IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60738

Summary Calendar

AJM EXPRESS, INC.

Plaintiff-Appellant,

v.

H & S TRANSPORTATION, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(3:94-CV-145-B-N)

(April 26, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:[*]

AJM Express, Inc., appeals the district court's dismissal of its diversity suit for failure to meet the amount in controversy requirement of 28 U.S.C. § 1332. FED. R. CIV. P. 12(b)(1). Finding a sufficient allegation of tortious conduct in AJM's complaint to state a cognizable claim for punitive damages, we reverse.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I. FACTUAL AND PROCEDURAL BACKGROUND

Bay Area Produce, Inc. ("Bay") purchased 1,600 cases of tomatoes from Pacific Tomato Growers ("Pacific"). Bay then contracted with H&S Transportation, Inc. ("H&S") to transport the tomatoes from Florida to California. H&S in turn paid $2,800 to plaintiff AJM Express, Inc., a motor carrier broker, to transport the tomatoes. H&S hired Phil Ingram, a carrier based in Rankin, Texas, to pick up the tomatoes in Florida and haul them in his refrigerated semi-trailer to Bay's customers in northern California.

On May 11, 1993, Ingram arrived at Pacific's facilities in Florida and the tomatoes were loaded onto Ingram's truck. On May 16, 1993, Ingram delivered the tomatoes to four of Bay's customers in northern California. The following day, Bay notified H&S that a portion of the tomatoes delivered by Ingram was defective. Bay requested payment of $7,463.50 from H&S to pay for the defective tomatoes. H&S paid this claim without notifying AJM, then deducted this amount from payments owed to AJM for other hauling jobs.

AJM instituted suit against Bay, Pacific, and H&S seeking to recover the $7,463.50, plus $7,500 in related damages and $50,000 in punitive damages. The defendants filed a motion to dismiss AJM's claims pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, asserting that AJM failed to meet the $50,000 amount in controversy requirement for diversity suits, 28 U.S.C. § 1332, and alternatively, that AJM failed to

state a claim upon which relief could be granted. The district court granted the motion to dismiss, finding: (1) "[i]t appears to this Court to a legal certainty that the cause of action of the Plaintiff is for far less than the minimum jurisdiction amount of $50,000[;]" and (2) plaintiff's complaint did not state a claim upon which to base federal question jurisdiction pursuant to 28 U.S.C. § 1331. After the district court denied its motion for reconsideration, AJM filed a timely appeal to this court.

II. ANALYSIS

AJM's second amended complaint requested "actual damages in the amount of $14,965.50 . . . and punitive damages in the amount of $50,000."[1] AJM argues that the $50,000 amount in controversy requirement contained in 28 U.S.C. § 1332 is satisfied by its claim for punitive damages. Moreover, AJM contends that an award of punitive damages is cognizable under Mississippi law due to the allegation set forth in paragraph twelve of its original complaint, in which AJM avers that:

> by conspiracy and collusion between Defendants Pacific, Bay and H&S, without filing any claim with, allowing Plaintiff to inspect the alleged damages, or receiving any assent from the Plaintiff, they caused Defendant H&S to reduce the total amount due by Defendant H&S to Plaintiff, in the amount of $7,463.50 . . . .

[1] Although AJM's second amended complaint lists total actual damages as $14,965.50, it seems likely that this is a typographical error of two dollars because AJM's original complaint (and appellate brief) requests $7,463.50 in actual damages which, when added to AJM's request for $7,500 additional damages, yields $14,963.50.

AJM argues that its claim of "conspiracy and collusion" among the defendants, which caused H&S to withhold money due to AJM, should have been interpreted by the district court as a tort claim--specifically, tortious interference with contract or unlawful conversion.

When a claim includes a prayer for compensatory and punitive damages, both must be considered in determining the amount in controversy. Bell v. Preferred Life Assurance Soc'y, 320 U.S. 238, 240 (1943). In determining whether the amount in controversy has been met,

> [t]he rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. . . .

St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938). Thus, the question before us is whether it appears to a "legal certainty" that AJM's claim could not yield a recovery of over $50,000.

The district court concluded that AJM's conspiracy allegation was "patently frivolous, made entirely for the purpose of increasing the amount in controversy above $50,000 so as to give Plaintiff federal diversity jurisdiction." It also concluded that AJM's conspiracy claim "merely add[ed] factual fodder to the basic contractual claim." We disagree. AJM's original complaint explicitly averred that "Pacific and Bay committed *torts* . . . including conspiracy with Defendant H&S, or

collusion with it[,] *leading to the breach of its contract with [AJM]* . . . ." (emphasis added). The gravamen this allegation is that the Bay and Pacific convinced H&S to pay them for the damaged tomatoes-- without notifying AJM or giving AJM an opportunity to defend the allegations-- knowing that H&S would then deduct the payment from money owed to AJM, and thereby tortiously interfering with the AJM-H&S contract.

While the factual basis upon which AJM bases its allegation may be far-fetched, it is nonetheless sufficient to state a claim for tortious interference with contract. See Collins v. Collins, 625 So. 2d 786 (Miss. 1993) (action for interference with contract will lie against one who maliciously interferes with valid contract); cf. Bell, 320 U.S. at 240-41 ("a complaint filed in federal court should not be dismissed for want of jurisdiction because of a mere technical defect such as would make it subject to a special motion to clarify."); see also FED. R. CIV. P. 8(a) ("A pleading . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief . . . . "). Moreover, under Mississippi law, tortious interference with contract may give rise to punitive damages. Merchants & Planters Bank of Raymond v. Williamson, No. 91-CA-00615, 1995 Miss. LEXIS 20, at *28 (Miss. Jan. 12, 1995) ("it is [] well established that from a finding of intentional interference with a contract, a court may award punitive damages."); accord Bailey v. Richards, 111 So. 2d 402 (Miss. 1959). When the plaintiff has stated a claim for which state law

permits the recovery of punitive damages, a federal court cannot say at the jurisdictional stage, to a legal certainty, that the plaintiff cannot recover such punitive damages. Klepper v. First Amer. Bank, 916 F.2d 337, 341 (6th Cir. 1990); cf. Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1048 (3d Cir.) (holding that punitive damage claim could not be used to satisfy amount in controversy because "punitive damages simply cannot be recovered against a trustee under Pennsylvania law."), cert. denied sub nom., Upp v. Mellon Bank, N.A., 114 S. Ct. 440 (1993). Accordingly, it was error for the district court to dismiss AJM's claim for want of jurisdiction under 28 U.S.C. § 1332.[2]

III. CONCLUSION

For the foregoing reasons, the judgment of the district court is REVERSED and the case is REMANDED for further proceedings.

[2] As we have determined that the district court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, we need not address AJM's argument that the district court erred in determining that no federal question jurisdiction exists.