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Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals, Ninth Circuit.
 JUNGIL LEE, Estate representative for Jin Ah Lee, deceased; Sang Chul Lee, decedent's father; Dukson Lee, decedent's mother, Plaintiffs-Appellants,

v.

ANC CAR RENTAL CORP.; General Motors Corp.; Hong-Jun Jeon, Defendants-Appellees.

No. 04-17288.

Argued and Submitted Jan. 10, 2007.
 Filed Jan. 29, 2007.

Background: After Korean national was killed in car accident in Arizona, her estate representative and Korean national parents brought suit in federal court alleging state law tort claims against three defendants, including a Korean national. The United States District Court for the District of Arizona, James A. Teilborg, J., dismissed the suit for lack of subject matter jurisdiction. Plaintiffs appealed.

Holdings: The Court of Appeals held that:

- (1) complete diversity required for subject matter jurisdiction was lacking, since there were Korean nationals on both sides of the case and no United States citizen plaintiffs;
- (2) dismissal of Korean national defendant as a party was not warranted; and
- (3) a 1956 Treaty of Friendship, Commerce and Navigation between United States and Korea did not give rise to federal question jurisdiction.

Affirmed.

West Headnotes

[1] Federal Courts 170B ↪275

170B Federal Courts

170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

170BIV(A) In General

170Bk275 k. Controversies Between a State or Citizens Thereof and Foreign States, Citizens or Subjects. Most Cited Cases
 Complete diversity, required for subject matter jurisdiction over action alleging state law tort claims, was lacking where plaintiffs and one defendant were all Korean nationals. 28 U.S.C.A. § 1332(a)(2).

[2] Federal Courts 170B ↪275

170B Federal Courts

170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

170BIV(A) In General

170Bk275 k. Controversies Between a State or Citizens Thereof and Foreign States, Citizens or Subjects. Most Cited Cases
 Subject matter jurisdiction did not exist over action alleging state law tort claims, under alienage diversity provisions of federal jurisdiction statute, where lawsuit did not include any United States citizen plaintiffs. 28 U.S.C.A. § 1332(a)(3).

[3] Federal Courts 170B ↪275

170B Federal Courts

170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

170BIV(A) In General

170Bk275 k. Controversies Between a State or Citizens Thereof and Foreign States, Citizens or Subjects. Most Cited Cases
 Lack of diversity under alienage diversity provisions of federal jurisdiction statute could not be cured, as required for subject matter jurisdiction over action alleging state law tort claims, by district court exercising supplemental jurisdiction over

Korean nationals' claims against Korean national.
28 U.S.C.A. §§ 1332(a), 1367.

[4] Federal Courts 170B ↪ 275

170B Federal Courts

170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

170BIV(A) In General

170Bk275 k. Controversies Between a State or Citizens Thereof and Foreign States, Citizens or Subjects. Most Cited Cases

Dismissal of Korean national defendant as a party in order to preserve diversity jurisdiction in lawsuit arising from fatal car accident was not warranted, where plaintiffs failed to raise the issue before the trial court and they had another timely filed suit pending against all of the defendants in state court. Fed.Rules Civ.Proc.Rule 21, 28 U.S.C.A.

[5] Federal Courts 170B ↪ 162

170B Federal Courts

170BIII Federal Question Jurisdiction

170BIII(A) In General

170Bk162 k. Cases Arising Under Treaties. Most Cited Cases

Federal Courts 170B ↪ 275

170B Federal Courts

170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

170BIV(A) In General

170Bk275 k. Controversies Between a State or Citizens Thereof and Foreign States, Citizens or Subjects. Most Cited Cases

A 1956 Treaty of Friendship, Commerce and Navigation between United States and Korea, which allowed Korean nationals to bring suit on same terms as United States citizens, did not confer original federal question jurisdiction, so as to allow Korean nationals to avoid complete diversity requirements of federal jurisdiction statute in action alleging state law tort claims. 28 U.S.C.A. §§ 1331(a), 1332(a).

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Plaintiffs-Appellants.

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Appeal from the United States District Court for the District of Arizona; James A. Teilborg, District Judge, Presiding. D.C. No. CV-03-01532-JAT.

Before: HUG and W. FLETCHER, *495 Circuit Judges, and HOLLAND ^{FN*}, District Judge.

FN* The Honorable H. Russel Holland, Senior United States District Judge for the District of Alaska, sitting by designation.

MEMORANDUM ^{FN**}

FN** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**1 After Jin Ah Lee, a Korean national, was killed in a car accident in Arizona, her estate representative, Jungil Lee, and Korean national parents, Sang-Chul Lee and Dukson Lee, brought suit in federal court alleging various state law tort claims against three defendants: Hong-Jun Jeon, a Korean national; Alamo/National Rental Car, a Florida corporation; and General Motors, which is incorporated in Delaware and has its primary place of business in Michigan. The district court dismissed the suit for lack of subject matter jurisdiction under the alienage diversity provisions of 28 U.S.C. § 1332(a). Plaintiffs-Appellants appeal from this final order. We review the district court's subject matter jurisdiction determination de novo, see *Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933, 938 (9th Cir.2006), and we affirm.

I. Diversity Jurisdiction Under § 1332(a)

[1] We have interpreted § 1332(a)(2) to require complete diversity of parties. That is, aliens may not be on both sides of the litigation. *Faysound Ltd. v. United Coconut Chem., Inc.*, 878 F.2d 290, 294 (9th Cir.1989); *Craig v. Atlantic Richfield Co.*, 19 F.3d 472, 476 (9th Cir.1994) (§ 1332(a)(2) does not confer jurisdiction where a “case involve [s] a single foreign plaintiff ... and numerous foreign defendants (in addition to U.S. defendants)”). Because the Plaintiffs-Appellants are Korean nationals, ^{FN1} as is Jeon, the complete diversity required for jurisdiction under § 1332(a)(2) is lacking.

FN1. Although Jungil Lee may be a citizen of the United States, for diversity purposes, the legal representative of the estate of a decedent is deemed to have the same citizenship as the decedent. 28 U.S.C. § 1332(c)(2).

[2] Under the plain language of § 1332(a)(3), for jurisdiction to exist there must be both United States citizen plaintiffs and United States citizen defendants. *See Transure, Inc. v. Marsh & McLennan, Inc.*, 766 F.2d 1297, 1298 (9th Cir.1985). Because here United States citizens, namely Alamo/National Rental Car and General Motors, are on only one side of the litigation, § 1332(a)(3) does not apply.

[3] Contrary to Plaintiffs-Appellants' contention, the lack of diversity under § 1332(a) cannot be cured by the district court exercising supplemental jurisdiction over their claims against Jeon under 28 U.S.C. § 1367.

[4] We decline Plaintiffs-Appellants' request that we dismiss Jeon as a party under Federal Rule of Civil Procedure 21, in order to preserve diversity jurisdiction, for two reasons. First, Plaintiffs-Appellants failed to raise this issue before the district court. Second, they have another, timely filed suit pending against all defendants in state court in Arizona. We express no opinion as to whether Jeon is an indispensable party under Federal Rule of Civil Procedure 21.

II. Diversity Jurisdiction Under § 1331(a)

[5] Plaintiffs-Appellants also argue that a 1956 Treaty of Friendship, Commerce and Navigation between the United States and Korea gives rise to federal question jurisdiction under 28 U.S.C. *496 § 1331(a). They point to Article V of the treaty, which provides that “[n]ationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice ... within the territories of the other Party, in all degrees of jurisdiction....” Treaty of Friendship, Commerce and Navigation, Nov. 28, 1956, U.S.-Korea, Art. V, 8 U.S.T. 2217.

**2 In *Buechold v. Ortiz*, 401 F.2d 371 (9th Cir.1968), we interpreted a virtually identical provision in the 1956 Treaty of Friendship, Commerce and Navigation between the United States and Germany. We held that it did not confer original jurisdiction on the federal courts under § 1331(a). *Id.* at 372. As in *Buechold*, we conclude that the 1956 treaty with Korea does not confer original jurisdiction on the federal courts, but rather provides only that Korean nationals be allowed to bring suit on the same terms as United States citizens. *See id.* Because United States citizens must satisfy complete diversity to sue in federal court under § 1332(a), requiring Plaintiffs-Appellants to do the same is not inconsistent with the treaty.

For the foregoing reasons, we affirm the order of the district court dismissing Plaintiffs-Appellants' suit for lack of subject matter jurisdiction.

AFFIRMED.

C.A.9 (Ariz.),2007.
Jungil Lee v. ANC Car Rental Corp.
220 Fed.Appx. 493, 2007 WL 295498 (C.A.9 (Ariz.))

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