

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

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DARYL STRENKE,

Plaintiff,

v.

ROBERT ALAN GLICKMAN,

Defendant.

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ORDER

09-cv-473-bbc

Plaintiff Daryl Strenke is proceeding pro se on claims that defendant Robert Glickman's legal representation of him in a Wisconsin state criminal matter "led to a substantial breach of contract and fraud." Defendant has filed a motion to dismiss and a motion for summary judgment, arguing in part that plaintiff has failed to show that this court has subject matter jurisdiction in this case. He has filed also two motions to stay the October 11, 2011 trial date and a motion for a ruling on his dispositive motions. Plaintiff has filed a motion to amend the request for relief in his complaint.

After considering the parties' submissions, I will grant plaintiff's motion to amend his request for relief and deny defendant's motion to dismiss, which is based on plaintiff's failure to meet the requirements of diversity jurisdiction, by not alleging that the amount in

controversy exceeds \$75,000. However, because plaintiff has failed to show that the parties have diverse citizenship, I will give him a chance to do so. Finally, I will strike the remainder of the schedule in this case and deny as moot defendant's motions to stay the trial date and motion for a ruling on his dispositive motions.

In his motion to dismiss, defendant argues that plaintiff's complaint fails to state damages sufficient to give this court diversity jurisdiction and that plaintiff's claim is frivolous. I must resolve the jurisdictional question before the merits. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 584 (1999). Generally, a federal court may exercise jurisdiction over a case in one of two situations: (1) the plaintiff brings a claim that arises under federal law, 28 U.S.C. § 1331; or (2) the plaintiff and defendants are citizens of different states and the amount in controversy is greater than \$75,000. 28 U.S.C. § 1332. Plaintiff brings claims for breach of contract and fraud, both of which are state law causes of action. In his complaint, plaintiff invokes diversity jurisdiction under § 1332.

As the party filing suit, plaintiff bears the burden of showing that federal jurisdiction exists. Chase v. Shop n' Save Warehouse Foods, Inc., 110 F.3d 424, 427 (7th Cir. 1997) (party seeking to invoke federal diversity jurisdiction bears burden of demonstrating that complete diversity and amount in controversy requirements are met). Defendant argues that plaintiff has failed to meet the amount in controversy requirement because he requests only \$25,000 in compensatory damages and \$25,000 in punitive damages, short of the \$75,000 requirement.

However, whether § 1332 supplies jurisdiction must be determined at the outset of a case; “events after the suit begins do not affect . . . diversity jurisdiction.” Johnson v. Wattenbarger, 361 F.3d 991, 993 (7th Cir. 2004) (citing Freeport-McMoRan, Inc. v. K N Energy, Inc., 498 U.S. 426, (1991)). In his original complaint, plaintiff sued four defendants — a company named Crime Attorneys, John Feiner (the owner of the company), Edward Lerner (the company’s “registered agent (co-owner),” and Glickman, who was contracted by Crime Attorneys to represent plaintiff in his criminal case. Plaintiff asked for “[c]ompensatory damages in the amount of \$25,000 against each defendant, jointly and severally: and “[p]unitive damages in the amount of \$25,000 against each defendant.” Plaintiff had significant difficulty serving the defendants and ended up voluntarily dismissing Crime Attorneys and Lerner. Ultimately, I dismissed Feiner from the lawsuit for plaintiff’s failure to serve him. Dkt. #41. Thus, although some of the defendants have dropped out of the case, at the outset of the lawsuit, plaintiff requested damages exceeding \$75,000.

Moreover, plaintiff has filed a motion to amend the request for relief in his complaint. He now seeks to recover \$20,000 of the retainer he paid defendant, \$150,000 in damages for missing out on his opportunity to file appeals of his conviction in the state court system or a petition for writ of habeas corpus (\$25,000 for each separate proceeding he was unable to pursue, such as his appeal to the Wisconsin Court of Appeals or a petition for writ of certiorari with the Wisconsin Supreme Court, etc.) and \$150,000 in punitive damages. 28

U.S.C. § 1653 allows a party to correct a defective statement about jurisdiction that actually exists. Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 831-32 (1989); Olivares v. Charan Motel, Inc., 28 Fed. Appx. 542, 543-44 (7th Cir. 2002). As in Olivares, plaintiff's mistake appears to have been in how to plead damages rather than the underlying facts of his claim. He states that when he asked for \$25,000 against each defendant "jointly and severally," he thought that meant that he was suing each defendant for \$25,000 for each violation of his rights, rather than suing all of the defendants for \$25,000 total. Because it does not appear to a legal certainty that plaintiff could not recover more than \$75,000, St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 289 (1938), I will grant plaintiff's motion to amend the request for relief in his complaint. Because plaintiff's complaint now properly alleges an amount in controversy that exceeds \$75,000, defendant's motion to dismiss the case on this ground must be denied.

However, another issue must be resolved before the case can proceed. Although defendant does not dispute diversity as to citizenship, the court has an independent obligation to meticulously review the limits of federal jurisdiction to prevent the waste of federal judicial resources, Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002) and is "always obliged to inquire . . . whenever a doubt arises as to the existence of federal jurisdiction." Tylka v. Gerber Prods. Co., 211 F.3d 445, 447-48 (7th Cir. 2000).

Plaintiff states that he is a Wisconsin citizen but states only that defendant is “from Atlanta, Georgia.” Because I cannot determine the citizenship of defendant from the information provided in the complaint, plaintiff will need to provide this court with verification of the diversity of citizenship of the parties.

For purposes of establishing diversity jurisdiction, the court examines the citizenship of individual persons. An individual is a citizen of the state in which he is domiciled, that is, the state in which he has a “permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” Charles Alan Wright, Law of Federal Courts 161 (5th ed. 1994); see also Dakuras v. Edwards, 312 F.3d 256, 258 (7th Cir. 2002). A person has only one domicile, but may have several residences. Steigleder v. McQuesten, 198 U.S. 141 (1905) (distinguishing between residency and citizenship). The proponent of jurisdiction must show where each individual is domiciled, that is, where he or she intends to live for the foreseeable future. Dakuras v. Edwards, 312 F.3d 256, 258 (7th Cir. 2002).

At the present time, plaintiff has not established defendant’s citizenship. Although I suspect that plaintiff’s and defendant’s citizenship are diverse, it is plaintiff’s burden to establish citizenship. I will give him until September 23, 2011 to submit verification, in the form of an affidavit or other admissible evidence, showing the citizenship of defendant, or the case will be dismissed for lack of subject matter jurisdiction.

If plaintiff succeeds in showing that he and defendant have diverse citizenship, I will address the portion of defendant's motion to dismiss dealing with the merits of the case as well as his motion for summary judgment. The remainder of the schedule in this case, including the October 11, 2011 trial date, is stricken and a new schedule will be set once plaintiff verifies the diversity of the parties. Defendant's motions to stay the October 11, 2011 trial date and motion for a ruling on his dispositive motions will be denied as moot.

#### ORDER

IT IS ORDERED that

1. Plaintiff Daryl Strenke's motion to amend the request for relief in his complaint, dkt. #77, is GRANTED.

2. Defendant Robert Glickman's motion to dismiss, dkt. #71, is DENIED as to defendant's argument that the amount in controversy does not exceed \$75,000.

2. Plaintiff may have until September 23, 2011 to submit verification, in the form of an affidavit or other admissible evidence, showing the citizenship of defendant. If plaintiff does not respond by that date, this case will be dismissed for lack of subject matter jurisdiction.

3. The remainder of the schedule in this case, including the October 11, 2011 trial date, is STRICKEN. A new schedule will be set should plaintiff verify the diversity of the

parties.

4. Defendant's motions to stay the October 11, 2011 trial date, dkt. ##90, 93, and motion for a ruling on his dispositive motions, dkt. # 92, are DENIED as moot.

Entered this 9th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge