

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT LEXINGTON

PATRICIA L. MOBLEY,
Plaintiff,

V.

BURKE'S WESTGATE STORES, LLC,
Defendant.

CIVIL ACTION NO. 5:15-30-KKC

OPINION AND ORDER

*** **

This matter is before the Court on the plaintiff's motion to remand this matter to Montgomery Circuit Court (DE 22). Because the defendant has not established this Court's diversity jurisdiction by a preponderance of the evidence, the motion will be granted.

With this action, the plaintiff asserts that she slipped and fell in a store owned by the defendant and suffered severe personal injuries. She seeks damages for bodily injuries, pain and suffering, emotional distress and past and future medical expenses. The plaintiff filed this action in Montgomery Circuit Court and the defendant removed it to this court, asserting that this court has jurisdiction under 28 U.S.C. § 1332. That statute grants federal courts jurisdiction over matters in which the amount in controversy exceeds \$75,000 and where the dispute is between citizens of different states.

The plaintiff is a Kentucky citizen. The defendant has established that it is a Florida citizen. Thus, there is diversity of citizenship between the parties. The plaintiff moves to remand, however, arguing that the amount in controversy does not exceed \$75,000. In response, the defendant argues that the plaintiff has in no way indicated the amount of damages she seeks. It argues that "it does not appear that the Court lacks subject matter jurisdiction at this point in the litigation" because "it is not clear" that the amount in

controversy is \$75,000 or less. The defendant argues that, without something in the record indicating that the amount in controversy does not exceed \$75,000, the motion to remand is “premature.”

The problem is that it is the removing defendant’s burden to satisfy the amount-in-controversy requirement. *Everett v. Verizon Wireless, Inc.*, 460 F.3d 818, 822 (6th Cir. 2006). A defendant satisfies its burden by proving that it is “more likely than not” that the amount-in-controversy exceeds \$75,000. *Id.* Here, the defendant has not attempted to establish that it is more likely than not that the amount in controversy exceeds \$75,000. Instead, it argues that the plaintiff has not yet proved that the amount in controversy is \$75,000 or less so the motion to remand is premature.

Because the removing defendant has the burden of establishing this Court’s jurisdiction, the Court hereby ORDERS that the motion to remand (DE 22) is GRANTED and this matter is REMANDED to the Montgomery Circuit Court.

Dated November 30, 2015.



Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY