

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

Civil Action No. 17-cv-01201-PAB

CHRISANN CHEEK and
JOSEPH CHEEK,

Plaintiffs,

v.

WOLFGANG PUCK WORLDWIDE, INC., d/b/a Spago Restaurant, and
RITZ CARLTON HOTEL COMPANY, LLC,

Defendants.

ORDER TO SHOW CAUSE

This matter is before the Court on Ritz Carlton Hotel Company, L.L.C.'s Response to Order to Show Cause [Docket No. 15] filed by defendant "Ritz-Carlton Hotel Company, L.L.C." ("Ritz-Carlton"). Ritz-Carlton states that the Court has subject matter jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332. Docket No. 1 at 2, ¶ 3. The Court is satisfied that Ritz-Carlton has shown defendants' citizenship.

Ritz-Carlton claims that plaintiffs are "domiciled in the state of Florida," Docket No. 15 at 4, ¶ 19, based on (1) plaintiffs having provided a Florida address on the second amended complaint, (2) plaintiff Chrisann Cheek having received all of her medical treatment in Florida after the incident at issue, *id.* at 4-5, ¶ 20, and (3) "Plaintiffs' counsel [having] represented to Defense counsel that Plaintiffs are citizens of the State of Florida." *Id.* (citing Docket No. 15-10 at 1).

As clearly stated in the Order to Show Cause, domicile, not residency, is

determinative of citizenship. Docket No. 14 at 5. The Court has already found that plaintiffs listing a Florida address on the second amended complaint is not sufficient, by itself, to demonstrate domicile. *Id.* Ritz-Carlton also asserts that Ms. Cheek received all of her post-accident medical care in Florida. That fact may help support a finding of domicile, but Ritz-Carlton fails to explain over what period of time she received such treatment, which gives it little weight. Finally, Ritz-Carlton claims that plaintiffs' counsel confirmed that plaintiffs are citizens of Florida. The emails attached to the response, however, do not support the claim. Counsel for Ritz-Carlton asked plaintiffs' counsel to confirm that "plaintiffs live, reside and are domiciled in Florida." Docket No. 15-10 at 2. Plaintiffs' counsel responded that "My clients are residents of Florida." *Id.* at 1. Far from supporting domicile, plaintiffs' counsel's response suggests his clients are mere residents, which contradicts the other evidence that Ritz-Carlton relies upon. Hence, Ritz-Carlton has not met its burden to show the citizenship of plaintiffs and establish complete diversity. *Radil v. Sanborn W. Camps, Inc.*, 384 F.3d 1220, 1224 (10th Cir. 2004) ("The party invoking federal jurisdiction bears the burden of establishing such jurisdiction as a threshold matter."). Nonetheless, the Court will provide Ritz-Carlton one further opportunity to establish the citizenship of all parties and show that the Court has subject matter jurisdiction over this action.

For the foregoing reasons, it is

ORDERED that, on or before **5:00 p.m. on June 23, 2017**, defendant Ritz Carlton Hotel Company, LLC shall show cause why this case should not be remanded due to the Court's lack of subject matter jurisdiction.

DATED June 16, 2017.

BY THE COURT:

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