NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11396
Non-Argument Calendar

QATALYST INC,
a Florida corporation, derivatively on behalf of Expect Quest, LLC, a Florida limited liability company,

Plaintiff-Appellant,

versus

PIPES.AI, LLC,
a Delaware limited liability company,
805GURU, LLC,
a California limited liability company,
DREW THORNE-THOMSEN,
an individual,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cv-00941-CEH-AEP

Before NEWSOM, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

This appeal presents a question of subject-matter jurisdiction. We must decide whether Expect Quest, a Florida LLC that was initially named as a nominal defendant and then realigned as a nominal plaintiff in an amended complaint, is, in fact, more appropriately aligned as a defendant. As there is already a Florida citizen on the plaintiff side of "the v," Expect Quest's alignment as a defendant would destroy diversity, and thus our subject-matter jurisdiction under 28 U.S.C. § 1332(a). For the reasons that follow, we hold that Expect Quest should be realigned as a defendant and that we therefore lack jurisdiction to hear this case. Accordingly, we affirm the dismissal by the district court.

The (complicated) facts of the case are known to the parties, and we repeat them here only as necessary to decide the case.

I

This is a derivative action that involves a series of state-law claims. The case made its first appearance in federal court in April 2024 when plaintiff Qatalyst, Inc. (a citizen of Florida for diversity purposes) sued Expect Quest (Florida), Pipes.AI, LLC (California and Texas),[1] 805Guru, LLC (California),[2] and Drew Thorne-

[1] Pipes.AI is a three-member LLC: Drew Thorne-Thomsen (California), Eric Hargett (California), and Eric Evans (Texas).

[2] 805Guru is an LLC with a sole member: Drew Thorne Thompson (California).

Thomsen (California), with Expect Quest as a "nominal defendant." After the district court expressed concerns regarding subject-matter jurisdiction, Qatalyst filed two amended complaints.[3] From this point, Qatalyst "teamed up" with Expect Quest, listing it as a co-plaintiff. That framing ensured that both Florida citizens were on the same side of "the v."

Qatalyst, as 50% managing member of Expect Quest, alleged that it was suing to vindicate Expect Quest's rights, and by extension its own. It asserted diversity jurisdiction under 28 U.S.C. § 1332(a) as the sole ground of jurisdiction. *See* 2d Am. Derivative Compl. at 3.

In fact, Qatalyst's litigation goes back a little further—it first brought two suits against Robert Graham Enterprises, LLC ("RGE"), Expect Quest's other 50% managing member, and others in March 2022 in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida. These cases are consolidated and remain pending. Importantly, the second of these suits named Expect Quest as one of the defendants.

The dispute at the heart of all this litigation centers on Qatalyst's and RGE's relationship as co-managing members of Expect Quest. Qatalyst alleges that RGE (which isn't a party in the federal action) collaborated with the defendants, Pipes.AI, 805Guru, and Drew Thorne-Thomsen, to induce Florida insurance agencies to

[3] We look here at the second amended complaint. For our purposes, there is no important difference between the first and second amended complaints.

cancel their contracts with Expect Quest—prioritizing RGE's own financial interests over that of the LLC it ran with Qatalyst. 2d Am. Derivative Compl. ¶64. Qatalyst further alleges that it, its CEO, and Expect Quest were excluded from all communications between RGE, the defendants here, and the insurance-agency counterparties. *See id.* ¶109. This all allegedly led to a cancellation of the contracts and ensuing damages. *Id.* ¶¶68–72.

But there's more to this case than is captured by Qatalyst's allegations—and for reasons we'll explain below, this is a situation in which we can look beyond the complaint. In its response to interrogatories in the state-court suit, Qatalyst stated that the "financial and operational information" of Expect Quest "ceased being available to Qatalyst" and "was integrated . . . into the records of RGE, to which Qatalyst and [its CEO] had no access." Moreover, Qatalyst highlighted its loss of control over Expect Quest: "Although the Operating Agreement of Expect Quest required all corporate actions to be by consensus, in fact, once RGE gained control of the operations, RGE and its Managers, On Target, Graham, and Winslow, excluded Ruelas and Qatalyst from all decisions and actions taken on behalf of Expect Quest." Even now, Qatalyst doesn't disclaim these statements, but rather seeks to mitigate them by emphasizing the "deadlock" Expect Quest faced. It casts this as a consequence of the Operating Agreement's formal requirement of a majority vote for the LLC to take action and the 50/50 split in ownership held by Qatalyst and RGE. *See* Br. of Appellant at 3. As Expect Quest couldn't formally act, Qatalyst reasons, it couldn't be actively antagonistic to Qatalyst. *Id.* at 5.

II

We review the question whether we have subject matter jurisdiction de novo. *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1340 (11th Cir. 2011). A motion to dismiss for lack of subject matter jurisdiction can present either a facial or factual challenge. *McElmurray v. Consolidated Gov't of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). For the typical facial challenge, we would "look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction." *Id.* (citation modified). Allegations in its compliant would be taken as true. *Id.* But where, as here, the challenge is factual, we look beyond the complaint: "Factual attacks . . . challenge the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits are considered." *Id.* (citation modified).

Diversity jurisdiction under § 1332(a) is determined at the time the complaint was filed. *See Smith v. Sperling*, 354 U.S. 91, 93 n.1 (1957); *see also Thermoset Corp. v. Bldg. Materials Corp. of Am.*, 849 F.3d 1313, 1317 (11th Cir. 2017). To satisfy the so-called "complete diversity" requirement, the citizenship of *every* plaintiff must be different from that of *every* defendant. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978).

Moreover, the way the parties align themselves in the pleadings is not dispositive. Rather, "federal courts are required to realign the parties in an action to reflect their interests in the litigation." *City of Vestavia Hills v. Gen. Fidelity Ins. Co.*, 676 F.3d 1310,

1313 (11th Cir. 2012). To determine whether there is an alignment of interests, we must look to "the principal purpose of the suit" and "the primary and controlling matter in dispute." *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 69 (1941). The "general rule" is that in derivative actions, "the corporation is properly realigned as a plaintiff since it is the real party in interest." *Duffey v. Wheeler*, 820 F.2d 1161, 1163 (11th Cir. 1987). However, an "exception" to this rule applies where "antagonism is evident on the face of the pleadings and by the nature of the controversy." *Id.* (citation modified). "Such antagonism exists where it is plain that the stockholder and those who manage the corporation are completely and irreconcilably opposed." *Id.* In short, this exception applies only "where the corporation has been found to be 'actively antagonistic' to the plaintiff's interests." *Id.* (citing *Swanson v. Traer*, 354 U.S. 114 (1957)).

Here, Qatalyst aligns the parties like this: Qatalyst (Florida) and Expect Quest (Florida) against Pipes.AI, LLC (California and Texas), 805Guru, LLC (California), and Drew Thorne-Thomsen (California). This put Expect Quest, the Florida LLC, on the plaintiff side of "the v," thereby maintaining diversity and thus jurisdiction. Qatalyst argues that it was right to align Expect Quest as a plaintiff because the facts here fit the "general rule" articulated in *Duffey*. Br. of Appellant at 6 (citing *Duffey*, 820 F.2d at 1162). Like *Duffey*, Qatalyst says, this case involves business entities, a deadlock between two corporate representatives, the alleged malfeasance of a member of senior management, claims of demand futility rooted in the deadlock, and the naming of the corporation as a mere

formality.[4] *Id.* at 6–8. So rather than "refusing to take action," or being "hostile or antagonistic to the enforcement of a claim," Qatalyst argues, Expect Quest is *unable* to act based on the deadlock of management. *See* Br. of Appellant at 11.

Qatalyst overstates *Duffey*'s reach while ignoring some key facts in its own case. *In Duffey*, we stated that "[m]ere inaction, or inability to act on the part of the corporation, because of a deadlock between those who control the corporation has not been found to be the equivalent of active antagonism." 820 F.2d at 1163. There were no allegations in that case of actual antagonism. Far from creating a per se no-antagonism rule when deadlock is involved, we merely made the commonsense observation that deadlock and inaction *without more* don't show antagonism. *See id.* at 1162 ("Plaintiffs further alleged that the management's division did not make [the company] antagonistic to the plaintiffs, but merely incapable of undertaking the action on its own behalf . . . . Defendants . . . failed to respond to the complaint."). To embrace such a rigid rule would be to ignore the Supreme Court's instruction that the antagonism determination is "a practical not a mechanical determination" informed in part by "the nature of the dispute." *Sperling*, 354 U.S. at 97.

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[4] Indeed, there is no way to simply remove Expect Quest as a party to this derivative action. *Liddy v. Urbanek*, 707 F.2d 1222, 1224 (11th Cir. 1983) ("There is no question that a corporation is an indispensable party in a derivative action brought by one of its shareholders.").

The facts before us now are entirely different from those in *Duffey*. True, here there is formal deadlock under the Operating Agreement. However, Qatalyst itself has also asserted in its state proceedings that its co-owner RGE "gained control" of Expect Quest and "excluded . . . Qatalyst from all decisions and actions taken on behalf of Expect Quest." And that description is buttressed by the fact that Expect Quest is a listed defendant in one of the two state-court cases. So, quite different from the merely formal deadlock that Qatalyst alleges in its more recent federal-court filings, it has in its state-court pleadings described the complete and irreconcilable opposition it faces from Expect Quest. By this account, management of Expect Quest isn't so much unable to take action as they are actively "refus[ing] to take action." *Sperling*, 354 U.S. at 97. Therefore, "antagonism is evident." *Id.*

Accordingly, Expect Quest is not properly aligned as a plaintiff and should be realigned as a defendant. As this puts a Florida citizen on both sides of the dispute, complete diversity is lacking—and so too, therefore, is our subject-matter jurisdiction.

AFFIRMED