

DLD-177

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2468

LAN TU TRINH,
Appellant

v.

CITIZEN BUSINESS BANKING; VANESSA M. BARBETTI

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. Civil Action No. 2:18-cv-01662)
District Judge: Honorable Wendy Beetlestone

Submitted on Appellees' Motion for Summary Action
April 30, 2020

Before: RESTREPO, PORTER, and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted on appellees' motion for summary action on April 30, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered May 30, 2019, be and the same hereby is summarily affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/Patricia S. Dodszuweit
Clerk

DATED: May 29, 2020

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NOT PRECEDENTIAL

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(Opinion filed May 29, 2020)

OPINION*

PER CURIAM

Pro se appellant Lan Tu Trinh appeals from the District Court's order dismissing her claims for lack of subject matter jurisdiction. For the reasons that follow, we will summarily affirm the District Court's judgment.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

In 2018, Trinh filed a complaint in the District Court alleging that Citizens Bank of Pennsylvania and its employee, Vanessa Barbetti, facilitated wiring \$87,550 from her business account without her authorization. At a hearing, Trinh made clear that she sought an acknowledgement of wrongdoing and an apology from defendants, as the amount wired from the account had been returned; Trinh did not seek economic damages. Defendants moved for summary judgment and produced unopposed evidence that all parties were residents of Pennsylvania. The District Court granted defendants' motion, concluding that it lacked subject matter jurisdiction over the action. Trinh timely appealed, and appellees have moved for summary action.¹

The District Court correctly determined that it lacked subject matter jurisdiction over Trinh's claims. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) ("Federal courts are courts of limited jurisdiction."). It is apparent from Trinh's filings that her allegations do not form a basis for federal question jurisdiction. See 28 U.S.C. § 1331. There is also no basis for diversity jurisdiction, as the record evidence indicates that all parties are citizens of Pennsylvania. See 28 U.S.C. § 1332(a)(1). Accordingly, we grant the appellees' motion and will summarily affirm the District Court's judgment.

¹ We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, and we exercise plenary review over the District Court's dismissal for lack of subject matter jurisdiction. See Swiger v. Allegheny Energy, Inc., 540 F.3d 179, 180 (3d Cir. 2008). We may summarily affirm a district court's decision "on any basis supported by the record" if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAN TU TRINH,

Plaintiff,

CIVIL ACTION

v.

CITIZEN BUSINESS BANKING AND
VANESSA M. BARBETTI,
Defendants.

NO. 18-1662

FILED

MAY 29 2019

O R D E R

By KATE BARKMAN, Clerk
Dep. Clerk

AND NOW, this 29th day of May, 2019, upon consideration of Defendants' Motion for Summary Judgment (ECF No. 19), further briefing in support thereof (ECF No. 22), and Plaintiff's responses in opposition thereto (ECF Nos. 21, 23), IT IS ORDERED that the Motion is GRANTED and the case is DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

The Clerk of Court is directed to CLOSE this case.

BY THE COURT:



WENDY BEETLESTONE, J.

B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAN TU TRINH,

Plaintiff,

v.

CITIZEN BUSINESS BANKING AND
VANESSA M. BARBETTI,
Defendants.

CIVIL ACTION

NO. 18-1662

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Dep. Clerk

MEMORANDUM OPINION

Plaintiff Lan Tu Trinh brings suits against Defendants Citizen Business Banking and Vanessa M. Barbetti for claims stemming from the withdrawal of funds from LT International Beauty School, which Plaintiff owns. ECF No. 15. Defendants now move for summary judgment, and assert, *inter alia*, that subject matter jurisdiction does not exist. Because the federal courts are "courts of limited jurisdiction," *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005), "[i]t is fundamental that federal courts must have subject matter jurisdiction before reaching the merits of a case," *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 34 (3d Cir. 2018). Accordingly, before reaching the merits, the Court must determine whether it has subject matter jurisdiction to hear this case.

Federal courts have subject matter jurisdiction over two types of cases: federal question cases and diversity cases. *Exxon Mobil*, 545 U.S. at 552.

Federal question jurisdiction exists in "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. To establish federal question jurisdiction, "the party asserting jurisdiction must satisfy the 'well-pleaded complaint rule,' which mandates that the grounds for jurisdiction be clear on the face of the pleading that initiates the case." *Goldman v. Citigroup Glob. Markets Inc.*, 834 F.3d 242, 249 (3d Cir. 2016) (quoting *Franchise*

Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal., 463 U.S. 1, 9-11 (1983)). Here, Plaintiff's complaint asserts that Defendants improperly withdrew funds from her account without her signature or authorization. She does not invoke any federal precept of law, nor is any federal question apparent from the face of the complaint. Thus there is no basis to find federal question jurisdiction.

Diversity jurisdiction exists in civil actions between citizens of different States, between U.S. citizens and foreign citizens, or by foreign states against U.S. citizens where the amount in controversy exceeds \$75,000. 28 U.S.C. at § 1332. Complete diversity is required, meaning that "every plaintiff must be of diverse state citizenship from every defendant." *In re Briscoe*, 448 F.3d 201, 215 (3d Cir. 2006). A corporate defendant is deemed a citizen of its state of its incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c). Where "diversity of citizenship [has] been adequately pleaded by the plaintiff, the defendant can submit proof that, in fact, diversity is lacking." *GBForefront*, 888 F.3d at 35. "The defendant has the initial burden of production to raise a factual challenge," but "[o]nce a factual challenge has been raised, the plaintiff then has the burden of proof to establish diversity jurisdiction by a preponderance of the evidence." *Id.*

Plaintiff's complaint lists her state of residency as Pennsylvania, gives a Massachusetts address for Defendant Barbetti, and provides no address for Defendant Citizens Bank. In their summary judgment motion, Defendants assert that, in fact, they are both residents of Pennsylvania: Defendant Barbetti provided an affidavit stating that she is a resident of Pennsylvania and has been for many years; Defendant Citizens Bank is incorporated in Pennsylvania with its principal place of business in Pennsylvania. Plaintiff does not respond to these jurisdictional assertions in her opposition to Defendants' motion. Because Defendants

have provided evidence that all parties are residents of Pennsylvania, and because Plaintiff has not provided any proof to rebut this assertion, Plaintiff has not met her burden of proof to establish that diversity among the parties exists. *Id.*

In the absence federal question or diversity jurisdiction, this action must be dismissed for lack of subject matter jurisdiction.

May 29, 2019

BY THE COURT:



WENDY BEETLESTONE, J.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. **19-2468**

LAN TU TRINH,
Appellant

v.

CITIZEN BUSINESS BANKING;
VANESSA M. BARBETTI

D.C. No. 2-18-cv-01662

SUR PETITION FOR REHEARING

Before: SMITH, *Chief Judge*, McKEE, CHAGARES, JORDAN, SHWARTZ,
RESTREPO, BIBAS, PORTER, MATEY and SCIRICA, **Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

* Judge Scirica's vote is limited to panel rehearing only.

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circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ L. Felipe Restrepo

Circuit Judge

Date: September 14, 2020

Lmr/cc: Lan Tu Trinh

Joel M. Eads

**Additional material
from this filing is
available in the
Clerk's Office.**