

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY MATTIA and WILLIAM VESPE,

Plaintiffs,

v.

SUGARHOUSE HSP GAMING, L.P., et al.,

Defendants.

Civil Action

No. 2:19-cv-02220-GEKP

Judge Gene E.K. Pratter

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

I. INTRODUCTION

Plaintiffs, Anthony Mattia (“Mattia”) and William Vespe (“Vespe”) (collectively, “Plaintiffs”) bring this case as a “diversity action” pleading only state law claims. As a result, the Complaint must include facts to show diversity of citizenship between plaintiffs and defendants. Not only does it not show diversity, the Complaint does not even properly plead the citizenship of the parties. For the plaintiffs, it only identifies their residency, not citizenship, which courts find is not sufficient for subject matter jurisdiction purposes. For Defendant SugarHouse HSP Gaming, L.P. d/b/a SugarHouse Casino (“SugarHouse” or “Defendant”), the Complaint notes it is a limited partnership but then does not allege the citizenship of any of the partners, as the law requires. The Complaint also alleges claims against anonymous defendants but then does not identify their citizenship either, which alone destroys any purported diversity. For all of these reasons, the Complaint on its face fails to plead subject matter jurisdiction and should be dismissed.

Defendant gave Plaintiffs the opportunity to withdraw the Complaint so that the Court would not be burdened with this motion. *See* Ex. A, e-mail correspondence dated June 19, 2019. Plaintiffs, however, refused to do so, and instead indicated they were still looking into whether jurisdiction exists. *See* Ex. B, e-mail correspondence dated June 23, 2019. The Complaint should be dismissed now so that the Plaintiffs may complete the investigation that should have been done before the filing of this action.

II. PLAINTIFFS' COMPLAINT ALLEGATIONS

A. Plaintiffs Assert Solely State Law Claims.

Plaintiffs Mattia and Vespe purportedly suffered “wagering losses” from May 2017 to January 1, 2018. *See* D.E. 1, Compl., at ¶¶ 11-12. Plaintiffs also allege SugarHouse committed several “infractions” and “violations” in connection with certain table games’ alleged use of “illegitimate” decks as having too many, too few, the improper denomination of, and/or sequentially-ordered (rather than randomly-shuffled) cards as well as “fail[ing] to properly address warning lights on automated shufflers.” *Id.* at ¶¶ 13-14, 16, 18-20, 22-24, 26, 28-29, 33, 38, and 46. Plaintiffs, however, do not allege any specific facts that establish they gambled and suffered “wagering losses” on the same dates in which SugarHouse purportedly committed the infractions identified in the Complaint. *See generally* D.E. 1, Compl.

Even though it is missing this critically important causal connection,¹ the Complaint asserts several garden-variety state law claims: (i) negligence (*id.* at ¶¶ 31-35); (ii) breach of contract (*id.* at ¶¶ 36-40); (iii) unjust enrichment (*id.* at ¶¶ 41-43); (iv) breach of good faith and fair dealing (*id.* at ¶¶ 44-48); (v) fraud (*id.* at ¶¶ 49-54); and (vi) conspiracy to commit fraud (*id.* at ¶¶ 55-60). It

¹ SugarHouse reserves the right to file a motion to dismiss on this basis.

does not, however, plead any federal law claims and, as a result, the Complaint characterizes this case as solely a “diversity action.” *Id.* at ¶ 1.

B. Plaintiffs Do Not Allege Facts Showing Diversity Of Citizenship.

Plaintiffs assert “[t]he matter in controversy exceeds \$75,000 and *all parties to this action are citizens of different states.*” *Id.* at ¶ 1 (emphasis added). The Complaint, however, fails to plead any of the parties’ actual states of citizenship. Rather, the Complaint identifies each Plaintiffs’ city, county, and state of *residence*. *Id.* at ¶¶ 4 (“Mattia is a resident of the City of Philadelphia, County of Philadelphia, State of Pennsylvania”) and 5 (“Vespe is a resident of the City of Cherry Hill in the County of Camden in the State of New Jersey”) (emphasis added). Furthermore, the Complaint, while recognizing SugarHouse is a limited partnership (*See id.* at ¶6), it irrelevantly notes SugarHouse’s principal place (“office”) of business (in Philadelphia, PA) and state of organization (Delaware) rather than the *citizenship* of its partners, as required. *Id.* at ¶¶ 3 and 6. It also brings claims against “John Doe Companies I-X,” “John Does I-X,” and “Jane Does I-X” (collectively, “John Doe Defendants”) (*id.* at ¶¶ 49-60) but does not identify their citizenship.

