

A limited liability company and a corporation entered into a contract in which the corporation agreed to deliver 100 tons of refined ore to the limited liability company in State A. The company maintains its principal place of business in State A. It has two members: one lives in State A and the other lives in State B. The corporation is both incorporated and keeps its principal place of business in State B. The corporation frequently conducts business in State A and keeps a refinery there to service its State A customers.

After the corporation failed to deliver 100 tons of refined ore, the company sued the corporation for breach of contract in a federal court in State A, seeking \$1 million in damages. Sixty-one days after the company filed suit, a professional process server personally served the summons and complaint on the corporation's chief operating officer while she was touring the refinery, and copies of the summons and complaint were mailed to the corporation. Upon receiving service of process, the corporation moved to dismiss the lawsuit.

If the court grants the motion, which is the most likely reason?

- A. Improper venue, because the corporation's principal place of business is in State B.
- B. Lack of personal jurisdiction, because the corporation is domiciled in State B.
- C. Lack of subject-matter jurisdiction, because the opposing parties are not diverse.
- D. Untimely service of process, because the summons and complaint were served more than 60 days after the complaint was filed.

Explanation:

A lawsuit should be dismissed if the court lacks **subject-matter jurisdiction**—ie, the authority to hear a particular type of case. This breach-of-contract case does not present a federal question, so subject-matter jurisdiction must be established through **diversity jurisdiction**. Diversity jurisdiction exists when the **amount in controversy exceeds \$75,000** and the opposing parties are **citizens of different states**. A party's citizenship is determined as follows:

- **Individual** – the state where the individual **resides** and **intends to remain indefinitely** (ie, state of domicile)
- **Corporation** – the state(s) where it is **incorporated** and/or has its **principal place of business**
- **Unincorporated association** (eg, partnership, limited liability company) – every state where its **partners or members are domiciled**

Here, the corporation is a citizen of *State B*, where it is incorporated and has its principal place of business. The limited liability company is a citizen of *State A* and *State B*, where its two members are domiciled. Since both parties are citizens of *State B*, there is no diversity of citizenship. Therefore, the motion to dismiss was likely granted on this basis.

(Choice A) **Venue** is proper in the **federal district** where a substantial part of the events giving rise to the claim occurred—eg, where a contract was to be performed. Therefore, venue is *proper* in *State A*, where the ore was to be delivered.

(Choice B) A federal court acquires **personal jurisdiction** over an out-of-state corporation when a corporate officer (here, the chief operating officer) is served with process while voluntarily in the state where the court sits. Therefore, the *State A* court has personal jurisdiction over the *State B* corporation.

(Choice D) Service of process is timely if the **summons and complaint** are served within 90 days after the complaint is filed. Therefore, process was timely served 61 days after the complaint was filed.

Educational objective:

Individuals are only citizens of their state of domicile. In contrast, corporations are citizens of the state(s) where they are incorporated and/or have their principal place of business, and unincorporated associations are citizens of every state where their members are domiciled.

References

- 28 U.S.C. § 1332 (diversity jurisdiction).

Citizenship for diversity jurisdiction

