

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

OLD REPUBLIC NATIONAL TITLE	:	
INSURANCE CO.,	:	
Plaintiff,	:	NO. 3:01CV1772 (SRU)
	:	
v.	:	
	:	
BANK OF EAST ASIA LTD, ET AL.,	:	
Defendants.	:	

**RULING ON MOTION TO DISMISS FILED BY DEFENDANTS TCRM
COMMERCIAL, CORP. & TCRM ADVISORS, INC.**

Old Republic National Title Insurance Company (“Old Republic”), suing on its own behalf and as subrogee of Eastern Savings Bank (“Eastern”), has brought a cause of action for unjust enrichment against defendants TCRM Commercial Corporation (“TCRM Commercial”) and TCRM Advisors, Inc., (“TCRM Advisors”). Old Republic claims that these defendants should forfeit the \$81,000 in loan brokerage fees that Old Republic paid them in connection with a 1998 mortgage loan made by Eastern, because the mortgage loan was fraudulent.

TCRM Commercial avers that, because it did not exist at the time of the alleged fraudulent transaction, it earned no fees in relation to the transaction, and it otherwise had nothing to do with either the transaction or with the State of Connecticut, Old Republic’s claims should be dismissed against it for failure to state a claim upon which relief can be granted and for lack of personal jurisdiction. In its opposition papers, Old Republic did not substantively oppose dismissal against TCRM Commercial, but rather requested that dismissal enter without prejudice in case it was later discovered that TCRM

Commercial could be liable for the acts of TCRM Advisors as successor or transferee of TCRM Advisors. Subsequently, at oral argument Old Republic conceded that, if TRCM Commercial submitted an affidavit attesting to the separateness of the corporate entities, dismissal with prejudice would be appropriate. TRCM Commercial has submitted the requested affidavit. Accordingly, the claims against TRCM Commercial are dismissed with prejudice.

TCRM Advisors has separately moved for dismissal arguing that the court lacks subject matter jurisdiction because the amount in controversy is less than \$75,000 -- the requisite sum to sustain diversity jurisdiction. TCRM Advisors acknowledges that Old Republic paid it \$81,000 in brokerage fees, yet it denies that it had any knowledge that the underlying mortgage transaction was fraudulent. Moreover, TCRM Advisors claims that, even if Old Republic has a valid claim of unjust enrichment, the maximum Old Republic can recover under such theory would be \$40,500 because: (1) recovery in a cause of action for unjust enrichment is measured by the benefit to the defendant, not by the detriment to the plaintiff; and (2) the benefit to TCRM Advisors in this case is \$40,500 because TCRM Advisors distributed one-half of the amount Old Republic paid them to a third party. Thus, TCRM Advisors avers that Old Republic does not satisfy the amount in controversy requirement because the maximum Old Republic can recover against it is \$40,500.

STANDARD OF REVIEW

A district court has subject matter jurisdiction based on diversity of citizenship if the suit is between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1332(a). The parties do not dispute that the parties are citizens of different states.

As to the amount in controversy requirement, the plaintiff has the burden of proving that it appears to a “reasonable probability” that the claim is in excess of the statutory requirement. Chase Manhattan Bank, N.A. v. American Nat. Bank and Trust Co. of Chicago, 93 F.3d 1064, 1070 (2d Cir. 1996). In addition, the amount in controversy is determined at the time the action is commenced, and the amount claimed by the plaintiff controls, assuming the claim is made in “good faith.” Chase Manhattan Bank, N.A., 93 F.3d at 1070. Dismissal is appropriate only if it appears to a “legal certainty ... from the face of the pleadings,” and from the evidence offered, that the plaintiff cannot recover an amount in excess of \$75,000 or was never entitled to recover that amount. Id., *citing* St. Paul Mercury, 303 U.S. at 289. Importantly, potential defenses to all or part of the claim do not affect the amount in controversy -- even if disclosed on the face of the complaint. Id. (“The inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust jurisdiction.”). Lastly, “if the right of recovery is uncertain, the doubt should be resolved ... in favor of the subjective good faith of the plaintiff.” Tongkook, 14 F.3d at 785-86.

DISCUSSION

The parties do not dispute that Old Republic paid TCRM Advisors \$81,000 in loan brokerage fees. In addition, the parties do not dispute that TCRM Advisors distributed a portion of those proceeds to a third party. In fact, TCRM Advisors provided the court with copies of canceled checks demonstrating that it paid a third party \$40,500. Even though TCRM Advisors apparently paid to a third party one-half of the brokerage fees it received, Old Republic may still proceed against TCRM Advisors for the full amount it paid TCRM Advisors. The fact that TCRM Advisors shared half of its fees with a third party may afford TCRM Advisors a viable defense against Old Republic’s unjust

enrichment claim for the full amount of the brokerage fees paid to TCRM Advisors; the availability of that defense, however, does not implicate jurisdiction. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938) (potential defenses to all or part of the claim, even if disclosed on the face of the complaint, do not affect the amount in controversy). Similarly, even if the loan agreement called for one-half of the brokerage fees to be paid to outside brokers, that fact would also not affect the amount in controversy. Id. All that is relevant for the purpose of determining the amount in controversy is that Old Republic paid TCRM Advisors \$81,000 in loan brokerage fees and now, in good faith, claims that TCRM Advisors should return those fees. What TCRM Advisors did or did not do with the \$81,000 in loan brokerage fees is relevant only when determining the extent of TCRM's liability; it is not relevant when determining whether the amount in controversy requirement is satisfied. Accordingly, for purposes of determining the amount in controversy, Old Republic has shown to a reasonable probability that its claim is in excess of \$75,000, and TCRM Advisors has not proven to a legal certainty that it is not potentially liable for at least that sum.

CONCLUSION

For the foregoing reasons, TCRM Commercial's motion to dismiss is GRANTED, with prejudice. TCRM Advisor's motion to dismiss is DENIED.

It is so ordered.

Dated at Bridgeport this _____ day of February 2003.

Stefan R. Underhill
United States District Judge

