

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REMAND/JS-6

CIVIL MINUTES - GENERAL

Case No. CV 17-3130-GW (RAOx) Date July 26, 2017

Title *New Amsterdam Coffee & Tea Co., LLC, et al. v. Dady, et al.*

Present: The Honorable GEORGE H. WU, United States District Judge

Javier Gonzalez

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

Proceedings: (IN CHAMBERS): **ORDER REMANDING ACTION TO STATE COURT**

On April 26, 2017, defendants J. Michael Dady and Dady & Gardner, P.A. (“Defendants”) removed this matter to this Court from the Superior Court of the State of California in and for the County of Los Angeles, asserting subject matter jurisdiction by way of complete diversity of citizenship amongst the parties, pursuant to 28 U.S.C. § 1332. On June 7, 2017, this Court issued an Order to Show Cause re Diversity Jurisdiction (“June 7 Order”) in light of questions it had about the sufficiency of Defendants’ jurisdictional allegations and about the very existence of diversity jurisdiction over this action. *See* Docket No. 16. Defendants’ then-pending motion to transfer venue, *see* Docket No. 10, was first continued, and then taken off-calendar, pending resolution of this jurisdictional issue. *See* Docket Nos. 18, 24.

As the Court noted in its June 7 Order, the burden of establishing jurisdiction here is on Defendants. However, as the Court previously stated, *one way* in which Defendants could satisfy that burden was by proffering a sufficient stipulation from the plaintiffs. On July 24, 2017, plaintiffs New Amsterdam Coffee & Tea Co., LLC (“New Amsterdam LLC”), Jenmax Enterprises, LLC, NACT Management Company, LLC, NACT Southern Connecticut, LLC, NACT Northern New Jersey, LLC, NACT Boroughs, LLC, Ira Smedra, and Jeffrey Srulowitz (collectively, “Plaintiffs”) filed a Stipulation of Citizenship in Response to the Court’s Order to Show Cause (“Stipulation”). *See* Docket Nos 25-1, 26-1.¹ For the reasons addressed herein, that Stipulation is not sufficient to the task.

In a preliminary (unredacted, *see* Docket No. 25-1, at 2:11-13) section, the Stipulation states that “Plaintiffs have obtained the requested citizenship information as set forth below, but are still working on obtaining citizenship information from one member,” who they do not then identify. Then, in redacted portions, the Stipulation indicates that, as to one limited liability company member of New Amsterdam LLC, that limited liability company “[d]eclined to provide membership information; on

¹There is some reason to believe that docket number 25-1 may be the only one of these filings that is available for review by Defendants, and it *entirely redacts* the identities and states of citizenship of the members of the various plaintiff limited liability companies. According to the Court’s CM/ECF system, Docket No. 26-1 was filed *ex parte* and is restricted to court users and the filing party, i.e. *Plaintiffs*. However, if the redacted information has merely been designated as “Confidential” under the parties’ Stipulated Protective Order, that would *not* entirely prevent Plaintiffs or their legal representatives from accessing the redacted information. *See* Docket No. 13, at 9:8-16.

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information and belief, none of the beneficiaries [*sic*] are Minnesota citizens,” and, as to one trust member of New Amsterdam LLC, that trust “[d]eclined to provide membership [*sic*] information; on information and belief, none of the beneficiaries are Minnesota citizens.” Docket No. 26-1, at 4:3-6, 5:20-23.² Even if one of these two members is the “one member” Plaintiffs “are still working on obtaining citizenship information from,” it would appear that at least one of the two simply refuses to provide the necessary information. Thus, Plaintiffs apparently must resort to “information and belief” citizenship assertions as to New Amsterdam LLC – the first-named plaintiff in this case.

The “general requirement” is that a party asserting jurisdiction “must plead diversity affirmatively and on knowledge,” though “in ‘unusual circumstances’ a party need not affirmatively allege the citizenship of an opposing party.” *Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1087 (9th Cir. 2014). But unlike *Carolina Casualty*, *see id.*, this is not a situation where a party has had to rely on “information and belief” citizenship allegations as to the *opposing* party or where citizenship information was not reasonably available to it.³ This is a situation where Plaintiffs can offer only “information and belief” citizenship allegations as to *themselves* because of the apparent refusal of certain of the relevant “members” of one member limited liability company and one member trust to be forthcoming with the necessary information. *See* O’Connell & Stevenson, California Practice Guide: Federal Civil Procedure Before Trial (2017) § 2:2039.1, at 2C-120 (“*Carolina Cas[ualty]*...would seem to be limited to situations where the jurisdictional facts are uniquely in the opposing party’s possession and where there is a strong basis for believing that the jurisdictional facts will be forthcoming.”).

The question is whether Plaintiffs’ failure, in the Stipulation, should redound to Defendants with respect to their obligation and attempt to satisfactorily demonstrate a basis for subject matter jurisdiction in this Court. The Court believes that it should, for the following reason. Here, the Court has offered Defendants – and by way of their limited cooperation, Plaintiffs – “chance after chance to establish diversity of citizenship” by virtue of the continued extensions of time in which to provide the necessary information. *Carolina Cas.*, 741 F.3d at 1088 (omitting internal quotation marks) (quoting *America’s Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992)). As an early indication of its willingness to allow Defendants a sufficient opportunity to make the necessary showing, in its June 7 Order, the Court indicated that if Defendants did not already possess information regarding the identity of the plaintiff limited liability companies’ members and their citizenships, “and Plaintiffs are unwilling to voluntarily provide the necessary information or to stipulate to it, the Court will entertain a request at the June 22 Scheduling Conference for Defendants to take jurisdictional

²This trust is not the only trust listed as a member of one of the plaintiff limited liability companies. It is not clear from the Stipulation that Plaintiffs have applied the proper test for determining the citizenship of trusts for diversity jurisdiction purposes. However, as is reflected herein, that is not the primary concern of the instant order.

³Although Defendants’ original citizenship allegations regarding the limited liability company plaintiffs in their Notice of Removal were also made on information and belief (specifically, information and belief allegations that none of the members of those plaintiffs were citizens of Minnesota), *see* Notice of Removal ¶¶ 6-11, this Court *tested* those allegations in its June 7 Order as part of its required effort to determine whether it, in fact, had subject matter jurisdiction. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006); *see also Strotek Corp. v. Air Transport Ass’n of Am.*, 300 F.3d 1129, 1132 (9th Cir. 2002) (“Certainly a plaintiff can decide whom to sue, but jurisdictional facts, not fiction even if truly believed, are dispositive. For example, had Strotek sued John Doe Corporation, alleging on information and belief that it is a citizen of Nevada, but it turned out that the Corporation’s ‘nerve center’ is in Washington, D.C., the allegation would give way to the fact that the parties are diverse. The same would be true if Strotek had sued John Doe, alleging that he was a citizen of Nevada but it turned out that his permanent residence is in the District of Columbia... In each instance, the result is the same: actual citizenship controls – not the plaintiff’s mistaken allegations.”). Unlike *Carolina Casualty*, 741 F.3d at 1085, this Court did not simply dismiss (or rather, remand) the case without offering the parties (in particular, Defendants) the opportunity to address the issue the Court perceived.

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discovery on the issue.” Docket No. 16, at pg. 2. Despite that offer, Defendants have not made any such request.

Thus, in light of the fact that Defendants have not been able to satisfactorily demonstrate the complete diversity of citizenship necessary for subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), the Court remands this action to Los Angeles County Superior Court.