

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOSEPH C. CANOUSE,

Plaintiff,

v.

1:14-cv-02474-WSD

**AMERICAN PREMIUM WATER
CORPORATION, et al.,**

Defendants.

ORDER

On July 31, 2014, Plaintiff Joseph C. Canouse (“Plaintiff”) filed this breach of contract and conversion action against Defendants American Premium Water Corporation and Alfred Culbreth (“Culbreth”).

Plaintiff’s Complaint asserts that the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. Federal courts “have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.” Arbaugh v. Y&H Corp., 546 U.S. 500, 501 (2006). The Eleventh Circuit consistently has held that “a court should inquire into whether it has subject matter jurisdiction at the earliest possible stage in the proceedings. Indeed, it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” Univ. of

S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999). It is clear in this case that Plaintiff’s Complaint raises only questions of state law and that the Court only could have diversity jurisdiction over this matter.

Diversity jurisdiction exists where the amount in controversy exceeds \$75,000 and the suit is between citizens of different states. 28 U.S.C § 1332(a). “Diversity jurisdiction, as a general rule, requires complete diversity—every plaintiff must be diverse from every defendant.” Palmer Hosp. Auth. of Randolph Cnty., 22 F.3d 1559, 1564 (11th Cir. 1994). “Citizenship for diversity purposes is determined at the time the suit is filed.” MacGinnitie v. Hobbs Grp., LLC, 420 F.3d 1234, 1239 (11th Cir. 2005). “The burden to show the jurisdictional fact of diversity of citizenship [is] on the . . . plaintiff.” King v. Cessna Aircraft Co., 505 F.3d 1160, 1171 (11th Cir. 2007) (alteration and omission in original) (quoting Slaughter v. Toye Bros. Yellow Cab Co., 359 F.2d 954, 956 (5th Cir. 1966)).

The Complaint does not adequately allege Defendant Culbreth’s citizenship. The Complaint states that Defendant Culbreth is a resident of Miami, Florida. See Compl. at 2. This allegation is not sufficient to establish diversity jurisdiction because “[r]esidence alone is not enough” to show citizenship. Travaglio v. Am. Express Co., 735 F.3d 1266, 1269 (11th Cir. 2013). For United States citizens, “[c]itizenship is equivalent to ‘domicile’ for purposes of diversity jurisdiction,”

and “domicile requires both residence in a state and ‘an intention to remain there indefinitely.’” Id. (quoting McCormick v. Aderholt, 293 F.3d 1254, 1257–58 (11th Cir. 2002)).¹


The Court is thus unable to determine whether diversity jurisdiction exists in this matter. Because the Complaint fails to allege Defendant Culbreth’s citizenship, the Court is not able to determine whether it has subject matter jurisdiction over this proceeding. The Court is required to dismiss this action, unless Plaintiff files an Amended Complaint alleging sufficient facts to show the Court’s jurisdiction or submits evidence establishing jurisdiction. See Travaglio v. Am. Express Co., 735 F.3d 1266, 1268–69 (11th Cir. 2013) (holding that the district court must dismiss an action for lack of subject matter jurisdiction unless the pleadings or record evidence establishes jurisdiction).

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Plaintiff file an Amended Complaint, on or before 5 p.m., on October 1, 2014, that alleges the parties’ citizenship.

¹ Depending on their immigration status, foreign nationals may be treated as either “citizens or subjects of a foreign state” or citizens of their state of domicile for purposes of diversity jurisdiction. See Foy v. Schantz, Schatzman & Aaronson, P.A., 108 F.3d 1347, 1348–49 (11th Cir. 1997); see also 28 U.S.C. § 1332(a)(2).

SO ORDERED this 24th day of September 2014.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE