

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

<b>EMC GLOBAL TECHNOLOGIES, INC.</b>	:	
	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	
	:	<b>NO. 2001-cv-1289</b>
<b>DEBBIE ALAVEZOS</b>	:	

**MEMORANDUM AND ORDER**

**SCHILLER, J.**

**May 7, 2001**

Presently before this court is a motion to remand to state court by Plaintiff EMC Global Technologies' ("EMC"). For the reasons outlined below, I grant the motion and remand this action to the Court of Common Pleas for Bucks County.

EMC is a Pennsylvania corporation and maintains its principal place of business in Doylestown. In January 1999, EMC hired Ms. Debbie Alavezos as the chief salesperson for an a particular kind of "in-line" cleaning system for use in industries. The employment agreement contained a clause which purports to prohibit Ms. Alavezos from working for one of EMC's competitors for a period of three years subsequent to her employment with EMC. In October 2000, she moved from her previous home in Arizona into a unit owned by an acquaintance. She decided to leave EMC in November 2000, and tendered her resignation.

By March 2, 2001, she was hired by Technical Services, whom the EMC alleges is one of its competitors. EMC sought to enforce the "no-compete" by filing this action in the Court of Common Pleas for Bucks County on March 8, 2001. Ms. Alavezos removed the case to this Court on the basis of diversity jurisdiction, claiming that she is an Arizona citizen. EMC contends that Ms. Alavezos is a Pennsylvania resident, and seeks remand. At a telephonic status

conference on April 20, 2001, I suggested that the parties depose Ms. Alavezos and take discovery limited to the issue of jurisdiction. Discovery has now concluded.

As the proponent of this Court's jurisdiction, Ms. Alavezos must convince the Court that the plaintiff and defendant are citizens of different states. *See Walls v. Ahmed*, 832 F. Supp. 940, 941 n.3 (E.D. Pa. 1993). To determine citizenship, courts assess the facts as they existed at the time the action commenced. *See Diamant v. Genesis Assocs.*, No. 96-5342, 1997 U.S. Dist. LEXIS 5737 (E.D. Pa. Apr. 24, 1997) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 286 (1938)).

Citizenship is determined by two factors: (1) a party's intent to make a particular jurisdiction a permanent home; and (2) where a party resides on a permanent basis. *See Cardinal/Int'l Grooving & Grinding, Inc. v. Doltz*, No. 99-cv-1518, 1999 U.S. Dist. LEXIS 9314, at \*2 (E.D. Pa. Jun. 24, 1999); *Walls* at 942 (E.D. Pa. 1993). The Third Circuit has examined several facts when determining a party's citizenship, including: the establishment of a home, one's place of employment, the location of one's assets, the place of registration of one's car, and, generally, the centering one's business, domestic, social, and civic life in a jurisdiction. *See Juvelis v. Snider*, 68 F.3d 648, 654 (3d Cir. 1995). Although motive may be important evidence tending to show whether or not a party intended to make a home, motive is not determinative. *See id*; *Cardinal / Int'l Grooving*, 1999 U.S. Dist. LEXIS 9314, at \* 3. Declarations of intent "are subject to judicial skepticism. They are accorded little weight when in conflict with the facts." 13B Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice and Procedure* § 3612 at 532 (2d ed. 1984); *see also Korn v. Korn* 398 F.2d 689 (3d Cir. 1968).

In addition, where a party seeks to establish a change in domicile, there is a presumption in favor of the established domicile unless rebutted by clear and convincing evidence. *Walls*, 832 F. Supp. at 942. A definite and sincere statement to change one's domicile at some point in the future is insufficient to make that jurisdiction a present domicile. *See Diamant*, 1997 U.S. Dist. LEXIS 5737, at \*2.

Based on these principles, I find that Ms. Alavezos changed her domicile to Pennsylvania in October 2000 and has not yet changed it back to Arizona. She accepted employment with plaintiff EMC and moved her personal possessions from Arizona to Pennsylvania in October 2000. She viewed her move as neither permanent or temporary, but "left open" as she tried to live in Pennsylvania. Alavezos Dep. 41. Upon leaving employment with EMC, she began work for Technical Services as its regional manager for the East Coast, primarily servicing East Coast states. Technical Services' web site states that Ms. Alavezos "will be based out of Philadelphia, PA." Ms. Alavezos confirmed the web site's contents at her deposition. Ms. Alavezos also testified that she used a demonstration facility in Philadelphia on several occasions. Thus, her work life is currently "centered" in Pennsylvania.

In addition, her current "home" is in Pennsylvania, not Arizona. She rented apartments in Philadelphia from October through March 8, 2001, when the complaint in this action was filed. Her land line and cellular telephone numbers contain a "215" prefix. As recently as last February or March, she registered her car in Pennsylvania. While Ms. Alavezos retains real estate in Arizona, the property has been used for rental income since 1998; personal belongings which she left behind are stored in the basement. The current lease on her property in

Arizona is set to expire in May 2001, but as of the date of her deposition on April 25, 2001, she did not state that she had any specific plans to return.

Since October, her social and civic ties to Pennsylvania have grown while those to Arizona have dwindled. She registered to vote in Pennsylvania in the last election, adding her voice to Pennsylvania's political community. Certain social ties bind her here as well. Although she belongs to a church in Arizona and pays tithes, she also testified that she hasn't attended services in "awhile" and does not pay the tithe on a regular basis. Alavezos Dep. at 40.

In sum, plaintiff moved from Arizona to Pennsylvania to stay here indefinitely. Ms. Alavezos' declaration that she intends to move back to Arizona is belied by the fact that she remains in Pennsylvania and that her work is currently centered here. While her "home" may not be where her heart is, she is a citizen of Pennsylvania for the purposes of jurisdiction.

An appropriate order follows.

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**ORDER**

AND NOW, this        day of **May, 2001**, upon consideration of Plaintiff EMC Global's Motion to Remand, Defendant Alavezos' Response thereto, supplemental memoranda thereon, and after reviewing the deposition of Defendant Ms. Alavezos, it is hereby **ORDERED** that:

- (1) Plaintiff EMC Global's Motion to Remand, (docket no. 2) is **GRANTED** .  
This case is remanded to the Court of Common Pleas for the County of Bucks.
- (2) Plaintiff EMC Global's Motion to Dismiss Defendant's Counterclaim (docket no. 6) is **DENIED WITHOUT PREJUDICE** . Plaintiff may reassert its motion in state court.

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Schiller, J.