

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Bernstein v. Banco Popular North America

No. 25-cv-02204-BLF (N.D. Cal. July 22, 2025) · No. 25-cv-02204-BLF · Decided July 22, 2025

OPINION

Bernstein v. Banco Popular North America

PER CURIAM.

1 2

3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5 SAN JOSE DIVISION

6 7 JOHN L. BERNSTEIN, et al., Case No. 25-cv-02204-BLF 8 Plaintiffs, ORDER GRANTING
IN PART AND

TERMINATING IN PART

9 v. DEFENDANT BERDING & WEIL

LLP’S MOTION TO DISMISS;

10 BANCO POPULAR NORTH AMERICA, TERMINATING DEFENDANTS’

et al., MOTIONS AT ECF 32, 48, AND 70 AS

11 MOOT; AND DISMISSING CASE

Defendants. WITHOUT PREJUDICE 12 [Re: ECF Nos. 32, 48, 70, 74] 13 14 Before the Court is Defendant Berding & Weil LLP’s (“B&W’s”) Rule 12(b)(1) motion to 15 dismiss for lack of subject matter jurisdiction, Rule 12(b)(6) motion to dismiss for failure to state a 16 claim, and Rule 12(e) motion for more definite statement. ECF 74 (“Mot.”). Pro se Plaintiffs Mary 17 H. Bernstein, John L. Bernstein IV, John L. Bernstein III, and Elizabeth Tigano (collectively, 18 “Plaintiffs”) filed an opposition to B&W’s motion to dismiss. ECF 97. B&W filed a reply. ECF 105 19 (“Reply”).1 20 The Court finds that the matter is suitable to be determined without oral argument, and 21 hereby VACATES the hearing on B&W’s motion scheduled on August 21, 2025. For the reasons 22 below, the Court GRANTS B&W’s motion to dismiss for lack of subject matter jurisdiction and 23 DISMISSES the case WITHOUT PREJUDICE to refiling in state court. 24 1 The Court notes that two other motions are in the process of being briefed: 1) Defendants Meadow 25 Brook Village Association – Fremont, A.S.A.P Collection Services, LLC, Angius & Terry LLP, Donald P. Gagliardi, and Colin G. McCarthy’s Rule 12(b)(1) motion to dismiss for lack of subject 26 matter jurisdiction, Rule 12(b)(6) motion to dismiss for failure to state a claim, and Rule 12(e) motion for more definite statement at ECF 32, and 2) Defendant Platinum Resolution Services, 27 Inc.’s Rule 12(e) motion for a more definite statement at ECF 48. The Court also notes that

I. BACKGROUND

1 Plaintiffs own a property located at 3416 Deerwood Terrace, #113, Fremont, CA 94536 2 (“Property”). Compl. at 39, 46, 49. The Property is located within the Meadowbrook Village 3 Homeowners Association (“Association”). Id. at 46. In 2018, the Association levied an emergency 4 assessment to all members of the community. Id. at 3. On September 18, 2017, the Association 5 imposed this assessment in response to a Notice and Order to Abate Nuisance issued by the City of 6 Fremont to the Association, which required the Association to spend \$15.5 million on “emergency 7 repairs” identified by the City. Id. at 358-359. To facilitate its compliance with the Notice, the 8 Association entered into a loan agreement with Banco for a non-revolving line of credit in the 9 amount of approximately \$4 million (“Loan”). Id. at 490. The purpose of the Loan was to “pay for 10 building repairs and replacements, including lighting, boiler systems, fire alarm certification, siding, 11 painting, contingency, related costs and soft costs.” Id. at 506. The assessment was specifically 12 intended to pay off the Loan and to collect additional funds to perform the required repairs. Id. at 13 358. Plaintiffs’ share of the assessment was approximately \$33,625. Id. at 42. Plaintiffs did not pay 14 their share of the assessment. Id. at 260, 266. After nonpayment, the Association brought foreclosure 15 proceedings through a Notice of Default and Election to Sell Under Property Association Lien in 16 January 2025. Id. at 260. 17 On March 4, 2025, Plaintiffs filed this lawsuit against Defendants. Id. at 1. Plaintiffs assert 18 fourteen causes of action: (1) intentional misrepresentation; (2) negligent misrepresentation; (3) 19 violation of California Homeowner Bill of Rights, Cal. Civ. Code § 2924.17; (4) violation of 20 California Civil Code § 2923.55; (5) violation of California Business and Professions Code § 17200, 21 et seq. Unfair Competition Law; (6) wrongful foreclosure; (7) intentional infliction of emotional 22 distress; (8) intentional housing discrimination based on familial status, Cal. Gov. Code § 12900 et 23 seq; (9) negligence; (10) violation of Unruh Civil Rights Act, Cal. Civ. Code §§ 51, 51.2, 52; (11) 24 violation of Elder Abuse Act; (12) “terminate foreclosure proceedings initiated”; (13) intentional 25 misrepresentation; and (14) negligent misrepresentation. Id. at 1-2. 26

II. LEGAL STANDARD

27 Federal courts can adjudicate only those cases which the Constitution and Congress 1 authorize them to adjudicate: those involving diversity of citizenship or a federal question, or those 2 to which the United States is a party. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 376–77 (2012); 3 see also *Chen-Cheng Wang ex rel. United States v. FMC Corp.*, 975 F.2d 1412, 1415 (9th Cir. 1992) 4 (“Federal courts have no power to consider claims for which they lack subject-matter jurisdiction.”). 5 The Court has a continuing obligation to ensure that it has subject matter jurisdiction. See Fed. R. 6 Civ. P. 12(h)(3). A defendant may raise the defense of lack of subject matter jurisdiction by motion 7 pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The plaintiff bears the burden of 8 establishing subject matter jurisdiction. *Kokkonen v. Guardian Life Ins.*, 511 U.S. 375, 377 (1994). 9 A jurisdictional challenge may be facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 10 1035, 1039 (9th Cir. 2004). Where the attack is facial, the

Court determines whether the allegations 11 contained in the complaint are sufficient on their face to invoke federal jurisdiction, accepting all 12 material allegations in the complaint as true and construing them in favor of the party asserting 13 jurisdiction. *Id.*; see also *Warth v. Seldin*, 422 U.S. 490, 501 (1975). Where the attack is factual, 14 however, “the court need not presume the truthfulness of the plaintiff’s allegations.” *Safe Air for 15 Everyone*, 373 F.3d at 1039. In resolving a factual dispute as to the existence of subject matter 16 jurisdiction, the Court may review extrinsic evidence beyond the complaint without converting a 17 motion to dismiss into one for summary judgment. *Id.* Once the moving party has made a factual 18 challenge by offering affidavits or other evidence to dispute the allegations in the complaint, the 19 party opposing the motion must “present affidavits or any other evidence necessary to satisfy its 20 burden of establishing that the court, in fact, possesses subject matter jurisdiction.” *St. Clair v. City 21 of Chico*, 880 F.2d 199, 201 (9th Cir. 1989); see also *Savage v. Glendale Union High Sch. Dist. No. 22 205*, 343 F.3d 1036, 1040 n.2 (9th Cir. 2003).

23 III. DISCUSSION

24 A. Subject Matter Jurisdiction 25 In the complaint, Plaintiffs allege that the Court has jurisdiction under 28 U.S.C. § 1332, 26 Diversity of Citizenship. Compl. at 5 ¶ 19. B&W moves to dismiss the case for lack of subject matter 27 jurisdiction on the basis that the parties are not diverse. Mot. at 14-16; see ECF 74-1, Decl. Chad T. 1 Rather, Plaintiffs state that they “were under extreme stress” and request leave to file an amended 2 complaint in order to add claims under federal statute. See *id.* 3 1. Diversity-of-Citizenship Jurisdiction 4 Federal courts have diversity jurisdiction only where there is complete diversity of 5 citizenship—no plaintiff is a citizen of the same state as any defendant—and the amount in 6 controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1); see *Matao Yokeno v. Sawako Sekiguchi*, 754 7 F.3d 649, 652 (9th Cir. 2014). For purposes of determining diversity of citizenship, a corporation is 8 deemed to be a citizen of the state in which it was incorporated as well as the state in which its 9 principal place of business is located. 28 U.S.C. § 1332(c)(1). “Principal place of business” refers 10 to “the place where the corporation’s high level officers direct, control, and coordinate the 11 corporation’s activities,” that is, the corporation’s “nerve center.” *Hertz Corp. v. Friend*, 559 U.S. 12 77, 80–81 (2010). The “nerve center” is typically found at the corporation’s headquarters. *Id.* at 81. 13 Here, diversity does not exist because Plaintiffs and B&W are citizens of California. 14 Plaintiffs state that they are domiciled in California. Compl. at 4. B&W is a California limited 15 liability partnership with principal place of business in Walnut Creek, California. ECF 74-1, 16 Declaration of Chad T. Thomas, at 2. Accordingly, there is no diversity jurisdiction because there 17 is no complete diversity between the Plaintiffs and B&W. 18 Accordingly, the Court lacks subject matters jurisdiction based on diversity jurisdiction. 19 2. Federal Question Jurisdiction 20 In considering whether a court has federal question jurisdiction over a case, “[t]he Court’s 21 evaluation is generally restricted to review of the complaint and does not include consideration of 22 extrinsic evidence.” *Hofmann v. Virgin Am. Inc.*, No. 16-CV-05178-BLF, 2017 WL 1373850, at *2 23

(N.D. Cal. Apr. 17, 2017). 24 Here, there is no federal question jurisdiction because Plaintiffs have not made any federal 25 claims in their complaint. See Compl. at 1-2. All fourteen of the Plaintiffs' claims arise under state 26 law. Accordingly, the Court lacks federal question jurisdiction. 27 ***] of subject matter jurisdiction. Because the Court finds that there is no subject matter jurisdiction, "it 2 || can proceed no further and must dismiss the case on that account."

Sinochem Int'l Co. v. Malaysia

3. || Int'l Shipping Corp., 549 U.S. 422, 434 (2007); see Grupo Dataflux v. Atlas Glob. Grp., L.P., 541

4 || US. 567, 570, 124 S. Ct. 1920, 1924, 158 L. Ed. 2d 866 (2004) ("It has long been the case that the 5 || jurisdiction of the court depends upon the state of things at the time of the action brought.") (internal 6 || quotation omitted). The Court does not reach the remainder of B&W's motion for dismissal. The 7 || Court hereby DISMISSES the case WITHOUT PREJUDICE to refile in state court.

8 || IV. ORDER

9 For the foregoing reasons, the Court GRANTS B&W's Motion to Dismiss for lack of subject 10 || matter jurisdiction at ECF 74. Having found the Court lacks subject matter jurisdiction, the Court 11 TERMINATES Defendants' motions to dismiss at ECF 32, 48 and 70 AS MOOT. The Court hereby 12 || DISMISSES the Complaint WITHOUT PREJUDICE to filing the case in State Court. || Dated: July 22, 2025

TH LABSON FREEMAN

17 United States District Judge 18 19 20 21 22 23 24 25 26 27 28