

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CORECOMM-ATX, INC. : CIVIL ACTION  
 :  
 v. :  
 :  
 AT&T CORP. and ELISSA PHILLIPS : No. 02-1890

MEMORANDUM ORDER

Plaintiff asserts claims for defamation each against defendant in this action initiated in the Montgomery County Common Pleas Court. CoreComm-ATX and AT&T are competitors in marketing telecommunications services and products to businesses and individuals. Plaintiff is incorporated in Delaware and maintains its principal place of business in Bala Cynwyd, Pennsylvania. AT&T is incorporated and maintains its principal place of business in New York. Ms. Phillips, an account executive for AT&T, is a citizen of Maryland. On April 5, 2002, defendants filed a timely notice of removal predicated on diversity jurisdiction. Presently before the court is plaintiff's motion to remand.

Complete diversity of citizenship is clear and uncontested. The sole issue is whether the requisite amount in controversy is satisfied.

Plaintiff alleges that it enjoyed an excellent reputation and good-will which have been undermined by defendants' slanderous and libelous misrepresentations about

plaintiff's performance and financial status. Defendants have allegedly misrepresented to customers and prospective customers of plaintiff that it is on the verge of bankruptcy, that it provides poor service, that it overcharges customers and that others would refuse to do business with a company doing business with plaintiff. Defendant Phillips allegedly sent to a customer of plaintiff erroneous financial information falsely represented to be a Dun & Bradstreet report on CoreComm-ATX. Plaintiff alleges it has lost existing and prospective customers as a result of these defamatory statements. Plaintiff seeks compensatory and punitive damages in an unspecified amount.

The party asserting the sufficiency of the amount in controversy bears the burden of demonstrating that the jurisdictional minimum has been met. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 222 (3d Cir. 1999). Courts have variously applied a preponderance of the evidence standard and a legal certainty or reasonably probability standard in assessing whether a removing defendant has shown the requisite amount in controversy. See International Fleet Auto Sales, Inc. v. National Auto Credit, 1999 WL 95258, \*4 n.7 (E.D. Pa. Feb. 22, 1999). The resolution of the instant motion would be the same under each standard. Any doubts about the existence of federal jurisdiction are resolved in favor of remand. See Batoff v.

State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992); Bachman Co. v. McDonald, 173 F. Supp.2d 318, 322 (E.D. Pa. 2001); Orndorff v. Allstate Ins. Co., 896 F. Supp. 173, 174 (E.D. Pa. 1995).

Punitive damages are considered in assessing the amount in controversy when such damages are available and plaintiff has alleged conduct sufficient to pursue them under the applicable substantive law. See Bell v. Preferred Life Assur. Soc., 320 U.S. 238, 240 (1942); Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1046 (3d Cir. 1993); Gray v. Occidental Life Ins. Co., 387 F.2d 935, 936 (3d Cir. 1968); Burkhardt v. Contemporary Services Corp., 1998 WL 464914, \*3 (E.D. Pa. Aug. 7, 1998).

Where the complaint does not contain a demand for a specified amount, the court must make its own appraisal of the claim as pled and assess the reasonable value of the rights being litigated. See Bachman, 173 F. Supp.2d at 323. If substantiated, plaintiff's averments show that a major corporation and its agent wilfully and maliciously embarked on a course of tortious conduct to ruin plaintiff's reputation and destroy its business for economic advantage which caused the loss of current and prospective customers. There is no doubt that in such circumstances a reasonable jury could well award more than \$75,000 in punitive damages in addition to compensatory damages for loss of business.

**ACCORDINGLY**, this                    day of May, 2002, upon consideration of plaintiff's Motion to Remand (Doc. #3) and defendants' response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**