

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

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DeWITT, ROSS & STEVENS, S.C.,

Plaintiff,

v.

ALVIN E. ECKENROD, INTERLAM, INC,  
LAB DESIGNS, LLC and MODULAR  
WOOD SYSTEMS, INC.,

Defendants.  
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ORDER

11-cv-359-bbc

Plaintiff DeWitt, Ross & Stevens, S.C. is suing defendants Alvin E. Eckenrod, Interlam, Inc., Lab Designs, LLC and Modular Wood Systems, Inc. for failing to pay legal fees owed to plaintiff. Defendants removed the case to this court, relying on 28 U.S.C. § 1332 as a basis for jurisdiction. As required by that statute, defendants allege that plaintiff and defendants have diverse citizenship (plaintiff is a citizen of Wisconsin; defendants are citizens of Virginia, Florida, North Carolina and Nevada) and the amount in controversy is greater than \$75,000 (plaintiff seeks more than \$250,000 in unpaid fees). Now before the court is defendants' motion to dismiss for lack of personal jurisdiction. Dkt. #15.

In their motion, defendants focus on one argument. In particular, they say that they

could not reasonably anticipate being haled into court in Wisconsin because the letter drafted by Charles Sara on behalf of plaintiff and accepted by defendants states that “You should consider our representation as local representation.” Dkt.#14, exh. 1 at 5, ¶ 13. In other words, according to defendants, plaintiff agreed that its representation should be considered as “local representation,” provided by plaintiff in Virginia as “local counsel” to the Virginia firm of Gentry Locke. Plaintiff has filed a 23-page brief in opposition without addressing the argument defendants make regarding the contract.

It is plaintiff’s burden to show that this court may exercise personal jurisdiction over defendants. Tamburo v. Dworkin, 601 F.3d 693, 700 (7th Cir. 2010). Plaintiff’s inexplicable failure to address the one issue defendant raised means that plaintiff has failed to meet its burden. The rule in this circuit is clear: “A failure to oppose an argument permits an inference of acquiescence and ‘acquiescence operates as a waiver.’” Wojtas v. Capital Guardian Trust Co., 477 F.3d 924, 926 (7th Cir. 2007) (quoting Cincinnati Insurance Co. v. East Atlantic Insurance Co., 260 F.3d 742, 747 (7th Cir. 2001)). Accordingly, I am granting defendants’ motion to dismiss.

## ORDER

IT IS ORDERED that the motion to dismiss for lack of personal jurisdiction filed by defendants Alvin E. Eckenrod, Interlam, Inc., Lab Designs, LLC and Modular Wood

Systems, Inc., dkt. #15, is GRANTED. This case is DISMISSED WITHOUT PREJUDICE to plaintiff's refiling it in another court. The clerk of court is directed to enter judgment and close this case.

Entered this 12th day of December, 2011.

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