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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

KYONG S. EAGAN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MEGA MOVING CO., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

2:09-cv-01376-RCJ-PAL

**ORDER**

This lawsuit arises out of damage to Plaintiff Kyong Eagan’s household goods by Defendant Mega Moving Co. (“Mega”) during Eagan’s move from Florida to Las Vegas. Plaintiff filed a Complaint (#4) on August 12, 2009. The Complaint fails to claim a basis for federal jurisdiction, and none appears from the facts listed in the Complaint. Pursuant to screening under 28 U.S.C. § 1915, Magistrate Judge Peggy A. Leen found that the Complaint failed to state a claim on which relief could be granted, dismissing the Complaint with thirty (30) days to amend and warning Plaintiff that she would recommend dismissal if he did not comply. (#3). He did not comply, and on September 22, Magistrate Judge Leen issued a Report of Findings and Recommendation (“R&R”) recommending dismissal with prejudice for failure to prosecute. (#5). Plaintiff has filed an Objection (#6) and an Amended Complaint (“AC”) (#7). Plaintiff argues in the Objection that his noncompliance should be excused because of a “pending criminal probe” against Defendant involving many victims and “comprehensive medical conditions,” with no further explanation.

1 The dismissal was based on Plaintiff's failure to state a claim. (#3 at 3:20). The dismissal  
2 order cited both lack of subject matter jurisdiction and a forum selection clause in Plaintiff's contract  
3 with Defendant. The Court agrees that Plaintiff did not, and still has not, pled federal subject matter  
4 jurisdiction. However, it is not clear that the contractual clause at issue is a forum-selection clause.

5 The AC, filed on a 42 U.S.C. § 1983 complaint form, bases federal jurisdiction on the claim  
6 that Defendant possesses a federal commercial license issued by the U.S. Department of  
7 Transportation. This alone does not support federal question jurisdiction under 28 U.S.C. § 1331.  
8 The Complaint is for conversion and trespass to chattels, which are state law claims. (#7 at 3 ("The  
9 Defendant(s) was using commercial license [sic] to commit larceny, thief [sic], and stealing the  
10 customer's properties without a cause. Intentionally, deliberately damaged Plaintiff's properties .  
11 . . .")). Plaintiff also now claims he was damaged in the amount of \$75,001, in an attempt to support  
12 diversity jurisdiction under § 1332. But Plaintiff does not allege facts from which the Court can  
13 determine whether diversity of citizenship existed when Plaintiff filed the Complaint. Plaintiff notes  
14 that he currently resides in Nevada. However, he claims that the Defendant's actions were directed  
15 against him in Florida, presumably when he resided there prior to his move. Plaintiff claims that  
16 Mega "resides" in Florida. Plaintiff does not allege the place of incorporation or principal place of  
17 business of Mega, or even whether Mega is a corporation or some other form of business  
18 organization. Without such allegations, the Court cannot determine its jurisdiction under § 1332.  
19 It is Plaintiff's burden to overcome the presumption against federal jurisdiction. *Kokkonen v.*  
20 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). He has not met this burden.

21 As to forum selection, the text of the contractual clause at issue reads:

22 This Agreement has been entered into and shall be governed by as construed and  
23 enforced in accordance with the laws of the State of Florida. With respect to any  
24 legal proceedings arising out of this agreement, the Customer/Shipper consents [to]  
25 the jurisdiction and venue of any court of general jurisdiction of Dade County,  
Florida[,] and any legal proceedings arising out of this Agreement shall be brought  
only in such courts. In the event Customer/Shipper institutes legal proceedings in  
any court other than specified, Customer/Shipper shall assume all Mega Moving and

1 Storage, Inc.[‘s] cost in connection therewith, including, but not limited to[,]  
2 reasonable attorney’s fees. The parties hereto acknowledge that Mega Moving and  
3 Storage, Inc. services customers all over the United States and cannot subject itself  
to jurisdiction throughout the country. Florida is the reasonable and appropriate  
jurisdiction of any disputes arising out of this Agreement.

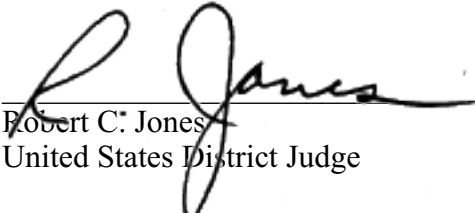
4 (#4 at 12). The first sentence is a choice-of-law clause, selecting the law of Florida as to any claims  
5 on the contract. The second sentence represents Plaintiff’s express consent to personal jurisdiction  
6 in any court of general jurisdiction in Dade County, Florida. The third sentence notes that if  
7 Plaintiff sues Defendant elsewhere, he consents to pay Defendant’s costs and attorney’s fees. The  
8 last two sentences are a recognition that Florida is the “reasonable and appropriate jurisdiction.”  
9 It is not entirely clear that this language amounts to a forum-selection clause, or, if it does, that the  
10 clause was not adhesive. The Nevada courts closely scrutinize purported forum-selection clauses.  
11 *See Tandy Computer Leasing, v. Terina’s Pizza, Inc.*, 784 P.2d 7, 8 (Nev. 1989). It is also not clear  
12 without further analysis whether Plaintiff’s claims sound in contract or tort, or whether any validated  
13 forum-selection clause would apply to the tort claims. As this Court does not have jurisdiction to  
14 hear the claims, it cannot rule on these points.

15 Although Plaintiff has not shown federal jurisdiction, and the Magistrate Judge is correct that  
16 Plaintiff has failed to prosecute, his delinquency has not been extreme. In the interest of justice, the  
17 case should be dismissed without prejudice due to lack of subject matter jurisdiction so that Plaintiff  
18 may pursue his contract, conversion, and/or trespass to chattels claims in state court, if he so desires.

19 **CONCLUSION**

20 IT IS HEREBY ORDERED that the Report of Findings and Recommendation (#5) are  
21 ADOPTED in part as explained above, and the Complaint (#4) is DISMISSED without prejudice  
22 for lack of subject matter jurisdiction.

23 DATED: November 4, 2009

24   
25 Robert C. Jones  
United States District Judge