

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

ROBERT ESTES and BECKY L.
ESTES,

Plaintiff,

TRAVELERS HOME & MARINE
INSURANCE COMPANY,

Subrogated Plaintiff,

v.

RAZOR USA, LLC,

Defendant.

OPINION AND ORDER

13-cv-22-wmc

On April 18, 2013, this court *sua sponte* filed an order requiring plaintiffs Robert Estes and Becky L. Estes to file an amended complaint containing allegations sufficient to establish this court's jurisdiction pursuant to 28 U.S.C. § 1332. (Dkt. #8.) On May 3, 2013, plaintiffs filed an amended complaint. (Dkt. #13.) This pleading too proves inadequate. Plaintiffs will be given one more chance to file a complaint with sufficient allegations for this court to determine whether complete diversity exists. Failing this, the court will promptly dismiss this case without prejudice.

In the April 18, 2013, order the court advised plaintiffs that the complaint did not contain allegations sufficient to determine the citizenship of defendant Razor USA, LLC.

In the amended complaint, plaintiffs now allege:

3A. The Defendant, Razor USA, LLC has three (3) principals with the following citizenship:

- (1) One individual principal with Taiwanese citizenship and California residence;
- (2) One corporate principal with California incorporation and principal place of business; and
- (3) One individual (deceased after date of filing) with Taiwanese citizenship and residence.

(Am. Compl. (dkt. #13) ¶ 3A.)

First, plaintiffs continue to refer to Razor USA, LLC as a “California corporation.” To be clear, because the terminology matters, a limited liability company is not a corporation. Moreover, based on the court’s own research, while Razor USA, LLC registered in California, it was formed as an LLC in Delaware. California Secretary of States, Corporate Filing for “Razor USA LLC”, (listing “Delaware” as “Foreign State of Incorporation”). Plaintiffs’ flippant treatment of these particulars causes the court to question the correctness and completeness of other allegations relating to the citizenship of Razor USA’s three principals or members.

Second, Razor USA, LLC’s filing with the California Secretary of State lists two members: Calvin Carlton and Robert Chen. Both individuals are listed with a Cerritos, California address. The court presumes that these are the two individual members as principals. The third alleged member, a “corporate principal with California incorporation and principal place of business,” is not identified in the California registration. Because of plaintiffs’ incorrect use of “corporation” to refer to defendant, the court will require plaintiffs to identify the full name of the “corporate” principal so that the court can determine whether its citizenship is correctly based on its actual place of incorporation and principal place of business.

Third, as for the individual members of Razor USA, LLC, plaintiffs have not adequately plead their respective citizenships, as that term is defined by 28 U.S.C. § 1332. An individual is a citizen of the state in which she is domiciled, which is “the place one intends to remain.” *Dakuras v. Edwards*, 312 F.3d 256, 258 (7th Cir. 2002). As a result, a person has only one domicile, but may have several residences. “Residence and citizenship are not synonyms and it is the latter that matters for purposes of diversity jurisdiction.” *Meyerson v. Harrah’s E. Chi. Casino*, 299 F.3d 616, 617 (7th Cir. 2002). Moreover, while not noted in the court’s April 18, 2013, order, plaintiffs’ allegations of their own citizenship is similarly inadequate. (Am. Compl. (dkt. #13) ¶ 1 (identifying plaintiffs as “residents” of Wisconsin).)

To the extent that this seems trivial, counsel for plaintiffs should review cases in which the Seventh Circuit has sanctioned or considered sanctioning counsel for failing to adequately plead jurisdiction on appeal. *See, e.g., Thomas v. Guardsmark, LLC*, 487 F.3d 531, 535 (7th Cir. 2007) (sanctioning counsel \$1000 for filing inadequate jurisdictional statement); *Smoot v. Mazda Motors of Am., Inc.*, 469 F.3d 675, 678 (7th Cir. 2006) (“We direct the parties to show cause within 10 days why counsel should not be sanctioned for violating Rule 28(a)(1) and mistaking the requirements of diversity jurisdiction. We ask them to consider specifically the appropriateness, as a sanction, of their being compelled to attend a continuing legal education class in federal jurisdiction.”).

Plaintiffs will have one week to correct the remaining deficiencies in their pleading subject matter jurisdiction in this case. Failure to comply in *any* respect will result in the prompt dismissal of this action for lack of jurisdiction.

ORDER

IT IS ORDERED that:

- 1) Plaintiffs shall have until May 17, 2013, to file and serve a second amended complaint containing good faith allegations sufficient to establish complete diversity of citizenship for purposes of determining subject matter jurisdiction under 28 U.S.C. § 1332; and
- 2) failure to amend timely shall result in prompt dismissal for lack of subject matter jurisdiction.

Entered this 10th day of May, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge