

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**MARY SOMRAK,**

**Plaintiff,**

**v.**

**KROGER, CO.,**

**Defendant.**

**Case No. 17-2480**

**MEMORANDUM & ORDER**

Plaintiff Mary Somrak brings this suit against defendant Kroger Co. (“Kroger”) for negligence after she slipped and fell in a Dillon’s grocery store. This case is before the court on defendant’s Motion to Dismiss (Doc. 5) for lack of subject matter jurisdiction. Defendant argues that it is not the proper party and should be dismissed. It claims that Dillon Companies, Inc. (“Dillon”)—who operates Dillon’s grocery stores—is the proper party in this litigation. And while Dillon is a wholly owned subsidiary of defendant, it is a separate corporate entity, and therefore defendant is not liable for any of Dillon’s acts or omissions. Defendant further claims that should Dillon be joined to the litigation, diversity jurisdiction would no longer exist because it is a Kansas corporation.

Defendant acknowledges that it is an Ohio corporation and that the court currently has diversity jurisdiction over this case under 28 U.S.C. § 1332. Yet defendant has moved for dismissal under Fed. R. Civ. P 12(b)(1) for lack of subject matter jurisdiction. As the matter currently stands, this court has subject matter jurisdiction over the case. The court acknowledges that defendant believes it should be dismissed because Dillon is the proper party, and should it be joined, the court would no longer have diversity jurisdiction over the case. Dillon, however, is not currently a party and the court will not

hypothesize as to the status of the case should Dillon be joined. Because the court currently has subject matter jurisdiction over this case, defendant's motion to dismiss is denied.

**IT IS THEREFORE ORDERED** that defendant's Motion to Dismiss (Doc. 5) is denied.

Dated December 22, 2017, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**