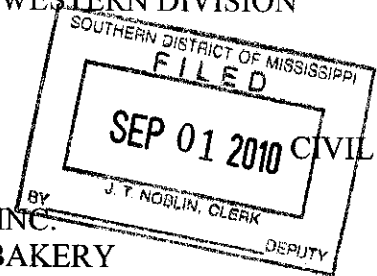


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JAMIE A. BROWN

PLAINTIFFS

v.



CIVIL ACTION NO. S:10CV145DCB-JMR

RYAN'S RESTAURANT GROUP, INC.
d/b/a RYAN'S GRILL BUFFET & BAKERY

DEFENDANTS

NOTICE OF REMOVAL

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, WESTERN DIVISION

Honorable Edward C. Walker
P.O. Box 1224
Natchez, MS 39121

ADAMS COUNTY CIRCUIT CLERK

Joe M. Davis
Valerie B. Hancock
RKUTLEDGE, DAVIS AND HARRIS
P.O. Box 29
New Albany, MS 38652

ATTORNEYS FOR PLAINTIFFS

In accordance with 28 U.S.C. §§ 1332, 1441 & 1446, Defendant Ryan's Restaurant Group, Inc., d/b/a Ryan's Grill Buffet & Bakery ("Ryan's" or "Defendant") files and serves this Notice of Removal, hereby removing this Action from the Circuit Court of Adams County, Mississippi to the United States District Court for the Southern District of Mississippi, Western Division. Defendant, appearing specially and for the sole and only purpose of effecting removal to this Court, states the following as grounds for removal:

1. On or about July 22, 2010, Plaintiff, putatively Mississippi citizen, filed this Action styled, "*Jamie A. Brown v. Ryan's Restaurant Group, Inc., d/b/a Ryan's Grill Buffet & Bakery*" and bearing the cause number 10-CV-0059-J.

2. On information and belief, no Defendant has been putatively served with process in this matter greater than 30 days from the date on which this case is being removed. Accordingly, this Notice of Removal is timely filed within 30 days of receipt of the pleading from which Defendant could ascertain that the case is properly removable in accordance with the provisions of 28 U.S.C. § 1446(b). Such removal is therefore timely under 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999).

3. Attached hereto as composite Exhibit 1 is a certified copy of the state court file from the Adams County Circuit Court which, pursuant to 28 U.S.C. § 1446(a), includes copies of all process, pleadings and orders putatively served on Defendant in this Action.

Diversity Jurisdiction

4. This Action could have been filed originally in the Court pursuant to 28 U.S.C. § 1332, as this Court has federal diversity jurisdiction of all claims asserted by Plaintiff against Defendant.

5. According to the Complaint, Plaintiff is a resident citizen of the State of Mississippi. *See Compl.* ¶ I.

6. Ryan's is a South Carolina corporation with its principal place of business in Greer, South Carolina. Ryan's is, therefore, a citizen only of the State of South Carolina for diversity jurisdiction purposes.

7. Accordingly, the controversy in said suit is, at the time of commencement thereof was, and at all times since has been a controversy between citizens of different states. There is, therefore, complete diversity of citizenship between Plaintiff and Defendant.

Amount in Controversy

8. Where a complaint as here does not request a specific amount in damages, the Fifth Circuit Court of Appeals, in *White v. FCI USA, Inc.*, 319 F. 3d 672, 675 (5th Cir. 2003), set forth the following procedure for determining whether the jurisdictional amount in controversy has been established:

In removal practice, when a complaint does not allege a specific amount in damages, the party invoking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount. The district court must first examine the complaint to determine whether it is “facially” apparent that the claims exceed the jurisdictional amount. If it is not thus apparent, the court may rely on “summary judgment-type” evidence to ascertain the amount in controversy.

Id.

9. The Fifth Circuit has also recognized that while plaintiffs are generally “masters of their complaints,” there is a potential for manipulation of federal jurisdiction by allowing a party to plead damages less than the jurisdictional amount “if their pleadings do not limit the actual damages they may ultimately collect.” *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 n. 14 (5th Cir.), *petition for reh’g denied*, 70 F.3d 26 (1995). Where no amount has been specifically pled in the complaint, the defendants may still establish federal jurisdiction by showing through a preponderance of the evidence that the amount in controversy exceeds the statutory requisite. *E.g., De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993).

10. If it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional minimum, then no strict proof on the part of the defendant is required. *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000). In conducting this analysis, the District Court may refer to the types of claims alleged by the plaintiff, as well as the nature of the damages sought. *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1336 (5th Cir. 1995). If the amount in controversy is not facially apparent from the allegations of the complaint, the court may also rely on legal arguments and related matters asserted in the removal notice which show that the amount in controversy does in fact exceed the required jurisdictional amount. *See Allen, supra*.

11. In determining whether jurisdiction is present for removal, the court considers the claims in the state court petition as they existed **at the time of removal**. *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 264 (5th Cir. 1995) (emphasis added). “In cases in which a plaintiff, by whatever means, seeks to reduce, rather than clarify, his demand **after** removal, remand for want of jurisdiction amount is barred.” *Starek v. U.S. Auctions.com, LLC*, 2006 WL 3858473 *1 (S. D. Miss. Dec. 30, 2006) (citing *Marcel v. Pool Co.*, 5 F.3d 81, 85 (5th Cir. 1993)) (emphasis added).

12. Here, Plaintiff’s Complaint seeks damages for “permanent, painful and disabling injuries which have caused [Plaintiff] to suffer great pain, loss of enjoyment of life, loss of wages and income, expense of medical care, emotional distress, and psychological injuries.” The Complaint goes on to assert that Plaintiff “will be forced to continue to suffer great pain, loss of enjoyment of life, loss of wage-earning capacity, expense of medical care, emotional distress and psychological injuries for the remainder of her life.” Compl. ¶ VIII. The Complaint also seeks “interest, attorney’s fees and all court costs herein” Compl., *ad damnun* clause. Accordingly, it

is “facially apparent” that the amount in controversy herein exceeds \$75,000, exclusive of interest and costs, when viewed in light of the nature of Plaintiff’s damages. *See Lockett v. Delta Airlines, Inc.*, 171 F. 3d 295, 298 (5th Cir. 1999) (holding that jurisdictional amount was met where the complaint listed damages including property damages, travel expenses, emergency ambulance trip, six-day hospital stay, pain and suffering, humiliation and temporary inability to do housework).

13. Moreover, in Plaintiff’s settlement demand letter, dated April 7, 2010, he stated that “a probable jury verdict in this case would be approximately \$89,346.00,” and he provides a breakdown for each element of damage. *See Ex. 2*, demand letter from Pl.’s counsel, dated April 7, 2010. Plaintiff’s settlement demand letter establishes that he intends to seek more than \$75,000.00 in damages in this case.

14. Accordingly, the matter in controversy between Plaintiff and Defendant, based on the allegations of the Complaint, thus exceeds the sum or value of \$75,000, exclusive of interests and costs, as required by 28 U.S.C. § 1332.

15. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any of the Defendant’s rights to assert any defense or affirmative matter, including, but not limited to, the defense of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) failure to join indispensable party(ies); or (8) any other pertinent defense available under Rule 12 of the Mississippi Rules of Civil Procedure or Rule 12 of the Federal Rules of Civil Procedure, any state statute, or any federal statute otherwise.

16. Defendant is serving a copy of this Notice of Removal on Plaintiff through her attorney of record and filing a copy of the Notice of Removal with the First Judicial District of the County Court of Hinds County, Mississippi.

WHEREFORE, PREMISES CONSIDERED, Defendant Ryan's Restaurant Group, Inc., d/b/a Ryan's Grill Buffet & Bakery files this Notice of Removal and removes this civil action to the United States District Court for the Southern District of Mississippi, Western Division. Plaintiff is hereby notified to proceed no further in state court.

THIS the 1st day of September, 2010.

Respectfully submitted,

RYAN'S RESTAURANT GROUP, INC., D/B/A
RYAN'S GRILL BUFFET & BAKERY


By: MALISSA WINFIELD, MB #100751

ITS ATTORNEY

OF COUNSEL:

Kenneth W. Barton, MB # 2093
Malissa Winfield, MB #100751
BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC
P.O. Box 6010
Ridgeland, MS 39158-6101

1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157

Phone: 601.948.5711
Fax: 601.985.4500
Winfield direct dial: 601.985.4409
malissa.winfield@butlersnow.com

Barton direct dial: 601.985.4515
Ken.barton@butlersnow.com

CERTIFICATE OF SERVICE

I, MALISSA WINFIELD, one of the attorneys for the Defendant, do hereby certify that I have this day served a true and correct copy of the above and foregoing Notice of Removal by mailing same by United States Mail with postage fully prepaid thereon to the following:

Honorable Edward C. Walker
P.O. Box 1224
Natchez, MS 39121

ADAMS COUNTY CIRCUIT CLERK

Joe M. Davis
Valerie B. Hancock
RKUTLEDGE, DAVIS AND HARRIS
P.O. Box 29
New Albany, MS 38652

ATTORNEYS FOR PLAINTIFFS

SO CERTIFIED, this the 1st day of September, 2010.


MALISSA WINFIELD