

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MARTHA BAUER,

Plaintiff,

v.

Case No: 2:13-cv-850-FtM-38DNF

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Defendant.

ORDER¹

This matter comes before the Court on review of Plaintiff's Complaint ([Doc. #1](#)) filed on December 5, 2013. A federal court is powerless to act without proper subject matter jurisdiction. Bochese v. Town of Ponce Inlet, 405 F.3d 964, 975 (11th Cir. 2005). Accordingly, "it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking." Id. (citing Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999)).

Federal courts have subject matter jurisdiction over claims pursuant to federal questions and diversity jurisdiction. Federal question jurisdiction exists when a plaintiff's cause of action "arises under" federal law. 28 U.S.C. § 1331. Ordinarily, whether a federal question exists in a pending action must be determined on the face of a plaintiff's well-

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pleaded complaint. [Conn. State Dental Ass'n v. Anthem Health Plans, Inc.](#), 591 F.3d 1337, 1343 (11th Cir. 2009) (citing [Louisville & N.R. Co. v. Mottley](#), 211 U.S. 149, 152 (1908)). Whereas claims properly brought in federal court pursuant to diversity jurisdiction contain matters where the parties are completely diverse with regard to citizenship and where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a); [Morrison v. Allstate Indem. Co.](#), 228 F.3d 1255, 1261 (11th Cir. 2000). In an action filed directly in federal court, a plaintiff bears the burden of adequately pleading and ultimately proving jurisdiction. [King v. Cessna Aircraft Co.](#), 505 F.3d 1160, 1171 (11th Cir. 2007).

Plaintiff initiated this matter on December 5, 2013, by filing a complaint with one count for negligence against the Federal Deposit Insurance Corporation as receiver for First Community Bank of Southwest Florida. Plaintiff states she brings this cause against Defendant “[p]ursuant to 12 U.S.C. § 1281(d)(6).” This statute however has been repealed. Therefore, no federal question has properly been presented. In addition, the Complaint only states the residency rather than the domicile of Plaintiff. An individual is a citizen where she is domiciled, the place of an individual’s true, fixed, and permanent home and to which he has the intention of returning whenever he is absent therefrom. [Arrol v. Heron](#), No. 2:10-cv-655-FtM-29DNF, 2011 WL 672417, at *1 (M.D. Fla. Feb. 17, 2011). Further, the Complaint does not allege an amount in controversy, albeit the Complaint does state that at least \$60,000 worth of medical expenses have been incurred as a result of the alleged negligence. ([Doc. #1](#), ¶10). Therefore, no diversity jurisdiction has been properly presented either. Consequently, Plaintiff has failed to properly allege federal jurisdiction.

Accordingly, it is now

ORDERED:

Plaintiff's Complaint ([Doc. #1](#)) is **DISMISSED without prejudice**. Plaintiff shall file an amended complaint that properly alleges this Court's subject matter jurisdiction no later than **December 21, 2013**. Failure to comply with this Order may result in the case being dismissed without further notice for failure to allege this Court's subject matter jurisdiction.

DONE and **ORDERED** in Fort Myers, Florida this 11th day of December, 2013.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record