

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

CASANDRA JOHNSON : CIVIL ACTION
 :
v. :
 :
COSTCO WHOLESALE : NO. 99-CV-3576

MEMORANDUM & ORDER

J. M. KELLY, J. **SEPTEMBER** , **1999**

Presently before the Court is Plaintiff Casandra Johnson's ("Johnson") Motion to Remand (Doc. 3). For the foregoing reasons, Plaintiff's motion is denied.

I. BACKGROUND

In this action, Johnson sued Costco for defamation arising from events which allegedly took place at Defendant's store on May 29, 1998. Johnson commenced this action on May 6, 1999 by filing a Writ of Summons in the Court of Common Pleas of Philadelphia County. She filed her Complaint on June 17, 1999.

According to the Complaint, Johnson is a resident of Pennsylvania and Defendant is a Washington corporation authorized to do business in the state of Pennsylvania. Plaintiff was a frequent shopper at Defendant's King of Prussia, Pennsylvania store and was a "Gold Star Member." On May 29, 1998 at approximately 10:00 a.m., Johnson was shopping at Costco's King of Prussia store where she attempted to purchase certain items. Upon presenting the items for payment at the counter, the Gold Star Member card issued to her did not work. Johnson was referred to the Customer Service Desk where a man who identified himself as the store manager informed Johnson that she had been identified as a "thief." Specifically, the store manager said

she had been seen stealing items from the store on April 27, 1998.

Johnson denied the store manager's allegations, stating to the contrary that she had been in the hospital for surgery and recovery from April 25, 1998 through April 28, 1998. Despite Plaintiff's explanation, the store manager repeated his allegations, this time in front of the crowd of people who had by this time gathered in the vicinity of the customer service desk.

Subsequently, the store manager escorted Johnson back through the store to return individually each of the items she had selected for purchase that day. Then the store manager took Johnson's Gold Star Member card and she was forced to leave the store.

In her Complaint, Johnson alleges Costco, through its employees, defamed her causing severe embarrassment, mental and emotional distress and public humiliation. Accordingly, she filed suit in Pennsylvania state court seeking damages "in an amount not in excess of \$50,000."

On June 21, 1999, following Costco's receipt of the Complaint, counsel for the Defendant wrote a letter to Plaintiff's counsel requesting the latter stipulate to limit Johnson's damages to \$75,000. In a June 24, 1999 letter, Johnson's counsel declined to execute such a stipulation. As a result, on July 15, 1999, Costco timely removed the action to this Court by filing Notice of Removal pursuant to 28 U.S.C. § 1441, basing subject matter jurisdiction on diversity of citizenship pursuant to 28 U.S.C. § 1332.

II. DISCUSSION

A. Standard for Motion to Remand

Generally, a defendant may remove a civil action filed in state court when the federal court could have original jurisdiction over the matter. See 28 U.S.C. § 1441(b) (1994); Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990). Upon removal, however, the district

court may remand the case to state court if there has been a procedural defect in the removal or if the court lacks subject matter jurisdiction. See 28 U.S.C. § 1447(c) (1994); Township of Whitehall v. Allentown Auto Auction, 966 F. Supp. 385, 386 (E.D. Pa. 1997). Upon a motion to remand, the moving party has the burden of establishing the propriety of removal. See Boyer, 913 F.2d at 111; Orndorff v. Allstate Ins. Co., 896 F. Supp. 173, 174 (M.D. Pa. 1995); Corwin Jeep Sales & Serv. Inc. v. American Motors Sales Corp., 670 F. Supp. 591, 595 (E.D. Pa. 1986). Removal jurisdiction is to be strictly construed, with all doubts as to its propriety to be resolved in favor of remand. See Orndorff, 896 F. Supp. at 175 n.3; Corwin, 670 F. Supp. at 592.

B. Diversity Jurisdiction

Diversity jurisdiction requires that the parties be completely diverse and that the amount in controversy exceed \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1332 (1994). The parties do not dispute that there is complete diversity of citizenship for jurisdictional purposes. Rather, Johnson contends that her claim does not satisfy the amount in controversy requirement.

