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MAINTAINING THE HOME FIELD ADVANTAGE: *ROSE VS. FEDERAL COURT*

I. INTRODUCTION

In the case of *Peter A. Rose v. A. Bartlett Giamatti*,¹ America watched one of baseball's foremost personalities, Pete Rose, fight to stave off a predetermined career death sentence issued by the Commissioner of Baseball, A. Bartlett Giamatti. The Commissioner accused Rose of wagering on professional baseball in direct violation of Major League Rules.² Rose filed the above action in the Court of Common Pleas of Hamilton County, Ohio.³ He counted on a "home-field advantage" to vindicate himself of the gambling charges and to restore his reputation as one of baseball's foremost legends. The District Court of Ohio took Rose's home-field away and placed him in the cold halls of federal court. This casenote will show that the district court erroneously exceeded the scope of inquiry authorized by law for determining its jurisdiction and in so doing, misinterpreted the power of the Baseball Commissioner.

II. FACTS

In February 1989, the Commissioner of Baseball, A. Bartlett Giamatti initiated an investigation regarding allegations that Pete Rose ("Rose") wagered on major league baseball games.⁴ Giamatti scheduled a hearing concerning the allegations for June 26, 1989.⁵ In an attempt to remain a part of the sport to which he has given his life — professional baseball — Rose initiated an action in the Ohio State Court of Common Pleas. Rose sought to enjoin the Commissioner's efforts to ban him from professional baseball through proceedings which Rose alleged violated baseball's governing agreements and his contract with his employer, the Cincinnati Reds ("Reds"). Rose's complaint alleged seven causes of action based upon state law claims of breach of contract, breach of an implied covenant of good faith and fair dealing, breach of fiduciary duty, promissory estoppel, tortious interference with contract, negligence and the common law right of "due process and natural justice."⁶ The crux of

1. 721 F. Supp. 906 (S.D. Ohio 1989).

2. *Id.* at 909.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Rose*, 721 F. Supp. at 909 n.1.

Rose's complaint was two-fold. Rose alleged that Commissioner Giamatti, acting as the representative of Major League Baseball, displayed bias and prejudice in his investigation and prosecution of Rose regarding his alleged gambling activities. Consequently, Rose alleged that procedural rights guaranteed to him under the Rules of Procedure⁷ and his contract with the Reds would be denied. Rose further claimed that Commissioner Giamatti not only had a duty to abide by the Rules of Procedure, but Major League Baseball and the Reds also had a duty to see that he did.⁸

Common Pleas Court Judge Nadel issued a temporary restraining order ("TRO") on June 25, 1989, which enjoined all named defendants: (1) from any involvement in deciding whether Rose should be disciplined or suspended from participation in baseball, and (2) from terminating Rose's employment as Field Manager of the Reds, or interfering with his employment in response to any action taken by Giamatti.⁹ Defendant Giamatti appealed the TRO to the Ohio Court of Appeals, but was unsuccessful.¹⁰ On July 3, 1989 Giamatti filed a notice to remove the action from the Ohio Court of Common Pleas to the United States District Court for the Southern District of Ohio.¹¹ Two days later, plaintiff Rose filed a motion to remand the case to the Court of Common Pleas of Ohio.¹² Rose argued that the district court lacked diversity subject matter jurisdiction over the action. District Court Judge Holschuh granted defendant Giamatti's petition for removal on July 31, 1989.¹³ The court decided that for the purposes of determining whether the case was removable, the citizenship of both Major League Baseball, an unincorporated association, and the Reds, a limited partnership, could be ignored.¹⁴ Consequently, diversity jurisdiction existed between the only remaining parties, Commissioner Giamatti, a citizen of New York, and Pete Rose, a citizen of Ohio.¹⁵

7. Plaintiff's Complaint at 23-25, *Peter A. Rose v. A. Bartlett Giamatti*, 721 F. Supp. 906 (S.D. Ohio 1989) (No. C-2-89-0577). See also *infra* note 54.

8. *Id.*

9. *Rose*, 721 F. Supp. at 909.

10. *Id.*

11. *Id.*

12. *Id.* at 909-10.

13. *Id.* at 923-24.

14. Rose's petition for an interlocutory appeal was denied on August 17, 1989. The court stated, "[b]ecause we find the law to be well settled, we . . . conclude that we are not presented with a controlling *question of law* as to which there is a substantial ground for a difference of opinion." *Rose*, No. 89-8328, slip op. at 3. (6th Cir. Aug. 17, 1989) (emphasis in original).

15. *Rose*, 721 F. Supp. at 923.

III. BACKGROUND ON DIVERSITY JURISDICTION

The United States district courts are courts of limited jurisdiction. The judicial power of the United States is extended to only two types of cases: cases arising under federal law¹⁶ or controversies between citizens of different states, where the amount in controversy exceeds \$50,000.¹⁷ The latter type of jurisdiction is commonly known as diversity jurisdiction. The federal statute permitting removal of cases filed in state court restricts the types of cases which may be removed from state court to federal court. To remove a case from state court, it must fall within the original jurisdiction of the federal courts.¹⁸ The removal statute provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division . . . where such action is pending."¹⁹ The statute also provides that except for a civil action founded on a claim arising under federal law, "[a]ny other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."²⁰

The reason for granting diversity jurisdiction to federal courts is that however true the fact may be that state courts will administer justice as impartially as federal courts, the framers of the Constitution were skeptical of the state courts' impartiality, and thus established national tribunals for the decision of controversies between citizens of different states.²¹ Thus, the principal advantage to removing a case from state to federal court is that it ensures the non-resident defendant an unbiased forum. The diversity statute has historically been interpreted to require complete diversity of citizenship.²² This means that "diversity jurisdiction does not exist unless *each* defendant is a citizen of a different state from *each* plaintiff."²³

In light of these settled principles of law, a case is properly remova-

16. 28 U.S.C. § 1331 (1989).

17. 28 U.S.C. § 1332(a) (1989).

18. Federal courts have original jurisdiction over two types of cases: cases arising under federal law or controversies between citizens of different states, where the amount in controversy exceeds \$50,000. 28 U.S.C. §§ 1331-1332 (1989).

19. 28 U.S.C. § 1441(a) (1989).

20. 28 U.S.C. § 1441(b) (1989).

21. The origin and purpose of diversity jurisdiction was stated many years ago by Chief Justice Marshall in *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809).

22. *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806).

23. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978) (emphasis in original).

ble from state court only if diversity of citizenship exists among all the parties to the action and none of the defendants in interest properly joined and served is a citizen of the state where the action is presently pending.²⁴ In most cases, removability may be determined from the original pleadings, and normally an allegation of a cause of action against the resident defendant will be sufficient to prevent removal. However, when a defendant alleges that there has been fraudulent joinder,²⁵ the court "may pierce the pleadings, consider the entire record, and determine the basis of joinder by any means available."²⁶

Defendant Giamatti contended that Rose's suit was removable because diversity jurisdiction existed. Giamatti desperately wanted to remove the action from the Ohio Court of Common Pleas for numerous reasons. First, in the Cincinnati state court Rose was a local hero and Commissioner Giamatti was viewed suspiciously as a foreigner from New York, accused of bias by Rose.²⁷ A national tribunal would ensure a hearing free from local prejudice. Second, the federal courts have historically been more favorable to the Commissioner of Major League Baseball.²⁸

On the face of Rose's complaint, diversity jurisdiction did not exist to allow removal of the action. However, by alleging fraudulent joinder in the notice of removal, Giamatti enabled the court to go beyond the face of the complaint and determine diversity of citizenship based on all the pleadings.²⁹ If the court concluded that any of the non-diverse defendants were fraudulently joined, then their citizenship could be ignored and Giamatti's wish for a federal forum would be granted.

IV. THE COURT'S HOLDING AND REASONING

The issue before the court was whether the citizenship of either Major League Baseball or the Cincinnati Reds could be disregarded for the purposes of establishing diversity jurisdiction.³⁰ The court held that the citizenship of these two defendants could be ignored because they were

24. *Rose*, 721 F. Supp. at 910.

25. See *infra* note 31-32 and accompanying text discussing fraudulent joinder.

26. *Dodd v. Fawcett Publications, Inc.*, 329 F.2d 82, 85 (10th Cir. 1964).

27. *Rose*, 721 F. Supp. at 910 n.2.

28. See generally *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (7th Cir. 1978), cert. denied, 439 U.S. 876 (1978); *Atlanta National League Baseball Club, Inc. v. Kuhn*, 432 F. Supp. 1213 (N.D. Ga. 1977).

29. *Rose*, 721 F. Supp. at 910. Defendant Giamatti alleged that both Major League Baseball and the Reds were fraudulently joined as defendants for the purpose of attempting to defeat the district court's removal jurisdiction. *Id.* at 911.

30. *Id.* at 911.

merely nominal parties in the instant action.³¹ In reaching that conclusion, the court applied two established doctrines to determine the proper parties to the suit.

The court looked first to the doctrine of fraudulent joinder. That doctrine prevents a plaintiff from defeating a defendant's right of removal by joining a non-diverse defendant against whom the plaintiff has no real cause of action.³² The court further explained that fraudulent joinder exists when the plaintiff has no factual basis upon which he can claim that the resident defendant is liable. Further, the court noted that before the citizenship of a named defendant will be disregarded for diversity purposes, the removing party has the burden of proof to establish that the named defendant was fraudulently joined. The removing party must establish that "there is no possibility that the plaintiff can establish a valid cause of action under state law against the non-diverse defendant, or that there has been outright fraud in the plaintiff's pleadings of jurisdictional facts."³³

The district court then looked to the nominal parties doctrine to determine whether diversity jurisdiction existed. That doctrine states that a federal court must disregard nominal parties to the action, and determine jurisdiction based only upon the citizenship of real parties to the controversy.³⁴ The court defined a real party in interest defendant as one who, by the substantive law, has the duty sought to be enforced or enjoined.³⁵

The court then turned to the case at bar and applied the above doctrines to each defendant. As the court focused on each defendant, it determined whether their citizenship could be disregarded for the purposes of establishing diversity jurisdiction.

A. *Commissioner Giamatti*

The court began its analysis by focusing on a specific portion of Rose's complaint. Rose alleged that the Commissioner's service as an investigator, prosecutor and prospective judge denied Rose the right to a fair hearing before an impartial decision-maker.³⁶ Rose further alleged that he was guaranteed this right under the Rules of Procedure and his

31. *Id.* at 923.

32. *Id.* at 913.

33. *Id.* at 914 (citing *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 549 (5th Cir. Unit A 1981)).

34. *Rose*, 721 F. Supp. at 914 (citing *Navarro Savings Ass'n. v. Lee*, 446 U.S. 458 (1980)).

35. *Id.* (citing *Sun Oil Co. of Pennsylvania v. Pennsylvania Dept. of Labor & Indus.*, 365 F. Supp. 1403, 1406 (E.D. Pa. 1973)).

36. *Id.* at 915.

contract with the Cincinnati Reds.³⁷ Focusing upon this portion of the complaint only, the court concluded that the actual controversy was between Rose and Commissioner Giamatti.³⁸ The only critical question left, in Judge Holschuh's mind, was whether in the controversy between Rose and Giamatti, there was the necessary collision of interests³⁹ between Rose on the one hand and the Cincinnati Reds and Major League Baseball on the other hand.⁴⁰

B. *The Major League Baseball Association*

The district court began its diversity jurisdiction analysis with regard to defendant Major League Baseball by describing Major League Baseball as a "unique organization" not a "typical unincorporated association."⁴¹ The court relied on *Charles O. Finley & Co. v. Kuhn*,⁴² ("*Finley*") to set forth a brief synopsis of the events which gave rise to the formation of the Major League Baseball Association and the powers vested in the Commissioner through the Major League Agreement.⁴³

The Major League Agreement authorizes the Commissioner to investigate any act not in the best interests of baseball, to determine what

37. *Id.* at 915-16.

38. *Id.* at 917.

39. The necessary collision of interests means that there is a real collision of issues or that an actual controversy exists between plaintiff and each defendant. 36 C.J.S. *Federal Courts* § 59 (1973).

40. *Rose*, 721 F. Supp. at 915.

41. *Id.* at 917.

42. 569 F.2d 527 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

43. *Rose*, 721 F. Supp. at 917 (citing *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 532 (7th Cir. 1978)). Prior to 1921, professional baseball was governed by a three-man National Commission which consisted of the presidents of the National and American Leagues and a third member, usually one of the club owners, selected by the presidents of the two leagues. Between 1915 and 1921, a series of events and controversies contributed to a growing dissatisfaction with the National Commission on the part of players, owners and the public. Most prominent of these events was the "Black Sox Scandal," in which several Chicago White Sox players had allegedly attempted to "fix" the 1919 World Series. This event rocked the game of professional baseball and proved the catalyst that brought about the establishment of a single, neutral Commissioner of Baseball.

In November, 1920, the major league club owners elected federal Judge Landis as the first Commissioner of Baseball and appointed a committee of owners to draft a charter setting forth the Commissioner's authority. During one of the drafting sessions an attempt was made to place limitations on the Commissioner's authority. Judge Landis responded by refusing to accept the office of Commissioner unless there was a clear understanding that he alone would have control over whatever and whoever had to do with baseball. Thereupon the owners voted unanimously to reject the proposed limitation upon the Commissioner's authority, and they all signed the "Major League Agreement" on January 12, 1921. Courts have construed the agreement as a contract between the constituent clubs of the National and American Leagues, and is the basic charter under which Major League Baseball operates. *Id.* at 917-18.

preventive or punitive action is appropriate, and to take such action against the leagues, the clubs or individuals.⁴⁴ The Major Leagues⁴⁵ and their constituent clubs severally agreed to be bound by the decisions of the Commissioner and by the discipline imposed by him.⁴⁶ They further agreed to "waive such right of recourse to the courts as would otherwise have existed in their favor."⁴⁷

Relying on the *Finley* decision and the history of the Major League Agreement, the court concluded that the Major League Baseball Association could not be compared to or equated with a typical unincorporated association engaged in any other business or even to any other sport.⁴⁸ In no other business or sport is there quite the same system created for quite the same reasons and with quite the same underlying policies.⁴⁹

In emphasizing the extraordinary powers vested in the Commissioner, the court found that the major leagues and the twenty-six clubs have absolutely no control over the investigative and disciplinary actions the Commissioner may take pursuant to the Major League Agreement.⁵⁰ Judge Holschuh noted that Rose did not purport to challenge the Commissioner's authority to promulgate rules pursuant to his investigative and disciplinary authority.⁵¹ Rather, Rose challenged Commissioner Giamatti's conduct of the investigation and disciplinary proceedings in his particular case.⁵² From this characterization of Rose's complaint, the court concluded that Rose's controversy was not with Major League Baseball, but with the Commissioner of Baseball.⁵³ Based on the court's characterization of the primary relief sought by Rose — preventing the Commissioner from conducting a disciplinary hearing — the court determined that complete relief could be afforded without the need for any

44. *Id.* at 918 (quoting Major League Agreement, Art. I. § 2(a) and (b) (originally entered into January, 1975 and remaining in force until January, 1990)).

45. The Major Leagues consist of two separate professional baseball leagues — The American and National Leagues.

46. Major League Agreement, Art. VII § 2 (1975).

47. *See* Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 544 (7th Cir. 1978) (upholding waiver of recourse clause unless: (1) where the rules, regulations or judgments of the association are in contravention to the laws of the land; and (2) where the association has failed to follow the basic rudiments of due process of law).

48. *Rose*, 721 F. Supp. at 918.

49. *Id.* This system contains standards such as the best interests of baseball, the interests of the morale of the players and the honor of the game. It also contains the policy of sportsmanship which accepts the umpire's decision without complaint.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Rose*, 721 F. Supp. at 918.

judgment against Major League Baseball or its constituent clubs.⁵⁴ Therefore, Major League Baseball's citizenship could be ignored for the purposes of determining diversity jurisdiction.

C. *The Cincinnati Reds*

In determining whether any real controversy existed between Rose and the Reds, the court interpreted Rose's employment contract with the Reds. Rose asserted that the Commissioner's Rules of Procedure⁵⁵ concerning fair disciplinary hearings were incorporated in his employment contract with the Reds, and that any action by Commissioner Giamatti in violation of his own Rules of Procedure would constitute a breach of Rose's contract with the Reds.⁵⁶ Rose's claim against the Reds was for anticipatory breach. Rose's position was that the Reds owed him a contractual duty to see that the procedural rules were not violated. Thus, if the Commissioner violated the rules by holding a hearing "without due regard for natural justice and fair play"⁵⁷(in violation of the Rules of Procedure) and as a result, sanctioned Rose, the Reds would be in breach of contract if they failed to ensure that the hearing was conducted fairly.⁵⁸ The court rejected Rose's argument and instead construed Rose's contract with the Reds and its relation to the Major League Agreement differently.

1. The Major League Agreement and the Rules Promulgated Pursuant to It

The Major League Agreement authorizes the Commissioner to investigate any act, transaction or practice that is suspected "not [to be] in the best interests of the national game of baseball."⁵⁹ In connection with this power, the Commissioner is given virtually unlimited authority to formulate his own rules of procedure for conducting the above mentioned duties.⁶⁰ There are two limitations on the Commissioner's extraordinary power. He must recognize the right of any party in interest

54. *Id.*

55. Various procedural rules govern the conduct of baseball players. Pursuant to the Major League Agreement, the Commissioner is authorized to promulgate his own "Rules of Procedure." In addition, each professional baseball league has promulgated their own rules known as the "Major League Rules."

56. *Rose*, 721 F. Supp. at 916.

57. Rules of Procedure, § 3 (formulated by the Commissioner pursuant to the Major League Agreement, Art. I § 2(e) (1975)).

58. Plaintiff's Complaint at 25, *Rose*, 721 F. Supp. 906 (S.D. Ohio 1989) (No. C-2-89-0577).

59. Major League Agreement, Art. I § 2(b) (1975).

60. Major League Agreement, Art. I § 2(e) (1975).

to appear before him and to be heard, and he must recognize the right of the American and National League presidents to be heard upon any matter affecting the interests of the two leagues.⁶¹

In contrast to the Commissioner's own Rules of Procedure, the two leagues that make up Major League Baseball have formally adopted their own rules governing matters related to the sport in general. These rules are known as the "Major League Rules" and have been accepted by the twenty-six major league professional baseball clubs as binding upon them.⁶²

2. Rose's Employment Contract With The Reds

The court considered Rose's contract with the Reds in light of the two separate Rules of Procedure promulgated pursuant to the Major League Agreement. Rose's contract with the Cincinnati Reds provides in relevant part: "The National League Constitution, Regulations and/or Rules and *the Major League and Professional Baseball Agreements and Rules*, and all amendments thereto hereafter adopted, are hereby made a part of this contract."⁶³

Judge Holschuh admitted that the Major League Agreement is incorporated in Rose's contract with the Reds. However, as between the two procedural rules promulgated pursuant to this agreement, the court concluded that only the "Major League Rules" were expressly incorporated into Rose's contract with the Cincinnati Reds.⁶⁴ Furthermore, the court stated that only the "Major League Rules" were adopted by members of Major League Baseball and that the Rules of Procedure, independently promulgated by the Commissioner, were not.⁶⁵ The court found that there was nothing in the Major League Agreement, the Major League Rules, or in Rose's contract with the Reds which gave the Reds any right to prevent or interfere in any manner with a disciplinary hearing conducted by the Commissioner.⁶⁶

The court then focused on Rose's complaint, and found that Rose had not alleged that the Cincinnati Reds were presently in breach of contract, nor had he alleged that the Reds had taken any action which would indicate an anticipatory breach.⁶⁷ Therefore, the court concluded that

61. *Id.*

62. Major League Rules, Rule 50.

63. *Rose*, 721 F. Supp. at 916 (emphasis added).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 917.

although the Reds had an interest in the present action, for the purposes of determining diversity jurisdiction, the Reds were fraudulently joined, and at best, only a nominal party in the action.⁶⁸

In light of its analysis, the court concluded that the only defendant whose citizenship was relevant to its removability determination was Commissioner Giamatti.⁶⁹ Major League Baseball and the Cincinnati Reds were fraudulently joined and thus their citizenship could be ignored in determining whether the case was removable based on diversity jurisdiction.⁷⁰

Despite this conclusion, in dicta, Judge Holschuh refuted Rose's remaining arguments.⁷¹ Rose alleged that all the defendants owed him the contractual duty to ensure that the Commissioner adhered to the Major League Agreement and discharged his duties in accordance with the Rules of Procedure. The court refused to recognize any contractual duty to prevent the Commissioner from conducting hearings "deemed by the Commissioner not to be in the best interests of baseball."⁷² Further, the court stated that the Commissioner's own Rules of Procedure were not even a part of the Major League Agreement. Thus, even if the Commissioner violated the rules, an action against the Commissioner may arise, but no liability would be imposed upon the Reds or any other members of Major League Baseball.⁷³

The court also refuted Rose's agency argument. Rose contended that the Commissioner, in conducting disciplinary proceedings, was acting as an agent for Major League Baseball. Therefore, Major League Baseball was liable for any violation of the Commissioner's duty to Rose to follow his own procedural rules.⁷⁴ The court admitted that Rose's agency argument might have merit if Major League Baseball were a typical unincorporated association. However, the court noted that with regard to disciplinary matters, the Clubs had vested such power in the Commissioner making him totally independent from their control. Since the Clubs have no control over the Commissioner, the court concluded that neither Major League Baseball nor its constituent clubs could be held liable if the Commissioner failed to act in accordance with his Rules of Procedure.⁷⁵

68. *Rose*, 721 F. Supp. at 917.

69. *Id.*

70. *Id.*

71. *Id.* at 919.

72. *Id.*

73. *Rose*, 721 F. Supp. at 919.

74. *Id.*

75. *Id.*

Rose relied on *Bank of Kentucky v. Adams Express Co.*⁷⁶ (“*Bank of Kentucky*”), to support his position that although Major League Baseball has no control over the Commissioner in disciplinary matters, it should nevertheless be held liable for his conduct.⁷⁷ In *Bank of Kentucky*, an express mail company used the services of a railroad company to transport money to and from various banks. When a shipment of money was lost due to the collapse of a railroad trestle, the express company sought to avoid liability to its customer on the ground that it had no control over the railroad company or its employees. The United States Supreme Court held that the express company could not avoid liability by alleging lack of control over the railroad. Instead, the Court held that the nature of the express company’s business lent itself to being a common carrier, and as such the express company was liable despite lack of control. The district court in *Rose* distinguished *Bank of Kentucky* as applying only to common carriers.⁷⁸

The court also refuted Rose’s argument in support of a claim against Major League Baseball and the Reds. Rose contended that because the members of Major League Baseball must act if any action is to be taken against Rose, those members who are injuring Rose must be proper parties, and thus their citizenship cannot be ignored for diversity purposes.⁷⁹ The court found the argument speculative because it depended on the Commissioner actually conducting a hearing, finding that Rose had violated the Major League Rules concerning wagering on baseball games, and placed him on the ineligible list before any obligation to take action would arise on the part of Major League Baseball and its constituent clubs.⁸⁰ In finding that the Clubs occupied a neutral role in the dispute between Rose and the Commissioner, the court concluded that they had no legal interest in the controversy, and were merely nominal parties for the purpose of determining diversity of citizenship.⁸¹ Therefore, the only proper party whose citizenship was of consequence in determining whether diversity existed, was defendant Commissioner Giamatti. Rose’s employer, the Cincinnati Reds, and the association that governs

76. 93 U.S. 174 (1876).

77. *Rose*, 721 F. Supp. at 919.

78. *Id.* at 919-20.

79. *Id.*

80. Major League Rule 15(c) provides in relevant part:

(1) A PLAYER OR OTHER PERSON found guilty of misconduct or other acts mentioned in Professional Baseball Rule 21, or convicted of a crime involving moral turpitude, may be placed on the ‘Ineligible List’ by the Commissioner A player or other person on the Ineligible List shall not be eligible to play or associate with any Major League or National Association Club until reinstated.

81. *Rose*, 721 F. Supp. at 921.

all the professional baseball clubs, Major League Baseball, were improper parties whose citizenship could be ignored for the purposes of determining diversity.

V. THE COURT ERRED IN TAKING AWAY ROSE'S HOME-FIELD

The district court concluded that Major League Baseball could be disregarded as a party for determining diversity jurisdiction because, "[c]learly, complete relief can be afforded with regard to the primary relief sought in the complaint — preventing Commissioner Giamatti from conducting a disciplinary hearing — without the need for any order against Major League Baseball or its constituent clubs."⁸² This conclusion is wrong for two reasons. First, the court applied the wrong standard to evaluate whether Major League Baseball's citizenship may be disregarded. Second, the court misperceived the nature of the primary relief sought by Rose.

A. *The District Court Exceeded the Scope of Inquiry Authorized by Law for Determining Its Jurisdiction*

The proper standard for determining whether a defendant is fraudulently joined requires the removing party to show: (1) that there is *no possibility* that the plaintiff could establish a cause of action against the non-diverse defendant in state court; or (2) that there has been outright fraud in the plaintiff's pleadings of jurisdictional facts.⁸³ Courts have generally applied this standard to deny removal or grant plaintiff's motion to remand by finding that the non-removing party (plaintiff) would be able to establish a cause of action against the non-diverse defendant in state court.⁸⁴

Long ago the Sixth Circuit announced that when examining a motion to remand, "[a]ll doubt should be resolved in favor of remand."⁸⁵ This rule has been followed throughout the federal judicial system.⁸⁶

82. *Id.* at 919.

83. *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 549 (5th Cir. Unit A 1981) (emphasis in original).

84. *See Bobby Jones Garden Apartments, Inc. v. Suleski*, 391 F.2d 172, 174 (5th Cir. 1968) ("[I]n testing fraudulent joinder it is enough to show a good faith expectation, not a legal certainty, that the attacked claim is good under state law."); *Breyman v. Pennsylvania, Ohio & Detroit Railroad Co.*, 38 F.2d 209, 212 (6th Cir. 1930) ("It is sufficient that a bona fide claim of joint liability, presenting a justiciable question of substance, was made by the petition and it necessarily follows that the court erred in denying the motion to remand.").

85. *Breyman v. Pennsylvania, Ohio & Detroit Railroad Co.*, 38 F.2d 209, 212 (6th Cir. 1930). *See also Hopkins Erecting Co. v. Briarwood Apartments*, 517 F. Supp. 243, 252 (E.D. Ky. 1981).

86. *See Ables v. State Farm Fire & Casualty Co.*, 770 F.2d 26, 29 (3d Cir. 1985); *Fajen v.*

When removal is challenged by a motion to remand, the burden is on the removing party to prove his right to a federal forum.⁸⁷ When a defendant seeks access to federal court by asserting fraudulent joinder of a non-diverse party, as did Commissioner Giamatti, that burden is a heavy one because it is asking the court to ignore a properly joined and served defendant.⁸⁸

In its analysis of diversity jurisdiction, the district court looked at each defendant and asked whether it was fraudulently joined. If the court found that a particular defendant was fraudulently joined, the court ignored its citizenship for the purposes of determining diversity jurisdiction. This analysis is flawed because it ignored the proper standard for determining whether a defendant is actually fraudulently joined.

The test is not, as the district court applied it, whether the federal court can identify a diverse party against whom an order can be entered providing complete relief. The district court's erroneous analysis dramatically expands the class of cases arising under state law which are removable. Under the district court's analysis, removal is proper at any stage in the litigation where the court can identify a diverse party as the only party against whom an order might afford complete relief. This finding can be made regardless of whether relief ultimately may be granted against the non-diverse parties. Instead of applying the proper standard, the district court resolved all doubts in favor of retaining jurisdiction and rejected Rose's claims that there was, at least, *a possibility* that a state court could find that a cause of action existed.

It is true that a district court faced with allegations of fraudulent joinder may pierce the pleadings. When a court pierces the pleadings, it determines whether under any set of facts alleged in the petition, a claim against the defendants could be asserted under state law.⁸⁹ This does not mean that a federal court will pre-try, as a matter of course, doubtful issues of fact to determine removability.⁹⁰ As will be shown, there are numerous instances where the district court erroneously pre-tried the merits of Rose's claims against the Reds and Major League Baseball in order to disregard their citizenship and retain jurisdiction.

Foundation Reserve Ins. Co., 683 F.2d 331, 333 (10th Cir. 1982); B., Inc. v. Miller Brewing Co., 663 F.2d 545, 549, 551 (5th Cir. Unit A 1981).

87. R. G. Barry Corp. v. Mushroom Makers Inc., 612 F.2d 651, 655 (2d Cir. 1979).

88. Green v. Amerada Hess Corp., 707 F.2d 201, 205 (5th Cir. 1983), *cert. denied*, 464 U.S. 1039 (1984).

89. Keating v. Shell Chemical Co., 610 F.2d 328, 331 (5th Cir. 1980).

90. Dodd v. Fawcett Publications Inc., 329 F.2d 82, 85 (10th Cir. 1964) (reviewing denial of remand on interlocutory appeal under 28 U.S.C. § 1292(b)).

1. Rose's Possible Claims Against Major League Baseball

Had the district court applied the proper test, it could not have disregarded Major League Baseball's citizenship. The court recognized that Major League Baseball and its member clubs will ultimately act to Rose's detriment if the Commissioner imposes sanctions.⁹¹ Therefore, the court should also have recognized that a possible claim against Major League Baseball existed. However, the district court overlooked the fact that Rose's complaint alleged that sanctions will be imposed given the Commissioner's prejudgment.⁹² Thus, the court erred in judging the removability of Rose's case solely on what it perceived Rose's claim for relief to be and not on what the complaint actually alleged; an inevitable chain of events involving all defendants.

Contrary to the district court's conclusion, the Rules of Procedure promulgated by the Commissioner do not exist separate and apart from the Major League Agreement, but rather spring from it. The member clubs agreed in article I, section 2(e) of the Major League Agreement that it shall be the function of the Commissioner to formulate "the rules of procedure to be observed by the Commissioner" and agreed on the minimum procedural protection which those Rules must contain.⁹³ The leagues and clubs comprising Major League Baseball also agreed, in article VII, section 3 of the Major League Agreement, that the contracts with their employees would contain clauses by which the parties to those contracts agreed to accept the Commissioner's decisions "rendered in accordance with this Agreement."⁹⁴

Reading both provisions of the Major League Agreement together, it appears that the member leagues and clubs of Major League Baseball agreed to delegate some of their disciplinary authority over employees to the Commissioner. However, it is also a reasonable construction of the Agreement that the leagues and clubs intended to give their employees the benefit of some procedural protection when subject to that disciplinary authority. Namely the leagues and clubs would ensure that the Commissioner's actions comport with principles of due process. Thus, an Ohio court could conclude that Rose, or any other club employee, is a third-party beneficiary of the Major League Agreement. Therefore, Rose had a possible cause of action against Major League Baseball and its constituent members. Rose's cause of action would be as alleged in his complaint, that in the event Rose was denied his procedural protection,

91. *Rose*, 721 F. Supp. at 920.

92. *Id.*

93. Major League Agreement, Art. I § 2(e) (1975).

94. Major League Agreement, Art. VII § 3.

Major League Baseball would be liable to him because it agreed to provide those protections as a check on the Commissioner's disciplinary power.⁹⁵

Even if the Rules of Procedure are not part of the Major League Agreement, the Agreement itself gives Rose rights to an unbiased commissioner. The Major League Agreement specifically guarantees the "right of any party in interest to . . . be heard."⁹⁶ An opportunity to be heard has been construed by courts to mean that a right to be heard must be granted at a meaningful time and in a meaningful manner.⁹⁷ Thus, Rose's allegation that Commissioner Giamatti pre-judged Rose's guilt of betting on baseball alleges a direct breach of the Major League Agreement because any hearing before Commissioner Giamatti would not be meaningful.

2. Rose's Possible Claims Against the Cincinnati Reds

The district court erroneously concluded that the Rules of Procedure do not form a part of Rose's employment contract with the Cincinnati Reds. Rose's contract with the Reds states that "the Major League . . . Agreements and Rules, and all amendments thereto hereinafter adopted, are hereby made a part of this contract."⁹⁸ The district court admitted that based on the above language, the Major League Agreement was incorporated into Rose's contract with the Reds.⁹⁹ Moreover, the court admitted that two separate rules of procedure were developed pursuant to this Agreement.¹⁰⁰ Namely, the Rules of Procedure promulgated by the Commissioner and the Major League Rules promulgated by the individual clubs. However, the court concluded that only the Major League Rules were specifically incorporated into Rose's contract with the Reds and not the Commissioner's procedural rules.¹⁰¹ This interpretation enabled the court to hold that Rose did not have a cause of action against the Reds for breach of contract.¹⁰²

This construction of Rose's contract is fatally flawed. To find that

95. See *Dombey, Tyler, Richards & Grieser v. Detroit, Toledo & Ironton Railroad Co.*, 351 F.2d 121, 126 (6th Cir. 1965) ("Ohio recognizes the general right of a third-party beneficiary to sue on a contract intended for his benefit.").

96. Major League Agreement, Art. I § 2(e) (1975).

97. *Professional Sports Ltd. v. Virginia Squires Basketball Club*, 373 F. Supp. 946, 951 (W.D. Tex. 1974) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

98. *Rose*, 721 F. Supp. at 916.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 917.

the entire Major League Agreement is expressly incorporated into Rose's contract with the Reds, and then find that only one set of procedural rules promulgated pursuant to that entire agreement, actually became part of Rose's contract with the Reds is illogical. Since the entire Agreement is expressly incorporated into Rose's contract with the Reds, it is inherently more reasonable to find that all procedural rules that were promulgated pursuant to that agreement are also incorporated into Rose's contract. Under this more logical construction, a state court could find that a breach of the Rules of Procedure by the Commissioner is, by virtue of the incorporation of the Major League Agreement into Rose's employment contract with the Reds, a breach of that contract as well.

B. *This Decision Does Not Reflect Sound Policy*

The district court erred in concluding that Commissioner Giamatti is not an agent of Major League Baseball simply because the Major League Agreement confers broad powers on the Commissioner. Indeed the court recognized that Rose's claims against Major League Baseball arising out of the acts of its chief executive officer, the Commissioner, might have merit if it were a "typical business organization."¹⁰³ However, it declined to apply established principles of law and relied on an overly indulgent reading of prior baseball cases.¹⁰⁴ For at least four reasons, the district court's infatuation with the supposed uniqueness of the Baseball Commissioner's relationship is wrong. First, the district court relied on *Charles O. Finley & Co. v. Kuhn* in construing the Commissioner's broad powers.¹⁰⁵ However, since 1978, when *Finley* was decided, the Major League Agreement has been amended several times. For example, the Agreement was amended in 1984, at the then-Commissioner's request, to provide that the Commissioner would henceforth be the "chief executive officer" of Major League Baseball.¹⁰⁶ Also, a 1983 preamble to a resolution amending article V, section 2 of the Major League Agreement, stated that Major League Baseball is a unique associ-

103. *Rose*, 721 F. Supp. at 919.

104. The theory that Baseball, or any other litigant, has a unique exemption from laws of general applicability has never been recognized in the United States courts. See *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 409 F. Supp. 233, 270 (W.D. Mo. 1976), *aff'd*, 532 F.2d 615 (8th Cir. 1976) ("[I]f called upon to make a finding in regard to what would serve the public interest, we would find that . . . the baseball industry be treated no differently from any other interstate industry.").

105. 569 F.2d 527 (7th Cir. 1978) (upholding Commissioner's authority to disapprove attempted assignments of three players by professional baseball club on ground that assignments would be potentially harmful to baseball), *cert. denied*, 439 U.S. 876 (1978).

106. Major League Agreement, Art. I § 2(a) (1975) (amended 1984).

ation of clubs and leagues organized to do business interdependently.¹⁰⁷

Furthermore, Baseball's "uniqueness" for federal antitrust law purposes — recognized in *Finley* — hardly amounts to a blanket exemption from all federal laws, including settled principles of diversity jurisdiction and state private association and contract law principles. Indeed, in *Salerno v. American League of Professional Baseball Clubs*¹⁰⁸ ("Salerno"), the court dismissed the case for lack of diversity jurisdiction because the American League, an unincorporated association, was through one of its members, a resident of the same state as one of the plaintiffs.

Moreover, the *Finley* court recognized that the Commissioner and defendant leagues' actions were subject to the requirements imposed on ordinary private associations by state law.¹⁰⁹ Concurring members of the *Finley* court also specifically found that the Commissioner's decisions could be overturned if the Commissioner "was biased or motivated by malice."¹¹⁰

In any event, *Finley* did not involve federal jurisdiction issues, but rather challenged the authority of the Commissioner to disapprove player assignments.¹¹¹ In fact, both the American and National Leagues were party defendants with the Commissioner in that case.¹¹² The only case which addressed the citizenship of an unincorporated association of professional baseball for diversity purposes was *Salerno*. That case was dismissed due to the presence of the non-diverse association.¹¹³

C. *The District Court Misunderstood the Primary Relief Sought by Rose*

The district court erroneously concluded that the primary relief sought by Rose was to stop Commissioner Giamatti from conducting a

107. Major League Agreement, Preamble to Art. V § 2 (1975) (amended 1983). "Major League Baseball is a unique association of twenty-six teams, operating both as individual franchises organized into two leagues, and doing business collectively as Major League Baseball." *Id.*

108. 310 F. Supp. 729 (S.D.N.Y. 1969), *aff'd*, 429 F.2d 1003 (2d Cir. 1970), *cert. denied*, 400 U.S. 1001 (1971). In *Salerno*, umpires of the American League of Professional Baseball Clubs brought suit against the American League, an unincorporated association, the president of the American League as representative of the association, and the Commissioner of Baseball. The umpire-plaintiffs alleged that defendants had violated antitrust laws by boycotting plaintiffs from employment as umpires. The court dismissed for lack of subject matter jurisdiction because properly joined defendant, American League, was non-diverse from umpire-plaintiffs. *Id.* at 731.

109. *Finley*, 569 F.2d at 544 & n.65.

110. *Id.* at 546 (Fairchild, Chief Judge, concurring).

111. *Id.* at 532.

112. *Id.* at 531.

113. *Salerno*, 310 F. Supp. at 731. *See also supra* note 101.

disciplinary hearing.¹¹⁴ That was only one aspect of the relief Rose sought. The primary relief Rose sought was an order preventing all defendants from barring him from participating in Major League Baseball. Such a bar would be based on disciplinary proceedings which Rose alleged to be unfair, in violation of Ohio law, the Major League Agreement and his contract with the Reds.¹¹⁵ The ultimate harm Rose sought to prevent was exclusion from baseball. The exclusion would have been undertaken by the leagues and clubs belonging to Major League Baseball once the Commissioner rendered his decision.

The district court focused only on the harm that would be caused by the Commissioner's hearing.¹¹⁶ However, holding a hearing was only part of the chain of events which would have caused Rose harm. This chain of events required the active participation of Major League Baseball to implement any decision the Commissioner reached. Thus, the district court should have concluded that the citizenship of both Major League Baseball and the Reds could not be ignored for the purposes of determining diversity jurisdiction.

This decision does not reflect sound policies of state sovereignty and diversity jurisdiction and does not move toward desired goals. When federal removal jurisdiction is based upon diversity of citizenship, the exercise of that jurisdiction ousts the state courts from acting in cases which are properly within their jurisdiction. Thus, the dictates of federalism require that removal jurisdiction be exercised, to the exclusion of the state courts, only when such jurisdiction is clearly present.¹¹⁷ Moreover, although the district court apparently believed otherwise, the federal courts no longer need to assert diversity jurisdiction for the sole purpose of protecting litigants from becoming the victims of provincial prejudice in state courts.¹¹⁸

114. *Rose*, 721 F. Supp. at 915.

115. Plaintiff's Complaint at 25, *Rose*, 721 F. Supp. 906 (S.D. Ohio 1989) (No. C-2-89-0577).

116. *Rose*, 721 F. Supp. at 919. See also *supra* notes 50-53 and accompanying text.

117. See *Shamrock Oil & Gas Co. v. Sheets*, 313 U.S. 100, 109 (1941) ("Due regard for the rightful independence of state governments which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.").

118. 28 U.S.C. § 1441, Revision Notes to § 1441 provide that:

All the provisions with reference to removal of controversies between citizens of different States because of inability, from prejudice or local influence, to obtain justice, *have been discarded*. These provisions, born of the bitter sectional feelings engendered by the Civil War and the Reconstruction period, have no place in the jurisprudence of a nation since united by three wars against foreign powers.

Id. (emphasis added).

VI. CONCLUSION

When the district court decided that Major League Baseball and the Reds were only nominal parties, the court created for employers and private association members an absolute immunity from liability. This immunity is attainable merely by investing the chief executive officer, Commissioner Giamatti,¹¹⁹ with plenary power to act on their behalf. The *Rose* court's decision means that whenever a baseball employee alleges that he has been treated unfairly only the chief executive officer is a proper party to the case. This is to the exclusion of the association for whom the chief executive officer acts, and to the exclusion of the player's employer, a member of that association. Whether a member of a baseball team can be afforded complete relief when he alleges that he has been treated improperly in violation of procedural rights guaranteed him in both the Major League Agreement and his employment contract is now questionable.

This decision greatly expands the diversity jurisdiction of federal courts at a time when there is a growing trend towards restricting the number of federal cases based on diversity jurisdiction.¹²⁰ Furthermore, the district court's engagement in judicial gymnastics to find that diversity jurisdiction exists is inconsistent with the Sixth Circuit's hostility toward this type of subject matter jurisdiction.¹²¹ Instead of turning established principles of sports, employment, and unincorporated association law on their heads, the district court should have held that both parties to *Rose's* employment contract, the Reds and Major League Baseball, were proper parties to the action. Thus, the citizenship of these two parties should not have been ignored and the action should have been remanded to *Rose's* home field — the Ohio state court.

Kimberly G. Winer

119. Commissioner Giamatti suffered a heart attack on September 1, 1989 and passed away. The new Commissioner of Major League Baseball, Fay Vincent, served as Giamatti's Deputy Commissioner prior to Giamatti's sudden death.

120. See *infra* note 109.

121. The Sixth Circuit's position on diversity jurisdiction has been expressed in *Arrow-Hart, Inc. v. Philip Carey Co.*, 552 F.2d 711, 713 (6th Cir. 1977) ("[T]he diversity jurisdiction of federal courts is an anachronism and should be repealed.").

