

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

CANDACE DUBOIS

CIVIL ACTION NO. 13-CV-134

VERSUS

JUDGE HAIK

SEARS ROEBUCK & COMPANY

MAGISTRATE JUDGE HANNA

REMAND RULING AND ORDER

On January 18, 2013, this case was removed to federal court from the 15th Judicial District Court, Parish of Lafayette, State of Louisiana on the basis of diversity jurisdiction. On March 13, 2013, the undersigned conducted a review of the pleadings and concluded that the requirements for diversity jurisdiction had not been satisfied. Specifically, the undersigned found that the requisite jurisdictional amount was not apparent from the petition¹, the removal notice, or the other pleadings filed as of that date because the facts alleged were not sufficient for a determination whether the amount in controversy exceeds the \$75,000.00 jurisdictional threshold requirement. The parties were ordered to file memoranda on the issue, with summary-judgment-type supporting evidence of an adequate jurisdictional amount in controversy. [Rec. Doc. 14]

¹In the petition, Plaintiff alleges that as the result of a trip and fall on the escalator at the Lafayette Sears store, she fell to the ground, injuring her back, right knee and right leg, suffering “extreme pain, discomfort and disability.” [Rec. Doc. 1-2, para. 21] She alleges she has been forced to undergo medical treatment and has suffered restrictions and limitations on her activities. [Rec. Doc., 1-2, para. 22] Plaintiff did not request a trial by jury.

The removing defendant Sears Roebuck & Company, along with CBS Corporation, responded to the briefing order as instructed on April 25, 2013, submitting evidence of Plaintiff Candace Dubois' execution of an "Irrevocable Stipulation and Agreement" declaring that the amount in controversy in this matter does not exceed the sum of \$75,000, and that she will "neither seek, nor accept an award of damages in this Court or State Court in Excess of \$75,000, exclusive of interest and costs." [Rec. Doc. 17-1, para. 2-3] The agreement includes Candace Dubois' agreement for the action to be remanded to state court. [Rec. Doc. 17-1, para. 4]

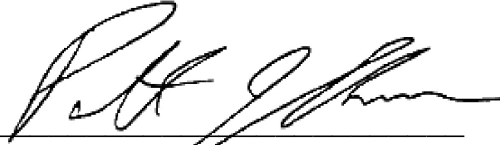
A federal court has the continuing duty to examine jurisdiction throughout a proceeding, concomitantly raising the issue *sua sponte* if need be. *United States v. Muhammad*, 165 F.3d 327, 330 (5th Cir.1999). Based on the facts presented and the stipulations by the parties made a part of the record, the undersigned determines that Plaintiff's claimed damages as articulated in the pleadings are not sufficient to meet the jurisdictional amount requirement, and therefore, the amount in controversy necessary to establish diversity jurisdiction has not been met and this case should be remanded to state court.

Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that this case is hereby

REMANDED to the Fifteenth Judicial District Court, Lafayette Parish, Louisiana.

Signed this 1st day of May, 2013, at Lafayette, Louisiana.

A handwritten signature in black ink, appearing to read "Patrick J. Hanna", written over a horizontal line.

Patrick J. Hanna
United States Magistrate Judge