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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YANTING ZHANG,

Plaintiff,

v.

SAFECO INSURANCE COMPANY OF
AMERICA, LEONARD BAINES and DOES
1-10,

Defendants.

No. C 12-1430 CW

ORDER DENYING
PLAINTIFF'S MOTION
TO REMAND

Defendant Safeco Insurance Company of America removed this breach of insurance contract action to federal court on the basis of diversity jurisdiction. Plaintiff Yanting Zhang moves to remand this case to the Contra Costa County superior court, pointing to the absence of complete diversity created by Leonard Baines as a named defendant. Safeco opposes the motion, arguing that Baines was fraudulently joined to defeat diversity. The matter was taken under submission and decided on the papers. Having considered all of the paper filed by the parties, the Court denies Plaintiff's motion to remand.

BACKGROUND

The following facts are taken from Plaintiff's complaint. On or about June 15, 2009, Plaintiff's home was vandalized. At the

1 time of the vandalism, Safeco insured Plaintiff's interest in the
2 property. Plaintiff submitted a claim to Safeco in the amount of
3 \$155,791 to recover the cost to repair the damage caused by the
4 vandalism. Safeco agreed to pay only a small portion of the loss
5 and withheld the money needed to repair Plaintiff's home which
6 remains unrepaired and uninhabitable. The loss was adjusted by
7 Defendant Leonard Baines, who determined the loss to be no more
8 than \$31,852. Baines and Plaintiff are citizens of California.
9 Safeco is incorporated in the State of New Hampshire with its
10 principal place of business in the State of Massachusetts. The
11 amount in controversy is more than \$75,000.

12 Baines knew the minimum cost to return Plaintiff's property
13 to its condition prior to the vandalism was not less than \$155,791
14 and knew that to deprive Plaintiff of the money needed to repair
15 her home would potentially cause her to lose her home and, as a
16 result, she would suffer severe and extreme emotional distress.
17 Baines nevertheless steadfastly and falsely claimed that the home
18 could be repaired for \$31,852. In estimating the cost of repairs
19 to be this false amount, Baines showed a reckless disregard for
20 the probability of causing severe and extreme emotional distress
21 to Plaintiff arising from the loss of her home. As a direct and
22 proximate result of Baines' conduct, Safeco withheld policy
23 benefits due under the insurance policy, the insured home was not
24 repaired, Plaintiff is in danger of losing her home and has
25 suffered severe and extreme emotional distress. The one claim
26 Plaintiff alleges against Baines is intentional infliction of
27 emotional distress (IIED).

28

LEGAL STANDARD

1
2 A defendant may remove a civil action filed in state court to
3 federal district court so long as the district court could have
4 exercised original jurisdiction over the matter. 28 U.S.C.
5 § 1441(a). Title 28 U.S.C. § 1447(c) provides that, if at any
6 time before judgment it appears that the district court lacks
7 subject matter jurisdiction over a case previously removed from
8 state court, the case must be remanded. On a motion to remand,
9 the scope of the removal statute must be strictly construed. Gaus
10 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong
11 presumption' against removal jurisdiction means that the defendant
12 always has the burden of establishing that removal is proper."
13 Id. Courts should resolve doubts as to removability in favor of
14 remanding the case to state court. Id.

15
16 District courts have original jurisdiction over all civil
17 actions "where the matter in controversy exceeds the sum or value
18 of \$75,000, exclusive of interest and costs, and is between . . .
19 citizens of different States." 28 U.S.C. § 1332(a). When federal
20 subject matter jurisdiction is predicated on diversity of
21 citizenship, complete diversity must exist between the opposing
22 parties. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-
23 74 (1978).

24
25
26 A defendant may remove a case with a non-diverse defendant on
27 the basis of diversity jurisdiction and seek to persuade the
28 district court that this defendant was fraudulently joined.

1 McCabe v. Gen. Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987).
2 "If the plaintiff fails to state a cause of action against a
3 resident defendant, and the failure is obvious according to the
4 settled rules of the state, the joinder of the resident defendant
5 is fraudulent." Id. The defendant opposing remand is entitled to
6 present facts showing the joinder to be fraudulent. Id.; Ritchey
7 v. Upjohn Drug Co., 139 F.3d 1313, 1318 (9th Cir. 1998) (where the
8 issue is fraudulent joinder, a court may look beyond the
9 plaintiff's complaint). The burden of the defendant is not to
10 show that the joinder of the non-diverse party was for the purpose
11 of preventing removal because "it is universally thought that the
12 motive for joining such a defendant is immaterial." Albi v.
13 Street & Smith Publ'ns, 140 F.2d 310, 312 (9th Cir. 1944).
14 Instead, the defendant must demonstrate that there is no
15 possibility that the plaintiff would be able to establish a cause
16 of action in state court against the alleged sham defendant. Id.

19 DISCUSSION

20 I. Scope of Employment

21 Safeco first argues that Baines cannot be held liable
22 individually because, when he was adjusting Plaintiff's claim, he
23 was acting as Safeco's employee. Safeco submits Baines'
24 declaration in which he states that, "at all times while I was
25 handling Zhang's claim arising out of the June 15, 2009 incident,
26 I was acting in my role as a Senior Claims Examiner for Safeco."

27 In California, an employee of an insurance company, acting
28 within the course and scope of his or her employment, cannot be

1 held individually liable as a defendant unless he or she acts for
2 his or her own personal advantage. Mercado v. Allstate Ins. Co.,
3 340 F.3d 824, 826 (9th Cir. 2003).

4 Plaintiff does not dispute that an employee or agent of an
5 insurance company, working within the scope of his or her
6 employment, cannot be held liable for a claim of IIED. Instead,
7 she argues that the allegations in her complaint control, and
8 there are no allegations that Baines worked as Safeco's employee.
9 Plaintiff further contends that the Court should not rely on
10 Baines' declaration because "there is no rule that a declaration
11 by an adverse party on an issue of fact resolves that issue of
12 fact."

13 Plaintiff is correct that a declaration, by itself, does not
14 resolve an issue of fact. However, Baines' declaration is
15 uncontested. Plaintiff has not submitted evidence raising a
16 dispute of fact regarding Baines' employment for Safeco and
17 whether he was working within the scope of that employment when he
18 investigated and adjusted her claim. Baines' uncontested
19 declaration is taken as true, at least for the purposes of this
20 motion to remand. See West America Corp. v. Vaughan-Bassett
21 Furniture Co., Inc., 765 F.2d 932, 936 (9th Cir. 1985) (taking as
22 true defendants' uncontested declaration about identity of Doe
23 defendants showing them to be fraudulently joined to establish
24 diversity). Therefore, even though Plaintiff has not alleged
25 Baines' relationship to Safeco in her complaint, the Court finds
26 that, during the time at issue, he was Safeco's employee working
27 within the scope of that employment.

28

1 Therefore, Safeco has met its burden to show that there is no
2 possibility that Plaintiff will be able to state a cause of action
3 against Baines in state court. Baines is fraudulently joined and
4 must not be considered for purposes of establishing diversity
5 jurisdiction. Diversity jurisdiction exists because Safeco and
6 Plaintiff, the two remaining parties, are citizens of different
7 states and the amount in controversy is more than \$75,000.
8 Plaintiff's motion for remand is denied. Furthermore, as
9 discussed below, Plaintiff has failed to allege a claim against
10 Baines upon which relief may be granted.

11 II. Failure to State a Claim Against Baines

12 The elements of a cause of action for IIED are (1) extreme
13 and outrageous conduct (2) intended to cause or done in reckless
14 disregard for causing (3) severe emotional distress and (4) actual
15 and proximate causation. Cervantez v. J.C. Penney Co., Inc., 24
16 Cal. 3d 579, 593 (1979), superseded by statute on other grounds as
17 stated in Melendez v. City of Los Angeles, 63 Cal. App. 4th 1, 7
18 (1998). The conduct must be so extreme as to "exceed all bounds
19 of that usually tolerated in a civilized community," id., and the
20 distress so severe "that no reasonable man in a civilized society
21 should be expected to endure it." Fletcher v. Western Nat'l Life
22 Ins. Co., 10 Cal. App. 3d 376, 397 (1970). "Behavior may be
23 outrageous if a defendant (1) abuses a relation or position which
24 gives him power to damage the plaintiff's interest; (2) knows the
25 plaintiff is susceptible to injury through mental distress; or
26 (3) acts intentionally or unreasonably with the recognition that
27 the acts are likely to result in illness through mental distress."
28 Pulver v. Avco Fin. Servs., 182 Cal. App. 3d 622, 637 (1986).

1 California courts have held that delay or denial of insurance
2 claims is not sufficiently outrageous to state a cause of action
3 for IIED. Coleman v. Republic Indem. Ins. Co. of California, 132
4 Cal App. 4th 403, 416-17 (2005).

5 Plaintiff argues that she has stated a claim for IIED because
6 her allegations meet the requirement of Judicial Council of
7 California Jury Instruction (CACI) 1603, which states that "the
8 defendant acted with reckless disregard in causing the plaintiff's
9 emotional distress if (1) the defendant knew that emotional
10 distress would probably result from his or her conduct, or (2) the
11 defendant gave little or no thought to the probable effects of his
12 or her conduct." Plaintiff points to Fletcher, 10 Cal. App. 3d at
13 394 and Younan v. Equifax, 111 Cal. App. 3d 498 (1980), to show
14 that a claim for IIED can be stated in connection with an
15 insurance claim. However, Fletcher and Younan are
16 distinguishable.

17 In Fletcher, the court found that an insurer and its claims
18 supervisor induced the plaintiff to surrender his disability
19 insurance policy and to settle a non-existent dispute by sending
20 the plaintiff a series of false and threatening letters and
21 applying economic pressure. Fletcher, 10 Cal. App. 3d at 392.
22 The defendants conceded that their conduct was deplorable and
23 outrageous. Id. In Younan, the court found that a claims
24 handling agency worked with the insurer deliberately to falsify
25 medical records so as to provide a basis upon which to deny an
26 insured's claim. Younan, 111 Cal. App. 3d at 515-16.

27 Here, there are no allegations of a plan to induce Plaintiff
28 to surrender her policy, to settle a dispute by sending her false

1 and threatening letters or of the falsification of medical records
2 to deny a valid claim. The allegations merely indicate that
3 Baines' opinion of the cost of repairing Plaintiff's house was
4 much lower than her estimate.

5 The facts of this case are not as egregious as those in
6 Coleman, 132 Cal. App. 4th at 407, 417, where the insurance
7 adjuster misled the claimants as to the applicable statute of
8 limitations and advised them not to obtain the services of an
9 attorney. The court held that even these acts, based on statutory
10 unfair settlement practices, did not constitute the type of
11 outrageous conduct that would support a cause of action for IIED.
12 Id. at 417; see also, Hailey v. California Physicians' Serv., 158
13 Cal. App. 4th 452, 474-76 (2007) (citing cases in which claims of
14 IIED against an insurer were rejected where the insurance company
15 refused to accept a settlement demand within policy limits, failed
16 to investigate a claim, accused the insured of "trying to put
17 something over on" it, or delayed or denied insurance benefits).
18 Here, too, Plaintiff's allegations against Baines do not rise to
19 the level of outrageous conduct that is necessary to state a claim
20 for IIED.

21 Plaintiff's argument that her pleading is sufficient because
22 she states the elements of CACI 603 is unpersuasive. She must
23 allege outrageous conduct on the part of Baines, not merely repeat
24 the elements of the cause of action. Similarly, her argument that
25 her pleading is "properly drafted" because it alleges
26 "outrageousness" is unpersuasive. It is the alleged conduct, not
27 the label of outrageousness, that is determinative.

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Based on the foregoing, Plaintiff's complaint has failed to state a claim for IIED against Baines.

CONCLUSION

For the foregoing reasons, diversity jurisdiction exists and Plaintiff's motion to remand is denied. The parties shall appear on Wednesday, June 27, 2012 at 2:00 pm for a case management conference.

IT IS SO ORDERED.

Dated: 5/23/2012



CLAUDIA WILKEN
United States District Judge