

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CHRISTY DAUZAT
Plaintiff

VERSUS

GPS HOSPITALITY PARTNERS IV, LLC
AND TRAVELERS INDEMNITY COMPANY
Defendants

* CASE NO. 1:25-cv-01440
*
* JUDGE TERRY A. DOUGHTY
*
* MAGISTRATE JUDGE
* JOSEPH H L PEREZ-MONTES
*
* A JURY IS DEMANDED
*

**GPS HOSPITALITY PARTNERS IV, LLC’S MEMORANDUM IN
OPPOSITION TO CHRISTY DAUZAT’S MOTION TO REMAND**

NOW INTO COURT, through undersigned counsel, comes Defendant, GPS Hospitality Partners IV, LLC (*GPS*) who files this *Memorandum in Opposition* to the *Motion to Remand* (*Docket No.* 19) filed by Plaintiff, Christy Dauzat (*Ms. Dauzat*). The *Motion to Remand* is unsupported by the facts of the case and improper as a matter of law. Such blatant attempts to evade federal jurisdiction should not be permitted. For the foregoing reasons, GPS prays this Honorable Court will deny the *Motion to Remand* and maintain jurisdiction over this proceeding.

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I. Statement of Pertinent Facts and Procedural History

This litigation arises from an alleged trip and fall that occurred at a Burger King restaurant in Marksville, Louisiana on February 13, 2017 (the *Incident*). Thereafter, on February 12, 2018, Ms. Dauzat filed her Original Petition for Damages alleging that she exited her vehicle to walk into the Burger King restaurant when her left foot stepped into a large pothole.¹ Within this Petition, she further alleged that “[t]he defendants are indebted unto petitioner for damages as are reasonable in the premises, including general and special damages, in an amount less than \$50,000.00.”² In its Answer to Plaintiff’s Petition, GPS explicitly stated: “Defendant reserves its right to pray for a trial by jury and/or remove this case to a United States District Court in the event that Plaintiff later amends her Petition to state that her damages exceed \$50,000 and/or \$75,000.”³

During the course of this litigation, it is true that Plaintiff’s counsel forwarded medical bills from Dr. Jeffrey Traina and West Jefferson Medical Center. The medical records and bills disclosed encompassed two carpal tunnel releases performed by Dr. Traina and a cervical corpectomy performed by Dr. Gabriel Tender. Following disclosure of these bills, counsel for GPS spoke with Plaintiff’s counsel seeking clarification of these records and whether Plaintiff was alleging that such medical treatment was causally related to the Incident, particularly in light of the fact that the Plaintiff reported neither neck nor arm or hand pain as a result of the Incident at her deposition.⁴ This request was brought with specific reference to Plaintiff’s binding stipulation of damages in her Petition; however, Plaintiff’s counsel did not provide any substantive response as to whether the treatment was related to the Incident but merely advised that he would speak to her doctors on the issue. With no further clarity from counsel, GPS noticed and took the deposition

¹ Exhibit A, Plaintiff’s Original Petition for Damages

² *Id.*

³ Exhibit B, GPS Answer to Plaintiff’s Original Petition for Damages.

⁴ Exhibit C, Deposition of Plaintiff, Christy Dauzat.

of Dr. Traina who testified that Ms. Dauzat had never reported any slip or trip and fall incident to him, that he does not treat injuries which are in ongoing litigation, and that if she had presented to him with an injury related to litigation, he would refuse to treat that area of the body.⁵ He further testified that he has no expert medical opinions as to whether the alleged fall caused Ms. Dauzat any injury.⁶ Similarly, Ms. Dauzat made no mention to Dr. Tender of the Incident, this litigation, or any allegedly related injuries and that she began treating with no referral.⁷

Thereafter, just 30 days prior to trial and more than 2 months after the deadlines for amending pleadings, Plaintiff's counsel filed a Motion for Leave to Amend Petition on the morning of pre-trial conference with the Tunica-Biloxi Tribal Court. In this amended petition, Plaintiff now alleges that her damages exceed \$75,000 and that Tunica-Biloxi Indians of Louisiana, as owner of the property, is liable for the Incident. This additional defendant, sought to be added more than 7 years into this litigation, would also defeat federal diversity jurisdiction.

For the foregoing reasons, GPS's removal was both timely and proper. This case is now properly before the United States District Court for the Western District of Louisiana and should not be remanded despite the unsupported allegations in Plaintiff's Motion to Remand.

II. Law & Argument

A. Timeliness of Removal

In her Motion to Remand, Plaintiff argues that this removal is untimely based on the disclosure of medical bills long prior to the filing of the amended Petition. Plaintiff's argument assumes that the stipulation, while in place throughout the long life of this claim, was at no point

⁵ Exhibit D, Deposition of Dr. Jeffrey Traina, pp. 10-11, 13-14.

⁶ *Id.* at p. 19.

⁷ *Id.*

binding on the Plaintiff and that the disclosure of unrelated medical bills not only allowed for but in fact necessitated removal. Plaintiff's argument is an attempt to eat her pie and have it too, which at best constitutes a bad faith abuse of her pleadings and this court system.

The well settled jurisprudence establishes that an admission by a party in a pleading constitutes a judicial confession and is full proof against the party making it.⁸ Under Fifth Circuit law, if a plaintiff pleads damages less than the jurisdictional amount, this figure will generally control and bar removal.⁹ Generally, the amount of damages sought in the petition constitutes the amount in controversy, so long as the pleading was made in good faith; and, in the typical diversity case, the plaintiff remains the master of his complaint.¹⁰ Therefore, as the courts of this state have long held, if a plaintiff 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.¹¹

Plaintiff's Motion employs jurisprudence which supports the contention that remand is appropriate when a binding stipulation is in place limiting the amount in controversy; however, the instant fact pattern is quite the opposite. In the instant matter, Defendants seek not to remove the action by overcoming a stipulation of the Plaintiff but rather by employing such judicial confession.

In *Bowers v. Mountain Laurel Assurance Co*, this Court found that remand was appropriate where a petition stipulated the amount in controversy did not exceed \$74,999.99 and the defendant

⁸ *C.T. Traina, Inc. v. Sunshine Plaza, Inc.*, 2003-1003 (La. 12/3/03), 861 So. 2d 156.

⁹ *Gnawllins, LLC v. Great Am. Ins. Co.*, No. CV 23-5666, 2023 WL 6938164, at *1 (E.D. La. Oct. 20, 2023).

¹⁰ *Powell v. Cadieu.*, No. CV 15-4839, 2016 WL 1042351 (E.D. La. Mar. 16, 2016).

¹¹ *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 58 S. Ct. 586, 82 L. Ed. 845 (1938).

could not prove otherwise.¹² In reaching this conclusion, the Court stated that the allegation was “presumptively correct” when made.¹³ This Court similarly found in *Lavespere v. Terminix* that the plaintiff’s stipulation that the amount in controversy did not exceed \$50,000 was a judicial confession that limited the plaintiff’s relief and that such a judicial confession cannot be revoked except as to an error of fact.¹⁴ This Court additionally held in *Blood v. Interstate Brands Corp.* that the plaintiffs’ stipulation in their complaint that their individual damages did not exceed \$50,000 was a “valid and binding judicial confession under Louisiana law” which deprived this Court of subject matter jurisdiction and necessitated remand.¹⁵

Plaintiff argues that, because she did not expressly waive her right to recover in excess of \$50,000, the stipulation in her Original Petition for Damages was not binding and had no bearing on the removal of this matter. This argument is misplaced. There is no jurisprudence or statutory authority which provides that a defendant has a duty to remove an action in which a plaintiff has made a judicial confession or admission that the amount in controversy is insufficient to create federal diversity jurisdiction. In fact, the cases upon which she relies largely support the contention that courts will defer to the plaintiff’s judicial admission when used to avoid removal.

Even assuming that this stipulation did not prevent the tolling of deadlines for removal, Plaintiff’s disclosure of unrelated medical bills did not constitute an “other paper” which would necessitate removal. Plaintiff produced records of two carpal tunnel releases and a cervical corpectomy performed 3-5 years after the Incident. Not only is this delay in treatment indicative

¹² *Bowers v. Mountain Laurel Assurance Co.*, No. 1:24-CV-00041, 2024 WL 5495299 (W.D. La. July 26, 2024).

¹³ *Id.* at *3.

¹⁴ *Lavespere v. Terminix Int'l Co. Ltd. P'ship*, No. 1:20-CV-00056, 2020 WL 7250591 (W.D. La. Nov. 19, 2020), *report and recommendation adopted sub nom. Lavespere v. Terminix Int'l Co. L.P.*, No. 1:20-CV-00056, 2020 WL 7249314 (W.D. La. Dec. 9, 2020).

¹⁵ *Blood v. Interstate Brands Corp.*, No. CIV.A. 10-1325, 2011 WL 902001, at *4 (W.D. La. Mar. 10, 2011).

of a lack of causation, but the Plaintiff herself at no time alleged in her deposition or otherwise that she suffered any injury to her neck, arms, or hands as a result of the Incident. These medical records are nothing more than a red herring of unrelated bills presented in an effort to confuse the matters at hand. The plain fact is that the removal deadlines did not and could not toll with Plaintiff's own stipulation in place. Based on the jurisprudence of this Court and others in this state, a Plaintiff's own admission in his Petition for Damages is presumptively correct and is sufficient to prevent removal. For this reason, Defendant's removal was timely filed and this matter is properly before this Court.

This premise is further supported by the opinion of *Morales v. Allstate Texas Lloyds* which stated:

One final point is to be made in closing. Should Plaintiff somehow amend his complaint in the future to renege on his promise not to accept damages in excess of the jurisdictional limit, Defendant "may seek to remove again at that time." Indeed, as another court has observed, "removal would most likely be proper [under those circumstances], even if such attempt came more than a year after commencement of plaintiff's suit, based on equitable estoppel principles."¹⁶

In accordance with this principle, even if the disclosure of medical bills somehow allowed for removal in spite of the Plaintiff's judicial confession, the issue would have again become ripe upon amendment of the Plaintiff's Petition for Damages and removal of the stipulation as to the amount in controversy. For this reason, even if Plaintiff's argument were applicable, removal is still timely in light of the Amended Petition which removed the stipulation of damages less than 30 days prior to GPS's Notice of Removal.

¹⁶ *Morales v. Allstate Texas Lloyds*, 410 F. Supp. 3d 816, 823 (S.D. Tex. 2019) (citing *Mason v. Evanston Ins. Co.*, No. 3:19-CV-98, 2019 WL 2412558, at *1 (S.D. Tex. June 7, 2019) and *Engstrom v. L-3 Commc'ns Gov't Servs., Inc.*, No. CIV.A. 04-2971, 2004 WL 2984329, at *5 (E.D. La. Dec. 23, 2004) (citation omitted)."

B. Removal Under the Improper Joinder Doctrine

Plaintiff further alleges that removal is improper because Tunica-Biloxi Indians of Louisiana is a proper party defendant. Plaintiff's argument is centered on the assertion that the alleged defect in the subject parking lot existed for two years prior to the Incident, based on the inspection and affidavit of her engineer. This argument is factually flawed because the "cracking or breaking of asphalt" upon which her engineer based his findings is not what was marked by the Plaintiff as the cause of her fall. In fact, the photographs which she marked show that she fell where the asphalt meets the concrete, which is approximately a foot or more from the cracking that her engineer references.¹⁷ For this reason, Plaintiff fails to make any claim against the Tunica-Biloxi Indians upon which relief might be granted.

Even if she were able to make a claim, however, the Tunica-Biloxi Indians would not be a proper party defendant. "The improper joinder doctrine allows a court to dismiss a non-diverse defendant from a removed state case and disregard that defendant's citizenship for purposes of diversity jurisdiction when a defendant has demonstrated there is no possibility of recovery by the plaintiff against the non-diverse defendant."¹⁸ "Since the purpose of the improper joinder inquiry is to determine whether or not the in-state defendant was properly joined, the focus of the inquiry must be on joinder, not the merits of the plaintiff's case."¹⁹ Under this guiding principle, the *Smallwood* court reiterated the two ways to establish improper joinder: "(1) actual fraud in the pleading of jurisdictional facts; or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court."²⁰

¹⁷ Exhibit F, Photographs Marked by Plaintiff

¹⁸ *Yarco Trading Co., Inc. v. United Fire & Casualty Co., et al.*, 18-155 (S.D. Tex. July 11, 2019) 397 F.Supp.3d 939, 947, citing to *Flagg v. Stryker Corp.*, 819 F.3d 132, 136 (5th Cir.).

¹⁹ *Smallwood v. Illinois Cent. R. Co.*, 385 F.3d 568, 572 (5th Cir., 2004).

²⁰ *Id.* at 573.

The inquiry into a plaintiff's ability to establish a cause of action against a defendant in the context of improper joinder focuses upon whether 'there is no possibility of recovery by the plaintiff against an in-state defendant, which stated differently means *that there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant.*'²¹

The Fifth Circuit established guidelines for determining if the plaintiff has a reasonable basis for recovery against the non-diverse defendant under state law:

A court may resolve the issue in one of two ways. The court may conduct a *Rule 12(b)(6)*-type analysis, looking initially at the allegations of the complaint to determine whether the complaint states a claim under state law against the in-state defendant. Ordinarily, if a plaintiff can survive a *Rule 12(b)(6)* challenge, there is no improper joinder. That said, there are cases . . . in which a plaintiff has stated a claim, but has misstated or omitted discrete facts that would determine the propriety of joinder. In such cases, the district court may, in its discretion, pierce the pleadings and conduct a summary inquiry.²²

For the plaintiff to overcome this, he cannot simply state hypothetical claim against the non-diverse defendant. To find that the non-diverse defendant is properly joined to a claim, the court must find that the plaintiff's cause of action against that defendant establishes "*a reasonable possibility of recovery, not merely a theoretical one.*"²³

GPS removed this case under the improper joinder doctrine alleging that Ms. Dauzat named the Tunica-Biloxi Indians as a defendant in this litigation for the sole purpose of confounding diversity jurisdiction. As explained in the Notice of Removal, the premises was leased for several years prior to the Incident, which lease was assigned to GPS on December 19, 2016.²⁴ This lease specifically provided that the "Tenant, during the term of this Lease, shall have exclusive use and

²¹ *Marin v. Lopez*, No. 23-00041, 2024 WL 5411359, at *2 (W.D. Tex., February 22, 2024) (emphasis added) citing to *Smallwood v. Ill Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir., 2004).

²² *Smallwood* at 573.

²³ *Marin*, at *2, citing to *Campbell v. Stone, Ins., Inc.*, 509 F.3d 665, 669 (5th Cir. 2007), accord *Kling Realty Co. v. Chevron U.S., Inc.*, 575 F.3d 510, 513 (5th Cir. 2009) (emphasis added).

²⁴ Exhibit G, Assignment of Lease

control of the Leased Premises, and Landlord shall take no action pertaining to the Leased Premises without prior written consent of the Tenant...”²⁵ Moreover, the lease states that “Tenant assumes complete and sole responsibility for the condition of the leased premises.”²⁶ Further, “Tenant shall, at its own expense, maintain the entire Leased Premises (including, without limitation, any and all structural elements of the Building, including the roof, foundation, exterior walls, and load bearing column and supports, the exterior parking and drive lane areas, all landscaping and any irrigation systems, the HVAC System and other utility systems exclusively service the Leased Premises) in good condition and repair (including replacements when necessary)...”²⁷ Further, “Tenant acknowledges and agrees that Landlord shall have no obligation to maintain, repair and/or replace the Leased Premises or any portion thereof or any component or mechanical feature thereof.”²⁸ Given this, Ms. Dauzat has no cause of action against Tunica-Biloxi Indians for the Incident as they retained no custody over the subject premises. Ms. Dauzat’s mere assertion that a condition, which is not the condition upon which she testified tripping, existed for some amount of time is insufficient to show that Tunica-Biloxi Indians knew or should have known of it. Because Ms. Dauzat has no possibility of recovery against Tunica-Biloxi Indians, Tunica-Biloxi Indians’ citizenship should be ignored for the purposes of diversity jurisdiction.

Additionally, to the extent that Plaintiff argues that Tunica-Biloxi Indians “knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time” in order to make them potentially liable under La. Rev. Stat. § 9:3221, the Plaintiff’s own deposition testimony defeats this argument. In her deposition, Plaintiff testified that, before the

²⁵ Exhibit. H, Lease Between Tunica-Biloxi Indian Tribe of Louisiana and Strategic Restaurants Acquisition Company, LLC, par. 2.

²⁶ *Id.* at par. 10

²⁷ *Id.* at par. 17.

²⁸ *Id.*

incident, she had gone to the subject Burger King location about ten times a month for the prior five years, had parked in the same spot she parked in on the day of this accident many times before, and had never noticed the alleged condition before.²⁹ Plaintiff further testified that she has no information as to how the deviation was created, that Burger King was aware of the deviation, or to confirm how long the deviation was present before this incident.³⁰

By naming Tunica-Biloxi Indians more than three years after discovering their status as a landlord, and in the same amending Petition which seeks to remove the damages stipulation, Ms. Dauzat is blatantly attempting an end-run around federal jurisdiction. This is a straightforward premises liability claim against GPS for a trip and fall in the parking lot over which it retained custody and garde. Despite that, Ms. Dauzat filed the amended Petition for Damages against the non-diverse, nominal defendant, Tunica-Biloxi Indians, to anchor this claim in tribal court. However, Ms. Dauzat has no interest in pursuing a claim against Tunica-Biloxi Indians which is evidenced by the years-long delay in seeking to join them as a defendant. Further, under the clear terms of the lease agreement, even if Ms. Dauzat were able to secure an award against Tunica-Biloxi Indians, GPS would ultimately be responsible for any amounts owed.

“A complaint requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”³¹ The plaintiff’s factual allegations against the in-state defendant “*must be enough to raise a right to relief above the speculative level . . . on the assumptions that the allegation in the complaint were true.*”³² In the instant matter, the Plaintiff’s amended complaint merely makes allegations against a non-diverse defendant for the sole purpose

²⁹ Exhibit C, Deposition of Plaintiff, at pp. 100-101,105-108, 112, 119.

³⁰ *Id.* at p. 131-132.

³¹ *Centaurus GF Cove, LLC v. Lexington Ins. Co.*, No. 10-836, at *2. (S.D.Tex. July 7, 2010) 2010 WL 2710390.

³² *Cenaturus*, at *2 (emphasis added).

of avoiding federal diversity jurisdiction. Ms. Dauzat cannot reasonably recover against Tunica-Biloxi Indians based on the applicable facts and law at hand, and their joinder should not be allowed as a tool to divest this Court of its proper jurisdiction over the subject litigation.

III. Conclusion

Based on the face of Plaintiff's original Petition for Damages, the action was not removable and the deadlines could not toll. Upon amendment of Plaintiff's Petition for Damages, removing her binding judicial confession as to the amount in controversy, Defendant promptly and timely filed its Notice of Removal. Because Plaintiff's binding stipulation was not previously removed, Defendant's removal of this action is timely and should not be remanded.

Further, Ms. Dauzat has no cause of action against Tunica-Biloxi Indians. It is evident that Tunica-Biloxi Indians was improperly joined to the amended *Petition for Damages* for the sole purpose of destroying diversity jurisdiction. Ms. Dauzat argues that Tunica-Biloxi Indians may be responsible if they knew or should have known of the allegedly hazardous condition. Of note, the Plaintiff herself testified that, in her hundreds of trips to that Burger King, she had not previously noticed the condition. However, even if it had been present for years, GPS contractually assumed custody, garde, and liability for conditions such as the one alleged. If GPS is ultimately the party responsible for Ms. Dauzat's causes of action arising out of the Incident, then the matter should remain in federal court.

[SIGNATURE BLOCK AND CERTIFICATE OF SERVICE ON NEXT PAGE]

Respectfully submitted,

/s/ Seth M. Pohlmann

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record via e-mail this 17th day of November, 2025.

/s/ Seth M. Pohlmann