

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

ROBERT F. KEENE,

Plaintiff,

OPINION AND ORDER

v.

13-cv-341-wmc

KAY DEBOER and DEBOER
TRANSPORTATION, INC.,

Defendants.

In this action, plaintiff Robert Keene is suing his former employer for defamation. Having received leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, and has made the initial payment of \$175 required of him under § 1915(b)(1), the court must now determine whether his proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915A(b). After examining the complaint, the court concludes that Keene has stated an actionable claim under state law and may proceed conditionally on the basis of his incomplete allegations of the court's diversity jurisdiction.

ALLEGATIONS OF FACT

In screening any pro se litigant's complaint, the court must read the allegations generously, holding the complaint "to less stringent standards than formal pleadings

drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Keene alleges, and the court assumes for purposes of this screening order, the following facts:

- Robert Keene is currently a resident of Longview, Texas, and formerly was a truck driver for DeBoer Transportation, Inc. Kay DeBoer is the President of DeBoer Transportation, Inc., which is based in Blenker, Wisconsin.
- On December 26, 2012, Robert Keene called DeBoer Transportation from Punta Gorda, Florida, to request some vacation time. Keene spoke to “Ruth,” the Drivers Manager, who denied the request and insisted that he be available for dispatch on the 28th of December.
- Keene also asked that his wages be directly deposited into his bank account. Ruth forwarded this request to Kay DeBoer, who refused to accommodate him.
- As a result of this dispute, Keene quit his employment with DeBoer Transportation.
- The next day, DeBoer sent a towing service to Keene’s house to pick up its truck. When the towing service arrived, Keene had to take them to the secure site where the truck was parked.
- After recovering the truck, DeBoer filed a false DAC report against Keene. A DAC report is a detailed summary of a trucker’s work history, which is used in the trucking industry to pre-screen drivers for employment.
- Finally, Keene alleges that the false report filed by DeBoer prevents him from driving professionally for five years and claims “ONE BILLION” dollars in damages.

OPINION

I. Defamation

Reading the complaint generously, the court finds that Keene has stated a claim for defamation under Wisconsin law. “A communication is defamatory if it tends to harm the reputation of another so as to lower that person in the estimation of the community or deter third persons from associating or dealing with him or her.” *Vultaggio v. Yasko*, 215 Wis.2d 326, 330, 572 N.W.2d 450, 452 (Wis. 1998). “However, not all defamations are actionable.” *Id.* Only statements that are false (not “substantially true”) and without privilege under the law provide a cause of action. *DiMiceli v. Klieger*, 58 Wis.2d 359, 363, 206 N.W.2d 184, 187 (Wis. 1973).

Keene has alleged that DeBoer made a false communication about him to the public. The court further infers for screening purposes that the contents of this report harmed Keene’s reputation because he can no longer find work as a professional truck driver. Although the complaint is slight on detail, the defamation claim is plausible. Accordingly, Keene may therefore proceed against Kay DeBoer, as a well as against DeBoer Transportation, Inc., on an implied theory of *respondeat superior* liability.¹

¹ One might construe the complaint as also naming Robert Meldrum, the Southern Regional Manager for DeBoer Transportation, as a defendant. Because none of the allegations suggest that Meldrum had any responsibility for authoring or transmitting the complained-of defamatory communication, however, Keene will not be allowed to proceed on a claim of defamation against Meldrum.

II. Jurisdiction

The complaint does not expressly allege all the required elements to establish substantive federal jurisdiction, which would normally be grounds to dismiss the complaint or, at least, to require re-pleading. *Holtz v. J.J.B. Hilliard W.L. Lyons, Inc.*, 185 F.3d 732, 738 (7th Cir. 1999) (allowing amendment to pleadings pursuant to 28 U.S.C. § 1653 rather than dismissing the suit for lack of jurisdiction). The court will nevertheless allow Keene to proceed, at least past the screening stage, because the allegations indicate that jurisdiction is likely present under 28 U.S.C. § 1332, which applies to actions in which the plaintiff and the defendants are “citizens of different States” and the amount in controversy is more than \$75,000.

For purposes of assessing diversity of citizenship, the court must look to the domicile of natural persons, *Winforge, Inc. v. Coachmen Indus., Inc.*, 691 F.3d 856, 867 (7th Cir. 2012), and the state of incorporation and principal place of business for corporate parties, *Metropolitan Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991). Keene alleges that his “residence” is in Texas, and that Kay DeBoer is employed in Blenker, Wisconsin. While neither allegation establishes the “domicile” of these two defendants, it seems very likely that their domiciles will prove to be Texas and Wisconsin, respectively. The court will also take judicial notice that DeBoer Transportation, Inc., is a Wisconsin corporation with its principal place of business in

Blenker, Wisconsin.² With a Texas citizen plaintiff and Wisconsin citizen defendants, diversity appears present.

As for the amount in controversy, Keene's grandiose claim to "one billion dollars" in damages is obviously a wildly unrealistic estimation of what his claim is worth. Still, Keene's contention that he will be out of work for five years appears enough to render likely a potential damages award greater than the minimum threshold of \$75,000, should Keene prevail.

Finally, the court wishes to emphasize that it is allowing Keene's complaint to proceed past the screening stage because Keene's case *likely* qualifies for federal diversity jurisdiction. That is *not* the same as finding that Keene has adequately pled jurisdiction. Keene must adequately plead jurisdiction if he wishes to proceed any further, and is advised to promptly file an amended complaint that properly alleges all of the necessary jurisdictional facts. If Keene fails to do so, the court will dismiss his complaint.

ORDER

IT IS ORDERED that:

1. Plaintiff Robert Keene's motion for leave to proceed is GRANTED;
2. The summons and complaint are to be delivered to the U.S. Marshal for service on defendants;
3. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than

² See Wis. Dep't of Financial Institutions Website, <https://www.wdfi.org/apps/CorpSearch/Search.aspx> (search for "DeBoer Transportation") (last visited December 2, 2013).

defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney; and

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 3rd day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge