

**FILED**

**AUG 14 2017**

Clerk, U.S. District Court  
District Of Montana  
Helena

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

RILEY MALONE, individually, and  
formerly d/b/a RIM CONSOLIDATED  
MINING INC.,

Plaintiff,

vs.

KATHLEEN D. MURRAY  
REVOCABLE LIVING TRUST,

Defendant.

No. CV-17-49-BU-SEH

**ORDER**

Defendant removed this action from state court by Notice of Removal<sup>1</sup> filed July 28, 2017. Jurisdiction was not well-pleaded. The Court granted Defendant the opportunity to file an amended notice of removal on or before August 11, 2017, by

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<sup>1</sup> Doc. 1.

Order of August 4, 2017.<sup>2</sup> Defendant filed its Amended Notice of Removal<sup>3</sup> on August 4, 2017. However, jurisdiction is still not well-pleaded.

The removal statute is strictly construed against removal jurisdiction. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9<sup>th</sup> Cir. 1992). The “strong presumption” against removal jurisdiction requires the defendant to carry the burden of showing removal is proper. Id. Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance. Id.

The Notice asserts federal jurisdiction under 28 U.S.C. §§1332 and 1441.

28 U.S.C. §1332(a)(1) states:

(a) The district courts shall have original 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—

(1) citizens of different States;

Only residence of Plaintiff is alleged. Citizenship is not. The diversity statute speaks of citizenship, not of residency. Kanter v. Warner-Lambert, 265 F.3d 853, 857 (9th Cir. 2001). Citizenship cannot be “deemed” by residency. Id. It is thus impossible for the Court to determine whether complete diversity exists.

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<sup>2</sup> Doc. 3.

<sup>3</sup> Doc. 4.

ORDERED:

This case is REMANDED to the Montana Fifth Judicial District Court for lack of jurisdiction.

DATED this 14<sup>th</sup> day of August, 2017.

  
SAM E. HADDON  
United States District Judge