

Here, diversity jurisdiction did not serve as a proper basis for removal of this action and Defendants had no objectively reasonable basis from which to conclude otherwise. Both Plaintiff and Defendant Brantley are citizens of Tennessee. While Defendants argued in their Response in Opposition to Motion to Remand that Defendant Brantley was fraudulently joined to avoid removal, the Sixth Circuit has recognized that “[t]here can be no fraudulent joinder unless it be clear that there can be no recovery under the law of the state on the cause alleged or on the facts in view of the law.” Alexander v. Elec. Data Sys. Corp., 13 F.3d 940, 949 (6th Cir. 1994). As discussed in Judge Breen’s September 16, 2008 Order Granting Plaintiff’s Motion to Remand, Defendants did not clearly show that there could be no recovery under Tennessee law on Plaintiff’s TCPA and negligence claims against Defendant Brantley. This Court finds that Defendants did not have an objectively reasonable basis for seeking removal because Defendants knew, or should have known, that they would not be successful in their fraudulent joinder argument. Defendants could not have reasonably believed that they could meet their high burden of proof regarding the negligence and TCPA claims, especially given their acknowledgement in their Response that “Tennessee case law is not explicitly clear.”

Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion is GRANTED and Defendants are directed to pay Plaintiff the amount of \$1,365.00.

s/ Edward G. Bryant
EDWARD G. BRYANT
United States Magistrate Judge

May 1, 2009
Date