

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

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RAYMOND BRESETTE  
DBA: Well Built Construction  
P.O. Box 1416  
Bayfield, WI 54814,

Plaintiff,

v.

EXCILDA "JEAN" BUFFALO-REYES  
JOSE M. REYES-LLANES  
90380 Blueberry Rd.  
Bayfield, WI 54814,

Defendants.

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ORDER

06-C-338-C

This is a proposed civil action for injunctive and monetary relief in which plaintiff Raymond Bresette alleges that defendants Excilda "Jean" Buffalo-Reyes and Jose Reyes-Llanes breached a contract they entered into with him for construction work. At present, plaintiff is confined at the Dodge Correctional Institution in Waupun, Wisconsin. He has paid the filing fee in full and is not seeking relief from a governmental entity, officer or employee. Therefore, his complaint is not subject to screening under the in forma pauperis statute, 28 U.S.C. § 1915, or the Prison Litigation Reform Act, 28 U.S.C. § 1915A.

However, after reviewing the allegations in plaintiff's complaint, I have determined that there is a substantial likelihood that this court lacks subject matter jurisdiction over plaintiff's claim. Therefore, I must dismiss this case pursuant to Fed. R. Civ. P. 12(h)(3).

From the allegations in plaintiff's complaint and the documents attached thereto, I understand him to be alleging the following.

#### ALLEGATIONS OF FACT

On or about September 23, 2005, defendants Excilda "Jean" Buffalo-Reyes and Jose Reyes-Llanes signed a contract for construction work with plaintiff Raymond Bresette, d/b/a Well Built Construction. A two-page proposal attached to plaintiff's complaint indicates that plaintiff was to extend the roof of defendants' home and construct "a deck with a hot tub insert." Plaintiff received a down payment of \$6,920.00 and ordered materials for the job. Work on the project began around October 3, 2005 and progressed through October and November. Defendants requested many changes from the plan; minor requests were accommodated and major changes were negotiated. On November 21, 2005, defendants obtained a temporary restraining order against plaintiff, stopping work on the project. The restraining order was made permanent on November 30, 2005. Plaintiff asked the local authorities to accompany him to the site to retrieve his property. Many of plaintiff's tools had been "misplaced." On December 27, 2005, another crew was working on defendants'

home with some of plaintiff's tools that had been "misplaced."

## DISCUSSION

Federal courts are courts of limited jurisdiction; that is, they are empowered to hear only certain types of cases. Bender v. Williamsport Area School Dist., 475 U.S. 534, 541 (1986); Hart v. Terminix International, 336 F.3d 541 (7th Cir. 2003). Accordingly, "judges must consider jurisdiction as the first order of business." Sherman v. Community Consol. Sch. Dist. 21 of Whelling Twp., 980 F.2d 437, 440 (7th Cir. 1992). See also Wisconsin Knife Works v. National Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) (federal courts should always ensure that federal jurisdiction has been properly alleged). Generally, a federal court has jurisdiction to hear a case in three instances: (1) when the complaint raises a federal question, 28 U.S.C. § 1331; (2) when the parties are citizens of different states and the amount in controversy is greater than \$75,000, 28 U.S.C. § 1332; and (3) when a state law claim is part of the same case or controversy as a federal law claim that may be considered under § 1331, 28 U.S.C. § 1367.

Plaintiff's complaint does not raise a federal question. Plaintiff alleges that defendants breached the contract they signed with him and that they kept some of his tools without permission. Breach of contract claims and small claims concerning property ownership arise under Wisconsin law, not federal law. That leaves diversity jurisdiction.

Plaintiff's allegations satisfy the amount in controversy requirement because he alleges losses in excess of \$80,000.00. However, his allegations indicate that he and defendants are not citizens of different states. In the caption of his complaint, he lists Bayfield, Wisconsin, in his address and in defendants' address. Because plaintiff and defendants reside in the same city, this court lacks jurisdiction over plaintiff's claim under the diversity statute.

ORDER

IT IS ORDERED that this case is DISMISSED for lack of jurisdiction. The clerk of court is directed to close the file.

Entered this 29th day of June, 2006.

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