

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APT SYSTEMS, INC.,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 21-2121
	:	
v.	:	
	:	
APPLE, INC.,	:	
	:	
Defendant.	:	

MEMORANDUM OPINION

Smith, J.

January 26, 2022

The plaintiff purchased and enhanced an app which was then made available for purchase on the defendant's app store. Unfortunately, a third party stole the access information for this app and, *inter alia*, changed the account information so that any subscriber fees for the app went to a different bank account than the one that the plaintiff had set up with the defendant. Although the plaintiff raised the issue of the theft of its app with the defendant's support services, it alleges that it was unable to get a resolution of the issue despite months of correspondence and negotiation with the defendant, in large part because the defendant seemingly would not recognize that the plaintiff owned the app. The plaintiff asserts that it lost not only the subscriber fees for the app for numerous months but future revenue once the defendant ultimately removed the app from its app store.

After unsuccessfully attempting to resolve its issues with the theft of its app by communicating with the defendant, the plaintiff filed an action in a Pennsylvania state court. The defendant then removed the matter here claiming that this court has diversity jurisdiction over this matter. The plaintiff later amended its complaint to attempt to claim an amount in controversy that

was below the \$75,000 amount-in-controversy threshold set in the diversity jurisdiction statute, 28 U.S.C. § 1332(a). It also moved to have this court remand the matter to the state court based on the allegations in the amended complaint because the amount in controversy no longer exceeded the jurisdictional threshold of \$75,000.

The defendant opposes this court remanding the matter, and it has separately moved to have the court dismiss the amended complaint or, in the alternative, transfer this action to the United States District Court for the Northern District of California. Upon reviewing the motion to transfer, the court required the parties to brief this part of the defendant's motion and then heard oral argument on the motion to transfer and the plaintiff's motion to remand.

As discussed in more detail below, the court will deny the motion to remand and grant the motion to transfer. With respect to the motion to remand, the court cannot consider the amended complaint in which the plaintiff attempted to defeat federal jurisdiction by, *inter alia*, seeking damages in amount that would not reach the \$75,000 threshold. The court therefore could only review the original complaint, which did not limit the sought-after damages to \$75,000 or a lower amount. The allegations in the original complaint show that the plaintiff was seeking an amount in excess of \$75,000, and the plaintiff has not shown to a legal certainty that it could not recover in excess of \$75,000 based on that original complaint. As such, the court cannot remand this matter to the state court.

Concerning the motion to transfer, the defendant and the plaintiff are bound by a valid forum selection clause, which requires that the court transfer this case to the Northern District of California. In this regard, the court does not find that (1) the forum selection clause is the result of fraud or overreaching, (2) its enforcement would violate a strong public policy of this forum, or

(3) its enforcement would result in litigation so seriously inconvenient and unreasonable that it would deprive the plaintiff of its day in court. Further, the plaintiff has not shown that the relevant public interests overwhelmingly disfavor transferring this case to the Northern District of California.

I. ALLEGATIONS AND PROCEDURAL HISTORY

The original plaintiffs, APT Systems, Inc. (“APT”) and Snapt Games, Inc. (“Snapt”), commenced this action by filing a complaint against the defendant, Apple, Inc. (“Apple”), in the Court of Common Pleas of Berks County on April 5, 2021.¹ *See* Notice of Removal, Ex. A, Compl., Doc. No. 1-1. In general, the original plaintiffs’ allegations related to a third-party “thief” gaining access to their Apple account and operating an app that the plaintiffs owned. *See* Compl. at ECF pp. 4–6. This thief obtained the revenue from subscribers’ use of the app, and the plaintiffs claimed that Apple refused to give them access to their app and the revenue associated with it despite the plaintiffs having provided Apple with proof of ownership of the app. *See id.* at ECF pp. 5–9. Based on these allegations, the plaintiffs asserted causes of action for (1) breach of bailment, (2) conversion, (3) intentional interference of contractual and business relations, and (4) unjust enrichment. *See id.* at ECF pp. 9–14. For relief, the plaintiffs sought, *inter alia*, (1) consequential and compensatory damages, (2) an accounting, (3) attorney’s fees, (4) equitable relief in the nature of requiring Apple to establish an App Store Ombudsman, which “under this court’s order and oversight, . . . [would] fairly, efficiently and expeditiously address issues of nature, among others, faced by Plaintiffs,” and (5) punitive damages (relating to the conversion cause of action). *See id.* at ECF pp. 11, 12, 13, 14.

¹ This matter was initially assigned to the Honorable Jeffrey L. Schmehl.

Apple received a copy of the complaint on April 23, 2021. *See* Notice of Removal at ¶ 3. On May 7, 2021, Apple removed the case from the Court of Common Pleas of Berks County to this court under 28 U.S.C. §§ 1332 and 1441 based on this court’s diversity jurisdiction. *See id.* at ¶ 6. In the notice of removal, Apple claims that the parties are completely diverse because it is a citizen of California, and the plaintiffs are citizens of Delaware and Pennsylvania. *Id.* at ¶¶ 8–10. Apple also asserts that the matter satisfies the \$75,000 amount-in-controversy requirement because (1) “a reasonable interpretation of Plaintiffs’ requested relief, including for compensatory and consequential damages, makes it clear that the amount requested exceeds the \$75,000 threshold,” and (2) the parties exchanged letters (which were referenced in the complaint) where the plaintiffs demanded \$225,000 in direct damages. *See id.* at ¶¶ 11–12.

On June 25, 2021, Apple filed a motion to dismiss the complaint or, in the alternative, to transfer venue to the United States District Court for the Northern District of California. *See* Doc. No. 4. On July 12, 2021, Judge Schmehl approved a stipulation extending the time for the plaintiffs to respond to the motion to dismiss until August 9, 2021. *See* Doc. No. 8. On July 30, 2021, Chief Judge Juan R. Sanchez reassigned this matter from Judge Schmehl’s calendar to the undersigned’s calendar. *See* Doc. No. 19.

On August 9, 2021, APT responded to the motion to dismiss by filing an amended complaint.² *See* Doc. No. 21. The amended complaint contains similar allegations as the original complaint but as discussed below, it changes the requested relief and removes a cause of action.

² Interestingly, APT is listed as the sole plaintiff in the caption, but the first line of the amended complaint states that the plaintiff is only Snapt. *See* Compl. at 1 (“Plaintiff Snapt Games, Inc. by its undersigned counsel, hereby demand judgment against Defendant, Apple Inc. . . .”); *id.* at ¶ 1 (“Plaintiff Snapt Games, Inc. (“Snapt”) is a Delaware corporation and wholly owned subsidiary of APT Systems, Inc. a Delaware corporation.”). Based on the representations in the amended complaint, the court has considered Snapt to be the relevant plaintiff in the amended complaint.

Regarding the allegations in the amended complaint, the plaintiff alleges that in April 2018, Snapt purchased “ThemeZone Live Wallpapers” App (the “App”), which is a “subscription fee generating live wallpaper App,” from a third-party developer for \$36,000. *See* Am. Compl. at ¶ 6, Doc. No. 21. The App was hosted on Apple’s App Store. *See id.*

Promptly after purchasing the App, Snapt took control over the associated developer account. *See id.* at ¶ 8. It changed the administrative contact details and modified App support to link to Snapt’s official website. *See id.* It also changed the bank account associated with the App to its bank account. *See id.*

By early May 2018, Snapt determined that Apple was not depositing the App’s subscription fees to Snapt’s bank account. *See id.* at ¶ 9. Instead, Apple sent those funds to the App’s prior owner. *See id.* at ¶ 10.

Snapt’s CEO contacted Apple about this banking issue, and Apple began depositing Snapt’s portion of the App’s subscriber fees into Snapt’s bank account starting on June 7, 2018. *See id.* at ¶ 11. Thereafter, the subscriber fees would arrive in Snapt’s bank account generally within 60 days after Apple would collect the fees from the App’s subscribers. *See id.*

In mid-January 2019, Snapt could no longer access its developer account for the App, and Snapt contacted Apple to inquire about this issue. *See id.* at ¶ 12. Apple’s support staff required proof of Snapt’s ownership of the App, so Snapt’s CEO e-mailed documents showing its proof of ownership to Apple on February 1, 2019. *See id.* at ¶ 13. Snapt’s CEO continued to place follow-up phone calls and e-mail messages to Apple’s support staff to address the accessibility issue with its App. *See id.* at ¶¶ 13, 15–17.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.