As noted above, the moving defendant bears the burden of proving that jurisdiction is proper in federal court. See e.g., Russ v. State Farm Mut. Auto. Ins. Co., 961 F. Supp. 808, 810 (E.D. Pa. 1997). What the moving party's burden is in this context has not, however, been expressly addressed by the Third Circuit.¹ Several decisions from this district have adopted a

¹ There are three approaches to the standard of proof when the amount in controversy is in dispute. Several courts have required the moving party to prove to a "legal certainty" that the plaintiff's claims meet the jurisdictional amount. See e.g., International Fleet Auto Sales, Inc. v. National Auto Credit, No. CIV. A. 97-CV-1675, 1999 WL 95258, at *4 n.7 (E.D. Pa. Feb. 22, 1999); Deep v. Manufacturers Life Ins. Co., 944 F. Supp. 358, 360 (D.N.J. 1996). Other courts have adopted a middle approach, requiring the defendant prove by a preponderance of the evidence that there is an adequate amount in controversy. See e.g., De Aguilar v. Boeing Co., 11

preponderance of the evidence standard, requiring the moving party prove that the jurisdictional amount is satisfied by a preponderance of the evidence. See *McFadden v. State Farm Ins. Cos.*, No. CIV. A. 99-1214, 1999 WL 715162, at *1 (E.D. Pa. Sept. 13, 1999); *Feldman v. New York Life Ins. Co.*, No. CIV. A. 97-4684, 1998 WL 94800, at *3 (E.D. Pa. Mar. 4, 1998); *Mercante v. Preston Trucking Co.*, No. CIV. A. 96-5904, 1997 WL 230826, at *2 (E.D. Pa. May 1, 1997).

The Third Circuit has, however, addressed the moving party's burden where the plaintiff claimed damages exceeding an amount less than the statutorily required amount in controversy. See *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 217 (3d Cir. 1999). The court found that "[w]hen it appears to a legal certainty that the plaintiff was never entitled to recover the minimum amount set by Section 1332, the removed case must be remanded even if the jurisdictional deficiency becomes evident only after trial." Id. A subsequent decision in this district found that the Third Circuit, based on its decision in *Meritcare*, would apply the legal certainty standard in cases where the complaint alleges damages not to exceed an amount less than the jurisdictional amount. See *International Fleet*, 1999 WL 95258, at *4 n.7.

This Court agrees with the *International Fleet* court's prediction that the Third Circuit would apply the legal certainty test in this context. Furthermore, even if the appropriate standard is less exacting, there is no impact on the outcome of this motion as the Court finds that Costco has established the amount in controversy requirement under the most stringent legal certainty test.

F.3d 55, 58 (5th Cir. 1993); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 n.2 (9th Cir. 1992); *C.D. Peacock, Inc. v. The Neiman Marcus Group, Inc.*, No. CIV. A. 97-5713, 1998 WL 111738, at *2 (E.D. Pa. Mar. 9, 1998). Finally, some courts require the amount in controversy be established to a "reasonable probability." See e.g., *Ball v. Hershey Foods Corp.*, 842 F. Supp. 44, 47 (D. Conn.), aff'd, 14 F.3d 591 (2d Cir. 1993).

C. Amount in Controversy

In determining whether the jurisdictional amount has been satisfied, the court must first look to the complaint. See Angus v. Shiley, Inc., 989 F.2d 142, 145 (3d Cir. 1993) (“The general federal rule is to decide the amount in controversy from the complaint itself.”). If the complaint does not contain a demand for an exact monetary amount, however, the court must make an independent appraisal of the claim and “after a generous reading of the complaint, arrive at the reasonable value of the rights being litigated.” Feldman, 1998 WL 94800, at *4; see Angus, 989 F.2d at 146. This appraisal must include the reasonable value of potential compensatory as well as punitive damages. See Angus, 989 F.2d at 145-46. Finally, the court may look to the Notice of Removal to assess whether the defendant has met its burden. See Mangano v. Helina, No. CIV. A. 97-1678, 1997 WL 697952, at *5 (E.D. Pa. Nov. 3, 1997).

In the instant case, Johnson’s complaint raises one count alleging defamation. The Complaint alleges that “[t]he defamatory statements as well as Defendant’s actions caused Plaintiff severe embarrassment, mental and emotional distress, and publicly humiliated her in front of several shoppers and her friend.” Complaint, ¶ 16, at 3. For these injuries, Johnson seeks damages “in an amount not in excess of \$50,000.” Id. at 3. The Third Circuit has noted that when evaluating claims that do not demand a precise amount of damages, “the amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated.” Angus, 989 F.2d at 1412. That being said, Costco does not identify anything in the Complaint itself that suggests the reasonable value of the rights being litigated. While it is arguable that, if proven, Johnson’s claims would result in an award in excess of \$75,000, statements in the Complaint alone are insufficient to prove the

amount in controversy to a legal certainty.

The Court can also look to Costco's Notice of Removal, however, in assessing the value of Johnson's claim. Costco argues in its Notice of Removal that while Johnson's Complaint alleges damages in an amount not to exceed \$50,000, Johnson's claim is really worth more based on plaintiff's counsel's actions. More specifically, Costco alleges that because plaintiff's counsel refused to stipulate to a \$75,000 limit on Johnson's damages, the amount in controversy is in excess of \$75,000. Plaintiff counters that because a stipulation is a voluntary agreement between the parties, "the absence of a stipulation can have no legal significance." Motion to Remand, at 3.

The Court agrees that a stipulation is a voluntary agreement. The Court does not agree, however, that Johnson's refusal to so stipulate is not legally significant. If Johnson's claim, as she alleges, is truly worth less than \$75,000, there is no valid reason why she cannot stipulate to limit her damages to that amount. By refusing to stipulate to such, Johnson attempts to defeat Costco's statutory right of removal while at the same time retain the ability to collect a damages award greater than \$75,000. As the Mercante court noted, "Plaintiffs are entitled to avoid federal court by seeking less than the jurisdictional amount, but they are not entitled to toy with the federal courts for strategic or tactical reasons. The removal statutes are not to be used, or avoided, for mere tactical reasons." Mercante, 1997 WL 230826, at *4.

This is the case notwithstanding the fact that the Philadelphia County Court of Common Pleas requires that all cases demanding less than \$50,000 be referred to arbitration, effectively creating a \$50,000 cap on damages for cases that are arbitrated. See Phila. Civ. R. 1301. Under Pennsylvania Rule of Civil Procedure 1021(d), upon its own motion or the motion of any party,

the Court of Common Pleas may determine the amount actually in controversy. See Pa. R.C.P. 1021(d). Thus, “a case that is initially referred to arbitration by a state rule of civil procedure or a court rule may be later determined to involve damages greater than \$50,000,” thereby removing the cap on plaintiff’s recovery. Mercante, 1997 WL 230826, at *5. Therefore, neither the mandatory arbitration provisions nor the fact that this case would be referred to arbitration if it was in state court defeat Costco’s removal.

Furthermore, while Johnson argues her claim falls short of the required amount in controversy, the very language she uses in support of her motion to remand indicates the amount in controversy may be more than alleged. In Johnson’s Motion to Remand, she sets forth three reasons why she declined to stipulate to the \$75,000 damages limitation. Notably, Johnson states she declined the offer because “if, for whatever reason, at trial, the fact finder awarded Plaintiff in excess of \$75,000, having signed the stipulation would have prejudiced Plaintiff considerably.” Motion to Remand, at 3. This raises two points. First, as discussed above, Johnson’s current demand for damages requires that the case, if before state court, be referred to arbitration. See Phila. Civ. R. 1301. To recover anything over the constructive \$50,000 limit on arbitrated claims, Johnson would have to amend her pleading and demand a larger amount, thereby taking the case out of arbitration. That Johnson considers it even possible to recover an award over \$50,000 indicates she at least contemplates this action, and may even intend to pursue it if the case were remanded to state court. Second, Johnson’s statement shows a belief on her part that the amount in controversy is greater than stated in her Complaint. The Court finds that Johnson cannot manipulate her ad damnum clause to deny Costco’s right of removal while retaining the right to recover damages that would satisfy the amount in controversy. See

Feldman, 1998 WL 94800, at *5.

Finally, Johnson offered to settle the case for an amount between \$10,000 and \$15,000. She argues that this demonstrates that the amount in controversy is not in excess of \$75,000. The Court disagrees. There are numerous factors that come to bear in deciding whether and for what amount to settle a case, but “[w]hat is pertinent is the value of what is claimed or at stake and not . . . [an] assessment of settlement value which necessarily reflects considerations regarding liability.” Chester v. The May Dep’t Store, No. CIV. A. 98-5824, 1999 WL 58642, at *2 (E.D. Pa. Jan. 28, 1999).

III. CONCLUSION

The Court finds that Costco has proven to a legal certainty that the amount in controversy in this action exceeds \$75,000. Accordingly, Johnson’s Motion to Remand shall be denied.

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

CASANDRA JOHNSON	:	CIVIL ACTION
	:	
v.	:	
	:	
COSTCO WHOLESALE	:	NO. 99-CV-3576

ORDER

AND NOW, this day of September, 1999, in consideration of Plaintiff Johnson's Motion to Remand (Doc. 3) and the response of Defendant Costco thereto, it is **ORDERED** that the Motion to Remand is **DENIED**.

BY THE COURT:

JAMES McGIRR KELLY, J.