

*Full my Court  
Remanded by the*

TO: Judge  
FROM: Donald  
DATE: 4-27-83  
RE: 82-336  
Sarah Spencer v. Aetna Insurance Company, et al.

PC, Thurs, 4-28-83, at 10:30 a.m.

Synopsis: Plff's residence was severely damaged by fire on 1-4-82. At that time, plff's home was insured from fire loss with defendant, Aetna Ins. Co.

Plff alleges that her home and contents were destroyed by the fire, but Aetna has refused to pay her claim on the basis that an investigation of the fire seems to point to arson.

Aside from the arson issue, Aetna says that plff has insufficiently documented her other losses (contents and clothing) to its satisfaction.

Pending Motions:

1. #5 - Plff has moved the Court to dismiss on the grounds that our Court does not have original jurisdiction, due to the fact that both plff and defendant are citizens of Kentucky.

Aetna has responded (Item 8) and stated that it is incorporated in Conn. and no other state, and that its principal place of business is in Conn.; therefore, there is diversity of citizenship, and this action should not be dismissed. (It was removed from Lee Circuit Court).

It appears that plff's motion to dismiss should be OVERRULED; this action does not need remanding back to state court.

Comments:

1. At the time Aetna removed this suit, there was another Kentucky defendant, Peoples Exchange Bank, who was the mortgagor of the property. In Aetna's response to plff's motion to dismiss, Aetna urges the Court to realign the bank as a party-plaintiff, since both plff and the bank have the same interest in this action. However, in Aetna's PC memo, it advised the Court that it has settled with Peoples Exchange Bank, which has assigned its interest to Aetna. Therefore, moot topic.
2. Only Aetna has filed a PC memo.
3. Peoples Exchange Bank is not properly before the Court. Since Aetna has settled with the bank, the record should be amended to show only Aetna as the defendant.