

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

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GALE RACHUY,

Plaintiff,

v.

CITY OF SUPERIOR, WISCONSIN;  
CITY OF DULUTH, MINNESOTA;  
CORY HANSON, City of Superior  
Wisconsin Police Officer; MICHAEL JASZCZAK,  
City of Superior Wisconsin Police Detective;  
JEANINE PAULY, City of Duluth Police Officer;  
DAVE ROSE and TED NOLEN;

Defendants.

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ORDER

09-cv-639-slc<sup>1</sup>

In a November 30, 2009 order, I dismissed this case for lack of subject matter jurisdiction; the court could not exercise diversity jurisdiction over plaintiff Gale Rachuy's state law claims for conversion because there was not complete diversity between the parties. Judgment was entered on December 1, 2009. Now, more than two years after that judgment, plaintiff has filed an amended complaint in which it appears that he has deleted from the caption all of the defendants whose citizenship had defeated diversity.

Once final judgment has been entered in a case, "the district court lacks jurisdiction to entertain a motion for leave to amend the complaint unless the plaintiff also moves for

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<sup>1</sup> While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. For the purpose of issuing this order I am assuming jurisdiction over the case.

relief from the judgment.” Camp v. Gregory, 67 F.3d 1286, 1289 (7th Cir. 1995). Even construing plaintiff’s amended complaint as including a motion for relief from judgment under Fed. R. Civ. P. 60(b), I must deny that motion because plaintiff has waited far too long to bring it. A motion under Rule 60(b) must be made “within a reasonable time,” generally within a year, and the long delay in this instance is clearly unreasonable.

However, because the present case was dismissed without prejudice, plaintiff is still free to file his amended complaint in a new lawsuit. If he chooses that option, he will either have to prepay the \$350 filing fee or submit a motion for leave to proceed in forma pauperis.

#### ORDER

IT IS ORDERED that plaintiff Gale Rachuy’s motion for relief from judgment, dkt. #9, is DENIED.

Entered this 9th day of August, 2012.

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