

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

JACK KRAUSS et al,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	
STEELMASTER BUILDINGS, LLC.,	:	NO. 06-796
et al,	:	
Defendant.	:	

Baylson, J.

October 27, 2006

I. Introduction

Presently before this Court is a Motion to Dismiss pursuant to Fed. R. Civ P. 12(b)(1), 12(b)(3) and 12(b)(6). Defendants assert (1) the amount in controversy does not reach the jurisdictional minimum, thus depriving this Court of subject matter jurisdiction, and (2) improper venue, due to a forum selection clause in the contract between the parties.¹ Defendants' Motion to Dismiss will be granted without prejudice due to the forum selection clause.

II. Background

Plaintiffs filed an Amended Complaint (Doc. No. 3) on April 26, 2006, alleging breach of contract, breach of warranty, negligence and misrepresentation in violation of Pennsylvania consumer protection law. On May 8, 2006, Defendants filed their Motion to Dismiss (Doc. No. 6). Plaintiff filed a Response (Doc. No. 8) on May 25, 2006, and Defendants filed a Reply brief (Doc. No. 9) on June 9, 2006.

¹ Defendants also move for dismissal pursuant to Fed. R. Civ. P. 12(b)(6), asserting that certain Plaintiffs lack standing (Def.'s Mem. 6-8), and that every Count in the Amended Complaint fails to state a claim for which relief may be granted. (Id. at 9-12.) However, the Court need not address the parties' contentions as to these matters.

III. Discussion

A. Jurisdiction

When deciding a motion to dismiss pursuant to Fed. R. Civ. P 12(b)(1) on an allegation that the amount in controversy does not meet the jurisdictional minimum, “the sum claimed by the plaintiff controls if the claim is apparently made in good faith.” St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1938). To dismiss a claim based on a failure to meet the jurisdictional minimum, the complaint must fail the Red Cab “legal certainty” test. Id. at 289 (“It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal”); Spectator Management Group v. Brown, 131 F.3d 120, 122 (3rd Cir. 1997) (“As a general rule, that amount is determined from the good faith allegations appearing on the face of the complaint. A complaint will be deemed to satisfy the required amount in controversy unless the defendant can show to a legal certainty that the plaintiff cannot recover that amount.” (citing Red Cab, 303 U.S. 283)), *cert. denied* 523 U.S. 1120 (1998).

The “legal certainty” standard is a threshold matter, and “[t]he court should not consider in its jurisdictional inquiry the legal sufficiency of those claims or whether the legal theory advanced by the plaintiff is probably sound.” Suber v. Chrysler Corp., 104 F.3d 578, 583 (3d Cir. 1997). Accordingly, the court should engage “in only minimal scrutiny of the plaintiff’s claims.” Id.

Defendants claim the amount in controversy cannot exceed \$75,000.00 as a matter of law, thus denying this Court subject matter jurisdiction. Defendants base this claim on the contract between Plaintiffs and Defendants which includes the provision, “Seller will not be liable for consequential damages and under no circumstances shall its liability exceed the purchase price

for defective or nonconforming goods.” (Ex. A ¶ 5.) Defendants contend that this clause is part of a valid, integrated agreement between Plaintiffs and Defendants, thus limiting Plaintiffs’ recovery to \$48,000.00 as a legal certainty. (Def.’s Mem. 5-6.)

It is clear, however, that Plaintiffs claim more than the minimum jurisdictional amount of \$75,000.00, if only because they explicitly make such a claim when invoking diversity jurisdiction in the Amended Complaint. See Red Cab, 303 U.S. at 290 (“In a cause instituted in the federal court the plaintiff chooses his forum.”) Plaintiffs assert that they lost \$48,000.00 when they bought buildings from Defendants now known to be unsuited to the task for which they were purchased. Additionally, Plaintiffs claim damages of at least \$30,000.00 in construction and demolition costs for the one building which was destroyed by snow, as well as an additional \$50,000.00 in future costs to completely demolish and reconstruct the damaged building. Moreover, Counts II and III of the Amended Complaint allege negligence and violations of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), respectively. In particular, the UTPCPL provides for treble damages. 73 Pa. Con. Stat. § 201-9.2. Thus, while the Court will make no determination as to the potential merits of Plaintiffs’ claims, it is not a legal certainty that Plaintiffs cannot recover the jurisdictional minimum. The Court finds that it has diversity jurisdiction over this matter.

