

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 17-888 JGB (DTBx)** Date July 14, 2017

Title *Crystal Moore v. CVS Health Corporation, et al.*

Present: The Honorable JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: Order (1) DENYING Plaintiff Crystal Moore’s Motion to Remand (Dkt. No. 11.); and (2) VACATING the hearing on July 24, 2017 (IN CHAMBERS)

Before the Court is a Motion to Remand by Plaintiff Crystal Moore (“Plaintiff”) (Dkt. No. 11.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After consideration of the papers filed in support of, and in opposition to the motion, the Court DENIES the motion.

I. BACKGROUND

On February 1, 2017, Plaintiff filed a complaint against Defendants CVS Health Corporation, CVS Pharmacy, Inc., Garfield Beach CVS, LLC No. 9698, and Does 1-60 (collectively “Defendants”) in the Superior Court of the State of California County of San Bernardino. (“Complaint,” Dkt. No. 1-1.) The Complaint alleged a single cause of action for negligence. (Id.) Defendants removed the action to this Court on May 8, 2017. (Dkt. No. 1.)

Plaintiff moved to remand the case on June 5, 2017. (“Motion,” Dkt. No. 11.) Defendant opposed the Motion on June 27, 2017. (“Opposition,” Dkt. No. 12.) Plaintiff replied on July 6, 2017. (“Reply,” Dkt. No. 13.)

II. LEGAL STANDARD

“Federal courts are courts of limited jurisdiction, possessing only that power authorized by the Constitution and statute.” Gunn v. Minton, 133 S. Ct. 1059, 1064 (2013) (internal citations omitted). As such, federal courts only have original jurisdiction over civil actions in which a federal question exists (federal question jurisdiction) or where there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 (diversity jurisdiction). 28 U.S.C. §§ 1331, 1332.

“The right of removal is entirely a creature of statute and a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.” Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 32 (2002) (internal citations and quotation marks omitted). Where Congress has acted to create a right of removal, those statutes are strictly construed against removal jurisdiction. Id.; Nevada v. Bank of Am. Corp., 672 F.3d 661, 667 (9th Cir. 2012). Under 28 U.S.C. § 1441(a), “[a] suit filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the suit.” Yad Abraham, LLC v. Disruptive Tech, Ltd., No. CV 17-4771 PA (AFMx), 2017 U.S. Dist. LEXIS 103760 (C.D. Cal. July 3, 2017). “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). “The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.” Kotulski v. FCA US LLC, No. 17-CV-0527-AJB-BGS, 2017 W.L. 2705429 at *2 (S.D. Cal. June 23, 2017) (quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).

III. DISCUSSION

Plaintiff challenges Defendants’ removal, contending the Court lacks subject matter jurisdiction in this matter because neither diversity jurisdiction nor federal question jurisdiction exist. (Mot. at 3-5.) As such, Plaintiff asserts the case must be remanded to the Superior Court for the County of San Bernardino. (Id. at 3.)

A. Federal Question Jurisdiction

“In determining federal question jurisdiction, the well-pleaded complaint rule ‘provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.’” Hunter v. Phillip Morris USA, 582 F.3d at 1039, 1042 (9th Cir. 2009) (quoting Fisher v. NOS Commc’ns (In re NOS Commc’ns), 495 F.3d 1052, 1057 (9th Cir. 2007)). To establish federal question jurisdiction, Plaintiff must show through its “well-pleaded complaint . . . that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” Proctor v. Vishay Intertech, Inc., 584 F.3d 1208, 1219 (9th Cir. 2009) (quoting Empire Healthchoice Assurance, Inc. v. McVeigh, 547 U.S. 677, 689–90 (2006)).

Here, Plaintiff's Complaint clearly states that it is "properly pleaded" and is "purely a state-law cause of action" not intending to invoke federal question jurisdiction under § 1331. (Reply at 5.) The Court agrees the Complaint asserts a single cause of action for negligence — a state law claim. Because the claim arises under state law and does not require resolution of federal law, the Court does not have federal question jurisdiction over this case.

B. Diversity Jurisdiction

"Under the plain terms of § 1441(a), in order to properly remove [an] action [defendant] must demonstrate that original subject-matter jurisdiction lies in the federal courts." Syngenta Crop Prot., 537 U.S. at 33. Here, Defendants purport to invoke the Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332. Under § 1332(a), "[t]he district courts . . . have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different states." 28 U.S.C. § 1332(a). In any case where subject matter jurisdiction is based on diversity, there must be complete diversity, i.e., all plaintiffs must have citizenship different than all defendants. Strawbridge v. Curtiss, 7 U.S. 267 (1806); Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 n. 3, (1996).

Generally, the amount in controversy claimed by a plaintiff in good faith will be determinative of the jurisdictional amount, unless it appears to a legal certainty that the value of the claim is less than \$75,000. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89, (1938). When the complaint does not demand an exact amount, the amount in controversy includes the amount of damages in dispute, as well as attorney's fees, if authorized by statute or contract. See Kroske v. US Bank Corp., 432 F.3d 976, 980 (9th Cir. 2005). If the amount in controversy is not easily ascertainable, "the removing defendant bears the burden of proving by a preponderance of evidence that the amount in controversy exceeds \$[75],000." Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 376 (9th Cir. 1997). However, "[t]he district court may consider whether it is facially apparent from the complaint that the jurisdictional amount is in controversy. . . . [or] may require parties to submit summary-judgment-type evidence relevant to the amount in controversy at the time of removal." (Id. at 377) (internal citations and quotation marks omitted).

Plaintiff does not assert an amount in controversy in her Complaint. (See generally, Compl.) Neither does Plaintiff address Defendant's argument that the jurisdictional threshold is met. (Opp'n at 2.) Therefore, in order to ascertain whether the amount in controversy requirement has been met, the Court looks to the allegations in the Complaint and the parties' respective contentions on the matter. Here, Plaintiff seeks damages for both mental and physical pain resulting from emergency care and treatment, and multiple hospital stays after her initial diagnosis. (Compl. at 3.) Plaintiff alleges that such damages resulted from serious heart issues, abnormal glucose levels, and respiratory problems, caused by Defendant's negligence. (Id.) Plaintiff also seeks damages for future treatments and expenses she will allegedly incur, the "cost of suit," and any relief a "[c]ourt may deem just and proper." (Compl. at 4.) Therefore, due to the severity of the alleged injuries and damages sought — including attorney's fees, the Court

finds it reasonably apparent that Plaintiff's prayer for relief satisfies the requirement under the provisions of §1332(a).

With respect to the diversity of citizenship requirement, Plaintiff contends complete diversity is lacking because both parties are citizens of California. (Mot. at 3, 4.) It is well established that an individual is a citizen of the state in which he or she is domiciled. See Gilbert v. David, 235 U.S. 561, 569 (1915) (holding a person is a citizen of the state in which she has her domicile, i.e., a permanent home where she intends to remain or to which she intends to return); Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001) ("A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return."). The citizenship of a corporation is both the place of incorporation and its principle place of business. 28 U.S.C. §1332(c)(1). For purposes of diversity jurisdiction, a limited liability corporation is a citizen of all states where its members are citizens. Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006).

Plaintiff asserts Defendant Garfield Beach CVS, LLC is a citizen of California, and thus the parties lack complete diversity as required under §1332(a). (Mot. at 3.) Plaintiff posits that a limited liability corporation ("LLC,") like Garfield Beach CVS, is a "business organization that shares characteristics of both corporations and partnerships," making it a "legal entity held separate and apart from the assets of its members." (Reply at 2.) To support this contention, Plaintiff cites Carden v. Arkona Assoc.'s, interpreting the holding as leaving the question of LLC citizenship as it relates to diversity jurisdiction unresolved. (Reply at 2 (citing 494 U.S. 185, 192, (1990).) However, Plaintiff's interpretation of Carden as to diversity jurisdiction under §1332(c) is misplaced.

In Carden, the Supreme Court held that for the purposes of diversity jurisdiction, citizenship reflects that of all the members or the several persons composing an association. 494 U.S. 185, 196 (internal citations omitted). While in Carden, the Supreme Court did not specifically state that LLCs were encompassed in the meaning of such associations, the Ninth Circuit has held that LLCs also reflect the citizenship of the states where its owners are citizens. See id; see also Johnson, 437 F.3d at 899 (collecting cases from other districts addressing the issue of whether or not LLCs hold separate citizenship from their owners for the purposes of diversity jurisdiction). Furthermore, the Ninth Circuit clearly outlined that treating LLCs as such is in line with the Supreme Court reasoning in Carden. Johnson, 437 F.3d at 899 (stating "[t]his treatment accords with the Supreme Court's consistent refusal to extend the corporate citizenship rule to non-corporate entities, including those that share some of the characteristics of corporations. . . . an LLC is a citizen of every state of which its owners/members are citizens.") (citing Carden, 494 U.S. at 189). As such, Plaintiff's interpretation of the provisions required under §1332(c) as they apply to LLCs runs contrary to binding precedent.

Here, there is no dispute that Defendants are organized in the state of Rhode Island, and are thus citizens of Rhode Island pursuant to § 1332(c)(1). (Dkt. No. 1-6.) The Notice of Removal along with the supplemental documents show Defendants CVS Pharmacy, Inc., and CVS Health Corporation are organized under the laws of the state of Rhode Island with their

principal place of business in Woonsocket, Rhode Island. (Id.; Mot. at 11-1.) Those documents further show, that Defendant Garfield Beach CVS is owned by CVS Pharmacy, Inc., and CVS Health Corporation. (Id.) While Plaintiff correctly states that Defendant Garfield Beach CVS is an LLC located in La Habra California, its citizenship reflects that of its owners, Defendants CVS Pharmacy, Inc., and CVS Health Corporation. Therefore, complete diversity of citizenship exists since all Defendants are citizens of Rhode Island and Plaintiff is a citizen of California. As such, the Court concludes it has subject matter jurisdiction over the matter pursuant to §1332(c)(1).

In sum, the Court concludes it has subject matter jurisdiction under diversity jurisdiction but not under federal question jurisdiction. Accordingly, the Court DENIES the Motion to Remand for lack of subject matter jurisdiction.

IV. CONCLUSION

For the reasons set forth above, Defendant's Motion is DENIED.

IT IS SO ORDERED.