III. ARGUMENT

A. Courts Must Dismiss Complaints That Fail To Allege Facts Supporting Subject Matter Jurisdiction.

This Court has jurisdiction over the state law claims only if Plaintiffs establish the necessary elements of diversity jurisdiction under 28 U.S.C. § 1332. “Federal district courts are vested with original jurisdiction over civil actions where the matter in controversy exceeds the sum or value of \$75,000 and is between ‘citizens of different States.’” *McCann v. Newman Irrevocable Tr.*, 458 F.3d 281, 286 (3d Cir. 2006) (citing 28 U.S.C. § 1332(a)(1)).

If Plaintiffs do not meet these elements, then this Court does not have subject matter jurisdiction and must dismiss the Complaint before reaching the merits. “It is fundamental that

federal courts must have subject matter jurisdiction before reaching the merits of a case, and, as its name indicates, jurisdiction based on diversity of citizenship requires that opposing parties be citizens of diverse states.” *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 34 (3d Cir. 2018) (citing *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 418 (3d Cir. 2010)). The party claiming jurisdiction bears the burden of demonstrating complete diversity. *See Chem. Leaman Tank Lines, Inc. v. Aetna Cas. & Sur. Co.*, 177 F.3d 210, 222, n. 13 (3d Cir. 1999).

Courts routinely grant Rule 12(b)(1) motions to dismiss when the Complaint fails to allege sufficient facts to establish diversity of citizenship and thus satisfy subject matter jurisdiction. *See Scanlin v. Soldiers & Sailors Mem'l Hosp.*, No. 4:06-CV-01915, 2007 WL 141014, at **3-4 (M.D. Pa. Jan. 17, 2007) (dismissing complaint as facially deficient where there was “no suggestion whatsoever that [plaintiff] and the defendants are citizens of different states.”); *Fifth Third Bank v. Flatrock 3, LLC*, No. 09-CV-06051 DMC-JAD, 2010 WL 2998305, at *3 (D.N.J. July 21, 2010) (motion to dismiss granted because of Plaintiffs’ “fail[ure] to identify or trace the citizenship of each individual member of [the limited liability company and limited partner defendants] for purposes of establishing diversity jurisdiction.”); *Arneault v. Diamondhead Casino Corp.*, 277 F. Supp. 3d 671, 676 (D. Del. 2017) (dismissing complaint where plaintiffs failed to “simply list the state of citizenship of each member of the [unincorporated] association” defendant.).

Such challenges are called “facial” attacks. *See Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 357 (3d Cir. 2014). “A facial attack, as the adjective indicates, is an argument that considers a claim on its face and asserts that it is insufficient to invoke the subject matter jurisdiction of the court because [...] there is no indication of a diversity of citizenship among the parties[.]” *Id.* at 358. “In reviewing a facial attack, the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable

to the plaintiff.” *Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000). Here, the Complaint on its face fails to establish diversity of citizenship.

B. Diversity of Citizenship Does Not Exist on the Face of the Complaint And Therefore It Should Be Dismissed.

The Complaint does not properly plead the citizenship of any party, let alone establish diversity of citizenship. It therefore should be dismissed for at least three reasons.

First, it does not allege the citizenship of the Plaintiffs. Instead, it only identifies the Plaintiffs’ residency, which is not relevant. “Alleging residency alone is insufficient to plead diversity of citizenship.” *GBForefront, L.P.*, 888 F.3d at 35 (citing *McNair v. Synapse Grp. Inc.*, 672 F.3d 213, 219 n.4 (3d Cir. 2012)). Domicile is what matters for the purposes of determining a natural person’s citizenship—not their residence:

A difference between the concepts of residence and domicile has long been recognized. A person is generally a resident of any state with which he has a well-settled connection. [...] “Intent to remain indefinitely” in the State need not be shown in order to be considered a resident of a state.

Martinez v. Bynum, 461 U.S. 321, 338-39 (1983) (citations omitted). On the other hand,

[c]itizenship is synonymous with domicile, and the domicile of an individual is his true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning. [...] An individual can change domicile instantly. To do so, two things are required: [h]e must take up residence at the new domicile, and he must intend to remain there.

McCann, 458 F.3d at 286.

Without an allegation of their respective domiciles, the Plaintiffs have failed to allege their own state citizenship and therefore have not pled subject matter jurisdiction. Courts routinely dismiss cases when faced with such deficiencies. *See Odell v. One W. Bank, NA*, No. CV 16-0984, 2016 WL 3551621, at *1 (E.D. Pa. June 30, 2016) (court dismissing action where it could not determine whether there is complete diversity “[b]ecause the plaintiff has failed to allege the state of citizenship of any party[.]”).

Second, the Complaint does not set forth Defendant SugarHouse’s citizenship, either. While the Complaint acknowledges that SugarHouse is “a limited partnership,” it does not allege the facts relevant to the citizenship of a limited partnership (*i.e.*, an unincorporated association). Rather, the Complaint focuses on facts relevant to a corporation’s citizenship – state of organization and location of principal place of business. *See* D.E. 1, Compl. at ¶¶ 3, 6.

SugarHouse’s citizenship—as a limited partnership—is not based on its state of organization or principal place of business but rather the citizenship of all its partners, including each general and limited partner. *See, e.g., Carden v. Arkoma Assoc.*, 494 U.S. 185, 195-96 (1990); *see also Rowles v. GGNCS Altoona Hillview LP*, No. 3:17-CV-22, 2018 WL 559160, at *1 (W.D. Pa. Jan. 24, 2018) (ordering parties to submit sufficient proof regarding citizenship where it found that “mere allegations that [limited partnership and limited liability company] Defendants were created under Delaware state law are insufficient to establish diversity jurisdiction”). As such, SugarHouse’s “state of organization and the principal place of business [...] are legally irrelevant” for purposes of subject matter jurisdiction based on diversity of citizenship. *Lincoln Ben. Life Co.*, 800 F.3d at 105. Rather, courts must “look to the citizenship of all the partners [of a limited partnership]...to determine whether the federal district court has diversity jurisdiction.” *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 182 (3d Cir. 2008).

The Complaint here fails to identify any of SugarHouse’s partners and constituent parts, much less their individual states of citizenship. Therefore, diversity of citizenship is also lacking on the face of the Complaint because it does not allege SugarHouse’s citizenship. The Complaint should be dismissed for this reason as well. *See Fifth Third Bank*, 2010 WL 2998305 and *Arneault*, 277 F. Supp. 3d 671, *supra*; *see also Merchants Mut. Ins. Co., v. New Vistas Corp.*, No. 3:16-CV-8274-BRM-DEA, 2018 WL 3647223, at (D.N.J. July 31, 2018) (motion to dismiss granted where

complaint failed to identify the citizenship of the members of the limited liability company defendants).²

Third, Plaintiffs' use of the John Doe Defendants destroys the Court's subject matter jurisdiction. Plaintiffs allege SugarHouse, Rush Street, and the John Doe Defendants "acted together and conspired to mislead the public" into believing the SugarHouse casino was a "fair wagering environment" while simultaneously "suppl[ying] the table games [*sic*] with illegitimate decks." See D.E. 1, Compl. at ¶¶ 56, 59. However, Plaintiffs fail to specifically allege any of the John Does Defendants' respective state of citizenship. "John Doe parties destroy diversity jurisdiction if their citizenship cannot truthfully be alleged" where there are no allegations as to their citizenship. *Mortellite v. Novartis Crop Protection, Inc.*, 460 F.3d 483, 494 (3d Cir. 2006). Courts routinely dismiss complaints that fail to plead the citizenship of a fictitiously-named defendant. See *Tungsten Heavy Powder & Parts, Inc. v. Glob. Tungsten & Powders Corp.*, No. 4:17-CV-01948, 2018 WL 656033, at *4 (M.D. Pa. Feb. 1, 2018) (complaint dismissed for "fail[ing] to allege the citizenship of John Doe Defendants 1-10 [*sic*] referenced within the Complaint's civil conspiracy claim); *Frisof v. Swift Transp. Co.*, No. 3:07-CV-2331, 2008 WL 2550767, at *1 (M.D. Pa. June 23, 2008) ("Plaintiff does not allege the citizenship of Defendant John Doe, and thus, does not show that she and Defendant John Doe are citizens of different states. Therefore, Plaintiff fails to establish complete diversity and Defendant John Doe's presence appears to destroy federal diversity jurisdiction."); *Vail v. Doe*, 39 F. Supp. 2d 477, 477 (D.N.J. 1999) (dismissed for lack of subject matter jurisdiction where plaintiff failed to plead citizenship

² Defendant Rush Street Gaming, LLC ("Rush Street"), pled as a limited liability company, is also an unincorporated association. As with limited partnerships, plaintiffs must identify the citizenship of each member of a limited liability company. However, Plaintiffs here have similarly failed to do so with respect to any of Rush Street's members.

of John Doe defendant). Plaintiffs' Complaint must also be dismissed for failing to allege the citizenship of the John Doe Defendants.

C. Plaintiffs Should Have Never Filed In Federal Court.

As discussed above, the Complaint does not allege the facts necessary to establish subject matter jurisdiction. The Complaint confuses residency for citizenship, incorrectly treats partnerships as corporations, and asserts claims against unnamed parties without noting their citizenship. **What's worse, even under Plaintiffs' (mis)understanding of the rules governing diversity of citizenship, there still would be no subject matter jurisdiction.** That is, if residency equaled citizenship and the rules for corporations applied to SugarHouse, then Plaintiff Mattia, as a Pennsylvania resident, would have the same citizenship as Defendant SugarHouse, with a Pennsylvania place of business. Again, on the face of the Complaint, it would lack subject matter jurisdiction.

This shows Plaintiffs did not do the research necessary to determine subject matter jurisdiction before burdening this Court with their Complaint, or worse, ignored this analysis altogether. Defendant alerted Plaintiffs of these issues and asked that they withdraw the Complaint. *See* Ex. A. They did not, even though as late as June 23, 2019, Plaintiffs' counsel indicated that Plaintiffs were still investigating to what extent there was subject matter jurisdiction and, if they learned that there was not jurisdiction, they would "withdraw" it (which they have not done). *See* Ex. B. That investigation should have taken place before the filing of the Complaint. The Complaint should be dismissed now, and Plaintiffs should be forced to discharge their obligation

of determining whether subject matter jurisdiction exists, and properly plead as such if it does, before again filing in federal court.³

IV. CONCLUSION

On its face, the Complaint shows this Court does not have jurisdiction and, therefore, it should be dismissed.⁴

Respectfully submitted:

FOX ROTHSCHILD LLP

/s/ Brian A. Berkley
Brian A. Berkley, Esq.
2000 Market Street, 20th Floor
Philadelphia, PA 19103-3222
(215) 299-2000

Thomas A. Mastroianni, Esq.
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422
(610) 397-6500

Dated: June 28, 2019

*Attorneys for Defendant,
SugarHouse HSP Gaming, L.P.
d/b/a SugarHouse Casino*

³ If one of the Plaintiffs is in fact a citizen of Pennsylvania, then diversity will not exist as certain partners of SugarHouse are also Pennsylvania citizens. Plaintiffs can easily find this out, as the identities of SugarHouse's partners are publicly available. See <https://gamingcontrolboard.pa.gov/?p=268>, last accessed on June 26, 2019) (identifying the owners of SugarHouse). Further, SugarHouse also told Plaintiffs of this fact, which Plaintiffs have ignored. See Exs. A and B.

⁴ Were Plaintiffs to refile this action in state court either in a knowingly improper venue (see Ex. B) or without alleging any facts to substantiate their allegations, SugarHouse will seek all appropriate costs and sanctions associated with the costs incurred by having to respond to yet another frivolous complaint.

CERTIFICATE OF SERVICE

I, Brian A. Berkley, hereby certify that, on this date, I caused the foregoing document to be filed electronically with this Court, where it is available for viewing and downloading from the Court's ECF system, and that such electronic filing automatically generates a Notice of Electronic Filing constituting service of the filed document, upon the following:

Conrad J. Benedetto, Esq.
The Law Offices of Conrad J. Benedetto
1615 S Broad St.
Philadelphia, PA 19148-1003
(215) 389-1900

Steven Feinstein, Esq.
Optimum Law Group
1500 Market St. Fl. 12 E Twr
Philadelphia, PA 19102
(267) 833-0200

Attorneys for Plaintiffs

/s/ Brian A. Berkley
BRIAN A. BERKLEY

Dated: June 28, 2019