

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THERESA CELLUCCI/HODGKINSON : CIVIL ACTION
:
vs. :
:
JACOBY & MYERS LAW FIRM : NO. 98-6094

M E M O R A N D U M

DUBOIS, J.

NOVEMBER 23, 1998

Plaintiff, Theresa Cellucci/Hodgkinson, filed an Application to Proceed In Forma Pauperis and a Complaint against Jacoby & Myers Law Firm, alleging that she retained Jacoby & Myers to represent her in a personal injury action, that the action was settled for \$17,000.00, and that she received only \$1,700.00. In her claim for relief she states that she wants "the rest of the money that was to be awarded to me."

There are no allegations of federal jurisdiction in the Complaint although it appears that the only conceivable basis of federal jurisdiction is diversity of citizenship under 28 U.S.C. § 1332. That statute provides that district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. Where it appears from the face of the Complaint that a plaintiff fails to meet the jurisdictional requirements of 28 U.S.C. § 1332, a court must dismiss the Complaint without prejudice for lack of federal jurisdiction. St. Paul Mercury Indemnity Co. v. Red Cab

Co., 303 U.S. 283, 289 (1938); see also In Re Corestates Trust Fee Litigation, 39 F.3d 61 (3d Cir. 1994).

Plaintiff, Theresa Cellucci/Hodgkinson identifies herself in the Complaint as residing in Atlantic City, New Jersey, and Jacoby & Myers Law Firm is identified as having an office at 1500 Chestnut Street, Philadelphia, Pennsylvania. Thus, the parties might be citizens of different states.

Plaintiff also states in the Complaint that the case was settled for \$17,000.00 and that she has not received her share of the settlement. She seeks her share of the settlement proceeds. The Court concludes under the allegations of the Complaint that, to a legal certainty, plaintiff cannot recover damages in excess of the agreed-upon settlement of the case, \$17,000.00. Because the matter in controversy does not exceed \$75,000.00, exclusive of interest and costs, plaintiff has failed to establish subject matter jurisdiction under 28 U.S.C. § 1332. Therefore, the case will be dismissed without prejudice as frivolous under 28 U.S.C. § 1915(e) for lack of federal jurisdiction.

An appropriate order follows.

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AND NOW, to wit, this 23rd day of November, 1998, upon consideration of plaintiff's Complaint in this case, for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that the action is dismissed without prejudice as frivolous under 28 U.S.C. § 1915(e) for lack of federal jurisdiction.

BY THE COURT:

JAN E. DUBOIS, J.