

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

HILLSBORO EQUIPMENT, INC.,

Plaintiff,

v.

DEAN C. HENNING,

Defendant.

OPINION AND ORDER

12-cv-72-slc¹

Defendant Dean C. Henning has filed a notice of removal of a state court small claims action filed in the Circuit Court for Vernon County, Wisconsin. In the underlying complaint, plaintiff Hillsboro Equipment, Inc. sought money damages for an unpaid account balance totaling \$2269.06. Plaintiff has filed a motion to remand the case to state court and for costs and attorney fees. I conclude that the case must be remanded.

Under 28 U.S.C. § 1446(c)(4), a district court is to examine a notice of removal to determine whether it appears from its face and any attached exhibits that an order for summary remand must be issued. An action may be removed from state to federal court if the federal district court would have had original jurisdiction over the complaint had it been filed originally in the federal court. 28 U.S.C. § 1441. In determining whether removal is proper under § 1441, a district court must construe the removal statute narrowly and resolve

¹For the purposes of issuing this order, I am assuming jurisdiction over the case.

any doubts regarding subject matter jurisdiction in favor of remand. Doe v. Allied-Signal, Inc., 985 F.2d 908, 911 (7th Cir. 1993); Illinois v. Kerr-McGee Chemical Corp., 677 F.2d 571, 576 (7th Cir. 1982). Generally, federal courts have the authority to hear two types of cases: (1) cases in which the plaintiff alleges a violation of his or her constitutional rights or rights established under federal law, 28 U.S.C. § 1331; and (2) cases in which a citizen of one state alleges a state law claim against a citizen of another state that amounts to more than \$75,000. 28 U.S.C. § 1332.

In its timely filed motion to remand, plaintiff argues that defendant has not shown that this court can exercise jurisdiction over the case. Defendant states that the parties are diverse because he is a citizen of “the Wisconsin Republic” and not a citizen of “the De facto Federal State of WISCONSIN or any subset or extension of THE UNITED STATES CORPORATION” Dkt. #1. This shopworn “sovereign citizen” argument has been rejected repeatedly by courts, including this court in previous cases that defendant removed. Parker Community Credit Union v. Henning, No. 11-cv-693-slc (W.D. Wis. May 31, 2012); The Necedah Bank v. Henning, No. 11-cv-587-slc (W.D. Wis. Feb. 7, 2012). Accordingly, defendant fails to show that he and plaintiff are citizens of different states, and in any case, he cannot show that the amount in controversy exceeds \$75,000.

Not only is diversity jurisdiction non-existent but the court lacks federal question jurisdiction over the case: plaintiff’s claim for recovery of an unpaid account balance is not a federal claim. Defendant says that there is a federal question because his “rights were violated,” but this argument is undeveloped so it is unclear what defendant means. In any

case, a defendant cannot base federal question jurisdiction on a defense or counterclaim. Vaden v. Discover Bank, 556 U.S. 49, 60 (2009). Accordingly, I will grant plaintiff's motion to remand this case to state court.

Because this case will be remanded, plaintiff requests that defendant bear the costs of litigating the removal and remand as authorized by 28 U.S.C. § 1447(c), which provides that “[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of removal.” Generally, an award for costs in removal cases is justified when “the removing party lacked an objectively reasonable basis for seeking removal.” Wisconsin v. Amgen, 516 F.3d 530, 534 (7th Cir. 2008) (citing Martin v. Franklin Capital Corp., 546 U.S. 132 (2005)). In Lott v. Pfizer, Inc., 492 F.3d 789, 793 (7th Cir. 2007), the Court of Appeals for the Seventh Circuit held that a defendant had an objectively reasonable basis for removal “if clearly established law did not foreclose a defendant’s basis for removal”

As discussed above, clearly established law makes it clear that defendant had no basis for removal of this case. Accordingly, I conclude that defendant must reimburse plaintiff for its costs and attorney fees incurred as a result of the removal. Defendant will be given a chance to object to the amount that claims as itemized expenses, but not to raise any new objections to the decision that he is liable for the expenses.

ORDER

IT IS ORDERED that

1. Plaintiff Hillsboro Equipment's motion to remand this case, dkt. #2, is GRANTED. The case is REMANDED to the Circuit Court for Vernon County, Wisconsin.
2. Plaintiff's motion for costs and attorney fees, dkt. #2, is GRANTED.
3. Plaintiff may have until August 7, 2012, in which to submit an itemization of the actual expenses, including costs and attorney fees, it incurred in responding to defendants' notice of removal.
4. Defendant may have until August 21, 2012, to file an objection to plaintiff's itemization of costs and fees.

Entered this 26th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge