

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GRUNBERGER JEWELERS, et al.	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 3:03CV647 (CFD)
	:	
THOMAS LEONE,	:	
Defendant.	:	

RULING ON MOTION TO REMAND

Plaintiffs, Grunberger Jewelers, Inc., James Grunberger, Eric Beaume, and Sonia Lutbert, originally filed this suit in the Connecticut Superior Court against the defendant, Thomas Leone (“Leone”). Leone subsequently removed the action to federal court based upon diversity jurisdiction. Pending is plaintiffs’ Motion for Remand [Doc. # 10]. For the following reasons, the motion is DENIED.

The plaintiffs’ motion is based on 28 U.S.C. § 1446(b), which sets forth the time limits within which a party must file a notice of removal. The statute provides for two alternative time limits, both potentially relevant here. The first paragraph of § 1446(b) provides that “the notice of removal of a civil action . . . shall be filed within thirty days after the receipt by defendant . . . of a copy of the initial pleading.” However, the second paragraph provides that “[i]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” The plaintiffs raise two arguments based on § 1446(b): 1) the initial complaint indicated that the case was removable (or that, based on the

surrounding circumstances, the defendant should have known the case was removable based on the complaint); and, alternatively, 2) there has not been “an amended pleading, motion, order or other paper” that has subsequently made the case removable.

Discussion

1. Complaint did not establish federal jurisdiction

It is undisputed that the notice of removal was filed after the expiration of the thirty day period following the defendant’s receipt of the initial pleading. However, “[u]nder § 1446(b), ‘the thirty day time period . . . starts to run from a defendant’s receipt of the initial pleading *only when that pleading affirmatively reveals on its face that the plaintiff is seeking damages in excess of the minimum jurisdictional amount of the federal court.*’” Viens v. Wal-Mart Stores, Inc., No. 3:96CV02602 (AHN), 1997 WL 114763, at *2 (March 4, 1997, D. Conn.) (citing Chapman v. Powermatic, Inc., 969 F.2d 160, 163 (5th Cir. 1992)) (emphasis added). Here, the plaintiffs’ initial pleading did not “affirmatively reveal on its face” that the amount in controversy exceeded the \$75,000 threshold required for diversity jurisdiction. See 28 U.S.C. § 1332(a). Rather, the complaint seeks damages arising from a breach of contract with a total purchase price of \$22,000. It also asserts damages for punitive damages, lost profits, loss of use, and fraud, but there is nothing in the complaint to indicate the amount of those damages.

Plaintiffs point to a demand letter sent to Leone prior to the filing of this suit to show actual knowledge by Leone that the amount in controversy exceeded \$75,000. That letter, dated March 27, 2002, requested \$172,000 to settle the claims arising out of the breach of the contract at issue in this

suit.¹ See Pl.’s Mot. for Remand, Ex. D. However, even assuming that the letter made Leone aware that the dispute exceeded \$75,000, the Court’s inquiry under § 1446(b) is directed solely at the initial pleading itself, without reference to the defendant’s subjective knowledge. See Chapman, 969 F.2d at 163 (“We adopt this rule because we conclude that it promotes certainty and judicial efficiency by not requiring courts to inquire into what a particular defendant may or may not subjectively know.”).

Because the complaint did not clearly indicate that the case was within the diversity jurisdiction of the federal courts, Leone’s petition for removal was not untimely for failure to file within thirty days of receiving the initial pleading.

2. “Other Paper”

As noted above, plaintiffs also argue that, if the Court decides that the original complaint did not start the thirty-day removal period, removal was still not proper because there was not “an amended pleading, motion, order or other paper” within the meaning of § 1446(b) that served to make the case removable.² Assuming without deciding that § 1446(b) requires such “other paper” before removal is authorized (rather than merely setting the time limits for when the right of removal must be exercised), the plaintiffs’ motion fails because there is “other paper” here “from which it [can] be ascertained that the case . . . has become removable.” 28 U.S.C. § 1446(b). As noted above, attached to the plaintiffs’ Motion for Remand as exhibit D is the demand letter of March 27, 2002 offering \$172,000 to

¹The letter contemplates a suit against Leon’s company, CMI International. However, counsel for the plaintiffs indicated at oral argument on this motion on June 20, 2003 that Leone was ultimately named as the plaintiff because CMI International is now defunct.

²Leone’s counsel claims that he was put on notice that the case was removable for the first time when he was “orally advised . . . that the Plaintiffs were seeking monetary damages in excess of \$300,000” by plaintiffs’ counsel on March 10, 2003. See Def.’s Notice of Removal, ¶ 14.

settle the case. Considered with the initial complaint, the plaintiffs' memorandum, which incorporates this letter, establishes that there is federal jurisdiction over this controversy based on diversity jurisdiction, and starts the thirty-day time period within which the case may be removed. See Yarnevic v. Brink's, Inc., 102 F.3d 753, 755 (4th Cir. 1996) ("We do not think § 1446(b) requires that the 'motion, order or other paper' be part of the state court record . . . The 'motion, order or other paper' requirement is broad enough to include any information received by the defendant, 'whether communicated in a formal or informal manner.'" (citations omitted).³ Thus, Leone's notice of removal, filed on April 9, 2003, was timely, as it was filed before May 14, 2003 (thirty days after the case became removable due to the filing of the plaintiffs' motion for remand).⁴

Conclusion

For the preceding reasons, the plaintiffs' Motion for Remand [Doc. # 10] is DENIED.

SO ORDERED this ____ day of June 2003, at Hartford, Connecticut.

Christopher F. Droney
United States District Judge

³It is irrelevant that Leone was in possession of this letter prior to the filing of the initial complaint. See Chapman, 969 F.2d 164 ("The plain language of the second paragraph of § 1446(b) requires that if an 'other paper' is to start the thirty-day time period, a defendant must receive the 'other paper' *after* receiving the initial pleading.") (emphasis added). Here, the letter triggered the thirty-day period only when it became part of the record *after* the receipt of the original complaint.

⁴Although the notice of removal was filed five days *before* the "paper" which indicated the basis for diversity jurisdiction, it would certainly not be in the interest of judicial efficiency to require a new notice of removal.