IP 08-1158-C Y/K Hornbuckle v Allied Insurance
Judge Richard L. Young Signed on 10/30/08

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ERIC SHANE HORNBUCKLE,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:08-cv-01158-RLY-TAB
	)	
ALLIED PROPERTY AND CASUALTY	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ERIC SHANE HORNBUCKLE, Plaintiff,	)	
vs.	)	1:08-cv-1158-RLY-TAB
ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, Defendant.	)	

ENTRY ON PLAINTIFF'S OBJECTION TO REMOVAL AND MOTION FOR REMAND

This case originated in the Howard Superior Court, where Eric Shane Hornbuckle ("Plaintiff") filed suit against Allied Property and Casualty Insurance Company ("Defendant"), requesting declaratory relief and asserting claims for bad faith and defamation. Defendant timely removed the action to the United States District Court for the Southern District of Indiana pursuant to 28 U.S.C. §§ 1332 and 1441(a). Now before the court is Plaintiff's Objection to Removal and Motion for Remand. Plaintiff argues that removal was improper because the amount in controversy does not exceed $75,000 as required by 28 U.S.C. § 1332. For the reasons set forth below, Plaintiff's Motion for Remand is **GRANTED**.

I. Background

This action arises out of a dispute over insurance coverage for a stolen automobile. Plaintiff filed a claim with his automobile insurer, Defendant, after his 2006 Dodge Magnum was allegedly stolen from his residence. (Docket # 1-2 ("Complaint") at ¶¶ 7, 13). Defendant did not provide coverage for this claim and alleges that Plaintiff is not entitled to coverage because Plaintiff failed to comply with conditions regarding notification of loss and cooperation

in investigation of a loss, made material representations, and made false statements. (Docket # 13 ("Amended Answer") at ¶¶ 12-14). In his Complaint, Plaintiff requests a declaratory judgment that the insurance policy in dispute does cover the vehicle theft. (Complaint at ¶ 16). Plaintiff also makes claims for bad faith and defamation. For each of these claims, Plaintiff seeks punitive damages, costs, and attorney fees. (*Id.* at Claim II, Claim 3). For the defamation claim, Plaintiff also requests unspecified compensatory damages. (*Id.* at Claim 3).

Plaintiff's Complaint does not include a dollar amount for any of the requested damages. Indiana Trial Rule 8(A)(2) dictates that "in any complaint seeking damages for personal injury or death, or seeking punitive damages, no dollar amount or figure shall be included in the demand." Defendant removed to federal court on the basis of federal diversity jurisdiction, which requires diversity of citizenship[1] and an amount in controversy exceeding $75,000. Plaintiff alleges that if he had been permitted under Indiana Trial Rule 8(A) to specify a dollar amount for damages, such damages would have been $ 71,136. (*See* Docket # 10-1 ("Hornbuckle Aff.")). Under Indiana law, a jury could award Plaintiff a maximum of $50,000 for each of the two claims carrying a request for punitive damages. *See* Ind. Code § 34-51-3-5.

II. Discussion

Pursuant to 28 U.S.C. § 1441(b), a defendant has the right to remove a case from state court to federal court when the federal court could exercise jurisdiction in the first instance. Defendant claims that this court has original jurisdiction pursuant to 28 U.S.C. § 1332(a). As Plaintiff does not dispute that the parties are citizens of different states, the only inquiry is whether the matter in controversy exceeds the sum or value of $75,000.

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[1]Neither party disputes diversity of citizenship. Plaintiff is a citizen of the state of Indiana, while Defendant is a citizen of the state of Iowa.

Plaintiff has filed an affidavit, in which he swears that he is seeking damages in an amount less than $75,000. (Hornbuckle Aff. at ¶ 8). However, when a case has been removed to federal court, the amount in controversy is the amount required to satisfy the plaintiff's demands in full *on the day the suit was removed*. *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 510-11 (7th Cir. 2006) (*citing BEM I, L.L.C. v. Anthropologie, Inc.*, 301 F.3d 548, 552 (7th Cir. 2002) (emphasis added). Because jurisdiction is determined as of the instant of removal, Plaintiff's post-removal affidavit cannot be considered by the court in determining whether jurisdiction existed at the time of removal. *See In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir. 1992); *see also St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938).

Although Plaintiff's post-removal affidavit cannot serve to defeat federal jurisdiction, Plaintiff's motion to remand makes it clear that there is a dispute concerning the jurisdictional issue of the amount in controversy. "Where there is a dispute as to the jurisdictional amount in controversy, the party seeking the federal forum has the burden of coming forward with 'competent proof' to establish at least a 'reasonable probability' that the amount in controversy requirement is satisfied." *Reason v. General Motors Corp.*, 896 F. Supp. 829, 834 (S.D. Ind. 1995) (citations omitted). The court, therefore, examines whether Defendant has met its burden of proving that there is a reasonable probability that the amount in controversy exceeds $75,000.

Defendant argues that the amount in controversy exceeds $75,000 because Plaintiff's car is valued between $15,000 and $20,000 and the bad faith and defamation claims could each result in an award of $50,000 in punitive damages. However, Defendant's burden is to come forth with competent proof to establish that the amount in controversy requirement is satisfied. Although Defendant has shown that is possible that Plaintiff's action could satisfy the amount in controversy requirement, evidence of mere possibility is not enough to meet Defendant's burden.

See id. at 835 ("the possibility that Mrs. Reason's claims could satisfy the jurisdictional amount in controversy is not enough").

Indiana statue may allow for a punitive damages award in the amount of $50,000, but Defendant has not established that there is a reasonable probability that Plaintiff's claims are valued at this amount. The court cannot find that the amount in controversy requirement has been met without speculating as to the valuation of Plaintiff's bad faith and defamation claims. Accordingly, Defendant has not met its burden and Plaintiff's motion to remand must be granted.

III. Conclusion

For the above stated reasons, Plaintiff's Objection to Removal and Motion For Remand (Docket # 10) is **GRANTED**. This action is remanded to the Howard Superior Court 4.

SO ORDERED this 30th day of October 2008.

s/ ***Richard L. Young***
RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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