

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

UNIEK, INC.,

Plaintiff,

v.

DOLLAR GENERAL CORPORATION,

Defendant.

ORDER

06-C-311-C

Currently pending before this court is defendant Dollar General Corporation's motion for summary judgment on plaintiff Uniek, Inc.'s claim under Wis. Stat. §100.18. In reviewing the parties' submissions for this motion, I discovered that neither party has proposed facts demonstrating that this court has subject matter jurisdiction to hear the case, in violation of the court's Procedure to Be Followed on Summary Judgment, which the parties received with preliminary pretrial conference order.

All of the causes of action asserted by plaintiff arise under state law. Thus, federal jurisdiction exists only if the amount in controversy is more than \$75,000 and the parties are of diverse citizenship. 28 U.S.C. § 1332. Plaintiff alleges in its complaint that it is entitled to several million dollars, so the amount in controversy requirement is satisfied.

Smoot v. Mazda Motors of America, Inc., 469 F.3d 675, 677 (7th Cir. 2006). However, I cannot determine from the parties' submissions whether the parties are citizens of different states.

Both parties are corporations, which means that both are citizens of their state of incorporation and of the state in which their principal place of business is located. 28 U.S.C. § 1332(c)(1); Smoot, 469 F.3d at 676. If either of these states is the same for both parties, there is no diversity jurisdiction.

In its proposed findings of fact, plaintiff says that its headquarters are in Wisconsin, which is the same thing as its principal place of business under § 1332. Metropolitan Life Insurance Co. v. Estate of Cammon, 991 F.2d 1220, 1223 (7th Cir. 1991). (As evidence of its disregard for the jurisdictional question, defendant's response to this proposed finding of fact is that it is undisputed but "immaterial." Dkt. # 56, at ¶13.) However, plaintiff says nothing about its state of incorporation. Defendant's submissions are even less helpful; it says only that it "operates" in 35 states. Dkt. #29, at ¶1.

Until the parties submit proof of their citizenship, I cannot decide defendant's motion for summary judgment. Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 778 (2000) ("if there is no jurisdiction there is no authority to sit in judgment of anything else."). As the proponent of jurisdiction, plaintiff has the burden to establish its existence. Oshana v. Coca-Cola, 472 F.3d 506, 511 (7th Cir. 2006).

Accordingly, IT IS ORDERED that plaintiff may have until February 19, 2007, in which to submit proof to the court of defendant's principal place of business and both parties' state of incorporation. If plaintiff fails to do this, the case will be dismissed for lack of subject matter jurisdiction.

Entered this 12th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge