



## Madrigal v. Russell Trust Association et al

2017 | Cited 0 times | S.D. Texas | November 21, 2017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

CORPUS CHRISTI DIVISION REYNALDO MADRIGAL, §

§ § § § § § Plaintiff, VS. CIVIL ACTION NO. 2:17-CV-340 RUSSELL TRUST ASSOCIATION, et al, Defendants.

MEMORANDUM AND RECOMMENDATION Plaintiff filed this civil action pro se on October 31, 2017. (D.E. 1). The case has been referred to the undersigned Magistrate Judge for case management pursuant to 28 U.S.C. § 636. neither presents a federal question nor fulfills the requirement of complete diversity.

DISMISSED for lack of subject matter jurisdiction. I. BACKGROUND

Pancho Villa was a prominent figure of the Mexican Revolution. His skull, which was stolen from his grave in 1926, is rumored to be in the possession of Yale

1 The Society has been accused of housing other similar artifacts as well. 2

1 See Pancho Villa Skull at Yale?, The Washington Post, Aug. 11, 1988. The Washington Post reported that a group of Mexican nationals in El Paso, Texas wished to trying to l Case 2:17-cv-00340 Document 6 Filed on 11/21/17 in TXSD Page 1 of 6

United States District Court Southern District of Texas

ENTERED November 21, 2017 David J. Bradley, Clerk In his civil complaint, Plaintiff alleges the Society further alleges the various Defendants, including the Russell Trust Association, 3

George H.W. Bush, Willard Mitt Romney, and Yale University, are

t it may be buried with his body in Mexico City. (D.E. 1, Page 4).

On November 13, 2017, the undersigned ordered Plaintiff to file a more definite Plaintiff filed a more definite statement on November 20, 2017. (D.E. 5). None of the



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Defendants has appeared in this action. II. JURISDICTION

Absent a challenge by a litigant, a federal court must examine the basis of its jurisdiction sua sponte. See *Perez v. Stephens*, 78 F.3d 1182 (5th Cir. 1995) (axiomatic that we must consider the basis of our own jurisdiction, sua sponte if *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 919 (5th Cir. 2001) (federal

*La Cabeza de Villa*, *The New Yorker*, Nov. 27, 1989, at 108. 2 A suit was filed against the Society to recover the remains of the Apache warrior Geronimo, which, according to 1900s. *Geronimo v. Obama*, 725 F. Supp. 2d 182 (D.D.C. 2010). The Geronimo plaintiffs based their claim upon . § 3001 et seq. The court held the plaintiffs failed to establish the United States had waived its sovereign immunity, and dismissed the case for lack of subject matter jurisdiction and for failure to state a claim. 3 The Russell Trust Association is the governing body of the Society. See generally, Alexandra Robbins, *Secrets of the Tomb: Skull and Bones, the Ivy League, and the Hidden Paths of Power* (Little, Brown & Co., Back Bay Books, 2002).

courts must address jurisdiction sua sponte if not raised by the parties). The burden of establishing jurisdiction rests on the party seeking the federal forum. *Howery*, 243 F.3d at 916.

At various points in his Pro Se as the basis for federal jurisdiction. (D.E. 1, Page

3 and 6). the conclusion that Plaintiff intended to base jurisdiction upon

diversity of citizenship. (D.E. 5). For completeness, however, the undersigned has considered both federal question and diversity jurisdiction.

A. Federal Question Under 28 U.S.C. § 1331, a district court has original federal question jurisdiction

over a federal question. *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995). A suit arises under federal law i.e. presents a federal question if there appears on the face of the complaint some substantial, disputed question of federal law. *Id.*; see also *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 11 (1983) establishes the case arises under federal law where a right created by federal law is an

(citation omitted).

requested relief that Defendants be ordered to return stolen property does not raise a

federal claim. Accordingly, Plaintiff has not established this Court has federal question jurisdiction.

B. Diversity of Citizenship matter in controversy exceeds the sum or value of \$75,000, exclusive of



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interest and

statute requires complete diversity of citizenship, meaning that all persons on one side of

the controversy must not share the same citizenship as any one person on the other side. *Stiftung v. Plains Mktg., L.P.*, 603 F.3d 295, 297 (5th Cir. 2010); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079-80 (5th Cir. 2008).

In the instant case, complete diversity is lacking because Plaintiff and one of the Defendants, George H.W. Bush, are citizens of the same state. Plaintiff is a resident of Corpus Christi, Texas, and Defendant Bush is a resident of Houston, Texas. (D.E. 1, Pages 1-2). 4

Therefore, the undersigned recommends this Court cannot exercise diversity See *Vela v. Manning*, 469 under 28 U.S.C. § 1 see also *Howery*, 243 F.3d at 920 (court must dismiss for

lack of jurisdiction where there is no evidence of diversity on the record).

4 mum requirement of \$75,000. Plaintiff does not allege a specific amount, nor has he alleged facts from which the amount in controversy could be reasonably inferred. (D.E. 1, Page 4). This is an independent reason to find that diversity jurisdiction is not established. See *Fairley v. Ford*, No. CV H-17-1639, 2017 WL 3507015, at \*4 (S.D. Tex. Aug. 16, 2017) ( to dismiss for lack of subject matter jurisdiction, even after court found plaintiff did not establish diversity of citizenship).

### III. RECOMMENDATION

should be DISMISSED for lack of subject matter jurisdiction. Respectfully submitted this 21st day of November, 2017.

\_\_\_\_\_ Jason B. Libby United States Magistrate Judge

NOTICE TO PARTIES The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within FOURTEEN (14) DAYS after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(c); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

report and recommendation within

FOURTEEN (14) DAYS after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal



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conclusions accepted by the District Court. *Douglass v. United Servs.*, 79 F.3d 1415 (5th Cir. 1996)(en banc).

