

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JERRY ALDERMAN FORD, INC.,)	
BUTLER AUTOMOTIVE GROUP, INC.,)	
)	
Plaintiffs,)	
vs.)	NO. 1:05-cv-00939-JDT-TAB
)	
SALEEN INCORPORATED,)	
)	
Defendant.)	

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BUTLER AUTOMOTIVE GROUP, INC.,)	
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ENTRY ON MOTION TO REMAND (DKT. NO. 14)¹

This case was removed from the Marion Superior Court, Marion County Indiana, pursuant to 28 U.S.C. §§ 1441 and 1446. Defendant, Saleen Incorporated (“Saleen”), claims federal jurisdiction based on diversity of citizenship and all the requirements of 28 U.S.C. § 1332. Plaintiffs, Jerry Alderman Ford (“Alderman”) and Butler Automotive Group (“Butler”), now move to remand this case on the grounds that the amount in controversy does not exceed the \$75,000.00 required by 28 U.S.C. § 1332. For the reasons discussed in this entry, Plaintiffs’ motion to remand has merit.

Factual Background

Saleen customizes Ford Mustangs, turning the already popular sports cars into relatively unique high performance vehicles that sell for considerably more than Ford’s

¹ This Entry is a matter of public record and will be made available on the court’s web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

initial sticker price. Alderman had a contractual franchise agreement with Saleen through which Alderman was an exclusive dealer of Saleen Mustangs in Indianapolis. The contract, which was entered into on March 6, 2002, had a clause that allowed for automatic renewal of the contract on a yearly basis unless either party gave written notice of non-renewal at least 120 days prior to the renewal date of March 6. The contract was renewed automatically in 2003, 2004 and 2005. However, on March 23, 2005, Saleen notified Alderman that the contractual relationship would be terminated effective July 23, 2005, due to an alleged breach of contract by Alderman in failing to maintain the required inventory of vehicles. In May of 2005, Alderman sold all of its assets to Butler and notified Saleen that Alderman intended to assign its interest in the franchise agreement to Butler. Saleen refused the assignation of the relationship to Butler claiming that Butler may perform poorly as a franchisee. Alderman and Butler are suing for damages and injunctive relief under Indiana's Dealer Franchise Act as well as for damages under the law of contracts.

Analysis

Alderman and Butler argue that this court does not have jurisdiction to hear this case because the statutory requirements for diversity jurisdiction are not met. Specifically, they do not quarrel with regard to the diversity of the parties, but maintain that the amount in controversy does not exceed \$75,000, as required by 28 U.S.C. § 1332.

In order to remove a case filed in state court, a defendant has the burden of

establishing that the federal district court has jurisdiction. In this case, Saleen bears that burden. If the existence of jurisdiction is “fairly cast into doubt” by the non-moving party, the moving party must show evidence of jurisdiction. *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 607 (7th Cir. 1997). The Seventh Circuit has declared that the party claiming jurisdiction must show “competent proof” supporting jurisdiction. *NLFC, Inc. v. Devcom Mid-Am., Inc.*, 45 F.3d 231, 237 (7th Cir. 1995) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178 (1936)). Competent proof has been defined as a “preponderance of the evidence or ‘proof to a reasonable probability that jurisdiction exists.’” *Id.* (quoting *Gould v. Artisoft, Inc.*, 1 F.3d 544, 547 (7th Cir. 1993)).

Alderman and Butler, in their verified motion to remand, have accounted for the monetary damages they will incur as a result of termination of the franchise contract. Their estimation of \$25,000 (which includes actual damages of \$3,142.75 and attorney’s fees) falls short of the \$75,000 required by statute for federal jurisdiction. Thus they have fairly cast jurisdiction into doubt and Saleen assumes the burden of showing by a preponderance of the evidence that jurisdiction exists. Saleen has not met that burden.

In an action where jurisdiction is founded on diversity, the law in this circuit is that the amount in controversy is equal to the amount at stake for either party, not just the amount the plaintiff may reasonably be awarded. *BEM I, L.L.C. v. Anthropologie, Inc.*, 301 F.3d 548, 553 (7th Cir. 2002), *contra Ericsson GE Mobile Commc’ns, Inc. v. Motorola Commc’ns & Elecs., Inc.*, 120 F.3d 216, 218 (11th Cir. 1997) (relying on plaintiff’s view of damages only). The amount at stake includes the costs of complying

with an injunction in addition to the costs of litigation. *Uhl v. Thoroughbred Tech. & Telecomm'cns, Inc.*, 309 F.3d 978 (7th Cir. 2002).

Saleen argues that the amount at stake if an injunction is imposed against them is \$255,000. This amount is Saleen's estimate of the lost sales that will result by forcing them to reestablish the franchise agreement. Saleen determines this amount by taking the nationwide average for franchisee retail sales and subtracting the projected retail sales of Butler, which it bases on an average of Alderman's past performance. This accounting is flawed on its face as it does not tabulate costs or lost profits, but lost retail sales prices. If Saleen loses one potential sale, it hasn't suffered damages equal to the retail price of the automobile because it has not incurred the rather sizeable cost of the automobile in its pre-customized form. The damage to Saleen from a lost sale would be the lost profit. The accounting is further flawed because it assumes that another franchisee in Indianapolis would perform as well as the average of the national markets. Saleen has offered no evidence to suggest that this is reasonable, especially in light of the fact that Alderman's performance was never near the national average it invokes, yet Alderman's franchise was renewed for several years. This flawed and speculative accounting is not sufficient to meet the burden of competent proof required of the party seeking jurisdiction.

Since Saleen has offered no other evidence of an amount in controversy exceeding \$75,000, it has failed to carry its burden of establishing that the case meets all the requirements under 28 U.S.C. § 1332 for federal diversity jurisdiction and Plaintiffs' Motion For Remand (Dkt. No. 14) is **GRANTED**. This case will be remanded

to the Marion Superior Court, in Marion County Indiana.

ALL OF WHICH IS ENTERED this 23rd day of September 2005.

John Daniel Tinder, Judge
United States District Court

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