

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

BRUCE IRRGANG	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
MASCO CORPORATION	:	NO. 01-6944
	:	
Defendant	:	
	:	

Newcomer, S.J.

February 21, 2002

**M E M O R A N D U M**

Presently before the Court is Plaintiff Bruce Irrgang's Motion to Remand as well as Defendant Masco Corporation's Motion to Compel Arbitration.

**B A C K G R O U N D**

This matter stems from a disturbance in the employment relationship between plaintiff (employee), a Pennsylvania resident, and defendant (employer), a Delaware corporation. On June 30, 2000 the parties entered into a three year employment contract which made plaintiff the "Chief Operating Officer" of defendant's business at a yearly salary of \$200,000 in addition to periodic bonuses. In December of 2001 trouble emerged as defendant "suspended" plaintiff by relieving him of his work

related duties and restricting his access to the office by employing a security guard to keep him out of the building. Plaintiff is, however, able to gain access to his office by giving defendant twenty-four hour notice before entering the building. On December 21, 2001, Plaintiff filed a complaint in the Court of Common Pleas asking that Court to issue a restraining order reestablishing the "status quo" by giving plaintiff unfettered access to the building and removing the work related suspension. It is unclear to this Court as to whether the plaintiff has been terminated or continues to work for the defendant under suspension.<sup>1</sup> Defendant removed the matter to this Court on December 26, 2001. Plaintiff subsequently filed a Motion to Remand arguing this Court lacks sufficient subject matter jurisdiction to entertain such a complaint.

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<sup>1</sup> The Court has reviewed plaintiff's counsel's letter of December 24, 2001 which addresses the issue of termination (a submission by defendant in an effort to justify the requisite \$75,000 amount in controversy). This letter leaves serious questions as to whether plaintiff's employment with defendant has been terminated. With the exception of this letter, neither party address the current employment status of plaintiff in their submissions. Therefore, this Court will address both scenarios in its decision.

## D I S C U S S I O N

At the heart of plaintiff's motion is the issue of subject matter jurisdiction. Plaintiff claims this Court is void of such jurisdiction while defendant asserts the contrary. Specifically, defendant avers the presence of diversity jurisdiction. Diversity jurisdiction is present when a, "matter in controversy exceeds the sum or value \$75,000, exclusive of interest and costs, and is between citizens of different states." 28 U.S.C. 1332(a)(1).

Neither party contests the fact that this dispute arises between citizens of different states. Plaintiff is a resident of Pennsylvania and defendant a Delaware corporation, whose principle place of business is Michigan. The parties do not agree, however, on whether the amount in controversy exceeds the requisite \$75,000. Upon examination this Court finds that the requisite amount giving rise to diversity jurisdiction is not met, and therefore, must remand the matter to the Court of Common Pleas for lack of jurisdiction.

Plaintiff's demand comes not in the form of a definitive dollar amount, but rather, in the form of a request for injunctive relief (a restraining order ending the work related suspension and allowing plaintiff to have unfettered access to his office). When a diversity action plaintiff seeks

injunctive relief the district court must assess the value of the right sought by the plaintiff in order to determine whether the requisite amount for diversity jurisdiction is present. Columbia Gas Transmission Corp. v. Tarbuck, 62 F.3d 538, 541 (3d. Cir. 1995); In Re: Corestates Trust Fee Litigation, 39 F.3d 61, 65 (3d. Cir. 1994); Clayman v. Ford Motor Co., 1998 U.S. Dist. Lexis 16356, \*5 (E.D.Pa. 1998); Sallada v. Nationwide Mutual Insurance Co., 1999 U.S. Dist. Lexis 21670, \*5 (M.D.Pa. 1999). In making such an assessment the Court measures the value of the proposed injunctive relief to the plaintiff. In Re: Corestates Trust Fee Litigation, 39 F.3d at 65; Sallada 1999 U.S. Dist. Lexis at \*5. The plaintiff's proposed injunctive relief in the case at hand includes an end to the suspension of job duties and unfettered access to the plaintiff's office. Therefore, we ask whether the plaintiff will benefit by \$75,000 or more should said relief ultimately be granted. The only plausible answer is no. Neither party has offered any evidence that plaintiff will be so enriched by being removed from suspended status and/or by being able to access the building at will. Currently, the Court assumes plaintiff continues to be employed under suspended status and paid by the defendant<sup>2</sup> as there is no persuasive evidence to the

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<sup>2</sup> See Plaintiff's Exhibit B, Memorandum to Bruce Irrgang from Masco's Director of Employee relations detailing the terms

contrary. Should this be the case, there is no certainty that such payments will not continue. Nor is there any evidence (or argument presented) that enabling plaintiff to conduct his job duties will safeguard the continuation of such payments.

Therefore, under this scenario the defendant is unable to show how the proposed remedy will benefit the plaintiff in an amount of \$75,000 or more. On the other hand, if defendant has terminated plaintiff's employment, plaintiff's unamended complaint asks for a rescission of plaintiff's suspension. Under this scenario said remedy is worthless as the suspension has, in effect, already been ended and there is no longer a working relationship between the parties to repair. Likewise, no argument under either scenario has been made that plaintiff will be enriched by the requisite amount should he be allowed unfettered access to the building.

In an attempt to prove the amount in controversy requisite has been met, defendant offers a letter sent from plaintiff's counsel demanding the full contract value remaining on plaintiff's employment contract with defendant. While the \$800,000 discussed in the letter would certainly meet the amount in controversy requirement, this amount cannot be considered as

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of his suspension.

such. This demand is not part of plaintiff's complaint, but rather, perhaps an incentive for defendant to meet the plaintiff's ultimate demand: an end to the suspension and unfettered access to the building. Because the request for \$800,000 is not part of the plaintiff's complaint or proposed injunctive relief, we cannot consider it here.

Accordingly, the \$75,000 amount in controversy requirement has not been met. Therefore, this Court lacks proper jurisdiction and must remand this matter to the Court of Common Pleas.

AN APPROPRIATE ORDER SHALL FOLLOW.

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Clarence C. Newcomer, S.J.

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O R D E R

AND NOW, this        day of February, 2002, for the foregoing reasons it is hereby ORDERED that said motion is GRANTED. This case is hereby REMANDED to the Court of Common Pleas. The Clerk shall MARK this case as closed for statistical purposes. All pending motions in this matter are DENIED as moot.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.