UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JENNIFER MASON, *et al.*,

Plaintiffs,

v.

LOCKWOOD, ANDREWS & NEWNAM, P.C., a Michigan corporation, LOCKWOOD, ANDREWS & NEWNAM, Inc., a Texas corporation, and LEO A. DALY COMPANY, a Nebraska corporation,

Defendants.
_____/

Case No. 16-10663

Hon. John Corbett O'Meara

OPINION AND ORDER GRANTING PLAINTIFFS' MOTION TO REMAND

Before the court is Plaintiffs' motion to remand, filed March 24, 2016, and which has been fully briefed. For the reasons explained below, Plaintiffs' motion is granted.

BACKGROUND FACTS

This case is one of many arising out of the water crisis in Flint, Michigan. The city, under state emergency management, switched its drinking water source in April 2014 from Lake Huron (via the Detroit Water and Sewerage Department) to the Flint River in an effort to save money. Plaintiffs allege that the Flint River

water was not properly treated with anti-corrosive chemicals, leading to the corrosion of lead pipes and the leaching of lead and other contaminants into the drinking water of Flint residents. The named Plaintiffs "at all relevant times, were residents of Flint, who as individuals, parents of minors and as property owners, have been and continue to be exposed to highly dangerous conditions created and caused by Defendants' negligent administration of a plan to place the Flint Water Treatment Plaint ("FWTP") into full-time operation for drawing water from the Flint River." Compl. at ¶2. Defendants are engineering firms that contracted with the City of Flint to design and implement the new water treatment system.

LAW AND ANALYSIS

Plaintiffs filed this action in Genesee County Circuit Court, alleging a single count of professional negligence. Defendants removed it to this court on February 23, 2016, based on two grounds: substantial federal question jurisdiction and the Class Action Fairness Act. Plaintiffs argues that jurisdiction is lacking and that the court should remand the case to state court.

I. Substantial Federal Question Jurisdiction

In similar Flint water cases against Lockwood, the court determined that the plaintiffs' negligence claims did not involve a substantial federal question and that the court lacked subject matter jurisdiction. See, e.g., Bell v. Lockwood, Andrews

& Newnam, Case No. 16-10825 (E.D. Mich.), Docket No. 17. In this respect, this case is indistinguishable from Bell. Accordingly, for the reasons stated in Bell, the court finds that Plaintiffs' professional negligence claim against Defendants does not implicate a substantial federal question. See id.

II. Class Action Fairness Act

The remaining potential basis for jurisdiction is the Class Action Fairness Act ("CAFA"), which expands federal court jurisdiction over certain class actions. The act provides:

> (2) The district court shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which –
>
> > (A) any member of a class of plaintiffs is a citizen of a State different from any defendant;
> >
> > * * *

28 U.S.C. § 1332(d)(2). The parties do not dispute that these requirements are met here, when the aggregate amount in controversy exceeds $5,000,000 and there is minimal diversity of citizenship between the parties. See 28 U.S.C. § 1332(d)(6) ("claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000").

Plaintiffs contend that the "local controversy exception" to the CAFA

applies and that the court must decline to exercise jurisdiction. According to the statute:

> (4) A district court shall decline to exercise jurisdiction under paragraph (2) –
>
> (A)(i) over a class action in which –
>
> (I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;
>
> (II) at least 1 defendant is a defendant –
>
> (aa) from whom significant relief is sought by members of the plaintiff class;
>
> (bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
>
> (cc) who is a citizen of the State in which the action was originally filed; and
>
> (III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and
>
> (ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; . . . .

28 U.S.C. § 1332(d)(4).

CAFA's "primary objective" is to "ensur[e] Federal court consideration of interstate cases of national importance." Standard Fire Ins. Co. v. Knowles, 133

S.Ct. 1345, 1350 (2013). The local controversy exception

> is intended to respond to concerns that class actions with a truly local focus should not be moved to federal court under this legislation because state courts have a strong interest in adjudicating such disputes. At the same time, this is a narrow exception that was carefully drafted to ensure that it does not become a jurisdictional loophole. Thus, the Committee wishes to stress that in assessing whether each of these criteria is satisfied by a particular case, a federal court should bear in mind that the purpose of each of these criteria is to identify a truly local controversy that uniquely affects a particular locality to the exclusion of all others.

S. REP. 109-14, 39, 2005 U.S.C.C.A.N. 3, 38. As discussed below, the court finds this case is precisely the type of local controversy to which the exception was intended to apply.

A. Citizenship of Proposed Class

In order to meet the first requirement of the local controversy exception, Plaintiffs must show that more than two-thirds of the proposed class are citizens of Michigan. The complaint alleges that the named plaintiffs are residents of and property owners in Flint, Michigan. Compl. at ¶¶ 1, 2, 5. The complaint contends that the "residents of the City of Flint ("Flint"), from April 25, 2014 to the present, have experienced and will continue to experience serious personal injury and property damage." Id. at ¶ 1. See also Compl. at ¶ 64 ("LAN owed a duty to

Plaintiffs, as residents and property owners in the City of Flint. . . .").

Although residency is not synonymous with citizenship, "[e]vidence of a persons place of residence . . . is prima facie proof of his domicile." Hollinger v. Home State Mut. Ins. Co., 654 F.3d 564, 571 (5th Cir. 2011). "The place where an individual resides is properly taken to be his domicile, absent a showing to the contrary." Novel v. Zapor, 2013 WL 1183331 at *5 (S.D. Ohio Mar. 21, 2013) (citing District of Colombia v. Murphy, 314 U.S. 441, 445 (1914)). See also Fort Knox Transit v. Humphrey, 151 F.2d 602, 602-603 (6th Cir. 1945) ("[U]pon the whole record and in the absence of any challenge to the jurisdiction, the plaintiff's residence in Ohio is prima facie evidence of his citizenship in that state.").

Although the class Plaintiffs seek to represent is not expressly limited to Michigan citizens, Plaintiffs are Flint residents and property owners who seek to represent those similarly situated. See Hollinger, 654 F.3d at 573 ("[C]ourts have acknowledged that where a proposed class is discrete in nature, a common sense presumption should be utilized in determining whether citizenship requirements have been met."); Caruso v. Allstate Ins. Co., 469 F. Supp. 2d 364, 368 (E.D. La. 2007) ("Although there well may be proposed classes where detailed proof of the two-thirds citizenship requirement is required, the Court finds that common sense should prevail in this closed-end class involving people who, as noted, hold an

asset that is a measure of domicile, their home."); Eagles Nest LLC v. Moy Toy, LLC, 2014 WL 4655277 at *5 (M.D. Tenn. Sept. 16, 2014) ("This case involves a defined class of Tennessee property owners, and an indicia of domicile is property ownership.").

Further, the proposed class is comprised of Flint residents over a relatively limited period of time (beginning in April 2014) who "have experienced *and will continue to experience* serious personal injury and property damage." Compl. at ¶ 1. This discrete time period and the continuing nature of the alleged injury – experienced in Flint – also demonstrates that the class is concentrated in Michigan. There are no circumstances – such as a large number of college students, military personnel, owners of second homes, or other temporary residents – suggesting that these Flint residents are anything other than citizens of Michigan. Cf. Evans v. Walter Indus., Inc., 449 F.3d 1159 (11th Cir. 2006) (no sufficient proof of Alabama citizenship of "extremely broad" class of "all individuals who have come in contact" with hazardous substances over period of 85 years). Based upon the contours of the proposed class, the concentration of injury in a specific location in Michigan over a relatively short period of time, and the absence of evidence suggesting otherwise, Plaintiffs have sustained their burden of demonstrating that more then two-thirds of the proposed class are citizens of Michigan. See also

Coco v. Heck Indus., Inc., 2014 WL 1029994 (W.D. La. Mar. 17, 2014) (sufficient evidence of Louisiana citizenship when class members were injured as a result of operation of concrete plant near their homes in Louisiana).[1]

B. Significant Local Defendant

To meet the second requirement of the local controversy exception, Plaintiffs must show that at least one defendant is a Michigan citizen whose conduct forms a "significant basis" of their claims and from whom the class seeks "significant relief." 28 U.S.C. § 1332(d)(4)(A)(i)(II). This requirement ensures that jurisdiction is not defeated by the presence of a nominal defendant. In determining whether this requirement is met, the court looks to the allegations in the complaint. See, e.g., Coleman v. Estes Exp. Lines, Inc., 631 F.3d 1010, 1015-17 (9th Cir. 2011). "If the local defendant's alleged conduct is a significant part of the alleged conduct of all the Defendants, then the significant basis provision is satisfied." Kaufman v. Allstate New Jersey Ins. Co., 561 F.3d 144, 156 (3d Cir. 2009).

Defendant Lockwood, Andrews & Newnam, P.C. ("LAN P.C.") is a Michigan corporation with its principal place of business in Flint, Michigan. The

[1] Indeed, Defendants alleged that Plaintiffs were "citizens of the State of Michigan" in their Notice of Removal. See Notice of Removal at ¶ 15.

other defendants are Lockwood, Andrews, & Newnam, Inc. ("LAN, Inc."), a Texas corporation with its principal place of business in Texas, and Leo A. Daly Company, a Nebraska corporation with its principal place of business in Nebraska. The complaint does not appear to seek direct relief against the Leo A. Daly Company, but alleges that it is liable based upon its control over LAN and the lack of "legal distinction" between the companies. Compl. at ¶¶ 3, 79-82.

The complaint alleges that LAN Inc. conducted business in Genesee County, Michigan, "through LAN P.C." Compl. at ¶ 4. Plaintiffs allege that LAN Inc. and LAN P.C. (collectively referred to as LAN) provided engineering services to Flint to upgrade the Flint Water Treatment Plant, allowing it to draw drinking water from the Flint River. Compl. at ¶ 26-27. Plaintiffs claim that "LAN failed to ensure that the upgraded FWTP would treat the water drawn from the Flint River with the proper anti-corrosive chemicals before it was released for consumption and use into the community. . . ." Id. at ¶ 40. Plaintiffs' professional negligence claim is based upon Defendants' duty to properly administer the operation of the FWTP so as not to endanger the health and property of Plaintiffs and the class.

Here, Plaintiffs seek direct, significant relief on behalf of all class members against LAN P.C. Based upon Plaintiffs' allegations, LAN P.C. is not a nominal

defendant, but is the Michigan licensed professional engineer through with LAN, Inc. and Leo A. Daly Company operated in Michigan. The court finds that the "local defendant" requirement is satisfied.

C. Principal Injuries Incurred in Michigan

The third requirement of the local controversy exception to the CAFA is that the "principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(A)(i)(III). In light of Plaintiffs' allegation that they are residents of Flint who have been and continue to be injured in Flint, there can be no serious doubt that this requirement is satisfied. See Compl. at ¶¶1, 2.

D. No Other Class Action

The fourth requirement is that "no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons" during the three-year period preceding the filing of this case. 28 U.S.C. § 1332(d)(4)(A)(ii). The parties do not dispute that this element is met. Moreover, the court has remanded dozens of similar individual cases against Lockwood to state court for lack of subject matter jurisdiction. If the court were to retain jurisdiction over this action, Lockwood would be defending similar actions

in two forums, frustrating Congress's intent that "defendants did not face copycat, or near copycat, suits in multiple forums." Vodenichar v. Halcon Energy Properties, Inc., 733 F.3d 497, 508-509 (3d Cir. 2013). On the other hand, "if this Court remands the case, the lawsuits, which, by their facts and allegations do not present any matters of national interest, will be handled in a single jurisdiction in which the cases originated and in which the causes of action arose." Logan v. CLUB Metro USA LLC, 2015 WL 7253935, at *3 (D.N.J. Nov. 17, 2015).

III. Attorney's Fees

Plaintiffs seek attorney's fees pursuant to 28 U.S.C. § 1447(c), which provides that an "order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." Id. "Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal." Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005).

Although the court finds that the local controversy exception to the CAFA applies, it is undisputed that the initial requirements for removal (amount in controversy and minimal diversity) were met. 28 U.S.C. § 1332(d)(2). Defendants did not, therefore, lack an objectively reasonable basis for removal and the court will not award attorney's fees.

IV. Conclusion

The court concludes that this is "a truly local controversy that uniquely affects a particular locality to the exclusion of all others" and that it must decline to exercise jurisdiction pursuant to the CAFA. See S. REP. 109-14, 39, 2005 U.S.C.C.A.N. 3, 38.

ORDER

IT IS HEREBY ORDERED that Plaintiff's motion to remand is GRANTED and this action is REMANDED to Genesee County Circuit Court.

s/John Corbett O'Meara
United States District Judge

Date: May 11, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, May 11, 2016, using the ECF system.

s/William Barkholz
Case Manager