

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 18-3473 and 18-3485

LAN TU TRINH,
Appellant

v.

OFFICE OF RECORDS CITY OF PHILADELPHIA

LAN TU TRINH,
Appellant

v.

MICHAEL TRINH

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action Nos. 18-cv-03441 and 18-cv-04114)
District Judge: Honorable Cynthia M. Rufe

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 3, 2019

Before: MCKEE, COWEN and RENDELL, Circuit Judges

(Opinion filed: July 12, 2019)

OPINION*

PER CURIAM

Lan Tu Trinh, a self-represented litigant, appeals the District Court’s dismissal of her complaints for lack of subject matter jurisdiction.¹ We will vacate and remand for further proceedings.

On August 13, 2018, Trinh filed a complaint against the City of Philadelphia Office of Records alleging “property fraud.” See Compl. at 3. According to Trinh, another person’s name was fraudulently listed on the deed for her property. The action was docketed at Trinh v. Office of Records, City of Phila., E.D. Pa. Civ. No. 18-cv-03441. Trinh filed a second action on September 24, 2018, naming Michael Trinh as the defendant. That action was docketed at Trinh v. Trinh, E.D. Pa. Civ. No. 18-cv-04114. In this complaint, Trinh alleged a “violation of business and property rights due to lack of

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

¹ While the District Court assumed Lan Tu Trinh is a male, a transcript attached to the complaint in the second action supports the conclusion that Trinh is a female.

compensation and the refusal to show proper evidence of said compensation existing.”

See Compl. at 3.

In nearly identically worded orders (save a one-sentence recitation of the allegations of each complaint) issued on October 1, 2018, the District Court sua sponte dismissed the complaints without prejudice for lack of subject matter jurisdiction. The court noted that Trinh failed to allege any basis for her claims under federal law and that there was no diversity between the parties. The District Court’s order was entered on the docket in E.D. Pa. Civ. No. 18-cv-03441 on October 2, 2018, and on October 1, 2018 for E.D. Pa. Civ. No. 18-cv-04114. Trinh filed notices of appeals in both actions on November 6, 2018.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.² We exercise plenary review over the District Court’s dismissal for lack of subject matter jurisdiction. FOCUS v. Allegheny Cty. Court of Common Pleas, 75 F.3d 834, 839-40 (3d Cir. 1996).

In order to have subject matter jurisdiction, a District Court must be able to exercise either federal question jurisdiction or diversity jurisdiction. See 28 U.S.C. §§ 1331-1332. Pursuant to 28 U.S.C. § 1332(a)(1), the federal district courts have subject

² As the District Court’s dismissal orders contain the reasoning for its disposition, the orders do not comply with the separate judgment rule set forth in Fed. R. Civ. P. 58(a), which requires that every judgment must be set out in a document separate from the opinion. See Witasick v. Minn. Mut. Life Ins. Co., 803 F.3d 184, 187 (3d Cir. 2015) (order must omit reasoning to be considered a separate document). Thus, the judgments were not entered until 150 days after the orders were entered on the docket, and Trinh’s

matter jurisdiction when there is diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. With respect to Trinh's action against Michael Trinh at E.D. Pa. Civ. No. 18-cv-04114, she may proceed in the District Court only if she proves facts by which diversity jurisdiction could be sustained because the complaint does not arise under the Constitution, laws, or treaties of the United States. To establish federal subject matter jurisdiction based on diversity of citizenship, "diversity must be complete; that is, no plaintiff can be a citizen of the same state as any of the defendants." Midlantic Nat'l Bank v. Hansen, 48 F.3d 693, 696 (3d Cir. 1995). Trinh's complaint states that both she and Michael Trinh are citizens of Pennsylvania. Thus, we agree that there is no diversity in E.D. Pa. Civ. No. 18-cv-04114.

The deficiency in Trinh's action at E.D. Pa. Civ. No. 18-cv-03441 against the City of Philadelphia Office of Records, however, is not as conclusive. Trinh claims diversity of citizenship as the basis of jurisdiction on the cover sheet of her complaint and, as such, the District Court is correct in finding diversity lacking. On page three of her complaint, on the other hand, Trinh indicates that federal question jurisdiction is being invoked. Though falling far short of establishing that her complaint arises under the Constitution, laws, or treaties of the United States, Trinh appears to allege some type of conspiracy and

notices of appeal were timely filed. See Fed. R. App. P. 4(a)(1)(A); Fed. R. Civ. P. 58(c)(2)(B).

fraudulent scheme with respect to the City of Philadelphia's handling of records involving properties in which she has or once had an ownership interest.

Without question, the burden is on the plaintiff to clearly allege facts that invoke the District Court's jurisdiction, see Phila. Fed'n of Teachers v. Ridge, 150 F.3d 319, 323 (3d Cir. 1998), and the District Court may sua sponte consider whether the plaintiff has satisfied this burden. Fed. R. Civ. P. 12(h)(3). However, we have repeatedly held that the District Court's failure to afford parties the opportunity to be heard on the issue is improper. Neiderhiser v. Borough of Berwick, 840 F.2d 213, 216 n.6 (3d Cir. 1988); see also Berardi v. Swanson Mem'l Lodge No. 48 of the Fraternal Order of Police, 920 F.2d 198, 200 (3d Cir. 1990) (quoting Local 336, Am. Fed'n of Musicians, AFL-CIO v. Bonatz, 475 F.2d 433, 437 (3d Cir. 1973)) (“[T]he record must clearly establish that after jurisdiction was challenged the plaintiff had an opportunity to present facts . . . in support of [the] jurisdictional contention.”). After sua sponte raising the issue of jurisdiction, the District Court failed to provide Trinh with an opportunity to demonstrate jurisdiction. We find this lack of opportunity to be heard to be improper.³

In the interest of justice and to be consistent, we will vacate the District Court's dismissals of both of Trinh's complaints and remand for further proceedings. On remand, the District Court should provide Trinh with either an opportunity to respond to the issue of jurisdiction or amend her complaints to properly allege federal question or

³ We also note that, because Trinh paid the applicable filing fees, the screening

diversity jurisdiction.⁴ See 28 U.S.C. § 1653; St. Francis Med. Ctr. v. Sullivan, 962 F.2d 1110, 1117 (3d Cir. 1992).

provisions of 28 U.S.C. § 1915(e) were not applicable.

⁴ Appellant's motion filed in C.A. No. 18-3473 to "submit additional evidence" is denied. Appellant seeks permission to file a transcript of a hearing that took place in the Philadelphia Court of Common Pleas on April 29, 2019. However, the composition of the record on appeal is set forth in Fed. R. App. P. 10(a), and Rule 10 does not provide for the introduction of new "evidence." Moreover, given the fact that the hearing took place after the conclusion of the District Court proceeding, it is obvious that appellant has no argument for modification or correction of the record under Rule 10(e).