

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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SHIRLEY DRAKE,	:	CASE NO. 1: 10 CV 2176
	:	
	:	
Plaintiff,	:	
	:	<u>ORDER GRANTING PLAINTIFF'S</u>
-vs-	:	<u>MOTION TO REMAND THIS MATTER</u>
	:	<u>TO STATE COURT</u>
	:	
BARCLAYS BANK DELAWARE, et al.,	:	
	:	
	:	
Defendants.	:	
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UNITED STATES DISTRICT JUDGE LESLEY WELLS

Plaintiff Shirley Drake ("Ms. Drake") brought this action in Cuyahoga County Court of Common Pleas, against Barclays Bank Delaware ("Barclays"), Juniper Card Services ("Juniper") and an unnamed John Doe. Barclays properly removed the action to this Court on diversity and federal question grounds, pursuant to 28 U.S.C. §§ 1331 & 1332. (Doc. 1). Immediately after removal, Ms. Drake amended her complaint to exclude her claim under the Fair Debt Collection Act, 15 U.S.C. § 1692 et seq., and limiting her damages to no more than \$66,000.00. (Doc. 3).

Now before Court is Ms. Drakes' timely motion to remand the instant action as lacking in original jurisdiction. (Doc. 5). Barclays has not opposed the remand motion. For the reasons set forth below, this Court will grant Ms. Drakes' motion for remand.

A defendant may remove a civil case over which the United States district courts would have original jurisdiction. See 28 U.S.C. § 1441(a). If this Court, subsequently,

determines that it does not have original subject matter jurisdiction over the case, it must remand to state court. See 28 U.S.C. § 1447. Courts should construe removal statutes strictly. Alexander v. Elec. Data Sys. Corp., 13 F.3d 940, 949 (6th Cir. 1994). The defendant seeking removal bears the burden of establishing federal subject matter jurisdiction. Ahearn v. Charter Township of Bloomfield, 100 F.3d 451, 453-54 (6th Cir. 1996). A federal district court has diversity jurisdiction over any civil action where the matter in controversy exceeds \$75,000.00, exclusive of interests and costs, and is between citizens of different states. See 28 U.S.C. § 1332(a). Further, a federal district court has federal question jurisdiction over any civil action which arises under the laws of the United States. See 28 U.S.C. § 1331.

When a plaintiff alleges a specific amount of damages in the complaint, that amount controls unless it appears to a legal certainty that the plaintiff in good faith cannot claim the jurisdictional amount. Klepper v. First Amer. Bank, 916 F.2d 337, 340 (6th Cir. 1990) (citing St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-289 (1938)). If the plaintiff seeks to recover some unspecified amount of damages, the defendant may still remove by proving, by a preponderance of the evidence, that the plaintiff's claims meet the federal amount in controversy requirement. Gafford v. Gen. Elec. Co., 997 F.2d 150, 158 (6th Cir. 1993).

Now that Ms. Drake has amended her complaint before this Court, to limit the amount requested in this lawsuit to \$66,000.00, diversity jurisdiction no longer adheres. Further, as the amended complaint no longer alleges any action construed under federal law, federal question jurisdiction, also, no longer adheres.

Accordingly, this Court grants Ms. Drakes' motion to remand this action, case no.

CV-10-734663, to the Cuyahoga County Court of Common Pleas. The Court remands the claims in the newly-amended complaint to the Cuyahoga County Court of Common Pleas. The Clerk shall mail a certified copy of this order to the Clerk of the Cuyahoga County Court of Common Pleas, in accordance with 28 U.S.C. § 1447(c).

IT IS SO ORDERED.

Dated: 11/15/2010

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE