

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

NOUBAR MEGERIAN, : CIVIL ACTION  
ANIE MEGERIAN and :  
RAFFI MEGERIAN :  
 :  
v. :  
 :  
ADAM NOEL THOMAS and :  
ZIDSKE PROFESSIONAL LANDSCAPING : NO. 99-1423

MEMORANDUM ORDER

Plaintiffs allege that they were injured in a vehicular accident in Maryland in 1996 for which defendant Thomas was responsible. Plaintiffs allege that at the time, Mr. Thomas was acting as an employee or agent of defendant Zidske.

Plaintiffs allege that the amount "in controversy exceeds the sum of Fifty Thousand Dollars." Plaintiffs allege that they are citizens of Pennsylvania and defendant Thomas is a citizen of Maryland. They allege that defendant Zidske "is a company" with its principal place of business in Maryland. The complaint on its face appears to have been filed on the last day before the expiration of the Maryland three year statute of limitations for personal injury actions.

"Federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte," Liberty Mut. Ions. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995). See also American Policyholders Ins. v. Nyacol Products, 989 F.2d 1256,

1258 (1st Cir. 1993) ("a federal court is under an unflagging duty to ensure that it has jurisdiction"); Steel Valley Authority v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) ("lack of subject matter jurisdiction voids any decree entered in a federal court"); Wisconsin Knife Works v. National Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) ("[t]he first thing a federal judge should do when a complaint is filed is check to see that federal jurisdiction is properly alleged"). "[T]he facts giving rise to federal jurisdiction must be strictly construed and alleged with particularity." Gafford v. General Electric Co., 997 F.2d 150, 164 (6th Cir. 1993).

The jurisdictional threshold for a diversity claim is an amount in controversy exceeding \$75,000 and not \$50,000 as alleged herein. See 28 U.S.C. § 1332(a). See also Heininger v. Wecare Distributors, Inc., 706 F. Supp. 860, 862 n.2 (S.D. Fla. 1989) (failure to allege that matter in controversy exceeds statutory threshold deprives court of jurisdiction). The citizenship of a corporate defendant is determined by both the state of its incorporation and its principal place of business. See Midlantic Nat'l. Bank v. E.F. Hansen, 48 F.3d 693, 696 (3d Cir. 1995); Wisconsin Knife Works, 781 F.2d at 1282. There is no allegation regarding the state of Zidske's incorporation. If Zidske is an unincorporated business, then plaintiffs must allege the citizenship of its owners and not where they operate the

business from. There is no such allegation herein. Rather than dismiss the complaint, however, the court will afford plaintiffs an opportunity to amend clearly to show the presence of subject matter jurisdiction if such can be done in good faith.

It is also clear that this court lacks venue as no defendant is alleged to reside in this district and all of the events giving rise to plaintiffs' claims allegedly occurred in Maryland. See 28 U.S.C. § 1391(a). This is not a basis for preemptory dismissal, however, as the lack of venue may be waived by a defendant who fails to assert it in a Rule 12(b)(3) motion or other initial responsive pleading. See Fed. R. Civ. P. 12(h)(1).

**ACCORDINGLY**, this                      day of April, 1999, **IT IS HEREBY ORDERED** that plaintiffs shall have twenty days to amend their complaint to show clearly the presence of federal subject matter jurisdiction.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**