

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

JS - 6

Case No. **CV 20-8208 FMO (ASx)** Date **October 16, 2020**

Title **PGB Holdings LLC v. Ohio Security Insurance Company**

Present: The Honorable **Fernando M. Olguin, United States District Judge**

Vanessa Figueroa

None

None

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorney Present for Plaintiff:

Attorney Present for Defendant:

None Present

None Present

Proceedings: (In Chambers) Order Remanding Action

On August 3, 2020, plaintiff PGB Holdings LLC (“plaintiff”) filed a Complaint in the Los Angeles County Superior Court against Ohio Security Insurance Company (“defendant”). (See Dkt. 1, Notice of Removal (“NOR”) at ¶ 1). On September 8, 2020, defendant removed that action on diversity jurisdiction grounds pursuant to 28 U.S.C. § 1332. (See *id.* at ¶ 5).

LEGAL STANDARD

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 1675 (1994). The courts are presumed to lack jurisdiction unless the contrary appears affirmatively from the record. See *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n. 3, 126 S.Ct. 1854, 1861 (2006). Federal courts have a duty to examine jurisdiction *sua sponte* before proceeding to the merits of a case, see *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574, 583, 119 S.Ct. 1563, 1569 (1999), “even in the absence of a challenge from any party.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 1244 (2006).

“The right of removal is entirely a creature of statute and a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.” *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32, 123 S.Ct. 366, 369 (2002) (internal quotation marks omitted). Where Congress has acted to create a right of removal, those statutes, unless otherwise stated, are strictly construed against removal jurisdiction.¹ See *id.* Unless otherwise expressly provided by Congress, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court[.]” 28 U.S.C. § 1441(a); see *Dennis v. Hart*, 724 F.3d 1249, 1252 (9th Cir. 2013) (same). A removing defendant bears the burden of establishing that removal is

¹ For example, an “antiremoval presumption” does not exist in cases removed pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). See *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

JS - 6

Case No. CV 20-8208 FMO (ASx)

Date October 16, 2020

Title PGB Holdings LLC v. Ohio Security Insurance Company

proper. See Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006) (*per curiam*) (noting the “longstanding, near-canonical rule that the burden on removal rests with the removing defendant”); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (“The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.”) (internal quotation marks omitted). Moreover, if there is any doubt regarding the existence of subject matter jurisdiction, the court must resolve those doubts in favor of remanding the action to state court. See Gaus, 980 F.2d at 566 (“Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”).

DISCUSSION

The court’s review of the NOR and the attached state court Complaint makes clear that this court does not have subject matter jurisdiction over the instant matter. See 28 U.S.C. § 1441(a); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429 (1987) (“Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.”) (footnote omitted). In other words, plaintiff could not have originally brought this action in federal court, as plaintiff does not competently allege facts supplying diversity jurisdiction.² See 28 U.S.C. § 1332(a).³

When federal subject matter jurisdiction is predicated on diversity of citizenship pursuant to 28 U.S.C. 1332(a), complete diversity must exist between the opposing parties. See Caterpillar Inc. v. Lewis, 519 U.S. 61, 68, 117 S.Ct. 467, 472 (1996) (stating that the diversity jurisdiction statute “applies only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant”). Defendant contends that complete diversity exists because defendant is a citizen of New Hampshire and Massachusetts, (Dkt. 1, NOR at ¶ 10.b), and plaintiff is a citizen of California. (*Id.* at ¶ 10.d). However, defendant improperly relies on the standard applicable to corporations despite the fact that plaintiff is a limited liability company. (See *id.*) (contending that plaintiff is a citizen of California because it was “incorporated under the laws of the State of California, and continues to have its principal place of business in Commerce, California”).

Limited liability companies (“LLCs”) are treated like partnerships rather than corporations for the purpose of determining citizenship, and are deemed “a citizen of every state of which its owners/members are citizens.” Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006); see Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S. 567, 569, 124 S.Ct. 1920, 1923 (2004) (“[A] partnership . . . is a citizen of each State or foreign country of which any of its

² Defendant seeks only to invoke the court’s diversity jurisdiction. (See Dkt. 1, NOR).

³ In relevant part, 28 U.S.C. § 1332(a) provides that “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States[.]”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

JS - 6

Case No. CV 20-8208 FMO (ASx)

Date October 16, 2020

Title PGB Holdings LLC v. Ohio Security Insurance Company

partners is a citizen.”). “There is no such thing as ‘a [state name] limited partnership’ for purposes of . . . diversity jurisdiction. There are only partners, each of which has one or more citizenships.” Hart v. Terminex Int’l, 336 F.3d 541, 544 (7th Cir. 2003) (internal quotation marks omitted). Moreover, “[a]n LLC’s principal place of business [or] state of organization is irrelevant” for purposes of diversity jurisdiction. See Buschman v. Anesthesia Business Consultants LLC, 42 F.Supp.3d 1244, 1248 (N.D. Cal. 2014); Tele Munchen Fernseh GMBH & Co Produktionsgesellschaft v. Alliance Atlantis Int’l Distribution, LLC, 2013 WL 6055328, *4 (C.D. Cal. 2013) (“As a limited liability company, [defendant]’s principal place of business is irrelevant for purposes of diversity jurisdiction.”). If a member of an LLC is a corporation, then the state of that member’s incorporation and its principal place of business must be shown.

Defendant has failed to set forth the proper citizenship of plaintiff and that of its members. (See, generally, Dkt. 1, NOR). In short, defendant has failed to show that complete diversity of the parties exists. Given that any doubt regarding the existence of subject matter jurisdiction must be resolved in favor of remanding the action to state court, see Gaus, 980 F.2d at 566, the court is not persuaded, under the circumstances here, that defendant has met its burden. Therefore, there is no basis for diversity jurisdiction.

This order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

Based on the foregoing, IT IS ORDERED that:

1. The above-captioned action shall be **remanded** to the Superior Court of the State of California for the County of Los Angeles, 111 N. Hill Street, Los Angeles, CA 90012, for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).
2. The Clerk shall send a certified copy of this Order to the state court.
3. Any pending motion is denied as moot.

Initials of Preparer vdr