

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ESKENDER BERHE §
v. § CIVIL NO. 4:24-CV-00685-SDJ-BD
AMERICAN SECURITY §
INSURANCE COMPANY, ET AL. §
§

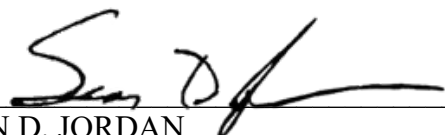
**MEMORANDUM ADOPTING THE REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On April 7, 2025, the Magistrate Judge entered proposed findings of fact and a recommendation (the “Report”), (Dkt. #17), that the case be remanded to the 471st Judicial District of Collin County.

Having received the Report of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s Report as the findings and conclusions of the Court.

It is therefore **ORDERED** that the case is **REMANDED** to the 471st Judicial District of Collin County.

So ORDERED and SIGNED this 30th day of April, 2025.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ESKENDER BERHE	§	
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v.	§	NO. 4:24-CV-00685-SDJ-BD
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**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Eskender Berhe sued American Security Insurance Company and OneForce Construction, LLC for violations of the Texas Deceptive Trade Practices-Consumer Protection Act, fraud, and breach of contract. Dkt. 4. American Security removed the case to this court based on diversity jurisdiction, Dkt. 1, and moved to dismiss Berhe’s complaint for failure to state a claim, Dkt. 3. Berhe did not respond to that motion. He instead filed an untimely motion for remand to state court. Dkt. 12; *see* Dkt. 14 (response). Because the court lacks diversity jurisdiction, the case must be remanded.

BACKGROUND

I. Alleged Facts

According to the complaint, Berhe contacted American Security, his homeowner’s insurance carrier, to make a claim for damage to his house. After inspecting the house, American Security offered Berhe \$1,428.15.

Berhe hired OneForce Construction to repair the damage, signing a contract based on OneForce’s initial quote of \$29,072.52. But then OneForce upped the price to more than \$69,000.

II. Procedural History

Berhe sued American Security and OneForce in state court. American Security removed the case to this court based on diversity jurisdiction. The removal notice asserted that, because OneForce had not been served, its consent to removal was not required. It also argued that

OneForce’s citizenship should be disregarded because it was not properly joined or served. American Security relied on the state-court docket, which describes OneForce as “unserved.” Dkt. 1-3 at 2. American Security also noted that the state-court docket shows that Berhe requested just one citation from that court, which was served on American Security.

Berhe filed an untimely motion to remand, arguing that OneForce had, in fact, been served. The motion attached an affidavit from Berhe’s attorney stating that “OneForce Construction LLC, was served with citation, but has not answered.” Dkt. 12-1. The affidavit does not describe when or how OneForce was served or explain the discrepancies between Berhe’s assertion of service and the state-court docket. The motion also suggested that OneForce is a “local defendant who is incorporated in Texas.” Dkt. 12 at 2. American Security responded to the motion, reiterating the arguments made in its notice of removal.

The court ordered Berhe to file an amended complaint that properly alleged the citizenship of OneForce and to submit evidence showing that it had been properly served. Dkt. 16. Berhe did not comply with that order.

SUBJECT-MATTER JURISDICTION

“Federal courts are courts of limited jurisdiction” and “possess only that power authorized by Constitution and statute . . . which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). When in doubt, the court must “presume[] that a cause lies outside this limited jurisdiction.” *Id.* Federal courts bear “the responsibility to consider the question of subject matter jurisdiction *sua sponte* . . . and to dismiss any action if such jurisdiction is lacking.” *Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1297 (5th Cir. 1985) (per curiam).

A federal court has original jurisdiction over any “civil action[] where the matter in controversy exceeds . . . \$75,000” and is between “citizens of different States.” 28 U.S.C. § 1332(a). Diversity of citizenship must be complete, meaning that each plaintiff must be diverse from each defendant. *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806); *MidCap Media Fin., L.L.C. v. Pathway Data*,

Inc., 929 F.3d 310, 313 (5th Cir. 2019). In other words, “all persons on one side of the controversy [must] be citizens of different states than all persons on the other side.” *MidCap*, 929 F.3d at 313.

DISCUSSION

I. American Security Has Not Established That Complete Diversity Exists.

Berhe’s failure to comply with the court’s order questioning jurisdiction, Dkt. 16, leaves OneForce’s citizenship uncertain. But because Berhe and American Security both assume that OneForce is a Texas citizen, the court must accept that assumption as true. That makes diversity incomplete.

A. Berhe is a Texas citizen.

A natural person is domiciled, and therefore a citizen, where he or she has his or her true, fixed, and permanent home. *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954). “[A]n allegation of residency alone ‘does not satisfy the requirement of an allegation of citizenship.’” *MidCap*, 929 F.3d at 313 (quoting *Strain v. Harrelson Rubber Co.*, 742 F.2d 888, 889 (5th Cir. 1984) (per curiam)); see *Texas v. Florida*, 306 U.S. 398, 424 (1939) (explaining that citizenship of a natural person requires not only “[r]esidence in fact” but also “the purpose to make the place of residence one’s home”).

The notice of removal states that Berhe has been domiciled in Texas since 1985 and is therefore a Texas citizen. Nothing in Berhe’s filings disputes that contention; his operative complaint provides only his Texas address, and his motion to remand says nothing about his citizenship. So the court treats the removal notice’s statement as true. See *Kumar v. Panera Bread Co.*, No. 23-20178, 2024 WL 1216562, at *2 (5th Cir. Mar. 21, 2024) (accepting as true the unchallenged jurisdictional allegations in the notice of removal).

B. American Security is a citizen of Delaware and Georgia.

A corporation is “a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). For that reason, “allegations regarding the citizenship of a corporation must set out the principal

place of business of the corporation as well as the state [or states] of its incorporation.” *Neeley v. Bankers Tr. Co. of Tex.*, 757 F.2d 621, 634 n.18 (5th Cir. 1985); *see Coal City Cob Co. v. Palm Enters., Inc.*, No. 3:18-CV-0123-N, 2018 WL 3475594, at *3 (N.D. Tex. July 18, 2018) (discussing the 2011 amendment to 28 U.S.C. § 1332(c)(1) and the demise of the forum doctrine).

The removal notice asserts, with sworn support, that American Security is incorporated in Delaware and has its principal place of business in Georgia. Dkts. 1 at 3, 1-11 at 2. Nothing in the record contradicts those assertions.

C. The court must presume that OneForce is a Texas citizen.

A limited liability company’s citizenship is that of each of its members. *Megalomedia Inc. v. Phila. Indem. Ins. Co.*, 115 F.4th 657, 659 (5th Cir. 2024). A party seeking to establish diversity jurisdiction must therefore specifically allege the citizenship of every member of every LLC involved in the litigation. *Settlement Funding, L.L.C. v. Rapid Settlements, Ltd.*, 851 F.3d 530, 536 (5th Cir. 2017). To adequately allege the citizenship of an LLC, a party must allege the required jurisdictional facts for each member, and those allegations will differ depending on whether the member is a natural person or an entity. *See Alphonse v. Arch Bay Holdings, L.L.C.*, 618 F. App’x 765, 768 (5th Cir. 2015) (per curiam) (explaining that, when an unincorporated entity is comprised of additional entities, the “appropriate tests for citizenship involve tracing entities’ citizenships down the various organizational layers where necessary”) (cleaned up); *see also Thomason v. Outback Steakhouse of Fla., L.L.C.*, No. 1:17-CV-01541, 2019 WL 3526839, at *1 n.1 (W.D. La. May 14, 2019) (stating that, where a defendant LLC’s sole member was itself an LLC, and the member LLC’s sole member was a Delaware corporation with its principal place of business in Florida, the defendant LLC’s citizenship was both Delaware and Florida).

Neither Berhe nor American Security has identified the members of OneForce, LLC, let alone their citizenships. According to Berhe, OneForce is a “resident of Texas,” Dkt. 4 at 2, that is “a Texas limited liability company located in the State of Texas and doing business in” Texas, Dkt. 12 at 1, and is “incorporated in Texas,” *id.* at 2. Those assertions are confusing; a Texas LLC is not

a corporation and is therefore not incorporated in any State. *See GEO Group, Inc. v. Hegar*, No. 23-0149, 2025 WL 852414, at *5 n.12 (Tex. Mar. 14, 2025); *see also* Tex. Bus. Orgs. Code §§ 21.051-.059 (procedure for incorporation); *id.* §§ 101.051-.056 (procedure for forming an LLC). In any event, the assertions fail to establish OneForce’s citizenship, and Berhe offers no reason to think that OneForce is a citizen of any State other than Texas.

American Security concedes that OneForce is a Texas citizen but urges the court to ignore its citizenship. Its response to the motion to remand identifies OneForce as a “forum defendant.” Dkt. 14 at 3 (discussing *Texas Brine Co. v. American Arbitration Association*, 955 F.3d 482, 485–86 (5th Cir. 2020), and the forum-defendant rule). The response and the removal notice also argue that OneForce has not been properly joined and served. When a removing defendant argues that another defendant has been improperly joined, it asks the court to ignore the citizenship of an in-state defendant, such as OneForce, whose presence would otherwise defeat diversity. *See Smallwood v. Ill. Cent. R. Co.*, 385 F.3d 568, 572–73 (5th Cir. 2004) (en banc).

When jurisdictional facts are contested or unclear, the court must resolve them in favor of remand. *Palmquist v. Hain Celestial Grp., Inc.*, 103 F.4th 294, 304 (5th Cir. 2024); *see Kokkonen*, 511 U.S. at 377 (noting that the court must presume that it lacks jurisdiction unless the party asserting jurisdiction establishes otherwise). OneForce’s citizenship remains in doubt because neither party has properly alleged it. But because Berhe and American Security both concede that it is a citizen of Texas and offer no evidence or allegations otherwise, the court must presume that, like Berhe, OneForce is a Texas citizen.

II. American Security’s Reliance on the Forum-Defendant Rule Is Misplaced.

As noted, American Security and Berhe dispute whether OneForce was served. The court need not resolve that dispute to determine its jurisdiction.

“[T]he forum-defendant rule is a procedural rule and not a jurisdictional one.” *Tex. Brine*, 955 F.3d at 485. It provides that “[a] civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest

properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2). Section 1332(a) delineates the court’s diversity jurisdiction. So by its own terms, the forum-defendant rule applies to cases “removable solely on the basis of” diversity jurisdiction. *Id.*

When diversity jurisdiction exists under § 1332(a) but a defendant “properly joined and served” is a citizen of the forum State, § 1441(b)(2) prevents removal to federal court. But if the forum defendant has not yet been served, § 1441(b)(2) allows a “snap removal” by a non-forum defendant in some circumstances. *See Tex. Brine*, 955 F.3d at 485–87.

American Security claims entitlement to snap removal because OneForce, the forum-defendant, was not served before removal. But that argument does not work here.

As explained in Part I, complete diversity is absent because the plaintiff is a Texas citizen and one defendant must be assumed to be a Texas citizen. The forum-defendant rule and the availability of snap removal in other scenarios do not alter the core jurisdictional requirement of § 1332(a).

The Fifth Circuit has long held that “[a] non-resident defendant cannot remove an action if the citizenship of any co-defendant, joined by the plaintiff in good faith, destroys complete diversity, regardless of service or non-service upon the co-defendant.” *New York Life Ins. Co. v. Deshotel*, 142 F.3d 873, 883 (1998). The court did not retreat from that holding in *Texas Brine*. Far from ignoring the citizenship of the unserved defendants in finding diversity jurisdiction, the Fifth Circuit in that case noted that the district court “had subject-matter jurisdiction because each defendant”—including the two unserved defendants—“was diverse from the plaintiff.” *Tex. Brine*, 955 F.3d at 485. Other courts since *Texas Brine* have reached the same conclusion. *See Beechum v. Anointed Touch, Inc.*, No. 6:21-CV-00370-JDK, 2022 WL 538968, at *3 (E.D. Tex. Jan. 18, 2022) (collecting cases). Snap removal is available only when complete diversity exists—as, for example, when a Texas citizen sues two Louisiana citizens and a New York citizen in Louisiana state court and the New York citizen removes the case before the Louisiana citizens are served. *See, e.g., Tex. Brine*, 955 F.3d at 486.

III. American Security Has Not Demonstrated that OneForce Was Improperly Joined.

American Security also asserts that OneForce's citizenship can be ignored because it was improperly joined. Berhe does not respond to that point.

The "starting point for analyzing claims of improper joinder," *Smallwood*, 385 F.3d at 572, is the federal removal statute, which permits the removal of "any civil action brought in a State court of which the district courts of the United States have original jurisdiction," 28 U.S.C. § 1441(a). As already noted, the statute goes on to say that a suit "may not be removed if any of the parties in interest *properly joined* and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b)(2) (emphasis added).

If a defendant is improperly joined, "the court may disregard the citizenship of that defendant, dismiss the non-diverse defendant from the case, and exercise subject matter jurisdiction over the remaining diverse defendant." *Advanced Indicator & Mfg., Inc. v. Acadia Ins.*, 50 F.4th 469, 473 (5th Cir. 2022) (per curiam). Improper joinder may be demonstrated by "(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court." *Smallwood*, 385 F.3d at 573. "The burden of persuasion on a party claiming improper joinder is a heavy one." *Palmquist*, 103 F.4th at 304.

American Security did not shoulder that burden. It makes no argument for either type of improper joinder.

RECOMMENDATION

It is **RECOMMENDED** that the case be **REMANDED** to the 471st Judicial District of Collin County.

* * *

Within 14 days after service of this report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

A party is entitled to a de novo review by the district court of the findings and conclusions contained in this report only if specific objections are made. *Id.* § 636(b)(1). Failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this

report will bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*; 28 U.S.C. § 636(b)(1) (extending the time to file objections from 10 to 14 days).

So **ORDERED** and **SIGNED** this 7th day of April, 2025.



Bill Davis
United States Magistrate Judge