

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 18, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

ELESHA SOTO,

Plaintiff - Appellant,

v.

TARA KALATZES and GUS
KALATZES,

Defendants - Appellees.

No. 21-4081
(D.C. No. 2:21-CV-00223-TS-JCB)
(D. Utah)

ORDER AND JUDGMENT*

Before **BACHARACH, MURPHY, and CARSON**, Circuit Judges.

Pro se Plaintiff Elesha Soto filed a complaint against Defendants Gus and Tara Kalatzes, alleging they breached the parties' lease agreement. Plaintiff asserts the district court had federal-question and diversity jurisdiction under 28 U.S.C. §§ 1331 and 1332. Because her complaint alleged only state-law claims, Plaintiff and Defendants are citizens of Utah, and the amount in controversy was \$25,000, the

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

district court sua sponte dismissed Plaintiff's complaint without prejudice for lack of subject-matter jurisdiction. We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

I.

This case arises out of a failed commercial transaction. Defendant Gus Kalatzes owns and manages commercial real property. Plaintiff leased property from Gus for her salon, Cuts Plus. She alleges Gus's wife, Tara, handled "all the secretary duties" for her husband's commercial and residential rental properties. On March 1, 2021, Gus notified Plaintiff that he would not renew her lease after its expiration. As a result, Plaintiff filed a complaint in the District of Utah against both Defendants, Gus and Tara. Plaintiff alleged Defendants breached the parties' lease agreement by failing to repair the property, permitting two other salons to open nearby, overcharging her for monthly utilities, and not renewing her lease. She sought \$25,000.00 in damages. Plaintiff sought to proceed *in forma pauperis* (IFP).

The district court referred Plaintiff's IFP motion to a magistrate judge who entered an order requiring Plaintiff to supplement the motion and to show cause why the district court should not dismiss her action for lack of subject-matter jurisdiction. The magistrate judge warned that failure to do so would result in a recommendation to dismiss the case. The show-cause order explained that, although Plaintiff "mark[ed] diversity jurisdiction on the forms," she failed to establish jurisdiction

because she alleged all parties “resid[e] in Utah,”¹ and the amount in controversy was \$25,000. The order stated Plaintiff’s complaint did not establish federal-question jurisdiction because it failed to allege any federal claims. Plaintiff timely responded to the order, but she averred no facts establishing federal jurisdiction of any kind. Thus, the district court dismissed Plaintiff’s complaint without prejudice for lack of subject-matter jurisdiction. Plaintiff appeals.

II.

We review a district court’s order dismissing a case for lack of subject-matter jurisdiction de novo. Grynberg v. Kinder Morgan Energy Partners, L.P., 805 F.3d 901, 905 (10th Cir. 2015) (citation omitted). In doing so, we liberally construe a pro se plaintiff’s filings, Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted), but we will not act as her advocate. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

“Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute.” Gunn v. Minton, 568 U.S. 251, 256 (2013) (citation and quotation marks omitted). “The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C. §§ 1331 and 1332.” Arbaugh v. Y&H Corp., 546 U.S. 500, 513 (2006). “Section 1331 provides for ‘[f]ederal-

¹ While “[a]n individual’s residence is not equivalent to his domicile[,] and it is domicile that is relevant for determining citizenship,” Siloam Springs Hotel, L.L.C. v. Century Sur. Co., 781 F.3d 1233, 1238 (10th Cir. 2015) (citation omitted), Plaintiff’s form complaint uses the word “citizen” and states that Plaintiff, Tara Kalatzes, and Gus Kalatzes are citizens of Utah.

question’ jurisdiction, [and] § 1332 for ‘[d]iversity of citizenship’ jurisdiction.” Id. Federal-question jurisdiction exists for all claims “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. And diversity jurisdiction exists when “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States” or “citizens of a State and citizens or subjects of a foreign state.” Id. § 1332. Diversity jurisdiction requires complete diversity—no plaintiff may be a citizen of the same state as any defendant. Grynberg, 805 F.3d at 905 (citation omitted). Federal courts must presume that a case lies outside their limited jurisdiction, “and the burden of establishing the contrary rests upon the party asserting jurisdiction.” Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (citations omitted).

III.

Plaintiff argues that the district court erred in dismissing her complaint because she did not receive proper notice, she complied with the district court’s show-cause order, and the district court is “the only place where these issues submitted for judgment can be addressed.” But the magistrate judge’s show-cause order notified Plaintiff that he would recommend her complaint be dismissed if she could not establish a basis for federal jurisdiction. And though Plaintiff timely responded, she failed to establish federal jurisdiction. Last, as explained below, Plaintiff is incorrect that the federal district court is the “only place” where the issues she raised may be addressed.

Plaintiff pleaded that the district court had both federal-question and diversity jurisdiction. But she (1) alleged only state-law claims related to her lease agreement with Gus Kalatzes; (2) asserted that she, Gus Kalatzes, and Tara Kalatzes are citizens of Utah; and (3) stated the amount in controversy was \$25,000.00.

Plaintiff's response to the magistrate judge's show-cause order referred to the citizenship of business entities, though Defendants are individuals, and stated, "that owners listed also maintain his and her citizenship in Greece international, including several other states of records undiscovered." But if Plaintiff intended to explain that Tara and Gus Kalatzes are Greek and not Utah citizens, contrary to her complaint's allegations, she failed to identify them as the Greek citizen business "owners." See Kokkonen, 511 U.S. at 377 (1994) ("It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." (citations omitted)). And regardless, Plaintiff's show-cause response did not refute the alleged \$25,000.00 amount in controversy, which falls far short of § 1332(a)'s \$75,000 threshold.

For these reasons, the district court properly dismissed Plaintiff's complaint for lack of subject-matter jurisdiction.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge