JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 13-09044 RGK (AJWx)**	Date	February 5, 2014
Title	***Vagle v. Archstone Communites, LLC et al.*.**		

Present: The Honorable	R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams (Not Present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) Order re: Plaintiff's Motion for Remand (DE 10)**

I. INTRODUCTION

On March 14, 2012, Jennifer Vagle ("Plaintiff Vagle") filed a class action complaint against Archstone Builders Inc., Archstone Property Management (California), Inc., Archstone-Smith Four, Inc., and Archstone-Smith Two, Inc. in the Los Angeles County Superior Court. The Original Complaint alleged six causes of action including violation of California Civil Code § 1950.5, unjust enrichment, and violation of California Business and Professions Code §§ 17200 et seq.

On August 22, 2012, Plaintiff Vagle filed the First Amended Complaint, adding Archstone Communities, LLC ("Archstone Defendant") as a defendant, and removing the three causes of action not mentioned above.

On October 25, 2012, Plaintiff Vagle filed the Second Amended Complaint and named ASN Warner Center, LLC ("WC Defendant") as the sole defendant.

On October 24, 2013, Plaintiff Vagle and George Ponce ("Plaintiff Ponce") (collectively "Plaintiffs") filed the Third Amended Complaint erroneously naming as a defendant ASN Long Beach Harbor, LLC instead of Archstone Long Beach, L.P. ("LB Defendant").

Finally, on November 21, 2013, Plaintiffs filed the Fourth Amended Complaint against Archstone Defendant, LB Defendant, and WC Defendant (collectively "Defendants") and alleged the same causes of action as the First Amended Complaint. Plaintiffs seek to represent a class comprising all tenants who leased an apartment managed by Archstone Defendant, or, alternatively, a class comprising

all tenants who leased an apartment owned by LB Defendant and a class comprising all tenants who leased an apartment owned by WC Defendant.

On December 6, 2013, LB Defendant removed the case to this Court under the Class Action Fairness Act ("CAFA").

Presently before the Court is Plaintiffs' Motion to Remand and Request for Award of Attorney's Fees and Costs. For the following reasons, the Court **GRANTS** Plaintiffs' Motion to Remand and **DENIES** Plaintiffs' Request for Award of Attorney's Fees and Costs.

II. FACTUAL BACKGROUND

Archstone Defendant (a Delaware corporation) manages apartment buildings nationally, including 70 multi-unit apartment buildings in California ("Archstone Apartments"). Among these buildings are Archstone Warner Center ("WC Apartment") and Archstone Long Beach ("LB Apartment"). Plaintiff Vagle lived in an apartment in WC Apartment, which is owned by WC Defendant (a Delaware corporation). Plaintiff Ponce lived in a unit in LB Apartment, which is owned by LB Defendant (a Delaware corporation).

Plaintiffs allege that Defendants systematically charged tenants for cleaning, painting, and carpet cleaning at the conclusion of every tenancy, regardless of the apartment unit's actual condition, in violation of California Civil Code § 1950.5. Plaintiffs brought this class action and filed the Fourth Amended Complaint against Archstone Defendants on behalf of all former tenants of Archstone Apartments in California. Alternatively, Plaintiff Vagle brought this class action against WC Defendant on behalf of all former tenants of WC Apartment, and Plaintiff Ponce brought this class action against LB Defendant on behalf of all former tenants of LB Apartment.

In the Fourth Amended Complaint, Plaintiffs argue that at all times "there existed[] a unity of ownership between the Defendants such that any individuality or separateness between them has ceased and each of them is the alter ego of the others." (Fourth Am. Compl. ¶ 12.) Additionally, in the Prayer for Relief, Plaintiffs seek relief "against Defendants, jointly and severally." (Fourth Am. Compl. at 20)

On December 6, 2013, following the Fourth Amended Complaint, LB Defendant removed this case to federal court under CAFA. In support of LB Defendant's Notice of Removal, LB Defendant included a declaration of Chris Jenkins ("Jenkins"), who oversees the processing of Archstone Defendant's financial information and electronic data. Jenkins alleges that over the time in question approximately 69,000 tenants resided in Archstone Apartments; they "paid security deposits of approximately $34,000,000;" and they "were charged approximately $21,000,000 for apartment cleaning, painting and/or carpet replacement." (Decl. of Jenkins in Supp. of Def.'s Notice of Removal ¶ 5.) LB Defendant's Notice of Removal does not list the number of tenants or approximate charges associated with LB Apartment and WC Apartment individually.

III. JUDICIAL STANDARD

A defendant may remove a case to federal court when the federal court has original jurisdiction. 28 U.S.C. § 1441(a). Federal courts must "strictly construe the removal statute against removal jurisdiction." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The strong presumption against removal jurisdiction places the burden on the defendant to show by a preponderance of the evidence that removal is proper. *Id.* at 566–67. Under CAFA, a federal court has subject matter jurisdiction over a class action in which (1) there are 100 or more proposed class members, (2) any member of the proposed class is a citizen of a state different from any defendant, and (3) the aggregated claims of the proposed class members exceeds $5,000,000. *See* 28 U.S.C. § 1332(d).

IV. DISCUSSION

LB Defendant alleges that this case can be removed because it satisfies the CAFA requirements, including that the amount in controversy exceeds $5,000,000. The Court disagrees.

The party attempting to remove the case to federal court bears the burden of proving that the amount in controversy requirement has been met. *Lowdermilk v. United States Bank Nat'l Ass'n*, 479 F.3d 994, 997 (9th Cir. 2007). "[W]here it is unclear or ambiguous from the face of the state-court complaint whether the requisite amount in controversy is pled[,]" the removing defendant must prove by "a preponderance of the evidence" that the amount in controversy has been met. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699-700 (9th Cir. 2007).

Because Plaintiffs do not allege an amount in controversy in the Fourth Amended Complaint, LB Defendant must prove by a preponderance of the evidence that the amount in controversy has been met. LB Defendant calculates the amount in controversy by aggregating potential damages to all tenants who lived in any of the 70 multi-unit apartment complexes managed by Archstone Defendant. However, in order to be potentially liable for damages to all former tenants of Archstone Apartments, LB Defendant would have to be jointly liable with Archstone Defendant, *see Libby v. City Nat'l Bank*, 592 F.2d 504, 510 (9th Cir. 1978), or Defendants would need to be one legal entity and not separate entities. The Court is not persuaded that the facts alleged in Plaintiffs' Complaint are consistent with either joint liability or the existence of one entity. Therefore, LB Defendant does not properly calculate its potential liability and does not satisfy the CAFA amount in controversy requirement.

A. Potential Liability Against LB Defendant Should Not Be Aggregated With Archstone Defendant

While CAFA permits aggregation of claims of separate plaintiffs, *see* 28 U.S.C. § 1332(d)(6), claims against multiple defendants can only be aggregated when the defendants are jointly liable, s*ee Libby*, 592 F.2d at 510. Plaintiffs and LB Defendant, both citing *Middle Tennessee News Co., Inc. v. Charnel of Cincinnati, Inc.*, 250 F.3d 1077, 1081 (7th Cir. 2001), agree that if Defendants are severally liable, LB Defendant's potential liability must exceed $5,000,000 for CAFA jurisdiction to exist.

LB Defendant contends that Plaintiffs hold it jointly liable with Archstone Defendant for all claims, and that the claims may therefore be aggregated when calculating the amount in controversy. LB Defendant bases its contention on Plaintiffs' Prayer for Relief in the Fourth Amended Complaint, which states, "Plaintiffs . . . pray for relief and judgment against Defendants, jointly and severally . . . ." (Fourth Am. Compl. at 20)

However, contrary to LB Defendant's contention, the properly pleaded factual allegations in the Complaint determine whether the claims are joint. *See, e.g., Ryan v. Tollefson*, 118 F.Supp. 420, 423 (E.D.N.Y 1954) ("The fact that a complaint may charge the defendants with joint and several liability . . . is not controlling. What is important is whether the plaintiff's complaint alleges a single claim or multiple claims."). *See also Gaus*, 980 F.2d at 566-67 ("If it is *unclear* what amount of damages the plaintiff has sought, . . . then the defendant bears the burden of actually proving the facts to support jurisdiction, including the jurisdictional amount.") (emphasis in original). Therefore, just because Plaintiffs conclusorily state in their Fourth Amended Complaint that Defendants are jointly liable, does not mean that there are sufficient factual allegations on which to conclude that joint liability is possible.

Looking at the facts in the Fourth Amended Complaint, there is no factual basis on which to conclude that LB Defendant could be liable for damages owed to any tenants outside the class of tenants

who lived in LB Apartment. Therefore, the Court is not persuaded that potential damages against all Defendants should be aggregated when determining the amount in controversy.

B. The Complaint Does Not Adequately Allege That LB Defendant and Archstone Defendant Are One Entity

LB Defendant contends that Plaintiffs' complaint alleges that LB Defendant and Archstone Defendant are one entity. LB Defendant argues, therefore, that its possible liability for purposes of the amount in controversy includes all claims against Archstone Defendant. The Court must determine whether the Fourth Amended Complaint alleges facts that, if true, would permit the legal conclusion that LB Defendant and Archstone Defendant are one entity. The Court finds that it does not.

It is uncontroverted that LB Defendant and Archstone Defendant are separate corporations. To conclude that their corporate status should be disregarded, the Court would have to pierce the corporate veil. *See Chan v. Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1294 (9th Cir. 1997). The court can pierce the corporate veil "where a corporation uses its alter ego to perpetrate fraud or where it so dominates and disregards its alter ego's corporate form that the alter ego was actually carrying on the controlling corporation's business instead of its own." *Id.* "Common ownership alone is insufficient to support disregard of the corporate form." *Id.*

Plaintiffs conclusorily allege in the Fourth Amended Complaint that all defendants in this case were actually one entity. They allege:

> [T]here existed[] a *unity of ownership* between the Defendants such that any individuality or separateness between them has ceased and *each of them is the alter ego of the other*. Defendants share essentially identical ownership and officers, share the same corporate headquarters, and utilize the services of the same employees. Adherence to the fiction of the separate existence of Defendants, and each of them, would, under the circumstances, sanction fraud and/or promote injustice.

(Fourth Am. Compl. ¶ 12.) (emphasis added)

LB Defendant argues that these allegations, if proven, could make it liable for claims against Archstone Defendant as part of the same entity. The Court disagrees. Aside from alleging the common ownership of these corporations, the Fourth Amended Complaint does not allege specific facts that demonstrate fraud or disregard of the corporate form. *Chan*, 123 F.3d at 1294. *See also Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003) (explaining that piercing the corporate veil is a "rare exception"). Therefore, the Court is not persuaded that the Fourth Amended Complaint alleges facts that fraud or injustices, if any, would justify treating Defendants as one legal entity.

C. The Court Is Not Persuaded That Removal Is Proper

LB Defendant argues that the amount in controversy exceeds $5,000,000 based on the assumption that it would be liable for all tenants who lived at any Archstone Apartments. Because LB Defendant failed to prove this assertion by a preponderance of the evidence, the Court is not persuaded that LB Defendant meets the CAFA amount in controversy requirement. Therefore, removal is improper.

D. Plaintiffs Are Not Entitled to Attorney's Fees and Costs

Plaintiffs request attorney's fees and costs for improper removal under 28 U.S.C. § 1447(c). "[C]ourts may award attorney's fees under §1447(c) only where the removing party lacked an

objectively reasonable basis for seeking removal." *Lussier v. Dollar Tree Stores, Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008). "[R]emoval is not objectively unreasonable solely because the removing party's arguments lack merit, or else attorney's fees would always be awarded whenever remand is granted." *Id.* Even though LB Defendant's argument lacks merit, the Court is not persuaded that an objectively reasonable litigant in the position of LB Defendant could not have concluded that the claims were removable. As a result, the Court denies Plaintiffs' Request for Attorney's Fees and Costs.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion for Remand and **DENIES** Plaintiffs' Request for Award of Attorney's Fees and Costs.

IT IS SO ORDERED.

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