

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

SAVANNAH BARGE LINE, INC.,)
)
Plaintiff,)
)
VS.) No. 02-1275
)
ACORDIA NORTHEAST, INC., d/b/a)
Acordia of Pittsburgh, and AMERICAN)
HOME ASSURANCE COMPANY,)
)
Defendants.)

ORDER

On November 25, 2002, Plaintiff Savannah Barge Line, Inc. filed a motion to remand this case to the Tennessee Chancery Court of Hardin County. This case arises from a collision involving Plaintiff's barge, the M/V Ashley M. Robinson, and a draw bridge located in Biloxi, Mississippi. Plaintiff was sued in Mississippi Circuit Court by the owner of the draw bridge seeking damages allegedly caused by the collision. The owner of the draw bridge is seeking \$55,000 in damages arising out of the alleged collision. Plaintiff subsequently filed an action against Defendants Acordia Northeast, Inc., Plaintiff's insurance broker, and American Home Assurance Company, Plaintiff's policy provider. Plaintiff alleges that the barge was covered by an insurance policy issued by Defendant American Home and alleges negligence against Defendant Acordia. Plaintiff believes that this Court

lacks subject matter jurisdiction as required under 28 U.S.C. § 1332.

Generally, a civil case brought in state court may be removed by a defendant to federal court if it could have been brought there originally." Gafford v. General Elec. Co., 997 F.2d 150, 155 (6th Cir. 1993). The burden of establishing federal jurisdiction rests "clearly upon the defendants as the removing party." Alexander v. Electronic Data Systems Corp., 13 F.3d 940, 949 (6th Cir. 1994). If the plaintiff's complaint specifies that she is seeking an unspecified amount in damages, then the "'preponderance of the evidence' ('more likely than not') test" will apply, and the Defendant must show, by a preponderance standard, that the plaintiff's allegations, if properly proved, will justify an award in excess of the jurisdictional minimum. Gafford, 997 F.2d at 158. The court is required to "'look to the complaint as it existed at the time the petition for removal was filed to determine' the matter of federal jurisdiction raised by the defendant's notice of removal." Alexander, 13 F.3d at 949 (quoting Cromwell v. Equicor-Equitable HCA Corp., 944 F.2d 1272, 1277 (6th Cir. 1991)). The federal courts strictly construe removal petitions in a manner that resolves all doubts against removal. Her Majesty The Queen v. City of Detroit, 874 F.2d 332, 339 (6th Cir. 1989).

Under 28 U.S.C. § 1332,

- (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between –
 - (1) citizens of different states; ...

It is undisputed by the parties that they are "citizens of different states" as required by §1332(a)(1). However, the parties dispute whether the amount in controversy exceeds

\$75,000.

Plaintiff filed this suit as a direct result of being sued in Mississippi Circuit Court.¹ Plaintiff believes that any damages it is found liable for by the Mississippi Court are covered by the insurance policy obtained from Defendants. Because of this direct relationship, the amount in controversy in the case filed in Mississippi Circuit Court directly impacts the amount Plaintiff claims against Defendants' insurance policy. The bridge owner is seeking damages in "excess" of \$55,000. Defendants construe the word "excess" to include at least \$20,001 in costs, interest, attorneys fees and consequential damages, thereby satisfying the

¹The parties dispute the jurisdictional limitations of the Mississippi Circuit Court. More specifically, Defendants believe that the court has jurisdiction *only* over those matters that exceed \$75,000. If this were true, the only logical conclusion is that the amount in controversy exceeds the federal jurisdictional requirements of 28 U.S.C. § 1332. However, Plaintiff believes that the jurisdiction of the Mississippi Circuit Court is not limited to matters exceeding \$75,000.

The Mississippi Constitution, Article 6, § 156 provides:

The circuit court shall have original jurisdiction in all matters civil and criminal in this state not vested by this Constitution in some other court, and such appellate jurisdiction as shall be prescribed by law.

The Mississippi Code Annotated § 9-7-81 provides:

The circuit court shall have original jurisdiction in all actions when the principal of the amount in controversy exceeds two hundred dollars...which are not exclusively cognizable in some other court, such as appellate jurisdiction as prescribed by law.

In short, the circuit court has, depending on the amount in controversy, concurrent jurisdiction with statute created courts such as the justice court and county court. As long as the amount in controversy exceeds \$200, the circuit court has jurisdiction. The case pending in Mississippi Circuit Court, where damages of \$55,000 are sought, is within the jurisdiction of that court and has no conclusive impact upon this matter.

requirements for subject matter jurisdiction under 28 U.S.C. § 1332. However, this position is not supported by any facts set forth in Defendants' reply briefs. Defendants' point to no facts that would increase the amount in controversy in the Mississippi case above \$75,000, and consequently, the amount in controversy in the present action would not exceed \$75,000. Rather, Defendants' simply make assumptions as to costs and expenses, liquidated damages, and consequential damages. As noted, the federal courts strictly construe removal petitions in a manner that resolves all doubts against removal. Her Majesty The Queen, 874 F.2d 332, 339 (6th Cir. 1989).

Defendants have also interpreted Plaintiff's complaint as alleging a claim for damages under Tennessee's bad faith statute. The relevant statement in Plaintiff's complaint is that Defendants "may not rightfully deny coverage." If this claim exists, Defendants believe that the total damages sought would exceed \$75,000. However, this statement does not rise to an allegation of bad faith. Tennessee Rule of Civil Procedure Rule 8.05 specifically addresses this issue stating, "Every pleading stating a claim or defense relying upon the violation of a statute shall, in a separate count or paragraph, either specifically refer to the statute or state all of the facts necessary to constitute such breach so that the other party can be duly apprised of the statutory violation." A clear reading of Plaintiff's complaint does not support the conclusion that a claim has been made under the Tennessee bad faith statute. This is further supported by Plaintiff's statement that such a claim was not made. Based on the foregoing discussion, Defendants have failed to show, by a preponderance of the evidence,

that the amount in controversy exceeds \$75,000.

Alternatively, Defendants believe the Court has federal question jurisdiction because the alleged collision at issue in this case occurred in navigable waters. In short, Defendants' claim the insurance policy is a maritime policy, covering traditional maritime activities, and the court has subject matter jurisdiction under 28 U.S.C. § 1333. However, § 1333 contains a savings clause. "Courts have consistently interpreted the "saving" clause to preclude removal of maritime actions brought in state court and invoking a state law remedy, provided there is no independent federal basis for removal, such as diversity jurisdiction." In re Chimenti, 79 F.3d 534, 538 (6th Cir. 1996). The Chimenti Court explained that, "[t]his makes sense, since the entire purpose of the saving clause was to give claimants pursuing a common-law remedy the ability to choose their forum, and such purpose would be completely diluted if defendants were allowed to remove saving-clause actions just like any other federal action." Id. The Supreme Court has stated:

We have previously refused to hold that admiralty claims, such as a limitation claim, fall within the scope of federal question jurisdiction out of concern that saving to suitors actions in state court would be removed to federal court and undermine the claimant's choice of forum. Romero v. International Terminal Operating Co., 358 U.S. 354, 371-372 (1959). We explained that to define admiralty jurisdiction as federal question jurisdiction would be a "destructive oversimplification of the highly intricate interplay of the States and the National Government in their regulation of maritime commerce." Id. at 373.

Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 455 (2001).

While no clear position has been presented by the Supreme Court, two courts of appeals have squarely faced the issue. They have held that admiralty and maritime claims

are not removable to federal court unless there exists some independent basis, such as diversity of the parties, for federal jurisdiction. See Servis v. Hiller Systems Inc., 54 F.3d 203, 206-07 (4th Cir. 1995), cert. denied, 116 S. Ct. 799 (1996); Linton v. Great Lakes Dredge & Dock Co., 964 F.2d 1480, 1488 (5th Cir.), cert. denied, 506 U.S. 975 (1992); In re Dutile, 935 F.2d 61, 62-63 (5th Cir. 1991) (relying on Romero and relied on by both Servis and Linton).

In summary, the savings to suitors clause requires some independent basis for subject matter jurisdiction when a plaintiff chooses to pursue a claim in state court. Accordingly, this Court does not have subject matter jurisdiction under 28 U.S.C. § 1333. Defendants' have failed to show by a preponderance of the evidence that Plaintiff's allegations, if proven, will justify an award in excess of the jurisdictional minimum required by 28 U.S.C. § 1332. Accordingly, this Court does not have subject matter jurisdiction under § 1332. Based on the foregoing discussion, Plaintiff's motion to remand is GRANTED and the case is REMANDED to the Tennessee Chancery Court of Hardin County.

Defendant American Home Assurance has filed a counter-claim against Plaintiff and a cross-claim against Defendant Acordia. Defendant American Home asserts that the Court has jurisdiction under 46 U.S.C. § 740 and 28 U.S.C. § 1333. Even though the Court has determined that the underlying action should be remanded, Defendant American Home requests that the Court retain jurisdiction over the counter-claim and cross-claim under 28 U.S.C. § 1441(c). Section 1441(c) gives this Court the discretion to retain jurisdiction and

determine all issues, or, in the alternative, remand the entire civil action to state court when state law predominates, even though federal question jurisdiction would have existed if the action were brought originally in federal court. Section 1441(c) provides:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

28 U.S.C. § 1441 (c). Courts have relied upon the Supreme Court's opinion in American Fire & Casualty Company v. Finn, 341 U.S. 6 (1951) to define "separate and independent" claims under § 1441(c). The Finn Court stated that “where there is a single wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action.” 341 U.S. at 14. Under this analysis, the counter-claim asserted by Defendant American Home is not “separate and distinct.” By Defendant American Home’s own statements, the facts from the state-claims are interlocked with those set forth in the counter-claim. All claims set forth by the parties involved surround the same fact and transactions. Therefore, § 1441(c) is inapplicable to the present case. See Broad, Vogt & Conant, Inc. v. Alstom Automation, Inc., 186 F. Supp. 2d 787 (E.D. Mich. 2002).

Where a court dismisses an action for lack of federal subject matter jurisdiction, it may nonetheless adjudicate a counterclaim presenting an independent basis for federal jurisdiction. Niagara Mohawk Power Corp. v. Tonawanda Band of Seneca Indians, 93 F.3d 747, 753 (2nd Cir. 1996). However, in Switzer Brothers, Inc. v. Chicago Cardboard Co., 252

F.2d 407, 410 (7th Cir. 1958) the Court held, “[b]ut it is apparent in those exceptional cases where a counterclaim may survive the jurisdictional failure of a complaint that at least three premises must exist. Jurisdiction must exist within the scope of the allegations of the counterclaim; the claim made in the counterclaim must be independent of that made in the main case; and, lastly, affirmative relief must be sought.” See also Manufacturers Casualty Ins. Co. v. Arapahoe Drilling Co., 267 F.2d 5, 7 (10th Cir. 1959). Because the court has already determined that under § 1441(c), the Defendant American Home’s counter-claim is not “separate and independent,” it follows that the counter-claim is not “independent of that made in the main case.” Furthermore, the Court believes that judicial economy and efficiency would be better achieved by remanding the counter-claim and cross-claim because these claims arise from the same accident and insurance contract at issue. Based on the foregoing discussion, Defendant American Home’s counter-claim and cross-claim are REMANDED to the Tennessee Chancery Court of Hardin County.

In summary, Plaintiff’s motion to remand is GRANTED and the entire action, including the counter-claim and cross-claim, is REMANDED to the Chancery Court of Hardin County.

IT IS SO ORDERED.

JAMES D. TODD
UNITED STATES DISTRICT JUDGE

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