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47-CV-2014-901261-00
CIRCUIT COURT OF DISTRICT COURT
MADISON COUNTY, ALABAMA
JANE C. SMITH, CLERK

FILED

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

DALTON JOHNSON D/B/A ALABAMA)
WOMEN’S CENTER, LLC a/k/a)
ALABAMA WOMEN’S CENTER FOR)
REPRODUCTIVE ALTERNATIVES,)
LLC,)

Plaintiffs,)

v.)

Civil Action No.: 47-CV-2014-901261.00

DIRECTORY ASSISTANTS, INC., a)
Connecticut Corporation, doing business)
in Alabama.)

Defendant.)

NOTICE TO CLERK OF FILING NOTICE OF REMOVAL

To: Jane C. Smith, Circuit Clerk
Madison County Circuit Court
100 North Side Square
Huntsville, Alabama 35801

YOU ARE HEREBY NOTIFIED of the filing of a Notice of Removal to the United States District Court for the Northern District of Alabama, Northeastern Division, of the plaintiff’s claims and causes of action against the defendant in the above-styled case, in accordance with the provisions of 28 U.S.C. §§ 1332, 1441, and 1446. These claims and causes of action are of a nature of which the United States District Court has jurisdiction pursuant to 28 U.S.C. § 1332. A copy of the Notice of Removal (without exhibits) is attached hereto as Exhibit “A.”

Pursuant to said removal, and in accordance with the provisions of 28 U.S.C. § 1446(d), the Circuit Court of Madison County, Alabama shall proceed no further with this action.

Respectfully submitted this 15th day of July, 2014.

**EXHIBIT
B**

/s/ Edward T. Rowe

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Attorneys for Directory Assistants, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2014, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to the following:

Kimberly A. Ford

Fordumas, LLC

P.O. Box 18054

Huntsville, AL 36804

/s/ Edward T. Rowe

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

DALTON JOHNSON D/B/A ALABAMA)
WOMEN’S CENTER, LLC a/k/a)
ALABAMA WOMEN’S CENTER FOR)
REPRODUCTIVE ALTERNATIVES,)
LLC,)

Plaintiffs,)

v.)

Civil Action No.:

DIRECTORY ASSISTANTS, INC., a)
Connecticut Corporation, doing business)
in Alabama.)

Defendant.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Directory Assistants, Inc. (“DAI”) hereby gives notice of the removal of this action from the Circuit Court of Madison County, Alabama to the United States District Court for the Northern District of Alabama, Northeastern Division. In support of this removal, DAI states as follows:

FACTS AND PROCEDURAL BACKGROUND

1. Plaintiffs Dalton Johnson (“Johnson”) d/b/a Alabama Women’s Center, LLC a/k/a Alabama Women’s Center for Reproductive Alternatives, LLC (“AWC”) (collectively referred to as “Plaintiffs”) filed civil action CV-2014-901261 in the Circuit Court of Madison County, Alabama on June 13, 2014.

2. In accordance with 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders in the state court action is attached collectively hereto as Exhibit A.

**EXHIBIT
A**

3. In their Complaint, Plaintiffs assert causes of action against DAI for breach of contract, fraud, and bad faith arising out of a consulting contract between the parties (the “Contract”).

4. Plaintiffs seek \$25,000.00 for breach of contract, \$20,000.00 for fraud, \$10,000.00 for bad faith, and undisclosed amounts for punitive damages and attorneys’ fees against DAI. Additionally, Plaintiffs request that the court vacate a \$99,672.41 arbitration award in favor of DAI and against Plaintiffs related to DAI’s breach of contract claim under the Contract.

5. DAI was served with the Complaint on June 17, 2014.

6. The removal of this case to this Court is timely pursuant to 28 U.S.C. § 1446(b).

GROUND FOR REMOVAL

7. This action is properly removable under 28 U.S.C. § 1441(a) because, inasmuch as there is complete diversity of citizenship between Plaintiffs and DAI and the amount-in-controversy exceeds \$75,000, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

Diversity of Citizenship

8. On information and belief, Johnson is an individual residing in Huntsville, Madison County, Alabama. See Compl. at ¶ 1. Therefore, Johnson is a citizen of Alabama.

9. On information and belief, AWC is a limited liability company organized and existing under the laws of the state of Alabama with its principal place of business in Alabama. See Compl. at ¶ 2. Therefore, AWC is a citizen of Alabama.

10. DAI is a corporation organized and existing under the laws of the state of Connecticut with its principal place of business in Connecticut. Therefore, DAI is a citizen of Connecticut.

11. Because Plaintiffs are citizens of Alabama and DAI is a citizen of Connecticut, complete diversity exists.

Amount-in-Controversy

12. The amount-in-controversy requirement is satisfied in this case because it is clear from the face of Plaintiffs' Complaint that the "matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs" 28 U.S.C. § 1332(a).

13. In their Complaint, Plaintiffs have specified the amount of compensatory damages sought for each of their three legal claims. Plaintiffs seek \$25,000.00 for breach of contract, \$20,000.00 for fraud, \$10,000.00 for bad faith for a total specified amount of \$55,000.00.

14. In addition to those amounts, Plaintiffs are seeking undisclosed amounts for punitive damages and attorneys' fees. Where, as here, the plaintiffs have not fully specified in the complaint the amount of monetary damages sought, the removing defendant may assert the amount in controversy in the notice of removal. 28 U.S.C. § 1446(c)(2)(A). In such a case, the defendant "need not prove to a legal certainty that the plaintiff's claims exceed the jurisdictional amount" *Lindsay v. Am. Gen. Life & Accident Ins. Co.*, 133 F. Supp. 2d 1271, 1275 n.5 (N.D. Ala. 2001) (internal quotations omitted). Rather, removal is proper "if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds" \$75,000. 28 U.S.C. § 1446(c)(2)(B). In making this determination, district courts are permitted "to make reasonable deductions, reasonable inferences, or other reasonable extrapolations from the pleadings" *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-62 (11th Cir. 2010) (internal

quotations omitted). Moreover, district courts “may use their judicial experience and common sense in determining whether the case stated in [the] complaint meets federal jurisdictional requirements.” *Id.* at 1062.

15. In making its amount-in-controversy determination, “the plaintiffs’ likelihood of success on the merits is largely irrelevant to the court’s jurisdiction because the pertinent question is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) (internal quotation omitted) (emphasis in original); *see Seckel v. Travelers Home & Marine Ins. Co.*, No. 4-12-CV-4163-KOB, 2013 WL 360421, at *2 (N.D. Ala. Jan. 29, 2013) (“Although the court questions the merits of Mr. Seckel’s emotional distress claim under Alabama law, his pleading put those emotional damages at issue and the likelihood of success on those claims is irrelevant at this point.”).

16. Thus, although the amounts specifically stated in Plaintiffs’ Complaint do not exceed the threshold jurisdictional amount, Plaintiffs’ demand for punitive damages clearly does so. Because Alabama law authorizes the award of punitive damages for fraud and bad faith, the Court must consider punitive damages when determining whether the amount-in-controversy requirement is met in this action. *Holley Equip. Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir. 1987)(requiring district courts to consider punitive damages when determining the jurisdictional amount in controversy “unless it is apparent to a legal certainty that such cannot be recovered”).

17. Moreover, Plaintiffs claim they are entitled to attorneys’ fees under the Contract. Because the Complaint asserts a right to attorneys’ fees as a portion of damages awardable under a contract, consideration should be given to those amounts in determining the satisfaction of the

amount-in-controversy requirement. *Rae v. Perry*, 392 F. App'x 753, 755 (11th Cir. 2010)(citing *Federated Mutual Ins. Co. v. McKinnon Motors, L.L.C.*, 329 F.3d 805, 808 n.4 (11th Cir. 2003) for the proposition that “attorneys’ fees should not be considered when determining the jurisdictional amount in controversy unless they are allowed for by statute or by contract.”).

18. Additionally, the removing defendant may assert the amount in controversy in the notice of removal when the Complaint seeks nonmonetary relief. 28 U.S.C. § 1446(c)(2)(A)(i). In the context of a request by a plaintiff to vacate an arbitration award, where the amount of the arbitration award exceeds \$75,000.00, the amount-in-controversy requirement is met. *Evergreen Forest Products of Georgia, LLC v. Bank of Am., NA*, 262 F. Supp. 2d 1297, 1308 (M.D. Ala. 2003). Because Plaintiffs’ Complaint seeks nonmonetary relief in the form of a vacatur of the \$99,672.41 arbitration award entered in favor of DAI, the amount-in-controversy clearly exceeds the threshold amount.

19. As this Court has expressly recognized, Congress’ 2011 jurisdictional statute amendments have “slow[ed] down, if not . . . prevent[ed] this court and others like it from remanding diversity cases like this one, where there is no *a[d] damnum* clause, but where the parties and the court know from their exercise of good sense and experience that the claim exceeds \$75,000.” *Smith v. State Farm Fire & Cas. Co.* 868 F. Supp. 2d 1333, 1335 (N.D. Ala. 2012). To the contrary, plaintiffs wishing “to pursue claims against diverse parties in a state court seeking unspecified damages of various kinds, such as punitive damages and emotional distress” have been instructed to “formally and expressly disclaim any entitlement to more than \$74,999.99, and categorically state that [they] will never accept more. Otherwise, [said] plaintiff[s] will find [themselves] in a federal court” *Id.*; see *Stubbs v. State Farm Fire & Cas. Co.*, No. 2:12-CV-2186-SLB, 2013 WL 980313, at *5 n.3 (N.D. Ala. March 8, 2013).

20. For all of the reasons outlined herein, Plaintiffs seek more than \$75,000 in damages in this case. Therefore, the amount-in-controversy requirement is met.

21. Because there is complete diversity of citizenship between Plaintiffs and DAI and because the amount in controversy exceeds \$75,000, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

Other Prerequisites for Removal

22. Plaintiffs' claims are properly removable to this Court pursuant to 28 U.S.C. § 1441.

23. This case is a civil action within the meaning of the Acts of Congress relating to removal of causes.

24. In accordance with 28 U.S.C. § 1446(d), DAI will promptly provide written notice of the filing of this Notice of Removal to Plaintiffs and shall file a copy of this Notice of Removal along with the Notice of Filing Notice of Removal (attached hereto as Exhibit "B") with the Clerk of the Circuit Court of Madison County, Alabama, from which this action is being removed.

25. DAI has not heretofore sought similar relief in this case.

26. Venue for removal is proper in this district and division pursuant to 28 U.S.C. § 1441(a) because this district and division embrace the Circuit Court of Madison County, Alabama, the forum from which the instant action is being removed.

27. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of rights to assert any defense or affirmative matter, whether pursuant to Federal Rule of Civil Procedure 8(c) or Federal Rule of Civil Procedure 12(b).

28. DAI reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, premises considered, Defendant Directory Assistants, Inc. requests the Court to take jurisdiction of this action and issue all necessary orders and process to remove this action from the Circuit Court of Madison County, Alabama.

/s/ Edward T. Rowe

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