

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.

ORDER

06-C-338-C

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Judgment was entered in this case on July 10, 2006, dismissing plaintiff Raymond Bresette's complaint pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject matter jurisdiction. In his complaint, plaintiff alleged that defendants breached a contract with him for construction work and kept some of his tools without his permission. In an order dated June 29, 2006, I explained that plaintiff's allegations did not raise a federal question that would confer jurisdiction under 28 U.S.C. § 1331, and that his allegations did not invoke the court's diversity jurisdiction under 28 U.S.C. § 1332 because plaintiff and defendants

lived in the same city, Bayfield, Wisconsin. Now plaintiff has written a letter to the court in which he states that “this litigation happened due to a default contract on Red Cliff Reservation in Bayfield Co. This is federal land.” Also, plaintiff requests that, if his case is dismissed, the court refund his filing fee.

I will construe plaintiff’s letter as a motion to alter or amend the July 10 judgment of dismissal pursuant to Fed. R. Civ. P. 59. I understand plaintiff to be saying that the alleged breach of contract occurred on an Indian reservation. Also, it is possible that at least one of the defendants is Indian. These facts are not enough by themselves to confer federal jurisdiction. As I stated in the June 29 order, federal jurisdiction is present when a complaint (1) pleads a claim arising under federal law or (2) contains allegations satisfying the requirements of the diversity statute. The fact that the alleged breach occurred on the Red Cliff Reservation does not mean that plaintiff’s claim raises a federal question or arises under federal law. Schantz v. White Lightning, 502 F.2d 67 (8th Cir. 1974) (no jurisdiction under § 1331 over tort action arising on Indian reservation involving non-Indian plaintiffs and Indian defendant). Also, even assuming at least one of the defendants is Native American, diversity jurisdiction does not exist, because all of the parties reside in Wisconsin. Richardson v. Malone, 762 F. Supp. 1463, 1466-67 (N.D. Ok. 1991) (“a Native American residing within the borders of a state is a citizen of that state”). Simply put, federal jurisdiction is not present just because the alleged breach of contract occurred on an Indian

reservation. Plaintiff must bring his claim in state court or in the tribal court that has jurisdiction over the Red Cliff Reservation.

In his letter, plaintiff requests that the court refund his filing fee if his case remains dismissed. I cannot refund plaintiff's filing fee. It has been deposited in a bank and transmitted to Washington, D.C. in accordance with proper court procedure. There is no provision in the Federal Rules of Civil Procedure or in any statute enacted by Congress that authorizes a district court to refund a filing fee in instances where the case is closed following a ruling by the judge. Bell v. Clark, 194 F.3d 781, 782 (7th Cir. 1999) ("There is no refund of a filing fee just because an appellant, petitioner, or other seeker of judicial review is dissatisfied with the outcome of his quest, whether that outcome is defeat on the merits or a refusal, for jurisdictional or other reasons, even to consider the merits.").

#### ORDER

IT IS ORDERED that plaintiff Raymond Bresette's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED. Further, plaintiff's request for a refund

of his filing fee is DENIED.

Entered this 7th day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge