UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC AXELROD,

Plaintiff,

-against-

HOWARD KLEIN, MARATHON SEARCH PARTNERS OF BURLINGTON, INC., and JEMEL CONSULTING, INC.,

Defendants.

16-cv-07183 (ALC)

OPINION AND ORDER

ANDREW L. CARTER, JR., United States District Judge:

This suit was brought in the Superior Court of the State of Vermont, Chittenden Unit, by Plaintiff Eric Axelrod seeking declaratory judgment against his former business partner Howard Klein, as well as Marathon Search Partners of Burlington, Inc. ("MSPB"), a New York corporation formed by Axelrod and Klein, and Jemel Consulting, Inc., a New Jersey corporation. On September 14, 2016, Defendants removed the action to this district on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332.

By order dated September 16, 2016, the Court ordered Defendants to show cause why removal to the Southern District of New York was proper. ECF No. 3. The following week, Axelrod filed a motion to remand this action to the Superior Court in Vermont, arguing that: (1) removal would only be proper to the District of Vermont; (2) removal was untimely; and (3) there is no diversity jurisdiction because MSPB has its principal place of business in Vermont, where Axelrod resides.[1] ECF Nos. 4-6. Defendants did not file any opposition to Axelrod's motion to remand, but, in response to the Court's order to show cause, Defendants

[1] Although Plaintiff makes several arguments regarding the impropriety of removal, the Court need only address the argument that this case was removed to the wrong federal district court, as it is dispositive of the motion.

submitted an affirmation by their counsel. ECF No. 7 (Affirmation of David J. Panitz, dated Sept. 30, 2016 ("Panitz Aff.")).

Where a ground for removal to federal court exists, a case "may be removed by the defendant or the defendants, to the district court of the United States for the district and division *embracing the place where such action is pending*." 28 U.S.C. § 1441(a) (emphasis added); *accord Cardona v. Mohabir*, No. 14-cv-1596 (PKC), 2014 WL 1088103 (S.D.N.Y. Mar. 18, 2014). It is without question that the Southern District of New York does not "embrace the place" where Axelrod initiated his action; that is, Vermont.

In responding to the Court's order to show cause, Defendants do not make any express arguments regarding this locational requirement on the face of the removal statute. Rather, Defendants assert that venue is proper in this district because Klein and MSPB are resident in New York. Panitz Aff. ¶¶ 2-5. They further explain that they had intended to file suit in the Southern District of New York against Axelrod, the plaintiff in this action, when Axelrod preemptively initiated his case in Vermont state court. *Id.* ¶ 12. Defendant MSPB ultimately did commence an action against Axelrod and others in this district after Axelrod filed his motion to remand, and has a pending motion to consolidate these two actions. *See Marathon Search Partners of Burlington, Inc. v. Axelrod, et al.*, No. 16-cv-07452 (RWS); Panitz Aff. ¶ 10, Ex. B. Defendants did not cite, nor is the Court aware of, any authority that would permit the Court to ignore the text of the statute for the reasons Defendants have articulated. As a result, this case must be remanded to state court.

Axelrod also seeks the attorney's fees incurred in connection with Defendants' removal of this action. Under 28 U.S.C. § 1447(c), the Court "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." Attorney's fees

may be awarded "where the removing party lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Courts in this Circuit and elsewhere have found that a removal was objectively unreasonable where a party removed the case to the wrong federal district court. *See, e.g.*, *Marlin Bus. Bank v. Halland Companies, LLC*, 18 F. Supp. 3d 239, 242 (E.D.N.Y. 2014); *Dickerson Enterprises, Inc. v. M.R.P.I. Corp.*, No. 12-cv-3025 (MWB), 2012 WL 3113913, at *2 (N.D. Iowa July 31, 2012); *Maysey v. CraveOnline Media, LLC*, No. 09-cv-1364 (PHX) (JAT), 2009 WL 3740737, at *4 (D. Ariz. Nov. 5, 2009); *see also Cardona v. Mohabir*, No. 14-cv-1596 (PKC), 2014 WL 1804793 (S.D.N.Y. May 6, 2014) (sanctioning attorney based on removal to wrong district).

While removal to this district was objectively unreasonable, Axelrod has not provided sufficient information for the Court to determine the appropriateness of the fees he is seeking. His attorney, Thomas Telesca, submitted a declaration asserting that, "in connection with defendants' improper removal, this firm has incurred 19.9 hours in attorney time at an hourly rate of $375" and "1.8 hours of paralegal time at an hourly rate of $210." ECF No. 8-1 (Declaration of Thomas A. Telesca, dated Oct. 7. 2016), at ¶ 12. While Telesca asserts that these hourly rates are reasonable, there is no information in the record regarding Telesca's and the paralegal's level of expertise to support the reasonableness of the rates charged or the amount of time spent. It also is not clear from Telesca's declaration whether any attorneys in addition to Telesca performed the work at issue.

For all of the foregoing reasons, the Court GRANTS the portion of Axelrod's motion seeking to remand this case to the Superior Court of the State of Vermont, Chittenden Unit. The Court DENIES without prejudice Axelrod's request for attorney's fees. Axelrod may submit

supplemental papers regarding his request for attorney's fees or before October 21, 2016. The Clerk of the Court is respectfully requested to close Docket Entry Number 4.

SO ORDERED.

Dated: October 14, 2016
New York, New York

ANDREW L. CARTER, JR.
United States District Judge