

EXAMINER'S ANALYSIS OF QUESTION NO. 4

The court should deny the motion to dismiss for lack of subject matter jurisdiction. Federal courts are courts of limited jurisdiction, meaning they can only hear actions authorized by the United States Constitution or federal statutes. The two primary categories of federal subject matter jurisdiction are when (1) there is either a federal question asserted in a well-pleaded complaint that seeks a remedy based on the federal question or (2) there is complete diversity of jurisdiction, which requires that the action be between citizens of different states and the amount in controversy exceeds \$75,000. For "complete diversity" to exist, no plaintiff can be a citizen of the same state of any defendant. 28 USC § 1332.

In terms of diversity jurisdiction for this case, complete diversity between the parties exists; however, the federal court lacks diversity jurisdiction because the amount in controversy does not exceed \$75,000.

When determining an individual's citizenship, a court will look to the person's domicile at the time the action was filed. A person can have only one domicile for purposes of diversity jurisdiction, *Eastman v Univ of Mich*, 30 F3d 670, 673 (CA 6, 1994), and a previous domicile cannot be lost until another is adequately established, *Mitchell v US*, 88 US 350, 353 (1874). Establishment of a new domicile, for diversity jurisdiction purposes, is determined by two factors: (1) residence in the new domicile, and (2) intention to remain there. *Von Dunser v Aronoff*, 915 F2d 1071, 1072 (CA 6, 1990). Thus, the relevant questions are whether Michael took up a new domicile in Ohio and whether Michael intended to remain in Ohio indefinitely.

Here, the facts do not support that Michael intended to abandon his Michigan domicile in favor of relocating to the Ohio farmhouse. Michael had established a Michigan domicile in which he lived "for over 30 years" before he purchased the Ohio farm. Although he lived at the Ohio farmhouse for the majority of the year and moved many personal items there, his presence in Ohio was necessitated by his livelihood. There is far stronger evidence that Michael considered his Michigan house as his domicile. For instance, he referred to his Michigan house as his "home," he would live there during the fall and winter when he wasn't required to be "growing and selling" produce at the farm; he maintained an active social life in Monroe; he maintained health club and church memberships in Monroe; he was registered and did in fact vote in Monroe, and he continues to obtain medical and dental care from

his doctors in Monroe. Michael has not changed his Michigan driver's license and car registration. Thus, Michael's intent was not to abandon his Michigan domicile in favor of the Ohio farmhouse. Accordingly, Michael is a citizen of Michigan for diversity purposes.

The fact that Michael moved to the Ohio farmhouse full time after the action was filed is irrelevant for diversity purposes. Diversity is determined at the time that the action is filed, and based on the residency of the parties at that time. A change in domicile by a party after that date does not destroy diversity. *LeBlanc v Cleveland*, 248 F3d 95, 100 (CA 2, 2001).

Unlike an individual, a corporation is a citizen where it is incorporated and where it has its principal place of business. 28 USC § 1332(c)(1). Here, Sally Foods is a citizen for diversity purposes in Minnesota where it is incorporated. A corporation's "principal place of business" for purposes of federal diversity jurisdiction refers to "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities." *Hertz Corp v Friend*, 559 US 77, 80 (2010). Sally Foods is also a citizen of Ohio because that is where its headquarters and CEO who directs and controls Sally Foods activities are located. Therefore, complete diversity exists between Michael and Sally Foods

However, diversity jurisdiction also requires that the amount in controversy exceed \$75,000. 28 USC § 1332. In determining the amount in controversy, courts will accept the plaintiff's good faith allegations as to damages unless it appears to a legal certainty that the plaintiff cannot recover that amount. *St Paul Mercury Indemnity Co v Red Cab Co*, 303 US 283, 288-289 (1938). Here, Michael's claim for \$80,000 in damages does not appear to have been made in good faith. During the first two years of this 4-year contract, Michael earned no more than \$20,000 per year. The facts further state that Sally Foods learned that Michael prices "were higher than other farms in the area." Nevertheless, Michael asserted \$80,000 in damages for his expected loss of produce sales for the remaining 2 years of the contract. The facts do not support Michael's assertion that expected future produce sales for the last two years of the contract would be greater than \$75,000 when he earned only \$40,000 during the first two years. Thus, although the parties are diverse, the jurisdictional threshold is not met and federal jurisdiction based on diversity is lacking.

However, the federal court has subject matter jurisdiction because Michael has asserted a federal claim. Federal courts have subject matter jurisdiction to hear claims that "arise under" the Constitution or other federal laws. 28 USC § 1331. Because Michael's lawsuit is based on federal law, not state law, the federal claim establishes an independent basis for federal jurisdiction regardless of whether the parties are diverse or the \$75,000 amount in controversy threshold for diversity jurisdiction is met. Thus, the federal court should deny defendant's motion to dismiss for lack of subject matter jurisdiction.