

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

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DIRECTV, INC.,

Plaintiff,

v.

STEPHEN HENDERSON,

Defendant.  
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OPINION AND  
ORDER

03-C-680-C

This matter is before the court on plaintiff DIRECTV, Inc.'s motion for entry of judgment. The underlying dispute between plaintiff and defendant Stephen Henderson dates back to 2003, when plaintiff filed a lawsuit in this court alleging that defendant had used pirate devices to view plaintiff's television programming. On October 13, 2004, plaintiff voluntarily dismissed the lawsuit; that same day, the parties filed a "Stipulated Permanent Injunction," which the court granted (dkt. ##15-16). The injunction forbade defendant from directly or indirectly receiving plaintiff's transmissions of television programming through unlawful means.

Plaintiff has now filed a motion for entry of judgment and an “Affidavit of Breach of Settlement Agreement.” In the affidavit, plaintiff states that on September 28, 2004, it entered into a settlement agreement with defendant. According to plaintiff, paragraph 1 of the settlement agreement provides that:

The settlement amount deemed full restitution shall be Five Thousand Dollars (\$5,000.00). Stephen Henderson hereby agrees to pay said amount to DIRECTV in accordance with the payment terms enumerated in this paragraph and to execute a Consent to Judgment in the amount of Ten Thousand Dollars (\$10,000.00), securing said settlement. . . . If Mr. Henderson fails to adhere to the enumerated payment plan, DIRECTV is expressly authorized to file with the Court in this action the previously executed Consent to Judgment. The Five Thousand Dollars shall be paid within 45 days of the execution of this settlement agreement, or by November 12, 2004.

The Consent to Judgment, which was executed by defendant on September 29, 2004, is attached to plaintiff’s affidavit and states the following:

I, Stephen Henderson, am a resident of the State of Wisconsin. I authorize the entry of a judgment in the amount of Ten Thousand Dollars (\$10,000.00) in favor of plaintiff DIRECTV, Inc., if I materially breach paragraph “1. Settlement Amount” of the Settlement Agreement and plaintiff files an Affidavit of Breach of Settlement Agreement indicating that I have not fulfilled my monetary obligations under the Settlement Agreement.

In its affidavit, plaintiff asserts that defendant has breached the settlement agreement by failing to make the payments required under paragraph 1 of the agreement. Plaintiff asks the court to enter judgment in the amount of \$10,000 against defendant as provided for in the Consent to Judgment. The issue before the court is whether defendant has breached the

settlement agreement. This court lacks jurisdiction to entertain plaintiff's motion because there is no federal question at issue, the jurisdictional amount of \$75,000 required to establish diversity jurisdiction is not met and the court cannot exercise supplemental jurisdiction because the settlement agreement was not incorporated into the dismissal of the underlying lawsuit. Kokkenen v. Guardian Life Ins. Co., 511 U.S. 375, 380-81 (1994) (federal courts do not have ancillary jurisdiction to resolve dispute over alleged breach of settlement agreement unless agreement made part of order or dismissal, either by separate provision or by incorporating terms of agreement in order); Lucille v. City of Chicago, 31 F.3d 546, 548 (7th Cir. 1994); McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985) (holding that district court "barely" retained jurisdiction to hear claims of violation of settlement agreement because it had stated in dismissal order that order was pursuant to parties' stipulation and stipulation stated that dismissal was pursuant to terms and conditions of settlement agreement).

Plaintiff's voluntary dismissal of the lawsuit did not incorporate the settlement agreement or even recite that it was dismissing the case "pursuant to the settlement agreement." The court was not aware of the existence of the settlement agreement until plaintiff referred to it in the present motion. Because the court lacks jurisdiction to entertain plaintiff's motion for entry of judgment, the motion will be denied.

ORDER

IT IS ORDERED that plaintiff DIRECTV Inc.'s motion for entry of judgment is DENIED.

Entered this 23d day of March, 2006.

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