

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

DANIEL O. KOSHY : CIVIL ACTION
: :
v. : :
: :
OHIO CASUALTY LIFE INSURANCE : :
CO. and COMMON CENTS PLANNING, : :
INC. : NO. 08-cv-01390-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

May 8, 2008

Plaintiff purchased a disability insurance policy from the defendant Ohio Casualty Life Insurance Co. The defendant Common Cents Planning, Inc. was the agent who sold plaintiff the policy. Plaintiff filed suit against both defendants in the Court of Common Pleas of Delaware County, and the defendants removed the case to this Court, on the basis of diversity of citizenship. Although everyone agrees that both plaintiff and the defendant Common Cents Planning, Inc. are citizens of Pennsylvania, the defendant Ohio Casualty asserts that Common Cents was fraudulently joined in order to defeat removal, hence its citizenship should be ignored. Plaintiff, on the other hand, insists that the case should be remanded to the Court of Common Pleas.

When plaintiff first became covered by disability insurance issued by Ohio Casualty, plaintiff was an employee. He later became owner of the business in which he was employed, and obtained a new policy, affording greater benefits. Plaintiff

alleges that the defendant Common Cents Planning, Inc. persuaded him to buy the new policy by asserting that it provided precisely the same kind of coverage as the initial policy, but for a greater amount of benefits. Plaintiff apparently fears that he will have more difficulty vindicating his position under the new policy than he would have had under the old. (The insurance company may assert that the requirements of his job changed when he became the owner of the business, hence proving he is unable to perform the requirements of his job may be more difficult.)

Be all that as it may, I am satisfied that plaintiff's counsel entertains a genuine, good faith, belief that plaintiff has valid claims against both the insurance company and its agent. On this record, the defendants have not met their burden of proof on the issue of fraudulent joinder. The case will therefore be remanded to the Court of Common Pleas of Delaware County.

An order follows.

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ORDER

AND NOW, this 8th day of May 2008, upon consideration of plaintiff's objections to removal (treated as a motion for remand), and after an evidentiary hearing, IT IS ORDERED:

That this action is REMANDED to the Court of Common Pleas of Delaware County.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.