

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

Civil Action No. 21-cv-02983-PAB

PENNY SHAFER,

Plaintiff,

v.

WALMART INC., and
WAL-MART REAL ESTATE,

Defendants.

ORDER TO SHOW CAUSE

The Court takes up this matter *sua sponte* on the Notice of Removal [Docket No. 1]. Defendants assert that this Court has jurisdiction pursuant to 28 U.S.C. § 1332. Docket No. 1 at 1.

In every case and at every stage of the proceeding, a federal court must satisfy itself as to its own jurisdiction, even if doing so requires *sua sponte* action. See *Citizens Concerned for Separation of Church & State v. City & Cnty. of Denver*, 628 F.2d 1289, 1297 (10th Cir. 1980). Absent an assurance that jurisdiction exists, a court may not proceed in a case. See *Cunningham v. BHP Petroleum Gr. Brit. PLC*, 427 F.3d 1238, 1245 (10th Cir. 2005). Courts are well-advised to raise the issue of jurisdiction on their own, regardless of parties' apparent acquiescence. First, it is the Court's duty to do so. *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 844 (10th Cir. 1988). Second, regarding subject matter jurisdiction, "the consent of the parties is irrelevant, principles of estoppel do not apply, and a party does not waive the

requirement by failing to challenge jurisdiction.” *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (citations omitted). Finally, delay in addressing the issue only compounds the problem if, despite much time and expense having been dedicated to the case, a lack of jurisdiction causes it to be dismissed. See *U.S. Fire Ins. Co. v. Pinkard Constr. Co.*, No. 09-cv-00491-PAB-MJW, 2009 WL 2338116, at *3 (D. Colo. July 28, 2009).

“The party invoking federal jurisdiction bears the burden of establishing such jurisdiction as a threshold matter.” *Radil v. Sanborn W. Camps, Inc.*, 384 F.3d 1220, 1224 (10th Cir. 2004). Defendants assert that the Court has diversity jurisdiction under 28 U.S.C. § 1332. Docket No. 1 at 2, ¶ 2. Pursuant to that section, “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.” 28 U.S.C. § 1332(a). While, at the pleading stage, the Court takes as true all “well-pled (that is, plausible, conclusory, and non-speculative) facts,” *Dudnikov v. Chalk & Vermilion Fine Arts*, 514 F.3d 1063, 1070 (10th Cir. 2008), the allegations regarding the citizenship of defendants are not well-pled.

The notice of removal states that defendant “Walmart is a citizen of the state of Arkansas” and that defendant “Wal-Mart Real Estate is a citizen of the state of Delaware.” Docket No. 1 at 2, ¶ 3. These allegations are insufficient for two reasons. First, the notice of removal does not state both Walmart’s principal place of business or state of incorporation, see *id.*, and a corporation is deemed to be a citizen of “every State and foreign state by which it has been incorporated and of the State or foreign

state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Second, the notice does not indicate what type of entity Wal-Mart Real Estate is. This information is critical to the Court’s jurisdictional analysis because, while a corporation is a citizen of both its state of incorporation and its principal place of business, 28 U.S.C.

§ 1332(c)(1), the citizenship of an unincorporated entity is determined, not by its state of organization or principal place of business, but by the citizenship of all of its members. *See Siloam Springs Hotel, LLC v. Century Sur. Co.*, 781 F.3d 1233, 1237–38 (10th Cir. 2015) (“[I]n determining the citizenship of an unincorporated association for purposes of diversity, federal courts must include all the entities’ members.”).

Because the allegations regarding defendants’ citizenship are not well-pled, the Court is unable to determine defendants’ citizenship and whether the Court has jurisdiction. *See United States ex rel. General Rock & Sand Corp. v. Chuska Dev. Corp.*, 55 F.3d 1491, 1495 (10th Cir. 1995) (“The party seeking the exercise of jurisdiction in his favor must allege in his pleading the facts essential to show jurisdiction.” (quotations omitted)). It is therefore

ORDERED that, on or before **November 22, 2021**, defendants shall show cause why this case should not be remanded to state court due to the Court's lack of subject matter jurisdiction.

DATED November 15, 2021.

BY THE COURT:



PHILIP A. BRIMMER
Chief United States District Judge