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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

METALMARK NORTHWEST, LLC, an Oregon limited liability company; VALLEY BRONZE OF OREGON, INC., an Oregon corporation,

Plaintiffs - Appellees,

v.

LAURA JANELLE STEWART; STEWART SPRINGS, LTD.,

Defendants - Appellants,

and

CHRISTOPHER W. STEWART; F. LEITH BOGGESE; HIGHLAND ORNAMENTAL IRON WORKS, INC., a Virginia corporation MILESTONE TARANT, LLC, a District of Columbia limited liability company; RICHARD T. ROSS; SUPERIOR IRON WORKS INC., a Virginia corporation,

Defendants.

No. 06-35321

D.C. Nos. CV-04-00682-KI  
CV-05-01920-KI

MEMORANDUM\*

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

Appeal from the United States District Court  
for the District of Oregon  
Garr M. King, District Judge, Presiding

Argued and Submitted February 4, 2008  
Portland, Oregon

Before: RYMER, T.G. NELSON, and PAEZ, Circuit Judges.

Janelle Stewart and Stewart Springs, Ltd. challenge the district court's confirmation of an arbitration award in favor of Metalmark Northwest, LLC and Valley Bronze of Oregon, Inc. On February 8, 2008, we remanded for the limited purpose of enabling the district court to determine whether there was complete diversity of the parties both when the motion to confirm the arbitration award was filed in state court and when the action was removed to federal court. On March 20, 2008, the district court held that the parties were completely diverse at both times. We now address our jurisdiction and the merits of the appeal.

I

As the district court concluded, the parties were completely diverse in December of 2005, when Metalmark moved to confirm the arbitration award and Stewart/Stewart Springs removed the case to federal court. At that time, Stewart

and Stewart Springs were citizens of Virginia, having moved there in July of 2005, and Metalmark/Valley Bronze were citizens of Oregon. Although Stewart Springs was once a member of Metalmark, its Virginia citizenship in December of 2005 did not affect Metalmark's citizenship because Stewart Springs ceased to be a member of Metalmark when it dissolved and stopped doing business in Oregon in July of 2005 (Stewart Springs reincorporated in Virginia in September of 2005). *See Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“[L]ike a partnership, an LLC is a citizen of every state of which its owners/members are citizens.”). Janelle Stewart was the assignee of Stewart Springs's interest in Metalmark, but nothing in the record suggests that she ever became a member of Metalmark, and we are aware of no authority for the proposition that an LLC is a citizen where the assignee of a dissolved member's interest is a citizen. *Cf.* Or. Rev. Stat. §§ 63.249, 265. Accordingly, the district court properly exercised diversity jurisdiction over this case.

## II

Turning to the merits, Stewart/Stewart Springs argue the arbitration award should be vacated for evident partiality because of connections between Metalmark/Valley Bronze's counsel and the arbitrator. Metalmark/Valley Bronze

contend that Stewart/Stewart Springs waived this argument and failed to demonstrate the arbitrator was partial.

We hold that Stewart/Stewart Springs did not waive their evident partiality challenge to the arbitration award because the burden falls on arbitrators to disclose conflicts and, here, the arbitrator disclosed none. *See Schmitz v. Zilveti*, 20 F.3d 1043, 1048 (9th Cir. 1994). This case is distinguished from *Fidelity Federal Bank, FSB v. Durga Ma Corp.*, 386 F.3d 1306, 1313 (9th Cir. 2004), where one of the parties selected the arbitrator.

We further hold that Stewart/Stewart Springs have not met their burden of demonstrating evident partiality on the part of the arbitrator. The connections between the arbitrator and counsel for Metalmark/Valley Bronze in this case are trivial at best. *Cf. Schmitz*, 20 F.3d at 1049; *New Regency Prods., Inc. v. Nippon Herald Films, Inc.*, 501 F.3d 1101, 1109 (9th Cir. 2007).<sup>1</sup>

AFFIRMED.

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<sup>1</sup> Janelle Stewart's bankruptcy proceeding in the Eastern District of Virginia has no apparent significance for the purposes of our jurisdiction. We decline Metalmark/Valley Bronze's invitation to delay entry of judgment as to her, for nothing in the record suggests we should.