

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

AMANDA EDMOND,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 3:98CV1653(CFD)
	:	
THE HARTFORD INSURANCE CO. et al.,	:	
Defendants.	:	

RULING

Pending are the defendant Hartford Insurance Company’s (“Hartford”) Motion to Dismiss for Failure to Comply with Court Order [Doc. #96] and Motion to Dismiss for Failure to Comply with Court Order [Doc. # 112]. The earlier motion to dismiss [Doc. # 96], is DENIED as moot, in light of the subsequent motion. The subsequent motion to dismiss [Doc. # 112] is DENIED, for the following reasons:

On March 23, 2001, this Court entered a ruling granting a motion to dismiss the plaintiff’s action for failure to state a claim on which relief could be granted. The plaintiff appealed, and on December 14, 2001, the Second Circuit entered a summary order affirming in part and vacating in part this Court’s March 23, 2001 Ruling. In its summary order, the Second Circuit noted that “[e]ven though the plaintiff did not specifically enumerate breach of contract as a count in her amended complaint . . . she sets forth facts that might establish a contract breach.” Summ. Order [Doc. # 80], at 3-4. The Second Circuit remanded the case and directed this Court to permit the plaintiff to amend her complaint to state a breach of contract action sounding in this Court’s diversity jurisdiction “[i]f the district court determines that plaintiff is able to state a viable claim for breach of contract, the parties are

diverse, and the amount in controversy is in excess of \$75,000. . . .” Id. at 4. In accordance with the remand order, this Court entered an Order on January 25, 2002, directing the plaintiff and Hartford to “show cause why any contract claim that remains should not be dismissed because the amount-in-controversy does not exceed the amount specified in 28 U.S.C. § 1332.” Order, dated January 25, 2002 [Doc. # 81].¹

On February 22, 2002, Hartford mailed interrogatories and requests for production to the plaintiff, presumably intended to elicit information regarding the amount of damages alleged in order to aid Hartford in responding to the Court’s Order to show cause regarding the jurisdictional issue of amount in controversy. The plaintiff failed to respond to two of Hartford’s interrogatories—one interrogatory asked the plaintiff “to list, itemize, and describe with specificity all damages the plaintiff is claiming” and the other interrogatory asked for documentation in support of such damages calculations. After this Court granted, in part, Hartford’s motion to compel the plaintiff’s responses to these interrogatories and requests for production on July 8, 2002 and the plaintiff still failed to respond, Hartford filed the first motion to dismiss indicated above [Doc. # 96]. This Court entered an Order on June 25, 2003 [Doc. # 110], indicating that the case would be dismissed if the plaintiff failed to respond to the discovery requests that were the subject of the Court’s July 8, 2002 Order.

On July 3, 2003, in response to the Court’s June 25, 2003 Order, the plaintiff served a document on Hartford entitled “A Respond to Interrogatories,” in which plaintiff attempted to respond

¹The Court entered a second order to show cause on February 22, 2002, when it became apparent that Hartford had not received the first order. This order was the same in substance as the January 25, 2002 Order. See Order, dated February 22, 2002 [Doc. # 83].

to the discovery requests. See Mot. to Dismiss for Failure to Compl. with Court Ord. [Doc. # 112], Ex. E. Hartford claims that the plaintiff's July 3, 2003 document was not responsive, and again asserted that the action should be dismissed for failure to respond to an order of the Court. See id. While the Court agrees that the plaintiff's document was not clearly responsive to Hartford's discovery requests, the pro se plaintiff has submitted additional documentation that is responsive to the requests for production and that is sufficient for this Court to conclude that the amount in controversy regarding the plaintiff's putative breach of contract claim exceeds the \$75,000 threshold required for diversity jurisdiction. See 28 U.S.S. 1332. Specifically, on February 13, 2002, the plaintiff filed a response to this Court's original Order to Show Cause [Doc. # 82]. Attached to the plaintiff's February 13, 2002 response was documentation suggesting that the damages alleged exceed \$75,000. Included as attachments to the plaintiff's response were, among other items: 1) a work proposal from a roofing company for \$38,000; 2) a work estimate from a fence company for \$24,220; and 3) an estimate from a construction company for \$27,000.

In determining whether the amount in controversy requirement has been met, courts apply the "legal certainty" test which requires dismissal of an action when it appears to a legal certainty that the plaintiff's claim is for less than the jurisdictional minimum. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 58 S.Ct. 586, 82 L.Ed. 845 (1938). In applying the legal certainty test, resort to matters outside the pleadings may be used to amplify the meaning of the complaint's allegations. Zacharia v. Harbor Island spa, Inc., 684 F.2d 199, 202 (2d Cir.1982), citing Givens v. W.T. Grant Co., 457 F.2d 612 (2d Cir.), vacated, 409 U.S. 56, 93 S.Ct. 451, 34 L.Ed.2d 266, on remand, 472 F.2d 1039 (2d Cir.1972).

Hough v. Merrill Lynch, Pierce, Fenner & Smith, 757 F. Supp. 283, 285 (S.D.N.Y. 1991).

Moreover, "[s]ince most pro se plaintiffs lack familiarity with the formalities of pleading requirements, we must construe pro se complaints liberally, applying a more flexible standard to evaluate their

sufficiency than we would when reviewing a complaint submitted by counsel. . . . In order to justify the dismissal of the plaintiff[']s pro se complaint, it must be beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief.” Lerman v. Bd. of Elections, 232 F.3d 135, 139-40 (2d Cir.2000) (internal citations, quotation marks and footnote omitted), cert. denied, 533 U.S. 915, 121 S.Ct. 2520, 150 L.Ed.2d 692 (2001). Viewing the plaintiff’s complaint in combination with her February 13, 2002 filing under this standard, it is not clear to a “legal certainty” that the plaintiff’s putative breach of contract claim is for less than \$75,000.

For the forgoing reasons, Hartford’s Motion to Dismiss [Doc. # 112] is DENIED. Also, the Motion to Dismiss [Doc. # 96] is DENIED as moot. The plaintiff may file an amended complaint no later than October 14, 2003 to assert a claim for breach of contract in accordance with the Second Circuit’s order, dated December 5, 2001. If the amended complaint is not filed by that date, this action will be dismissed.

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

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE