

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

CALVIN S. SEARS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIV. ACT. NO. 2:09CV164-WKW-CSC
	)	(WO)
EMANUEL MATHEWS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

Upon consideration of the plaintiff’s motion for leave to proceed *in forma pauperis*, it is

ORDERED that the motion be and is hereby **GRANTED**.

On March 2, 2009, the pro se plaintiffs, Calvin S. Sears and Barbara C. Sears, filed this action against defendants Willie C. McDowell and Emanuel Mathews. The Sears assert that the defendants have failed to repair a substantial mold and mildew problem, a leaky roof, and cracking lead paint or install insulation in their rental home. Upon consideration of the pleadings and evidentiary materials in this case, the court concludes that this case is due to be dismissed prior to service of process.

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11<sup>th</sup> Cir. 1994). Thus, federal courts only have the power to hear cases as authorized by the Constitution or the laws of the United States, *see Kokkonen*, 511 U.S. at 377, and are required to inquire into their jurisdiction at the earliest possible point in the proceeding.

*Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11<sup>th</sup> Cir. 1999). Every federal court operates under an independent obligation to ensure it is presented with the kind of concrete controversy upon which its constitutional grant of authority is based. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990).

FED R. CIV. P. 12(h)(3) requires that “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Every federal court operates under an independent obligation to ensure it is presented with the kind of concrete controversy upon which its constitutional grant of authority is based. This obligation on the court to examine its own jurisdiction continues at each stage of the proceedings, even if no party raises the jurisdictional issues and both parties are prepared to concede it. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990). “It is axiomatic that a district court may inquire into the basis of its subject matter jurisdiction at any stage of the proceedings.” *See* 13 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* 3522 (1975).

A review of the complaint demonstrates that the plaintiff does not assert any federal claim, and the court is unaware of any federal claim concerning the failure of a landlord to remediate mold in rental property. Thus, the court does not have federal question jurisdiction over this matter. *See* 28 U.S.C. § 1331.

A federal district court may exercise subject matter jurisdiction over a civil action in which only state law claims are alleged if the civil action arises under the federal court’s diversity jurisdiction. *See* 28 U.S.C. § 1332(a)(1). The diversity statute confers jurisdiction on the federal courts in civil actions “between citizens of different states,” in which the

jurisdictional amount is met. *Id.* To satisfy diversity, not only must a plaintiff be a citizen of a state other than the state of which one defendant is a citizen, but also, under the rule of “complete diversity,” no plaintiff may share the same state citizenship with any defendant. *See Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). The complaint alleges that the plaintiffs are citizens of the State of Alabama as well as defendant McDowell. Therefore, there is no basis for diversity jurisdiction. *See* 28 U.S.C. § 1332. In short, this court lacks jurisdiction over all of the plaintiffs’ claims and this case is due to be dismissed.

### CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be DISMISSED pursuant to 28 U.S.C. 1915(e)(2)(b)(ii).

It is further

ORDERED that the parties are DIRECTED to file any objections to the **on or before March 19, 2009**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a de novo determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein*

*v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 6<sup>th</sup> day of March, 2009.

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/s/Charles S. Coody  
CHARLES S. COODY  
UNITED STATES MAGISTRATE JUDGE