

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

MID-CONTINENT CASUALTY  
COMPANY, a foreign corporation

Plaintiff,

v.

Case No: 2:17-cv-55-FtM-38CM

G.R. CONSTRUCTION  
MANAGEMENT, INC. and DANA M.  
DICARLO, as Trustee of the DANA  
M. DICARLO REVOCABLE TRUST  
DATED FEBRUARY 1, 2007,

Defendants.

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**OPINION AND ORDER**<sup>1</sup>

This matter comes before the Court on Plaintiff Mid-Continent Casualty Company's ("Mid-Continent") Response to Order to Show Cause ([Doc. 16](#)) filed on March 10, 2017. In its response, Mid-Continent provided insufficient information for this Court to determine if it has subject matter jurisdiction under [28 U.S.C. § 1332](#). ([Doc. 16](#)). Thus, the Complaint is dismissed without prejudice.

Special jurisdictional concerns arise when a trust or trustee is involved. ([Doc. 10](#)). "If a complaint's factual allegations do not assure the court it has subject matter

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jurisdiction, then the court is without power to do anything else in the case.” *Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013) (citation omitted). Mid-Continent has the burden to plead diversity and must allege facts demonstrating the existence of diversity jurisdiction. See *Wells Fargo Bank, N.A. v. Mitchell's Park, LLC*, 615 F. App'x 561, 563 (11th Cir. 2015) (“The party filing a diversity lawsuit in federal court bears the burden of establishing, by a preponderance of the evidence, that all parties are completely diverse.”); see also *Bryant v. Ally Fin.*, 452 F. App'x 908, 910 (11th Cir. 2012) (discussing the need for complete diversity to establish federal subject matter jurisdiction). Here, Mid-Continent has not plead facts or provided sufficient information to establish diversity jurisdiction. (Doc. 1; Doc. 16).

To start, it is still unclear if Mid-Continent is suing (1) Dana M. Dicarlo in her capacity as a trustee or (2) the Dana M. Dicarlo Trust. Simply put, is Mid-Continent suing the trust, trustee, or both? The Court expects Mid-Continent to clear up this issue, if it chooses to amend. Moreover, Mid-Continent’s allegation that Dana M. Dicarlo is “residing” in Baltimore, Maryland is not enough to establish diversity. (Doc. 1 at ¶ 4). Where a party invokes federal subject matter jurisdiction based on diversity, he or she must allege facts sufficient to show the citizenship of each party. See *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998) (citation omitted). “Citizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity . . . .” *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994). Mid-Continent has not alleged Dana M. Dicarlo’s citizenship and, therefore, has not alleged diversity.

Mid-Continent also “believes that the [Dana M. DiCarlo Revocable Trust Dated February 1, 2007] is a ‘traditional trust’ established for the benefit of its beneficiar[ies] . .

. .” (Doc. 16 at ¶ 8). To the extent Mid-Continent is suing a traditional trust, it needs to plead the citizenship of all trustees. See *Americold Realty Trust v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1016 (2016). While Mid-Continent contends that it possesses no specific knowledge regarding the number of trustees, that does not relieve its burden to plead facts sufficient to establish jurisdiction. (Doc. 16 at ¶ 7). Further, the “mere designation of an entity as a trust rather than an unincorporated association is not controlling for purposes of determining diversity of citizenship.” *Bearse v. Main St. Investments*, 220 F. Supp. 2d 1338, 1344 (M.D. Fla. 2002) (citing *Xaros v. U.S. Fid. & Guar. Co.*, 820 F.2d 1176, 1181 (11th Cir. 1987)). Therefore, Mid-Continent must allege facts sufficient to establish Dana M. Dicarolo Revocable Trust as a traditional trust. But if it turns out that the Dana M. Dicarolo Revocable Trust is an unincorporated business trust, citizenship is based on the citizenship of its shareholders. *Crook-Petite-El v. Bumble Bee Seafoods L.L.C.*, 502 F. App’x 886, 887 (11th Cir. 2012) (citation omitted).

If Mid-Continent is suing Dana M. Dicarolo as a trustee, the citizenship of the trustee is what matters for diversity purposes. See *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 465 (1980). But a trustee also must have customary powers to hold, manage, and dispose of assets for the benefits of others to be a real party to the controversy. *Id.* at 464. Therefore, Mid-Continent must not only establish Dana M. Dicarolo’s citizenship, but also establish her as a real party to the controversy.


The Court will allow Mid-Continent an additional opportunity to amend its Complaint to cure the defective jurisdictional allegations.

Accordingly, it is now

**ORDERED:**

1. The Complaint ([Doc. 1](#)) is **DISMISSED without prejudice**.
2. Plaintiff Mid-Continent Casualty Company may file an Amended Complaint on or before April 24, 2017, that properly alleges federal jurisdiction. **Failure to comply by the deadline will result in this matter being closed.**

**DONE** and **ORDERED** in Fort Myers, Florida this 10th day of April, 2017.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record