

Mado Holdings, LLC v. Jinming Wu

United States District Court for the Northern District of Georgia, Atlanta Division

September 22, 2017, Decided; September 22, 2017, Filed

CIVIL ACTION FILE NO. 1:17-CV-1358-MHC

Reporter

2017 U.S. Dist. LEXIS 217958 *

MADO HOLDINGS, LLC, Plaintiff, v. JINMING WU, LAN YAO, TAOMEI XIAO, JIE REN, SUPER U-BAGS, INC., L&Q TUCKER INDUSTRIAL, INC., J&L TRADING, INC., UNIVERSAL INTERATIONAL SUPPLY COMPANY, INC., and S&D SUPPLY, INC., Defendants.

Judges: MARK H. COHEN, United States District Judge.

Opinion by: MARK H. COHEN

Core Terms

seller, buyer

Counsel: [*1] For MADO Holdings, LLC, Plaintiff, Counter Defendant: A. Todd Merolla, LEAD ATTORNEY, Merolla & Gold, LLP -Atl, Atlanta, GA.

For Jinming Wu, Taomei Xiao, Jie Ren, Super U-Bags, Inc., L&Q Tucker Industrial, Inc., J&L Trading, Inc., Universal International Supply Company, Inc., S&D Supply, Inc., Lan Yao, Defendants: Mark Byron Bullman, LEAD ATTORNEY, Bullman Law Group, LLC, Atlanta, GA; Ryan Lance Isenberg, LEAD ATTORNEY, Isenberg & Hewitt, P.C., Atlanta, GA.

For Lan Yao, Counter Defendant: Mark Byron Bullman, LEAD ATTORNEY, Bullman Law Group, LLC, Atlanta, GA; Ryan Lance Isenberg, LEAD ATTORNEY, Isenberg & Hewitt, P.C., Atlanta, GA.

For Taomei Xiao, Universal International Supply Company, Inc., Jinming Wu, Jie Ren, L&Q Tucker Industrial, Inc., S&D Supply, Inc., Super U-Bags, Inc., J&L Trading, Inc., Counters Claimants: Mark Byron Bullman, LEAD ATTORNEY, Bullman Law Group, LLC, Atlanta, GA; Ryan Lance Isenberg, LEAD ATTORNEY, Isenberg & Hewitt, P.C., Atlanta, GA.

Opinion

ORDER

This case comes before the Court on Plaintiff's Motion to Remand this case to the Superior Court of DeKalb County, Georgia [Doc. 4].

I. BACKGROUND

On March 13, 2017, Plaintiff [*2] filed an action against Defendants in the Superior Court of DeKalb County. Compl. [Doc. 1-1]. Plaintiff alleges that it is an assignee of JuXian Ju de Plastic Company ("JuXian") with respect to the accounts of Defendants Super U-Bags, Inc. ("SUB"), J&L Trading, Inc. ("J&L"), and Universal International Supply Co., Inc. ("Universal"), and that SUB, J&L, and Universal owed JuXian \$134,042.97 as of July 21, 2013. Id. ¶¶ 12, 14. Plaintiff's action against these three Defendants is based upon state law claims of breach of contract, account stated, promissory estoppel, quantum meruit, and unjust enrichment. Id. ¶ 15. Plaintiff contends that the remaining Defendants also are personally liable to Plaintiff based upon their relationship to one or more Defendant corporate entities. Id. ¶ 16. The Complaint alleges that all parties are either residents of Georgia or Georgia corporations.

Id. ¶¶ 1-10.

On April 17, 2017, Defendants removed the case to this Court pursuant to [28 U.S.C. § 1331](#), based upon federal question jurisdiction, contending that JuXian is a Chinese corporation and that all claims asserted by Plaintiff are governed by the United States Convention on Contracts for the International Sales of Goods [*3] ("CISG").¹ Notice of Removal [Doc. 1] ¶¶ 10, 17. In their Answer, Defendants assert state law counterclaims against Plaintiff that they contend should be considered by this Court under its supplemental jurisdiction. Id. ¶ 20; Defs.' Answer & Countercls. [Doc. 2].

Plaintiff seeks remand of this case to the Superior Court of DeKalb County because its complaint is based upon state law claims for collections of accounts receivable and the CISG does not apply. Mem. In Supp. of Pl.'s Mot. to Remand [Doc. 4-1], Defendants argue that the CISG applies to preempt Plaintiff's state law contract claims because they assert the underlying contract was subject to the CISG; however, in their counterclaim, they allege that the underlying agreements that relate to the accounts receivable in Plaintiff's Complaint were between two Chinese signatories. Defs.' Resp. to Pl.'s Mot. to Remand [Doc. 7]; Defs.' Countercls. ¶¶ 2-6.

II. LEGAL STANDARD

On a motion to remand a removed case, the removing party "bears the burden of proof regarding the existence of federal subject matter jurisdiction." [City of Vestavia Hills v. General Fidelity Ins. Co.](#), 676 F.3d 1310, 1313 n.1 (11th Cir. 2012) (citation omitted). [*4] Removal jurisdiction is construed narrowly and any doubts regarding the existence of federal jurisdiction are resolved in favor of the non-removing party. [Scimone v. Carnival Corp.](#), 720 F.3d 876, 882 (11th Cir. 2013). An action may be removed from state court only where it "originally could have been filed in federal court." [Caterpillar, Inc. v. Williams](#), 482 U.S. 386, 392, 107 S.

¹ United Nations Convention on Contracts for the International Sale of Goods, *opened for signature* Apr. 11, 1980, S. Treaty Doc. No. 9, 98th Cong., 1st Sess. 22 (1983), [19 I.L.M. 671](#), reprinted at 15 U.S.C. app. 52 (1997) (entered into force Jan. 1, 1988); see also [MCC-Marble Ceramic Ctr., Inc. v. Ceramica Nuova d'Agostino S.p.A.](#), 144 F.3d 1384, 1386 nn.1, 5 (11th Cir. 1998) (citing [Filanto S.p.A. v. Chilewich Int'l Corp.](#), 789 F. Supp. 1229, 1237 (S.D.N.Y. 1992) (recognizing that the CISG entered into force between the United States and the other States Parties on January 1, 1988)).

[Ct. 2425, 96 L. Ed. 2d 318 \(1987\)](#); see also [28 U.S.C. § 1441\(a\)](#) (a case is removable from state to federal court when it contains a claim over which a district court has original jurisdiction).

The district courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. Id. § 1331. In such a case, the district court may exercise supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." Id. § 1367(a). The district court may, however, decline to exercise supplemental jurisdiction if:

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling [*5] reasons for declining jurisdiction.

Id. § 1367(c).

"[T]he presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." [Rivet v. Regions Bank of La.](#), 522 U.S. 470, 475, 118 S. Ct. 921, 139 L. Ed. 2d 912 (1998) (quoting [Caterpillar](#), 482 U.S. at 392). Under this rule, "the plaintiff [is] the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law," even where a federal claim is also available. [Caterpillar](#), 482 U.S. at 392.

An exception to the well-pleaded complaint rule is the "artful pleading doctrine"—the principle that "a plaintiff may not defeat removal by omitting to plead necessary federal questions. [Rivet](#), 522 U.S. at 475. In certain circumstances, a court may "uphold removal even though no federal question appears on the face of the plaintiff's complaint." Id. When a plaintiff has pled only state-law causes of action, a court may find federal question jurisdiction if either (1) the state-law claims raise substantial questions of federal law or (2) federal law completely preempts the state-law claims. [Franchise Tax Bd. v. Constr. Laborers Vacation Trust](#), 463 U.S. 1, 13, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983).

III. DISCUSSION

The CISG is an international treaty which has been signed and ratified by the United States and China, among [*6] other countries. The CISG was adopted for the purpose of establishing "substantive provisions of law to govern the formation of international sales contracts and the rights and obligations of the buyer and the seller." U.S. Ratification of 1980 United Nations Convention on Contracts for the International Sale of Goods: Official English Text, 15 U.S.C. App. at 52 (1997); see also Treibacher Industrie, A.G. v. Allegheny Techs., Inc., 464 F.3d 1235, 1237 (11th Cir. 2006) (stating that the CISG "governs the formation of and rights and obligations under contracts for the international sale of goods."). The CISG applies "to contracts of sale of goods between parties whose places of business are in different States . . . when the States are Contracting States." 15 U.S.C. App., Art. I(l)(a); see also Innotex Precision Ltd. v. Horei Image Prods., 679 F. Supp. 2d 1356, 1358 (N.D. Ga. 2009) (noting that the CISG "applies to all contracts between parties from 'Contracting States.'").

There is nothing on the face of Plaintiff's complaint that indicates that any of the state law causes of action relate to a contract between parties subject to the CISG. Article 4 of the CISG states that it

governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in the Convention, [*7] it is not concerned with: (a) the validity of the contract or any of its provisions or of any usage; (b) the effect which the contract may have on the property in the goods sold.

Caterpillar, Inc. v. Usinor Industeel, 393 F. Supp. 2d 659, 674 (N.D. Ill. 2005) (quoting 15 U.S.C. App. at 335-36). "The plain text of the CISG limits its application to claims between buyers and sellers." Id. District courts have found that the provision "excludes from the scope of the CISG the rights and obligations of all parties that are neither the immediate buyer nor the immediate seller." Beth Schiffer Fine Photographic Arts, Inc. v. Colex Imaging, Inc., No. 10-05321, 2012 U.S. Dist. LEXIS 36695, 2012 WL 924380, at *7 (D.N.J. Mar. 19, 2012); see also Cedar Petrochemicals, Inc. v. Dongbu Hannong Chem. Co., Ltd., No 06-cv-3972, 2007 U.S. Dist. LEXIS 51802, 2007 WL 2059239, at *3 (S.D.N.Y. July 19, 2007) ("[t]o the extent that the CISG applies to

a transaction, it addresses only the rights of the buyer and seller"); American Mint LLC v. GOSoftware, Inc., No. 1:05-CV-650, 2005 U.S. Dist. LEXIS 45003, 2005 WL 2021248, at *3 (M.D. Pa. Aug. 16, 2005) ("The fact that the parties have their places in different states must be apparent from either the contract, any dealings between the parties, or any information disclosed by the parties at any time before or at the conclusion of the contract."). "Under general principles of preemption [as to the preclusive effect of the CISG] . . . courts must be reluctant in finding the federal preemption of a subject traditionally governed by state law." [*8] Usinor Industeel, 393 F. Supp. 2d at 673 (quotation marks and citation omitted).

Defendants have failed to carry their burden of proof regarding the existence of federal question jurisdiction in this case. The decisions cited by Defendants in their opposition to the motion for remand that involve preemption by the CISG all involve actions between the actual parties to the contract. See Asante Techs., Inc. v. PMC-Sierra, Inc., 164 F. Supp. 2d 1142, 1149 (N.D. Cal. 2001) (holding that the CISG applied because the California plaintiffs' claims concern breaches of representations made by a defendant from Canada); Valero Marketing & Supply Co. v. Greeni Oy, 373 F. Supp. 2d 475, 480 (D.N.J. 2005) (concluding that the CISG governed a contract involving sales of goods between Delaware and Finland corporations), reversed on other grounds, 242 F. App'x 840 (3d Cir. 2007). There is no allegation that this is the case here.²

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Plaintiff's Motion to Remand [Doc. 4] is **GRANTED**. This case is **REMANDED** to the Superior Court of DeKalb County. Plaintiff's request for attorneys' fees is **DENIED**.

IT IS SO ORDERED this 22nd day of September, 2017.

/s/ Mark H. Cohen

MARK H. COHEN

United States District Judge

² Although Defendants correctly assert that only the complaint, and not their counterclaim, determines removability, the counterclaim in fact alleges that the invoices that involve Plaintiffs' allegations relate to contracts between two Chinese companies, not two Contracting States under the CISG.

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