

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

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JOHN W. MOORE,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.  
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OPINION AND ORDER

10-cv-473-bbc

Plaintiff John W. Moore has sued defendant United States Postal Service for allegedly blocking his access to the mail box he was renting at the Capitol Station branch of the Postal Service. In a complaint he filed on August 18, 2010, he alleged that defendant United States Postal Service had blocked his access to post office box 343, the box he had rented and for which he had paid rent through the end of 2010.

In an order entered on October 13, 2010, I construed plaintiff's complaint as stating a common law contract claim for breach of defendant's contractual obligation to give him access to Box 343 through the end of 2010. Defendant answered the complaint, denying that it had plugged or altered the lock on the post office box.

On April 1, 2011, defendant moved for summary judgment, arguing that the material

facts were not in genuine dispute and that it was entitled to judgment as a matter of law. In support of its motion, defendant proposed findings of fact, one of which was that as of April 1, 2011, P.O. Box 343 had been available to plaintiff since May 1999. Plaintiff made no objections to the proposed facts and did not propose any facts of his own in opposition to those proposed by defendant. Instead, he filed a motion for default, dkt. #7, and a motion for “issuance of subpoenas ducas tecum” for the Federal Bureau of Investigation. Dkt. #8. I denied both motions as unsupported. Dkt. #13. However, I found that the proposed fact about the continued availability of Box 343 seemed irreconcilable with defendant’s suggestion to the court that it should either dismiss the case or enter judgment in favor of defendant because mailings defendant had sent to plaintiff at Box 343 had been returned to defendant as undeliverable. If, as defendant was asserting, plaintiff had full access to Box 343, why would mailings sent to him at that address be returned to the sender as undeliverable?

In an order entered on May 3, 2011, I directed defendant to supplement its motion to dismiss with an explanation of the apparent discrepancy in the facts. It did so by submitting the declaration of Robert C. Sheehan. Dkt. #18. Sheehan declared that his duties include the supervision of delivery of post office box mail and that he had learned from his investigation of plaintiff’s situation that plaintiff had stopped picking up his mail from his box in or around June 2010. Id. From that time on, defendant had continued to

put his mail into the box and had done nothing to prevent plaintiff from gaining access to the box, although he was delinquent on the box rental fee. Id. In April 2011, defendant closed plaintiff's box officially on its records, returned all of the mail accumulated in the box to its senders and changed the lock on the box. Id. It could not return the mail to plaintiff because it had no forwarding address. Id.

For the purpose of deciding this motion I find that the following proposed facts are not in dispute.

#### UNDISPUTED FACTS

Post office box 343 was held in the name of plaintiff John W. Moore and available for access by him from May 1999 to sometime in April 2011. Plaintiff made his last payment for the box rental in June 2010.

Although plaintiff was delinquent in his rental payments for ten months, defendant United States Postal Service never locked him out of his box; never rented his box to anyone else; never changed the lock or the key to his box; never plugged the lock; and never prevented him in any other way from gaining access to the box. Plaintiff never complained to anyone at the Capitol Station about not being able to gain access to Box 343.

## OPINION

Plaintiff alleged in his complaint that he had been denied access to his post office box, #343, but he did not respond to defendant's motion for summary judgment with any evidence to support his allegation or to oppose any of the facts proposed by defendant. Plaintiff's failure to come forward with any evidence to oppose the facts means that they are undisputed and must be accepted by the court as true.

Plaintiff could have opposed defendant's proposal that it never prevented him from gaining access to his box by filing a sworn statement of his own about his unsuccessful attempts to get into his box or a statement by a witness who had seen him try to get his mail from his box, but he did not. His only response to defendant's motion for summary judgment was to file a document entitled "Memorandum of Law," dkt. #15, in which he said that he had given written notice and proof of service by United States mail and that he objected to the court's failure to make defendant file a written answer to plaintiff's motion for default. Neither of these assertions sufficed to put into dispute his claim of denial of access to his box. (If plaintiff intended his memorandum to be a motion for reconsideration of his motion for default, it would be denied because plaintiff has not shown any better reason for granting it than he did when he filed it initially.)

More to the point, plaintiff did not come forward with any evidence that he had completed his obligations under the contract he had with defendant for rental of a post office

box. He has not shown that he made any payments to defendant after June 2010 to continue the rental of the box. (He did attach to his complaint what appear to be copies of two receipts for payments made in June 2010, one of \$7.00 and one of \$5.00, but he provided nothing about any additional payments in later months.) Plaintiff has no ground on which to claim a breach of contract if he was not fulfilling his end of the bargain, which was to pay a fee for access to Box 343. Nevertheless, defendant waited a number of months before canceling plaintiff's box access.

I conclude that defendant has shown that it is entitled to summary judgment in its favor on plaintiff's claim that he was denied access to his post office box in violation of his rental contract with defendant.

#### ORDER

IT IS ORDERED that the motion for summary judgment filed by U.S. Postal Service, dkt. #9, is GRANTED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 8th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge