

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RENEE EVERETT and BUILDING WERKS OF WI, LLC,

Plaintiffs,

v.

Case No. 10-C-634

PAUL DAVIS RESTORATION, INC.,
EA GREEN BAY LLC, and MATTHEW L EVERETT,

Defendants.

ORDER

Plaintiffs Renee Everett and Building Werks of WI, LLC commenced this action on July 14, 2010, seeking a determination that they are not a proper parties to an arbitration commenced by Defendant Paul Davis Restoration, Inc. ("PDRI"), and further that Plaintiffs are not bound by the non-competition provisions of a franchise agreement between PDRI and Defendants Matthew Everett, and EA Green Bay, LLC, under which the arbitration is sought. According to the removal petition, Matthew Everett is Renee's husband, and Building Werks of WI was formed to take over the business of EA Green Bay free of the obligations imposed under the franchise agreement with PDRI.

The action was originally commenced in Brown County Circuit Court, but removed to this Court by PDRI on July 26, 2010. Jurisdiction is asserted under 28 U.S.C. § 1332 based on diversity of citizenship of the parties. Although Defendants EA Green Bay and Matthew L. Everett, like the Plaintiffs, are citizens of the State of Wisconsin, PDRI claims that they are either improperly aligned

as defendants or their joinder is fraudulent. For this reason, PDRI contends complete diversity nevertheless exists and thus its removal to federal court is proper. No motion to remand the case to state court was filed by the Defendants, and on the basis of the record before me at this time, I find that Matthew Everett and EA Green Bay are in fact aligned in interest with the Plaintiffs and are therefore more properly considered plaintiffs in the case. Accordingly, I conclude that subject matter jurisdiction exists, though the issue can be revisited at a later time.

On August 20, 2010, Plaintiffs filed a motion for a temporary restraining order and a preliminary injunction seeking to enjoin PDRI from maintaining or pursuing or prosecuting its arbitration proceeding against them. The Court scheduled the matter for a telephone status conference on the motion for August 26, 2010. On August 25, 2010, PDRI filed an expedited motion for discovery and extension of time to respond to Plaintiffs' motion. The Court addressed both motions at the status conference.

Based upon the discussion at the status conference and a review of the entire file, **IT IS HEREBY ORDERED** that the Motions for Expedited Discovery and For an Extension of Time to Respond to Plaintiffs' Motion are **GRANTED** with the understanding that the parties will consult with one another in an attempt to work out any disagreement as to the scope of the expedited discovery to which PDRI is entitled. Responses to PDRI's request for production of documents are to be made on or before September 10, 2010, and the depositions requested by PDRI shall be completed on or before October 1, 2010. PDRI's response to the Motion for Preliminary Injunction shall be filed on or before October 15, 2010 and Plaintiffs' reply shall be filed on or before October 26, 2010. This matter is scheduled for an evidentiary hearing on October 29, 2010 at 10:00 a.m.

This order is expressly conditioned upon PDRI's agreement that it will not proceed on its arbitration claim against the Plaintiffs absent further order of the Court until such time as the Court renders its decision on Plaintiffs' Motion for a Preliminary Injunction. In light of PDRI's agreement that it will not proceed with its arbitration proceeding against Plaintiffs pending this court's decision of Plaintiffs' motion for a preliminary injunction, Plaintiffs' motion for a temporary restraining order is denied as moot.

Dated this 26th day of August, 2010.

s/ William C. Griesbach
William C. Griesbach
United States District Judge