

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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THERESA ALICEA, JOSE RAMON
ALICEA, CONJUGAL PARTNERSHIP
ALICEA-ALICEA,

Plaintiffs,

v.

ARECIBO LIGHTHOUSE &
HISTORICAL PARK, UNITED STATES,

Defendants.

Civil No. 13-1637 (JAF)

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6 **OPINION AND ORDER**

7 Plaintiffs Theresa Alicea (“Alicea”), José Ramón Alicea (“Ramón”), and the
8 Conjugal Partnership Alicea-Alicea (collectively “Plaintiffs”), are suing Defendants
9 Arcibo Lighthouse and Historical Park (“Lighthouse”) and the United States
10 (collectively “Defendants”). Plaintiffs are suing the United States under 28 U.S.C.
11 § 1346(b); the Federal Tort Claims Act; 5 U.S.C. § 552a(b); 28 U.S.C. § 1331; 28 U.S.C.
12 § 1343; and 28 U.S.C. § 1367. Plaintiffs are suing the Lighthouse under Puerto Rico Civil
13 Code, Article 1802, and 31 L.P.R.A. § 5141, via diversity jurisdiction, 28 U.S.C. § 1332.
14 (Docket No. 2.)

15 Lighthouse moves us to dismiss the case, alleging that there is no diversity of
16 citizenship under 28 U.S.C. § 1332. (Docket No. 12.) They point to Plaintiffs’ incident
17 report, which lists Plaintiffs’ address as 8 Ave. Laguna, Carolina 00979. (Docket No. 12-
18 1.) Plaintiffs respond that, although they have a second residence in Puerto Rico, they are
19 domiciled in New York and are, therefore, diverse parties. (Docket No. 17.)

1 “For purposes of diversity, a person is a citizen of the state in which he is
2 domiciled.” Padilla-Mangual v. Pavia Hospital, 516 F.3d 29, 31 (1st Cir. 2008). A
3 person’s domicile “is the place where he has his true, fixed home and principal
4 establishment, and to which, whenever he is absent, he has the intention of returning.”
5 Rodríguez-Díaz v. Sierra-Martinez, 853 F.2d 1027, 1029 (1st Cir. 1988) (internal citations
6 omitted). In determining a party’s intent to return, we consider “the place where civil and
7 political rights are exercised, taxes paid, real and personal property (such as furniture and
8 automobiles) located, driver’s and other licenses obtained, bank accounts maintained,
9 location of club and church membership and places of business or employment.” Bank
10 One, Tex., N.A. v. Montle, 964 F.2d 48, 50 (1st Cir. 1992) (internal citation omitted).

11 Plaintiffs have a home at 60 West 104 Street, Apartment 11G, New York, New
12 York. (Document 17 at 2.) They both have current New York State driver’s licenses or
13 identification cards (Docket No. 17-1); their bank statements are mailed to their New
14 York apartment (Docket No. 17-2); they file taxes in New York State (Docket No. 17-3);
15 and they receive medical care in New York State (Docket No. 17-4). Plaintiffs have
16 established that they are domiciled in New York.

17 Therefore, Lighthouse’s motion to dismiss (Docket No. 12) is **DENIED**.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 30th day of May, 2014.

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S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE