

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

THOMAS K. STOUTD
d/b/a TRIPLE SPRINGS DAIRY INC.,

Plaintiff,

v.

RICHARD BERGER,

Defendant.

ORDER

01-C-256-C

In this civil action for injunctive and monetary relief, pro se plaintiff Thomas K. Stoudt alleges that defendant Richard Berger issued a fraudulent Form 1099 to Triple Springs Dairy Inc. for rents paid in the amount of \$7,776. Plaintiff alleges that he has never received any money from defendant for any reason.

Because plaintiff is proceeding pro se, his complaint is held to less stringent standards than formal pleadings drafted by lawyers and must be liberally construed. See Antonelli v. Sheehan, 81 F.3d 1422, 1427 (7th Cir. 1996). However, Fed. R. Civ. P. 12(h)(3) provides that “[w]hen it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Even construing the

complaint liberally, I am convinced that this court lacks subject matter jurisdiction. Accordingly, I will dismiss this case.

Federal courts are courts of limited jurisdiction and, therefore, have power to adjudicate controversies only when a federal statute provides a basis for jurisdiction. Plaintiff cannot rely on diversity jurisdiction, which allows a federal court to hear a case when the plaintiff and the defendant are citizens of different states and the amount in controversy is over \$75,000, because plaintiff is seeking damages of only \$5,000. See 28 U.S.C. § 1332. Similarly, plaintiff cannot establish that federal question jurisdiction exists under 28 U.S.C. § 1331, which confers jurisdiction upon federal district courts for cases “arising under the Constitution, laws or treaties of the United States.” A case “arises under” federal law only when “a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief depends on resolution of a substantial question of federal law.” Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983).

In Franchise Tax Board, the Supreme Court outlined two tests for federal jurisdiction. The first test requires that the well-pleaded complaint establish both a federally-created right and a federally-created remedy. See American Well Works Co. v. Layne & Bowler Co., 241 U.S. 257, 260 (1916). Even construing plaintiff’s complaint liberally, it does not state a federally-created cause of action. Plaintiff has not pointed to any provisions in the Internal

Revenue Code that create a private right of action for a taxpayer to file suit against another taxpayer for violating the code.

The second test requires a federal question to be a “substantial ingredient” of a state-law created cause of action. Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 199 (1921). “Substantial ingredient” has been defined as an “essential [element] of the Plaintiff’s cause of action.” Gully v. First Nat’l Bank, 299 U.S. 109, 112-13 (1936). Although plaintiff’s complaint involves a federal tax form, the form merely provides the factual basis for the dispute. The dispute does not center on the application or construction of federal law; federal law is not an essential element of plaintiff’s cause of action. Instead, plaintiff’s contention is based in state common law: defendant committed an act of fraud.

Plaintiff raises an issue in his complaint that merits comment. In his request for relief, plaintiff asks that this court forward his complaint to a federal agency with authority to pursue criminal actions against defendant. Although this court does not have jurisdiction over this case and I cannot reach plaintiff’s requests for relief, I note that plaintiff is free to contact the Internal Revenue Service to report his belief that a tax fraud violation has occurred by calling (800) 829-0433.

ORDER

IT IS HEREBY ORDERED that plaintiff Thomas K. Stoudt’s action is dismissed

with prejudice for lack of subject matter jurisdiction. The clerk of court is directed to enter judgment for defendant and close the case.

Entered this 24th day of May, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge