UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Preferred Fixture Manufacturing Co.,	:	
v.	:	**No. 3:03cv1160 (JBA)**
Sealed Air Corp. and Carpenter Co.	:	

Ruling on Plaintiff's Motion to Remand [Doc. # 15]

Plaintiff Preferred Fixture Manufacturing Company ("Preferred") commenced this suit against defendants, Sealed Air Corporation ("Sealed Air") and Carpenter Company ("Carpenter"), in the Superior Court for the State of Connecticut, alleging a violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, et seq. On July 3, 2003, Carpenter removed this case to federal court pursuant to 28 U.S.C. §§ 1441 and 1446. Preferred now moves to remand to the Superior Court for the State of Connecticut. For the reasons discussed below, this motion [Doc. # 15] is denied.

I. Background

In a complaint originally filed with the Connecticut Superior Court for the Judicial District of Hartford, Preferred claimed that the defendants have taken actions to destroy competition in the market for "foam-in-place" packaging equipment and to allow Sealed Air to control the foam-in-place market, in

violation of the Connecticut Unfair Trade Practices Act ("CUPTA"), Conn. Gen. Stat. §§ 42-110a, et seq. Preferred's alleged damages included the "loss of its foam-in-place business, lost profits, loss of the investment it made in the foam-in-place business, lost future business opportunities from Preferred's customers, diversion of business resources from other business projects, lost business opportunities, and interest and attorney's fees." See Complaint [Doc. # 1, Ex. A] at ¶ 37. Preferred sought all relief available under CUPTA, including damages, punitive damages, attorney's fees, interest costs and penalties. Although Preferred did not identify the amount in demand in its complaint, in accordance with Connecticut's pleading rules, Preferred filed a Statement of Amount in Demand, declaring that the amount was in excess of Fifteen Thousand Dollars ($15,000). See Statement of Amount in Demand [Doc. # 1, Ex. A].

On July 3, 2003, Carpenter timely filed a Notice of Removal to federal court, pursuant to 28 U.S.C. §§ 1441 and 1446, removing the case to this Court based on diversity of citizenship between the parties and an amount in controversy in excess of $75,000, exclusive of interest and costs. See Notice of Removal [Doc. # 1] at 2-3. Sealed Air consented to removal on July 7, 2003. See Notice of Consent to Removal [Doc. # 8].

On July 24, 2003, Preferred filed a motion to remand the

case to state court on the grounds that defendants failed to establish that the amount in controversy exceeded the statutory minimum in 28 U.S.C. § 1332 as to each defendant, and that Carpenter's removal petition was defective. See Mot. Remand [Doc. # 15] at 1. Preferred does not contest that diversity of citizenship of the parties exists.

II. Discussion

Removal is proper if the federal district court has original jurisdiction over the matter, which can be established if the parties are diverse in citizenship and the amount in controversy exceeds $75,000. See 28 U.S.C. § 1441; 28 U.S.C. §1332. These jurisdictional requirements must have been met at the time the complaint was filed and at the time of removal to federal court. See Chase Manhattan Bank, N.A. v. American Nat. Bank and Trust Co. of Chicago, 93 F.3d 1064, 1070-71 (2nd Cir.1996); United Food & Commercial Workers Union, Local 919 v. Centermark Properties Meriden Square, Inc., 30 F.3d 298, 301 (2d Cir. 1994).

The party "invoking the jurisdiction of the federal court has the burden of proving that it appears to a 'reasonable probability' that the claim is in excess of the statutory jurisdictional amount." Tongkook Am., Inc. v. Shipton Sportswear Co., 14 F.3d 781, 784 (2d Cir. 1994); see also Mehlenbacher v. Akzo Nobel Salt, Inc., 216 F.3d 291, 296 (2d Cir. 2000). If the jurisdictional facts are challenged, "the party asserting

jurisdiction must support those facts with 'competent proof' and 'justify [its] allegations by a preponderance of evidence.'" United Food, 30 F.3d at 305 (quoting McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936)); see also Mehlenbacher, 216 F.3d at 296.

Here, diversity of citizenship is not challenged, and the dispute centers on whether Carpenter adequately alleged and proved that the amount in controversy exceeds $75,000 as to each defendant. Since plaintiff's pleadings do not establish the amount in controversy, it is appropriate to "look outside those pleadings to other evidence in the record." United Food, 30 F.3d at 305. Attached to their memorandum in opposition to plaintiff's motion to remand, defendants have submitted a letter from Preferred's counsel responding to a request from Sealed Air's counsel to learn the amount in controversy, which states, "please be advised that the plaintiff is seeking to recover in excess of $75,000, exclusive of interest and costs, from each defendant." See Tavtigian Letter [Doc. # 20, Ex. B]. Plaintiff's counsel has conceded by this letter, therefore, that the amount in controversy is sufficient to meet the statutory jurisdictional requirement. While this letter was written after the commencement of the suit, and after removal to federal court had already taken place, the declaration as to the damages sought is unqualified, and does not rest on a change in plaintiff's

position. This submission, moreover, is fully consistent with plaintiff's pleadings, which call for damages compensating a variety of business losses as well as punitive damages, and specify that the damages exceed $15,000. Accordingly, the Court finds that defendants have established by the preponderance of the evidence that plaintiff's claim exceeds $75,000.

Preferred argues, however, that because Sealed Air has asserted that it had no involvement in the matters alleged in the complaint and that its subsidiary is the proper party, "at least according to the defendant Sealed Air Corporation, the amount in controversy as to it is zero." See Pl.'s Mot. Supp. Mot. Remand [Doc. # 16] at 6. This argument is without merit. It is well settled that the defendant's defenses have no bearing on the amount in controversy, and that 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); see also Scherer v. Equitable Life Assurance Society of U.S., No. 02-7439, 2003 WL 22351627, *3 (2d Cir. Oct. 16, 2003); Zacharia v. Harbor Island Spa, Inc., 684 F.2d 199, 202 (2d Cir. 1982). Indeed, as the Second Circuit has explained: "Were such defenses to affect the jurisdictional amount, . . . 'doubt and ambiguity would surround the jurisdictional base of most diversity litigation from complaint to final judgment[, and i]ssues going to a federal court's power to decide would be hopelessly confused

with the merits themselves.'" Scherer, 2003 WL 22351627, at *3 (quoting Zacharia, 684 F.2d at 202). Thus, affirmative defenses may not be used in calculating the jurisdictional amount. See id.

Preferred also argues that the removal petition was deficient because it does not allege that the statutory minimum was exceeded "as to each defendant." See Pl.'s Mem. Supp. Mot. Remand [Doc. # 16] at 6. While Preferred is correct that claims against multiple defendants generally cannot be aggregated to meet the jurisdictional amount in controversy requirement,[1] and thus that claims against each defendant must exceed $75,000, the notice of removal need not be pled with such specificity. The statutory procedure for removal requires only a "short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant . . . ." 28 U.S.C. §1446(a). Carpenter's notice of removal meets these requirements. Because defendants' have subsequently

[1]See Sovereign Samp, W.O.W. v. O'Neil, 266 U.S. 292, 295 (1924) ("It is the settled rule . . . that in a suit based on diversity of citizenship brought against several defendants . . . which are separate and distinct . . . the test of jurisdiction is the amount of each separate claim, and not their aggregate amount."). Defendants have argued that aggregation would be permissible under the facts of this case because the claims against Carpenter and Sealed Air are "integrated." See Def.'s Mem. L. Opp. Mot. Remand [Doc. # 20] at 8 n.3. Because Preferred, in the letter from its counsel, conceded that the amount in controversy exceeded $75,000 as to each defendant, see Tavtigian Let. [Doc. # 20, Ex. B], it is not necessary to decide the aggregation issue.

submitted evidence showing that the amount in controversy requirement has been met as to each defendant, removal is proper. See, e.g. Mehlenbacher, 216 F.3d at 296-98 (remanding to district court for further fact-finding, not to state court, when defendant "nowhere alleged that each plaintiff – or, indeed, any plaintiff – individually met the jurisdictional requirement").

III. Conclusion

For the foregoing reasons, plaintiff's motion to remand [Doc. # 15] is DENIED.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 22nd day of October, 2003.