

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MAYER AMSCHEL ROTHSCHILD,

Plaintiff,

v.

Case No: 2:24-cv-959-JES-NPM

KOHL'S INC., a Foreign
Corporation,

Defendant.

OPINION AND ORDER

This matter comes before the Court on *pro se* plaintiff's Opposing Motion for Remand (Doc. #9) filed on October 23, 2024. No response has been filed and the time to respond has expired.

Construed liberally, plaintiff argues that state courts are more familiar with "applying state-specific laws", "attuned to local community standards", more expedient and cost effective, local jurors are familiar with the area, the removal was untimely, the forum defendant rule prevents removal, defendant waived removal by engaging in litigation before removal, and the amount in controversy is not met.

As a preliminary matter, the Complaint was filed in state court on September 16, 2024, and served on defendant on September 19, 2024. The removal occurred on October 15, 2024, within 30

days of the filing of the Complaint in state court. See 28 U.S.C. § 1446(B)(1) ("The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter."). Therefore, the removal was timely. Also, defendant Kohl's, Inc. is a Delaware corporation with a principal place of business in Wilmington, Delaware, and not a citizen of Florida. (Doc. #1 at 22.) Therefore, the forum defendant rule does not apply. 28 U.S.C. § 1441(b)(2).

This federal court sits in Fort Myers, Florida, one block from the state court and pulls from the same community jury pool. Further, the laws of the State of Florida are "regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." 28 U.S.C. § 1652. "Sitting in diversity, this Court must follow state substantive law as it has been announced by the state's highest court and is generally bound by the decisions of the state's intermediate appellate courts." Virgilio v. Ryland Grp., Inc., 695 F. Supp. 2d 1276, 1278 n.2 (M.D.

Fla. 2010) (citations omitted), aff'd, 680 F.3d 1329 (11th Cir. 2012). Therefore, the Court applies the same law as the state court.

As to the amount in controversy, defendant removed the case based on an amount in controversy exceeding \$75,000, based on a demand of the policy limits and the medical bills totaling \$116,335.01, not including any future damages. (Doc. #1 at 12-16.) "If the plaintiff could, no matter how bona fide his original claim in the state court, reduce the amount of his demand to defeat federal jurisdiction the defendant's supposed statutory right of removal would be subject to the plaintiff's caprice. The claim, whether well or ill founded in fact, fixes the right of the defendant to remove, and the plaintiff ought not to be able to defeat that right and bring the cause back to the state court at his election. If he does not desire to try his case in the federal court he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove." St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 294 (1938).

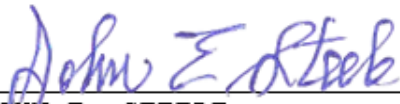
As the Court is properly exercising subject matter jurisdiction, the motion to remand will be denied.

Accordingly, it is hereby

ORDERED:

Plaintiff's Opposing Motion for Remand (Doc. #9) is **DENIED**.

DONE and ORDERED at Fort Myers, Florida, this 8th day of
November 2024.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record