

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

G. GUY SMITH : CIVIL ACTION
 :
 v. :
 :
 RESORTS, USA, Inc., t/a OUTDOOR WORLD :
 and MONTEREY FINANCIAL SERVICES, Inc. :
 and PETER NORTH : NO. 99-2685

MEMORANDUM AND ORDER

HUTTON, J.

NOVEMBER 10, 1999

Presently before this Court are Defendants Monterey Financial Services ("Monterey") and Peter North's ("North") Motion to Dismiss Plaintiff's Complaint (Docket No. 2), Plaintiff G. Guy Smith's ("Plaintiff" or "Smith") Motion to Remand (Docket No. 5), Defendant Resorts, USA, Inc.'s ("Resorts") Response to Plaintiff's Remand Motion (Docket No. 6), Monterey and North's Renewed Motion to Dismiss Plaintiff's Complaint (Docket No. 7), Monterey and North's Response to Plaintiff's Remand Motion (Docket No. 8), Resorts' Motion to Dismiss Plaintiff's Complaint (Docket No. 9), Monterey and North's Request for Oral Argument on Motion of Defendants Monterey and North to Dismiss Pursuant to Rule 12(b)(6) (Docket No. 10), Monterey and North's Supplemental Memorandum in Opposition to Motion to Remand (Docket No. 11), Resorts' Memorandum of Law in Response to Motion to Remand (Docket No. 12), and Resorts' Renewal of Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons stated below,

Plaintiff's Motion to Remand is **DENIED**, defendants Monterey and North's Motion to Dismiss is **GRANTED**, defendant Resorts' Motion to Dismiss is **GRANTED**, and all other pending motions and/or requests are **DENIED as moot**.

I. BACKGROUND

Plaintiff is an attorney and this case arises out of his provision of legal services to a client regarding a debt collection matter involving defendants Monterey, North, and Resorts (collectively, the "Defendants"). (Compl. at ¶¶ 5, 10). Said client was a debtor and owed money to Resorts. (Compl. at ¶ 10). Resorts retained Monterey to collect the debt from Plaintiff's client and, in turn, Monterey hired North to collect said debt. (Compl. at ¶¶ 10, 11).

Plaintiff alleges, inter alia, that North made slanderous and defamatory comments about Plaintiff to Plaintiff, his paralegal, Eileen D'Angelo, and his client.¹ (Compl. at ¶¶ 13-15). Plaintiff alleges that during the time period in which North made such remarks, Plaintiff was a "person of good name, credit, and reputation and was deservedly enjoying the esteem and good opinion of diverse persons throughout the community." (Compl. at ¶ 12).

¹ For example, North allegedly said to Plaintiff's client that Plaintiff "can't be a very good lawyer if you can afford him." (Compl. at ¶ 13(a)). North allegedly told Plaintiff that he was "nothing but a secretary." (Compl. at ¶ 14(a)). North allegedly stated to Plaintiff's paralegal that Plaintiff should "just do his job and return his calls." (Compl. at ¶ 15(b)).

Plaintiff further alleges that each of North's statements is wholly false, that North knew each statement to be false, and that North made each statement deliberately, falsely, and maliciously with intent to injure Plaintiff and deprive him of his good name, fame, credit, and reputation. (Compl. at ¶¶ 13-18).

Plaintiff first filed the instant action in Pennsylvania state court on or about May 5, 1999. (See Docket No. 1, Ex. 2). Plaintiff states nine claims: Count I) defamation and slander under Pennsylvania law against North; Count II) defamation and slander under Pennsylvania law against Monterey; Count III) defamation and slander under Pennsylvania law against Resorts; Count IV) tortious interference with Plaintiff's business relations and contracts under Pennsylvania law against North; Count V) tortious interference with Plaintiff's business relations and contracts under Pennsylvania law against Monterey; Count VI) tortious interference with Plaintiff's business relations and contracts under Pennsylvania law against Resorts; Count VII) violations of the federal Fair Debt Collection Practices Act and the Pennsylvania Debt Collection Trade Practices Act against North; Count VIII) violations of the federal Fair Debt Collection Practices Act and the Pennsylvania Debt Collection Trade Practices Act against Monterey; and Count IX) violations of the federal Fair Debt Collection Practices Act and the Pennsylvania Debt Collection Trade Practices Act against Resorts. (See Compl.).

Monterey and North, with Resorts' consent, removed the instant action to federal court on or about May 26, 1999. Plaintiff filed his Motion to Remand on or about June 14, 1999. As the Court's disposition of Plaintiff's remand motion may be dispositive of Defendants' various dismissal motions, the Court first considers whether remand is proper.

II. DISCUSSION

A. Legal Standard for Remand

In order to remove a case from state court to the district court, federal jurisdictional requirements must be met. See Medlin v. Boeing Vertol Co., 620 F.2d 957, 960 (3d Cir. 1980). Generally, a defendant may remove a civil action filed in state court so long as the federal court would have had original jurisdiction over the matter had it been filed in federal court. See 28 U.S.C.A. § 1441 (West 1999). Upon a motion to remand, the defendant has the burden of establishing the propriety of removal. See Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990). Once a case is removed, the federal court may remand if there was a procedural defect in removal, or if the court determines that it lacks federal subject matter jurisdiction. See 28 U.S.C.A. § 1447(c) (West 1999). Removal jurisdiction is to be strictly construed, with all doubts as to its propriety to be resolved in favor of remand. See Johnson v. Costco Wholesale, No. CIV.A. 99-CV-3576, 1999 WL 740690, at *1 (E.D. Pa. Sept. 22, 1999) (citations omitted).

1. Plaintiff's Motion to Remand

Plaintiff moves the Court to remand this matter to state court on the basis that he amended his Complaint so that there exists no federal question and the amount in controversy is less than the \$75,000.00 jurisdictional minimum. (Pl.'s Motion to Remand). Plaintiff's Motion to remand is insufficient for several reasons.

First, the Court disagrees with Plaintiff's claim that he amended his Complaint. Plaintiff attached to his Motion to Remand a copy of an Amended Complaint that he filed on June 14, 1999, in the Court of Common Pleas of Delaware County. However, Defendants removed this action to federal court on May 26, 1999. Upon Defendants' removal to federal court, the state court was divested of jurisdiction over this matter. Therefore, Plaintiff's Amended Complaint, which he submitted to the state court at least nineteen days after his action was removed to federal court, is not a valid pleading in this Court. See Fed. R. Civ. P. 5.

Second, even if Plaintiff had properly filed his Amended Complaint in the correct forum, Plaintiff is prohibited from amending his Complaint to defeat federal jurisdiction. Allen v. Rite-Aid, Inc., CIV.A. No. 91-3836, 1991 WL 148272, at *1 (E.D. Pa. July 30, 1991). Thus, eliminating a claim that provides a basis for federal jurisdiction does not void the Court's jurisdiction or invalidate removal.

Third, jurisdiction after removal is based on the Complaint as it existed at the time of removal. See Pullman Co. v . Jenkins, 305 U.S. 534, 537, 59 S. Ct. 347, 349 (1939); Albright v. R.J. Reynolds Tobacco Co., 531 F.2d 132, 135 (3d Cir. 1987); Allen, 1991 WL 148272, at *2 (E.D. Pa. July 30, 1991). Therefore, in the event that Plaintiff had properly filed his Amended Complaint, the Court would still be bound to evaluate the Defendants' removal of the instant matter on the basis of Plaintiff's original Complaint. Plaintiff's original Complaint states claims against each Defendant pursuant to the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C.A. § 1692 et seq. (West 1999). In Bell v. Hood, 327 U.S. 678, 66 S. Ct. 773 (1946), the Supreme Court stated that a plaintiff invokes a federal court's jurisdiction by stating a substantial federal claim even if the claim is likely to fail. Id. at 682, 66 S. Ct. at 776. The substantial federal claim that triggers jurisdiction must appear on the face of the plaintiff's complaint. See Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 152, 29 S. Ct. 42, 43 (1908). As a substantial federal claim appears on the face of Plaintiff's Complaint, the Court has jurisdiction over the instant matter pursuant to the federal question doctrine.² Accordingly, Plaintiff's Motion to Remand is

² It must be noted that while Plaintiff states that his Amended Complaint no longer presents a federal question, paragraphs 40 and 41 of his Amended Complaint state a claim under the FDCPA. It also must be noted that Plaintiff incorporates paragraphs 40 and 41 into subsequent claims so that Plaintiff's Amended Complaint ultimately states a federal cause of action against each defendant. It finally must be noted that had Plaintiff's attempt to manipulate the forum been effective, the Court would have considered such manipulations when deciding whether to remand. See

denied. The Court now considers Defendants' dismissal motions.

**2. Legal Standard for Dismissal Pursuant to
Federal Rule of Civil Procedure 12(b)(6)**

Defendants filed motions to dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. There is an alternative basis, however, on which the Court may decide whether to dismiss Plaintiff's Complaint. Local Rule 7.1(c) of the Local Rules of the United States District Court for the Eastern District of Pennsylvania states in pertinent part:

Every motion not certified as uncontested . . . shall be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of the motion . . . [and] any party opposing the motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within fourteen (14) days after service of the motion and supporting brief. In the absence of a timely response, the motion may be granted as uncontested

E.D. Pa. R. Civ. P. 7.1(c) (West 1999).

**3. Defendants' Motion for Dismissal Pursuant to
Federal Rule of Civil Procedure 12(b)(6)**

As Plaintiff did not file any response, timely or untimely, to Defendants' motions to dismiss, pursuant to Local Rule 7.1(c), the Court grants said motions as uncontested.

An Appropriate Order follows.

Trans Penn Wax Corp. v. McCandless, 50 F.3d 217, 233 (3d Cir. 1995).

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O R D E R

AND NOW, this 10th day of November, 1999, upon consideration of Defendants Monterey Financial Services ("Monterey") and Peter North's ("North") Motion to Dismiss Plaintiff's Complaint (Docket No. 2), Plaintiff G. Guy Smith's ("Plaintiff" or "Smith") Motion to Remand (Docket No. 5), Defendant Resorts, USA, Inc.'s ("Resorts") Response to Plaintiff's Remand Motion (Docket No. 6), Monterey and North's Renewed Motion to Dismiss Plaintiff's Complaint (Docket No. 7), Monterey and North's Response to Plaintiff's Remand Motion (Docket No. 8), Resorts' Motion to Dismiss Plaintiff's Complaint (Docket No. 9), Monterey and North's Request for Oral Argument on Motion of Defendants Monterey and North to Dismiss Pursuant to Rule 12(b)(6) (Docket No. 10), Monterey and North's Supplemental Memorandum in Opposition to Motion to Remand (Docket No. 11), Resorts' Memorandum of Law in Response to Motion to Remand (Docket No. 12), and Resorts' Renewal of Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), IT IS HEREBY ORDERED that:

(1) Plaintiff's Motion to Remand (Docket No. 5) is **DENIED**;

(2) Defendants Monterey and North's Motion to Dismiss Plaintiff's Complaint (Docket No. 2) is **GRANTED**;

(3) Defendant Resorts' Motion to Dismiss Plaintiff's Complaint (Docket No. 6) is **GRANTED**;

(4) Defendants Monterey and North's Renewed Motion to Dismiss Plaintiff's Complaint (Docket No. 7) is **DENIED as moot**;

(5) Defendant Resorts' Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) (Docket No. 9) is **DENIED as moot**;

(6) Defendants Monterey and North's Request for Oral Argument (Docket No. 10) is **DENIED as moot**; and

(7) Defendant Resorts' Praecipe for Renewal of Motion to Dismiss Plaintiff's Complaint (Docket No. 13) is **DENIED as moot**.

BY THE COURT:

HERBERT J. HUTTON, J.