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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

17

MARC BRAGG,

) Civil Action 06-4925
)
)

Plaintiff,

vs.

LINDEN RESEARCH, INC.,
et al,

Defendants.

) Philadelphia, PA
)
)

) January 4, 2007
)
)

) 3:13 p.m.
)

FILED

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Dep. Clerk

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE EDUARDO C. ROBRENO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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I N D E X

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By the Court

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1 (The following took place in open court at 3:13
2 p.m.)

3 THE COURT: Good afternoon.

4 MR. ARCHINACO: Good afternoon, Your Honor.

5 MR. SOVEN: Good afternoon, Your Honor.

6 THE COURT: Please be seated. The motion to -- to
7 remand the case to State Court in Chester County because the
8 amount in controversy does not exceed \$75,000, including
9 costs. So, plaintiff would like to -- to go -- to go back to
10 State Court, so why don't you proceed?

11 MR. ARCHINACO: Your Honor, would you like -- this
12 is my first time before you, Your Honor.

13 THE COURT: Yes.

14 MR. ARCHINACO: I'm Jason Archinaco, on behalf of
15 the plaintiff. Would you like me to argue from counsel table
16 or from the podium?

17 THE COURT: Whatever is more comfortable for you.

18 MR. ARCHINACO: Your Honor, I believe -- I don't
19 know what you would like in the way of background about the
20 case.

21 THE COURT: Well, let me ask you a question
22 before --

23 MR. ARCHINACO: Sure.

24 THE COURT: -- before we get into that. Is your
25 argument that you are not claiming more than \$75,000 worth of

1 damages?

2 MR. ARCHINACO: Well, I don't believe the face of
3 the complaint sets forth more than \$75,000 in damages.

4 THE COURT: Okay. Well, that's a different
5 question, because --

6 MR. ARCHINACO: Yes.

7 THE COURT: -- we often have the issue where the
8 defendant will tender -- and, you know, your firm is involved
9 in these cases on the other side, generally -- somebody will
10 file a case in the Court of Common Pleas. They will say, the
11 amount in controversy is less than \$50,000. The case comes
12 here, and the defendant says, okay.

13 And then the defendant says, well, if the plaintiff
14 agrees and stipulates that the damages in this case do not
15 exceed \$75,000, and therefore, no judgment can be entered in
16 excess of that, I'll be happy -- I'll go back to State Court
17 to do that.

18 But, otherwise, you can't have it both ways. You
19 cannot say, well, that's not what the complaint says, but I
20 can go over there and get \$10 million. And I don't know if
21 you want to candidly address that issue or not.

22 MR. ARCHINACO: Absolutely, Your Honor.

23 THE COURT: Okay.

24 MR. ARCHINACO: Let me -- let me try to -- let me
25 try to address it this way. The burden, I believe in these

1 cases --

2 THE COURT: Yes.

3 MR. ARCHINACO: -- is on the defendant to come
4 forward by a preponderance of the evidence as to what the
5 reasonably objective basis is for the removal.

6 THE COURT: Yes.

7 MR. ARCHINACO: Now, clearly, my client -- my belief
8 is my client is out of pocket approximately four to \$5,000.
9 There is available to us a trebling statute. There is also
10 available to us, under that statute, reasonable attorneys'
11 fees. And there is also available under alternate causes of
12 action, punitive damages.

13 Now, that having been said, if you treble the amount
14 in controversy, you add on a reasonable attorney fee -- well,
15 let me go back for a second. When you ask what the reasonable
16 attorney fee is -- an example -- what is the reasonable
17 attorney fee and what will the reasonable attorney fee be? I
18 don't know the answer to that, as I stand here before you. I
19 can't say to you that I should cap my fees at 70 -- that they
20 be less than \$70,000, nor do I know what a Court would award
21 me --

22 THE COURT: Well, sure --

23 MR. ARCHINACO: -- in terms of a reasonable fee.

24 THE COURT: -- and you don't know if you're going to
25 go to the Supreme Court of the United States or whether you

1 are going to resolve the case, you know, by summary judgment.

2 MR. ARCHINACO: Correct, Your Honor.

3 THE COURT: And, so, it could be 5,000; it could be
4 100,000. But, under that -- under that view of the facts,
5 every case would belong in the Federal -- there would be no
6 point in having amounts in controversy, I mean --

7 MR. ARCHINACO: Correct.

8 THE COURT: -- effectively. Now, you also have, in
9 punitive damages, the Gore line of cases that would, at the
10 very least -- I don't know whether it caps or it guides that
11 it be nine times. So, this case would be, let's say, 5,000
12 times nine. That would be \$45,000 and then 5,000
13 -- I guess you would probably add the compensatory, as well.
14 So, 45 plus five.

15 MR. ARCHINACO: Correct, Your Honor.

16 THE COURT: That would be \$50,000, even if you were
17 entitled to punitive damages, and then you would add
18 attorneys' fees to \$50,000.

19 MR. ARCHINACO: Well, what I would say -- one thing
20 I would like to point out to you with regard to punitive
21 damages, I agree in terms of a proposition of law, with
22 whether it be nine or ten times, that there is a limitation
23 placed by the law as to what is an appropriate amount.

24 The problem I have with what they filed with this
25 Court is, they cite a case, and I don't disagree with the

1 proposition that, under the appropriate circumstances, a nine
2 time multiple is fair. What I do have a problem with is, is
3 that in order to determine a multiple, you have to present the
4 net worth of the defendants.

5 And, for example, if Linden's net worth is negative,
6 I don't foresee myself obtaining any punitive damage award
7 because the -- the element to obtain a punitive damage award
8 is, what is the net worth of the defendants. So, when I
9 received their brief, I -- they say, obviously, the defendants
10 are not worth billions in assets.

11 THE COURT: I thought, though, under Pennsylvania
12 law, and maybe -- correct me if I'm wrong -- actually the net
13 worth of the defendants is a defense to punitive damages, it's
14 not a component of punitive -- in other words, a defense can
15 come in and say, look, I'm very poor.

16 MR. ARCHINACO: Correct.

17 THE COURT: Therefore, you know, a dollar will do
18 it, but that the plaintiff doesn't have to show the net worth
19 of the -- he generally does because, you know, Aetna, you have
20 \$21 billion, the number is real big, but he doesn't have to
21 do that.

22 MR. ARCHINACO: Generally --

23 THE COURT: Is that correct?

24 MR. ARCHINACO: -- well, generally, what I have
25 seen, in my practice --

1 THE COURT: Yes.

2 MR. ARCHINACO: -- in defending cases is, the
3 plaintiff always presents the net worth of the --

4 THE COURT: Well, to -- to agitate and --

5 MR. ARCHINACO: Yes.

6 THE COURT: -- the jury, but he doesn't have to. In
7 other words, it's not a component of it. It's viewed to have
8 the defendant have the -- in other words, if you are going to
9 punish somebody, and the person comes forth and says, hey,
10 look, I don't have any money -- you know, I'm worth a lot less
11 money. I'm not -- I'm not Aetna. In other words, he gives
12 the defendant an opportunity to mitigate punitive damages on
13 the strength that, you know, you don't have to give me a big
14 award to punish me. I'm a little guy.

15 MR. ARCHINACO: And, but -- and, Your Honor, but
16 what we have in terms of what's been presented to this Court,
17 is the defendants will not tell you their net worth. I mean,
18 that's one of the components --

19 THE COURT: Well, let's assume that it's billions of
20 dollars, so, you think that would make it more than -- can
21 Gore -- can you make it more than -- it doesn't matter, if
22 it's General Motors or Aetna Insurance -- isn't it nine times,
23 and that's it?

24 MR. ARCHINACO: Correct, it would be a nine time
25 multiple.

1 THE COURT: Yes.

2 MR. ARCHINACO: And then the question would be a
3 reasonable attorney fee, and I can't tell you -- I mean,
4 obviously, I don't -- I do not believe that a defendant --

5 THE COURT: Okay. Well, let me ask you another
6 question.

7 MR. ARCHINACO: Sure.

8 THE COURT: What is it, in this case, on the face of
9 the complaint that suggests that this is nothing other than a
10 contract dispute, a breach of contract? You paid them, and
11 they -- they have breached a contract to either give you
12 something or return you something, which you did not receive.
13 What is it here that -- that would suggest intentional tort,
14 fraud and all these various grievous conclusions?

15 MR. ARCHINACO: If I can give you a little --

16 THE COURT: Yes.

17 MR. ARCHINACO: -- perspective on the industry.
18 There is -- there is -- they call them games, but in truth,
19 these aren't really games anymore. They're enormous
20 businesses. And there isn't -- a genre of the game industry
21 that has been referred to as the massively multiple online
22 roll playing genre -- MMORPG.

23 And the MMORPG industry, the industry standard has
24 been to deny players any rights in any virtual item or
25 property under all circumstances. Sony has taken that line,

1 Blizzard, which is owned by Vivendi Universal. Every company
2 has denied players ownership rights and interest in the
3 virtual items. Now, that's not to say that players don't
4 believe that they actually own their accounts.

5 Many of these games people play for two or three
6 years. They develop their characters for two or three years.
7 And over time, they acquire magical swords and helmets and
8 items that have real world value. And, in fact, there is a
9 flourishing black market for these real world items, believed
10 to be a minimum of \$100 million, and by certain reports, in
11 excess of a billion dollars a year.

12 And it's a black world market, because they are
13 traded -- you know, people sell virtual gold. They sell
14 virtual items on Ebay. They sell them on a web site called
15 PlayerAuctions.com. There are a number of web sites. But
16 it's all black market, because all of these companies have
17 said, you players do not own anything.

18 Mr. Rosedale comes along, Phil Rosedale, who is the
19 former CTO of Real Networks, and he establishes this Linden
20 Research, who creates Second Life. And, initially, they are
21 just like any other massively multi-player online roll playing
22 game, but they were struggling to develop a player base.

23 People weren't going to their world, because they
24 didn't have any content. They didn't have dragons, and they
25 didn't have dungeons, and they didn't have magical swords.

1 They had a platform, but they had nothing else. So, he did,
2 in this industry, which is like telling someone they can vote,
3 he went out and made the statements, you come to our world,
4 and you will own virtual land. You will retain your
5 intellectual property rights of anything you develop in this
6 world.

7 And that was a complete departure from the industry
8 standard. What he did was, he created a fervor in the
9 industry, an absolute fervor, where players began, in some
10 numbers, to flock to Second Life, because this is, to them,
11 the promised land. I can now own my virtual things. All
12 these other companies are saying I don't own it, I can't own
13 it.

14 And so, Mr. Rosedale has repeatedly made the
15 statements to people, in numerous press releases and articles,
16 you own it. And he's even gone so far to say, we transfer
17 title to the land to the people that own it, that the land is
18 so thoroughly owned by the player that we, the company, cannot
19 advertise on your land, because you own it when you buy it.

20 And my client was one of those people that came
21 along and invested approximately \$8,000 --

22 THE COURT: On the basis of the oral representations
23 that you would own it?

24 MR. ARCHINACO: Yes.

25 THE COURT: Well, was there a contract that he

1 signed when he -- when he began investing?

2 MR. ARCHINACO: There -- well, that -- that, I
3 think, is going to be an issue that, at some point, will have
4 to be addressed, but what happens is, you go to the website.
5 It says the same thing Rosedale is saying in these interviews.

6 THE COURT: Okay.

7 MR. ARCHINACO: And on the website it says, own
8 virtual land. You click various hyperlinks on the website,
9 and you go from subpage to subpage, and it continues to say
10 the same thing, buy, you own, you own, you own. When you
11 finally register for an account with the game, you are caused
12 to check box, or at the time, you were caused to check box,
13 but not necessarily read, a terms of service agreement.

14 The terms of service agreement contains no language
15 in it that says, by the way -- there's no header that says,
16 virtual land, you don't really own it, you never owned it.
17 There's no header that addresses the virtual land issue, and
18 there's nothing in the terms of service that says, virtual
19 land contracts, here are the terms.

20 The way it would then work is, is after he had an
21 account established, they have what are called auctions, just
22 like an Ebay auction. They have an independent site with all
23 of the land listed in individual auctions that you can bid on.
24 You bid on the land, and you are reminded, just like Ebay, if
25 you bid on this land, it's a binding contract, and you will

1 own, you know, this piece of land.

2 When you complete the auction, they send you an
3 email. It says, confirmation, you have purchased this piece
4 of land. The amount will be debited from your credit card or
5 your account, go log into the game and claim your land. And
6 that's exactly what he did.

7 So, there is a terms of service agreement, although,
8 the terms of service agreement, if it were before the Court,
9 at this point, there does not appear to be a section that
10 says, by the way, when you enter into these auction contracts,
11 let's make it real clear to you that even though we were
12 telling you you own it, you don't own it anymore.

13 And, in fact, in the terms of service agreement,
14 there was actually, at one point in time, although they've
15 removed it now, there was a liquidation provision that said,
16 if we kick you out of the game, we will liquidate your assets.

17 THE COURT: Let me ask you this. If your client
18 owned the virtual real estate, I guess --

19 MR. ARCHINACO: Yes.

20 THE COURT: -- wouldn't that be worth more than four
21 or \$5,000?

22 MR. ARCHINACO: That is -- well, it depends. It's
23 hard to say right now, Your Honor, because here's what's
24 happened. He's out four to \$5,000 with regard to out of
25 pocket. The game itself, the world --

1 THE COURT: Yes.

2 MR. ARCHINACO: -- has expanded exponentially since
3 then. I don't know, as we -- on some of it -- the company,
4 here's what they did to him, just to answer as directly as I
5 can. When -- when they took his land from him, reclaimed it,
6 they put it out to auction again. And when they put it out to
7 auction again, they sold it to the highest bidder and kept the
8 proceeds for themselves. They did not return that money to
9 him.

10 In some instances, individual parcels of land sold
11 for more than he paid. In some instances, they sold for less.
12 It's difficult for me, right now, to say, would -- what is the
13 actual value of that land, currently. The game is
14 exponentially expanding, and more and more people --

15 THE COURT: So, your theory would be that it's worth
16 considerably more or you don't even have -- or you don't even
17 know that?

18 MR. ARCHINACO: I don't know that. As I stand here,
19 I cannot assert to you. What I can say is that we -- we have
20 requested specific performance.

21 THE COURT: But if they gave you a -- if they --
22 your damages -- you paid, what, \$300, is that it? What was
23 the initial --

24 MR. ARCHINACO: No, it was -- he invested
25 approximately \$8,000 in virtual land --

1 THE COURT: Okay.

2 MR. ARCHINACO: -- and -- he's out of pocket,
3 approximately, four to \$5,000.

4 THE COURT: What is the difference between those two
5 numbers?

6 MR. ARCHINACO: Because he was able to obtain some
7 of his cash back out of his account before they completely
8 locked him out, and made it unable --

9 THE COURT: Okay. Now, is it possible to try to
10 analogize this to what would happen in real life?

11 MR. ARCHINACO: Yes.

12 THE COURT: In other words, you -- you thought you
13 bought a piece of land, and you gave somebody \$8,000. And at
14 some point, there was, maybe, I don't know -- maybe he had
15 been -- if it had been misrepresented, I own the land, and --
16 and the person didn't own the land, so, you didn't get the
17 land, so you're owed, what, \$8,000 or you're owed what that
18 land would have been worth if the person owned it? I'm trying
19 to --

20 MR. ARCHINACO: Sure.

21 THE COURT: -- get my feet on something that is --
22 that is other than virtual to see how those principles apply
23 here.

24 MR. ARCHINACO: Well, let's use the real --

25 THE COURT: If that's possible.

1 MR. ARCHINACO: Sure. No, I'm going to -- I'll do
2 my best.

3 THE COURT: Yes.

4 MR. ARCHINACO: What, in essence, they sell you is a
5 piece of landlocked land, as an example --

6 THE COURT: Okay.

7 MR. ARCHINACO: -- because you still have to have
8 access to the game world to get --

9 THE COURT: Okay. Some easements into there.

10 MR. ARCHINACO: Right. So, it's almost like a
11 virtual easement.

12 THE COURT: Okay.

13 MR. ARCHINACO: The land, itself, to equate it to a
14 regular real world land, it operates just like real world
15 land, in that you can restrict other people from going on it,
16 you can put signs up --

17 THE COURT: Right.

18 MR. ARCHINACO: -- you can build casinos on it. Mr.
19 Bragg had developed, you know, dance clubs and other things he
20 put on the land.

21 THE COURT: Okay.

22 MR. ARCHINACO: There is the prospect that that land
23 could become more valuable by virtue of the success of the
24 game.

25 THE COURT: But, okay -- but, what happened there?

1 When it was sold, the seller owned it and conveyed it to Mr.
2 Bragg legitimately, so it's something that happened after the
3 sale was completed. The wrong occurred some time thereafter.
4 So --

5 MR. ARCHINACO: Right.

6 THE COURT: -- what's happened is that the defendant
7 has foreclosed access to that -- to that land. That would be
8 one -- one action. And, number two, instead of giving him
9 back the money, I guess, there might have been some kind of
10 reservation. Instead of giving him back, he has kept the
11 money, he has kept him out of the land.

12 MR. ARCHINACO: Correct. They did both.

13 THE COURT: So, he has failed to, I guess, convey
14 the ownership of that land to -- to Mr. Bragg.

15 MR. ARCHINACO: They told him that they conveyed him
16 the land through the representations and otherwise.

17 THE COURT: But they didn't.

18 MR. ARCHINACO: Well, apparently, they --

19 THE COURT: They have failed to close on that deal.

20 MR. ARCHINACO: Well, they did close on it. He did
21 own it for a while.

22 THE COURT: Okay.

23 MR. ARCHINACO: He -- he entered into a series of
24 transactions over several months.

25 THE COURT: Okay.

1 MR. ARCHINACO: He would buy a piece of land, let's
2 say. And he would buy another piece of land.

3 THE COURT: But, so, his claim is that he is the
4 legal owner of this -- of this virtual property?

5 MR. ARCHINACO: Yes.

6 THE COURT: This virtual site?

7 MR. ARCHINACO: Yes.

8 THE COURT: Okay. So, if he is the legal owner,
9 then he doesn't want back his money. What he wants is --
10 doesn't he want some kind of action in equity --

11 MR. ARCHINACO: Correct, Your Honor.

12 THE COURT: -- to restore him to his rightful
13 position, land -- is virtual land irreplaceable, the same as
14 -- as real land, real property?

15 MR. ARCHINACO: Yes. Can I --

16 THE COURT: I don't know if the word is
17 irreplaceable.

18 MR. ARCHINACO: -- can I give you one qualification
19 on it?

20 THE COURT: Yes.

21 MR. ARCHINACO: You know, just like the Internet has
22 domain names --

23 THE COURT: Yes.

24 MR. ARCHINACO: -- the Second Life is sort of a
25 three dimensional version of the Internet, in that, specific

1 pieces of land never cease existing. There's a game world
2 map. So, just like the real world, the land exists, and it's
3 -- each piece is unique.

4 THE COURT: Yes.

5 MR. ARCHINACO: The difference -- the only
6 difference, in my view, with the real world is, is that Linden
7 can continue to make new land --

8 THE COURT: Okay.

9 MR. ARCHINACO: -- expand the borders of the world.

10 THE COURT: But he wouldn't be satisfied if they
11 gave him a piece somewhere else in other words?

12 MR. ARCHINACO: Correct.

13 THE COURT: This is -- I think the word was unique.
14 Real estate in the real world being unique, what you want is
15 the real estate --

16 MR. ARCHINACO: Correct, Your Honor.

17 THE COURT: -- not someplace else or money, because
18 I think one of the factors is it may increase in value, et
19 cetera, so your interest in real estate is only satisfied if
20 you get the real estate.

21 MR. ARCHINACO: Correct, Your Honor.

22 THE COURT: So, I guess the amount in controversy
23 here may -- may be an estimate of what that is worth today,
24 but that -- that cannot be done?

25 MR. ARCHINACO: Well, can it be done or has it been

1 done? Can it be done? Yes. If the defendants would have or
2 did want to present evidence to you as to what they believe
3 the value of the land they took from Mr. Bragg is today,
4 because he did have property. He got in very early in the
5 game world, and do I think it's appreciated? Yes. But we
6 don't have access to that information.

7 The defendants would have access to that
8 information. The defendants would know exactly what the value
9 of that land is today and what the selling prices have been
10 for similar parcels of land. But what the problem is is that
11 we filed a motion, and there is no evidence that has been
12 presented to you by the defendants saying, well, here is the
13 estimate of what we really think it is worth.

14 THE COURT: Now, let me ask you another question.
15 And it may not have any legal significance, but why -- I can
16 see in a personal injury action or something like that,
17 although I'm not sure in Chester County, which is where you
18 want to return, that rationale would apply, but I can see that
19 a personal injury plaintiff in Philadelphia County would
20 rather be in Philadelphia County than in the Federal Court
21 because of the jury, et cetera.

22 But, why do you want to be in Chester County?
23 Either -- I can't imagine that there is any benefit or
24 advantage to it, and the two of you are just on the street.

25 MR. ARCHINACO: Your Honor, actually, I mean, this

1 is -- this is the -- this is the -- you keep using the word
2 that I want to return.

3 THE COURT: Yes.

4 MR. ARCHINACO: I -- I --

5 THE COURT: Maybe Mr. Bragg --

6 MR. ARCHINACO: No.

7 THE COURT: -- wants to be in Chester County, but --

8 MR. ARCHINACO: Well, had I been able, had I
9 believed that I wasn't going to be confronted with a motion to
10 remand --

11 THE COURT: Yes.

12 MR. ARCHINACO: -- by filing in Federal Court, I
13 would have filed in Federal Court --

14 THE COURT: Yes.

15 MR. ARCHINACO: -- because I believe that there are
16 important issues in this case --

17 THE COURT: Yes.

18 MR. ARCHINACO: -- to be resolved. And, quite
19 frankly, having the Federal Court preside over the matter, and
20 even this Court --

21 THE COURT: Yes.

22 MR. ARCHINACO: -- I'd be more than happy to. The
23 -- the original complaint in this case was filed in Magistrate
24 Court.

25 THE COURT: Right.

1 MR. ARCHINACO: And it was removed from there, in
2 part, because the Pennsylvania Rules of Civil Procedure, Rule
3 1301, which governs arbitrations, is an example, say that we
4 can't get equitable or specific performance relief from
5 arbitrators. So, we couldn't even file it in arbitration, and
6 it ultimately went up to the GE level.

7 If I believed, sua sponte, that I could have filed
8 this Court in Federal Court, I would have done so. But --

9 THE COURT: Well, what -- well, I still don't --
10 don't understand all of that. Say it again in --

11 MR. ARCHINACO: Had I believed --

12 THE COURT: Yes.

13 MR. ARCHINACO: -- that I could have filed this
14 Court in Federal Court --

15 THE COURT: You mean that you had --

16 MR. ARCHINACO: -- that I had jurisdiction, I would
17 have filed it.

18 THE COURT: -- 75,000. You thought you'd be
19 confronted with, if you file in Federal Court, with a motion
20 to dismiss?

21 MR. ARCHINACO: I thought I was going to be
22 confronted with a motion to remand the case --

23 THE COURT: No, what --

24 MR. ARCHINACO: -- if I filed in Federal Court. I'm
25 actually somewhat surprised that it was removed. That having

1 been said, we're now here, and the question is, is by a
2 preponderance of the evidence --

3 THE COURT: I mean, initially, and this is maybe,
4 he wants this almost back from me. I could see this case
5 actually -- yeah, well -- as I said, I don't -- you mean, you
6 didn't think that, in good faith, you could file a case in
7 Federal Court --

8 MR. ARCHINACO: Correct, Your Honor.

9 THE COURT: -- under Rule 11, that you would have
10 been bounced because you didn't have the amount in
11 controversy?

12 MR. ARCHINACO: Had I filed in Federal Court, and I
13 had come before you and said --

14 THE COURT: Yes.

15 MR. ARCHINACO: -- here is the trebling of my \$5,000
16 claim; here is the, you know, punitive damages, and I argued a
17 ten time multiple; here is my reasonable attorney fee, the
18 response from the defendants would have been, your reasonable
19 attorney fee can't be X. You can't get over that \$75,000
20 controversy.

21 THE COURT: Well, you think that shifting of the
22 burden of proof makes it -- makes it -- you can now make those
23 arguments because the defendant has the burden, now, of
24 proving the negative, almost, or proving something that the
25 case is worth more than what the plaintiff says it's worth, in

1 a sense?

2 MR. ARCHINACO: Well, I -- I think --

3 THE COURT: It puts him in an awkward -- it puts
4 everybody in an awkward position --

5 MR. ARCHINACO: Yes.

6 THE COURT: -- to do that --

7 MR. ARCHINACO: It does.

8 THE COURT: -- to say, you know, my case isn't worth
9 a lot. He says, it's worthless, but if it's worth something,
10 it's worth a lot. Yes.

11 MR. ARCHINACO: Your Honor, I think from -- I'll put
12 it to you this way, in terms of the litigants.

13 THE COURT: Yes.

14 MR. ARCHINACO: Mr. Bragg has practiced before this
15 Court. Mr. Bragg has practiced in Chester County. He's an
16 attorney. Mr. Bragg, it does not matter to him which Court he
17 is before. It does not matter to me which Court I am before.
18 I would actually prefer to be in Federal Court.

19 THE COURT: Yes.

20 MR. ARCHINACO: But I did believe that I was going
21 to be confronted with a motion to remand by the defendants,
22 had I filed, because, at the time I filed the complaint, the
23 amount in controversy was nowhere near \$75,000.

24 THE COURT: Okay. But once the -- once the case was
25 removed, why -- why are we all here?

1 MR. ARCHINACO: I think we're here because -- well,
2 the Court has jurisdiction at any moment to remand the case.
3 I mean, I don't -- I don't -- if you don't have jurisdiction,
4 you can bounce a case for lack of jurisdiction, so we could
5 have gotten halfway into the case, and you could have bounced
6 it for lack of jurisdiction.

7 I think why we're here is because I expect --

8 THE COURT: Well, but is -- as of the time that the
9 filing occurred, not any time that there is less an amount.
10 In other words, I understand the principle to be as follows:
11 If there was no jurisdiction when the case came in, it doesn't
12 really matter, but you can -- it always happens. Most cases
13 are less than the amount of jurisdiction by the time you
14 finish. I don't know if it's most, but I mean, it's a very
15 common phenomenon. You come in here. You make your argument.
16 And the case is, you know, \$50,000. That doesn't mean that
17 the Court has no jurisdiction.

18 In other words, as I understand it, the moment -- in
19 other words, you're going to put the key in the door. That's
20 the moment in which the Courts are going to -- to give you a
21 better example, if two people from Philadelphia sue each other
22 and it went all the way to the Supreme Court, the Supreme
23 Court could find, there is no diversity. They're both in
24 Philadelphia.

25 But if one moved out to Nebraska six months into the

1 case, you still have jurisdiction at the time that you came
2 through the door. So, the point is, as of the time you came
3 through the door, is there -- does the -- does the -- can the
4 defendant show, in this case, or could you have shown, if you
5 had filed a case here, under the -- under the standard, that
6 the amount in controversy exceeds \$75,000?

7 MR. ARCHINACO: It -- it -- I mean, Your Honor, the
8 way it would -- the way it would possibly exceed that amount
9 is if my attorneys' fees are caused to go through the roof,
10 through an aggressive litigation of the case.

11 THE COURT: Yes. Now, these two statutes, you have
12 Pennsylvania and California --

13 MR. ARCHINACO: Yes.

14 THE COURT: -- are they going to -- there's going to
15 be a choice of law or, in other words, is this in the
16 alternative or they violated both?

17 MR. ARCHINACO: I believe they violated both, but
18 the truth is, I can only recover damages --

19 THE COURT: One damages -- yes.

20 MR. ARCHINACO: You don't -- there's some case law
21 cited by the defense counsel that you aggregate damages.

22 THE COURT: Yes.

23 MR. ARCHINACO: There's a single satisfaction rule.
24 A plaintiff can only be made whole once.

25 THE COURT: Sure.

1 MR. ARCHINACO: So --

2 THE COURT: Same thing with fraud and deceptive
3 practices, et cetera.

4 MR. ARCHINACO: Correct.

5 THE COURT: If the fraud constituted a deceptive
6 practice, that's one amount.

7 MR. ARCHINACO: I believe it's subsumed.

8 THE COURT: Now, you may have -- I think that, for
9 example, the state statute would allow attorneys' fees and
10 maybe the common law fraud may not.

11 MR. ARCHINACO: The state -- the state statute
12 permits attorneys' fees, at the Court's discretion.

13 THE COURT: Yes.

14 MR. ARCHINACO: It's not mandatory, although
15 California law is mandatory, but it is -- it is trebling, at
16 the Court's discretion, and attorneys' fees, at the Court's
17 discretion. A fraud claim, on the other hand, would permit
18 only punitives.

19 So, I don't know that I've ever seen a case where
20 those two causes of action have been -- by a Court where they
21 have looked to say, what is the single satisfaction of the
22 plaintiff. I don't know, although it's been the defendant's
23 position that I could conceivably obtain punitive damages on a
24 fraud claim, and then obtain the trebling and the attorneys'
25 fees under the statutory claim.

1 That's their position --

2 THE COURT: Yes.

3 MR. ARCHINACO: -- or at least -- well, they don't
4 say that's really their position --

5 THE COURT: Yes.

6 MR. ARCHINACO: -- but that's what they've asserted
7 in their papers.

8 THE COURT: Right.

9 MR. ARCHINACO: And I have not seen a case that has
10 reconciled those two causes of action as to whether or not
11 that is the case.

12 THE COURT: Well, are -- are you -- would you be
13 prepared to stipulate that the amount in controversy exceeds
14 \$75,000?

15 MR. ARCHINACO: Exceeds it?

16 THE COURT: Yes.

17 MR. ARCHINACO: No, because, again, it's -- I -- I'm
18 not prepared to do either. And the problem is, is the
19 attorneys' fee issue.

20 THE COURT: Yes, but if it exceeds, it means you can
21 get it. My question is, are you -- are you prepared to
22 stipulate that there is -- that the Court has jurisdiction to
23 hear this case?

24 In other words, are you prepared to say, not that
25 you don't have it, and then you go back. The question is,

1 from what I understand it, you were reluctant to file the case
2 here, because --

3 MR. ARCHINACO: Right.

4 THE COURT: -- you weren't sure that you could stay
5 here. But now, the defendant is -- is, in fact, urging you to
6 stay here. So, the matter has changed posture. And, so, the
7 question is, are you prepared to say, well, you're right, this
8 -- this -- the amount in controversy doesn't mean that's what
9 you are going to get, but the amount in controversy exceeds
10 \$75,000.

11 MR. ARCHINACO: Your Honor, two points --

12 THE COURT: Yes.

13 MR. ARCHINACO: -- I would make about that. One is,
14 if the -- one is, if the defendant were to present evidence to
15 you, particularly as to the net worth of the individual
16 defendant and the defendant, Linden, you could, then,
17 properly, and I could properly assess, whether a nine or ten
18 multiple -- ten time multiple on punitive damages would be
19 appropriate. That's the first point. So, I would need to see
20 that evidence.

21 The second point is, is if the defendant is willing
22 to stipulate that there is absolutely no cap as to what would
23 be reasonable for my attorneys' fees in this case, then --

24 THE COURT: Well, what does that have to -- I don't
25 understand what that has to do with it.

1 MR. ARCHINACO: Because what's going to happen is is
2 that they are going to contest -- they will contest what a
3 reasonable attorney fee is for handling a \$5,000 case.

4 THE COURT: Right.

5 MR. ARCHINACO: And I would, too. If I was the
6 defense counsel, I'd say, it's unreasonable, Mr. Archinaco. I
7 don't care -- you know, you're a partner at a big firm. I
8 don't care. It's unreasonable for you to have \$70,000 in
9 fees.

10 THE COURT: But it's not a \$5,000 case. If it was a
11 \$5,000 case, if -- then, it would be unreasonable, but your
12 whole point is that it isn't a \$5,000 case, that it is a fraud
13 case. It's an intentional interference case. It's a
14 violation of Pennsylvania law. It's a violation of California
15 law. This is a big deal and a big case. That's what the case
16 is about.

17 Now, it may turn out to be a \$5,000 collection case.
18 That's -- that's -- but you can't, ahead of time, know what it
19 is going to be --

20 MR. ARCHINACO: Your Honor --

21 THE COURT: -- except that we are, as you come
22 through the door, and as I'm listening to you, this is a big
23 case.

24 MR. ARCHINACO: Importance-wise, absolutely.
25 Absolutely.

1 THE COURT: Well, a big case in terms of numbers.
2 What these people have done is ripped off a lot of people for
3 a long period of time, and you are just the guy who is
4 complaining about it. You want an injunction to stop them
5 from doing it to other people. So, if you're here for a
6 \$5,000 case, then you go back to State Court. If you are here
7 on a case which, realistically, involves more money, then --
8 then you stay here.

9 But -- but I don't know -- you know, you -- you
10 know, maybe you don't have the authority to do this, but I --
11 I just find it hard to believe that you actually want to be --
12 unless, you know, Mr. Bragg is from Chester County, that may
13 have something to do with it --

14 MR. ARCHINACO: He is, but it's --

15 THE COURT: -- which is entirely appropriate. I
16 mean, I'm not holding that -- anybody from Chester County, as
17 you say, some of my best friends are from Chester County, but
18 he may feel more comfortable in Chester County. And that's an
19 entirely appropriate rationale, because I couldn't -- I
20 couldn't see that -- he is going to require a lot of attention
21 to this case, and I just don't see the State Court having the
22 ability to do that, nor a jury is going to make that much of a
23 difference in Chester County than in Philadelphia.

24 In fact, it probably, basically, is less likely to
25 empathize with something along these lines. But those are

1 practical considerations that you have to make. If what you
2 are saying is, this is the way it is, okay, we'll call it.
3 So, we'll -- we'll do the best we can and just call it once we
4 hear the defendant.

5 MR. ARCHINACO: Your Honor --

6 THE COURT: Yes.

7 MR. ARCHINACO: -- and I don't want -- I don't want
8 the Court to think that, you know, obviously, this is an
9 argument -- I think Courts have recognized that when we come
10 before you on this type of argument --

11 THE COURT: Yes.

12 MR. ARCHINACO: -- I think both sides, and I would
13 recognize this with Andrew, as well, it puts us in a difficult
14 position because, as one Court has noted, we always argue the
15 opposite position, or, at least, that's the way it is. The
16 way the rule has been contemplated is, we always argue the
17 opposite position.

18 But I will say to the Court, I mean, trebling of the
19 out of pockets, and the case law appears to be, on the Unfair
20 Trade Practice claim, that it's out of pockets. I don't know
21 that you're entitled to trebling of the appreciation of an
22 asset.

23 And I just don't know that. I don't --

24 THE COURT: Yes, but unless you prove some kind of
25 fraud, if all you've proved is that you paid -- that there's a

1 breach of contract -- and that's going to be the big issue
2 here -- this is going to be a \$5,000 case, no matter what --
3 what you call it. If you prove that there is something going
4 on here beyond that, then this is going to be a case where you
5 will aggregate all kinds of various damages.

6 But, so far, you gave them some money, and they
7 didn't give you whatever it was. I mean, it sounds like a
8 contract case, unless there is more to it, which you claim
9 there is. Otherwise, every contract case involves somebody,
10 you know, lying. They said they would provide the services,
11 and, you know, you sometimes hear that argument. I paid for
12 it. They said they would do it. They didn't do it. They
13 committed fraud, you know.

14 MR. ARCHINACO: And if I take my biggest, I mean,
15 damage claim, aside from this nine or ten time multiple --

16 THE COURT: Yes.

17 MR. ARCHINACO: -- but if I take my biggest damage
18 claim, which is the Unfair Trade Practice claim --

19 THE COURT: Yes.

20 MR. ARCHINACO: -- I treble the amount in
21 controversy. Let's assume that it was the appreciation of the
22 land. We don't know what the number is for that.

23 THE COURT: Yes.

24 MR. ARCHINACO: But if I treble that, and then add
25 on a reasonable attorney fee, I am not at 75,000. That's the

1 reason why I don't think that they have presented the evidence
2 to you to keep the case before you.

3 Now, obviously, recognizing that there are other
4 issues here about appreciation. Are there other people this
5 is happening to? Yes. This is happening -- this is happening
6 to everyone they make the promise to --

7 THE COURT: Yes.

8 MR. ARCHINACO: -- that they own the land. And
9 there are people being induced into investing in this world --

10 THE COURT: Yes.

11 MR. ARCHINACO: -- and then, after being told one
12 story, it turns out that that story isn't true.

13 THE COURT: Well, all I'm saying is that the heart
14 of this case is whether this is an ordinary breach of contract
15 or whether it involves fraud and a tort, whether this is a
16 contract or this is a tort. And if -- if it is a contract
17 claim, it is a \$5,000 claim.

18 If it's a tort claim, then, it's significantly more.
19 If they do it to everybody, if they do it as a matter of
20 practice, if this is a scheme, if all of those things that you
21 are alleging turn out to be so, then you've got a big case
22 here.

23 And I think that that's what your complaint reflects
24 in there. But we'll see what we have. Good. Okay.

25 MR. ARCHINACO: Thank you, Your Honor.

1 THE COURT: Well, thank you.

2 MR. ARCHINACO: Thank you, Your Honor.

3 THE COURT: Okay. Mr. Soven, please?

4 MR. SOVEN: Thank you, Your Honor. Let me begin
5 with just a little more.

6 THE COURT: You're even in the same building?

7 MR. SOVEN: Yeah. Well, he's --

8 THE COURT: You can take depositions. And he's in
9 the 25th -- you can take depositions on the 21st floor,
10 halfway between.

11 MR. SOVEN: Neither of us is in Chester County,
12 either, but anyway.

13 THE COURT: Okay.

14 MR. SOVEN: Your Honor, the way this got started,
15 before this complaint was even filed, is Mr. Bragg filed a
16 complaint for \$8,000 with the local District Justice in
17 Chester County.

18 THE COURT: Right.

19 MR. SOVEN: That's when I got hired. I was prepared
20 to go out there and litigate what I thought was an \$8,000
21 claim.

22 THE COURT: It's beneath your stature.

23 MR. SOVEN: Well, the client gets to decide that, I
24 guess.

25 THE COURT: Okay.

1 MR. SOVEN: But anyway, so, the day before that was
2 supposed to be heard, that complaint is withdrawn, Mr. Bragg
3 hires counsel --

4 THE COURT: Right.

5 MR. SOVEN: -- and this complaint results a few
6 months later. I think it's a little bit disingenuous for Mr.
7 Bragg to argue that he's now seeking less in this case than he
8 was seeking in the District Justice case where the complaint
9 asked for \$8,000. So --

10 THE COURT: Well, that still would make it \$8,000.

11 MR. SOVEN: What's that?

12 THE COURT: That would make it \$8,000. So, what
13 would that increase the multiplier, is that what you're
14 saying?

15 MR. SOVEN: Well, it wouldn't even increase the
16 multiplier, but conceptually, we're at different universes.

17 THE COURT: Yes.

18 MR. SOVEN: I mean, that case was an \$8,000 case.
19 All right. There was no other -- I mean, in theory, if I had
20 thought, on the basis of that complaint, that complaint could
21 have been removed. All right. Although it's rare that
22 District Justice actions get removed to the Court -- it has
23 happened. I did it once. And I could have done that. But
24 that complaint did not look like a case where \$75,000 was
25 being sought.

1 This case gets filed. And, although, you didn't
2 quite get, I don't think, a straight answer to your question
3 about whether or not it's about fraud, clearly, on the face of
4 the complaint --

5 THE COURT: Well, it says fraud.

6 MR. SOVEN: -- it's fraud.

7 THE COURT: Yes.

8 MR. SOVEN: Right. I mean, the virtual ownership
9 lie is the key phrase that keeps coming up over and over
10 again. And when you heard counsel's presentation about what
11 supposedly happened here, it's key that that "virtual
12 ownership lie" is going to be the centerpiece of the
13 plaintiff's case.

14 Now, the defendant will argue that the terms of
15 service that Mr. Bragg agreed to are what control the outcome,
16 but clearly, the plaintiff is not accepting that position,
17 and it wasn't accepted today. I mean, it was disputed today.
18 So, the centerpiece of this complaint, which, of course, I
19 don't agree has merit and all that, is -- sounds -- sounds in
20 fraud.

21 The way -- a little bit more background. What
22 happened -- if you look -- Exhibit A to the complaint reflects
23 that Mr. Bragg actually owned about a hundred of these virtual
24 properties. What happened was, he had purchased a large
25 number of these virtual properties, and then he had purchased

1 several more surreptitiously, by sort of, rigging the auction
2 system.

3 Now, again, we're not here on the merits here today.
4 But that's what happened. He was able to buy a few properties
5 at an unreasonably low price. Linden found out about it and
6 kicked him off the system, and, you know, essentially, you
7 know, he no longer had access to those properties.

8 THE COURT: So, this was a counter measure --

9 MR. SOVEN: This was a -- yes, right.

10 THE COURT: -- to an ongoing fraud by Mr. Bragg?

11 MR. SOVEN: Right. I mean, and we said, well, under
12 the -- you violated the terms of service. You know, you
13 rigged -- you rigged the game, you're out.

14 THE COURT: Now, was -- is -- is there a -- I think
15 I asked -- I asked a question from counsel -- is there a piece
16 of paper where the terms of this sale are contained or --

17 MR. SOVEN: Well, there's not a piece of paper --
18 well, there may not be a piece of paper --

19 THE COURT: Maybe --

20 MR. SOVEN: -- as to each sale, but the --

21 THE COURT: -- virtual paper.

22 MR. SOVEN: -- the terms of service are attached to
23 our motion to compel arbitration --

24 THE COURT: Right.

25 MR. SOVEN: -- which will be heard, I guess --

1 THE COURT: Yes.

2 MR. SOVEN: -- if the case stays before Your Honor.
3 So, yeah, I mean, those terms of service are in writing, you
4 know, whether the consumer prints them, I don't know, but you
5 click on them, and you agree.

6 THE COURT: But there is -- there is a -- there is a
7 site where these terms are -- are contained?

8 MR. SOVEN: Right. And it lays out the various
9 rules that govern your life in Second Life, so to speak, and
10 says what you own and what you don't own. I mean, that's all
11 in the -- what we would call the contract.

12 All right. So, that's, sort of, by way of
13 background. I mean, I think it's a fraud case, and the
14 circumstances of how what happened here and "how much is at
15 stake" are just a little bit different than -- than as
16 presented. I guess I do the math a little bit -- a little bit
17 differently. I mean, if he's out of pocket, say, \$5,000, I
18 guess we agree that that could, potentially, be multiplied by
19 nine or ten or --

20 THE COURT: Well, how do you go to ten? Is that
21 what Gore says or what is the other case?

22 MR. SOVEN: Well, there's Gore, and I believe
23 there's State Farm.

24 THE COURT: State Farm, okay.

25 MR. SOVEN: I don't -- I don't think it makes a

1 difference for purpose of this --

2 THE COURT: Okay.

3 MR. SOVEN: -- whether it's nine or -- whether it's
4 nine or ten.

5 The point on the Unfair Trade Practices claim is
6 that that is a bench issue. And the way the statute reads is
7 that gives the Court, the Judge, as opposed to a jury, the
8 discretion to -- to impose treble damages. So, you know,
9 sitting here today, I think it's difficult to predict how a
10 jury might rule on the punitive damages side --

11 THE COURT: Well --

12 MR. SOVEN: -- and how the Court might rule on the
13 treble damages side.

14 THE COURT: -- if -- if true -- if -- if the
15 defendant was engaged in a scheme that induced people to buy
16 virtual real estate and then did not deliver that property,
17 and it wasn't a mistake or an oversight or a single customer,
18 but it was a matter of course of how they did business, if
19 that is true, then treble damages may be warranted.

20 MR. SOVEN: The Court might find --

21 THE COURT: Why else would there be treble damages?

22 MR. SOVEN: -- the Court might find as much.

23 THE COURT: Okay.

24 MR. SOVEN: And, so, I mean, if you start with five,
25 and you add 45 to the five for the punitive damages, and you

1 add 15 for the treble damages, and you add reasonable
2 attorneys' fees, and given the length of the complaint, we
3 already have several thousand dollars of those --

4 THE COURT: Now, you said -- I -- I think there was
5 a question whether punitive damages would go on top of treble
6 damages.

7 MR. SOVEN: Well, I mean, again, for purposes of
8 argument today, I believe the law is that they could. You
9 know, the punitive damages would be an issue for the jury.
10 They could just easily decide that, you know, Mr. Bragg gets
11 back his \$5,000 and, you know, he's entitled to nine times
12 that for punitive damages.

13 And then, you know, the Judge, sitting on the bench,
14 could decide, well, this was really outrageous, and I
15 potentially, have the authority to order another 15, plus
16 attorneys' fees on top of that, and that's what I'm going to
17 do, you know, assuming that that's the way the case goes in.
18 We don't think it will. But all of that is possible.

19 THE COURT: Well, the attorneys' fees will be
20 pursuant to the Pennsylvania statute?

21 MR. SOVEN: Well, there's -- either the Pennsylvania
22 CPL law --

23 THE COURT: Or California?

24 MR. SOVEN: -- or the California statutes that are
25 in the complaint.

1 THE COURT: Is that where the defendant is located,
2 in California?

3 MR. SOVEN: Yes.

4 THE COURT: Okay.

5 MR. SOVEN: In San Francisco. Although, it's only
6 \$1,000 -- if we are counting, there's also \$1,000 claim for
7 statutory damages under California law. There is also a
8 tortious interference claim, which potentially, there are both
9 actual damages involved in that, as well as that's additional
10 grounds, potentially, for punitive damages.

11 And then there's the injunctive relief component of
12 the case, which is that Mr. Bragg wants all of his property
13 restored. He wants access to the Second Life site, and in the
14 complaint, he asks for -- for Second Life or Linden to restore
15 the property of people who were treated similarly.

16 And so, when you add in all those factors, I think
17 that there's no question that you can get to a possibility of
18 there being \$75,000 at issue.

19 THE COURT: Well, I think it says a legal
20 certainty --

21 MR. SOVEN: Well, but it's a -- but it's --

22 THE COURT: -- not a possibility. It's up for you
23 to prove that what appears to be to a legal certainty that the
24 plaintiff would not be entitled to a minimum amount so the
25 word, legal certainty is -- is something more than we can sit

1 around and speculate and conjecture that that would happen.

2 MR. SOVEN: I agree, Your Honor. But if you read --
3 but if you read KIA vs. -- I think it's -- or Samuel versus
4 KIA -- Bassett --

5 THE COURT: Yes.

6 MR. SOVEN: -- which, I think, is the Third
7 Circuit's most recent case on the issue, I mean, what the
8 Third Circuit says is that, you know, they haven't seen a case
9 yet where the precise phraseology as to the standard, really,
10 would make a difference --

11 THE COURT: Yes.

12 MR. SOVEN: -- whether it's called reasonableness or
13 called, legal certainty. And then they come out, and they
14 say, we're going to use legal certainty. And it has to be
15 that there's a legal certainty that the complaint, as phrased,
16 can't lead towards a result of \$75,000. I mean, it's actually
17 phrased in the negative in that case.

18 THE COURT: Okay.

19 MR. SOVEN: So, you know, I think that -- so, as I
20 said, there were some other factors in there that counsel
21 didn't necessarily acknowledge. I mean, the complaint, of
22 course, has never been amended. I mean, you know, you might
23 face the argument of well, you know, I don't know if I would
24 be -- if the complaint had been amended, after we filed our
25 motion to dismiss to assert a single count for breach of

1 contract, I don't know if I would be able to stand here before
2 Your Honor.

3 But that's not what happened. And in various ways,
4 counsel never conceded that he would agree, under any set of
5 circumstances, to accept \$75,000.

6 THE COURT: How about if he amended the complaint
7 afterwards? Would -- would that --

8 MR. SOVEN: After I removed the case?

9 THE COURT: Yes.

10 MR. SOVEN: Well, I mean, the Third Circuit standard
11 is at the time of the removal, but frankly, you know, the
12 plaintiff -- I mean, the defendant, you know, might have less
13 of an -- well, I guess, if we removed the case, and an amended
14 complaint was filed, frankly, as a strategic matter, we might
15 treat the motion to remand differently. Well, I mean, I think
16 as a practical --

17 THE COURT: But he couldn't file an amended
18 complaint tomorrow. If -- if the motion to remand was denied,
19 could the plaintiff then file an amended complaint that says,
20 this is a contract matter or is it a --

21 MR. SOVEN: Well, as I said, I think what would
22 happen, as a practical matter --

23 THE COURT: Yes.

24 MR. SOVEN: -- is I would say to my client, look, he
25 amended the complaint. He's only seeking \$5,000. Should we

1 really spend more time arguing about this. Maybe we --

2 THE COURT: Let's go back to State Court.

3 MR. SOVEN: Maybe we should just go back there, and
4 -- and resolve it --

5 THE COURT: Okay.

6 MR. SOVEN: -- and resolve it there.

7 THE COURT: Thank you. I think I get your point,
8 sir.

9 MR. SOVEN: You think you got the point.

10 THE COURT: Yes.

11 MR. SOVEN: I mean, there are cases, I mean, the
12 Roth case --

13 THE COURT: Yes.

14 MR. SOVEN: -- there were \$10,000 in out of pockets.
15 Judge Shapiro found that there was easily \$75,000 at issue.

16 THE COURT: Thank you. Let me just hear rebuttal
17 here.

18 MR. ARCHINACO: Your Honor, just a couple of points.

19 THE COURT: Yes.

20 MR. ARCHINACO: Defense counsel said that -- that he
21 didn't believe you got a straight answer about whether I
22 believe this case sounds in fraud. I absolutely believe the
23 case sounds in fraud, and I actually agree with defense
24 counsel, this case definitely sounds in fraud. So,
25 absolutely, I do not believe it's just a simple contract

1 action.

2 THE COURT: Well, isn't the math, then, easy?
3 \$5,000 out of pocket, \$45,000 for treble damages, and if you
4 have to prove a complex scheme involving all of these
5 plaintiffs in a -- in a new area of the law, \$15,000 would not
6 be unreasonable under those circumstances. That puts you at
7 \$75,000.

8 I mean, it seems to me, like, from the face of the
9 complaint, and what you have argued here, it is -- it is
10 nearly undisputable that you've got 70 -- that you have in
11 excess of \$75,000 in this case, so long as you make a claim.

12 If your claim is -- you're not saying that it's even
13 in the alternative. You're saying this is a fraud case.

14 MR. ARCHINACO: Yes.

15 THE COURT: It just began as a contract case, but it
16 is really a fraud case.

17 MR. ARCHINACO: There are breach of contract
18 elements --

19 THE COURT: Yes, sure.

20 MR. ARCHINACO: -- that we would ask for --

21 THE COURT: Well, sometimes, that's how you --

22 MR. ARCHINACO: Yes.

23 THE COURT: -- that's how you find out there's fraud
24 is when somebody doesn't carry out the contract.

25 MR. ARCHINACO: Correct. When you buy something --

1 THE COURT: So, there's always a breach of contract
2 that leads you to discover the fraud. If they had lived up to
3 the contract, there would be no fraud.

4 MR. ARCHINACO: When you buy, you know, several
5 pieces of land --

6 THE COURT: Yes.

7 MR. ARCHINACO: -- and you are told you own the
8 land, and you actually go to the land, and you actually do own
9 it for a period of time, and then, you know, the night before
10 Christmas or whatever it is, they say, we don't like you
11 anymore --

12 THE COURT: Sure.

13 MR. ARCHINACO: -- and then they reconfiscate the
14 land that you were told you own, and, Your Honor --

15 THE COURT: And then you find out that they've done
16 it to 20 other people --

17 MR. ARCHINACO: Yes.

18 THE COURT: -- and that's when the fraud comes in.

19 MR. ARCHINACO: Yes. Yes. And, Your Honor --

20 THE COURT: This is -- this is something that they
21 do as a matter of practice, and they knew very well this is
22 what was going to happen.

23 MR. ARCHINACO: Your Honor --

24 THE COURT: Now, that may or may not be so, but
25 that's your theory.

1 MR. ARCHINACO: -- I would -- I would also tell you
2 two points. You mentioned with regard to amendment of the
3 complaint --

4 THE COURT: Yes.

5 MR. ARCHINACO: -- to the extent that the Court is
6 reading the complaint to -- I don't believe that I went as
7 broad as Mr. Sorven -- Soven, sorry -- as Mr. Soven stated
8 with regard to my injunctive relief, but there is injunctive
9 relief, which asks for a declaration as to all of the people
10 that have been induced into purchasing.

11 We would consider amending. If you do keep the
12 case, we would consider amending to expand it classwide.

13 THE COURT: Well, that -- that may be so, but I'm
14 considering it as of today.

15 MR. ARCHINACO: Okay.

16 THE COURT: As of the time of the removal action.

17 MR. ARCHINACO: And, Your Honor, and when you point
18 out, in terms of importance, I absolutely believe this is an
19 important case. There is one person, Anshe -- Anshe Chung, I
20 believe is the virtual name of the person, and that person
21 hasn't taken a position yet, but they are said to have a
22 million dollars in virtual assets invested with this company.

23 And why is it important? Well, it's important
24 because tomorrow, according to what they are apparently saying
25 right now, is that they can just pull out the rug, and that

1 that money is theirs. And there are other people this has
2 happened to.

3 THE COURT: Yes.

4 MR. ARCHINACO: And do I think it's important? Do I
5 think, you know, flaunting the own word in this industry,
6 because that is the standard in this industry, ownership right
7 of virtual assets, I absolutely believe it's important. And I
8 think it's the primary reason I took the case.

9 THE COURT: Well, I mean, that was not a
10 requirement, but I guess I have -- low pay gives me the
11 privilege of telling an anecdote. And that was from my
12 colleague, Judge Pollak. And when somebody argued to him
13 that, Judge, this is not Sacco/Vansetti; this is not an
14 important case, his response was, every case is an important
15 case to the litigants.

16 So, we're not going to measure whether or not it
17 should stay here on the basis of whether or not it is going to
18 appear in the Wall Street Journal. But I'm sure it's
19 important to you and to your clients. And that's good enough
20 for us here.

21 And we'll let others consider whether it will be a
22 Sacco/Vansetti type or the more ordinary staple that we're
23 used to working with here. But I appreciate both of you for a
24 very thorough briefing here, and I'm ready to rule on it.

25 MR. ARCHINACO: Thank you, Your Honor.

1 THE COURT: Motion to remand will be denied,
2 applying the well settled standard that the party removing the
3 case must show what appears to be a legal certainty that the
4 plaintiff would not be entitled to recover the minimum amount
5 set by Section 13:32.

6 The Court finds that the out of pocket minimum
7 recovery will be \$15,000 -- will be \$5,000, treble damaging
8 that recovery would bring the -- the amount to \$45,000. The
9 amount of attorneys' fees in this case, given the complexity
10 of the theory under which the plaintiffs are proceeding would
11 bring the case, to the Court's satisfaction, in excess of
12 \$75,000.

13 The case -- the only way that the case could be
14 viewed as falling short of the \$75,000 threshold is if it were
15 viewed as a contract case. But the very essence of the
16 plaintiff's position is that this goes much beyond a contract
17 pled case, and it is a tort case. Indeed, it's a fraud case.
18 And, indeed, it's a fraud case that encompasses not only this
19 particular plaintiff, but many similarly situated plaintiffs.

20 It's a novel area of law. It is complicated. If
21 litigated to its fullest extent, it will encompass a
22 significant amount of attorneys' fees, as to which the
23 plaintiff may be entitled to, depending on the application of
24 the state law in that -- in that regard.

25 But reading the complaint, I think one is impressed

1 by the plaintiff's belief that the facts here support an
2 ultimate judgment against the defendant for fraud and
3 deceptive practices under state law that would warrant those
4 -- those remedies.

5 So, the motion to remand having been denied, we'll
6 move on to the next stage of this proceeding. And what would
7 that be?

8 MR. ARCHINACO: Your Honor, I believe there are two
9 other motions --

10 THE COURT: Yes.

11 MR. ARCHINACO: -- that have been filed by -- by the
12 defendants, and I believe we have an agreement. I'm not sure
13 how many days you had gave me to file my responses. I don't
14 know if it was five or ten days after this argument. But we
15 do owe the Court responses, both to the motion to transfer the
16 case to arbitration --

17 THE COURT: Yes.

18 MR. ARCHINACO: -- and there was also a motion to
19 dismiss Mr. Rosedale for lack of personal jurisdiction. So, I
20 do owe the Court two -- two responsive pleadings to both of
21 those motions.

22 THE COURT: And when would you -- when would you be
23 ready for -- to file that response?

24 MR. ARCHINACO: I think within ten days would be
25 reasonable.

1 THE COURT: Ten days, okay.

2 MR. ARCHINACO: I've already --

3 THE COURT: That would be fine.

4 MR. ARCHINACO: -- done some work on those.

5 THE COURT: Okay. And if there is any rebuttal in
6 this -- in this case, and it may be appropriate, particularly
7 in a motion to dismiss case, that there may be something, ten
8 days to file a reply or a rebuttal. Now, that's going to be
9 both a motion to dismiss and the motion to compel arbitration?

10 MR. ARCHINACO: Correct, Your Honor.

11 THE COURT: Okay. Fine. So, why don't we get a
12 look at those papers, and then, probably, bring you in once we
13 are ready to -- to address them, but let's take a look at them
14 first. So, we'll issue an order today, scheduling those --
15 those matters.

16 And you, also, may want to have some discussions, so
17 when we have the hearing here, if the -- and maybe I'm getting
18 slightly ahead of myself -- but just so that we can continue
19 to move this matter, you would need to do this whether you're
20 here on arbitration, which is what kind of discovery you would
21 anticipate having so that you would have a sense of how long
22 it would take or should be allowed for discovery in this -- in
23 this case, which will proceed either here or in -- or in
24 arbitration.

25 So, please be prepared to discuss that, as well, you

1 know, the number of depositions, et cetera, that you envision,
2 you know, whether it's ten or 100 or whatever that may be.

3 Okay. Very well. Thank you.

4 MR. ARCHINACO: Thank you, Your Honor.

5 MR. SOVEN: Thank you, Your Honor.

6 (Proceedings concluded at 4:11 p.m.)

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C E R T I F I C A T I O N

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Lois A. Vitarelli January 14, 2007

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LOIS A. VITARELLI

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DIANA DOMAN TRANSCRIBING

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