

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CORNERSTONE CONTRACTING, :
INC.,

Plaintiff,

v.

FIDELITY & DEPOSIT COMPANY :
OF MARYLAND,

Defendant.

Case No. 3:24-cv-291

JUDGE WALTER H. RICE

DECISION AND ENTRY SUSTAINING THE MOTION TO DISMISS
FILED BY DEFENDANT FIDELITY & DEPOSIT COMPANY OF
MARYLAND (DOC. #12); TERMINATION ENTRY

Plaintiff Cornerstone Contracting, Inc. ("Plaintiff") filed this lawsuit against Fidelity & Deposit Company of Maryland ("Defendant"). Doc. 1. Plaintiff contends that Defendant is liable for breach of contract. Doc. #1, PageID #5. Pending before the Court is a Motion to Dismiss for Lack of Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Doc. #12. Plaintiff failed to timely respond to this motion and have, therefore, waived their right to respond.

Federal Rule of Civil Procedure 12(b)(1) permits a party to move to dismiss a claim for relief based on lack of subject matter jurisdiction. Subject matter jurisdiction may be based on either "federal question" jurisdiction pursuant to 28 U.S.C. § 1331 or "diversity" jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff's Complaint makes

no claims under federal law and therefore rests solely on diversity jurisdiction. Doc. #1, PageID #2.

Federal court jurisdiction based on diversity of the parties requires that the amount in controversy be greater than \$75,000 and that the parties be citizens of different states. 28 U.S.C. § 1332(a)(1). While Plaintiff's claims meet the amount in controversy requirement, they fail to meet the complete diversity requirement. Plaintiff states in the Complaint that they are "an Illinois corporation with its principal place of business in Elk Grove Village, Illinois." Doc. #1, PageID #1. Defendant's Motion to Dismiss states that it is also "a corporation formed under the laws of Illinois, with its corporate headquarters and principal place of business located at 1299 Zurich Way, Schaumburg, IL 60196." Doc. 12, PageID #110. Defendant's citizenship in Illinois is further bolstered by Plaintiff's Request for Issuance of Summons in this case, whereby they requested the Clerk's Office to serve notice of this lawsuit to Defendant in Illinois. Doc. #9, PageID #105. Because both Plaintiff and Defendant are citizens of Illinois there is no diversity jurisdiction in this case and therefore no subject matter jurisdiction.

For these reasons, the Motion to Dismiss for Lack of Jurisdiction filed by Defendant Fidelity & Deposit Company of Maryland (Doc. #12) is SUSTAINED and the captioned case is DISMISSED. If permitted by the relevant statute of limitations, the captioned case may be refiled in a state court of competent jurisdiction.

The above captioned case is hereby ordered TERMINATED upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: February 21, 2025

Walter H. Rice

WALTER H. RICE
UNITED STATES DISTRICT JUDGE