

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

DATA SALES CO., INC.,	:	
	:	
Plaintiff	:	
	:	DOCKET NO.: 3:13-CV-02626
v.	:	
	:	
VOLUMEDRIVE, INC.,	:	"ELECTRONICALLY FILED"
	:	
Defendant	:	

PLAINTIFF'S MOTION TO REMAND

1. Plaintiff, Data Sales, Co. Inc., is a Minnesota corporation with its principal place of business located at 3450 West Burnsville Parkway, Burnsville, Minnesota.

See Notice of Removal P. 3.

2. The Defendant, VolumeDrive, Inc. is a Pennsylvania corporation with its principal place of business located at 1143 Northern Boulevard, Clarks Summit, Pennsylvania. See Notice of Removal P. 5.

3. On or around February 11, 2011, VolumeDrive entered into a written agreement with Data Sales for the lease of computers and computer related equipment.

4. In March 2013, Data Sales notified VolumeDrive that it had defaulted on the agreement.
5. On September 20, 2013, Data Sales filed a complaint alleging breach of contract, unjust enrichment and replevin claims against VolumeDrive in the Luzerne County Court of Common Pleas, No. 11138 of 2013. See Notice of Removal, Exhibit A.
6. Without success, good faith efforts were made to serve VolumeDrive with the complaint. See Sheriff's Return of Service attached hereto as Exhibit A.
7. Contemporaneously with the filing of the complaint, in an effort to reclaim the equipment it owns and the collateral that was pledged, Data Sales also filed a motion for writ of seizure.
8. A hearing on that motion was scheduled for October 21, 2013 before the Luzerne County Court of Common Pleas.
9. On October 14, 2013, pursuant to 1075.1(d) of the Pennsylvania Rules of Civil Procedure, VolumeDrive was properly served with the motion for writ of seizure.
10. On October 21, 2013, VolumeDrive appeared at the hearing without a lawyer.

11. Because of that, President Judge Thomas F. Burke, Jr. continued the hearing until Thursday, October 24, 2013.
12. On the evening of October 23, 2013, VolumeDrive removed the case to the Middle District of Pennsylvania claiming federal diversity jurisdiction in a matter exceeding \$75,000.
13. On October 24, 2013, based on the removal, Judge Burke issued an order indicating the court's lack of jurisdiction to rule on the motion for writ of seizure.
14. On October 25, 2013, the case was assigned to U.S. District Judge Robert D. Mariani.
15. This case has been improperly removed to federal court.
16. Under the forum defendant rule (28 U.S.C. § 1441(b)(2)), it is improper for a defendant to remove a case to a federal court if it is a citizen of the state in which the action is brought.
17. Consequently, this case should be remanded to the Luzerne County Court of Common Pleas.

Wherefore, Plaintiff, Data Sales Co. Inc., respectfully requests this court to remand this matter to the Luzerne County Court of Common Pleas.

MOTION FOR ATTORNEY'S FEES AND COSTS

18. Plaintiff incorporates paragraphs 1-17 as if fully set forth herein.
19. 28 U.S.C. § 1447(c) permits the court to order payment of costs and actual expenses, including attorney's fees, incurred as a result of the removal when the removal was lacking an objectively reasonable basis.
20. VolumeDrive lacked an objectively reasonable basis for removal and this court should order it to pay Data Sales' costs and expenses, including attorney's fees, associated with the motion for remand.

Wherefore, Plaintiff, Data Sales Co. Inc., respectfully requests this court to order that the Defendant, VolumeDrive, Inc. pay its costs and actual expenses, including attorney's fees, associated with the motion to remand.

Respectfully submitted,

LAW OFFICE OF ANDREW D. BIGDA

BY: /s/ Andrew D. Bigda, Esquire
Attorney ID No.: 74675
900 Rutter Avenue
Forty Fort, PA 18704
(570) 714-4001
abigda@bigdalaw.com

Attorney for Plaintiff,
DATA SALES CO., INC.