

Candice Lue

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April 29, 2022

Clerk's Office
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

DOCKET NO. 21 - 892

Candice Lue, Pro Se Plaintiff - Appellant v. JPMorgan Chase & Co. et al Defendants - Appellees


Petition for Rehearing

To Whom It May Concern:

Pursuant to FRAP 40, please find attached my Petition for Rehearing and Summary Order for the above-captioned Civil Action to cure the defective filing of April 20, 2022 (docket # 91).

Also attached is Certificate of Service representing service of a true and correct copy of my said Petition for Rehearing to the Appellees' attorney, Robert S. Whitman of Seyfarth Shaw LLP.

Respectfully,


Candice Lue
Pro Se Plaintiff - Appellant

Attachments: Petition for Rehearing, Summary Order and Certificate of Service

Filed via Email: prosecases@ca2.uscourts.gov

NO. 21 - 892

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CANDICE LUE,
Pro Se Plaintiff - Appellant,

v.

JPMORGAN CHASE & CO., a Delaware Corporation; ALEX KHAVIN, an individual; FIDELIA SHILLINGFORD, an individual; KIMBERLY DAUBER, an individual; BARUCH HOROWITZ, an individual; CHRIS LIASIS, an individual; MICHELLE SULLIVAN, an individual,
Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No.: 19 CV 9784
Judge Katherine Polk Failla

PETITION FOR REHEARING

Candice Lue, Pro Se



Email: Info@CandiceLue.com

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INTRODUCTION

Per the Summary Order on April 19, 2022, the Court's decision was made pursuant to *Hertz Corp v. Friend*, 599 U.S. 77, 94 (2d Cir. 2010) whereby "Courts have an independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it" and that I, Candice Lue, "*failed to plead diversity of citizenship*".

I'd like to respectfully bring to the this Court's attention that I am a Pro Se Plaintiff/non-attorney **without** the financial resources to retain legal representation who is up against a "goliath" with **unlimited** financial resources to retain any legal representation they so desire so the fact that the Court takes it upon themselves, on behalf of JPMorgan Chase & Co., et al ("Goliath", "the Goliath") to claim that I, Candice Lue "*failed to plead diversity of citizenship*" which Goliath with their unlimited financial resources and legal representation had the opportunity from the inception of this lawsuit to do but FAILED to do, is telling. Everything in the Summary and Order is about how poor, Pro Se Plaintiff/non-attorney, Candice Lue "*failed, failed, failed*" but **nothing** about the Goliath's failure.

The ironic thing is that not only did Goliath fail to challenge the subject-matter jurisdiction, they and the District Court addressed and **agreed** with the said subject-matter jurisdiction as stated in footnote # 4 on pages 8 to 9 of the District Court's Opinion and Order: "*Because subject matter jurisdiction in this case is*

*based upon diversity of citizenship (see Am. Compl. ¶ 1), the Court applies the choice of law rules of the forum state, see Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941). New York choice of law rules mandate application of the substantive law of the state with the most significant relationship to the legal issue. See, e.g., Skaff v. Progress Int'l, LLC, No. 12 Civ. 9045 (KPF), 2014 WL 5454825, at *8 (S.D.N.Y. Oct. 28, 2014) (quoting Intercontinental Plan., Ltd. v. Daystrom, Inc., 24 N.Y.2d 372, 382 (1969)). Defendants' briefing indicates their belief that New York law applies in this case. (See Def. Br. 4). The Court agrees. The instant suit alleges defamation with respect to prior litigation in federal court in New York between the same parties — many of which are located in New York — and as such, the complained-of conduct and harm occurred in New York. Accordingly, the Court will apply New York law to Plaintiff's state law claims.”*

Based on my argument below in which I seek an amendment to the subject-matter jurisdiction pursuant to 28 U.S.C. § 1653 and the fact that I am a Pro Se Plaintiff/non-attorney who is afforded special solicitude under Second Circuit Law - *Graham v. Lewinski*, 848 F. 2d 342, 344 (2d Cir. 1988) “*A pro se plaintiff is entitled to have her pleadings held to less stringent standards than formal pleadings drafted by lawyers*”, I hereby respectfully ask that the Court grant my Petition for the Rehearing of the entirety of my case.

ARGUMENT

In response to the Summary Order on April 19, 2022, pursuant to 28 U.S.C. § 1653, I, Candice Lue, Pro Se Plaintiff/non-attorney, respectfully ask that this Court grant leniency in giving me the opportunity to amend the “Statement of Subject Matter and Appellate Jurisdiction” indicated in this case.

I totally miscalculated the fact that federal diversity jurisdiction under 28 U.S.C. § 1332 “diversity of citizenship” means that as a plaintiff, I cannot live in the same state as any of the defendants and without attempting to do further research due to the time sensitivity and limitation of time (Statute of Limitation) I had to file this lawsuit, I actually thought that it meant that all the defendants and myself do not live in the same state and as such, had to go that route.

Even though I do not have definite knowledge as to the domicile of all the defendants, I have a strong belief that at least two of them lived permanently in my home state of New Jersey at the time of the serving of this lawsuit.

Upon the afore-stated realization, I now understand that my “Subject Matter Jurisdiction” pursuant to 28 U.S.C. § 1332 due to diversity of citizenship between Plaintiff and Defendants is flawed and, as a Pro Se Plaintiff/non-attorney and pursuant to 28 U.S.C. § 1653 ask for leniency from this Court to amend “Statement of Subject Matter and Appellate Jurisdiction” as follows:

Statement of Subject Matter and Appellate Jurisdiction

The District Court possessed subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(1):

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property.

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291. The District Court entered its final Order granting the Defendants' Motion to Dismiss on March 23, 2021 (App. 10A – 29A & 30A). I, pro se Plaintiff, Candice Lue filed a timely Notice of Appeal on April 6, 2021 (App. 31A – 32A).

CONCLUSION

In light of the foregoing, I once again respectfully ask for the leniency of this Court in granting my Petition for the Rehearing of the entirety of my case.

DATED: April 29, 2022

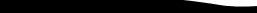
Respectfully Submitted,

CANDICE LUE

Pro Se Appellant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition for Rehearing was served with permission via email on the Appellees' attorney on record, Mr. Robert Whitman of Seyfarth Shaw LLP on April 29, 2022 as indicated below:


 Candice Lue
 Pro Se Appellant

SUMMARY ORDER

21-892-cv
Lue v. JPMorgan Chase & Co.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit,
held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of
New York, on the 19th day of April, two thousand twenty-two.

PRESENT:

**BARRINGTON D. PARKER,
MICHAEL H. PARK,
BETH ROBINSON,**
Circuit Judges.

CANDICE LUE, an individual,

Plaintiff-Appellant,

v.

21-892

**JPMORGAN CHASE & CO., a Delaware
Corporation, ALEX KHAVIN, an individual,
FIDELIA SHILLINGFORD, an individual,
KIMBERLY DAUBER, an individual,
BARUCH HOROWITZ, an individual, CHRIS
LIASIS, an individual, MICHELLE
SULLIVAN, an individual,**

*Defendants-Appellees.**

* The Clerk of Court is respectfully directed to amend the caption as set forth above.

1 **FOR PLAINTIFF-APPELLANT:**

Candice Lue, pro se, [REDACTED]
[REDACTED]

4 **FOR DEFENDANTS-APPELLEES:**

Robert S. Whitman, Seyfarth
Shaw LLP, New York, NY.

7 Appeal from a judgment of the United States District Court for the Southern District of
8 New York (Failla, J.).

9 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
10 **DECREED** that the case is **REMANDED** pursuant to the procedures outlined in *United States v.*
11 *Jacobson*, 15 F.3d 19 (2d Cir. 1994).

12 Appellant Candice Lue, proceeding pro se, sued her former employer, JPMorgan Chase &
13 Co. (“JPMorgan”), and six of its employees or former employees for defamation and “false and
14 fraudulent acts and conduct.” Supp. App’x at 17. The district court granted Defendants’ motion
15 to dismiss with prejudice for failure to state a claim. We assume the parties’ familiarity with the
16 underlying facts, the procedural history of the case, and the issues on appeal.

17 We first consider whether we have subject matter jurisdiction because “[c]ourts have an
18 independent obligation to determine whether subject-matter jurisdiction exists, even when no party
19 challenges it.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2d Cir. 2010). We conclude that Lue
20 has failed to plead diversity of citizenship.

21 Lue’s complaint asserted federal diversity jurisdiction under 28 U.S.C. § 1332, which
22 requires that the case be between “Citizens of different States.” *Id.* § 1332(a)(1). “An
23 individual’s citizenship, within the meaning of the diversity statute, is determined by his domicile,”
24 and residence or place of employment alone are “insufficient to establish domicile for
25 jurisdictional purposes.” *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 53–54 (2d Cir.



1 2019) (citation omitted). “[A] plaintiff premising federal jurisdiction on diversity of citizenship
2 is required to include in its complaint adequate allegations to show that the district court has subject
3 matter jurisdiction.” *Durant, Nichols, Houston, Hodgson & Cortese-Costa P.C. v. Dupont*, 565
4 F.3d 56, 64 (2d Cir. 2009) (citing Fed. R. Civ. P. 8(a)(1)); *see also Jacobs v. Patent Enforcement*
5 *Fund, Inc.*, 230 F.3d 565, 567 (2d Cir. 2000) (plaintiffs “failed adequately to allege diversity in
6 their original complaint” because “they had alleged only the residence, and not the citizenship (or
7 domicile), of the parties”).

8 Here, Lue failed to allege the state of her own citizenship or domicile or that of the
9 individual Defendants. Although she sufficiently alleges JPMorgan’s citizenship, she alleged
10 only that she “reside[s] and work[s] in the state of New Jersey,” and that the individual Defendants
11 were employees or former employees of JPMorgan “located . . . in the County of New York.”
12 Supp. App’x at 2–3. These allegations are insufficient to establish individual citizenship for
13 diversity purposes. Likewise, in response to the district court’s initial pretrial conference order,
14 Lue stated that the court had subject matter jurisdiction because “the Plaintiff and the Defendants
15 who are individuals live and/or work in different states.” S.D.N.Y. dkt. no. 1:19-cv-9784, doc.
16 23 at 1. Such conclusory allegations are insufficient, and Lue thus failed to establish diversity of
17 citizenship.

18 Accordingly, we remand the case pursuant to the procedures adopted in *United States v.*
19 *Jacobson*, 15 F.3d 19 (2d Cir. 1994), with instructions to determine whether there is complete
20 diversity of citizenship between Lue and Defendants. If the district court determines that it lacks
21 diversity jurisdiction, it must dismiss the case without prejudice. If it determines that there is
22 diversity jurisdiction, either party may reinstate this appeal by submitting a letter to this Court so

1 requesting no later than 10 days after the district court's determination. The Clerk shall direct
2 any such appeal to this panel.

3 FOR THE COURT:
4 Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

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