

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LANDS' END, INC.,

OPINION and ORDER

Plaintiff,

11-cv-164-bbc

v.

KELLY REEVES,

Defendant.

Plaintiff Lands' End, Inc. filed this case initially in the Circuit Court for Iowa County. Plaintiff alleges that defendant Kelly Reeves breached a contract by refusing to repay a relocation and signing bonus after quitting her job within twelve months of being hired. On March 4, 2011, defendant removed the case to this court under 28 U.S.C. §§ 1441 and 1446. As a basis for federal jurisdiction, defendant relies on 28 U.S.C. § 1332, which requires a showing that plaintiff is not a citizen of the same state as defendant and that the amount in controversy is greater than \$75,000. Defendant is a Delaware corporation with its principal place of business in Wisconsin and plaintiff is a citizen of Ohio. Thus, the citizenship of the parties is completely diverse. However, plaintiff has filed a motion to remand the case under 28 U.S.C. § 1447(c), dkt. #7, contending that the amount in controversy requirement is not met. Plaintiff also seeks costs and expenses incurred in filing

the motion to remand.

OPINION

When a defendant removes an action to federal court under § 1332, the amount in controversy is the amount required to satisfy plaintiff's demands on the date of removal. BEM I, LLC v. Anthropologie, Inc., 301 F.3d 548, 551-52 (7th Cir. 2002) (“[T]he relevant date for determining whether the minimum amount in controversy is present is the date of removal, not the date of the original complaint in state court.”). If the amount in controversy is contested, the party seeking federal jurisdiction bears “the burden of showing by a preponderance of the evidence facts that suggest the amount-in-controversy requirement is met.” Oshana v. Coca-Cola Co., 472 F.3d 506, 511 (7th Cir. 2006). A defendant may do this by, among other things, “[citing to] contentions interrogatories or admissions in state court; by calculation from the complaint’s allegations . . .; by reference to the plaintiff’s informal estimates or settlement demands . . .; or by introducing evidence, in the form of affidavits from the defendant’s employees or experts, about how much it would cost to satisfy plaintiff’s demands.” Meridian Security Insurance Co. v. Sadowski, 441 F.3d 536, 541-42 (7th Cir. 2006).

In this case, plaintiff admits that when it filed the complaint in state court on January 28, 2011, it sought to recover \$80,500 in relocation costs from plaintiff. However, before defendant removed the case, defendant repaid \$25,000 of the relocation costs to plaintiff.

Specifically, defendant negotiated an agreement with her new employer, Lane Bryant, under which Lane Bryant would repay a portion of plaintiff's relocation obligation to plaintiff if defendant agreed to work for Lane Bryant. Dft.'s Answer, dkt. #3, ¶ 8. On Monday, February 21, 2011, Lane Bryant sent plaintiff a check in the amount of \$25,000 for partial payment of defendant's reimbursement obligations to plaintiff. Plaintiff accepted the check but told Lane Bryant that defendant still owed plaintiff approximately \$55,000. Thus, plaintiff contends that the amount in controversy after February 21, 2011 was approximately \$55,000, not \$80,500.

Defendant does not deny that plaintiff may recover only \$55,000 on its breach of contract claim and presents no facts to suggest that plaintiff could have recovered more than \$55,000 on the date of removal. Instead, defendant contends that removal was proper and subject matter jurisdiction exists in this court because at the time of removal, the complaint stated that plaintiff was seeking \$80,500. Additionally, plaintiff has never sought to amend the complaint to seek a lesser amount. (Plaintiff says that it will file an amended complaint seeking a lesser amount after the case is remanded to state court.) Defendant urges the court to disregard plaintiff's post-removal affidavits and arguments, citing the well-established principal that post-removal amendments to a complaint cannot defeat subject matter jurisdiction. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 293 (1938) (“[E]vents occurring subsequent to removal which reduce the amount recoverable, whether beyond the plaintiff's control or the result of his volition, do not oust the district court's

jurisdiction.”).

The problem with defendant’s arguments is that she is conflating a plaintiff’s post-removal attempts to alter the amount in controversy with a plaintiff’s post-removal clarification of the actual amount in controversy. It is true that post-removal events, such as settlement of the underlying dispute, do not undermine the validity of the removal. E.g., Rising-Moore v. Red Roof Inns, Inc., 435 F.3d 813, 816 (7th Cir. 2006); Chase v. Stop ‘N Save Warehouse Foods, Inc., 110 F.3d 424, 429 (7th Cir. 1997) (“post-removal affidavits or stipulations are ineffective to oust federal jurisdiction”). However, “[e]vents subsequent to removal that merely reveal whether the required amount was in dispute on the date of filing, rather than alter the current amount in controversy, can be considered in deciding what that original amount in controversy was.” BEM I, 301 F.3d at 552; see also State Farm Mutual Automobile Insurance Co. v. Powell, 87 F.3d 93, 97 (3d Cir. 1996) (“[A] distinction must be made . . . between subsequent events that change the amount in controversy and subsequent revelations that, in fact, the required amount was or was not in controversy at the commencement of the action”) (citation and quotation omitted). Moreover, in determining whether the jurisdictional threshold amount has been met the court must evaluate “the controversy described in the plaintiff’s complaint” as well as “the record as a whole.” Uhl v. Thoroughbred Technology and Telecommunications, Inc., 309 F.3d 978, 983 (7th Cir.2002) (citing Shaw v. Dow Brands, Inc., 994 F.2d 364, 366 (7th Cir. 1993)).

In this case, plaintiff does not rely on post-removal events to defeat subject matter

jurisdiction. Rather, plaintiff has established that at the time of removal, it was not legally possible for it to recover more than approximately \$55,000 on its breach of contract claim against plaintiff. St. Paul Mercury, 303 U.S. at 289 (remand appropriate if it appears to “legal certainty that claim is really for less than the jurisdictional amount”). Because “[r]emoval [is] proper only if the amount in controversy exceed[ed] \$75,000 *on the date of removal*,” BEM I, 301 F.3d at 551, the case must be remanded to state court.

Although I am remanding this case for lack of subject matter jurisdiction, I am denying plaintiff’s motion for costs and expenses under 28 U.S.C. § 1447(c). Requiring a party to pay for removing a case to federal court is warranted “only where the removing party lacked an objectively reasonable basis for seeking removal.” Wisconsin v. Amgen, Inc., 516 F.3d 530, 534 (7th Cir. 2008). A party’s basis for removal is objectively reasonable if clearly established law did not foreclose defendant’s basis for removal. Lott v. Pfizer, Inc., 492 F.3d 789, 793 (7th Cir. 2007). Plaintiff does not attempt to explain why defendant’s removal was objectively unreasonable. In addition, although clearly established law states that the amount in controversy is determined at the date of the removal, the record does not establish that defendant knew at the date of removal that the amount in controversy had decreased to \$55,000, and there is no case suggesting that defendant should have contacted plaintiff to verify whether it had received the \$25,000 check from defendant’s employer or ask plaintiff whether its claim had otherwise decreased in value. Because plaintiff has failed to establish that defendant’s removal was objectively unreasonable, it is not entitled to fees and

costs.

ORDER

IT IS ORDERED that

1. Plaintiff Lands' End's motion to remand, dkt. #7, is GRANTED, and this case is REMANDED to the Circuit Court for Iowa County, Wisconsin.

2. Plaintiff's request for reimbursement of costs and expenses under 28 U.S.C. § 1447(c) is DENIED.

Entered this 9th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge