

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FIFTH THIRD BANK,)	
)	
Plaintiff,)	
)	
v.)	No. 09 C 2876
)	
RUSSELL OTT, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER


Fifth Third Bank ("Fifth Third") has just filed this action against Russell Ott ("Ott") and Emily, Inc. ("Emily"), invoking federal jurisdiction on diversity of citizenship grounds. Although it seems most likely that Fifth Third can cure the pleading flaws identified here, so that this Court will contemporaneously issue its customary initial scheduling order on that premise, this brief order is issued sua sponte because of two problematic aspects of the Complaint.

First, Complaint ¶1 fails to identify Fifth Third's own principal place of business as required under 28 U.S.C. §1332(c)(1). That omission on counsel's part is somewhat puzzling, given the inclusion of that information as to Emily in Complaint ¶3--but as Horace noted in his Ars Poetica, "Homer himself hath been observ'd to nod."

Second, Complaint ¶2 speaks only of Ott's residence, not of his jurisdictionally-relevant state of citizenship. Although more than one opinion from our Court of Appeals has directed that

such an omission mandates dismissal (see, e.g., Adams v. Catrambone, 359 F.3d 858, 861 n.3 (7th Cir. 2004)), this Court is loath to stick Fifth Third or its counsel with another \$350 charge for refiling if, as seems probable, Ott's residence coincides with his state of citizenship.

Accordingly Fifth Third is ordered to file a brief amendment to the Complaint (not a self-contained Amended Complaint) to cure the defects identified here on or before May 26, 2009. Absent such a filing, though, this Court would be required to dismiss the Complaint and this action for lack of established subject matter jurisdiction.



Milton I. Shadur
Senior United States District Judge

Date: May 13, 2009