

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

STEPHANIE A. MCCULLAGH,

Plaintiff,

v.

Case No: 2:17-cv-138-FtM-MRM

CIRCLE K. STORES, INC.,

Defendant.

OPINION AND ORDER

This matter comes before the Court, *sua sponte*, upon review of the file. On March 9, 2017, the Honorable Sheri Polster Chappell entered an Opinion and Order regarding Defendant's Notice of Removal (Doc. 1). (Doc. 7). In the Order, the Court stated that "Defendant fails to establish complete diversity of citizenship." (*Id.* at 2). The Court specifically noted that "neither the Complaint (Doc. 2) nor the Notice of Removal (Doc. 1) sufficiently establish Plaintiff's domicile. Defendant cannot solely rely on Plaintiff's residence to establish citizenship." (*Id.* at 3). Based on that failure, Defendant was ordered to show cause why this case should not be remanded for failure to establish subject matter jurisdiction based on the presence of diversity jurisdiction at the time of removal. (*Id.*). The Court warned that "[f]ailure to comply with this Order will result in this case being remanded without further notice." (*Id.*).

On March 23, 2017, Defendant filed a response to the Order. (Doc. 14). In pertinent part, Defendant states:

Plaintiff has maintained addresses in Florida since at least 1995; from 2008 to the present Plaintiff has resided in Lehigh Acres, Florida in a home owned jointly with her husband for which she pays property taxes and claims a homestead exemption; Plaintiff has a Florida driver's license; Plaintiff is registered to vote in Florida; Plaintiff has a Florida fishing license; and Plaintiff has maintained vehicle registrations in Florida.

(*Id.* at 2 ¶ 9). Additionally, Defendant notes that “Plaintiff’s Answers to Interrogatories indicate that Plaintiff’s last place of employment was in Florida and all of Plaintiff’s treating physicians for at least the last ten years have been located in Florida, including a primary care physician who treated Plaintiff since she was fifteen-years-old.” (*Id.* at ¶ 10 (citing Doc. 1-4)). Thus, Defendant argues that Plaintiff’s domicile is Florida and that the case should not be remanded for lack of diversity. (*Id.* at 3 ¶ 12).

As the Court previously noted, an individual is a citizen where she is domiciled. *See McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002). A domicile is the place of an individual’s true, fixed, and permanent home and to which she intends to return whenever she is absent therefrom. *Id.* at 1257-58 (citations omitted).

Here, Defendant has sufficiently demonstrated that Florida is the place of Plaintiff’s true, fixed, and permanent home and to which she intends to return whenever she is absent therefrom. *See id.* Specifically, Plaintiff owns a house in Florida and resides in that home. (Doc. 14 at 2 ¶ 9). Additionally, Plaintiff has a Florida driver’s license, is registered to vote in Florida, has a fishing license in the state, and maintains vehicle registrations in the state. (*Id.*). Further, Plaintiff was last employed in Florida and all recent medical treatment was received in the state. (*Id.* at ¶ 10). Based on these contentions, the Court finds that Plaintiff’s domicile is Florida.

Moreover, Defendant is alleged to be incorporated in Texas with a principal place of business in Arizona. (*Id.* at 3 ¶ 13). For diversity purposes, Defendant is a citizen of those two states. 28 U.S.C. § 1332(c)(1). Neither of these states are Florida. The Court finds, therefore, that Defendant has presented sufficient evidence to establish that complete diversity existed at the time of removal. *See* 28 U.S.C. § 1332(a); *Moreland v. SunTrust Bank*, No. 2:13-cv-242,

2013 WL 3716400, at *1 (M.D. Fla. July 15, 2013) (citing *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010)).

Accordingly, the Court hereby **ORDERS** that:

The Order to Show Cause (Doc. 7) is hereby **DISCHARGED**. The Court will take no further action.

DONE AND ORDERED in Fort Myers, Florida on May 2, 2017.



MAC R. MCCOY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties