

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

EISENCORP, INC.,

Plaintiff,

v.

ROCKY MOUNTAIN RADAR, INC.
and MICHAEL CHURCHMAN,

Defendants.

ORDER

03-C-157-C

This is a civil action for monetary and declaratory relief. Plaintiff Eisencorp, Inc. claims that defendants Rocky Mountain Radar, Inc. and Michael Churchman terminated the parties' dealership agreement in violation of the Wisconsin Fair Dealership Law, Wis. Stat. §§ 135.01-135.07. In addition, plaintiff claims that defendants failed to make certain commission payments and is liable under breach of contract, conversion or civil theft. Currently pending before the court is defendants' motion for summary judgment.

Plaintiff invokes jurisdiction under the federal diversity jurisdiction statute, 28 U.S.C. § 1332. Pl.'s Cmpl., dkt. #2, ¶ 11. Under that statute, jurisdiction exists if there is complete diversity of citizenship and the amount in controversy exceeds \$75, 000. Id.

Because plaintiff claims damages in excess of \$75,000, the amount in controversy element is satisfied. To satisfy the complete diversity requirement, citizens of the same state may not be on opposite sides of a lawsuit. Turner/Ozane v. Hyman/Power, 111 F. 3d 1312, 1318 (7th Cir. 1997). Although defendants have not moved to have this case dismissed for lack of jurisdiction, the court has an independent obligation to insure that subject matter jurisdiction exists. Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002).

In its complaint, plaintiff alleges that plaintiff is incorporated and has its principal place of business in Wisconsin, defendant Rocky Mountain Radar is incorporated and has its principal place of business in Colorado and defendant Michael Churchman is a resident of Texas. Id. at ¶¶ 1-3. In their answer, defendants deny plaintiff's alleged place of incorporation and principal place of business for lack of knowledge and deny that defendant Churchman resides in Texas. Dfts.' Amended Ans., dkt. #7, ¶¶ 1 and 3. Defendants admit that defendant Rocky Mountain radar is incorporated and has its principal place of business in Colorado. Id. at ¶ 2. Although this court's rules make clear that all facts necessary to sustain a party's position on a motion for summary judgment, including facts establishing jurisdiction, must be proposed explicitly as findings of fact, there are no factual proposals regarding the citizenship of the parties, except defendants' proposal that defendant Rocky Mountain Radar is a Colorado corporation. Dfts.' PFOF, dkt. #17, ¶ 4. Accordingly, I am unable to conclude that complete diversity is present in this case.

Even if defendants had not denied that defendant Churchman resided in Texas, the diverse citizenship requirement of 28 U.S.C. § 1332 would not have been satisfied. “[R]esidence and citizenship are not synonyms and it is the latter that matters for purposes of the diversity jurisdiction.” Meyerson v. Harrah's East Chicago Casino, 299 F.3d 616, 617 (7th Cir. 2002)(citation omitted). “Citizenship for purposes of the diversity jurisdiction is domicile, and domicile is the place one intends to remain.” Dakuras v. Edwards, 312 F.3d 256, 258 (7th Cir. 2002). (Plaintiff alleges defendant Rocky Mountain Radar’s and its own states of incorporation and principal places of business. If true, these allegations would establish corporate citizenship; corporations are citizens of states in which they are incorporated and have their principal place of business. Metropolitan Life Ins. Co. v. Estate of Cammon, 929 F.2d 1220, 1223 (7th Cir. 1991)).

Because plaintiff sought federal court jurisdiction originally, it bears the burden of showing that federal jurisdiction exists. Chase v. Shop n' Save Warehouse Foods, Inc., 110 F.3d 424, 427 (7th Cir. 1997) (“party seeking to invoke federal diversity jurisdiction [] bears the burden of demonstrating that the complete diversity and amount in controversy requirements are met.”).

IT IS ORDERED that plaintiff Eisencorp, Inc. will have until April, 13, 2004, to provide this court with verification of its citizenship and that of defendant Michael

Churchman.

Entered this 8th day of April, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge