

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

WANDA BALOGUN : CIVIL ACTION  
 :  
 v. :  
 :  
 ALDEN PARK MANAGEMENT :  
 CORPORATION/EASTVIEW REALTY :  
 ASSOCIATES, L.P. : NO. 98-0612

**MEMORANDUM AND ORDER**

HUTTON, J.

September 30, 1998

Presently before the Court are Plaintiff Wanda Balogun's Motion for Reconsideration (Docket No. 8) and Defendant Alden Park Management Corp.'s Opposition thereto (Docket No. 9). For the following reasons, the Motion for Reconsideration is granted.

**I. BACKGROUND**

The Plaintiff, Wanda Balogun, filed a complaint against Defendant, Alden Park Management Corporation/Eastview Realty Associates, L.P., in the Court of Common Pleas of Pennsylvania. Defendant is a limited partnership. Plaintiff is a citizen of Pennsylvania. Plaintiff alleged discrimination in violation of the Pennsylvania Human Relations Act (PHRA). Pursuant to 28 U.S.C. § 1441(a), Defendant filed a Notice of Removal to the United States District Court for the Eastern District of Pennsylvania based on diversity of citizenship.

On February 27, 1998, Plaintiff filed a Petition to Remand arguing that the amount in controversy did not exceed \$75,000. On July 8, 1998, this Court granted Plaintiff's Petition to Remand, without addressing whether the amount in controversy exceeded \$75,000, based on lack of diversity of citizenship. This Court found that the Defendant and Plaintiff were citizens of Pennsylvania. Subsequently, Defendant filed this Motion for Reconsideration.

## **II. Standard of Review**

A motion for reconsideration may not be used to present a new legal theory for the first time or to raise new arguments that could have been made in support of the original motion. See Vaidya v. Xerox Corp., No. CIV.A.97-547, 1997 WL 732464, at \*2 (E.D. Pa. Nov. 25, 1997). A motion for reconsideration should be granted only if there is: (1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct a clear error of law or prevent manifest injustice. See Stepanuk v. State Farm Auto. Ins. Co., No. CIV.A.92-6095, 1993 WL 166748, at \*2 (E.D. Pa. May 14, 1993).

## **III. DISCUSSION**

In general, a defendant may remove a civil action filed in state court if the federal court would have had original jurisdiction to hear the matter. See 28 U.S.C. § 1441(b) (1994);

see also Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990), cert. denied, 498 U.S. 1085 (1991). Once the case has been removed, however, the federal court may remand if there has been a procedural defect in removal, or if the court determines that it lacks federal subject matter jurisdiction to hear the case. See 28 U.S.C. § 1447(c) (1994 & Supp. 1997); see also Township of Whitehall v. Allentown Auto Auction, 966 F. Supp. 385, 386 (E.D. Pa. 1997). Upon a motion to remand, it is always the moving party's burden to establish the propriety of removal, and all doubts as to the existence of federal jurisdiction must be resolved in favor of remand. See Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992); Independent Mach. Co. v. International Tray Pads & Packaging, Inc., No. CIV.A.97-2987, 1998 WL 35002, at \*2 (D.N.J. Jan. 5, 1998). The Court makes this determination by examining the jurisdictional amount in effect on the date of removal. Id. "Any prior history in state court is irrelevant." TJS Brokerage & Co. v. CRST, Inc. 958 F. Supp. 220, 221 (E.D. Pa. 1997).

Under diversity jurisdiction, a district court has jurisdiction over a civil action if the parties are citizens of different states and the amount in controversy exceeds \$75,000.<sup>1</sup>

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<sup>1</sup> The statute now provides as follows:

The district court 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--

(continued...)

See 28 U.S.C. § 1332(a) (1994 & Supp. 1997). If either of these requirements are not met, the court may remand a removed case to the state court for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).<sup>2</sup>

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<sup>1</sup>(...continued)

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For purposes of this section, section 1355, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

28 U.S.C. § 1332(a) (1994 & Supp. 1997).

<sup>2</sup> Congress has provided that:

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expense, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

28 U.S.C. § 1447(c) (1994 & Supp. 1997).

**A. Diversity of Citizenship**

In order to establish diversity of citizenship, there must be complete diversity. See Development Fin. Corp. v. Alpha Housing & Health Care, Inc., 54 F.3d 156, 158 (3d Cir. 1995). Thus, “[i]t is axiomatic that the federal judiciary’s diversity jurisdiction depends on complete diversity between all plaintiffs and all defendants.” Id. For purposes of determining diversity of citizenship, the citizenship of a limited partnership is determined by the citizenship of the limited partnership’s individual members. See Carden v. Arkoma Assocs., 494 U.S. 185, 190 (1990). Thus, a limited partnership is a citizen of the state in which its partners are citizens. See id.

In the present case, Defendant is a limited partnership. All members of the limited partnership are citizens of New York. Plaintiff is a citizen of Pennsylvania. Moreover, in the Petition to Remand, Plaintiff did not contest diversity of citizenship. Therefore, this Court incorrectly granted Plaintiff’s Petition to Remand based on lack of diversity of citizenship because diversity of citizenship clearly exists. The Court must still examine, however, whether the amount in controversy exceeds \$75,000.

**B. Amount in Controversy**

The amount in controversy requirement for diversity jurisdiction is \$75,000. See 28 U.S.C. § 1332(a). To determine the amount in controversy, the Court must look at the complaint

itself. See Angus v. Shiley, Inc., 989 F.2d 142, 145 (3d Cir. 1993). If the Court finds that the plaintiff seeks damages in excess of \$75,000, then the jurisdictional minimum is met. See id. If, however, the Court cannot conclude to a "legal certainty" that the claim is really for less than the jurisdictional amount, the case must be remanded to the state court. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1939); Suber v. Chrysler Corp., 104 F.3d 578, 583 (3d Cir. 1997); Garnder v. Beasley FM Acquisition Corp., No. CIV.A.97-2900, 1997 WL 325794, at \*3 (E.D. Pa. June 6, 1997).

In the instant case, the Plaintiff asserts that the amount in controversy is less than \$75,000, the jurisdictional minimum. Defendant responds with essentially two arguments. First, Defendant argues that Plaintiff marked this case as not appropriate for arbitration which "certifies that it is a claim for an amount in excess of \$50,000." Second, Defendant argues that the open ended request for damages by the Plaintiff under the PHRA suggests that the amount in controversy requirement is met. This Court will not address the arbitration argument because it finds that Plaintiff's open ended request for damages under the PHRA could reasonably read as an amount in controversy exceeding \$75,000.

In her complaint, Plaintiff prays for the following relief in the "Wherefore" provision: (1) an order that Defendant

reinstate Plaintiff to her former position with appropriate wages, increases, promotions, and benefits; (2) an amount for lost wages, increases, promotions, and benefits; (3) an amount for future or front wages, increases, promotions, and benefits; (4) an amount for compensatory and punitive damages; and (5) attorney's fees, costs, delay damages, and prejudgment interest. See Pl.'s Compl. at ¶ 16(b)-(g). Plaintiff claims that she is entitled to such relief under the Pennsylvania Human Relations Act, 43 P.S. § 951, because Defendant terminated her based on her race. Moreover, Plaintiff alleges that this illegal termination occurred on October 6, 1995. See Pl.'s Compl. at ¶ 8.

Because Plaintiff made no specific dollar requests in her damages (which she is entitled to do in her complaint), this Court must treat her damage request as open ended. As such, the amount in controversy is measured by a reasonable reading of the value of the rights being litigated. See Angus, 989 F.2d at 145. After reviewing the complaint, this Court finds that a reasonable reading of the value of the rights being litigated is in excess of \$75,000. Plaintiff seeks back pay damages for a period of almost two years, front pay, and punitive damages. In addition, Plaintiff seeks attorney's fees and delay damages. A reasonable jury could easily value Plaintiff's damages at more than \$75,000. Therefore, this Court grants Defendant's Motion for Reconsideration and retains jurisdiction over this case.

An appropriate Order follows.

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O R D E R

AND NOW, this 30th day of September, 1998, upon consideration of Plaintiff Wanda Balogun's Motion for Reconsideration and Defendant Alden Park Management Corp.'s Opposition thereto, IT IS HEREBY ORDERED that the Motion for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED THAT:

- (1) This Court's Order of July 8, 1998 is **VACATED**; and
- (2) Plaintiff's Petition to Remand is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.