

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

FRED DOUGHTY	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 05-4539
MARRIOTT HOTEL SERVICES, INC	:	

MEMORANDUM AND ORDER

Baylson, J.

November 17, 2005

Pending before the Court is the Plaintiff’s Motion for Remand to State Court. Plaintiff’s Complaint seeks damages for defamation of character pursuant to 42 Pa. Cons. Stat. § 8343. Removal was based on diversity of citizenship and that the amount in controversy is in excess of \$75,000. Plaintiff does not dispute diversity of citizenship, but asserts that Defendant has not met its burden of showing that the amount in controversy is \$75,000 or more.

Plaintiff was a bellman at the Marriott Hotel in Philadelphia, Pennsylvania. On or about July 4, 2004, Defendant Marriott Hotel Services, Inc. (“Marriott”) suspended Plaintiff for misconduct and asserted as the reason to Plaintiff that a customer had complained that Plaintiff had overcharged the customer for tickets to a Philadelphia Phillies game. Plaintiff seeks compensatory damages, punitive damages, counsel fees and costs. In Plaintiff’s Civil Cover Sheet, which was filed with the Complaint in the Court of Common Pleas of Philadelphia County, Plaintiff’s counsel indicated that the amount in controversy was more than \$50,000.

In the Motion to Remand, Plaintiff does not deny that the claim is worth more than \$50,000, but does deny that it is worth more than \$75,000. Obviously, the gap is not significant,

because in a defamation case, the amount of damages is to some extent in the jury's discretion. See, e.g., Walder v. Lobel, 339 Pa. Super. 203, 210-211 (Pa. Super. 1985) (citations omitted) (observing that a defamation plaintiff may recover damages for injury to reputation, for any special harm he may have suffered, and for emotional distress or bodily harm, and that the assessment of such damages is within the province of the jury).

Furthermore, Plaintiff seeks punitive damages and counsel fees, and these items are also included in the determination as to whether the jurisdictional amount of \$75,000 has been exceeded. See, e.g., Packard v. Provident Nat'l Bank, 994 F.2d 1039 (3d Cir. 1993) (stating punitive damages are properly considered in determining whether the jurisdictional amount has been satisfied); Laut v. Allstate Ins. Co., 1992 U.S. Dist. LEXIS 489 (E.D. Pa. 1992) (including counsel fees in determination of amount in controversy).

Plaintiff's reliance on Sprague v. American Bar Association, 166 F. Supp. 2d 206 (E.D. Pa. 2001) is distinguishable because in that case the real issue was whether the defendant had delayed too long in seeking removal to this court.

For the above reasons, Plaintiff's Motion to Remand to State Court (Doc. No. 4) is DENIED.

BY THE COURT:

Date: 11/17/05

/s/ MICHAEL M. BAYLSON
Michael M. Baylson, U.S.D.J.

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