

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

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JOHN W. MOORE,

Plaintiff,

v.

U. S. POSTAL SERVICE,

Defendant.

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ORDER

10-cv-473-bbc

This is a proposed civil action for injunctive relief in which plaintiff John W. Moore seeks to enjoin defendant United States Postal Service from blocking his access to his post office box. Plaintiff has asked for leave to proceed in forma pauperis and has supported his request with an affidavit of indigency. The standard for determining whether plaintiff qualifies for indigent status is the following:

- From plaintiff's annual gross income, the court subtracts \$3700 for each dependent excluding the plaintiff.
- If the balance is less than \$16,000, the plaintiff may proceed without any prepayment of fees and costs.
- If the balance is greater than \$16,000 but less than \$32,000, the plaintiff must

prepay half the fees and costs.

- If the balance is greater than \$32,000, the plaintiff must prepay all fees and costs.
- Substantial assets or debts require individual consideration.

In this case, plaintiff's monthly income is \$150 a month, which makes his annual income \$1,800. Because plaintiff's income is less than \$16,000, he can proceed without any prepayment of fees or costs.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, because plaintiff is requesting leave to proceed without prepayment of costs, his complaint must be dismissed if it is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B). After reviewing plaintiff's complaint, I conclude that he may proceed on a breach of contract claim against defendant United States Postal Service.

In his complaint, plaintiff alleges the following facts.

#### ALLEGATIONS OF FACT

Plaintiff rents post office box 343 at the United States Postal Service Capital Station in Madison, Wisconsin. He has paid for the box through the end of the year 2010. On August 5 and 6, defendant United States Postal Service changed the lock on plaintiff's post office box and issued a key to someone else. Plaintiff can no longer gain access to his post office box.

## DISCUSSION

Although plaintiff does not identify a specific legal theory in his complaint, he explains that he wishes to bring suit against the United States Postal Service for injunctive relief in order to gain access to the post office box he allegedly paid for. Under the Postal Reorganization Act, 39 U.S.C. § 201, the United States Postal Service is an “independent establishment of the executive branch of the Government of the United States.” Dolan v. United States Postal Service, 546 U.S. 481, 483-84 (2006). To sue the United States or its agencies in federal court, a plaintiff must show that he has a basis for subject matter jurisdiction in the district court and that he is suing under a law that waives the sovereign immunity of the United States to the cause of action. Clark v. United States, 326 F.3d 911, 912 (7th Cir. 2003); see also Dolan, 546 U.S. at 484 (Postal Service enjoys sovereign immunity absent a waiver); United States Postal Service v. Flamingo Industries (USA) Ltd., 540 U.S. 736, 744 (2004) (same). In this case, I conclude that section 409 of the Postal Reorganization Act confers jurisdiction upon this court and section 401 of the Act waives the Postal Service’s sovereign immunity. In addition, I conclude that plaintiff has adequately pleaded a common law contract claim.

The plain language of § 409(a) of the Postal Reorganization Act confers jurisdiction upon the United States district courts, concurrently with state courts. 39 U.S.C. § 409(a). It provides that “the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service.” 39 U.S.C. § 409(a); see also Powers v. United States Postal Service, 671 F.2d 1041, 1042 (7th Cir. 1982); Licata v. United States Postal

Service, 33 F.3d 259, 261 (3d Cir. 1994) (holding that plain meaning of § 409(a) grants jurisdiction to district courts over any action to which Postal Service is party); Continental Cablevision of St. Paul, Inc. v. United States Postal Service, 945 F.2d 1434, 1437 (8th Cir. 1991) (same); American Postal Workers Union, AFL-CIO v. United States Postal Service, 830 F.2d 294, 312 n.33 (D.C. Cir. 1987) (same).

In addition to providing jurisdiction over this suit, the Postal Reorganization Act provides waiver of the Postal Service's immunity from suit by giving the Postal Service the power "to sue and be sued in its official name." 39 U.S.C. § 401(1); see also Dolan, 546 U.S. at 484; Flamingo Industries, 540 U.S. at 741. Thus, there is both a basis for subject matter jurisdiction in the district court and a law that waives the Postal Service's sovereign immunity.

I can infer that plaintiff is raising a breach of contract claim against defendant Postal Service, over which this court would have jurisdiction pursuant to 39 U.S.C. § 409(a). The contract claim is grounded on plaintiff's allegation that defendant breached an agreement to rent a post office box to plaintiff until the end of 2010 in exchange for plaintiff's payment of a fee. Plaintiff alleges that he paid the fee but defendant failed to provide the box. At this stage, such allegations are sufficient to plead a breach of contract claim based on common law principles of contract law. MB Financial Group, Inc. v. United States Postal Service, 545 F.3d 814, 819 (9th Cir. 2008) (holding that plaintiff stated claim for breach of contract based on post office's failure to make available post office box for which plaintiff had paid); see also Kerin v. United States Postal Service, 116 F.3d 988, 990-91 (2d Cir. 1997) (affirming award of damages to plaintiff for

post office's breach of lease agreement); Burks v. United States Postal Service, 2009 WL 1097508, \*1 (N.D. Ill. April 17, 2009) (holding that the Postal Reorganization Act conferred jurisdiction over plaintiff's breach of contract claim). Therefore, plaintiff will be granted leave to proceed on his claim that defendant United States Postal Service breached a contract to provide him access to a post office box in exchange for his payment of a fee.

### ORDER

IT IS ORDERED that

1. Plaintiff John Moore is GRANTED leave to proceed on his claim that defendant United States Postal Service breached a contract to provide plaintiff access to a post office box in exchange for his payment of a fee.

2. For the sake of expediency, I will send a summons, the complaint and the screening order to the United States Postal Service, local United States Attorney and this United States Attorney General via certified mail in order to complete service in accordance with Fed. R. Civ. P. 4(i). Defendant must respond to the complaint within 60 days from the date of service on the United States Attorney's Office.

3. For the remainder of this lawsuit, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that

he has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 13th day of September, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge