

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

PNC Capital LLC d/b/a
Procuretechstaff Consulting
Services, and PTS Consult-
ing Services,

Plaintiff,

v.

TCode, Inc.,

Defendant.

No. 20-L-9563

Calendar S

Judge Jerry A. Esrig

ORDER

This cause comes to be heard on Defendant TCode, Inc.’s Motions to (1) Compel the Plaintiff, PNC Capital LLC to answer its jurisdictional interrogatory (attached as Exhibit 1 to the Motion), and to (2) Stay the time to answer the Complaint or otherwise plead until defendant has the opportunity to remove this case to federal court in the event that diversity jurisdiction is found. In connection with its motion to compel, defendant also seeks sanction under Ill. Sup. Ct. R. 219.

I.

The federal removal statute, 28 U.S.C. § 1446(b), provides that a defendant seeking to remove a civil action from a state court must file its notice of removal within 30 days after service of the complaint. If the removability of the case is unclear from the face of the pleadings, defendant must promptly investigate whether the case may be removed. *Rooflifters, LLC v. Nautilus Ins. Co.*, No. 13 C 3251, 2013 U.S. Dist. LEXIS 107926, ¶ 9 (N.D. Ill. 2013). Under such circumstances, a notice of removal may be filed within 30 days after the defendant receives a “copy of an amended complaint, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). For the purposes of invoking federal diversity jurisdiction, the citizenship of a limited liability company is the citizenship of each of its members. *Rooflifters*, 2013 U.S. Dist. LEXIS 107926, ¶ 9—10. Thus, where a plaintiff is an LLC, the defendant seeking to remove a state court matter to the federal

court must identify each of the plaintiff's members and their respective citizenships in its Notice for Removal. *Id.*, ¶ 10.

Where a defendant seeking to remove a state court matter requests jurisdictional information from a plaintiff, the plaintiff is not at liberty to conceal facts necessary to the determination of whether jurisdiction in the state court is proper and thereby engage in a scheme to preclude the defendant's timely removal. *Id.*, ¶ 16. A party's mere assertion that certain material is exempt from discovery is not sufficient to confer upon such material a privilege against document production. *Akers v. Atchison, T. & S. F. R. Co.*, 187 Ill. App. 3d 950, 957 (1989).

A.

On September 4, 2020, PNC filed its three-count complaint against the defendant in state court for Breach of Restrictive Covenant (Count I), Tortious Interference with a Contract (Count II), and Breach of Non-compete Agreement (Count III). In connection with Count II, plaintiff seeks \$104,000 in damages. Given the amount in controversy and the likelihood that the parties are from different states, defendant requested that the plaintiff disclose the identity and citizenship of all of plaintiff's members. Plaintiff refused to comply, relying on a purported unopposed agreement by defendant's former counsel to exclusive jurisdiction in state court and venue in the Circuit Court of Cook County. (*See*, Ex. 2 to the Response)¹

Although the court makes no findings as to the existence and scope of the alleged agreement, it does not appear from the email chain on which plaintiff relies that defendant's former counsel agreed to exclusive jurisdiction in state court or to waive defendant's right to remove the instant claims to federal court. In any event, the purported existence of such an agreement is no justification for withholding the requested discovery. Given defendant's obligations under 28 U.S.C. § 1446, the broad scope of discovery, and the absence of any privilege attaching to the information sought, defendant is entitled to receive an answer to its jurisdictional inquiry. Ill. Sup. Ct. R. 201(b) (providing that a party may serve discovery upon another party to obtain "full disclosure regarding any matter relevant to the subject matter involved in the pending action,

¹ To the extent that plaintiff attaches the affidavit of its counsel to support this alleged agreement, the court does not consider it, as it does not comply with the requirements under 735 ILCS 5/1-109.

whether it relates to the claim or defense”). The motion to compel is granted.

II.

Where a party’s refusal to provide answers or comply with requests for production is without substantial justification, the court may impose sanctions on the offending party under Ill. Sup. Ct. R. 219. In determining whether a party’s noncompliance with discovery orders or rules is sanctionable, the court may consider a party’s good faith (or lack thereof). *Gausselin v. Commonwealth Edison Co.*, 260 Ill. App. 3d 1068, 1081 (1994). Under Ill. Sup. Ct. R. 219, the court has authority to require the offending party to pay to the aggrieved party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney’s fees. Given the plaintiff’s failure to provide substantial justification for its failure to participate in discovery in good faith, the court grants the defendant’s request for sanctions under Ill. Sup. Ct. R. 219.

* * * *

Based on the foregoing,

- (1) The defendant’s motion to compel is granted;
- (2) Plaintiff has seven (7) days to file an answer to the defendant’s jurisdictional interrogatory;
- (3) The defendant’s motion for sanctions pursuant to Ill. Sup. Ct. R. 219(c) is granted, and the defendant is entitled to reasonable legal fees incurred in bringing its motion to compel;
- (4) If the parties cannot agree on the amount of legal fees to be awarded to the movant, then the movant may petition the court for the amount sought. The petition must be supported by an itemized statement and affidavits supporting the time entries and hourly rate of defendant’s counsel. If the respondent opposes the petition, it must disclose its itemized fees incurred in defending the motion;
- (5) The case-management conference set for May 14, 2021 at 9:00 a.m. is stricken; and

- (6) The case is continued for a case management conference on April 28, 2021 at 9:30 a.m.

Failure to comply may result in dismissal for want of prosecution or entry of a default order.

ENTERED:

Jerry A. Esrig
Honorable Jerry A. Esrig
Circuit Judge, Law Division

Dated: March 31, 2021

Circuit Judge
Jerry A. Esrig

Mar 31, 2021

Circuit Court - 2101