



The Congregation Of Beth Israel Of Mahoney City, PA v. Congregation Of Beth Israel Of Mahoney C

2017 | Cited 0 times | M.D. Pennsylvania | August 7, 2017

UNITED STATES DISTRICT COURT FOR MIDDLE DISTRICT OF PENNSYLVANIA
CONGREGATION OF ISRAEL OF MAHANOEY CITY,

Plaintiff,

CONGREGATION EITZ CHAYIM OF DOGWOOD

(JUDGE MARIANI)

MEMORANDUM OPINION

I. INTRODUCTION Presently previously Pleas Schuylkill Pennsylvania. follow, will

II. PROCEDURAL BACKGROUND FACTUAL ALLEGATIONS

glass Complaint, Plaintiff, Israel originally 1903 Families located Pennsylvania, ,m glass

originally installed built Plaintiff located (Id. ,m 10-11). In 1990s,

place several

THE THE THE BETH

PA,

v.

PARK,

Defendant.

3:16-cv-1671

before the Court is a Motion to Remand the above captioned matter which was removed to this Court from the Court of Common of County,



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For the reasons that this Court grant the Motion to Remand.

AND This action arises from a dispute over a number of stained windows. According to the Beth Congregation, is a nonprofit corporation

incorporated in by a number of Jewish in Mahanoy City,

and the surrounding area. (Doc. 1-6 at 2, 9). The stained windows at the heart of this case were in a synagogue by in 1923 and

in Mahanoy City. at the the synagogue ceased being used as an active of worship, but the nonprofit continued to be operated by

also Plaintiff. In 2006,

oral located 2010, allegedly all

glass least installed

Island, (Id. Plaintiff subsequently filed Pleas Schuylkill Pennsylvania, 2015. Plaintiff filed Complaint exactly later. Complaint following law claims I), II), replevin

III), oral IV),

"in \$75,000.00, 2010, alternative, Order

all Israel (Id.). 11-V expressly pleaded alternative. 30,

On Plaintiff filed Complaint filed

Removal,

"[t]he Complaint

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I f l f i decedents of those interred in a nearby cemetery which was owned by (Id. at

12-13). Defendant, Eitz Chayim Congregation, another nonprofit corporation, visited Mahanoy City



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and, pursuant to an contract, took possession of some pews and prayer books in the synagogue. (Id. 3, 14). Then, in Defendant

returned and, without permission, took of the Mahanoy City synagogue's stained windows. (Id. 15). At some of the windows were then in Defendant's synagogue in Long New York. 18).

a praeceipe in the Court of Common of County, on August 11, (Doc. 1 1). a

one year (Doc. 1 7). The contained the state against Defendant: conversion (Count conspiracy to defraud (Count (Count breach of contract (Count and unjust enrichment (Count V). (Doc. 1-6). Each count seeks damages the sum of with interest from January 31, and costs; or in the an requiring the Defendant, Eitz Chayim Congregation, at its expense, to remove the Windows from its synagogue and to return of the Windows to Beth Congregation." Moreover, Counts are

in the (Id. 38, 47, 51).

the same day its in state court, Defendant their Notice of (Doc. 1), based on the diverse citizenship of the parties. With respect to the amount in controversy requirement, the Notice states that estimates

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\$75,000, Complaint also

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i I 1 Complaint also

\$75,000, exclusive costs." (Id. alleges Plaintiff previously

\$100,000 Plaintiff valued \$192,500. (Id. Finally, \$75,000,

claims \$75,000. (Id. On 2016, Plaintiff filed presently

removal lacks original

Ill. ANALYSIS Title "[e]xcept expressly civil

original



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place pending." U.S.C. One jurisdictional civil properly federal

value \$75,000, exclusive States." U.S.C. that the damages are but the states that the amount is subject to

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discovery and the seeks the return of the windows, and the preponderance of the evidence demonstrates that the matter in controversy exceeds of interests and 14). The Notice further that had asserted that the windows are worth more than in its communication with Defendant and that hired an appraiser who the windows at at 15). the Notice stated that because each Count seeks the aggregation of the exceed 16).

