

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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ORDER

January 19, 2018

By the Court:

No. 08-2695	WEI ZHOU, Plaintiff - Appellant v. MARQUETTE UNIVERSITY, Defendant - Appellee
District Court No: 2:07-cv-00958-RTR Eastern District of Wisconsin District Judge Rudolph T. Randa	

Upon consideration of the **MOTION TO RECALL THE MANDATE**, filed on January 19, 2018, by pro se Appellant,

IT IS ORDERED that the motion to recall the mandate is **DENIED**.

form name: c7_Order_BTC(form ID: 178)

A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WEI ZHOU,

Plaintiff,

-vs-

Case No. 07-C-958

MARQUETTE UNIVERSITY,

Defendant.

DECISION AND ORDER

Wei Zhou moves for leave to proceed *in forma pauperis* on appeal from the denial of his request for relief from the Court's ongoing filing bar. Zhou's appeal is frivolous. *See Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000). Therefore, Zhou's motion [ECF No. 60] is DENIED. *See* 28 U.S.C. § 1915(a)(3).

Dated at Milwaukee, Wisconsin, this 20th day of May, 2016.

SO ORDERED:


HON. RUDOLPH T. RANDA
U.S. District Judge

B

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 4, 2008*
Decided December 5, 2008

Before

FRANK H. EASTERBROOK, *Chief Judge*

WILLIAM J. BAUER, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

No. 08-2695

WEI ZHOU,
Plaintiff-Appellant,

v.

MARQUETTE UNIVERSITY,
Defendant-Appellee.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 07-C-958

Rudolph T. Randa,
Chief Judge.

ORDER

Wei Zhou got into a dispute with Marquette University over whether he received high enough marks on an exam to remain in a Ph.D. program. He sued the university in federal court claiming breach of contract. The district court concluded that it lacked subject-

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* FED. R. APP. P. 34(a)(2).

C

matter jurisdiction and dismissed the case. We agree that the district court did not have jurisdiction over the dispute and so properly dismissed it.

Zhou was a candidate for a Ph.D. in Math. To complete the program, candidates must pass a three-part preliminary exam, but the university gives them two chances to take the test. The first time around, Zhou sat for two parts of the exam but passed only one. He alleges that a faculty member then told him that he would receive a passing grade if, on his next attempt, he could do "a little bit" more or completely "finish three or four" problems. On the second try Zhou failed both parts that he attempted (including the part that he failed the first time). Afterward, the university told him he no longer could pursue a Ph.D. but could work towards a Master's degree instead. In September 2004 Zhou and the university agreed to this arrangement in writing.

Three years later, though, Zhou sued in federal court. He claims that Marquette breached what he says was an oral contract to give him a passing grade if he answered three or four questions on the second test. The university, he adds, "forced" him to agree to give up on his Ph.D. in favor of a Master's degree, which he says violated his "human right, civil right and freedom of expression." Zhou requested reinstatement to the Ph.D. program or the ability to re-take the exam and "about \$30,000" for each year since he was kicked out of the program.

The district court agreed with the university that this lawsuit does not belong in federal court. So do we. Zhou claims that the university breached an oral contract and somehow fraudulently induced him to enter into a written contract. Contract disputes among private parties are quintessential state-law claims. See *Taake v. County of Monroe*, 530 F.3d 538, 542 (7th Cir. 2008); *City of Chi. v. Comcast Cable Holdings, L.L.C.*, 384 F.3d 901, 904 (7th Cir. 2004). And though in his complaint Zhou alludes to violations of his civil rights including his right to freedom of expression, his feeble one-line reference falls far short of what is required to state a federal claim. See *Greater Chi. Combine & Center, Inc. v. City of Chi.*, 431 F.3d 1065, 1069 (7th Cir. 2005); *Oak Park Trust & Sav. Bank v. Therikildsen*, 209 F.3d 648, 651 (7th Cir. 2000); *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312, 1317 (7th Cir. 1997); *Gammon v. GC Servs. L.P.*, 27 F.3d 1254, 1256 (7th Cir. 1994). As Zhou makes clear in his complaint and his brief on appeal, his gripe relates to contracts that he allegedly entered into with the university. His vague allusions to civil liberties cannot transform these state-law claims into a federal question.

With respect to the diversity jurisdiction, federal courts may not exercise jurisdiction on this basis when both the plaintiff and the defendant are citizens of the same state. See 28 U.S.C. § 1332(a); *Blue Cross & Blue Shield Ass'n v. Am. Express Co.*, 467 F.3d 634, 638 (7th Cir.

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2006); *Andrews v. E.I. Du Pont De Nemours & Co.*, 447 F.3d 510, 514 (7th Cir. 2006). In the district court Zhou alleged that he is a "resident of Sichuan Province, P.R. China," though he provided a Milwaukee, Wisconsin, address. But he did not identify his citizenship or immigration status. These omissions are important because federal courts have diversity jurisdiction over disputes among "citizens of a State and citizens or subjects of a foreign state," but permanent-resident aliens are considered citizens both of the state where they are domiciled and their home countries. 28 U.S.C. § 1332(a)(2); see *Extra Equipamentos E Exportação Ltda. v. Case Corp.*, 541 F.3d 719, 721 (7th Cir. 2008); *Intec USA, LLC v. Engle*, 467 F.3d 1038, 1043 (7th Cir. 2006). Presented with this limited information, the district court found that Zhou is a citizen of Wisconsin, and so lacked diversity with Marquette (which is incorporated and located in Wisconsin). Zhou does not dispute these findings. Instead, in his brief he insists incorrectly that it was the district court's burden to prove that he and Marquette are not diverse. But it is up to the plaintiff who files in federal court to plead this basis for jurisdiction and establish diversity of citizenship, see *Craig v. Ontario Corp.*, Nos. 06-4409, 08-1013, 2008 WL 4149718, at *3 (7th Cir. Sept. 10, 2008); *Hart v. FedEx Ground Package Sys., Inc.*, 457 F.3d 675, 679 (7th Cir. 2006), and Zhou has not done that here.

AFFIRMED.