

APR 21 2014

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WAILEA PARTNERS, LP, a Delaware  
limited partnership,

Plaintiff - Appellant,

v.

HSBC BANK USA, N.A., a national  
banking association,

Defendant - Appellee.

No. 11-18041

D.C. No. 3:11-cv-03544-SC

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Samuel Conti, Senior District Judge, Presiding

Argued and Submitted January 15, 2014  
San Francisco, California

Before: BYBEE and BEA, Circuit Judges, and RESTANI, Judge.\*\*

Wailea Partners, LP (“Wailea”), seeks rescission of a swap agreement it  
entered into with HSBC Bank USA, N.A. (“HSBC”), that was tied to the value of a

---

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

\*\* The Honorable Jane A. Restani, Judge for the U.S. Court of  
International Trade, sitting by designation.

fund managed exclusively by Bernie Madoff. Wailea brought several state law causes of action claiming mistake, failure of a condition precedent, and misrepresentation.

At oral argument, the court sua sponte questioned whether subject matter jurisdiction existed in this case, as Wailea had failed to identify in its complaint all of the relevant entities and persons upon which it based its allegation of diversity jurisdiction. After supplemental briefing, diversity jurisdiction still has not been established, and Wailea no longer alleges as much.<sup>1</sup> Just as we lack jurisdiction, so too did the district court lack subject matter jurisdiction in this case ab initio, and therefore it was without power to render judgment.

**VACATED.**

---

<sup>1</sup> Although HSBC attempts to save Wailea's complaint by asserting an alternative basis of jurisdiction under the Edge Act, 12 U.S.C. § 632, we decline to exercise jurisdiction pursuant to the act, as it is not clearly supported by the complaint and has not been advanced by Wailea.