

U. S. DISTRICT COURT
Southern District of Florida

Daniel T. K. Hurley
U. S. District Judge

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From: Judge Hurley's chambers

Date: June 19, 2003

Description:

Case No. 03-80515-CIV-HURLEY, Johnson v. Max

Total Pages Including cover sheet:

4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80515-CIV-HURLEY/LYNCH

KATY JOHNSON,

Plaintiff,

v.

TUCKER MAX,

Defendant.

ORDER SETTING EXPEDITED BRIEFING SCHEDULE

THIS CAUSE is before the court upon review of the defendant's notice of removal, defendant's motion to dismiss plaintiff's complaint, and defendant's motion to dissolve the injunction issued in the State Court.

As an initial matter, prudence counsels that the court verify its jurisdiction. "A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises." Fitzgerald v. Seaboard Sys. R.R., Inc., 760 F.2d 1249, 1251 (11th Cir. 1985) (citing Philbrook v. Glodgett, 421 U.S. 707 (1975)). "As a threshold matter, we must determine the source of our jurisdiction. We must inquire *sua sponte* into the source of our jurisdiction whenever it might be in question." Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1439 (11th Cir. 1998) (citing Miscott Corp. v. Zarembo Walden Co., 848 F.2d 1190, 1192 (11th Cir. 1988)).

Diversity jurisdiction exists where the suit is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs. See 28 U.S.C. § 1332(a). "Where . . . the plaintiff has not pled a specific amount of damages, the removing defendant must

prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional requirement.” Williams v. Best Buy Co., Inc., 269 F.3d 1316, 1319 (11th Cir. 2001). “If the jurisdictional amount is not facially apparent from the complaint, the court should look to the notice of removal and may require evidence relevant to the amount in controversy at the time the case was removed.” Id. By the same token, the plaintiff should have an opportunity to respond and make such representations as she deems appropriate. See, e.g., Federated Mut. Ins. Co. v. McKinnon Motors, LLC, 329 F.3d 805, 808 (11th Cir. 2003) (stating that plaintiff’s attorney’s representations as officers of the court that plaintiff will not seek damages in excess of the jurisdictional amount are entitled to deference).

To this end, the court will request that the parties brief the issue of whether this court possesses diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1332 or federal question jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiff will be granted an opportunity to respond to the defendant’s brief. If and only if this court is satisfied that it has subject-matter jurisdiction over this matter will it then proceed to consider defendant’s motion to dissolve the injunction.

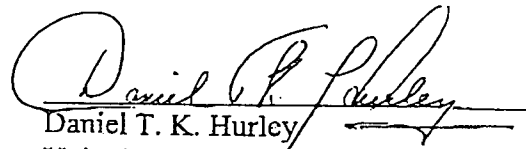
Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. Defendant is **ORDERED** to file with the court by **Monday, June 30, 2003**, a brief with any attached “summary-judgment-type” evidence, Williams, 269 F.3d at 1319, demonstrating the court’s subject-matter jurisdiction.
2. Thereafter, plaintiff shall have until **Thursday, July 10, 2003** to file a response to the defendant’s brief, containing similar “summary-judgment-type” evidence,

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demonstrating the court's subject-matter jurisdiction, or lack thereof. Plaintiff may also, within the time limitations set forth in 28 U.S.C. § 1447(c), file a separate motion to remand the case.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida this 19th day of June, 2003.


Daniel T. K. Hurley
United States District Judge

Copies provided to:

Michael I. Santucci, Esq.
John C. Carey, Esq.