

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

U.S. FRAME, LLC,

Plaintiff,

v.

ERA SPORTS, INC.,

Defendant.

OPINION and ORDER

07-C-298-C

In this civil action for monetary relief, plaintiff U.S. Frame, LLC contends that defendant ERA Sports, Inc. breached the terms of the parties' supply contract by failing to pay invoices for items plaintiff shipped to it. Originally, plaintiff filed this suit in the Circuit Court for Dane County, Wisconsin. On May 29, 2007, defendant removed the action to this court under 28 U.S.C. § 1332.

Now before the court is plaintiff's motion to remand, which poses a simple question: Does a claim meet the amount in controversy requirements of 28 U.S.C. § 1332 when the amount sought as relief will exceed \$75,000 only if interest is considered? Because the correct measure of the amount in controversy is the amount allegedly due to plaintiff on the day the action was removed and because that amount is less than \$75,000 whether or not

interest is considered, plaintiff's motion will be granted. Moreover, because defendant had no objectively reasonable ground for removing this case from state court, I will grant plaintiff's request for reimbursement of its costs and attorney fees for opposing defendant's removal.

From plaintiff's complaint, I draw the following factual allegations.

ALLEGATIONS OF FACT

Plaintiff U.S. Frames, LLC is a Wisconsin corporation with its principal place of business in Madison, Wisconsin. Plaintiff manufactures and distributes picture frames and moldings.

Defendant ERA Sports, Inc. is a Canadian corporation with its principal place of business in British Columbia. Defendant manufactures and distribute sports memorabilia.

From May 2005 to March 2007, plaintiff provided defendant with materials and services under the terms of a contract between the parties. Plaintiff billed defendant for products it shipped. Although defendant paid most of plaintiff's invoices, it did not pay \$68,480.00, plus past due interest in the amount of \$5,314.00, due as of May 7, 2007.

On May 8, 2007, plaintiff filed its complaint in this lawsuit, seeking the following relief:

- a. payment of Seventy-three Thousand, Seven Hundred Ninety-four and

00/100 Dollars (\$73,794.00), plus all interest which continues to accrue;

b. payment of its attorney fees:

c. payment of all taxable costs and disbursements; and

d. any further relief the Court deems just and proper.

Dkt. #1, Exh. A, at 4.

DISCUSSION

A. Subject Matter Jurisdiction

It is well established that statutes authorizing removal are to be narrowly construed against removing a plaintiff from his choice of forum. The party seeking to remove a case to federal court bears the burden of establishing federal jurisdiction by a preponderance of the evidence. Meridian Sec. Ins. Co. v. Sadowski, 441 F.3d 536, 543 (7th Cir. 2006).

In this case, the parties concede that if federal jurisdiction exists, it does so under one statute only: 28 U.S.C. § 1332(a), which authorizes federal courts to hear state law claims when “the matter in controversy exceeds the sum or value of \$75,000, *exclusive of interest and costs*, and is between . . . citizens of different States.” (Emphasis added.) In quantifying the amount in controversy, “[w]hen the complaint includes a number, it controls unless recovering that amount would be legally impossible.” Rising-Moore v. Red Roof Inns, Inc., 435 F.3d 813, 815 (7th Cir. 2006) (citing St. Paul Mercury Indemnity Co. v. Red Cab Co.,

303 U.S. 283).

Although the rule appears to speak for itself, defendant contends that the plain language of the statute should be ignored in this case. In defendant's view, plaintiff's claim for interest is a "substantive part" of the contractual damages plaintiff seeks because interest is authorized by the terms of the parties' contract and is not merely an incidental add-on to plaintiff's primary claim for damages. Citing nonprecedential and distinguishable cases, defendant appears to suggest that interest may be considered part of the amount in controversy because plaintiff's claims against defendant would not be extinguished if defendant failed to pay plaintiff the interest it seeks under the contract.

Even if defendant were correct in asserting that the interest in this case is part of plaintiff's "substantive claim" and that it could therefore be considered part of the amount in controversy (a matter I need not resolve), defendant still loses the jurisdictional argument. When a case is removed to federal court, the amount in controversy is measured by 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, 510-511 (7th Cir. 2006); BEM I, L.L.C. v. Anthropologie, Inc., 301 F.3d 548, 552 (7th Cir. 2002). In its complaint, filed on May 8, 2007, plaintiff asked for "\$73,794.00, plus all interest which continues to accrue," attorney fees and taxable costs and disbursements. Although the demand for relief is vague on this point, plaintiff clarifies it in the body of the complaint and in its brief in support of the

motion to remand when it explains that the \$73,794.00 comprises \$68,480.00 in principal, plus interest in the amount of \$5,314.00 that had accrued up to the time of filing. Plaintiff's request for "all interest which continues to accrue" was meant only as an indication that plaintiff was not abandoning its request for *future* interest should defendant fail to settle the case. On the day of filing, defendant could have extinguished all of plaintiff's claims against it by paying \$73,794.00.

Of course, as explained above, the relevant moment for calculating the amount in controversy is the date on which the case was removed, not the date on which it was filed in state court. Defendant removed the case on May 29, 2007, almost three weeks after plaintiff filed the lawsuit. Although it is reasonable to assume that some interest would accrue between filing and removal, defendant has not suggested the amount in controversy would have increased by more than \$1,200.00 in the span of a few short weeks.

In its opposition brief, defendant alleges without explanation that, if the facts alleged in the complaint were found to be true, plaintiff could "reasonably [be] award[ed] . . . the sum of \$68,480 plus interest of \$12,035.79, for a total of at least \$80,515.79." Defendant has not supported this assertion by affidavit or in any other way, or explained how it arrived at this measure of damages. The law is clear that the burden of establishing subject matter jurisdiction rests on defendant, and all doubts must be resolved against removal. Doe v. Allied-Signal, Inc., 985 F.2d 908, 911 (7th Cir. 1993). Because defendant has not shown

by a preponderance of the evidence that the amount in controversy at the time of removal was more than \$75,000, even after interest was added to the claim, defendant has not shown that removal was proper. Therefore, plaintiff's motion to remand will be granted.

B. Attorney Fees and Costs

In Martin v. Franklin Capital Corp., 126 S. Ct. 704 (2005), the Supreme Court examined the language of 28 U.S.C. § 1447(c) to determine whether it supported a presumption in favor of awarding attorney fees to a party who has successfully obtained remand of a case from federal to state court. The Court held that the statute did not indicate that fees “should either usually be granted or usually be denied.” Id. at 710. The Court emphasized that through the removal statute, “Congress granted a right to a federal forum to a limited class of state-court defendants” and that “there is no reason to suppose Congress meant to confer a right to remove, while at the same time discouraging its exercise in all but obvious cases.” Id. at 711. For this reason, the Court held that

[t]he appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, *when the statutory criteria are satisfied*.

Id. (emphasis added).

In this case, defendant has moved to remove a lawsuit involving only a state law claim

when it is apparent from the face of the complaint that plaintiff is seeking less than \$75,000, exclusive of costs or interest. Even under the theory of the case defendant argued (namely, that interest should be included in the calculation of the amount in controversy), defendant failed to show that plaintiff's claim met the requirements of § 1332. Defendants came forward with no relevant statutory or case law that would authorize the removal of this lawsuit and my independent search has revealed none. Consequently, I cannot help but conclude that defendant ERA Sports, Inc. removed the case without an objectively reasonable ground for doing so, for the purpose of prolonging litigation or increasing plaintiff's costs in prosecuting the case. Plaintiff's request for reimbursement of costs and attorney fees will be granted.

ORDER

IT IS ORDERED that

1. Plaintiff U.S. Frame's motion to remand for lack of subject matter jurisdiction is GRANTED and this case is REMANDED to the Circuit Court for Dane County, Wisconsin.

3. Plaintiff's request for reimbursement of costs and attorney fees under 28 U.S.C. § 1447(c) is GRANTED.

4. Plaintiff may have until August 15, 2007, in which to submit an itemization of the actual expenses, including costs and attorney fees, it incurred in responding to defendant's

removal of the case.

5. Defendant may have until August 29, 2007, in which to file an objection to any itemized costs and fees.

6. The clerk of court is directed to return the record in case number 07-C-298-C to the Circuit Court for Dane County, Wisconsin.

Entered this 3d day of August, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge