

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CONNIE B. ROVIGO,

Plaintiff,

**1:15-cv-687
(GLS/CFH)**

v.

**THE BANK OF NEW YORK
MELLON, as Trustee for the
Alternative Loan Trust 2005-55CB,
et al.,**

Defendants.

SUMMARY ORDER

Plaintiff *pro se* Connie Rovigo commenced this action against defendants The Bank of New York Mellon,¹ as the Trustee for the Alternative Loan Trust 2005-55CB, Select Portfolio Servicing, Inc., Mortgage Electronic Registration Systems, Inc., and Does 1-10 alleging a violations of state law arising from a mortgage on a property located at 739 County Route 19, Elizaville, New York 12523. (Compl., Dkt. No. 1.) Defendants subsequently filed a motion to dismiss. (Dkt. No. 14.)

Although not raised by either party, the court must first address

¹ Rovigo incorrectly identified "The Bank of New York" as a defendant in her complaint. (Dkt. No. 8, Attach. 2; Dkt. No. 14, Attach. 4 at 1 n.1.) The court directs the Clerk to amend the caption to read "The Bank of New York Mellon."

whether it has subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3); *Lovejoy v. Watson*, 475 F. App'x 792, 792 (2d Cir. 2012) (“Where jurisdiction is lacking, . . . dismissal is mandatory.” (internal quotation marks and citation omitted)). Rovigo invokes this court’s diversity jurisdiction alleging that the plaintiff and defendants are diverse and the amount in controversy exceeds \$75,000. (Compl. ¶¶ 1, 4, 6, 8, 11, 13-17, 132.) As relevant here, diversity jurisdiction over civil actions requires that “the matter in controversy exceeds the sum or value of \$75,000 . . . , and is between citizens of different states.” 28 U.S.C. § 1332(a)(1). As such, there must be “complete diversity,” i.e. all plaintiffs must be citizens of states diverse from those of all defendants.” *Pennsylvania Pub. Sch. Emps.’ Ret. Sys. v. Morgan Stanley & Co., Inc.*, 772 F.3d 111, 118 (2d Cir. 2014). “The party asserting jurisdiction bears the burden of proof.” *Id.*

Here, both Rovigo and The Bank of New York Mellon are citizens of New York, thereby precluding complete diversity between plaintiff and defendants. (Compl. ¶¶ 1, 4, 14-15.); see *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 464-65 (1980) (holding that trustees of a business trust invoke their own citizenship for the purposes of diversity jurisdiction). As Rovigo has only raised state law claims to challenge the validity of her mortgage,

(see generally Compl.), the court does not have jurisdiction to hear the case on the basis of 28 U.S.C. § 1331 either. To the extent that Rovigo seeks leave to amend to add additional state law claims, such amendment would be futile because the court would still lack jurisdiction. See *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000); 28 U.S.C. § 1332(a)(1).

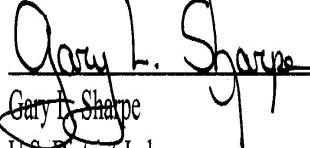
Accordingly, it is hereby

ORDERED that Rovigo's complaint (Dkt. No. 1) is **DISMISSED** for lack of subject matter jurisdiction; and it is further
ORDERED that defendants' motion (Dkt. No. 14) is **DENIED AS MOOT**; and it is further

ORDERED that the Clerk shall close this case; and it is further
ORDERED that the Clerk provide a copy of this Summary Order to the parties.

IT IS SO ORDERED.

December 6, 2016
Albany, New York



Gary L. Sharpe
U.S. District Judge