

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

THE MEN'S WEARHOUSE, INC.,

Plaintiff,

v.

DJ'S KOOLER SERVICE, FRATE INC.,
KENTUCKY CORPORATION, THE SUDDATH COMPANIES,
SPECIALIZED TRANSPORTATION, AGENT GROUP INC.
and FIRST BUSINESS CAPITAL CORPORATION,

Defendants.

ORDER

13-cv-149-bbc

Plaintiff Men's Wearhouse, Inc. filed this interpleader action under 28 U.S.C. § 1335, in which it alleged that it had competing claims from each of the defendants regarding approximately \$170,000 that plaintiff owed for store fixtures. Now plaintiff and defendant First Business Capital Corporation have filed what they call a "stipulated motion for disbursement of the interplead funds to defendant First Business Capital Corporation and for dismissal on the interpleader complaint" on the ground that First Business is the only defendant to file an answer to the complaint. Dkt. #27.

An initial problem with this case is that plaintiff has not demonstrated that subject matter jurisdiction is present. Under § 1335, the plaintiff must show that at least two claimants have diverse citizenship. In its complaint, plaintiff alleges that defendants are incorporated under the laws of diverse states (Texas, Kentucky, Florida, Indiana and

Wisconsin), but it does not identify the principal place of business for any of these corporations. Because corporations are citizens of both their state of incorporation and their principal place of business, Hoagland ex rel. Midwest Transit, Inc. v. Sandberg, Phoenix & von Gontard, P.C., 385 F.3d 737, 740-43 (7th Cir. 2004), I cannot determine whether any of the defendants have diverse citizenship without knowing their principal places of business. Accordingly, before I can grant any substantive relief in this case, plaintiff will have to demonstrate that subject matter jurisdiction is present.

Even if plaintiff had made that showing, I could not grant its motion. Plaintiff has not filed a motion for default under Fed. R. Civ. P. 55 as to the other defendants or a motion for summary judgment under Fed. R. Civ. P. 56 and it cites no rule that authorizes the relief it is seeking. Before I can enter judgment, plaintiff must follow the Federal Rules of Civil Procedure or cite authority showing that different rules apply to an interpleader action.

ORDER

IT IS ORDERED that the stipulated motion filed by plaintiff Men's Wearhouse, Inc. and defendant First Business Capital Corporation, dkt. #27, is DENIED.

Entered this 15th day of April, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge