

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

LARRY J. STOKES

PLAINTIFF

V.

CIVIL ACTION NO. 1:16-CV-00152-SA-DAS

CAPTAIN D'S, LLC,
CAPTAIN D'S REALTY, LLC,
CAPTAIN D'S DBA,
STORE MASTER FUNDING I, LLC, and
SHN PROPERTIES, LLC

DEFENDANTS

ORDER

There are two motions pending in this case. The first is a Motion to Dismiss [19] filed by the Defendants to dismiss two parties, Captain D's Realty, LLC, and Captain D's DBA. The Plaintiff has no objection to this motion. The second is a Motion for Leave to Amend [20] filed in response to the Court's Order to Show Cause [18] as to jurisdiction.

In light of the fact that there is no opposition to the Defendant's Motion to Dismiss, the Court finds the motion well taken and it is therefore granted. Captain D's Realty, LLC, and Captain D's DBA are dismissed from this case without prejudice.

Moving to the Defendants' Motion for Leave to Amend, the Court's Order recognized that the Defendants failed to adequately allege the citizenship of the Plaintiff, Captain D's DBA, and Defendant Store Master Funding I, LLC.

In their proposed Amended Notice of Removal the Defendants affirmatively allege that the Plaintiff is a citizen of Mississippi, and have therefore established the Plaintiff's citizenship for jurisdictional purposes.

Because Captain D's DBA is now dismissed from this action, its citizenship is no longer an issue for purposes of jurisdiction. Store Master Funding I, LLC remains a party to this action.

In their proposed Amended Notice of Removal the Defendants' allege:

Store Master Funding I, LLC is a Delaware Limited Liability Corporation whose sole member is Store Capital Acquisitions, LLC, a Delaware Limited Liability Corporation. Both Store Master Funding I, LLC's and Store Capital Acquisitions, LLC's principal place of business is Arizona. Store Master Funding I, LLC is therefore a citizen of Delaware and Arizona for the purposes of diversity jurisdiction.

This is not an adequate jurisdictional allegation. As clearly stated in the Court's Order, although the state of incorporation and principal place of business are sufficient jurisdictional facts to establish a corporation's citizenship, Store Master Funding is an LLC. The Fifth Circuit has held that the citizenship of an LLC "is determined by the citizenship of *all* its members." *Harvey*, 542 F.3d at 1079-80. Because Store Capital Acquisitions, LLC is also an LLC, the citizenship of *all* of its members must also be affirmatively alleged. Store Master Funding I, LLC's citizenship is not clear from the pleadings, and the existence of federal jurisdiction is in question. For this reason, the Defendants' Motion for Leave to Amend is denied.

The Defendants' unopposed Motion to Dismiss [19] is GRANTED and Captain D's Realty, LLC, and Captain D's DBA are DISMISSED from this case without prejudice. The Defendants' Motion for Leave to Amend [20] is DENIED.

The Defendants have fourteen days from the entry of this Order to submit: (1) a response sufficiently alleging the citizenship of Store Master Funding, LLC, and the attendant state of citizenship of each of its members as of the date of removal; and (2) a motion for leave, pursuant to 28 U.S.C. § 1653, to amend the jurisdictional allegations of the notice of removal to adequately allege diversity jurisdiction.

A failure to adequately allege jurisdiction will result in dismissal of the action.

SO ORDERED on this 20th day of December, 2016

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE