

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

DANETTE L. JAMES :
 :
 Plaintiff, :
 :
 v. : CIVIL ACTION :
 : NO. 98-CV-1583 :
 :
 :
 ELECTRONIC DATA SYSTEMS :
 CORPORATION, :
 :
 Defendant. :

McGlynn, J. July , 1998

MEMORANDUM OF DECISION

Defendant Electronic Data Systems Corporation ("EDS") removed this action from the Philadelphia Court of Common Pleas to the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1441. Before the court is plaintiff Danette L. James' motion to remand this case to the Philadelphia Court of Common Pleas. For the reasons set forth below, plaintiff's motion is granted.

I. BACKGROUND

On June 25, 1997, plaintiff Danette L. James, a citizen of Pennsylvania, brought this action in the Philadelphia Court of Common Pleas against defendant EDS, a Delaware corporation with its principal place of business in Texas. Plaintiff essentially claims that EDS breached their employment contract with her. She alleges that in July,

1995 she was interviewed and hired for a position in EDS's Consumer Asset Management Division (CAMD). During the interview, she informed her interviewers of her bad credit record. (Pl. Compl. ¶ 9). Upon arriving at EDS on July 31, 1995, plaintiff was told that her employment offer had been withdrawn due to her bad credit rating. Id. at ¶ 12. By that time, plaintiff's position with her previous employer - - from which she resigned to join EDS -- had been filled and plaintiff has since been unable to find other suitable employment. Id. at ¶ 13. She seeks compensatory damages,

in an amount less than the jurisdictional limits for arbitration, for lost wages, other financial detriment, and emotional distress caused by defendant's conduct; interest, costs of suit, and reasonable attorneys fees; such other different and further relief as shall be just and appropriate.

Id. ¶ 24.

The complaint does not demand punitive damages or allege facts supporting such an award. Because plaintiff did not allege damages in excess of \$50,000, the case was assigned to the Compulsory Arbitration Program of the Philadelphia Court of Common Pleas on February 25, 1998.¹ After a hearing, the Arbitrators found for plaintiff in the

¹ "All cases having an amount in controversy, exclusive of interest and costs, of \$50,000 or less shall be assigned to the Compulsory Arbitration Program." Phila. Ct. C.P. R. 1301.

amount of \$50,000.² At the arbitration hearing, plaintiff submitted an "Arbitration Memo" which defendant contends asserted facts beyond the scope of the original complaint supporting an award of punitive damages, and expressly requested punitive damages. Defendant argues that plaintiff's Arbitration Memo effectively amended her complaint to add a count for punitive damages, bringing her claim within the jurisdictional amount for removal to federal court.

Plaintiff bases her motion to remand on 28 U.S.C. § 1446(b),³ which gives a defendant thirty days to remove an action after receiving the initial pleading or summons. She claims that defendant's notice of removal was untimely, having been filed nearly seven months beyond the filing of her state-court complaint. Defendant responds that the case

² Defendant appealed the arbitration award on March 9, 1998.

³ 28 U.S.C. § 1446(b) provides in pertinent part:

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, which period is shorter.

became removable when it received the Arbitration Memo which purportedly amended plaintiff's complaint, and that the removal was properly filed within thirty days of that event.⁴

II. DISCUSSION

In order to remove a case from state court to the district court, federal jurisdictional requirements must be met. Medlin v. Boeing Vertol Co., 620 F.2d 957, 960 (3d Cir. 1980). It is the responsibility of the district court to inquire, sua sponte, into the question of subject matter jurisdiction. Id. The district court has removal jurisdiction where there is diversity of citizenship among the parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of costs and interests.⁵ 28 U.S.C. §§ 1332 and 1441 (1994). In this case, diversity is not contested. At issue is the timeliness of defendant's removal, which depends upon whether plaintiff's Arbitration Memo amended her complaint to allege damages which meet the \$75,000 jurisdictional threshold.

Where a plaintiff and defendant clash over

⁴ The Notice of Removal was filed on March 26, 1998.

⁵ 28 U.S.C. § 1332(a) provides in pertinent part: "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between-- (1) citizens of different states . . ."

jurisdiction, uncertainties are to be resolved in favor of remand. Boyer v. Snap-on Tools Corp., 913 F.2d 108, 111 (3d. Cir. 1990), cert. denied, 498 U.S. 1085 (1991). Initially, the court must look to whether the state court claim was removable on its face. Sfirakis v. Allstate Insurance Co., No. CIV. A. 91-3092, 1991 WL 147482, at *2 (E.D. Pa. July, 24, 1991). Where the jurisdictional amount of damages is challenged, the amount alleged by the plaintiff in her complaint controls rather than the amount alleged in the defendant's notice of removal. St. Paul Mercury Indemnity Co. v. Red Cab. Co., 303 U.S. 283, 288 (1938). In this instance, plaintiff's complaint demanded judgment in an amount "less than the jurisdictional limits for arbitration . . .," that is, less than \$50,000. (Pl. Compl. ¶ 24). Consequently, the complaint as filed did not meet the \$75,000 jurisdictional requirement for removal.

Under 28 U.S.C. § 1446(b), however, a complaint which was not removable on its face when filed may become removable "through service or otherwise, of a copy of an amended pleading, motion, order or other paper"⁶

⁶ 28 U.S.C. 1446(b) provides in pertinent part:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be

Thus, a case which was non-removable when commenced can become removable if the plaintiff amends his state-court pleadings. See Gaitor v. Peninsular & Occidental Steamship Co., 287 F.2d 252, 254 (5th Cir. 1961). Plaintiff's counsel has submitted a signed declaration which states, "[t]he complaint as filed in the Court of Common Pleas was never amended." (Decl. of Richard Ash ¶ 3). As a result, this case cannot be removed on the ground that plaintiff amended her complaint.

Removal may still be appropriate without formal amendment of the pleadings if the plaintiff serves the defendant with "other paper." 28 U.S.C. 1446(b). Defendant argues that plaintiff's Arbitration Memo constitutes "other paper" under § 1446(b) which makes this case removable.

What constitutes "other paper" has not been clearly defined. In Putterman v. Dovel, 169 F. Supp. 125, 129 (D. Del. 1958), the district court found that "other paper" was not meant to override the expressed sources listed in the statute, but instead meant some other paper appearing in the record of the state court which might not fall within the

ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

express language used. Similarly, in Gilardi v. Atchison, Topeka and Santa Fe Railway Co., the district court held that for purposes of 28 U.S.C. § 1446(b), "other paper" must be part and parcel of state court proceedings and have its origin and existence by virtue of state court process. 189 F. Supp. 82, 85 (N.D. Ill. 1960); see also Bonell v. Seaboard Air Line Rail Road Co., 202 F. Supp. 53, 55 (N.D. Fla. 1962) (finding that "other paper" meant paper which was filed of record in state court).

In light of the these cases, plaintiff's Arbitration Memo, which was not filed with the state court and does not appear in the docket of the Philadelphia Court of Common Pleas, has no effect on plaintiff's complaint. While the Arbitration Memo alleged facts sufficient to permit an award of punitive damages, the complaint demands only "compensatory damages in an amount less than the jurisdictional limits for arbitration." (Pl. Compl. ¶ 24). The complaint has never been formally amended. See Phila. Ct. C.P. Docket No. 970602992.

To state a claim for punitive damages under Pennsylvania law,⁷ "the pleadings must allege facts

⁷ Under Pennsylvania law: "[p]unitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." McDaniel v. Merck, Sharpe & Dohme, 367 Pa. Super. 600, 533 A.2d 436, 447 (Pa. Super. Ct. 1987) (citing The Restatement of Torts (Second) § 908(2)).

sufficient to demonstrate evil motive or reckless indifference to the rights of others." Great West Life Assurance Co. v. Levithan, 834 F. Supp. 858, 864 (E.D. Pa. 1993). Because the original complaint did not allege evil motive or reckless indifference on defendant's part, plaintiff cannot seek punitive damages in state court, and the court lacks removal jurisdiction over this case.

The Arbitration Memo does not override the complaint's allegation that damages do not exceed \$50,000. This amount has special significance in Pennsylvania practice because claims of \$50,000 or less are subject to compulsory arbitration, see Pa. R. Civ. P. 1021, and the plaintiff is required to plead whether or not her claim exceeds that amount. Phila. Ct. C.P. R. 1301.

Defendant relies on the recent decision in Feldman v. New York Life Ins. Co., which held that "the plaintiff cannot defeat a defendant's statutory right of removal merely by pleading damages 'not in excess of' the jurisdictional amount." No. CIV. A. 97-4684, 1998 WL 94800, at *7 (E.D. Pa. Mar. 4, 1998). In Feldman, the complaint sought compensatory and punitive damages "not to exceed \$75,000." Id. at *2. The district court found, however, "by a preponderance of the evidence that the value of the Feldmans' claim reasonably exceeds \$75,000." Id. at *4. Feldman is factually distinguishable from the present case.

The complaint in Feldman sought both compensatory and punitive damages determined to be well over the jurisdictional amount, whereas, the complaint here seeks only compensatory damages less than \$50,000, subjecting the case to Compulsory Arbitration. Phila. Ct. C.P. R. 1301.

Moreover, plaintiff is estopped from claiming upon remand that her damages exceed the jurisdictional limit for arbitration. The doctrine of judicial estoppel precludes a party from assuming a position in a legal proceeding inconsistent with one previously asserted. Ligon v. Middletown Area School District, 136 Pa. Commw. 566, 573, 584 A. 2d. 376, 379 (Pa. Commw. Ct. 1990); Selected Risks Insurance Co. v. Kobelinski, 421 F. Supp. 431, 434 (E.D. Pa. 1976) (judicial estoppel is the well established principle that a party may not assert contrary positions in the same or related proceedings). Courts have long applied this principle where litigants "play fast and loose with the courts" by switching legal positions to suit their own ends. Scarano v. Central R. Co. of New Jersey, 203 F.2d 510, 513 (3d. Cir. 1953). Here, the state-court complaint alleges damages less than \$50,000 and plaintiff has stated that she is "entirely satisfied with the arbitration award and had no intention of appealing." (Pl. Br. at 4). As a result, she may not claim damages over the \$50,000 jurisdictional limit on remand to the Court of Common Pleas without amending her

complaint accordingly.

III. CONCLUSION

Because the amount in controversy does not exceed \$75,000, the court does not have subject matter jurisdiction. Accordingly, this case will be remanded to the Court of Common Pleas of Philadelphia County.

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O R D E R

AND NOW this day of July, 1998, upon
consideration of plaintiff Danette L. James' motion to
remand this case to Philadelphia County Court of Common
Pleas, and defendant Electronic Data Systems Corporation's

response thereto, it is hereby

ORDERED that this case is remanded to the Philadelphia County Court of Common Pleas at Number 2992, June Term 1997.

BY THE COURT:

JOSEPH L. McGLYNN, JR., J.