

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Plaintiff,

v.

Case No: 2:14-cv-630-FtM-38CM

WEST COAST ROOFING &
WATERPROOFING, INC.,
MCDANIEL NICHOLAS
CONSTRUCTION, INC., MITCHELL
B. NICHOLAS, MELINDA A.
NICHOLAS, BILLY W. MCDANIEL,
JR. and MELANIE MCDANIEL,

Defendants.

ORDER¹

This matter comes before the Court on review of Plaintiff's Complaint ([Doc. #1](#)) filed on October 29, 2014. 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

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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-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 \(11th Cir. 2007\)](#).

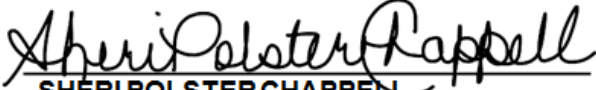
Plaintiff initiated this matter on October 29, 2014, by filing a complaint with two counts: breach of contract against all Defendants (Count 1) and common law indemnity against Defendant West Coast Roofing & Waterproofing, Inc. (Count 2). ([Doc. #1 at 6-8](#)). A review of the Complaint, however, reveals that Plaintiff only states the residency, rather than the domicile, of Defendants. 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 \(M.D. Fla. Feb. 17, 2011\)](#). Therefore, diversity jurisdiction has not been properly presented. Consequently, Plaintiff has failed to properly allege federal jurisdiction before this Court.

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 **November 19, 2014**. 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 5th day of November, 2014.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record