IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DORIAN BRAZY-COURTNEY,

Plaintiff,

v.

JOHN ERICKSON,

Defendant.

OPINION AND ORDER

20-cv-301-wmc

The posture of this case could pass for a Civil Procedure I exam. To begin, *pro se* plaintiff Dorian Brazy-Courtney initially filed a small claims action in Dane County Circuit Court on February 28, 2020, against defendant John Erickson, the CEO of Minnesota-based collection firm I.C. System ("ICS"), whose employees allegedly, wrongfully sought to collect payment for a Verizon Wireless bill that plaintiff had already paid. (State court dkt. sheet (dkt. #1-3) at 1.) When defendant did not file an answer, the circuit court entered a default judgment against him on March 27, 2020. *Id.* Four days later, defendant filed a notice of removal to this court on the basis of federal question jurisdiction, 28 U.S.C. § 1331, since plaintiff had cited various state and federal laws related to extortion, mail and wire fraud, criminal conspiracy, and criminal enterprise, including the Racketeer Influenced and Corrupt Organizations Act (RICO). (Not. of Removal (dkt. #1) ¶ 6; (Pl.'s Compl. (dkt. #1-2).) The defendant then promptly moved to dismiss plaintiff's claims under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction (dkt. #2), while plaintiff filed numerous responses, including a motion to remand the case back to small claims court (dkt. #9). Finally, in June of 2020, defendant filed a motion for relief from the state court default judgment under Federal Rule of Civil Procedure 60(b), on the

grounds that defendant was never properly served with the summons and complaint. (Dkt. #17.)

The following motions are all before this court: (1) plaintiff's motion for remand (dkt. #9); (2) defendant's motion for relief from the state court default judgment (dkt. #17); and (3) defendant's motion to dismiss for lack of personal jurisdiction (dkt. #2). From the record, this much is clear: removal was proper, even after the entry of the default judgment; defendant was never properly served with the summons and complaint, so the default judgment is void; and notwithstanding defendant's arguments that this case must be dismissed for lack of personal jurisdiction over defendant under Wisconsin law, RICO authorizes nationwide service over anyone within the United States, thus creating personal jurisdiction over defendant, at least for now. Accordingly, the court will deny plaintiff's motion to remand, grant defendant's motion for relief from default judgment, and deny defendant's motion to dismiss for lack of personal jurisdiction. However, before this case, such as it is, can proceed further, plaintiff must properly serve defendant. He may have 45 days to do so or the case will be dismissed.

OPINION

Although a federal district court "has leeway to choose among threshold grounds for denying audience to a case on the merits," *Meyers v. Oneida Tribe of Indians of Wis.*, 836 F.3d 818, 821 (7th Cir. 2016) (internal citation omitted), it usually "first resolves doubts about its jurisdiction over the subject matter," *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999). Therefore, the court will first address plaintiff's motion to remand relating to subject matter jurisdiction, then turn to defendant's motion for relief from the

default judgment and motion to dismiss for lack of personal jurisdiction. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 586-87 (1999) (quoting *Allen v. Ferguson*, 791 F.2d 611, 616 (7th Cir. 1986)) ("If personal jurisdiction raises 'difficult questions of [state] law,' and subject-matter jurisdiction is resolved 'as easily' as personal jurisdiction, a district court will ordinarily conclude that 'federalism concerns tip the scales in favor of initially ruling on the motion to remand.'").

I. Motion to Remand

Plaintiff argues in his motion to remand that this case should be remanded because defendant did not complete all three steps for effective remand to federal court, 28 U.S.C. § 1446, *before* he was served with the summons and complaint. (Dkt. #9, at 1.) A defendant removing a civil action from state court to a federal district court must: (1) file a notice containing a short and plain statement of the grounds for removal, § 1446(a), (2) within 30 days of defendant's receipt of the initial pleading, § 1446(b), and (3) provide written notice to all adverse parties and the state court, § 1446(d). However, defendant is not required to file or serve his notice of removal before plaintiff serves his complaint. To the contrary, § 1446(b) simply states that notice of removal is not required until 30 days *after* "the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based."

Plaintiff has submitted a certificate of service showing that the summons and complaint was served on a business located at "301 Sand Lake Road, Onalaska, WI" by "leaving a copy" with an individual identified as "Matthew Roark" on March 6, 2020. (Cert. of Serv. (Dkt. #9-1).) As noted already, that service was improper, which is

addressed further below, but defendant plainly did not receive a copy of the summons and complaint until March 6, 2020, at the earliest. Therefore, defendant's notice of removal was timely filed in this court less than 30 days later, on March 31, 2020. Moreover, defendant then immediately gave written notice of the removal to plaintiff and filed a copy with the state court. (Dkt. #1-4.) Finally, defendant timely filed his motion to dismiss within seven days after the notice of removal was filed, as required under Federal Rule of Civil Procedure 81(c)(2)(C).

In several of his responsive submissions, plaintiff argues that this suit nevertheless belongs in state court, noting several Wisconsin statutes that govern fraud and wrongful collection actions like his own. (Dkt. #5; Dkt. #6; Dkt. #13; Dkt. #18.) However, 28 U.S.C. § 1441(a) allows a defendant to remove a civil action brought in state court to federal court so long as the complaint seeks to bring a claim that is within the jurisdiction of a federal court. As the basis for federal jurisdiction here, defendant relies on 28 U.S.C. § 1331, granting jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." Moreover, in addition to alleging violations of several state laws, plaintiff's complaint explicitly alleges violations of federal statutes, including RICO, 18 U.S.C. §§ 1961-68.[1] *See* Pl.'s Compl. (dkt. #1-2) (citing 18 U.S.C. §§ 1951-1968; 18 U.S.C. § 131; 18 U.S.C. § 875(d); 18 U.S.C. § 880).

Plaintiff attempts to downplay his federal claims, arguing that: "[r]acketeering may be in play but it is NOT the basis for the lawsuit in State of Wisconsin Small Claims Circuit

[1] RICO provides civil remedies for any "person injured in his business or property" by a violation of the statute. 18 U.S.C. § 1964.

Court" (dkt. #5); and the "complaint was never specifically about racketeering" because the "primary issue is [f]raudulent [d]ebt [c]ollection" (dkt. #6, at 1). However, a complaint raises a federal question "when the plaintiff's statement of his own cause of action shows that it is based upon federal law." *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (internal quotations omitted). The rationale is that the plaintiff is the master of his complaint, which allows him to choose to avoid federal jurisdiction by relying exclusively on state-law claims. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). In this case, however, plaintiff chose to assert claims under both state and federal law in his complaint. Therefore, even though plaintiff had the right to file his lawsuit in state court, and the state court had jurisdiction over his claims, defendant was entitled to remove the case to federal court under 28 U.S.C. § 1441(a).

In a final, losing argument, plaintiff contends that defendant waived any right to remove the case once the state court entered a default judgment on March 27, 2020, after defendant failed to answer the complaint timely. However, plaintiff cites no authority to support this proposition, nor is this court aware of any. On the contrary, courts faced with this issue, including courts in this circuit, have held directly, or implicitly by approval, that a defendant who could have removed an action before default judgment may do so after default judgment has been entered in state court provided removal is still timely under federal law. *Price v. Wyeth Holdings Corp*., 505 F.3d 624, 632 (7th Cir. 2007) (district court did not err in vacating state court default judgment in case removed after default judgment entered); *Hawes v. Cart Prod., Inc.*, 386 F. Supp. 2d 681, 686 (D.S.C. 2005) (collecting similar cases); *Jenkins v. MTGLQ Invs*., 218 F. App'x 719, 724 (10th Cir. 2007) (same);

Soloway v. Huntington Nat'l Bank, No. 12-cv-507, 2012 WL 12883651, at *1 (W.D. Mich. Nov. 29, 2012) (collecting similar cases); *Kent v. Harris*, No. 08-cv-141-bbc, 2008 WL 2434122, at *1 (W.D. Wis. June 13, 2008) (*Rooker-Feldman* doctrine, which prohibits parties from using the federal district courts to appeal an adverse state court judgment, does not apply to a properly removed action in which the state court had entered a default judgment). As these courts explain, "removal of the lawsuit is a continuation of the same action, not a new or subsequent action and not an appeal." *Soloway*, 2012 WL 12883651, at *2. Therefore, plaintiff's motion to remand must be denied.[2]

II. Motion for Relief from State Court Default Judgment

Defendant next has filed a motion under Rule 60(b) to vacate the default judgment entered against him in state court. "When a case is removed, the federal court sits in the shoes of the state court from which the case was removed." *Kent*, 2008 WL 2434122, at *1. Therefore, "[s]o long as the state court would have authority to vacate the judgment and the removal is otherwise proper, . . . a default judgment may be vacated if it was obtained without proper service of process." *Id*. (citing *Western Pattern & Manufacturing Co. v. American Metal Shoe Co*., 175 Wis. 493,175 Wis. 493, 185 N.W. 535, 536 (1921); *Swaim v. Moltan Co*., 73 F.3d 711, 718 (7th Cir. 1996)). Therefore, the question is whether

[2] This does not mean that plaintiff will prevail on his federal claims. RICO actions are difficult to prove, and the allegations in this case do not fit squarely within the RICO statute. Moreover, should that federal claim be lost, so, too, likely would be plaintiff's basis for being in this court. *See Coleman v. City of Peoria, Illinois*, 925 F.3d 336, 352 (7th Cir. 2019) (district courts generally relinquish supplemental jurisdiction over state-law claims if all federal claims have been resolved before trial).

plaintiff properly served defendant with the summons and complaint in the state court action.

Under Wisconsin law, service of process may be completed by "personally serving the summons upon the defendant either within *or* without this state" or "[i]f with reasonable diligence the defendant cannot be served [personally] then by leaving a copy of the summons at the defendant's usual place of abode." Wis. Stat. § 801.11. The certificate of service in this case states that service was made by leaving a copy of the summons and complaint with "Matthew Roark, Director of Operations – La Crosse," who is "authorized to accept service" for "the above business." (Dkt. #9-1.) However, the summons and complaint do not name a business as a defendant. (Dkt. #1-1; Dkt. #1-2). Rather, "John Erickson" is the only named defendant, even though the attachment to the complaint identifies Erickson as the "President and CEO of IC System." Moreover, plaintiff offers no evidence that: (1) the Onalaska address, which is identified as the location of ICS's corporate office, is John Erickson's usual place of abode; or (2) Mr. Roark was authorized to accept service of a complaint filed against defendant personally in his individual capacity. Because the named defendant John Erickson was not properly served in his individual capacity, therefore, the state court's precipitous entry of default judgment is void and must be vacated.

III. Personal Jurisdiction

Finally, because the court's subject matter jurisdiction in this case is based on a federal question, whether the court has personal jurisdiction over defendant depends on either the federal statute under which plaintiff is suing or Wisconsin law regarding personal

jurisdiction. *Mobile Anesthesiologists Chi., LLC v. Anesthesia Assoc. of Huston Metroplex, P.A.*, 623 F.3d 440, 443 (7th Cir. 2010). Defendant's arguments focus on Wisconsin law, emphasizing plaintiff's failure to allege that defendant took any action in Wisconsin apart from serving as a corporate officer of ICS. *See Spam Arrest LLC v. Boxbe, Inc.*, No. 10-cv-669-wmc, 2011 WL 13267159, at *1 (W.D. Wis. Nov. 18, 2011) (personal jurisdiction over corporation cannot be sole basis for personal jurisdiction over officer of that corporation). However, defendant fails to acknowledge that RICO authorizes nationwide service. *See* 18 U.S.C. § 1965(d) ("All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.").

"[W]hen a federal statute authorizes nationwide service, the only question for determining personal jurisdiction is whether the defendant has minimum contacts with the United States; contacts with the forum state are not required." *Aboloma v. U.S. Foods & Pharms., LLC*, No. 19-cv-418-jdp, 2020 WL 905732, at *2 (W.D. Wis. Feb. 25, 2020) (citing *Lisak v. Mercantile Bancorp, Inc.*, 834 F.2d 668, 671 (7th Cir. 1987) (like the Securities Exchange Act, RICO "not only creates personal jurisdiction over anyone within the United States but also is consistent with the Due Process Clause of the Fifth Amendment")). Even the sparse allegations in plaintiff's complaint are sufficient to suggest that Erickson has minimum contacts with the United States. Therefore, defendant's motion to dismiss for lack of personal jurisdiction must be denied.

Before this case may proceed any further, however, plaintiff must still accomplish proper service on defendant as authorized by 28 U.S.C. § 1448 (allowing for completion

of service in removal cases where process served proves to be defective). Normally, if a defendant is not served within 90 days after the complaint is filed, the court must dismiss the action without prejudice, but Fed. R. Civ. P. 4(m) also grants the court discretion to "order service be made within a specified time." Now that the case is proceeding in federal court, plaintiff may have until December 18, 2023, to complete proper service. Enclosed with this order is a memo explaining plaintiff's options for serving his complaint, as well as the forms he may need in accomplishing service. Because this case has been proceeding for some time, plaintiff should also file proof of service in this court no later than January 2, 2024. If plaintiff fails to file proof of service by that date, the court will dismiss the case for plaintiff's failure to prosecute.

ORDER

IT IS ORDERED that:

1) Plaintiff Brazy-Courtney's motion to remand (Dkt. #9) and supplemental motion to remand (Dkt. #18) are DENIED.

2) Defendant John Erickson's motion for relief from judgment (Dkt. #17) is GRANTED. The default judgment entered in favor of plaintiff in Dane County Case No. 2020SC001878 is VACATED.

3) Defendant's motion to dismiss this case for lack of personal jurisdiction (Dkt. #2) is DENIED.

4) Plaintiff may have until December 18, 2023, to file with the court proof of service of his complaint on defendant. If plaintiff does not file proof of service by January 2, 2024, I will dismiss this case for plaintiff's failure to prosecute it.

Entered this 3rd day of November, 2023.

BY THE COURT:
/s/
WILLIAM M. CONLEY
District Judge