

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-30591
Summary Calendar

JERRY W. CHAISSON AND JANE CHAPMAN CHIASSON,
Plaintiffs,

VERSUS

KARL STORZ ENDOSCOPY-AMERICA, INC.,
Defendant-Appellant,

VERSUS

WEST JEFFERSON MEDICAL CENTER, and/or Hospital
Service and DR. EDUARDO R. RANDRUP,
Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA 93 1565 J (2/5))

September 29, 1995

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.
PER CURIAM:¹

Karl Storz Endoscopy-America appeals the district court's sua sponte dismissal of claims against it and the other defendants for lack of jurisdiction. We affirm in part and reverse in part.

I.

Chaisson, a citizen of Louisiana, filed suit in the district

¹Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

court against medical instrument manufacturer Karl Storz Endoscopy-America (Karl Storz), a California corporation with its principal place of business in California. Chaisson alleged jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeded \$50,000 and the parties were citizens of different states.

After the completion of Medical Review Panel proceedings against Chaisson's doctor, Eduardo R. Randrup, and hospital, West Jefferson Medical Center, Chaisson amended his complaint to add Randrup and West Jefferson as defendants. Both of the new defendants were alleged to be citizens of Louisiana.

Dr. Randrup filed a Motion to Dismiss all claims against him based on lack of subject matter jurisdiction and the trial court sua sponte dismissed the entire case against all defendants (including the admittedly diverse defendant, Karl Storz).

II.

Jurisdictional issues can be raised by the parties or by the court sua sponte at any time. See MCG, Inc. v. Great Western Energy Corp., 896 F.2d 170, 173 (5th Cir. 1990). In this case, the district court had jurisdiction over the original complaint due to § 1332 which provides that district courts have jurisdiction over civil actions where the matter in controversy exceeds \$50,000 and is between citizens of different states. See 28 U.S.C.A. § 1332 (West 1993). Section 1332 requires complete diversity of citizenship in order for a federal court to exercise original jurisdiction. Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806). If complete relief cannot be afforded without the presence of non-diverse parties, the action is not properly before the

district court. The supplemental jurisdiction statute, also applicable here, provides that district courts trying cases in diversity cannot exercise jurisdiction over non-diverse parties if doing so would be inconsistent with the jurisdictional requirements of § 1332. 28 U.S.C.A. § 1367 (b) (West 1993).

The district court dismissed all of Chaisson's claims against Dr. Randrup and West Jefferson Medical Center because it found, correctly, that it did not have jurisdiction over them. Dr. Randrup and West Jefferson Medical Center are citizens of Louisiana, the same state as Chaisson. Allowing Chaisson to include these defendants in the suit would violate the terms of § 1367 and allow an end run of § 1332's diversity requirement.

The district court also dismissed Chaisson's claims against Karl Storz because it found that Dr. Randrup and West Jefferson Medical Center were indispensable parties to those claims. The court found that "the issues of liability were so intertwined that the absence of either or both nondiverse defendants would preclude complete relief as between the original parties, Chaisson and Karl Storz." In reaching this conclusion, however, the district court erred. See Temple v. Synthes Corp. Ltd., 498 U.S. 5 (1990) (holding flatly to the contrary). In Temple, the Court held that a doctor and a hospital were not indispensable parties to a plaintiff's action against the manufacturer of defective medical equipment. Id. at 7. The Court found that the district court had erred in dismissing the case and noted that "[i]t has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit." Id.

Dr. Randrup and West Jefferson Medical Center, as potential joint tortfeasors with Karl Storz, are not indispensable parties to Chaisson's claim against Karl Storz. As a result, their presence destroyed complete diversity but did not prevent the court from exercising jurisdiction over Karl Storz. See Temple, 498 U.S. at 7 (1990). When the nondiverse party is not an indispensable party, "[i]t is not necessary to dismiss the entire action . . . but only to dismiss [the nondiverse party] out of the case." Scaccianoce v. Hixon Mfg. & Supply Co., 57 F.3d 582, 585 (7th Cir. 1995). As a result, the district court's dismissal of Karl Storz was inappropriate.

For these reasons we AFFIRM the district court's dismissal of the action against Dr. Randrup and West Jefferson Medical Center, REVERSE the district court's dismissal of the action against Karl Storz and REMAND this case for further proceedings.
AFFIRMED in part, REVERSED in part and REMANDED.