

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JAMES JEROME CUFFEE,

No. 1:21-cv-01258-NLH-KMW

Plaintiff,

v.

MEMORANDUM OPINION & ORDER

HARRAH'S RESORT ATLANTIC
CITY, et al.,

Defendants.

APPEARANCES:

THOMAS JOSEPH VESPER
WESTMORELAND, VESPER & SCHWARTZ, PC
8025 BLACK HORSE PIKE
SUITE 500
WEST ATLANTIC CITY, NJ 08232

On behalf of Plaintiff James Jerome Cuffee

TRACEY MCDEVITT HAGAN
REILLY, JANICZEK & MCDEVITT, PC
2500 MCCLELLAN BOULEVARD
SUITE 240
MERCHANTVILLE, NJ 08109

On behalf of Defendant Harrah's Resort Atlantic City

HILLMAN, District Judge

On January 27, 2021, Defendant, Harrah's Resort Atlantic City, removed Plaintiff James Jerome Cuffee's case from New Jersey Superior Court to this Court. Defendant's notice of removal stated that this Court has jurisdiction over this matter based on 28 U.S.C. § 1332(a) because the parties have diverse

citizenship and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

Defendant's notice of removal averred that Plaintiff is a citizen of Pennsylvania, and Defendant is a citizen of Delaware (state of incorporation) and Nevada (its principal place of business). Defendant's notice of removal further averred:

4. Plaintiff's Complaint does not plead a specific monetary amount of damages. See Exhibit "A."

. . .

6. On January 21, 2021, Movant sent a letter request to Plaintiff's counsel requesting a Statement of Damages. See a true and correct copy of Defendant's request for a Statement of Damages, attached hereto as Exhibit "B."

7. On January 22, 2021, Plaintiff's Counsel responded to Movant's January 21, 2021 letter requesting a Statement of Damages. See a true and correct copy of Plaintiff's response to Defendant's request for a Statement of Damages, attached hereto as Exhibit "C."

8. Plaintiff's Counsel's January 22, 2021 letter indicates Plaintiff's alleged damages total \$500,000.00. Id.

9. As contained in Plaintiff's January 22, 2021 letter, Plaintiff's alleged damages are in excess of \$75,000. Id.

On February 10th, 2021 Plaintiff and Defendant filed a "Stipulation to Cap Damages at \$69,000 and Waive Right to Seek Relief from Stipulation," (ECF No. 3), which was followed by a "Consent Order for Remand Case to State Superior Court." (ECF No. 4). The stipulation provides that Plaintiff has now agreed to cap his damages at \$69,000. The Consent Order for Remand

further provides that subject matter jurisdiction under 28 U.S.C. § 1332(a) no longer exists because of Plaintiff's agreement to cap his damages below the jurisdictional threshold, and the action must therefore be remanded.

The parties' agreement to remand is without force. A "post-removal agreement to the remand of the case to state court does not provide the mechanism for remand. The parties cannot unilaterally consent to the remand of the case when this Court had at the time of removal, and continues to have, subject matter jurisdiction over the action." McNally v. Waterford Township, 2019 WL 6117728, at *2 (D.N.J. Nov. 18, 2019). Similar efforts by parties to return to state court are also ineffectual when subject matter jurisdiction has been established in this Court. See id. (where the parties filed a proposed consent order to remand based on the plaintiff's post-removal amended complaint that dismissed his federal claim, which was the basis for subject matter jurisdiction, finding that the dismissal of the federal claims and their agreement to remand did not provide a valid mechanism to remand the matter to state court because subject matter jurisdiction existed under 28 U.S.C. § 1367(a)) (citing Duffy v. Absecon Police Department, 2019 WL 5265322, at *1 (D.N.J. Oct. 17, 2019) (citing Tom's Landscaping Contractors, LLC v. Ernest Bock & Sons, Inc., 2018 WL 5294510, at *2 (D.N.J. 2018)) (declining to endorse the

parties' "Consent Order Permitting Plaintiff to File Amended Complaint and For Remand of Entire Action to State Court," where the amended complaint would add a non-diverse party, because the filing of the plaintiff's amended complaint would not defeat subject matter jurisdiction if such jurisdiction existed at the time the defendant removed plaintiff's original complaint) (citing Mollan v. Torrance, 22 U.S. 537, 539 (1824), quoted in Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S. 567, 570 (2004) ("It has been long and well-established that in determining whether a federal court may exercise jurisdiction based upon diversity of citizenship, the court must look to 'the state of things at the time of the action brought.'"); St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 294-95 (1938) ("It uniformly has been held that in a suit properly begun in the federal court the change of citizenship of a party does not oust the jurisdiction. The same rule governs a suit originally brought in a state court and removed to a federal court.")); St. Paul Mercury Indem. Co., 303 U.S. at 292-93 (announcing long ago that "the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount, [] does not deprive the district court of jurisdiction," and further reiterating that "events occurring subsequent to removal which reduce the amount recoverable, whether beyond the plaintiff's control or the result of his

volition, do not oust the district court's jurisdiction once it has attached").

This Court has previously explained, "two things are equally true. This is a court of limited jurisdiction. It must not exercise its considerable power beyond the scope of its authority as conferred by the Constitution and statute.

However, it is equally so that this Court has an unflagging obligation to maintain its jurisdiction, once conferred."

Farren v. FCA US, LLC, 2018 WL 372168, at *3 (D.N.J. 2018).

Because Plaintiff has not challenged the procedural propriety of the removal, the Court properly maintains subject matter jurisdiction over the action under 28 U.S.C. § 1332(a) - at the time of removal there was diversity of citizenship between Plaintiff and Defendant, and the amount in controversy exceeded \$75,000. Indeed, according to Defendant's notice of removal, Defendant requested that Plaintiff's counsel provide a statement of the damages demanded pursuant to New Jersey state court rules, (see ECF No. 1-2, Ex. B), and Plaintiff's counsel responded with a statement that Plaintiff was pursuing \$500,000 in damages. (ECF No. 1-3, Ex. C). Plaintiff's belated decision to cap his damages at \$69,000 does not divest this Court of subject matter jurisdiction as it existed on the day Defendant removed Plaintiff's complaint to this Court.

Consequently, the parties' request that the Court order the remand of the action to state court must be denied.¹

SO ORDERED.

Date: February 12, 2021
At Camden, New Jersey

/s Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

¹ As the Court noted in Farren, 2018 WL 372168, at *3 n.2, neither Plaintiff nor Defendant are prisoners of the federal court if they would rather return to state court. The parties may follow Fed. R. Civ. P. 41(a)(1)(A), which provides that a plaintiff may dismiss its action without a court order by filing "(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared." If it is the first dismissal, the rule expressly provides that dismissal is without prejudice. Fed. R. Civ. P. 41(a)(1)(B). Thereafter, to the extent allowed by state law, Plaintiffs may refile their action in state court.