B. Venue

Venue is proper in the Eastern District of Pennsylvania, the original forum in this case, under 28 U.S.C. § 1391. Defendants regularly conduct business in the District, virtually all communications at issue in this case took place in the District and the collapsed building at issue was located in the District.

Notwithstanding this Court's finding of proper venue, enforcement of the forum selection clause requires dismissal of this case. The contract states, in relevant part,

Buyer agrees that any suit, action, or proceeding arising out of or relating to this contract shall be instituted exclusively in the Courts of the City of Virginia Beach, Virginia. Buyer hereby waives any objection to may have to the laying of venue in such court.

Ex. A ¶ 15.

Federal law determines the validity of a forum selection clause in a federal diversity case, Jumara v. State Farm Ins. Co., 55 F.3d 873, 877 (3d Cir. 1995), and such a clause will be enforced unless there is a strong reason to set it aside. See The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1972) (“The forum clause should control absent a strong showing that it should be set aside”) *overruled on other grounds by* Lauro Lines v. Chesser, 490 U.S. 495 (1989); Foster v. Chesapeake Ins. Co., Ltd., 933 F.2d 1207, 1219 (3d Cir. 1991). A forum selection clause will be valid unless the party objecting to its enforcement establishes (1) that it is the result of fraud or overreaching, (2) that enforcement would violate a strong public policy, or (3) that enforcement would result in litigation in a jurisdiction so seriously inconvenient as to be unreasonable. Coastal Steel Corp, 709 F.2d at 202. The party seeking to avoid the forum selection clause has the burden of proving that it is unreasonable, and therefore invalid. The Bremen, 407 U.S. at 15.

Plaintiffs fail to meet their burden. They do not allege fraud in the Amended Complaint, nor do they assert any reason by which the forum selection clause may be said to violate a strong public policy.² They argue that the clause is invalid because enforcement would result in

² Plaintiffs' first mention fraud in their Response to Defendants' Motion to Dismiss (Doc. No. 8), and rather than assert any public policy against enforcement of this forum selection clause, Plaintiffs merely claim it would deprive them of the “efficiency and uniformity” of a federal forum. (Id. at 4).

litigation in a jurisdiction so seriously inconvenient as to be unreasonable. Plaintiffs contend that if the forum selection clause were enforced, they would have to travel over 200 miles to Virginia Beach, Virginia.³ While there is no authority in the Third Circuit establishing the precise minimum distance that constitutes an unreasonable inconvenience, a forum selection clause requiring the parties to litigate in England rather than New Jersey was found to be valid. Coastal Steel Corp., 709 F.2d 190. The Court finds that the distance between Virginia Beach and the Eastern District of Pennsylvania is not so great as to pose an unreasonable inconvenience, and that the forum selection clause is valid.

Where venue is proper in the original forum, dismissal and transfer to another district pursuant to 28 U.S.C. § 1406 is not possible. See Salovaara v. Jackson Nat'l Life Ins. Co., 246 F.3d 289, 298 (3d Cir. 2001). Additionally, since the contract does not specify a venue with a federal forum, transfer pursuant to 28 U.S.C. § 1404 is also unavailable. Instead, enforcement of the valid forum selection clause may be effected by dismissal without prejudice pursuant to Fed. R. Civ. P. 12(b)(6). Id.; Wall Street Aubrey Golf, LLC v. Aubrey, No. 05-5027, 2006 WL 1525515 (3d Cir. June 5, 2006)(*not precedential opinion*)(citing Relm Wireless Corp. v. C.P. Allstar Corp., 265 F. Supp.2d 523 (E.D. Pa. 2003)(Pollak, J.)) Accordingly, Defendants' Motion will be GRANTED, and all claims against Defendants will be dismissed without prejudice.

V. Conclusion

An appropriate order follows.

³ Plaintiffs Jack Krauss and Cindy Brillman are residents of Bryn Mawr, Pennsylvania, and Plaintiffs SLB Management and J.C. Family Farms are Delaware corporations with their principal places of business in Wilmington, Delaware.

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ORDER

AND NOW, this **27th** day of October 2006, based on the foregoing Memorandum, it is hereby ORDERED as follows:

1. Defendants' Motion to Dismiss (Doc. No. 6) is GRANTED;
2. The Amended Complaint is Dismissed without prejudice; and
3. The Clerk shall close this case.

BY THE COURT:

/s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.