr. Smith’s death,” including “[i]n the six minutes of the episode *preceding* the lengthiest DeWitt quote” at issue. Remand Mot. at 7 (emphasis added). The problem with this argument is that Plaintiff has no possibility of prevailing *against DeWitt* over content that DeWitt is not even alleged to have had a role in writing, directing, producing, or distributing. The point is fundamental: as the court explained in *Harvey v. CNN*, a plaintiff simply cannot maintain a defamation claim against a defendant over statements that the defendant did not make:

Another threshold requirement for a claim for defamation is publication. Publication requires that the defendant made a defamatory statement to a third person. In other words, the plaintiff must establish that the *defendant* made the allegedly defamatory statement in issue.

520 F. Supp. 3d 693, 713-14 (D. Md. 2021), *aff’d*, 48 F.4th 257 (4th Cir. 2022). As a result, Plaintiff cannot salvage his claims against DeWitt by pointing the Court to parts of the Netflix Docuseries other than the statements made by DeWitt.

Third, and finally, Plaintiff errs in arguing that the First Amendment has no say in whether a federal court should remand a defamation action. *See* Remand Mem. at 5 n.1. In particular, Plaintiff criticizes the removal notice’s citation to out-of-circuit precedent, *id.*, namely *Lewis v. Time Inc.*, which is the leading case on the First Amendment’s role in protecting against improper joinder, 83 F.R.D. 455 (E.D. Cal. 1979), *aff’d*, 710 F.2d 549 (9th Cir. 1983). But the Fourth Circuit likewise cited *Lewis* in refusing to let a defamation plaintiff evade federal diversity jurisdiction

where, as here, plaintiff targeted a non-diverse defendant who “played no part” in the publication of certain challenged statements. *AIDS Counseling & Testing Ctrs. v. Grp. W Television, Inc.*, 903 F.2d 1000, 1004 (4th Cir. 1990). The First Amendment therefore provides ample grounds for this Court to carefully scrutinize Plaintiff’s efforts to escape federal court.

For the foregoing reasons and those stated in their co-defendants’ opposition brief, the Gannett Defendants respectfully request that the Court deny Plaintiff’s Motion to Remand.

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