

case's jurisdictional basis – even on their own initiative if necessary. Save the Bay, 639 F.2d at 1102 (citing Fed. R. Civ. P. 12(h)(3)); Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908)).

Original jurisdiction may be based on a federal question or on diversity of citizenship. 28 U.S.C.A. § 1331; 28 U.S.C.A. § 1332. Jurisdiction in this case is based on diversity of citizenship. A federal court has diversity 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.A. § 1332(a)(1). Generally, it is the plaintiff's burden to allege, with sufficient particularity, facts creating jurisdiction. Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1273 (11th Cir. 2000). This Order focuses on the citizenship requirement of diversity jurisdiction.

A party must plead citizenship distinctly and affirmatively. Toms v. Country Quality Meats, Inc., 610 F.2d 313, 316 (5th Cir. 1980); Am. Motorists Ins. Co. v. Am. Emp. Ins. Co., 600 F.2d 15, 16 (5th Cir. 1979). Regarding natural persons, there is no statutory definition of what constitutes a “citizen” for diversity purposes. 15 James Wm. Moore et al., Moore's Federal Practice, § 102.30 (3d ed. 2008) [hereinafter “Moore's”](citing Galva Foundry Co. v. Heiden, 924 F.2d 729, 730 (7th Cir. 1991)). Federal courts interpret citizenship under § 1332 as requiring a natural person to be a United States citizen and to be domiciled in a state. See, e.g., Las Vistas Villas, S.A. v. Petersen, 778 F. Supp. 1202, 1204 (M.D. Fla. 1991), aff'd, 13

F.3d 409 (11th Cir. 1994). Thus, there are two necessary inquiries regarding citizenship for diversity jurisdiction: (1) whether the person is a United States citizen, and (2) whether the person is domiciled in a particular state. 15 Moore's, § 102.30.

Under the first inquiry, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” U.S. Const. Amend. XIV, § 1. Regarding the second inquiry, domicile – synonymous with “state citizenship” in diversity jurisprudence – generally requires two elements: (1) physical presence in a state; and (2) the intent to make the state one’s home. Duff, 804 F. Supp. at 334. A complaint merely alleging residency, as opposed to state citizenship or domicile, may be insufficient to invoke diversity jurisdiction. Id.; e.g., Held v. Held, 137 F.3d 998, 1000 (7th Cir. 1998). This is because domicile is not always the same as residence, as a person may reside in one place but be domiciled elsewhere. See Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1989).

Regarding parties that are not natural persons, when a party is a limited liability company rather than a corporation, the limited liability company is a citizen of the states of which its members are citizens. Cosgrove v. Bartolotta, 150 F.3d 729, 731 (7th Cir. 1998); Ennis v. Flowers Baking Co. of Bradenton, LLC, No. 6:07-cv-292-Orl-31JGG, 2007 WL 1068139, at *1 (M.D. Fla. Apr. 6, 2007). Further, regarding all parties, “complete diversity” must exist for the court to retain jurisdiction

– that is, every plaintiff must be diverse from every defendant. Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998).

Here, Plaintiff has failed to properly plead the citizenship of all parties. As to the parties that are natural persons, Plaintiff has alleged that Defendants J. Michael Nidiffer and J. Brent Roswall are “residents” of Tennessee. (Complaint, ¶¶ 5-6). Because Plaintiff alleged the residency of these parties and not their citizenship, the Plaintiff has failed to properly plead their citizenship for purposes of diversity jurisdiction.

As to the party that is an entity rather than a natural person, Plaintiff has alleged that Defendant Gunter Village, LLC is a Florida LLC, but Plaintiff has not alleged the citizenship of its members. (Complaint, ¶ 4). Accordingly, Plaintiff has failed to properly plead the citizenship of Defendant Gunter Village, LLC.

To correct deficient allegations of citizenship, Plaintiff shall amend its Complaint (Doc. 1), if at all, no later than July 31, 2009. If Plaintiff fails to file the amendment by this deadline, this case shall be dismissed for want of jurisdiction.

SO ORDERED, this the 23rd day of July, 2009.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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