

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

<b>REBECCA A. CROFF and</b>	:	
<b>RICHARD P. CROFF, <i>h/w</i></b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 04-CV-1540</b>
	:	
<b>DONALD W. FAUGHT</b>	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**January 31, 2005**

Plaintiffs Rebecca A. Croff and Richard P. Croff (collectively “Plaintiffs”) bring this negligence action against Defendant Donald W. Faught (“Defendant”). Defendant filed a request for trial de novo from a decision by the arbitration panel. After ordering briefing from the parties on the issue of diversity jurisdiction, this Court will dismiss the case for lack of subject matter jurisdiction.

**I. Background**

Plaintiff Rebecca A. Croff and Defendant were involved in an automobile accident in Delaware on February 24, 2003. Complaint ¶ 10. The Complaint was filed on April 6, 2004. Plaintiffs reside in Pennsylvania. See id. ¶¶ 1-2. Although Defendant listed his address on the police accident report as Geneva, Switzerland, see Plaintiffs’ Brief Regarding Lack of Diversity of Citizenship, Exhibit A, by January 2004, three months before the filing of the Complaint, Defendant had returned to Pennsylvania, was residing in Chadds Ford with his wife, and paid taxes in Pennsylvania for that year. Defendant’s Reply Memorandum, Exhibit A ¶ 8. At the time of the accident and the filing of the Complaint, Defendant had a Pennsylvania driver’s license. See Plaintiffs’ Brief, Exhibit A.

In late 2003, Defendant purchased a home in Colorado. Defendant's Reply Memorandum, Exhibit A ¶ 8. Defendant states he purchased the residence in Colorado with the intent of permanently residing there upon his retirement; however, at the time of the filing of the Complaint, Defendant admits this property was actually being used as a vacation home. Id. ¶ 8.

## **II. Legal Standard**

Lack of subject matter jurisdiction is a ground for dismissal and federal courts have an "ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte." Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995). "In order to sustain jurisdiction based on diversity of the parties, there must exist an actual, substantial controversy between citizens of different states," and if the defendant is the citizen of the same state as any plaintiff, complete diversity is lacking. Employers Ins. of Wausau v. Crown Cork and Seal Co., 905 F.2d 42, 45 (3d Cir. 1990). "The burden of persuasion as to diversity jurisdiction remains at all times on the proponent of jurisdiction." Walls v. Ahmed, 832 F. Supp. 940, 941 (E.D. Pa. 1993) (citing McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178 (1936). Domicile for the purposes of diversity is determined as of the date the action is filed. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 286, 294-95 (1938).

## **III. Analysis**

Defendant claims federal jurisdiction in this case exists based on diversity of citizenship. Under 28 U.S.C. § 1332(a), "the district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state ...". 28 U.S.C. 1332(a). Citizenship for the purposes of diversity is the

same as domicile. Last v. Elwyn, 935 F. Supp. 594, 596 (E.D. Pa. 1996). Domicile, in turn, consists of a party's physical presence, or residence, in a state, coupled with an intent to remain there. Juvelis v. Snider, 68 F.3d 648, 654 (3d Cir. 1995). "The requirements of intent and presence must be met simultaneously, 'thus, a definite and sincere intention to make a place one's home at some time in the future is not enough to make that place an individual's present domicile.'" Diament v. Genesis Associates, 1997 WL 214870, at \*1 (E.D. Pa. April 25, 1997) (citing 13B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 3613, at 549 (2d ed. 1984)).

In the instant case, Plaintiffs and Defendant are all citizens of Pennsylvania. Thus, there is no diversity and no basis for jurisdiction. At the time of the filing of the Complaint, Defendant was residing in Pennsylvania and not in Geneva or Colorado.

In determining intent, the second part of the two-prong test, "courts may consider the totality of the circumstances, including: the parties' declarations; voter registration; tax payments; domestic and business residence; affiliations with clubs, churches and other organizations; and driver's license and automobile registration." Rotella v. McConnell, 1999 WL 124418 at \*1 (E.D. Pa. March 4, 1999); see also Wolgin v. Smith, 1995 WL 434395, at \*1 (E.D. Pa. July 20, 1995). Persuasive evidence of intent can include establishment of a home, place of employment, location of assets, and registration of a car. Juvelis, 68 F.3d at 654 (noting that motive is not determinative in evaluating intent to remain, although it may be important evidence tending to show whether or not there was an intention to make a home).

While mere residence in a state is not sufficient to establish citizenship for the purposes of diversity, where a party seeks to establish a change in domicile there is a presumption in favor

of the established domicile unless rebutted by clear and convincing evidence. Walls v. Ahmed, 832 F. Supp. 940, 942 (E.D. Pa. 1993). As between two homes, a person's principal home is that which is more nearly the center of his domestic, social, and civil life. *Id.* at 943. Defendant has not established that his domicile was in Colorado, as he was residing in Pennsylvania, had a Pennsylvania driver's license, was paying Pennsylvania taxes, and was working in nearby Delaware. Furthermore, there is not sufficient evidence of substantial steps by Defendant to make Colorado his permanent home to rebut the presumption of his original domicile of Pennsylvania. See Biomagnetics, Ltd. v. Spooner, 1997 WL 197283, at \*1 (E.D. Pa. April 18, 1997). Although Defendant's Pennsylvania license and the payment of Pennsylvania taxes are not in themselves dispositive, the totality of the circumstances establish that Pennsylvania was the center of Defendant's domestic, social, and civil life when the Complaint was filed.

#### **IV. Conclusion**

As the parties are not diverse, the Court lacks jurisdiction and the case will be dismissed. An appropriate order follows.

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:** **CIVIL ACTION  
NO. 04-CV-1540**

**ORDER**

**AND NOW**, this 31<sup>st</sup> day of January, 2005, after a review of the parties briefings on the issue, and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the above-captioned action is **DISMISSED** for lack of subject matter jurisdiction.

**BY THE COURT:**

**S/Bruce W. Kauffman  
BRUCE W. KAUFFMAN, J.**