

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

C. E. NIEHOFF & CO.,

Plaintiff,

v.

QUANTUM DEVICES, INC.,
QUANTUM MECHANIX, INC.,
JOSEPH IGNATIUS and UNKNOWN
SHAREHOLDERS OF QUANTUM
MECHANIX, INC.,

Defendants.

ORDER

06-C-480-C

In this civil action for replevin, plaintiff C.E. Niehoff contends that defendants Quantum Devices, Inc., Quantum Mechanix, Inc., Joseph Ignatius and unidentified shareholders of defendant Quantum Mechanix breached the terms of several production contracts and warranties relating to defendants' production of components plaintiff used in the alternators and charging systems it manufactured. Jurisdiction is present under 28 U.S.C. § 1332.

Before the court is defendant Quantum Device's motion to dismiss count VI of plaintiff's amended complaint, which charges defendants with fraudulently inducing plaintiff

to enter into a production contract for brass inserts used in the alternators plaintiff manufactures. In reviewing the parties' submissions, it has come to my attention that plaintiff has not alleged facts in its amended complaint from which I may conclude that this court has subject matter jurisdiction over the parties. Without jurisdiction, the court lacks the power to proceed with any aspect of this lawsuit. Therefore, I will stay a decision on defendant Quantum Device's motion to dismiss to permit plaintiff to supplement the allegations of its complaint with proof of the parties' diverse citizenship.

In its complaint, plaintiff alleges that it is an Illinois corporation with its principal place of business in Evanston, Illinois and defendants Quantum Devices, Inc. and Quantum Mechanix, Inc. are Wisconsin corporations with their principal places of business in Barneveld, Wisconsin. So far, so good.

However, plaintiff alleges also that "on information and belief," defendant Joseph Ignatius and defendant unknown shareholders of defendant Quantum Mechanix, Inc. "live in Wisconsin." "Citizenship may differ from residence"; therefore, to allege diversity jurisdiction, a party must identify the state of citizenship of each individual person named as a litigant. Macken ex rel. Macken v. Jensen, 333 F.3d 797, 799 (7th Cir. 2003). Identifying defendant Ignatius's citizenship should be an easy task; however, the unidentified defendants present a problem of their own.

It is not entirely clear why plaintiff has named unidentified shareholders as

defendants in this lawsuit. In cases in which unidentified defendants are “nominal parties . . . whose addition was a mere gesture,” courts have been willing to overlook the question of diversity with respect to the unnamed persons. Moore v. General Motors Pension Plans, 91 F.3d 848, 850 (7th Cir. 1996); United States Fire Insurance Co., Inc. v. Charter Financial Group, Inc., 851 F.2d 957, 959 n. 3 (7th Cir. 1988). In such cases, the unnamed litigants must have no legal interest in the pending action. United States Fire Insurance Co., Inc., 851 F.2d at 959 n.3.

In this case, however, it appears that “plaintiff has identified specific additional defendants he wishes to sue, but is simply uncertain as to their names.” Moore, 91 F.3d at 850. Plaintiff is seeking to “pierce Quantum Mechanix’[s] corporate veil and hold Joseph Ignatius and Unknown Stockholders of Quantum Mechanix directly liable for all amounts due and owing to C. E. Niehoff.” Clearly, the unnamed litigants have an interest in the outcome of this lawsuit. “Because diversity jurisdiction must be proved by the plaintiff rather than assumed as a default, this court cannot presume that [the unidentified shareholders] are diverse with respect to the plaintiff.” Id. (citing Pollution Control Industries of America v. Van Gundy, 21 F.3d 152, 155 (7th Cir. 1994)).

This court has an independent obligation to insure that subject matter jurisdiction exists. Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002). The Court of Appeals for the Seventh Circuit has reiterated the need for litigants to meticulously review the limits

of federal jurisdiction to prevent the waste of federal judicial resources. Smoot v. Mazda Motors of America, Inc., 469 F.3d 675, 676-77 (7th Cir. 2006); Belleville Catering Co. v. Champaign Market Place, L.L.C., 350 F.3d 691 (7th Cir. 2003). The federal courts are “always obliged to inquire sua sponte whenever a doubt arises as to the existence of federal jurisdiction.” Tylka v. Gerber Products Co., 211 F.3d 445, 447-48 (7th Cir. 2000).

As the party seeking federal jurisdiction of his claim, plaintiff bears the burden of showing that federal jurisdiction existed at the time its complaint was filed. Chase v. Shop n' Save Warehouse Foods, Inc., 110 F.3d 424, 427 (7th Cir. 1997) (“party seeking to invoke federal diversity jurisdiction bears the burden of demonstrating that the complete diversity and amount in controversy requirements are met.”). So far, it has not met this burden.

When the allegations of a complaint are defective because of their failure to indicate the citizenship of the parties, plaintiffs must be given an opportunity to “cure [the] potentially curable defect.” Denlinger v. Brennan, 87 F.3d 214, 217 (7th Cir. 1996). Therefore, I will give plaintiff one month in which to produce facts verifying the citizenship of defendants Joseph Ignatius and unnamed shareholders of defendant Quantum Mechanix. In addition, I will permit plaintiff to conduct limited discovery on the question of citizenship only. Failure to submit proof of diverse citizenship by May 5, 2007, will result in the dismissal of this case for lack of subject matter jurisdiction. Id. (“Failure to include the necessary allegations in the complaint, even after an opportunity to amend, usually means

dismissal.”)

ORDER

IT IS ORDERED that plaintiff C. E. Niehoff, Inc. may have until May 5, 2007, in which to provide this court with verification of the citizenship of each defendant. Failure to comply with this deadline will result in the dismissal of the case for lack of subject matter jurisdiction.

Entered this 3rd day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge