

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

**PEPI SCHAFLER**

\*

Plaintiff,

v.

\*

CIVIL ACTION No. RWT-08-1840

**NICHOLAS R. SCANNIELLO, et al**

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Defendants.

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**ORDER**

This case concerns what Plaintiff calls a “mongrel car.” She alleges that she bought a vehicle which turned out to have been stitched together from the “leftover spare parts” of other cars, something that is reminiscent of the “Psycho-Billy Cadillac” in Johnny Cash’s famous ballad, “One Piece at a Time.” Plaintiff alleges diversity jurisdiction under 28 U.S.C. § 1332. However, she also alleges that she is a citizen of the same state as two of the defendants responsible for this “abomination of a car.” On July 28, 2008, the Court dismissed Plaintiff’s Complaint sua sponte for lack of complete diversity. Plaintiff now seeks reconsideration of the Court’s dismissal.

Plaintiff argues that the defendants should have been served and required to challenge jurisdiction before her complaint was dismissed by the Court. She states that “[l]ack of diversity jurisdiction . . . is part of the defenses for the Defendants, and their argument to make” and that “[t]his right is not to be usurped by this Court.” Plaintiff, who has admittedly earned a law degree, supports her argument by seriously misquoting a prior version of the Federal Rules of Civil Procedure. Plaintiff quotes Federal Rule of Civil Procedure 12(h)(3) as stating that “whenever it appears by suggestion of the parties that the court lacks jurisdiction of the subject matter the court shall dismiss the action.” She contends that this language prohibits a court from undertaking a sua

sponte dismissal for lack of jurisdiction unless the jurisdictional shortcomings were brought to the Court's attention "by suggestion of the parties."

However, Plaintiff's version of the Federal Rules of Civil Procedure, like her car, is missing some crucial parts. Prior to the 2007 revisions to the Rules, the language in Rule 12(h)(3) was similar to the language quoted in Plaintiff's motion. However, it included two extra words. The prior version reads: "whenever it appears by suggestion of the parties **or otherwise** that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." (emphasis added).

The current version of Rule 12(h)(3), and the one that applies to this case, is much more lucid. The current version states: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." (emphasis added). This rule could not be more clear. If the Court lacks jurisdiction, then it must dismiss the case "at any time." No "suggestion of the parties" is required. Furthermore, because subject-matter jurisdiction "concerns a court's competence to adjudicate a particular category of cases . . . subject-matter jurisdiction must be considered by the court on its own motion, even if no party raises an objection." *Wachovia Bank v. Schmidt*, 546 U.S. 303, 316 (U.S. 2006). This rule categorically prohibits the Court from considering Plaintiff's allegation that she was sold a mongrel automobile. Without jurisdiction, this Court is simply not competent to entertain Plaintiff's action

Accordingly, it is this 20<sup>th</sup> day of August, 2008, by the United States District Court for the District of Maryland, hereby

**ORDERED** that Plaintiff's Motion for Reconsideration [Paper No. 3] is **DENIED**.<sup>1</sup>

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/s/  
\_\_\_\_\_  
ROGER W. TITUS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>The Court recognizes Plaintiff's frustration with this Order. So, the Court would like to stress to Plaintiff that her Complaint was dismissed without prejudice, meaning that she may file a state court action without being adversely affected by the Court's dismissal for lack of jurisdiction.