

United States District Court, N.D. Florida,

Tallahassee Division.

Latavius W. ROBINSON, Plaintiff,

v.

JPMORGAN CHASE BANK, N.A., Defendant.

Case No. 4:24cv170-AW-MAF

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Signed April 16, 2024

Attorneys and Law Firms

Latavius Robinson, Tallahassee, FL, Pro Se.

Courtney Marie Keller, Greenberg Traurig PA, Orlando, FL, for Defendant.

ORDER

MARTIN A. FITZPATRICK, UNITED STATES MAGISTRATE JUDGE

Defendant filed a notice of removal, ECF No. 1, on April 11, 2024, which was reviewed by the undersigned Magistrate Judge on April 15th. An Order was entered, ECF No. 9, noting that the removal notice appeared to be timely filed and confirmed that jurisdiction was proper, but gave Plaintiff an opportunity to properly file a motion to remand if there was a basis to do so.

Today, the Clerk's Office has notified the Court that the pro se Plaintiff has submitted five documents, ECF Nos. 4-8, which had not yet been entered on the docket when the Court reviewed the notice of removal, ECF No. 1, and Plaintiff's notice, ECF No. 3, which sought to refute Defendant's contention that there was complete diversity of citizenship and the amount in controversy. ECF No. 3. Plaintiff's arguments made in that filing were rejected as erroneous because he cited to non-existent cases and orders. ECF No. 9.

Plaintiff's new submissions, ECF Nos. 4-8, have now been reviewed. First, Plaintiff has filed a "motion to withdraw answer to Defendant's notice of removal due to incorrect case law." ECF No. 4. Plaintiff did not file a document entitled as an "answer." Instead, he filed a document entitled "Introduction," which the Court construed as his notice of objection to removal. See ECF No. 9. As that has been the only document Plaintiff filed thus far in this

case, it is accepted that Plaintiff seeks to withdraw it. At this point, withdrawal is unnecessary because the Court has already considered it and rejected it. Thus, the motion to withdraw, ECF No. 4, is denied as moot.

Plaintiff's second document is a "correct response with corrected case law to Defendant's notice removal." ECF No. 5. The document is immediately problematic because it is submitted as a letter to the presiding District Judge Allen C. Winsor. *Id.* at 1. Letters to a judge are not permissible and, indeed, are barred by Local Rule 7.1 which provides: "A request for action of any kind relating to a case can never be made by a letter to a judge." N.D. Fla. Loc. R. 7.1(A). Notwithstanding, Plaintiff's response has been reviewed.

Plaintiff once again challenges Defendant's citizenship, yet he also acknowledges that "national banking associations are considered citizens of the state where their main office is located." ECF No. 5 at 2. Plaintiff contends that should only be the consideration when the case involves multiple parties. *Id.* This case involves only one Plaintiff and one Defendant, and Plaintiff contends the Defendant has failed "to establish complete diversity between the Plaintiff and the Defendant ...." *Id.* at 3. That is incorrect. Defendant's notice of removal sufficiently identified its main office as being located in Ohio. ECF No. 1 at 3-4. Plaintiff has not shown that to be not true. Defendant and Plaintiff have diverse citizenship.<sup>1</sup>

Plaintiff then challenges the amount in controversy. ECF No. 5 at 3. Plaintiff claims that since "Defendant has sold the vehicle that was subject to the dispute, ... Plaintiff now seeks ... \$30,330.16, and any costs incurred due to the wrongful repossession." *Id.* at 3-4.

In addition, Plaintiff has filed a "motion for leave to amend complaint in district court." ECF No. 6. Plaintiff states that the basis of his request is to correct his statement concerning the citizenship of the Defendant. *Id.* He said that in his original and amended complaints, he incorrectly alleged that the Defendant was domiciled in Florida. *Id.* at 1. He now wishes to correct that allegation and accepts that Defendant "is domiciled in Ohio." *Id.*

Although Plaintiff's motion to amend is curious in light of his simultaneously filed "response" which challenges Defendant's diversity assertion, the Court finds that granting

the motion for that purpose is not necessary. Notably, before the case was removed to federal court, Plaintiff filed a motion for leave to file a second amended complaint. ECF No. 1-3 at 293-295. Plaintiff sought to amend his complaint to add a request for a jury trial. Id. at 194. Plaintiff's proposed "second amended complaint," which has now been entered on the docket in this case, see ECF No. 10, does not include a statement which addresses citizenship or provides an address for the Defendant. Because that is the operative pleading and Plaintiff's asserted reason for filing another amended complaint is immaterial to the pleading, the motion need not be granted.

Even so, Plaintiff's proposed amended pleading, ECF No. 7, has been reviewed. The document was submitted as a "notice of motion to amend pleadings; notice of corrected amended complaint." Id. at 1. Essentially, Plaintiff's document provides notice that he filed a motion to amend in state court, id., but Plaintiff filed a copy of his motion to amend from state court, to which was attached a "corrected amended complaint" with attachments. Although the proposed pleading is styled for state court, it otherwise sufficiently complies with the federal requirements for filing a complaint.

Plaintiff's proposed complaint, see ECF No. 7 at 6-10, asserts a claim for breach of contract, the wrongful repossession of Plaintiff's vehicle, and a "negative impact on Plaintiff's financial character." Id. at 6. Plaintiff now specifies that the only relief he seeks is the return of his "down payment of \$30,330.16" and the costs incurred in returning home after the repossession. Id. at 7. It appears he is no longer seeking to be released from paying the balance of the auto loan, and he is no longer seeking the "return or replacement of the wrongfully repossessed vehicle." See ECF No. 10 at 3.

Federal Rule of Civil Procedure 15, which governs amended and supplemental pleadings, provides:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Fed. R. Civ. P. 15(a). In this case, Defendant has been served and more than 20 days have passed. Furthermore, Plaintiff has already amended his complaint several times. However, Defendant has not yet filed a responsive pleading and, pursuant to federal rules, leave should be freely given unless there is substantial reason to deny the motion. Therefore, Plaintiff's motion to amend will be granted.

For clarity and ease of reference, the Clerk is directed to correct the docket for Plaintiff's "notice," ECF No. 7, and note that it is Plaintiff's third amended complaint. In light of this action, it appears that this Court lacks jurisdiction over this case and it should be remanded back to state court. Prior to issuance of such an Order, Defendant is provided an opportunity to file a response to this Order. Defendant's response shall be filed no later than April 26, 2024.

Plaintiff's final submission is titled as "Interrogatories to Defendant." ECF No. 8. Defendant. ECF No. 13. Plaintiff is advised that there are three problems with his submission and his discovery request is not valid.

First, discovery does not begin in a federal case until after issuance of an Initial Scheduling Order by the Court. That Order will not be entered before the Court reviews the Defendant's answer, and the deadline for Defendant to do so has not yet passed.

Second, pursuant to the Local Rules of this Court, discovery is a process that takes place between the parties, but is not filed with the Court. Local Rule 26.1 provides: "A party may conduct discovery but must not file a discovery request or response or a deposition transcript unless:

- (1) the Court orders the filing;
- (2) the material is needed for determination of a pending motion or issue; or
- (3) the material is admitted into evidence at a trial or hearing.

N.D. Fla. Loc. R. 26.1(A). When the parties are permitted to engage in discovery, the requests and responses are not to be filed with the Court.

Third, a cursory review of Plaintiff's interrogatories reveals that he has submitted 26 interrogatories to the Defendant. Pursuant to Federal Rule of Civil Procedure 33, a "party may serve on any other party no more than 25 written interrogatories, including all discrete subparts." Fed. R. Civ. P. 33(a)(1). The Court will not grant additional interrogatories absent a showing of extraordinary circumstances.

Accordingly, it is

ORDERED:

1. No action will be taken on Plaintiff's first set of interrogatories, ECF No. 8, and the Defendant is not required to respond.
2. Plaintiff's motion to withdraw his answer to Defendant's notice of removal, ECF No. 4, is DENIED as moot.
3. Plaintiff's motion for leave to amend the complaint, ECF No. 6, is GRANTED.
4. For ease of reference, the Clerk shall correct the docket to reflect that ECF No. 7 is Plaintiff's "third amended complaint."
5. Defendant shall have until April 26, 2024, to file a response to this Order concerning subject matter jurisdiction and whether this case should be remanded to state court.
6. Plaintiff must immediately inform the Clerk of Court of any change in his address.
7. The Clerk of Court shall return this case upon Defendant's filing of a response or no later than April 26, 2024.

DONE AND ORDERED on April 16, 2024.

All Citations

Slip Copy, 2024 WL 2287674

Footnotes

1 Indeed, Plaintiff has filed a motion to amend his complaint in which he asserts that the Defendant “is domiciled in Ohio.” ECF No. 6 at 1. Plaintiff cannot have it both ways; he cannot challenge that Defendant should not be considered to be domiciled in Ohio in one document while alleging that same fact in another document.