

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

CARDINAL / INTERNATIONAL	:	CIVIL ACTION
GROOVING & GRINDING, INC.	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ERIC DOLTZ and	:	
HARRIS & ASSOCIATES	:	
Defendants.	:	NO. 99-CV-1518

MEMORANDUM AND ORDER

J. M. KELLY, J.

JUNE 24, 1999

Presently before the Court is Defendants Eric Doltz and Harris & Associates' Motion to Dismiss. As it addressed more fully in a previous Memorandum and Order, the Court previously granted the parties a brief period to conduct discovery essentially limited to the jurisdictional issues raised in Defendants' motion. Discovery disputes arose, however, and the Court held a hearing to settle these differences and flesh out whether the Court has jurisdiction. Despite Plaintiff's protests, the record is sufficiently complete for the Court to decide Doltz is a citizen of Pennsylvania, and no diversity of citizenship exists here. Defendants' motion therefore is granted.

Defendants claim the Court does not have jurisdiction for two reasons. One, the Court does not have subject matter jurisdiction because there is no diversity of citizenship, as Doltz and Plaintiff are citizens of Pennsylvania. Two, Harris & Associates has not had sufficient contacts with Pennsylvania for the Court to properly exert personal jurisdiction. Because the Court agrees it does not have subject matter jurisdiction, it will address only that issue in the following discussion.

Plaintiff alleges this Court has subject matter jurisdiction by virtue of the diversity of the parties' citizenship, see 28 U.S.C. § 1332(a)(1), but for this to be true the diversity must be complete, with no plaintiff and defendant sharing common citizenships, Mennen Co. v. Atlantic Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998). Domicile, synonymous with citizenship, Reynolds v. Adden, 136 U.S. 348, 349-51 (1890); Juvelis by Juvelis v. Snider, 68 F.3d 648, 654 (3d Cir. 1995), is determined by reference to two factors: (1) the intent of the person in question to make a particular place his or her permanent home; and (2) where that person presently has his "true fixed and permanent home," Walls v. Ahmed, 832 F. Supp. 940, 942 (E.D. Pa. 1993) (quoting Michelson v. Exxon Research & Eng'g Co., 578 F. Supp. 289 (W.D. Pa.), aff'd 745 F.2d 47 (3d Cir. 1984)). A person's own declarations of intent will be given particular weight. See Krasnov v. Dinan, 465 F.2d 1298, 1303 (3d Cir. 1972). Further, there is a presumption in favor of continuing domicile that is overcome only when the party hoping to show a change in domicile produces enough evidence of changed domicile to withstand a directed verdict. Tolan v. United States, 176 F.R.D. 507, 512 (E.D. Pa. 1998) (citing Coury v. Prot, 85 F.3d 244, 250 (5th Cir. 1996)).

Plaintiff has fallen far short of demonstrating Doltz has changed his domicile. In support of its position, Plaintiff clings to a letter in which Doltz listed a Florida return address. (Tr. of 6/1/99 at 7.) This meager evidence is overwhelmed by the record Defendants created. Defendants offer both an affidavit from Doltz stating he is a Pennsylvania resident and some utility and cable bills reflecting his home is located in Pottstown, Pennsylvania. Moreover, Defendants state Doltz votes here and has a Pennsylvania driver's license. Plaintiff actually verified Doltz's Pennsylvania residence when it received certain articles of incorporation from

the State of Florida on which Doltz lists a Pennsylvania address.

Plaintiff persists in maintaining that if it received documents it requested of Harris & Associates, it might have developed evidence that Doltz intended to change his domicile. (Tr. of 6/1/99 at 11, 25.) This position, however, is purely speculative and also is undermined by the fact that Plaintiff deposed Doltz at length and had ample opportunity to discover Doltz's intended domicile. Having questioned Doltz extensively, Plaintiff still failed to develop any evidence that he intends to be a resident of any state other than Pennsylvania.¹ The record before the Court is more than sufficiently developed for it to determine Doltz is a citizen of Pennsylvania, and because that finding shatters the diversity of citizenship on which Plaintiff relies, the Court finds it does not have subject matter jurisdiction. Defendants' motion to dismiss for lack of subject matter jurisdiction is granted.

An Order follows.

¹Further, it is far from certain that Plaintiff would have been entitled to these documents due to the limited scope of the Court's Scheduling Order.

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ERIC DOLTZ and	:	
HARRIS & ASSOCIATES	:	
Defendants.	:	NO. 99-CV-1518

ORDER

AND NOW, this 24th day of June, 1999, it is hereby **ORDERED**:

1. Defendants' Motion to Dismiss (Document No. 4) is **GRANTED** and this action is dismissed;

2. In view of the Court's lack of jurisdiction, Plaintiff's motion for a temporary restraining order (Document No. 2), Plaintiff's various motions to compel (Document Nos. 10, 11, 12, and 13), Plaintiff's motion to extend the discovery deadline (Document No. 14), Defendants' motion to compel (Document No. 16), and Defendants' motion for application to appear pro hac vice (Document No. 15) all are **DISMISSED** as moot; and

3. The Clerk of Court is ordered to mark this matter closed.

BY THE COURT:

JAMES MCGIRR KELLY, J.