

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

DIANE CARTEY,

Plaintiff,

v.

**NUTRIEN AG SOLUTIONS and
AERIAL SPECIALISTS, INC.,**

Defendants.

CIVIL ACTION FILE NO.

3:20-CV-00133-CAR

**REMOVED FROM SUPERIOR
COURT OF MORGAN COUNTY,
CIVIL ACTION FILE NO.**

2020-SU-CA-182

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION
FOR REMAND & STIPULATION OF DAMAGES**

COMES NOW, NUTRIEN AG SOLUTIONS and AERIAL SPECIALISTS, INC., Defendants in the above-styled matter (hereinafter "Defendants"), and responds to the Plaintiff's Motion for Remand & Stipulation of Damages showing the Court as follows:

INTRODUCTION

In her Motion to Remand, Plaintiff does not dispute that complete diversity of citizenship exists between the parties. Instead, Plaintiff's primary argument is that her Amended Complaint, which added nothing more than a claim for punitive damages and attorneys' fees, does not allege an amount in controversy in excess of \$75,000.00. A plain reading of Plaintiff's Complaint compared to her Amended Complaint shows she intentionally pled punitive damages and attorneys' fees in

addition to special damages. That, coupled with Plaintiff's pre-suit demands, demonstrate Plaintiff intended to allege amounts for punitive damages in addition to a high five-figure amount for special damages. This puts the amount in controversy well above the jurisdictional requirement. Furthermore, the pleadings and demands rebut Plaintiff's attempt to stipulate that her damages will not exceed \$74,999.99, which should not be considered at this juncture.

Moreover, this case presents significant issues involving federal law. As discussed below, the Federal Aviation Act (hereinafter the "FAA") preempts state law because it was intended to regulate airspace and aircraft. Furthermore, the FAA created a negligence standard that differs from Georgia's standard for negligence. Because negligence is instrumental in Plaintiff proving her case, federal law preempts state law in this area. For these reasons and the reasons discussed below, the Court should deny Plaintiff's Motion to Remand.

FACTUAL BACKGROUND

This case arises out of an alleged loss of blueberry plants in Plaintiff's front yard following a purported misapplication of herbicides onto Plaintiff's property by a pilot employed by Aerial Specialists, Inc. (hereinafter "Aerial Specialists"). Plaintiff originally filed a 10-count Complaint alleging Defendants were negligent in applying the herbicides to an adjacent property and, as a result, Plaintiff's property "sustained severe injuries – both economic and otherwise" and she

"incurred expenses and damages of \$74,999.99 or less." (Pl.'s Compl. ¶¶ 5-10). The original Complaint did not include any language alleging a claim for punitive damages. In fact, Plaintiff only prayed for "a sufficient amount to compensate Plaintiff for her property destruction, suffering and damages." (*See id.*).

After Defendants responded to Plaintiff's written discovery requests, Plaintiff filed an Amended Complaint with **the exact same language** as the original Complaint with three substantive (3) additions. First, Plaintiff alleged O.C.G.A. § 51-12-5.1(b) was "in force in the State of Georgia at the time of the complained incident." (Pl.'s Am. Compl. ¶ 9). Second, Plaintiff added a new, separate paragraph alleging Defendants' "actions that day ... raise the presumption of conscious indifference to the consequences." (*Id.* at ¶ 11). Finally, Plaintiff added a new, separate subparagraph to the "WHEREFORE" paragraph of her Complaint praying for attorneys' fees and punitive damages due to Defendants' "overwhelmingly negligent actions sufficient to raise the presumption of a conscious indifference to consequences and their unnecessary withholding of repayment for property damage incurred." (*See id.*). Plaintiff did not alter her allegation and prayer for special damages.¹ Rather, Plaintiff alleged punitive damages and attorneys' fees **in addition to** her claim for special damages.

¹ Paragraph 10 of Plaintiff's Amended Complaint mirrored Paragraph 10 of the original Complaint, which alleged "she incurred expenses and damages of \$74,999.00 or less." (Pl.'s Am. Compl. ¶ 10).

Plaintiff included the stipulation in Paragraph of the original Complaint to avoid federal jurisdiction under 29 U.S.C. 1332(a). Plaintiff's Amended Complaint contained the exact same stipulation, but alleged **additional allegations** for punitive damages and attorneys' fees. Plaintiff's new allegations, which were pled on top of and in addition to her claim for special damages, clearly allow for a presumption that the amount in controversy exceeds \$75,000.00. Even Plaintiff believed her claim to be worth more than \$75,000.00 prior to filing suit.²

Along with Plaintiff's Motion to Remand, she filed a Stipulation of Damages stating that she has not suffered damages in excess of \$74,999.00 and she will not accept an award in excess thereof. Plaintiff's Stipulation of Damages suffers from the same ambiguity as her Amended Complaint – she states she **suffered** no damages beyond \$74,999.00. She does not, however, say she is not entitled to an award of punitive damages, attorneys' fees, or costs, none of which are considered damages a plaintiff "suffers" under Georgia law. Nevertheless, as Plaintiff points out in her Motion, post-removal stipulations do not deprive federal district courts of jurisdiction. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 292, 58 S.Ct. 586. ("And though, as here, the plaintiff, after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim

² On January 31, 2020, Plaintiff sent Defendants a demand in the amount of \$500,000.00. The demand shows Plaintiff calculated her "expenses and damages" as \$56,726.60 to \$74,046.63, but that she was entitled to an additional amount. On May 21, 2020, Plaintiff reduced her demand to \$480,000.00. (*See* Pl.'s January 31, 2020 and May 21, 2020 Demands, attached hereto as Exhibits "A" and "B").

below the requisite amount, this does not deprive the district court of jurisdiction.") This is equally true when her pre-suit demands rebut the Stipulation of Damages. *See Southern Ins. Co. of Virginia v. Karrer*, 2011 WL 1100030, *3 (N.D.Ga. Mar. 22, 2011) ("In a removal case, the Eleventh Circuit noted that courts have considered demand letters in determining questions concerning the amount in controversy.")

Additionally, federal question jurisdiction exists here. Plaintiff's Amended Complaint alleges that Aerial Specialists "was operating a helicopter equipped with an herbicide spraying apparatus on the property adjacent to Plaintiff's property." (Pl.'s Am. Complaint ¶ 5). Plaintiff further alleges that Aerial Specialists "trespassed onto the airspace over Plaintiff's property while continuing to emit the relevant herbicides, destroying the organic garden on Plaintiff's property." (Id. at ¶ 6). As discussed below, the FAA, which encompasses the safe operation of aircraft, preempts state law. This case involves allegations against a helicopter pilot for negligent operation in airspace over Plaintiff's property. This Court, therefore, has federal question jurisdiction over this case. For these reasons and the reasons discussed herein, Plaintiff's Motion to Remand should be denied.

ARGUMENT AND CITATION OF AUTHORITY

Defendants properly removed this case to federal court and Plaintiff's Motion to Remand should be denied. Plaintiff concedes her lawsuit involves

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