

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>CHRISTINE PEREZ, and</b>	:	
<b>ANGEL PEREZ,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiffs,</b>	:	
<b>vs.</b>	:	
	:	
<b>SHOP-RITE,</b>	:	
<b>SHOP RITE SUPERMARKETS, INC.,</b>	:	
<b>LAURENTI FAMILY MARKETS, INC.,</b>	:	
<b>SHOP RITE OF BETHLEHEM, INC.,</b>	:	
<b>THE PEPSI BOTTLING GROUP, LLC,</b>	:	
<b>and</b>	:	<b>NO. 01-4717</b>
<b>PEPSI BOTTLING COMPANY</b>	:	
<b>OF ALLENTOWN, PA, INC.,</b>	:	
<b>Defendants.</b>	:	

**ORDER AND MEMORANDUM**

**ORDER**

**AND NOW**, this 5th day of November, 2001, upon consideration of Defendant's, Laurenti Family Markets, Inc.'s,<sup>1</sup> Motion to Dismiss for Lack of Jurisdiction (Document No. 2, filed October 18, 2001), Plaintiff's Response to Defendant, Laurenti Market, Inc., et al., Motion to Dismiss for Lack of Jurisdiction (Document No. 4, filed October 29, 2001), and defendants' letter to the Court dated November 1, 2001, which is identified as a sur-reply,<sup>2</sup> for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that Defendant's, Laurenti Family

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<sup>1</sup>Moving defendants include Shop-Rite, Shop Rite Supermarkets, Inc., Laurenti Family Markets, Inc., and Shop Rite of Bethlehem, Inc.

<sup>2</sup>A copy of the November 1, 2001 letter shall be docketed.

Markets, Inc.’s, Motion to Dismiss for Lack of Jurisdiction is **GRANTED** in part and **DENIED** in part as follows:

1. Plaintiffs’ action is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. The Clerk of the Court shall provide plaintiffs’ counsel with a certified transcript of the final judgment of this court in this matter and a certified transcript of the pleadings in this action in accordance with 42 Pa. Cons. Stat. Ann. §5103(b) (1981 & Supp. 2001)<sup>3</sup> to facilitate the transfer of plaintiffs’ action to the appropriate Court of Common Pleas.
2. That part of defendants’ motion which seeks attorneys’ fees and expenses is **DENIED**.
3. Plaintiffs’ request for oral argument is **DENIED**.

## MEMORANDUM

### **I. INTRODUCTION**

The Motion to Dismiss for Lack of Jurisdiction is premised on the lack of complete diversity between plaintiffs and defendants in this case. The Motion is granted based on the Court’s conclusion that it may not exercise diversity jurisdiction over this action because the presence of an adverse party with non-diverse citizenship destroys complete diversity.

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<sup>3</sup> Section 5103(b) provides that a matter filed in federal court, within the applicable statute of limitations, but dismissed for lack of jurisdiction, may be transferred to state court *without a federal court order* if the plaintiff *promptly* fulfills the transfer requirements set forth in section 5103(b)(2). These requirements include “filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth.” *Id.*; see also Williams v. F.L. Smithe Mach. Co., Inc., 395 Pa. Super. 511, 515-17, 577 A.2d 907, 909-10 (1990) (laying out with specificity the requirements a plaintiff must fulfill to effect a transfer of the dismissed action to state court).

The case arises out an accident at Laurenti Family Markets on September 18, 1999. At that time, wife plaintiff, while shopping, was struck by cases of canned Pepsi-Cola product which fell from a stack on display, causing injury to her head and other parts of her body.

The Complaint alleges the Court has subject matter jurisdiction over this action under the diversity jurisdiction statute, 28 U.S.C. § 1332, because the amount in controversy exceeds \$75,000 and the adverse parties are diverse. Compl. ¶ 9. There is no other basis of federal jurisdiction.

On October 18, 2001, defendants Laurenti Family Markets, Inc., Shop-Rite, Shop Rite Supermarkets, Inc., and Shop Rite of Bethlehem, Inc., filed this motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The motion is based on evidence that Laurenti Family Markets, Inc., is a citizen of Pennsylvania because it is incorporated under the laws of Pennsylvania and has its principal place of business in Pennsylvania, and that plaintiffs are also citizens of Pennsylvania. Plaintiffs filed their response to the motion on October 29, 2001. Moving defendants submitted a letter to the Court dated November 1, 2001, denominated as a sur-reply.

## **II. DISCUSSION**

In their motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), defendants contend the Court may not exercise diversity jurisdiction over this action because of the absence of diversity of citizenship. When considering a motion under Federal Rule of Civil Procedure 12(b)(1), the court is “free to weigh the evidence and satisfy itself as to the existence

of its power to hear the case.” Mortensen v. First Fed. Sav. and Loan Ass’n, 549 F.2d 884, 891 (3d Cir. 1977). Moreover, the party asserting jurisdiction, the plaintiff in this case, bears the burden of persuasion. See Carpet Group Int’l v. Oriental Rug Imps. Ass’n, Inc., 227 F.3d 62, 69 (3d Cir. 2000) (citing Mortensen).

In order to establish diversity jurisdiction pursuant to 28 U.S.C. § 1332, plaintiffs must demonstrate that no plaintiff is a citizen of the same state as any of the defendants and that the damages exclusive of interest and costs exceed \$75,000. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978) (“diversity jurisdiction does not exist unless *each* defendant is a citizen of a different State from *each* plaintiff.”).

An individual is deemed to be a citizen of the state where he or she is domiciled. Pemberton v. Colonna, 290 F.2d 220 (3d Cir. 1961) (“A citizen of the United States is a citizen of the state in which he is domiciled.”). Plaintiffs Christine Perez and Angel Perez admit that they are domiciled in the Commonwealth of Pennsylvania. See Pl.’s Resp. ¶ 2. Plaintiffs, as domiciliaries of Pennsylvania, are deemed to be citizens of Pennsylvania.

The Court next turns to the question of the citizenship of defendant Laurenti Family Markets, Inc. “A corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” 42 U.S.C. § 1332(c)(1). Defendant Laurenti Family Markets, Inc. is incorporated in Pennsylvania and has its principal place of business in Pennsylvania. See Aff. of Mark K. Laurenti ¶ 2. Thus, it is deemed to be a citizen of Pennsylvania.

Plaintiffs and one of the defendants, Laurenti Family Markets, Inc., are citizens of Pennsylvania. That destroys complete diversity, and thus prevents the Court from exercising diversity jurisdiction over this action pursuant to 42 U.S.C. §1332.

### **III. CONCLUSION**

The Court concludes that it may not exercise diversity jurisdiction over this matter, and plaintiffs have failed to establish any other basis on which the Court may exercise federal jurisdiction. Therefore, the Court dismissed the action without prejudice to plaintiffs' right to initiate the action in the appropriate Court of Common Pleas. To facilitate that procedure, the Court directed the Clerk of the Court to provide plaintiffs' counsel with the certified transcripts required for plaintiff to transfer the action to the appropriate Court of Common Pleas in accordance with 42 Pa. Cons. Stat. Ann. §5103(b).

**BY THE COURT:**

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JAN E. DUBOIS, J.