

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

JACQUELINE MANNERS,)
)
 Plaintiff,) Civil Action No. 08-1715
)
 v.) NOTICE OF MOTION TO DISMISS
)
 SANTOS CABRERA,)
)
 Defendant.)
)

To: Mr. Jeremy Morris
Morris Locker & Good LLP
1081 Carawood Drive
Forest, Virginia 24551

PLEASE TAKE NOTICE that on August 29, 2008 at 3:00pm
Defendant shall appear before the Honorable Nancy Kippenhan,
Judge of the United States District Court for the Southern
District of Ohio, Adams Division. There, Defendant shall present
a **MOTION TO DISMISS** the Plaintiff's lawsuit, a copy of which is
attached.

Dated: August 25, 2008

Michael Gumprecht, Esq.
Gumprecht & Parks LLP
3343 Peachtree Rd NE # 1600
Atlanta, GA 30326
(404) 233-7000
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

JACQUELINE MANNERS,)
) Civil Action No. 08-1715
Plaintiff,)
) (Judge Kippenhan)
v.)
)
SANTOS CABRERA,)
)
Defendant.)
)

**DEFENDANT'S
MOTION TO DISMISS**

DEFENDANT Santos Cabrera, by and through the undersigned counsel, moves this Court for an Order to dismiss this case for lack of subject matter jurisdiction.

In support of this motion, Defendant states the following:

1. As established by Congress, one of the required elements necessary to satisfy subject matter jurisdiction is that there is federal diversity jurisdiction among the opposing parties; simply, that they be "citizens of different states." 28 U.S.C. § 1332(a)(1).

2. "For the purposes of diversity jurisdiction, an individual is a citizen of the state in which she

is domiciled." Hakkila v. Consol. Edison Co., 745 F. Supp. 988 (S.D.N.Y. 1990).

3. From May 1984 to June 2007, Jacqueline Manners (hereafter "Plaintiff") was a resident of the State of Ohio.

4. In June 2000, Plaintiff obtained a valid drivers license from the State of Ohio.

5. In August 2002, Plaintiff registered her 2002 Honda Civic in the State of Ohio.

6. In September 2002, Plaintiff registered to vote in the State of Ohio.

7. In June 2007, Plaintiff moved to Frankfurt, Kentucky and lives in a leased apartment with her sister Carolyn. The lease will expire in June 2009.

8. All of the Plaintiff's remaining immediate family currently live and reside in the State of Ohio.

9. Plaintiff shares a joint-tenancy interest in a house in the State of Ohio with her siblings.

10. In August 2007, Plaintiff registered to vote in the State of Kentucky.

11. In October 2007, Plaintiff obtained a valid drivers license from the State of Kentucky.

12. In October 2007, Plaintiff registered her 2002 Honda Civic in the State of Kentucky.

13. For every fiscal year between 2002 and 2007, Plaintiff paid income taxes to the State of Ohio.

14. At the time of this motion Plaintiff has never paid any taxes to the State of Kentucky.

15. By her own admission in a sworn affidavit Plaintiff admits that she intends to move any state where a job becomes available, "Kentucky or elsewhere."

16. "A change of domicile may be effected only by a combination of two elements: (a) taking up residence in a different domicile with (b) the intention to remain there." Mas v. Perry, 489 F.2d 1396 (5th Cir. 1974).

17. Paragraphs 1-15 listed above establish Plaintiff's pre-existing domicile in the State of Ohio with no future intent to remain in The State of Kentucky.

18. Although the location where Plaintiff intends to remain is undecided, "Declarations of intent by the person whose domicile is in question are given heavy, but not conclusive, weight." Thomas v. Farmer, 148 F. Supp. 2d 593 (D. Md. 2001).

19. Furthermore, despite Plaintiff's time spent in Kentucky, "it is well established that domicile is

not synonymous with residence." Hakkila v. Consol. Edison Co., 745 F. Supp. 988 (S.D.N.Y. 1990).

20. Additionally, for the Plaintiff's involved relocation to create a new domicile it must demonstrate "the intention to create a new home," not just attend school and later move for a career. Id.

21. The Plaintiff's "registration to vote in the state of her college does not usually demonstrate a clear intention to make that state her home." Id.

22. Plaintiff does not appear to have any certainty that she will establish permanent residence in Kentucky nor "in the foreseeable future." Gordon v. Steele, 376 F. Supp. 575 (W.D. Pa. 1974).

23. Before May 2006, Plaintiff faced a sequence of unfortunate personal tragedies that prompted her to later obtain professional counseling.

24. From May 2006 to April 2007, Plaintiff obtained regular therapy counseling from Santos Cabrera (hereafter "Defendant") with the implicit goal of re-building her emotional stability and security.

25. After April 2007 Plaintiff stopped her regular therapy sessions with the Defendant after she perceived that he brought new emotional turmoil to her life.

26. As acted upon in December 2007, January 2008 and June 2008, the Plaintiff continues to travel to the State of Ohio for personal and legal reasons.

27. It is the "Plaintiff's burden to establish the facts supporting the existence of federal diversity jurisdiction by a preponderance of the evidence. Plaintiff's failure to do so requires that this case be dismissed." O'Brien v. Jansen, 903 F. Supp. 903 (D. Md. 1995).

28. Plaintiff has not established the existence of federal diversity jurisdiction by a preponderance of the evidence and therefore subject matter jurisdiction does not exist.

29. Rule 12(b)(1) of the Federal Rules of Civil Procedure provide that a motion to dismiss is a valid and proper defense when subject matter jurisdiction has not been established.

30. As proper under the requirements of 28 U.S.C. § 1332(a)(1) and Rule 12(b)(1) of the Federal Rules of Civil Procedure, the Defendants now motion to dismiss the lawsuit.

31. On August 25, 2008, a summons addressed to the defendant in the above-captioned matter, accompanied by a copy of the complaint and a request

for each defendant to waive service of process, was delivered to the Office of Chief Counsel of Plaintiff by hand delivery on behalf of the Defendant.

WHEREFORE, Defendant respectfully requests that an order be issued by this Honorable Court to dismiss this case for a lack of subject matter jurisdiction.

Respectfully submitted, this 25th day of August, 2008,

Michael Gumprecht (Bar No. 77777)
Gumprecht & Parks LLP
3343 Peachtree Rd NE # 1600
Atlanta, GA 30326
(404) 233-7000
Counsel for Defendant

**In the United States District Court
for the Southern District of Ohio**

Jacqueline Manners,)	
)	
Plaintiff,)	
)	Civil Action No. 08-1715
v.)	
)	
Santos Cabrera,)	
)	
Defendant.)	

AFFIDAVIT OF DOMICILE OF JACQUELINE MANNERS

I, Jacqueline Manners, having first been sworn, state under oath:

1. From May 1984 until September of 2001, I resided in Cedar Mills, Ohio. From September of 2001 through June of 2005, I resided during the school year in Dayton, Ohio, while attending the University of Dayton, and resided in Cedar Mills during summer vacations. From June of 2005 until June of 2007, I resided in Cedar Mills, Ohio, where I taught elementary school. In June of 2007, I moved to Frankfort, Kentucky, where I reside at the present time.
2. In September of 2007, I began a masters degree program in library science at Kentucky State University in Frankfort, Kentucky. I have an older sister who lives in Frankfort, with whom I now share an apartment. I felt the need to leave Cedar Mills, Ohio, because I was traumatized by my relationship with Santos Cabrera and by his betrayal of my trust. For the same reasons, I was unable to continue my employment as an elementary school teacher in Cedar Mills.

3. I have a checking account at First Bank in Frankfort, Kentucky. I have a savings account at Ohio Federal Savings and Loan in Cedar Mills, Ohio. A trust account established for my benefit by my parents is maintained at Ohio Federal Savings and Loan in Cedar Mills, Ohio and administered by a trustee affiliated with the savings and loan.
4. I first registered to vote in September of 2002 in Ohio. In August of 2007, I registered to vote in Kentucky. I voted in Ohio in November of 2004 and November of 2006. I have not yet voted in Kentucky, but intend to do so in November of 2008.
5. I have a one-fourth joint tenancy interest, together with my three siblings, in a house in Cedar Mills, Ohio, which we inherited from our parents. I have a leasehold interest in an apartment in Frankfort, Kentucky, which I hold jointly with my sister Carolyn Manners. The lease will expire in June of 2009, but is subject to renewal.
6. Between June and late August of 2007, I drove back and forth between Cedar Mills, Ohio, and Frankfort, Kentucky, three or four times, in order to move my belongings to Frankfort. I traveled to Cedar Mills, Ohio, from December 21, 2007 to January 2, 2008, in order to celebrate the holidays with my siblings who still live in Cedar Mills, and also to engage counsel for this lawsuit. I traveled to Cedar Mills from June 6 to June 12, 2008, during which time I visited friends and family and attended my niece's baptism. On each occasion I stayed at the home of my brother, Joseph Manners.
7. I obtained an Ohio driver's license in June of 2000. I surrendered that license in October of 2007, when I obtained a Kentucky driver's license.
8. I own a 2002 Honda Civic, which I purchased in Hillsboro, Ohio, in August 2002 and registered at that time in Ohio. In October 2007, I registered the vehicle in Kentucky.

9. I paid income taxes in Ohio for the years 2002 through 2007. I moved to Kentucky in the middle of 2007, but had Ohio income for the first half of the year. I paid a portion of the property taxes on the property owned jointly with my siblings in Ohio for the years 2006 and 2007. I have not had income since moving to Kentucky, so I have not yet paid any income taxes or other taxes in Kentucky.
10. I have no definite plans after I finish my degree at Kentucky State University. I intend to seek a position as a librarian. I do not yet have any occupational commitments or job offers in Kentucky. I have not been employed in Kentucky.
11. My immediate family includes my sister Carolyn Manners, with whom I reside in Frankfort, Kentucky. My brother Joseph Manners and his wife, my sister-in-law Dolly Manners, reside in Cedar Mills, Ohio. My sister Rachel Manners also resides in Cedar Mills, Ohio.
12. My claim of domicile in Kentucky is based on the following facts: I reside in Frankfort, Kentucky, where I have leased an apartment. Other than a trust fund established by my parents prior to their deaths, I am the sole source of my own support. I have no plans to move back to Ohio. On completion of my post-graduate studies, I intend to seek employment as a librarian in Kentucky or elsewhere.

I hereby declare, under the penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.

Dated: August 8, 2008

Jacqueline

Manners

Jacqueline Manners

State of Ohio
County of Adams

Signed and sworn to before me on August 8, 2008

Gerry Kelly

Notary Public

My commission expires on December 17, 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

JACQUELINE MANNERS,)
) Civil Action No. 08-1715
Plaintiff,)
) CERTIFICATE OF SERVICE
v.)
)
SANTOS CABRERA,)
)
Defendant.)
)

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2008 copies of
"DEFENDANT'S MOTION TO DISMISS" and "NOTICE OF MOTION TO DISMISS"
were delivered as follows:

BY HAND-DELIVERY TO:

Mr. Jeremy Morris
Morris Locker & Good LLP
1081 Carawood Drive
Forest, VA 24551
Counsel for Plaintiff

Date: August 25, 2008

Michael E. Gumprecht, Esq.
Gumprecht & Parks LLP
3343 Peachtree Rd NE # 1600
Atlanta, GA 30326
(404) 233-7000
Counsel for Defendant