

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

DAMON BERRY,

Plaintiff,

vs.

COMMUNICATION DATA LINK,

Defendant.

No. 4:08-cv-0201-JAJ

ORDER

This matter comes before the court pursuant to Plaintiff's June 4, 2008, Motion to Remand to State Court (Dkt. No. 2). On June 24, 2008, Defendant filed a response to the motion (Dkt. No. 5) and Plaintiff replied to that response on July 1, 2008 (Dkt. No. 6). The court grants Plaintiff's motion to remand state court.

I. PROCEDURAL BACKGROUND

Plaintiff Damon Berry filed suit against Defendant Communication Data Link, L.L.C., on February 28, 2008, alleging race discrimination, racial harassment, disparate treatment, hostile work environment, and retaliation. The case was filed in Iowa District Court for Polk County. On March 31, 2008, Defendant filed an answer to Plaintiff's complaint.

On April 16, 2008, Defendant requested an admission from Plaintiff that his claims gave rise to federal liability. Specifically, Defendant sought an admission that claims gave "rise to liability under Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., or as amended under the Civil Rights Act of 1991, 42 U.S.C. § 1981." (Dkt. 1, Ex. D). Plaintiff responded on April 22, 2008, admitting federal liability but disavowed federal jurisdiction. (Dkt. 1, Ex. E).

On May 15, 2008, Defendant filed a notice of removal to federal court (Dkt. No. 1). In the Notice of Removal, Defendant states that, because of Plaintiff's admission of

Title VII liability, the United States District Court has jurisdiction under 28 U.S.C. § 1441(b) (2007) and Section 1367(a). Plaintiff filed the present motion to remand to state court on June 4, 2008. (Dkt. No. 2).

II. CONCLUSIONS OF LAW

A. “Other Papers”

A defendant in a civil action may remove the action to federal court if the federal court had original jurisdiction at the time the petition was filed. 28 U.S.C. § 1446(b) (2007). A defendant must file a notice of removal within thirty days of the pleadings, with one exception:

If the case stated by the initial pleading is not removable a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or *other paper* from which it may first be ascertained that the case is one which is or has become removable.

Id. (emphasis added). The defendant contends that the admission was an “other paper” for purposes of Section 1446(b).

An “other paper” under Section 1446(b) is “*any paper* that is served or otherwise which comes to the Defendants’ attention, and shows that the matter may be removable.” Lapree v. Prudential Fin., 385 F. Supp. 2d 839 (S.D. Iowa 2005); see also Dahl v. R.J. Reynolds Tobacco Co., 478 F.3d 965 (8th Cir. 2007) (“other papers” include papers that “might introduce a new element into the case which could affect jurisdiction”).

Here, Plaintiff’s admission did not make the claim removable or otherwise affected jurisdiction. After admitting that the cause of action gives rise to liability under Title VII of the Federal Civil Rights Act of 1964, Plaintiff specifically disavowed federal jurisdiction stating,

Although Plaintiff admits the above request, Plaintiff in no way is admitting that Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., or as amended under Civil Rights act of 1991, 42 U.S.C. § 1981 is the **EXCLUSIVE** remedy for Plaintiff. Furthermore, Plaintiff does not admit that in his petition he alleged and plead for relief relying upon the above reference Title VII.

(Plaintiff's Response to Request for Admission, Dkt. 1, Ex. E) (emphasis in original). Absent a showing that Title VII completely preempts state law, which it does not (see California Federal Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 282 (1987)), this document does not create federal jurisdiction. As such, it is not an "other paper" and the court must determine removability based solely on the pleadings.

B. The Well-Pleaded Complaint Rule

The court turns to Plaintiff's complaint to determine whether he has stated a claim that could have originally have been filed in federal court. See Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 809 (1986) ("[A] defendant may remove a case only if the claim could have been brought in federal court" at the time of the pleadings).

"The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. . . . The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law."

Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987).

Plaintiff's complaint makes no mention of a federal cause of action. On the face of the complaint, Plaintiff several times references the Iowa Civil Rights Act. Plaintiff introduces his cause of action, stating, "This is an action under the Iowa Civil Rights Act, challenging Defendant's race discrimination, racial harassment, disparate treatment, hostile

environment, and retaliation toward the Plaintiff.” (Complaint at ¶ 1). Plaintiff also details his compliance with the Iowa Civil Rights Commission’s reporting requirements as required under the Iowa Civil Rights Act. Additionally, under “Count One,” Plaintiff titles the count as “Violation of the Iowa Civil Rights Act.” In contrast to these unequivocal assertions of state law violations, Plaintiff does not make a federal claim anywhere on the face of the complaint.

Defendant argues that because Iowa law only allows for “notice pleadings,” his complaint could encompass a federal law claim. Notice pleading allows for “notice of the incident giving rise to the claim and the general nature of the claim” and does not require specific theories of recovery. Roush v. Makaska State Bank, 605 N.W.2d 6, 10 (Iowa 2000). While notice pleadings are by nature vague and open-ended, it is clear from Plaintiff’s complaint that he seeks only state court remedies. As discussed above, Plaintiff several times states relief under the Iowa Civil Rights Act and nowhere makes a federal claim.

In adherence to the well-pleaded complaint rule which makes the plaintiff master of the claim, the court finds that Plaintiff seeks only state-court jurisdiction and properly pleaded his complaint to effectuate that desire. This action was improperly removed to federal court. Plaintiff’s motion to remand to state court is granted.

Upon the foregoing,

IT IS ORDERED that the Clerk of Court shall remand this case to the Iowa District Court in and for Polk County.

DATED this 14th day of July, 2008.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA