

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

NANCY RAYEL : CIVIL ACTION  
 :  
v. :  
 :  
MICHAEL A. MATLOCK, JR., :  
TRUSTEE OF THE MATLOCK :  
REAL ESTATE EQUITY TRUST; :  
MATLOCK REAL ESTATE EQUITY :  
TRUST : CASE NO. 04-1038

MEMORANDUM AND ORDER

McLAUGHLIN, J.

APRIL \_\_\_\_, 2004

The Court sua sponte remanded this case back to the Court of Common Pleas of Bucks County on March 31, 2004, on the ground that there was no diversity of citizenship and, therefore, the Court lacked subject matter jurisdiction over the case. The plaintiff thereafter filed a motion for costs and fees, including attorney's fees. The Court has the authority to grant an award of fees and costs, notwithstanding that the case has already been remanded back to state court. Mintz v. Educ. Testing Serv., 99 F.3d 1253, 1257-58 (3d Cir. 1996). Because the Court finds that there was no factual or legal basis to remove the case, it will grant the motion.

The plaintiff and the defendant are citizens of Pennsylvania. The defendant is sued as the trustee of two trusts whose situs is New York. The beneficiaries of the trust are the

defendant, who is also the settlor of the trust, and his descendants. The Supreme Court decided in Navarro Savings Assoc. V. Lee, 466 U.S. 458, 464 (1980), that the Court should look to the citizenship of the trustee when deciding the citizenship of a trust for purposes of diversity of citizenship. The other alternative considered by the Court in Navarro was the citizenship of the beneficiary of the trust. Both the trustee and the beneficiary of the two trusts at issue here are citizens of Pennsylvania. There was no basis for the defendant to think that there was diversity of citizenship here. Indeed, the Court is concerned that the defendant tried to mislead the Court about his citizenship and the law on diversity of citizenship.

This case was brought in the Court of Common Pleas of Bucks County by a citizen of Pennsylvania against Michael A. Matlock, Jr., individually and as trustee of the Matlock Family Trust, a/k/a Matlock Real Estate Equity Trust, and Matlock Family Trust, a/k/a Matlock Real Estate Equity Trust. The complaint was served on February 2, 2004. On March 4, 2004, the plaintiff, with defendants' consent, filed an amended complaint with the caption of this case. The defendant trustee removed the case to this court on March 10, 2004.

The notice of removal alleged diversity of citizenship. The Court reviewed the notice of removal shortly after it was filed and became concerned that there was no diversity of

citizenship. The notice of removal did not assert the citizenship of any of the parties. Instead, it referred to paragraphs 2 and 3 of the amended complaint as stating that the trust is an entity with a place of business in New York and the defendant, Michael A. Matlock, Jr., is a resident of the State of New York. The notice of remand stated that the plaintiff is identified in the complaint as a resident of Bucks County, Pennsylvania.

When the Court reviewed the amended complaint, I noticed that paragraph 3 said that the defendant trustee "is believed to have a place of residence located at 21 West 10<sup>th</sup> Street, New York, New York 10011, and/or 1975 River Road, Upper Black Eddy, Bucks County, Pennsylvania, 18972." It concerned the Court that the defendant had left out the part of the paragraph that listed Pennsylvania as a possible residence of Mr. Matlock. Knowing that the Court must look to the citizenship of a trustee when deciding diversity of citizenship, the Court became concerned that the defendant had misstated the allegations of the complaint to lead the Court to believe that Mr. Matlock was a citizen of the State of New York.

The Court then ordered the defendant to explain why there was diversity of citizenship. In response to the Court's order, the defendant submitted an affidavit, stating that: (1) he resided in New York more than six months of the year; (2) the

trust is a New York trust and entity; and, (3) his daughter, who is ten years of age and with whom he resides, is in public school in New York. He did not say anything about his citizenship or the beneficiaries of the trust. The defendant did not cite any law to establish that the situs of the trust is relevant for diversity of citizenship purposes.

Again, the Court ordered the defendant to explain the factual and legal basis for invoking this Court's diversity jurisdiction. In response, the defendant stipulated that he is a citizen of the Commonwealth of Pennsylvania. It was then that the Court remanded the case.

The Court must conclude that there was no factual or legal basis for the removal. Even of more concern to the Court is that the defendant attempted to mislead the Court in both his notice of removal and in his affidavit. In the notice of removal, he misstated the allegations of the amended complaint with respect to his residency. In his affidavit, the defendant attempted to mislead the Court by suggesting that he was a citizen of New York when in reality he is a citizen of the Commonwealth of Pennsylvania. He may also have misrepresented the residence of his daughter. Finally, in his opposition to the pending motion, he said that his daughter was the beneficiary of the trust when the trust instrument says that he and his descendants are the beneficiaries.

Although the Court sua sponte pursued the issue of subject matter jurisdiction, the plaintiff's counsel was preparing to file a motion to remand. Indeed, the plaintiff's counsel sent a letter to the defendant explaining to him that this Court did not have jurisdiction over the matter and asking the defendant to stipulate to a remand and pay Six Hundred Dollars in attorney's fees and costs. The defendant rejected this very reasonable request. This rejection came after the Court had raised the issue and explained to the defendant that it is the citizenship of the trustee that is relevant for diversity purposes.

The Court holds that the plaintiff is entitled to her costs and attorney's fees incurred in preparing and filing a motion to remand this case.

An appropriate Order follows.

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ORDER

AND NOW, this \_\_ day of April, 2004, upon consideration of Plaintiff's Motion Requesting Court to Supplement Order of Remand to Include Order for Repayment of Just Costs and Expenses including Attorney Fees, or in the Alternative, Application for Such Costs and Fees, Pursuant to 28 U.S.C. § 1447(c)(Docket No. 8), the defendant's answer thereto, and the plaintiff's reply, IT IS HEREBY ORDERED that said motion is GRANTED. IT IS FURTHER ORDERED that the defendant shall pay the plaintiff Two Thousand Two Hundred Sixty-two and 50/100 Dollars in costs and expenses, including attorney's fees, on or before May 7, 2004.

BY THE COURT:

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MARY A. McLAUGHLIN, J.