



Welk Resort Group, Inc. v. Newton Group Transfers, LLC et al

2018 | Cited 0 times | S.D. California | February 6, 2018

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

WELK RESORT GROUP, INC.,

Plaintiff, v. NEWTON GROUP TRANSFERS, LLC; THE NEWTON GROUP ESA, LLC,

Defendants.

Case No.: 3:17-cv-00990-BEN-MDD

ORDER MOTION TO DISMISS

Newton Group Transfers, LLC and The Newton Group ESA motion is GRANTED.

BACKGROUND 1 This diversity action arises out of the alleged interference with contractual relations between Plaintiff Welk Resort Group, In timeshare customers by Defendant Newton. Welk is a corporation, organized and existing under the laws of the

1 The following overview of the facts are drawn from the allegations of Complaint (Docket No. 1). The Court is not making findings of fact. State of California, with its principal place of business in the State of California. Welk develops vacation ownership properties in California, Missouri, and Cabo San Lucas, Mexico. Welk also sells timeshare ownership.

Both Newton Group Transfers, LLC and The Newton Group, LLC are limited liability companies organized and existing under the laws of the State of Michigan.

In essence, Welk alleges that since approximately October 2016, Newton has been, inter alia timeshare owners, which includes sending unsolicited and knowingly fraudulent and

misleading correspondence 13.) As a result of the alleged wrongful conduct, Welk claims [with its customers] has become more difficult and expensive and i monetary and non-monetary damages, including reputational damage and the expenditure

(Id. ¶ 2.)



Welk Resort Group, Inc. v. Newton Group Transfers, LLC et al

2018 | Cited 0 times | S.D. California | February 6, 2018

Subsequently, Welk filed this action against Newton asserting three claims for relief: (1) interference with contractual relations, (2) violation of the California Vacation Ownership and Time-Share Act, and (3) Violation of the California Unfair Competition Law. for failure to establish diversity jurisdiction and for failure to state a claim.

DISCUSSION

Stock W., Inc. v. Confederated Tribes of the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989) (quoting Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 374, (1978). Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant can move a court to dismiss an action for lack of subject matter jurisdiction. Fed. R. Civ. burden to establish jurisdiction in a motion to dismiss for lack of subject matter

jurisdiction. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994) citations omitted).

A Rule 12(b)(1) 2

jurisdictional attack may be facial or factual. White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). A defendant presenting a facial attack asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. See Safe Air v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). A Rule 12(b)(1) motion will be granted if, on the face of the complaint, and when considered in its entirety, the complaint fails to allege facts sufficient to establish subject matter jurisdiction.

Acc , federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332 (a)(1) (diversity jurisdiction based on claims between citizens of different states). (Compl. ¶ 8.) To establish federal jurisdiction under § 1332(a)(1), the proponent must allege (1) the parties are completely diverse, and (2) the amount in controversy exceeds \$75,000. Naffe v. Frey, 789 F.3d 1030, 1039 (9th Cir. 2015) (citing 28 U.S.C. § 1332(a)(1); McNutt v. Gen. Motors Acceptance Corp. of Ind., 298 U.S. 178, 189 (1936)).

Newton only challenges the existence of the second requirement. It argues that well settled that a general averment that the damages exceed the minimum jurisdictional

limit is sufficient, and that a request for injunctive relief alone can be sufficient to meet 2

unless otherwise stated. agrees with Newton that Welk has not met its burden to establish the amount in controversy.

test to determine whether a s amount in controversy requirement where, as here, a plaintiff files an action in federal court. Naffe, 789 F.3d at 1039 (citing Pachinger v. MGM Grand Hotel Las Vegas,



Welk Resort Group, Inc. v. Newton Group Transfers, LLC et al

2018 | Cited 0 times | S.D. California | February 6, 2018

Inc., 802 F.2d 362, 363 64 (9th Cir. 1986) (additional the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. Id. at 1040 (quoting St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938)).

the legal certainty test makes it very difficult to secure a dismissal of a case on the ground that it does not appear to satisfy the jurisdictional amount requirement. Id. at 1040. It identified three situations that when the terms of a contract limit the plaintiff's possible recovery; 2) when a specific rule of law or measure of damages limits the amount of damages recoverable; and 3) when independent facts show that the amount of damages was claimed merely to obtain federal court jurisdiction. Id. (citing Pachinger, 802 F.2d at 364).

Court finds the third situation applies. In short controversy exceeds the sum or value of \$75,000 suggest it could meet the amount in controversy. (Compl. ¶ 8.) Although Welk alleges

interference with contractual relations, it does not actually identify any specific contracts that were allegedly lost or interfered with (or even a specific amount of damages as a result). Nor does it specify any amount of damages related to its alleged reputational clientele. (Id. ¶ 36.) Therefore, without any indication of actual breached contract,

expenditures, the Court concludes that it appears to a Naffe, 789 F.3d at 1040.

The test for determining is the pecuniary result to either party which the judgment would directly produce. In re Ford Motor Co./Citibank (S. Dakota), N.A., 264 F.3d 952, 958 (9th Cir. 2001) (citing Ridder Bros. Inc., v. Blethen, 142 F.2d 395, 399 (9th Cir. 1944)). In other words, where the value of a plaintiff's potential recovery . . . is below the jurisdictional amount, but the potential cost to the defendant of complying with the injunction exceeds that amount, it is the latter that represents the amount in controversy for jurisdictional purposes. Id. Thus, in order for rule, it must appear from the face of the complaint that the potential cost to Newton to comply with any resulting injunction exceeds \$75,000. Id.

tising, and from encouraging

However, reviewing the factual allegations of

here is simply a dearth of factual allegations to

Finally, Welk argues that because it is requesting punitive and exemplary damages, it cannot be said with legal certainty that it would not be entitled to recover the jurisdictional amount. The Court disagrees. Indeed, if all a plaintiff had to allege to meet the amount in controversy was assert punitive or exemplary damages, almost no suit, no matter how small, could meet the jurisdictional



Welk Resort Group, Inc. v. Newton Group Transfers, LLC et al

2018 | Cited 0 times | S.D. California | February 6, 2018

requirement, which would fundamentally violat[e] . . . the principle underlying the jurisdictional amount requirement to keep small diversity suits out of federal court. In re Ford Motor Co., 264 F.3d at 961.

In sum, the Court finds Welk has failed to establish diversity jurisdiction and 3

Fed. R. Civ. P. 12(b)(1). However, the Court shall grant Plaintiff an opportunity to file an amended pleading that corrects the deficiencies identified in this Order.

CONCLUSION Defendant motion to dismiss is GRANTED DISMISSED without prejudice for lack of subject matter jurisdiction. amended complaint, if any, is due no later than seven (7) days from the date of this

Order.

IT IS SO ORDERED.

Dated: February 6, 2018

3 Because the Court finds subject matter jurisdiction lacking, it need not address

