

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

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CROELL REDI-MIX, INC.

Plaintiff,

v.

JACK A. ELDER,

Defendant.  
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ORDER

05-C-294-C

This is a civil action for monetary relief in which plaintiff Croell Redi-Mix, Inc. accuses defendant Jack A. Elder of defamation. This case is before the court on defendant's motion for summary judgment. I will stay a decision on defendant's motion because it appears that this court may lack subject matter jurisdiction over this case.

Plaintiff brought this suit in the Circuit Court for La Crosse County, Wisconsin, but defendants removed it to this court pursuant to 28 U.S.C. § 1441, alleging diversity jurisdiction pursuant to 28 U.S.C. § 1332. Generally, a plaintiff alerts the court to problems with the exercise of federal jurisdiction over a removed case by filing a motion for remand. 28 U.S.C. § 1447(c). Although that was not done in this case, the court has an independent

obligation to insure that jurisdiction exists. See, e.g., Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002). A defendant may remove merely by filing notice of removal, 28 U.S.C. § 1446, but as the party invoking federal jurisdiction the defendant bears the burden of proving the facts necessary to establish diversity jurisdiction. NFLC, Inc. v. Devcom Mid-America, Inc., 45 F.3d 231, 237 (7th Cir. 1995). In the context of removal, the Court of Appeals for the Seventh Circuit has determined that the removing party must provide “proof to a reasonable probability that jurisdiction exists.” Gould v. Artisoft, Inc., 1 F.3d 544, 547 (7th Cir. 1993); Shaw v. Dow Brands, Inc., 994 F.2d 364, 366 n.2 (7th Cir. 1993). Diversity jurisdiction exists when the amount in controversy exceeds \$75,000 and the adverse parties are citizens of different states. 28 U.S.C. § 1332.

When a case is removed to federal court, jurisdiction is determined by “looking at the plaintiff’s state court complaint, along with the record as a whole.” Gould, 1 F.3d at 547 (citations omitted). In this case, plaintiff alleges in the complaint that it is a citizen of Iowa and defendant is a citizen of Minnesota. However, it is not clear that more than \$75,000 is at stake in this case. Defendant states in the notice of removal that “the matter here in controversy exceeds the sum or value of \$75,000 were the court to grant the plaintiff relief as sought.” Not. Rem., dkt. #2, ¶ 5a. Defendant’s conclusory assertion is insufficient. In the complaint, plaintiff requests compensatory and punitive damages but does not indicate a dollar amount. Moreover, nothing in the record renders it obvious that the amount in

controversy exceeds \$75,000. Defendant must prove to a reasonable probability that the jurisdictional amount is in controversy. Shaw, 994 F.2d at 366 n.2. I will give defendant one week in which to submit evidence demonstrating that the jurisdictional amount is in controversy.

#### ORDER

IT IS ORDERED that

1. Defendant Jack A. Elder has until February 7, 2006, to submit evidence demonstrating that the jurisdictional amount is in controversy.
2. A decision is STAYED on defendant's motion for summary judgment.

Entered this 30th day of January, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge