

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

GERALD DRAYTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 7:17-cv-00413
)	
LADCO TRUCKING, LLC, <i>et al.</i> ,)	By: Elizabeth K. Dillon
)	United States District Judge
Defendants.)	

**ORDER GRANTING MOTION TO CONVERT AND
DENYING WITHOUT PREJUDICE MOTION TO DISMISS**

Defendants Ladco Trucking, LLC and Larry Lee Beebee removed this action to this court from the Circuit Court of Carroll County, Virginia, invoking this court’s diversity jurisdiction pursuant to 28 U.S.C. § 1332. Prior to the removal, the defendants had filed a demurrer in state court, asking the state court to dismiss plaintiff’s claim for punitive damages because it failed to state a claim as a matter of law. (*See* Notice of Removal, Ex. B, Dkt. No. 1-2.) Plaintiff did not respond to that demurrer in state court. (Notice of Removal ¶ 3; *see also generally* Dkt. No. 12 (state court records).)

After removal, defendants filed a motion asking this court to convert their demurrer into a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) and to dismiss plaintiff’s claim for punitive damages. (Dkt. No. 13.) To date, plaintiff has not responded to that motion, and the time for doing so has passed. To the extent that the motion simply requests a conversion of the previously-filed demurrer to a motion to dismiss pursuant to Rule 12(b)(6), the motion is GRANTED. To the extent the now-converted motion to dismiss seeks the dismissal of plaintiff’s claim for punitive damages, however, the court will deny that motion to dismiss without prejudice.

As this court has explained in detail in other cases, Rule 12(b)(6) does not provide a vehicle to dismiss a portion of the relief sought or a specific remedy, but only to dismiss a claim in its entirety. *Coogan-Golden v. Wal-Mart Stores E., LP*, No. 5:15-cv-54, 2017 WL 963235, at *1–*2 (W.D. Va. Mar. 13, 2017); *Meeks v. Emiabata*, No. 7:14-cv-534, 2015 WL 1636800, at *2 (W.D. Va. April 13, 2015). For that reason, explained in more detail in those cases, defendants’ Rule 12(b)(6) motion is DENIED WITHOUT PREJUDICE to defendants’ ability to seek the dismissal of punitive damages at a later stage of the case.

Entered: November 30, 2017.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge