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### Supreme Court Holds Third-Party Defendant Can't Remove Class Actions Under CAFA



**Takeaway:** The U.S. Supreme Court ever so slightly trimmed removal rules under the Class Action Fairness Act (CAFA) last week in *Home Depot U.S.A., Inc. v. Jackson*, No. 17-1471.

In an opinion by Justice Thomas, the Court held that neither CAFA nor the general removal statute (28 U.S.C. § 1441(a)) permit removal by a third-party counterclaim defendant. That is, a party brought into the suit through a claim filed by the original defendant cannot remove the case to federal court. Removal can be a powerful tool for companies defending against consumer protection class actions. State courts are viewed as hostile to class action defendants, many of which hail from out of state (and are alleged to have harmed in-state plaintiffs). CAFA liberalized the rules for defendants to remove class actions to federal court by eliminating the complete diversity requirement for class actions in which the aggregate amount in controversy exceeds \$5 million. The Court slightly curtailed CAFA's liberal trend in *Home Depot*. There, Citibank filed a debt collection proceeding against George Jackson in North Carolina state court alleging that he owed money on a Home Depot credit card. Jackson counterclaimed against Citibank and filed a third-party class action against Home Depot. Home Depot removed, but the district court granted Jackson's motion to remand. The U.S. Court of Appeals for the Fourth Circuit affirmed, and the Supreme Court granted cert. The Court agreed with the lower courts that removal was unavailable, reasoning that although Home Depot was a "defendant" to a "claim," "the statute refers to 'civil action[s],' not 'claims[.]'" and Home Depot was not the defendant in the original civil action. "[I]n the context of these removal provisions the term 'defendant' refers only to the party sued by the original plaintiff." The justices split 5-4 on this rather obscure removal question, with Justice Thomas joined by Justices Ginsberg, Breyer, Sotomayor and Kagan.

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