

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

PHILIP I. ROLFE,

Plaintiff,

v.

NETWORK FUNDING LP,

Defendant.

MEMORANDUM

14-cv-9-bbc

Philip Rolfe and Wayne Peterson brought this case in state court against defendant Network Funding LP, asserting violations of various state laws. Defendant removed the case to this court, relying on 28 U.S.C. § 1332 as a basis for jurisdiction. That statute requires diversity of citizenship between plaintiffs and defendants and an amount in controversy greater than \$75,000.

In an order dated May 16, 2014, dkt. #27, I dismissed former plaintiff Peterson from the case in accordance with a forum selection clause that required him to bring his claims in Texas. Because defendant Network Funding had relied primarily on Peterson's alleged damages to show that the amount in controversy was more than \$75,000, I issued an order for defendant to show cause that the remaining claims should not be remanded to state court.

In response, defendant has submitted a settlement letter from both Rolfe and

Peterson in which they estimate their damages at \$290,000 each, including at least \$50,000 each in “unreimbursed out-of-pocket expenses.” Dkt. #29-1. In addition, defendant notes that the amended complaint includes a request for punitive damages. Under Wis. Stat. § 895.043(6), a plaintiff may recover up to “twice the amount of any compensatory damages recovered by the plaintiff or \$200,000, whichever is greater” if he proves that “the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff.” Wis. Stat. § 895.043(3). As a potential basis for punitive damages, defendant quotes plaintiff’s allegation that defendant “intentionally deceived the Plaintiffs by representing that Plaintiffs’ investments and contributions to Network Funding would result in the ownership of [Network Funding’s Madison branch].” Am. Cpt. ¶ 21, dkt. #8.

At this stage of the case, defendant has shown that it has “a good-faith basis for supposing that the plaintiff crossed the [\$75,000] threshold,” Nightingale Home Healthcare, Inc. v. Anodyne Therapy, LLC, 589 F.3d 881, 886 (7th Cir. 2009), so I will allow the case to proceed. However, the case may be remanded at a later date if either party shows “to a legal certainty” that plaintiff cannot recover more than \$75,000. Rexford Rand Corp. v.

Ancel, 58 F.3d 1215, 1218 (7th Cir. 1995) (quoting St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 289 (1938)).

Entered this 17th day of July, 2014.

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