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

YVETTE ROUSE	:	CIVIL ACTION
	:	NO. 04-5320
v.	:	
NISSAN NORTH AMERICA, INC.	:	

O'Neill, J. January 10, 2005

MEMORANDUM

This is a "lemon law" case. Plaintiff Yvette Rouse alleges she purchased a 2005 Nissan Altima for a contract price of $20,600.40 (including registration charges, document fees, sales tax, finance and bank charges) and that the vehicle subsequently experienced "numerous substantial non conformities, defects, and problems . . . which remain uncorrected." Plaintiff filed a complaint against Defendant Nissan North America, Inc. in the Court of Common Pleas of Philadelphia County on October 4, 2004. Defendant filed a notice to remove this matter to the United States District Court for the Eastern District of Pennsylvania on November 16, 2004. Now before me is plaintiff's motion to remand the matter to state court.

Plaintiff contends that her claim does not meet the requirements for diversity jurisdiction or for federal question jurisdiction under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq*. Upon a motion to remand, it is the defendant's burden to establish the propriety of removal and all doubts must be resolved in favor of remand. See, e.g., Boyer v. Snap-on Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990); Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006,

101 (3d Cir. 1987).

I. DIVERSITY JURISDICTION

Defendants have not established a basis for diversity jurisdiction as the amount in controversy does not exceed the jurisdictional $75,000 requirement. "The general federal rule is to decide the amount in controversy from the complaint itself." Angus v. Shiley, 989 F.2d 142, 145 (3d Cir. 1993). In her complaint, plaintiff "demands judgement against defendant in an amount not in excess of Fifty Thousand Dollars ($50,000), together with all collateral charges, attorneys' fees, all court costs and treble damages." The complaint as filed consequently does not meet the $75,000 jurisdictional requirement for removal.

Defendant argues, however, that plaintiff might be entitled to recover treble damages under her Pennsylvania Unfair Trade Practices and Consumer Protection Law claim and that the purchase price of plaintiff's vehicle plus interest on the vehicle's loan, when trebled, would amount to $80,017.14,[1] more than the jurisdictional amount. Defendant has produced no evidence or case law to support its claim that treble damages will be awarded in this case. The mere possibility that the reasonable value of plaintiff's claims under the Pennsylvania Unfair Trade Practices and Consumer Protection law may exceed $75,000 is insufficient to establish that the complaint meets the jurisdictional requirement. See Kobaiassi v. American Country Ins. Co., 80 F. Supp. 2d 488, 490 (E.D. Pa. 2000) (holding that defendant had not proven the amount in controversy where the notice of removal was the only evidence supplied in support of its argument that the value of punitive damages at stake allowed plaintiff's claim to meet the

[1]Trebling the vehicle's purchase price exclusive of interest would amount to only $61,801.20, not more than $75,000.

jurisdictional requirement); McFadden v. State Farm Ins. Cos., No. 99-1214, 1999 U.S. Dist. LEXIS 13956, at *12 (E.D. Pa. Sept. 15, 1999) (holding that defendant had not shown a reasonable likelihood that plaintiff's claim, including punitive damages, would reasonably exceed $75,000, and that all doubts in removal should be resolved in favor of remand). Defendant has therefore not met its burden of demonstrating that the actual amount in controversy in this case exceeds $75,000.

"Under Pennsylvania state court procedural rules, a plaintiff is not limited to the amount of damages pled in the ad damnum clause of his complaint." Clark v. Pfizer, Inc., No. 04-3354, 2004 U.S. Dist. LEXIS 17813, at *9 (E.D. Pa. Sep. 7, 2004). Because of this, defendant further argues that plaintiff is not entitled to limit her own damages to avoid diversity jurisdiction. I agree that "a plaintiff cannot defeat otherwise valid diversity jurisdiction by manipulating the ad damnum clause alone." Feldmanv. New York Life Ins. Co., No. 97-4684, 1998 U.S. Dist. LEXIS 2301, at *17 (E.D. Pa. Mar. 4, 1998). However, defendant has not established that plaintiff has limited her damages merely in order to avoid diversity jurisdiction as it has not produced sufficient evidence to demonstrate that plaintiff's claims exceed the jurisdictional amount.

Several cases have held plaintiffs to their self limitation upon remand. See Clark v. Pfizer Inc., No. 04-3354, 2004 U.S. Dist. LEXIS 17813, at * 10 (E.D. Pa. Sep. 7, 2004) ("Upon remand, Plaintiff will be held to this voluntary limitation."). See also Kobaiassi v. American Country Ins. Co., 80 F. Supp. 2d 488, 490 (E.D. Pa. 2000), citing James v. Elec. Data Sys. Corp., No. 98-1583, 1998 U.S. Dist. LEXIS 10456, at *10 (E.D. Pa. Jul. 15, 1998) ("The doctrine of judicial estoppel precludes a party from assuming a position in a legal proceeding inconsistent

with one previously asserted."); Nasim v. Shamrock Welding Supply Co,, 563 A.2d 1266, 1267 (Pa. Super. Ct. 1989) ("A principal element of a judicial admission is that the fact has been admitted for the advantage of the admitting party, and consequently, a judicial admission cannot be subsequently contradicted by the party that made it."). However, I agree with my colleague Judge Clarence C. Newcomer, who considered a similar question in Smith v. Nike Retail Servs., Inc., No. 98-1405, 1998 WL 195913, at *2 n.1 (E.D. Pa. Apr. 9, 1998) that the issue of whether plaintiff's counsel's representation that this action is worth not in excess of $50,000 is a judicial admission "should be addressed by the state court" upon remand.

I further agree with Judge Newcomer that plaintiff's counsel has an ethical obligation not to pursue more than $50,000 in damages in state court. As in Smith, plaintiff's counsel here has filed an affidavit certifying that if damages exceed $50,000, any excess will be remitted to defendant. As noted by Judge Newcomer,

> plaintiff's counsel's affidavit is a document which speaks for itself and . . . plaintiff's counsel has an ethical obligation, as an officer of the court, to make accurate representations in all documents submitted to this Court. If plaintiff's counsel has truthfully averred that this action is not worth more than [$50,000], then the Court is assurred that plaintiff's counsel will not pursue more than [$50,000 in damages] in state court – his ethical repuration is, colloquially, "on the line."

Id.

II. FEDERAL QUESTION JURISDICTION

Plaintiff's Magnuson-Moss Warranty Act claims do not provide a basis for federal question jurisdiction pursuant to 28 U.S.C. § 1331. The Magnuson-Moss Warranty Act provides a cause of action to an injured consumer when a warrantor fails to comply with a written or implied warranty. 15 U.S.C. § 2310(d)(1). However, claims may not be brought in federal court

under the Act if "the amount in controversy is less than the sum or value of $50,000 (*exclusive of interests and costs*) computed on the basis of all claims to be determined in the suit." 15 U.S.C. § 2310(d)(3)(B) (emphasis added). For jurisdictional purposes under the Act, a plaintiff may not count the treble damages allowed under the Pennsylvania Unfair Trade Practices and Consumer Protection Law. See Neilon v. Chrysler Corp., No. 97 57-49, 1997 U.S. Dist. LEXIS 20327, at *4 (E.P. Pa. Dec. 11, 1997). The standard measure of damages under the Act is "the difference between the value of goods as warranted and the value of the defective goods." See Skriletz v. Ford Motor Co., No. 98 1550, 1999 U.S. Dist. LEXIS 2952, at *7-8 (E.D. Pa. Mar. 10, 1999), citing Neilon, 1997 U.S. Dist. LEXIS 20327, at *3. Even though the value of the allegedly defective vehicle has not yet been determined, plaintiff could recover a maximum of $20,600.40 under the Act, the purchase price of the automobile. Plaintiff's Magnuson-Moss claim thus clearly falls short of the necessary $50,000 required to institute the claim in federal court.

Defendant argues that plaintiff's demand for "reasonable attorney's fees" under the Act must be taken into consideration when determining the jurisdictional amount in controversy and that, coupled with the $20,600.40 purchase price for plaintiff's vehicle, her claim could satisfy the amount in controversy threshold of the Act. However, the Court of Appeals for the Third Circuit has held that, "the courts that have considered whether attorney fees are costs within the meaning of the statute have uniformly concluded that they are and thus must be excluded from the amount in controversy determination." Suber v. Chrysler Corp., 104 F.3d 578, 588 n.12 (3d Cir. 1997). See also Boelens v. Redman Homes, Inc. 78 F.2d 1058, 1069 (5th Cir. 1984); Saval v. BL Ltd., 710 F.2d 1027, 1033 (4th Cir. 1983); Skriletz, 1999 U.S. Dist. LEXIS 2952, at *6; Neilon, 1997 U.S. Dist. LEXIS 20327, at *4. Defendant therefore fails to meet its burden of

establishing the jurisdictional amount in controversy required to establish federal question jurisdiction under the Magnuson-Moss Warranty Act.

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ORDER

AND NOW, this 10th day of January 2005, after considering plaintiff's motion to remand, and defendant's response thereto and for the reasons set forth in the accompanying memorandum, it is ORDERED that the motion to remand is GRANTED. Accordingly this case is REMANDED to the Court of Common Pleas of Philadelphia County.

s/Thomas N. O'Neill, Jr.

THOMAS N. O'NEILL, JR., J.