

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ELLORA'S CAVE PUBLISHING, INC.
and
JASMINE-JADE ENTERPRISES, LLC

Case No:

Plaintiffs,

v.

DEAR AUTHOR MEDIA NETWORK, LLC
and
JENNIFER GERRISH-LAMPE

Defendants.

NOTICE OF REMOVAL

Pursuant to U.S.C. §1332, 1441, and 1446, Defendants Dear Author and Jennifer Gerrish-Lampe hereby notify the Court that the above-captioned action has been removed to the United States District Court for the Northern District of Ohio, based on the complete diversity of citizenship between the parties and an amount in controversy greater than \$75,000.

This Notice of Removal has been filed within the time prescribed in 28 U.S.C. 1446(b). This Court has original jurisdiction pursuant to 28 U.S.C. 1332(a).

Plaintiffs filed this action in the Court of Common Pleas in Summit County, alleging that Ms. Lampe's article written for *Dear Author* constitutes defamation. Defendants are the only defendants in the State Court action, and both defendants consent to the removal. The Complaint was filed on September 26, 2014. A copy of all pleadings served on Defendants in the State Court action are attached hereto as Exhibit A.

The Defendants draw the court's attention to the pending motion for a temporary restraining order and will file a response to it immediately following its docketing in this case.

Daniel M. Horrigan, Summit County Clerk of Courts

Diversity of Citizenship

At all times that the Complaint was filed, Defendants are residents of the State of Iowa. Defendant Dear Author is an Iowa LLC, with its registered agent at 531 77th Street, West Des Moines, Iowa 50266. Defendant Lampe is an individual, with a residence of 630 E. Locust Street, Des Moines, Iowa 50319.

Plaintiffs are Ohio Corporations, with a principal place of business located at 1056 Home Avenue, Akron, Ohio 44310. Pursuant to 28 U.S.C. §1332(c)(1), a corporation is a citizen of the state in which it is incorporated and of the state where it maintains its principal place of business. Therefore, Plaintiffs are citizens of Ohio.

There is complete diversity between the parties under 28 U.S.C. §1332(a)(1).

Amount in Controversy

The amount in controversy in this action exceeds \$75,000.00. The Plaintiff only seeks a rote “in excess of \$25,000” amount, and not a sum certain. Where the plaintiff has not plead any sum certain, in order to remove the case from state court to federal court, the defendant must demonstrate only that it is more likely than not that the amount in controversy is in excess of \$75,000. *Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 158 (6th Cir.1993).

The Plaintiffs’ prayer for \$25,000 is not the result of any omission on their part. Pursuant to the Ohio Rules of Civil Procedure, if the party seeks more than \$25,000.00 in damages, the plaintiff may not specify this in the demand for judgment. Ohio R. Civ. P. 8(A). Therefore, while the complaint only states “in excess of \$25,000” on its face, it is clear that the amount in controversy is in excess of \$75,000.

Each plaintiff alleges entitlement to money damages and injunctive relief against each defendant, “in excess of \$25,000.00.” This would seem to create an amount in controversy of “in excess of \$100,000.” However, even under other possible calculations, the amount in controversy exceeds \$75,000.

Communication with counsel for Plaintiffs has confirmed that Plaintiffs also believe that the amount in controversy is in excess of \$75,000.00, making statements that the amount of damages

Daniel M. Horrigan, Summit County Clerk of Courts

Plaintiffs will be seeking is quite large and growing. In fact, if Plaintiff were awarded a mere \$25,001 (in excess of \$25,000) as compensatory damages and twice that amount, or \$50,002, as punitive damages, the total damages would be \$75,003. The jurisdictional amount in controversy analysis must take into account the availability of punitive damages “unless it is apparent to a legal certainty that such cannot be recovered.” *Smith v. Nationwide Prop. & Cas. Ins. Co.*, 505 F.3d 401, 408 (6th Cir. 2007) (quoting *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572 (6th Cir. 2001)).

To determine whether the amount in controversy may be satisfied by the availability of punitive damages, the Court may consider verdicts and settlements in similar cases. See *Lays v. Lowe’s Home Ctrs., Inc.*, No. 1:08-cv-1084, 2009 U.S. Dist. LEXIS 16097, 2009 WL 514291, at *4 (W.D. Mich. March 2, 2009). In Lake County, a jury awarded \$750,000 in a similar defamation claim. *Blatnik v. Dennison*, 148 Ohio App. 3d 494 (Ohio Ct. App. 2002). More recently, in the Southern District of Ohio, a jury awarded \$100,000. *Young v. Gannett*, Case No. 1:10-cv-00483. In another case involving the reputation of a schoolteacher and cheerleader, which must be worth less than the reputation of a large company like Ellora’s Cave, the jury awarded \$338,000 in compensatory and punitive damages. *Jones v. Dirty World Entm’t Recordings LLC*, 755 F.3d 398 (6th Cir. 2014) (Overturning jury award due to immunity under 47 U.S.C. § 230).

Not only do similar jury awards support the amount in controversy, but the Complaint and affidavit of Patricia Marks both make it clear that the plaintiffs value this case in excess of \$75,000. The complaint alleges that there has been a loss of goodwill and reputational damage to the plaintiffs (Complaint at ¶30) and seeks punitive damages and attorneys’ fees. (Complaint at ¶31, 39, Demand). Further, the Complaint and Motion for a Temporary Restraining Order articulate that the Plaintiffs find the damages to be “irreparable” and apparently of such value that they are “impossible to quantify.” Meanwhile, seeking a TRO against speech must indicate that this is, at least, as important to the Plaintiff as a mere \$75,000.

The Plaintiffs quest for injunctive relief and punitive damages are properly included in determining the amount in controversy. See *In re Ford Motor Co. Crown Victoria Police Interceptor Prods. Liab. Litig.*, 2004 U.S. Dist. LEXIS 29971, 2004 WL 1170145 (N.D. Ohio May 19, 2004); *Everett v.*

Verizon Wireless, Inc., 460 F.3d 818, 829 (6th Cir. 2006) (“The costs of complying with an injunction, whether sought by one plaintiff or many plaintiffs, may establish the amount in controversy”). In this case, the Defendants will attest that complying with the requested injunctive relief would cost them in excess of \$75,000. The requested injunctive relief seeks to enjoin the Defendants from publishing *anything* about the Plaintiffs in any way, and requires that the Defendants violate their promise of confidentiality to their sources. In the event that either injunctive relief were granted, the Defendants would suffer at least \$75,000 in losses, and would in fact, likely need to consider going out of business altogether. If a journalist can not protect her sources,¹ and if a journalist can be enjoined from writing about one of her primary subjects, then the journalists is surely damaged at least to the tune of \$75,000 in either event.

Timing

Because Defendants removed this case on October 20, 2014, Defendants are within the 30 days of the date the Complaint was served upon them, as required under 28 U.S.C. §1446(b)(1). Further, the Defendants filed this notice of removal within 3 days of acquiring confirmation that the amount in controversy was in excess of \$75,000.

Process and pleadings

Pursuant to 28 U.S.C. §1446(a), copies of all process and pleadings served upon Defendants, and the pleadings now on file in the State Court action have been provided herein. See Exhibit A.

Conclusion

This Court has removal jurisdiction over this action pursuant to 28 U.S.C. §1332 and 1441. Defendants therefore exercise their right pursuant to 28 U.S.C. §1332, 1441, and 1446 to remove

¹ Ms. Lampe’s right to protect her sources is of such value in this state that the legislature has chosen to ennoble it by protecting it by statute. O.R.S. § 2739.12. Lampe’s home jurisdiction offers the same protection under Iowa’s common law. See *Winegard v. Oxberger*, 258 N.W.2d 847, 850, (Iowa 1977) (recognizing the “reporter’s privilege”); *Waterloo/Cedar Falls Courier v. Hawkeye Cmty. College*, 646 N.W.2d 97, 102 (Iowa 2002) (“The privilege protects confidential sources, unpublished information, and reporter’s notes”). The evisceration of such a sacred right should most definitely be given a value in excess of \$75,000.

this action from the Court of Common Pleas of Summit County, Ohio, to the United States District Court for the Northern District of Ohio.

WHEREFORE, Defendants Dear Author and Jennifer Gerrish-Lampe request this action proceed in this Court as an action properly removed pursuant to 28 U.S.C. §1441.

Respectfully Submitted,

s/Marc John Randazza _____

Marc J. Randazza, Esq.

Admitted in Northern District of Ohio

RANDAZZA LEGAL GROUP

3625 S. Town Center Drive, Suite 150

Las Vegas, Nevada 89135

Tele: 702-420-2001

Fax: 305-437-7662

Email: ecf@randazza.com