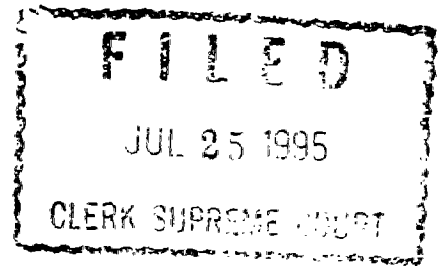


IN THE COURT OF APPEALS OF IOWA

No. 5-059 / 94-935



TRI-STATE DEBT COLLECTION, INC.,

Appellant,

vs.

SANDLER MEDICAL SERVICES, INC.,

Appellee.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Plaintiff appeals the district court's dismissal of plaintiff's breach of contract action for the collection of dishonored checks and bad accounts. **APPEAL DISMISSED.**

Michael J. Moon, Marshalltown, for appellant.

CeCelia C. Ibson of Brown, Winick, Graves, Baskerville, & Schoenebaum,
P.L.C., Des Moines, for appellee.

Considered by Hayden, P.J., and Sackett and Cady, JJ.

HAYDEN, P.J.

On January 23, 1992, Sandler Medical Services, Inc. and Tri-State Debt Collection, Inc. entered into an agreement in which Sandler was to assign its unpaid accounts to Tri-State and Tri-State would attempt to collect the debts. On accounts of \$2500 or less, Tri-State would receive forty percent and Sandler sixty percent; on accounts above \$2500, Tri-State would receive thirty percent and Sandler seventy percent.

On February 15, 1993, Tri-State initiated an action against Sandler, alleging Sandler had breached the agreement by failing to assign all of its dishonored checks and delinquent accounts. Tri-State sought damages and attorney fees.

While the action was pending, on May 10, 1993, a settlement agreement between Tri-State and the State of Iowa, in a suit in which the State alleged Tri-State had engaged in unfair debt collection practices, was approved by the district court.

Sandler filed its answer and a counterclaim in which it sought damages due to Tri-States' alleged breach of the contract. In October 1993 Sandler filed a motion to dismiss, alleging the present case violated the May 10, 1993, settlement agreement. Sandler amended its motion to dismiss to include the additional claim the case should be stayed until Tri-State furnished a security bond pursuant to Iowa Rule of Civil Procedure 80(b).

Later Sandler filed a second amendment to its motion to dismiss. In this amendment, Sandler claimed the district court lacked subject matter jurisdiction because Tri-State was seeking less than the jurisdictional amount of \$2000. It alleged the most Tri-State could collect under the terms of the parties' agreement was \$288.12.

On May 5, 1994, the district court considered the motion to dismiss and amendments. The court determined the action should be dismissed. Tri-State appealed.

Tri-State contends the district court erred by dismissing its action. It points out the motion to dismiss was not filed before the answer. In the alternative, Tri-State contends the motion to dismiss and amendments should have been denied because they relied on facts outside the pleadings.

We determine we do not have jurisdiction to consider Tri-State's appeal because there is not a sufficient amount in controversy. Iowa Rule of Appellate Procedure 3 provides, in pertinent part:

Except where the action involves an interest in real estate, no appeal shall be taken in any case, not originally tried as a small claim, where the amount in controversy, as shown by the pleadings, is less than five thousand dollars unless the supreme court or a justice thereof certifies that the cause is one in which appeal should be allowed.

The test for determining the existence of the requisite amount in controversy under this rule is whether the district court could have entered judgment against any party for this amount. *Simmons v. Brenton Nat'l Bank*, 390 N.W.2d 143, 144-145 (Iowa App. 1986). Although resort to the pleadings may resolve the issue where the

demand is not specified, we may examine the record before us to determine whether judgment could have been entered for the requisite amount. *Ackerman v. International Business Machs. Corp.*, 337 N.W.2d 486, 488 (Iowa 1983).

The pleadings and affidavits in this action show the maximum amount of damages Tri-State could have been awarded in this action was less than the requisite jurisdictional amount. We first note no attorney fees could be awarded due to the terms of the May 10, 1993, settlement agreement, which prohibited Tri-State from attempting to recover attorney fees.

Furthermore, by affidavit Tri-State set forth the amounts of the accounts it attempted to collect for Sandler. The total amount of these accounts was \$1486.81. Because none of these accounts exceeded \$2500, Tri-State would be entitled to forty percent of the amounts collected from these accounts, or a maximum of \$594.72.

This amount is far less than the requisite jurisdictional amount for us to consider this case on appeal. We determine we do not have jurisdiction under Iowa Rule of Appellate Procedure 3 to consider this appeal. We therefore dismiss the appeal.

APPEAL DISMISSED.