

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

CD Acquisitions, LLC v. Cencora, Inc., et al.

CD Acquisitions · No. 25-CV-4154 (JPO) · Decided December 1, 2025

SUMMARY

The court held that diversity jurisdiction was lacking because an LLC member of the plaintiff was domiciled in Pennsylvania, the same state as the defendants’ principal places of business. The court remanded the action to New York Supreme Court, denied the defendants’ motion to dismiss as moot and without prejudice, and closed the federal case.

CASE DETAILS

COURT	United States District Court for the Southern District of New York
WRITING FOR THE COURT	J. Paul Oetken
JURISDICTION	United States District Court for the Southern District of New York
DECIDED	December 1, 2025
DOCKET	25-CV-4154 (JPO)
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendants removed the action to federal court based on diversity jurisdiction. After ordering jurisdictional discovery concerning the citizenship of an LLC member, the court considered whether complete diversity existed and whether the case should be remanded.
STANDARD OF REVIEW	The court independently examined whether subject matter jurisdiction existed and resolved doubts against removability.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- subject matter jurisdiction
- civil procedure
- motions to dismiss
- commercial litigation
- federalism

PRACTICE AREAS

- civil procedure
- commercial litigation
- federal jurisdiction

QUESTIONS PRESENTED

1. Whether the court had diversity subject matter jurisdiction when the citizenship of an LLC member was disputed.
2. Whether Notash's sworn affidavit established that he was domiciled in Pennsylvania despite his Wisconsin driver's license.
3. Whether the action should be remanded and defendants' motion to dismiss denied as moot.

HOLDINGS

1. Complete diversity was absent because Notash, an LLC member, was domiciled in Pennsylvania, as were defendants, making the parties not citizens of different States within the meaning of 28 U.S.C. § 1332(a)(1).
2. The action had to be remanded to the New York Supreme Court, New York County because the court lacked subject matter jurisdiction and defendants offered no alternative basis for federal jurisdiction.

KEY QUOTATIONS

“Because Plaintiff and Defendants are therefore not “citizens of different States,” 28 U.S.C. § 1332(a)(1), this case falls outside this Court’s diversity jurisdiction.” (unpaginated order)

“In any event, “out of respect for the limited jurisdiction of the federal courts and the rights of states, [courts] must resolve any doubts against removability.”” (unpaginated order)

FACTUAL BACKGROUND

CD Acquisitions, LLC was the plaintiff in an action removed to federal court by Cencora, Inc. and other defendants on the asserted basis of diversity jurisdiction. The citizenship of LLC member GFN Company, LLC, and specifically the domicile of its member Mark Notash, was disputed. Notash submitted an affidavit stating that he had resided in Pennsylvania since becoming a member of GFN and had no present intention of making another place his domicile; defendants relied in part on his Wisconsin driver's license.

PROCEDURAL HISTORY

Defendants removed the action under 28 U.S.C. § 1332 but failed initially to allege the citizenship of each member of the LLC plaintiff. The court ordered defendants to show cause, permitted jurisdictional discovery concerning the domicile of LLC member Mark Notash, and directed plaintiff to submit Notash's citizenship affidavit. Concluding that plaintiff and defendants were both citizens of Pennsylvania, the court remanded the action to the New York Supreme Court, New York County and denied defendants' motion to dismiss as moot without prejudice.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Clerk was directed to remand the matter to the New York Supreme Court, New York County. Defendants' motion to dismiss the first amended complaint was denied as moot without prejudice to renewal in state court.

CASES CITED

- Morton v. Citibank, N.A., No. 18-CV-9048, 2019 WL 3066412, at *3-*4 (S.D.N.Y. July 12, 2019)
- In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, 488 F.3d 112, 124 (2d Cir. 2007)

OPINION

CD Acquisitions, LLC v. Cencora, Inc., et al.

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CD ACQUISITIONS, LLC,

Plaintiff,

25-CV-4154 (JPO)

-v-

ORDER

CENCORA, INC., et al., Defendants. J. PAUL OETKEN, District Judge: In their notice of removal, Defendants invoked this Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332. (ECF No. 1 at 2-3.) However, the notice did not adequately demonstrate the Court's subject matter jurisdiction because it did not allege the citizenship of each of the members of the LLC Plaintiff. Accordingly, this Court ordered Defendants to show cause as to why the action should not be remanded for lack of subject matter jurisdiction. (ECF No. 5.) The parties then filed a joint letter indicating disagreement on the citizenship of an LLC member of Plaintiff, GFN Company, LLC. (ECF No. 45.) In particular, the parties disagreed on whether one member of GFN Company, Mark Notash, is a citizen of Pennsylvania. (Id.) Notash's citizenship is pertinent because Defendants both have their principal places of business in Pennsylvania, making them Pennsylvania citizens for diversity purposes. In light of the dispute, this Court ordered jurisdictional discovery. (ECF No. 52.) After discovery failed to resolve the dispute (ECF No. 54), this Court held a telephonic conference, at which it ordered Plaintiff to file an affidavit by Notash stating his citizenship. (ECF No. 57.) Plaintiff has now filed Notash's affidavit, in which Notash states under penalty of perjury that he has resided in Pennsylvania since becoming a member of GFN Company and that he has no present intention of making any other place his domicile. (ECF No. 58-1 ¶ 3.) "In the Second Circuit, a sworn statement regarding citizenship will be a strong factor in favor of a similar judicial finding, absent contradictory evidence." Morton v. Citibank, N.A., No. 18-CV-9048, 2019 WL 3066412, at *3 (S.D.N.Y. July 12, 2019) (quotation marks omitted). Thus, Notash's declaration under penalty of perjury presents substantial evidence that he is domiciled in Pennsylvania. The fact that Notash has a Wisconsin driver's license is not enough to contradict the representations Notash has made in his sworn declaration. /d. at *4 (concluding the same where

Defendant put forward evidence that Plaintiff had a driver's license and was registered to vote in a different state than his claimed domicile). In any event, "out of respect for the limited jurisdiction of the federal courts and the rights of states, [courts] must resolve any doubts against removability." *In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, 488 F.3d 112, 124 (2d Cir. 2007) (cleaned up). Because Plaintiff and Defendants are therefore not "citizens of different States," 28 U.S.C. § 1332(a)(1), this case falls outside this Court's diversity jurisdiction. Defendants have offered no alternative basis for federal subject matter jurisdiction over this action. Accordingly, the case must be remanded to state court. In light of this conclusion, Defendants' motion to dismiss the first amended complaint is DENIED as moot without prejudice to the renewal of a similar motion in the state court. The Clerk of Court is directed to close the motion at Docket Number 46, close the case on this Court's docket, and remand the matter to the New York Supreme Court, New York County. SO ORDERED. Dated: December 1, 2025 New York, New York T. PAUL OETKEN United States District Judge