September 16, the Motion to Remand that is before this Court and asserted that was improper because this Court jurisdiction over the matter. (Doc. 11).

Section 1441 of 28 of the United States Code provides, in part, that as otherwise provided by Act of Congress, any action brought in a State court of which the district courts of the United States have jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the where such action is 28 § 1441 (a).

basis on which a action may be removed to court is "where the matter in controversy exceeds the sum or of of interest and costs, and is between ... citizens of different 28 § 1332(a)(1).

3 In

only "in value \$75,000, exclusive costs." On removal relevant If removal civil

initial pleading shall

removal initial pleading

relief;

State

removal

U.S.C. "[i]t settled federal removal all litigation, properly federal court." 507

2007). initial Plaintiff's Complaint Complaint alternatively relief glass Pennsylvania allow



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unliquidated See Pa. P. ("Any pleading the case at hand, there is no dispute that the parties are citizens of different states. (Doc. 12 at 4). Thus, the issue before this Court is whether the amount controversy exceeds the sum or of of interest and that point, the procedure for provides, in part, that

(2) of a action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the

be deemed to be the amount in controversy, except that-- {A) the notice of may assert the amount in controversy if the

seeks-- {i) nonmonetary or {ii) a money judgment, but the practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and {B) of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a). 28 § 1446(c). Further, is now in this [circuit] that the party asserting

jurisdiction in a case bears the burden of showing, at stages of the

that the case is before the Frederico v. Home Depot, F.3d 188, 193 (3d Cir.

As an matter, the Court is satisfied that the sum demanded in

cannot be deemed the amount in controversy under section 1446(c)(2). First, the

demands nonmonetary in the form of the return of the stained windows. Second, does not a demand for a specific sum of money in cases of damages. R. Civ. 1021(b)

4 relief unliquidated shall claim falls allow

removal. U.S.C. Accordingly, falls

\$75,000. U.S.C. 507 plaintiff challenges removal, "both

Owens, S. 190 (2014). In claim recoverable realistic. should fanciful, simply wishful policy limit will

403 2004). "The low

claim, reasonable value litigated.'" 2002)

In appraisal values glass \$192,500.



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"clearly applicable

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I { f I t i demanding for damages not any specific sum."). Thus, this case within both the statutory exceptions which a defendant to assert the amount in controversy in its notice of 28 § 1446(c)(2)(A)(i)-(ii). it now

to Defendant to show, by a preponderance of the evidence, that the amount in controversy exceeds 28 § 1446(c)(2)(B); Frederico, F.3d at 193.

When a the amount in controversy asserted by the defendant in a notice of sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied." Dart Cherokee Basin Operating Co. v. 135 Ct. 547, 554, L. Ed. 2d 495 determining whether the has met the amount in controversy requirement, "estimations of the amounts must be The inquiry be objective and not based on 'pie-in-the-sky,' or amounts, because otherwise the to diversity jurisdiction be frustrated." Samuel-Bassett v. KIA Motors Am., Inc., 357 F.3d 392, (3d Cir. court must measure the amount 'not ... by the end of an open-ended but rather by a reading of the of the rights being

Werwinski v. Ford Motor Co., 286 F.3d 661, 666 (3d Cir. (quoting Angus v. Shiley Inc., 989 F.2d 142, 146 (3d Cir. 1993)).

an effort to meet its burden, Defendant has submitted an report which the stained windows at (Doc. 27 at 7). Defendant argues that the report satisfies the preponderance of the evidence standard." (Doc. 26 at



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"limiting Specifically,

physical potentially

calculated

(Id.). Indeed, elsewhere "not personally physically listed personal "appraisal

black/white color (Id.

"[t]here installed Israel

"only installed Chayim" "[t]he

\$192,500, 10-12).

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I i l 11). close inspection of the report, however, the Court has significant reservations about assigning it much weight. The report itself, which was commissioned by Plaintiff before litigation began, identifies several conditions." (Doc. 27 at 6). the report notes that

An extraordinary assumption was used in the analysis, research, and determination that the removed and appropriated stained glass windows were identified correctly. No personal or inspection prohibited an accurate description of condition of the personalty. An extraordinary assumption was made that since the windows have been reused, they are in good condition. No onsite visit prevented the accurate measurement of the windows. An extraordinary assumption of measurement was made from existing photographs. Measurements were from brick/mortar counts and objects-of-known-size represented in the photographs.

in the report the appraiser noted that she had or inspected or recorded the property," and that the [was) produced using past and present photographs, photographs, and Google Maps." at 4).

Further, the appraiser was unsure of how many windows were at issue, noting that were between fifteen (15) and twenty-one (21) windows at Beth Congregation." (Id. at 9). Further, the report states that ... eight (8) windows ... have been at Congregation Eitz and that location of the remaining seven (7) to thirteen (13) windows is unknown." (Id.). The appraised value of however, is based on the



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aggregated value of twenty-one windows. (Id. at

6 limitations formulation appraisal,

\$75,000. 1

While glass value \$75,000,

simply credible allow

"in Congressional limit

resolved remand." 403. failed value glass

\$75,000.

alternatively \$75,000 Plaintiffs Complaint. 9-10). Specifically, Plaintiffs Complaint Plaintiff "has loss \$75,000.00,

will available time."

Plaintiff clearly limited Complaint \$75,000. 9-10).

implying poorly abilities Indeed, value physical necessarily several limitations

I J ! t i Given these and the "extraordinary assumptions" made in the of the the Court cannot say that this report shows by a preponderance of the evidence that the amount in controversy exceeds it may be that the stained windows in question do have an aggregate that exceeds Defendant has not provided the Court with enough evidence to the Court to make such a determination by a preponderance of the evidence. As the Third Circuit has noted order to carry out the intent to jurisdiction in diversity cases, doubts must be in favor of Samuel-Bassett, 357 F.3d at

Here, the Court finds that Defendant to show that the of the stained windows in question exceed

Nevertheless, Defendant argues that this Court can find that the amount in controversy exceeds on the basis of statements made in (Doc. 26 at 2-3, Defendant points to paragraph twenty-one in

which states that suffered a estimated at the exact amount of which be determined through the course of discovery, as the Windows are not for inspection at this (Doc. 1-6 21). According to Defendant, this is evidence that has not its to (Doc. 26 at This point, however, does not advance Defendant's position. As discussed above, because



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1 The Court, of course, is in no way that this reflects on the of the appraiser. the appraiser had to the property at issue without any inspection and

made assumptions. Moreover, she was candid about these in her report.

7 Rule Civil 1021 Plaintiff pleading relief entitled plead

Removal. U.S.C. "[e]vidence establishing plaintiff

allegation." S.

Plaintiff's Complaint limit \$75,000, alone

Upon close Plaintiff's Complaint, values

\$75,000. 2

Plaintiff

Accordingly, Plaintiff \$75,000, still establish

will Plaintiff's

IV. CONCLUSION outlined will Plaintiff's Order follows.

Removal individually \$75,000 total \$75,000. 1J

11-V expressly pleaded lacks

I l • r I Pennsylvania of Procedure (b) prohibits from a specific sum when seeking for unliquidated damages, Defendant was to the amount in controversy in its Notice of 28 § 1446(c)(2)(A). However,

the amount is required by§ 1446(c)(2)(B) ... when the contests, or the court questions, the defendant's Dart Cherokee Basin Operating Co., 135 Ct. at 554. Thus, even assuming that does not its damages to

that fact cannot carry the day.

a reading of no statement contained therein the case in excess of Thus, has made no admission that the amount in controversy exceeds the statutory requirement. even if it is true that did not cap its damages at it is Defendant's burden under section 1446(c)(2)(B) to



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damages by a preponderance of the evidence. Because Defendant has not done so here, the Court grant Motion to Remand.

For the reasons above, this Court grant Motion to Remand, (Doc. 11). A separate

2 The Notice of states that each of the five counts seeks damages of and therefore the amount in controversy exceeds (Doc. 1 at 16). Defendant, however, does not raise this argument again in its brief. Nevertheless, because Counts are in the alternative, the Court finds this argument, to the extent that it is not waived, merit.

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