

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DON MORELLO and JEAN MORELLO,
Husband and Wife,
d/b/a PLEASANT SPRINGS SUBS, INC.,

Plaintiffs,

v.

RANGER ENTERPRISES, INC.,
a Foreign Corporation Incorporated in Illinois,

Defendant.

ORDER

03-C-0231-C

This is a civil action for injunctive relief to enjoin defendant from terminating plaintiffs' tenancy at the property located at 2762 Highway N., Cottage Grove, Wisconsin until the controversy relating to the parties' contract is settled by binding arbitration. Plaintiffs initiated the suit in state court; defendant removed it, alleging diversity jurisdiction.

Although neither party disputes diversity, the court has an independent obligation to insure that it exists. See generally, Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002). In its complaint, plaintiffs allege that they reside in Verona, Wisconsin. They

also allege they do business as “Pleasant Springs Subs, Inc.” There is no mention of where Pleasant Springs, Inc. is incorporated or where its principal place of business is located. For diversity purposes, the citizenship of a corporation is determined by the state in which it is incorporated or in which it has its principal place of business. See 28 U.S.C. § 1332(c). Furthermore, it is not clear whether Pleasant Springs Subs, Inc. is a corporation and if so, whether it is a separate party to this lawsuit.

Although a defendant may remove merely by filing notice of removal, 28 U.S.C. § 1446, and it is usually the plaintiff that alerts the federal court to a lack of federal jurisdiction by filing a motion to remand, 28 U.S.C. § 1447(c), the party seeking to invoke jurisdiction bears the burden of supporting its jurisdictional allegations by "competent proof." NFLC, Inc. v. Devcom Mid-America, Inc., 45 F.3d 231, 237 (7th Cir. 1995) (citing McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178, 189 (1936)). The Court of Appeals for the Seventh Circuit has interpreted this burden to mean that a party must show "to a reasonable probability that jurisdiction exists." Chase v. Shop 'N Save Warehouse Foods, Inc., 110 F.3d 424, 427 (7th Cir. 1997).

Defendant may have until August 14, 2003, to provide this court with verification that Pleasant Springs Subs, Inc. is a corporation and party to this lawsuit, and if so, Pleasant Springs Subs, Inc.’s state of incorporation and its principal place of business. Alternatively, it may advise the court that it has determined that Pleasant Springs Subs, Inc. is not a separate party to the lawsuit.

ORDER

IT IS ORDERED that defendant Ranger Enterprises, Inc. may have until August 14, 2003, to submit an affidavit setting forth the corporate status of Pleasant Springs Subs, Inc., its state of incorporation and its principal place of business.

Entered this 11th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge