

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

ALLWYN JOURDAN,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,
a Foreign Illinois Registered Corporation,
and CONRADO YERO, INC., a Florida For
Profit Corporation,

Defendants.

Case No. _____

DEFENDANT ALLSTATE INSURANCE COMPANY'S NOTICE OF REMOVAL

Defendant Allstate Insurance Company ("Allstate"), by its attorneys and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this Notice of Removal with respect to the above-captioned case, which was filed and currently is pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 2018-023085-CA-01. In support of its Notice of Removal, Allstate states as follows:

BACKGROUND

1. On July 9, 2018, Plaintiff Allwyn Jourdan ("Plaintiff") filed a Complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, captioned *Allwyn Jourdan v. Allstate Insurance Company and Conrado Yero, Inc.*, Case No. 2018-023085-CA-01.

2. Between August 1, 2013 and October 14, 2015, Plaintiff sold Allstate insurance products and services pursuant to an R3001S Exclusive Agency Agreement ("EA Agreement")

with Allstate. (Compl. ¶¶ 14, 18.) Allstate terminated the EA Agreement for cause effective October 14, 2015. (*Id.* ¶¶ 34-35.)

3. In his Complaint, Plaintiff alleges that Allstate breached its duties under the EA Agreement. Specifically, Plaintiff alleges that Allstate interfered with his ability to sell the economic interest in his book of business upon termination of the EA Agreement. He alleges Allstate's activity constitutes breach of contract, breach of the implied covenant of good faith and fair dealing, and a violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat §§ 501.201 *et seq.* (Compl. ¶¶ 106-42.) In addition, he alleges that Defendant Conrado Yero, Inc. ("Yero") tortuously interfered with his business and contractual relationship with Allstate. (*Id.* at ¶¶ 143-53.)

4. Allstate accepted service of the Complaint by executing a Waiver and Acceptance of Service of Process on August 1, 2018. Therefore, pursuant to Fla. R. Civ. P. 1.070(i)(5), the effective date of service on Allstate is August 1, 2018. Copies of the Complaint and signed waiver are attached as Exhibit A.

5. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), as it is being filed within thirty (30) days after the date of service of the Complaint on Allstate.

BASIS FOR DIVERSITY JURISDICTION

6. This action is removable under 28 U.S.C. § 1441 because it is a civil action over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). The requirements of 28 U.S.C. § 1332(a) have been met because, based on the face of Plaintiffs' pleading at the time of removal, there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000. *See Ehlen Floor Covering, Inc. v. Lamb*, 660 F.3d 1283, 1287 (11th Cir. 2011); *see also* 28 U.S.C. § 1332(a). Although both Plaintiff and Defendant Yero are

citizens of Florida, Allstate respectfully submits that Yero was fraudulently joined because there is no possibility that Plaintiff can establish a cause of action against it. *See Crowe v. Coleman*, 113 F.3d 1536, 1538 (11th Cir. 1997).

Diversity of Citizenship Between Plaintiff and Allstate

7. Plaintiff is a citizen of the State of Florida and has resided in Miami-Dade County, Florida at all times material to the claims asserted in the Complaint. (Compl. ¶ 1.)

8. Defendant Allstate is an Illinois corporation with its principal place of business in Northbrook, Illinois. (Compl. ¶ 2.) A corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). A corporation’s principal place of business is the place where the corporation’s officers direct, control, and coordinate the corporation’s activity, and, in practice, that place “should normally be the place where the corporation maintains its headquarters.” *Hertz Corp.*, 559 U.S. at 92-93. Allstate’s headquarters in Northbrook, Illinois is indeed its principal place of business. Because Allstate’s principal place of business is located in Illinois, Allstate is a citizen of Illinois.

Fraudulent Joinder of Yero

9. Like Plaintiff, Yero is a citizen of the State of Florida. As alleged in the Complaint, Yero is a Florida corporation with a principal place of business located in Miami-Dade County, Florida. (Compl. ¶ 6.)

10. However, when a plaintiff “names a non-diverse defendant solely in order to defeat federal diversity jurisdiction, the district court must ignore the presence of the non-diverse defendant,” which is said to have been “fraudulently joined.” *Burillo Azcarrago v. J.P. Morgan (Suisse) S.A.*, Case No. 16-cv-22046-GAYLES, 2017 WL 693954, at *5 (S.D. Fla. Feb. 22,

2017). Fraudulent joinder may be proven where there is “no possibility the plaintiff can establish a cause of action against the resident defendant.” *Stillwell v. Allstate Ins. Co.*, 663 F.3d 1329, 1332 (11th Cir. 2011).

11. Count IV of the Complaint, styled “Tortious Interference with Business Contractual Relationship,” is the only count that implicates Yero. (*See generally* Compl.) In Count IV, Plaintiff alleges that Yero unlawfully interfered with his existing business and contractual relationship with Allstate by soliciting customers from his Allstate Book following the termination of the EA Agreement. (Compl. 34, 84, 91.)

12. Under Florida law, “interference with a business relationship and with a contract form a single claim because the prima facie showing for intentional interference with contractual relationships and intentional interference with business relationships are, in substance, the same.” *Circeo-Loudon v. Green Tree Servicing, LLC*, No. 14-21384-CIV, 2014 WL 4219587, at *4 (S.D. Fla. Aug. 25, 2014) (internal quotations omitted). The elements for such a claim are: (1) the existence of a business relationship; (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the breach of the relationship. *Novell v. Bank of Am. Corp.*, No. 14-CV-80672-RLR, 2014 WL 7564678, at *3 (S.D. Fla. Dec. 3, 2014) (quoting *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812, 814 (Fla. 1994)). If the claim relies on a contractual relationship, the plaintiff must also demonstrate a breach of contract. *Id.* at *4.

13. Plaintiff cannot possibly establish an actionable tortious interference claim against Yero based on the facts alleged in the Complaint. Even if he were able to establish the existence of a legally cognizable relationship with Allstate in the time period after termination of the EA Agreement, and even if there were proof that Yero knew about this relationship, Plaintiff would

not be able to demonstrate an intentional and unjustified interference with Plaintiff's relationship with Allstate.

14. According to Plaintiff, Yero's intentional and unjustified interference was "direct solicitation" of customers in the book of business in which he retained an economic interest. (Compl. ¶ 147.) Specifically, Plaintiff points to a January 25, 2016 letter that Yero sent to one of Plaintiff's former customers, Dario Rios ("Rios"), in his capacity as an Allstate Exclusive Agent. (*Id.* ¶ 74.) This letter was not improper in any respect.

15. As Plaintiff admits in his Complaint, Allstate terminated the EA Agreement for cause as of October 14, 2015. (Compl. ¶¶ 34-45, Ex. C.) Pursuant to the express terms of the EA Agreement—which Plaintiff has attached to the Complaint in full as a valid and enforceable instrument—immediate termination for cause results in an immediate transfer of the book of business at issue to Allstate. At that time, the Allstate Exclusive Agent will "cease representing Allstate," and Allstate "will service the book of business from the effective date of termination," determining "in its sole discretion the manner in which service will be provided" to existing customers. (EA Manual at 39, attached to Complaint as part of Composite Ex. B.) Although the Allstate Exclusive Agent maintains an economic interest in his or her book throughout the life of the EA Agreement and for 90 days after termination, that economic interest is limited. It does not include any ownership interest in the business written during the pendency of the EA Agreement, and does not provide any right to renewals or renewal commissions of any kind following termination of the EA Agreement. (EA Manual at 34.) Indeed, following termination, the former Allstate Exclusive Agent does not have "any ownership interest in expirations, renewals, or in any information about the customers to whom [the agent has] sold [Allstate] business." (*Id.*) In Plaintiff's case, Allstate took immediate ownership of all of Plaintiffs' customer relationships

and had the contractual right to service those customers as it saw fit as of October 14, 2015. (Compl. ¶ 61.) Allstate's right to do so was irrespective of any right Plaintiff had to sell the economic interest in his book on or before February 1, 2016 as set forth in Allstate's termination letter. (Compl. Ex. C; *see also* EA Manual at 39.) Because Allstate had exclusive rights to service customers in Plaintiff's book between at least October 14, 2015 and February 1, 2016, it had the right to appoint other Allstate Exclusive Agents to service these accounts. Allstate maintained authority over customer service in this area, and was within its rights to transfer those customer relationships to another Allstate Exclusive Agent to handle. (*See* EA Manual at 34.)

16. Plaintiff brought his tortious interference claim against Yero based on Yero's actions as an Allstate Exclusive Agent. (*See* Compl. Ex. E - letter from Yero as Allstate Exclusive Agent, written on Allstate letterhead). Indeed, Yero was acting in his capacity as an Allstate Exclusive Agent when he sent the letter to Rico that is the subject of Plaintiff's tortious interference claim. Therefore, even to the extent there *were* some evidence that Allstate had exceeded its authority under the EA Agreement vis-à-vis Plaintiff—which there is not, as demonstrated in Paragraph 15 above—that would not give rise to a claim that Allstate (through its authorized agent, Yero) had tortuously interfered with its own relationship with Plaintiff. Indeed, there is no claim for tortious interference under Florida law “where the defendant was the source of the business opportunity allegedly interference with.” *SMK Assoc., LLC v. Lorali, Inc.*, Case No. 14-CV-61460-WILLIAMS, 2015 WL 11199688, at *2 (S.D. Fla. Jan. 21, 2015) (citing *Genet Co. v. Anheuser-Busch, Inc.*, 498 So.2d 683, 684 (Fla. Dist. Ct. App. 3d 1986).) “For a party's interference to be ‘unjustified,’ the interfering party must be ‘a third party, a stranger to the business relationship.’” *Id.* “A defendant is not a stranger to a relationship if the

defendant ‘has any beneficial or economic interest in, or control over, that relationship.’” *Id.* (quoting *Genet*, 498 So.2d at 684).

17. Plaintiff’s citation to Fla. Stat. § 626.754 does not save his claim against Yero. This provision of the Florida statute regulating insurance agents states, in material part: “Following the termination of his or her agency appointment as to an insurer, the agent may for the period herein provided continue to service, and receive from the insurer commissions or other compensation relative to, policies written by him or her for the insurer during the existence of the appointment.” Fla. Stat. § 626.754(1). But the provision of this statute governing termination generally makes clear that an agent’s rights upon termination of an agency appointment are “[s]ubject to an appointee’s contract rights.” Fla. Stat. § 626.471(1). In other words, while Plaintiff might have had a statutory right to continue to service the customers in his book in the absence of a controlling contractual provision, in this case he freely agreed to a limitation on his rights. To the extent Yero, as an agent of Allstate, was communicating with customers formerly serviced by Plaintiff, he had the right to do so. Therefore, Plaintiff cannot state an actionable claim against Yero, rendering him fraudulently joined as a non-diverse defendant.

18. In sum, excepting Yero, who was fraudulently joined and thus should be discounted from the Court’s jurisdictional analysis, the parties are completely diverse and thus subject to removal. *See* 28 U.S.C. § 441(b)(1).

Amount in Controversy

19. In addition to diverse citizenship of the parties, diversity jurisdiction requires an amount in controversy that exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. Plaintiff does not claim a specific amount of damages in his Complaint, so the Court must look at

the face of the Complaint and any other relevant evidence submitted with the notice of removal when deciding whether the \$75,000 threshold is met. *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (2001).

20. Here, the face of the Complaint alone is sufficient to prove amount in controversy. In connection with Count IV alone, Plaintiff alleges that he believes the amount in controversy to exceed \$75,000. (Compl. ¶ 150.)

21. Breaking down Plaintiff's claim further, Count I (breach of contract against Allstate) claims damages stemming from Allstate's alleged interference with his ability to market and sell the economic interest in his book. (Compl. ¶ 111.) Count II (breach of implied covenant of good faith and fair dealing against Allstate), Count III (violation of Florida's Deceptive and Unfair Trade Practices Act against Allstate), and Count IV (tortious interference against Yero) allege essentially the same damages. (*Id.* ¶¶ 122, 133, 148.)

22. The EA Agreement provides for two ways to capture the economic interest Plaintiff maintained in his book of business following termination: a termination payment from Allstate, or the sale of his economic interest in the book to an Allstate-approved buyer. (EA Manual at 39.) Plaintiff acknowledges that he was not eligible for a termination payment, leaving sale to an approved buyer as his only option. (Compl. ¶¶ 67-69.)

23. While it is impossible to know the precise sum for which Plaintiff might have been able to sell the economic interest in his book in early 2016, Plaintiff provides a concrete assessment of what he believes was its worth. Plaintiff alleges that his annual generated premiums while working with Allstate exceeded \$1.9 million, with average renewal rates 93% or better. (Compl. ¶¶ 55-56.) He also alleges that he expended in excess of \$550,000 in start-up

costs for his Allstate Exclusive Agency. (*Id.* ¶ 57.) Based on these figures, this case undoubtedly qualifies for diversity jurisdiction.

24. In sum, because this action is between citizens of different states and the amount in controversy clearly exceeds \$75,000, exclusive of interest and costs, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1441(a).

VENUE AND ADMINISTRATIVE NOTICE

25. This action is pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Therefore, venue for purposes of removal is proper in this Court pursuant to 28 U.S.C. § 1441(a).

26. Prompt written notice of this Notice of Removal is being sent to Plaintiff through his counsel and to the Clerk of Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, as required by 28 U.S.C. § 1446(d). A copy of the notice is attached as Exhibit B.

27. The undersigned has read this Notice of Removal, and to the best of the undersigned's knowledge, information, and belief, formed after reasonable inquiry, certifies that Allstate's factual allegations have evidentiary support, and its legal contentions are warranted by existing law. The undersigned also certifies that this Notice of Removal is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needless increase in the cost of litigation.

[Signature of Counsel Appears on the Following Page]

Dated: August 30, 2018

Respectfully submitted,

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/s/ Salomon Laguerre

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CERTIFICATE OF SERVICE

I certify that on August 30, 2018, I served via email and U.S. Mail the foregoing
DEFENDANT ALLSTATE INSURANCE COMPANY'S NOTICE OF REMOVAL to the
following attorney of record:

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/s/ Salomon Laguerre

Salomon Laguerre

*Counsel for Defendant Allstate
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