

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

DIANE M. ANDRASKA,

Plaintiff,

v.

CHASE MANHATTAN BANK, USA, N.A.,

Defendant.

ORDER

07-cv-644-bbc

Plaintiff Diane M. Andraska began this lawsuit in state court. In her original complaint plaintiff alleged three causes of action against defendant Chase Manhattan Bank, USA, N.A.: (1) violation of the federal Truth in Lending Act, (2) breach of contract and (3) violation of plaintiff's constitutional right to due process. Defendant had the lawsuit removed to federal court under 28 U.S.C. § 1441. Defendant asserted that removal was proper because plaintiff's two federal causes of action provided this court with original jurisdiction under 28 U.S.C. § 1331. Now plaintiff is seeking permission to amend her complaint by removing the two federal causes of action and proceeding on only her breach of contract cause of action.

Defendant objects to plaintiff's requested amendment because such an amendment

would be akin to a dismissal of plaintiff's federal claims without prejudice, leaving defendant vulnerable to a possible later lawsuit regarding those claims. Under Fed. R. Civ. P. 41 (a)(1) a plaintiff may voluntarily dismiss an action without a court order if (1) the notice of dismissal is served before the opposing party has filed an answer or summary judgment or (2) all the parties stipulate to the dismissal. Plaintiff's circumstances do not satisfy either requirement.

However, there is another method of voluntary dismissal. A plaintiff may request dismissal of an action by a court order "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Defendant's concern is that permitting plaintiff's amendment would prejudice defendant because the amendment would amount to a voluntary dismissal without prejudice. In her reply brief plaintiff makes it clear that she is willing to dismiss her Truth in Lending Act and due process claims with prejudice, which would alleviate defendant's concern. Therefore, those causes of action will be dismissed with prejudice in accordance with Fed. R. Civ. P. 41(a)(2).

Dismissal of plaintiff's federal causes of action with prejudice leaves this court with plaintiff's breach of contract claim, which is governed by state law. There are no longer any federal questions under 28 U.S.C. § 1331. Defendant's counterclaim for confirmation of its arbitration award under 9 U.S.C. § 9 does not provide an independent basis for federal question jurisdiction. International Insurance Co. v. Caja Nacional De Ahorro y Seguro, 293

F.3d 392, 395 (7th Cir. 2002). Additionally, diversity jurisdiction is not present under 28 U.S.C. § 1332 because the amount in controversy exclusive of interest and costs is only \$9,803.12, well below the \$75,000 needed to create diversity jurisdiction. There is also no reason to exercise supplemental jurisdiction under 28 U.S.C. § 1367 because there are no longer any federal issues. Under 28 U.S.C. § 1447 “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” Therefore, this case, which now consists of only a breach of contract claim, will be remanded to the Circuit Court for Jackson County, Wisconsin.

ORDER

IT IS ORDERED that:

1. Plaintiff Diane M. Andraska’s motion to amend her complaint is GRANTED.
2. Plaintiff’s Truth in Lending Act and due process causes of action are DISMISSED with prejudice.

3. This case is REMANDED to the Circuit Court for Jackson County, Wisconsin.
The clerk of court is directed to transmit the record to the Circuit Court for Jackson County.

Entered this 29th day of May, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge