

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 17-cv-00085-PAB

GERALD STUARD CLAY,
GERALD PAUL CLAY, and
JEFFREY CLAY,

Plaintiffs,

v.

MIDWEST FARMS, LLC,
RICHARD GENE LAMBERT, and
MALISSA HELOISE HILL,

Defendants.

ORDER TO SHOW CAUSE

This matter is before the Court on Plaintiffs' Response to Order to Show Cause [Docket No. 9]. Although the order to show cause [Docket No. 7] was discharged [Docket No. 11], the Court takes the matter up sua sponte after this case was reassigned. See Docket No. 18.

Plaintiffs state that, "[a]ccording to its *most recent* filing with the state of Colorado, Midwest Farms, LLC is a limited liability company with two members: Ronald W. Houser, an individual, and R. W. Houser, Inc., a corporation." Docket No. 9 at 2 (citing Docket No. 9-4) (emphasis added). The "Biennial Report" of "Midwest Farms, L.L.C." that plaintiffs rely upon is dated December 16, 1996, Docket No. 9-4, and therefore does not necessarily represent the current membership. Additionally, the report, by its terms, did not require the entity to identify its members, but instead

required identification of the entity's "managers." *Id.*; Colo. Rev. Stat. § 7-80-303(1) (1996).¹ "[F]or purposes of determining the existence of diversity jurisdiction, the citizenship of the parties is to be determined with reference to the facts as they existed at the time of filing." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 569-70 (2004) (citation omitted). Moreover, while the form lists two "members," there is no indication on the form that those are the entity's only two members. Docket No. 9-4.

An LLC is deemed to be a citizen of the states of which its members are citizens. *See Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1237-38 (10th Cir. 2015) ("in determining the citizenship of an unincorporated association for purposes of diversity, federal courts must include all the entities' members."). Furthermore, when an entity consists of multiple tiers of ownership and control, the entire structure must be considered for diversity purposes. In other words, when an entity is composed of multiple layers of constituent entities, the citizenship determination requires an exploration of the citizenship of the constituent entities as far down as necessary to

¹ § 7-80-303. Limited liability company reports

(1) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this state shall file, within the time prescribed by this section, a limited liability company report setting forth:

- (a) The name of the limited liability company and, if a foreign limited liability company, the state where it is organized;
- (b) The name and business address of the registered agent of the limited liability company in this state, and, in the case of a foreign liability company, the address of its principal office in the state where it is organized; and
- (c) The name and address of each manager of the limited liability company.

Colo. Rev. Stat. § 7-80-303(1) (1996).

unravel fully the citizenship of the entity before the court. See *U.S. Advisor, LLC v. Berkshire Property Advisors, LLC*, No. 09-cv-00697-PAB-CBS, 2009 WL 2055206, at *2 (D. Colo. July 10, 2009); *SREI-Miami, LLC v. Thomas*, No. 08-cv-00730-MSK-BNB, 2008 WL 1944322, at *1 (D. Colo. May 2, 2008); see also *Hicklin Eng'g, L.C. v. Bartell*, 439 F.3d 346, 347 (7th Cir. 2006); *Turner Bros. Crane & Rigging, LLC v. Kingboard Chem. Holding Ltd.*, 2007 WL 2848154, at *4-5 (M.D. La. Sept. 24, 2007); cf. *Carden v. Arkoma Associates*, 494 U.S. 185, 195 (1990) (“[W]e reject the contention that to determine, for diversity purposes, the citizenship of an artificial entity, the court may consult the citizenship of less than all of the entity’s members.”).

Plaintiffs’ response to the order to show cause fails to state the members of Midwest Farms, LLC at the time their complaint was filed and the citizenship of all those members. As a result, the Court is unable to determine whether the Court has jurisdiction over this case based on diversity of citizenship.

Accordingly it is

ORDERED that, on or before **March 2, 2017**, plaintiffs shall show cause why this case should not be dismissed due to the Court’s lack of subject matter jurisdiction.

DATED February 16, 2017.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge