

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

SEAN M. GLOVER,

Plaintiff,

v.

PREMIER BANK,

Defendant.

ORDER

02-C-9-C

Plaintiff Sean Glover has filed a civil action seeking an award of property allegedly belonging to him as survivor of an estate defendant is holding in trust. Because matters involving trusts and estates are matters of state law, the only possible basis for jurisdiction in this court is under the diversity jurisdiction statute, 28 U.S.C. § 1332. This statute applies when a party from one state sues a party in a different state and the amount in controversy exceeds \$75,000. Plaintiff alleges in his complaint that he is a resident of West Nyack, New York, and that defendant Premier Bank is located in Fort Atkinson, Wisconsin. Although plaintiff does not specify in his complaint the precise amount of damages in controversy, he has submitted a separate document titled “Motion for Injunctive Relief” in which he seeks damages in the amount of \$113,350.49.

It is permissible for this court to “look beyond the jurisdictional allegations in the complaint and view whatever evidence has been submitted on the issue in determining whether in fact subject matter jurisdiction exists,” Grafon Corp. v. Hausermann, 602 F.2d 781, 783 (7th Cir. 1979). Thus, viewing the complaint and the motion for injunctive relief together, I will presume at this early stage of the proceedings that this court has jurisdiction to entertain plaintiff’s complaint under the diversity statute.

There is no indication in the court’s record that plaintiff has served his complaint on the defendant in accordance with Fed. R. Civ. P. 4. Similarly, plaintiff has failed to submit proof of service of his motion for injunctive relief on the defendant and, in any event, his motion is not in compliance with this court’s rules governing motions for injunctive relief, a copy of which is enclosed to plaintiff with this order. Therefore, plaintiff’s motion will be denied without prejudice to his refiling it after he submits proof of service of his complaint and the motion on the defendant and after he puts the motion in a form that complies with the court’s procedures.

One final matter requires attention. Plaintiff has faxed three subpoenas to the court which he appears to want issued by the clerk of court. It is not clear why these documents have been submitted by fax, because it is not permissible in this court for litigants to submit papers using the fax machine except under unusual circumstances that do not exist here. Therefore, the faxed subpoenas will be placed in the file of this case and no consideration

will be given to them. However, I will request the clerk of court to issue three blank subpoena forms for plaintiff's use in lieu of the ones he has sent to this court.

ORDER

IT IS ORDERED that plaintiff's motion for injunctive relief is DENIED without prejudice to plaintiff's refiling the motion after he has served the defendant with his complaint and with his motion for injunctive relief, which he must first conform to this court's procedures to be following on motions for injunctive relief, a copy of which is enclosed with this order.

Entered this 19th day of March, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge