

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

MICHAEL J. PETRUCELLI and
MARGARET C. PETRUCELLI,

Plaintiffs,

v.

JEANNINE J. PALMER,

Defendant.

3:07-CV-01783 (CSH)

ORDER

HAIGHT, Senior District Judge:

The Court has reviewed the record in this case and determined that additional information is required to firmly establish the existence of diversity jurisdiction under 28 U.S.C. § 1332.

It is firmly established that diversity of citizenship “should be distinctly and positively averred in the pleadings, or should appear with equal distinctness in other parts of the record.” *Wolfe v. Hartford Life & Annuity Ins. Co.*, 148 U.S. 389, 13 S.Ct. 602, 37 L.Ed. 493 (1893). It is also clear that a statement of the parties’ residence is insufficient to establish their citizenship. *Id.*; *John Birch Soc’y v. National Broadcasting Co.*, 377 F.2d 194, 199 (2d Cir.1967).

Leveraged Leasing Admin. Corp. V. PacifiCorp Capital, Inc., 87 F.3d 44, 47 (2d Cir. 1996).

Statements of residence are insufficient because citizenship for diversity purposes is determined by an individual’s domicile, not residence. An individual may have several residences. He or she can have only one legal domicile.

The Complaint alleges that Michael and Margaret Petrucelli are residents of Riverside Connecticut. Compl. [doc. #1] ¶ 1.

Palmer, in turn, has alleged that she “has resided in a rental apartment in Manhattan for over

forty years,” Def.’s Local Rule 56(a)(1) Statement [doc. #25] ¶ 3, and “[o]ther than the subject property at 9 Lakeshore North, New Fairfield, the only other real estate Palmer has ever owned were two condos in Florida.” *Id.* ¶ 4. Plaintiffs allege that Palmer “considers her residence in New York as her home.” Pls.’ Local Rule 56(a)(1) Statement [doc. #27] ¶ 75.

All of these allegations have been admitted.

I find that the record sufficiently demonstrates that at the time of the filing of the Complaint, Palmer was a domiciliary of either New York or Florida. However, I also find that the record does not demonstrate, “distinctly and positively,” the domicile of Michael and Margaret Petrucelli.

It is therefore ORDERED that Michael and Margaret Petrucelli must submit to the Court, no later than Friday, December 19, 2008, an affidavit stating whether, at the time they filed their Complaint, they maintained a residence in either New York or Florida. If they did maintain such a residence, then the affidavit must further state (a) all the residences kept by either of the plaintiffs, including where those residences are located, and (b) approximately how much time each party spends at each residence.

Dated: New Haven, Connecticut
December 10, 2008

/s/ Charles S. Haight, Jr.
Charles S. Haight, Jr.
Senior United States District Judge