
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

TREX SERVICES LLC, and STEVEN R.
MONTGOMERY,

Defendants.

**ORDER TO SHOW CAUSE RE:
SUBJECT-MATTER JURISDICTION**

Case No. 4:19-cv-00008-DN

District Judge David Nuffer

A federal court has a duty to consider sua sponte whether it has subject-matter jurisdiction whenever a doubt arises as to the existence of federal jurisdiction.¹ If a court concludes that it lacks subject-matter jurisdiction, it must dismiss the case or remand it to state court.²

Plaintiff Wells Fargo Bank, N.A., (“Wells Fargo”) alleges in its complaint diversity of citizenship under 28 U.S.C. § 1332(a)(1) as the basis for subject-matter jurisdiction.³ “To invoke the power of the court pursuant to § 1332, allegations of diversity must be pleaded affirmatively.”⁴ This requires allegations of facts essential to show that “all parties on one side of the litigation are of a different citizenship from all parties on the other side of the litigation.”⁵ In the case of national banks, a bank is a citizen of the state designated in its articles of association

¹ *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 278 (1977).

² *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515 (2006); *see* 28 U.S.C. § 1447(c).

³ Complaint, docket no. 2, filed January 16, 2019.

⁴ *Martinez v. Martinez*, 62 Fed. App’x 309, 313 (10th Cir. 2003).

⁵ *Depex Reina 9 P’ship v. Texas Int’l Petroleum Corp.*, 897 F.2d 461, 463 (10th Cir. 1990).

as the locus of its main office.⁶ In the case of unincorporated associations (including limited liability companies), the association is a citizen of each state in which its members are citizens.⁷ And in the case of individuals, an individual is a citizen of the state in which he is domiciled, as evidenced by his physical location and intent to remain there indefinitely.⁸

The complaint alleges that “Wells Fargo is a national banking association formed under the laws of the United States with its principal place of business and main office located in . . . South Dakota.”⁹ It alleges that Defendant Trex Services LLC “is a Utah limited liability company.”¹⁰ And that Defendant Steven R. Montgomery is an individual believed to reside in Utah.¹¹ But it makes no allegation regarding:

- the state *designated* in Wells Fargo’s articles of association as the location of its main office;
- the citizenship of each member of Trex Services; or
- Montgomery’s citizenship based on domicile (not residence), as evidenced by his physical location and intent.

THEREFORE, IT IS HEREBY ORDERED that by no later than *Thursday, January 24, 2019*, Wells Fargo shall file an amended complaint containing allegations essential to show

⁶ *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006).

⁷ *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1046-47 (10th Cir. 2016).

⁸ *Martinez*, 62 Fed. App’x at 313.

⁹ Complaint, *supra* note 3, ¶ 1.

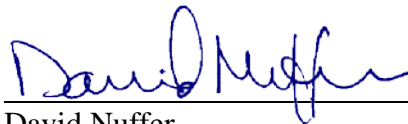
¹⁰ *Id.* ¶ 2.

¹¹ *Id.* ¶ 3.

the citizenship of Wells Fargo, Trex Services LLC, and Steven R. Montgomery. If Wells Fargo fails to do so, this action will be dismissed for lack of subject-matter jurisdiction.

Signed January 17, 2019.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge