

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

NATIONAL CITY BANK,

Plaintiff,

Case No. 06-C-92

v.

BARRY P. DEGNER,

Defendant.

OPINION AND ORDER

This third attempt at removing this case from the Circuit Court for Waukesha County suffers from the same lack of jurisdiction noted at the time of the second attempt when the court concluded that:

Barry Degner is attempting to remove this collection action from the Circuit Court for Waukesha County to federal court. He asserts that this court has federal question jurisdiction over the subject matter because, once he was in federal court, he filed counterclaims based upon federal law. He did not file the counterclaims in the state court. Therefore, the case in state court contained no federal claims and was not removable. Jurisdiction must be established at the time of removal. See 28 U.S.C. § 1441(a).

For the same reasons, because this court lacks jurisdiction, the court ORDERS that this action is remanded to the Circuit Court for Waukesha County.

IT IS FURTHER ORDERED that a certified copy of this order for remand shall be mailed to the clerk of the Circuit Court for Waukesha County whereupon that court may proceed with this case.

IT IS FURTHER ORDERED that the “Petition to Proceed Without Prepayment of Fees and/or Costs” (filed January 20, 2006) IS DENIED.

The Plaintiff is hereby warned that any repeated attempt to remove this action improperly or without jurisdiction could result in the imposition of sanctions. See Federal Rule of Civil Procedure 11.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 23rd day of January, 2006.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge