

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Lillian B. Dettle,

Plaintiff,

v.

Court File No. 17-cv-2327 (SRN/TNL)

Treasure Island Resort & Casino, et al.,

Defendants.

Response to the Objection to the Report and Recommendation

Introduction

On December 20, 2018, Dettle filed what appears to be her objection to the report and recommendation. Dkt. 41. Between that filing and her earlier motion for an extension, Dkt. 39, she has not raised a sustainable objection. Therefore the Defendants request that the Court adopt the report and recommendation and dismiss this case.

Argument

“A party may file and serve specific written objections to a magistrate judge’s proposed findings and recommendations” Local Rule 72.2(b)(1). On

objection to a report and recommendation, this Court conducts “a *de novo* review upon the record.” *Streambend Props. III v. Sexton Lofts*, 297 F.R.D. 349, 352 (D. Minn. 2014) (citing 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b)). Here, it appears that Dettle specifically objects to the findings regarding the alleged negligence. *See* Dkt. 39; Dkt. 41. Those findings, however, are irrelevant to the legal conclusion that the Court lacks subject-matter jurisdiction. To that conclusion, Dettle raises no objection. Regardless, it is supported by well-settled law.

Dettle’s pleadings do not raise a federal question. As the report and recommendation notes, her claim “sounds in negligence.” Dkt. 38 at 11. And her recent filings, which expressly reference her negligence-based allegations and suggest that she intends to bring her claim to state court, only reinforce that conclusion. *See generally* Dkt. 39; Dkt. 41. Further, Dettle’s passing reference to the First Amendment without any supporting factual allegations is legally insufficient to establish this Court’s jurisdiction. *See Bilal v. Kaplan*, 904 F.2d 14, 15 (8th Cir. 1990) (*per curiam*).

Dettle’s pleadings also do not establish diversity of citizenship. As the report and recommendation notes, the Prairie Island Indian Community, an

Indian tribe doing business as Treasure Island Resort and Casino, is not a citizen of any state. Dkt. 38 at 13 (citing *Standing Rock Sioux Indian Tribe v. Dorgan*, 505 F.2d 1135, 1140 (8th Cir. 1974), and *Auto-Owners Ins. v. Tribal Court of the Spirit Lake Indian Reservation*, 495 F.3d 1017, 1021 (8th Cir. 2007)). Therefore, this case cannot proceed under diversity of citizenship, which requires *complete* diversity of parties. *Id.* at 15 (citing *e.g.*, *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 27 (1st Cir. 2000), and *Frazier v. Brophy*, 358 F. App'x 212, 213 (2d Cir. 2009)).

Conclusion

The report and recommendation accurately recites the law and correctly concludes that this Court lacks subject-matter jurisdiction. Therefore, the Defendants request that the Court adopt the report and recommendation and dismiss this case.

Dated: January 3, 2019

/s/Peter J. Rademacher

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