

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

- - - - -

JOHN-ANDREW: GLAVIN - BY SPECIAL  
APPEARANCE, SOVEREIGN SENTIENT MAN,  
AMERICAN NATIONAL,  
REAL INJURED PARTY, SECURED PARTY  
CREDITOR  
RE: ORIGINAL DEFENDANT JOHN A. GLAVIN  
(STRAMINEUES HOMO),

OPINION AND ORDER

11-cv-765-bbc

Third-Party Plaintiff,

v.

AMERICAN HONDA FINANCE CORP.,  
a foreign corp., et al., MICHAEL C. KOEHN  
and JUNEAU COUNTY CIRCUIT COURT,

Third-Party Defendants.

- - - - -

Third-party plaintiff John A. Glavin, whom I will refer to as plaintiff because that is his posture in this case, removed this replevin action from state court on November 9, 2011, contending, in essence, that diversity of citizenship existed because American Honda Finance Corp. is a foreign corporation and plaintiff is a citizen of the Wisconsin Free State and “not a citizen of the De facto Federal State of Wisconsin.” Notice of Removal, dkt. #1, at 1. Plaintiff did not allege the citizenship of Michael C. Koehn or set forth any claims against this “third-party defendant” or against “third-party defendant Juneau County Circuit Court.”

The third-party defendants, whom I will refer to as defendants to reflect their actual status in this case, have moved to dismiss the case or remand it to the Circuit Court for Juneau County, Wisconsin. They contend that removal was improper for a number of reasons: the parties are not diverse; the matter in controversy does not exceed \$75,000 (because the court should not consider the counterclaim for \$10,000,000 that plaintiff added in state court); plaintiff did not seek to remove this case within thirty days of its filing or alternatively, within thirty days of filing the counterclaim; and the case was resolved in the Juneau County proceedings with a grant of replevin in favor of American Honda, which means that this proceeding is barred by the doctrine of res judicata.

Any one of these alleged reasons for remanding would be sufficient to support remand. First, plaintiff has failed to show that diversity jurisdiction exists to hear his case. As the party seeking removal, plaintiff has the burden of establishing the existence of federal jurisdiction. 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”). When plaintiff removed the case to this court, he alleged that diversity jurisdiction was present because he and the defendants were citizens of different states. Notice of Removal, dkt. #1, at 1. He did not identify the states of citizenship of any of the defendants, except to allege that defendant American Honda was a foreign corporation. Id. He did not say anything about the amount in controversy, although the statute requires a showing of

diversity *and* an amount in controversy in excess of \$75,000. 28 U.S.C. § 1332.

Ordinarily, in such a circumstance, it would be proper to give plaintiff an opportunity to support his invocation of diversity jurisdiction, but plaintiff has made it clear that he does not consider himself a citizen of any state recognizable by the court. He says he is “an American National and not a citizen of the De facto federal state of WISCONSIN or any subset or extension of THE UNITED STATES CORPORATION as defined in USC § 3002(15)(a).” Notice of Removal, dkt. #1, at 1. In other cases involving this same plaintiff, I have held that he is a citizen of the state of Wisconsin, even if he denies it, but his persistent denial that he is a citizen of this state persuades me that it is time to take him at his word.

Section 1332(a) gives the federal courts original jurisdiction of civil actions in which the amount in controversy exceeds \$75,000 and is between citizens of different states; between citizens of a state and citizens or subjects of a foreign state; between citizens of different states and the case is one in which citizens or subjects of a foreign state are additional parties; and between a foreign state as plaintiff and citizens of a state or different states. Plaintiff falls into none of these categories because, by his own description, he is neither a citizen of a domestic state nor a citizen of a foreign state. Moreover, he has not alleged an amount in controversy. In summary, he has not carried his burden of showing that removal to this court was proper.

Second, the case must be remanded because plaintiff did not seek to remove it within

30 days of its filing or alternatively, within thirty days of filing the counterclaim. A review of the Wisconsin Court System Circuit Court Access shows that plaintiff did not remove this case until after it had been closed and judgment entered in favor of American Honda Finance Corp. on September 19, 2011. <http://wcca.wicourts.gov/court> (visited on Feb. 28, 2012). Defendant filed his notice of removal in this case on November 9, 2011, long after the 30-day period for filing such a motion had expired. Under 28 U.S.C. § 1446(b), the general rule is that the defendant must file a notice of removal of a civil action within 30 days of his receipt of a copy of the initial pleading. The statute provides for exceptions but none that would apply in this case.

Third, because plaintiff did not file his notice of removal until after the case against him had been closed, further litigation of American Honda's right to replevin plaintiff's car is barred by the doctrine of res judicata. In Wisconsin, "under the doctrine of claim preclusion, previously called res judicata, 'a final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might have been litigated in the former proceedings.'" Wisconsin Public Service Corp. v. Arby Construction, Inc., 2011 WI ¶ 14, 333 Wis. 2d 184, 798 N.W.2d 715 (quoting Wickenhauser v. Lehtinen, 2007 WI 82, ¶ 22, 302 Wis. 2d 41, 58 734 N.W.2d 855) (citations omitted). The doctrine's purpose is to prevent repetitive litigation and thereby "promote judicial economy and . . . 'conserve the resources the parties would expend in repeated and needless litigation of issues that were, or that might have been resolved in a

single prior action.” Id. The elements of claim preclusion are “(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and (3) a final judgment on the merits in a court of competent jurisdiction.” Id. (quoting Wickenhauser, 2007 WI 82, ¶ 22, 302 Wis. 2d 41, 734 N.W.2d 855). Plaintiff has not suggested, much less shown, any reason to think that the elements of claim preclusion are not met in this case.

Plaintiff has also filed a motion to strike defendant American Honda’s motion to dismiss. The motion will be denied because plaintiff has not shown that defendant’s motion to dismiss is improper. I am treating the motion as a brief in opposition to defendants’ motion to dismiss or remand. In his filing (now his brief in opposition), defendant says that the case involves a federal question. I understand this assertion as an argument that if diversity of citizenship does not exist, he has grounds for removing the case under 28 U.S.C. § 1331, which allows the removal of cases in which federal jurisdiction is proper.

In fact, plaintiff has no basis for his assertion of federal jurisdiction. He argues that the state case concerned the Uniform Commercial Code, which he says is a federal law, but he is wrong about this. The Uniform Commercial Code is a template of laws that states such as Wisconsin have adopted to govern commercial transactions.

Plaintiff contends also that federal question jurisdiction is proper because the state court denied him his right to trial under the Seventh Amendment of the United States Constitution. I cannot assess this contention because plaintiff does not explain the

circumstances of the denial, why he thinks that he had such a right under the Constitution and why, if he was denied this right, he could not have appealed the denial of the right to a state appellate court. The court records show that American Honda's replevin action was filed in small claims court in Juneau County. I am aware of no provision in the United States Constitution that would require a jury trial in small claims court. In short, I can find no basis on which plaintiff could have prevailed on his claim that federal question jurisdiction exists even if he had raised the issue in connection with a timely notice of removal to federal court.

#### ORDER

IT IS ORDERED that the motion for remand filed by defendants American Honda Finance Corp., Michael C. Koehn and Juneau County Circuit Court is GRANTED. Plaintiff John Andrew Glavin's motion to strike the motion to dismiss or remand is DENIED. The clerk of court is directed to return the file to the Circuit Court for Juneau County and close this case.

Entered this 29th day of February, 2012.

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