

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ROSA W. SCARCELLI,)	
)	
Plaintiff)	
v.)	
)	Case No. 2:12-cv-63-GZS
GN HOLDINGS LP & KARL SWAN)	
NORBERG,)	
)	
Defendants.)	
)	

ORDER TO SHOW CAUSE

Before the Court are: (1) Plaintiff’s Motion to Dismiss Counterclaim (ECF No. 10) and (2) Plaintiff’s Second Motion to Dismiss (ECF No. 26). Upon review of the Motions, the Court has reason to doubt that this case was properly removed. Therefore, as briefly explained herein, Defendants are hereby ordered to show good cause why this case should not be remanded for lack of subject matter jurisdiction.

As all parties agree, Defendant GN Holdings, LP (“GN Holdings”) is a limited partnership formed under the laws of Illinois. As alleged in the Complaint, GN Holdings “conducts business throughout the State of Maine as a majority limited partner in several other limited partnerships owning various subsidized housing projects in the State of Maine.” (Compl. (ECF No. 1-1) at 1.) Defendant Karl Norberg, a resident of Illinois, is the named general partner. Plaintiff Rosa Scarcelli, a resident of Maine, is a limited partner in GN Holdings and asserts that she maintains a seventy percent interest in GN Holdings. There are two other limited partners: (1) Luigi Scarcelli and (2) Hillman Norberg.

Plaintiff Rosa Scarcelli filed the pending complaint on January 18, 2012 in Cumberland County Superior Court. The Complaint contains two counts. The first count seeks a declaratory

judgment with respect to Scarcelli's allocable share in GN Holdings. The second count seeks to have Defendant Karl Norberg removed as the general partner of GN Holdings based on violations of the Limited Partnership Agreement. In addition to naming GN Holdings and Karl Norberg as Defendants, the Complaint also names Pamela Gleichman, Plaintiff's mother and Norberg's wife, as a party-in-interest based on her various business dealings with GN Holdings.¹

On February 16, 2012, Defendants GN Holdings and Karl Norberg filed their notice of removal. The notice of removal indicated that the basis for removal is diversity jurisdiction. Diversity jurisdiction requires complete diversity of citizenship between all plaintiffs and all defendants. Lincoln Prop. Co v. Roche, 546 U.S. 81, 84 (2005); 28 U.S.C. § 1441(b). Moreover, the removal statute specifically states that civil actions "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 the action is brought." 28 U.S.C. § 1441(b)(2). As the removing party, it is Defendants' burden to show complete diversity.

In this case, the filings to-date give the Court reason to doubt whether Defendants can meet their burden of proving that GN Holdings is not a citizen of Maine. As a limited partnership, the citizenship of GN Holdings is determined by the citizenship of all members. Carden v. Arkoma Assoc., 494 U.S. 185, 195-96 (1990); see also Pramco, LLC v. San Juan Bay Marina, Inc., 435 F.3d 51, 54 (1st Cir. 2006). In this case, the well-pled allegations of the Complaint assert that GN Holdings has four partners, at least one of whom is acknowledged to

¹ Plaintiff alleges that upon providing official notice of her intent to remove Norberg as general partner of GN Holdings, Norberg and Gleichman produced a "fabricated" Limited Partnership Agreement that purported to allocate ninety-five percent interest in GN Holdings to Gleichman. (Compl. ¶¶ 19-20.) While denying much of these allegations, Defendants admit raising the assertion that Plaintiff "had no limited partnership interest in GN Holdings" and producing "a signed Limited Partnership Agreement for GN Holdings, LP . . . providing an allocation of partnership interests of 95% to Pamela Gleichman and 5% to Karl Norberg." (Answer ¶¶ 19 & 20.)

be a citizen of Maine.² In general, “any doubts about the propriety of removal [are] . . . ‘resolved in favor of remand.’” Colon-Rodriguez v. Astra/Zeneca Pharm., LP, 831 F. Supp. 2d 545, 549 (D.P.R. 2011) (quoting Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990)). While recognizing that Defendants may dispute the allegations of the Complaint, to establish federal diversity jurisdiction it is not enough to deny such allegations. Rather, Defendants must affirmatively establish at least a “reasonable probability” of complete diversity. Amoche v. Guarantee Trust Life Ins. Co., 556 F.3d 41, 49 (1st Cir. 2009); see also Reynolds v. World Courier Ground, Inc., 272 F.R.D. 284, 286 (D. Mass. 2011). In this case, this standard requires Defendants to affirmatively show that there is at least a reasonable probability that none of the members of GN Holdings were citizens of Maine during the relevant period of time.

Defendants shall respond to this Order to Show Cause no later than July 27, 2012. If Defendants file a timely response to this Order to Show Cause, Plaintiff shall have an additional fourteen days to file any reply. Absent a showing of good cause, the Court will remand this matter to Cumberland County Superior Court for lack of subject matter jurisdiction.

The Court hereby RESERVES RULING on both Plaintiff’s Motion to Dismiss Counterclaim (ECF No. 10) and Plaintiff’s Second Motion to Dismiss (ECF No. 26). The Court will decide these motions only after it determines whether the Court has jurisdiction over the case.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 6th day of July, 2012.

² It is worth noting that no representations have been made regarding the citizenship of the other two limited partners.

Plaintiff

ROSA W SCARCELLI

represented by **JAMES D. POLIQUIN**
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
774-7000
Email: jpoliquin@nhdlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PAUL F. DRISCOLL
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
774-7000
Email: pdriscoll@nhdlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DAVID A. GOLDMAN
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
207-774-7000
Fax: 207-775-0806
Email: dgoldman@nhdlaw.com
ATTORNEY TO BE NOTICED

RUSSELL PIERCE
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
774-7000
Email: rpierce@nhdlaw.com
ATTORNEY TO BE NOTICED

V.

Defendant

GN HOLDINGS LP

represented by **DANIEL L. ROSENTHAL**
MARCUS, CLEGG & MISTRETТА,

P.A.
ONE CANAL PLAZA, SUITE 600
PORTLAND, ME 04101-4102
207-828-8000
Email: drosenthal@mcm-law.com
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LEE H. BALS
MARCUS, CLEGG & MISTRETТА,
P.A.
ONE CANAL PLAZA, SUITE 600
PORTLAND, ME 04101-4102
(207) 828-8000
Email: lbals@mcm-law.com
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DANA F. STROUT
RUBIN & STROUT, PA
480 WEST STREET
ROCKPORT, ME 04856
207-236-8260
Email: dfspe@free.midcoast.com
ATTORNEY TO BE NOTICED

Defendant

KARL SWAN NORBERG

represented by **DANIEL L. ROSENTHAL**
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LEE H. BALS
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DANA F. STROUT
(See above for address)
ATTORNEY TO BE NOTICED

Interested Party

PAMELA W GLEICHMAN

represented by **DANIEL L. ROSENTHAL**
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LEE H. BALS
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DANA F. STROUT
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

GN HOLDINGS LP

represented by **DANIEL L. ROSENTHAL**
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LEE H. BALS
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DANA F. STROUT
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

KARL SWAN NORBERG

represented by **DANIEL L. ROSENTHAL**
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LEE H. BALS
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DANA F. STROUT
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

PAMELA W GLEICHMAN

represented by **DANIEL L. ROSENTHAL**
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LEE H. BALS
(See above for address)
TERMINATED: 05/25/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DANA F. STROUT
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

ROSA W SCARCELLI

represented by **JAMES D. POLIQUIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PAUL F. DRISCOLL
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DAVID A. GOLDMAN
(See above for address)
ATTORNEY TO BE NOTICED

RUSSELL PIERCE
(See above for address)
ATTORNEY TO BE NOTICED