

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NIPMUC PROPERTIES, LLC, :
Plaintiff, :
 :
v. : Civil Action No. 3:01CV2081(CFD)
 :
PDC-EL PASO MERIDEN, LLC; MERIDEN :
GAS TURBINES, LLC; THOMAS P. :
CADDEN, TRUSTEE OF THE 1998 REAL :
ESTATE TRUST; and the CITY OF MERIDEN, :
Defendants. :

RULING

I. Introduction

In this diversity action, Plaintiff NIPMUC Properties, LLC seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 concerning the rights conferred by a long term lease for approximately 52 acres of land located in Meriden, Connecticut. Defendant PDC-El Paso Meriden, LLC (“PDC-El Paso”) has moved to dismiss under Federal Rule Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. For the following reasons, the motion is granted.

II. Background¹

From 1998 to 2000, NIPMUC and PDC-El Paso negotiated and then entered into an agreement whereby NIPMUC agreed to sell a large parcel of land to PDC-El Paso,² a company that was interested in using some of the property for a gas-fired electricity generating plant. Under the final version of the agreement, NIPMUC purportedly retained a leasehold interest in

¹These facts are taken from the allegations of the complaint, which, as explained in Section III, the Court construes in the plaintiff’s favor in the context of a motion to dismiss for lack of subject matter jurisdiction.

²Defendant Thomas P. Cadden (“Cadden”) acted as an escrow agent for the transaction.

approximately 52 acres of the land. The Connecticut Siting Counsel eventually approved of PDC-El Paso's plans, except for NIPMUC's leasehold interest. In the Complaint, NIPMUC essentially seeks a judgment declaring that the lease is valid and in effect, and appears also to request injunctive relief in the form of a court order directing Cadden to deliver the lease to it. PDC-El Paso maintains that this Court lacks subject matter jurisdiction because of the absence of complete diversity of citizenship of the parties.

III. Standard

When considering a motion to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), "a district court must look to the way the complaint is drawn to see if it claims a right to recover under the laws of the United States." IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1055 (2d Cir.1993) (quoting Goldman v. Gallant Secs. Inc., 878 F.2d 71, 73 (2d Cir.1989)). In doing so, the allegations of the complaint are construed in the plaintiff's favor. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984); Connell v. Signoracci, 153 F.3d 74 (2d Cir.1998); Atlantic Mut. Ins. Co. v. Balfour Maclaine Intern. Ltd., 968 F.2d 196, 198 (2d Cir.1992). A district court, however, need not confine its evaluation of subject matter jurisdiction to the face of the pleadings and may consider affidavits and other evidence submitted by the parties. Land v. Dollar, 330 U.S. 731, 735 & n. 4 (1947); Exchange Nat'l Bank v. Touche Ross & Co., 544 F.2d 1126, 1130-31 (2d Cir.1976); Matos v. United States Dep't of Hous. & Urban Dev., 995 F.Supp. 48, 49 (D. Conn.1997). Once the question of subject matter jurisdiction has been raised, the burden of establishing subject matter jurisdiction rests on the party asserting jurisdiction. Thomas v. Gaskill, 315 U.S. 442, 446 (1942). Further, "[i]t is hornbook law that the

question of whether federal diversity jurisdiction exists is determined by examining the citizenship of the parties at the time the action is commenced. . . . If diversity exists at the time of commencement, federal jurisdiction is not defeated if one party subsequently becomes a citizen of the same state as his opponent.” Linardos v. Fortuna, 157 F.3d 945, 947 (2d Cir. 1998) (quotations omitted).

IV. Discussion

NIPMUC claims that this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because it involves citizens of different states. PDC El-Paso argues that the parties are not diverse because the citizenship of a limited liability company is determined by the citizenship of its members. As such, because two members of PDC-El Paso are Delaware corporations and a member of NIPMUC is a Delaware corporation, such complete diversity does not exist.

The United States Supreme Court has held that a limited partnership has the citizenship of all of its members for the purpose of establishing diversity jurisdiction. Carden v. Arkoma Assocs., 494 U.S. 185, 195-96 (1990). As PDC-El Paso points out, courts have extended Carden’s holding to limited liability companies as well. See, e.g., Handelsman v. Bedford Village Assocs. L.P., 213 F.3d 48, 51 (2d Cir. 2000); Cosgrove v. Bartolotta, 150 F.3d 729, 731 (7th Cir. 1998); Ferrara Bakery & Café, Inc. v. Colavita Pasta & Oil Corp., No. 98 CIV. 4344(LAP), 1999 WL 135234, at *2 (S.D.N.Y. Mar. 12, 1999). The Court finds the reasoning of these decisions persuasive and adopts their legal conclusion.

In this case, NIPMUC contends in its opposition memorandum that its sole member is a Delaware corporation. Because NIPMUC is a limited liability company, its citizenship reflects

that of its members, and thus it is a Delaware citizen.³

PDC-El Paso is a limited liability company organized in Connecticut under the Connecticut Limited Liability Company Act, Conn. Gen. Stat. § 34-1000 et seq.⁴ At the time this action commenced, it contained three members: (1) El Paso Meriden Power I Company; (2) El Paso Meriden Power II Company, and (3) PDC, LLC. Under Carden and its progeny, the Court must look to the citizenship of these entities to determine PDC-El Paso's citizenship. As to the first two entities, the affidavit of Timothy C. Sands, senior counsel of another entity known as El Paso Corporation, indicates that they are corporations incorporated under the laws of the State of Delaware. NIPMUC has produced no evidence to the contrary. Given that corporations are citizens of their state of incorporation, see Carden, 494 U.S. at 188, both entities are citizens of Delaware. Because both NIPMUC and PDC-El Paso are Delaware citizens, there is no diversity of citizenship between NIPMUC and PDC-El Paso and this Court thus lacks subject matter

³In the Complaint, NIPMUC states that it is a corporation duly organized under the laws of the Commonwealth of Massachusetts. However, in its memorandum in opposition to the motion to dismiss, it represents that NIPMUC is a limited liability company whose sole member is a Delaware corporation. Thus, it appears that NIPMUC is a Delaware citizen, as explained above.

⁴Under the Connecticut Limited Liability Company Act (“CLLCA”), a limited liability company “means an organization having one or more members that is formed under sections 34-100 to 34-242, inclusive.” Conn. Gen. Stat. § 34-101(9). As PDC-El Paso points out, the CLLCA does not specifically state that a limited liability company is an unincorporated association. Limited liability companies in Connecticut, however, share two distinguishing characteristics with those formed in other states: they enjoy the tax benefits conferred on limited partnerships as well as the limited liability associated with corporations. See PB Real Estate, Inc. v. DEM II Properties, 719 A.2d 73, 74 (Conn. App. Ct. 1998) (explaining the characteristics of Connecticut limited liability companies); Ferrara Bakery & Café, Inc., 1999 WL 135234 at *2 (concluding that a limited liability company formed in New Jersey is similar to those in other states because it shares these two characteristics, despite the fact it is not defined as an unincorporated association).

