

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS SMITH,	:	
	:	
Plaintiff	:	Civil Action 2:09-cv-780
	:	
v.	:	
	:	
STATE FARM FIRE AND CASUALTY COMPANY,	:	Magistrate Judge Abel
	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court pursuant to Plaintiff's Motion to Remand (Doc. 6). Plaintiff filed this action in the Court of Common Pleas of Jefferson County, Ohio on August 6, 2009 (Doc. 3). The Complaint alleged that Plaintiff Thomas Smith's home and its contents had been destroyed in a fire in January 2009, that he had been covered by an insurance policy issued by Defendant, that this loss had been covered under that policy, and that State Farm had refused, in bad faith, to pay for the loss. He prayed for judgment in an amount exceeding \$25,000 in compensatory damages and the same in punitive damages. Defendant removed the action to this court on September 4, 2009, alleging diversity jurisdiction under 28 U.S.C. §1332.

Plaintiff has now moved to remand to state court (Doc. 6). He argues that an

action can be properly removed to federal court based upon diversity jurisdiction only where the complaint itself shows that the plaintiff seeks an amount in excess of \$75,000, or where the defendant demonstrates by a preponderance of the evidence that the plaintiff's claims meet this amount. Plaintiff asserts that the defendant cannot do this. In the first place, he claims, the market value of his home (exclusive of the land) is assessed by his county auditor at \$27,100. Moreover, his claim is limited to his equity in the home, and his home is burdened with a mortgage in the amount of \$19,000. In the second place, he claims, any recovery of punitive damages would be capped by O.R.C. §2315.21(D)(5)(a) at twice the amount of compensatory damages. Therefore, even if he were to recover the maximum amount of his equity in the home, this amount in addition to the maximum punitive damages available would not exceed \$75,000.

Defendant rejoins that the amount for which it would potentially be liable under the insurance policy at issue is the cost to reasonably restore the house up to the applicable policy limits, not the market value of the property at the time of loss. It states that Plaintiff's policy had a limit of \$127,800.00 for the cost of structural repair, and attaches to its brief a copy of the notice it issued to Plaintiff stating that the house was a total loss and estimating his replacement cost at \$122,225.72 (Doc. 9-1). Defendant notes that, even if the remaining balance of Plaintiff's mortgage were deducted from this amount, the difference would exceed \$75,000. Thus, it argues, its potential exposure in this litigation satisfies the amount in controversy requirement of diversity jurisdiction.

Plaintiff has made no rebuttal to Defendant's *prima facie* showing as to the amount in controversy in this case, and it is not clear that this issue is still contested. Moreover, the Court is satisfied that Defendant has demonstrated by a preponderance of the evidence that the amount in controversy in this case is in excess of \$75,000. Consequently, Plaintiff's motion to remand this case to state court (Doc. 6) is **DENIED**.

s/Mark R. Abel
United States Magistrate Judge

