

SOUTHERN DISTRICT CIVIL PRACTICE ROUNDUP

Determining the Citizenship of Trusts for Diversity Jurisdiction

Over the years, significant confusion has existed—among both litigants and the courts—regarding how to determine the citizenship of an unincorporated entity, such as a joint-stock company, a limited partnership, or a trust, for purposes of diversity jurisdiction. Although clear rules have long existed for individuals and corporations, the same cannot be said for unincorporated entities. The issue has been particularly murky when it comes to trusts.

In *MSR Trust v. Nationstar Mortgage*, 2021 WL 4200720 (S.D.N.Y. Sept. 15, 2021), Southern District Magistrate Judge Robert W. Lehrburger recently addressed whether a trust's citizenship depends on the citizenship of its trustee(s), its beneficial owner(s), or both. Plaintiff MSR Trust (MSR Trust or the Trust) filed suit in New York state court, and defendant Nationstar Mortgage (Nationstar) removed the action to the Southern District of New York based on alleged diversity between the parties. MSR Trust sought



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remand, and the issue turned on whether MSR Trust is considered a citizen of the jurisdiction where its trustee is a citizen, where its beneficial owner is a citizen, or both. Judge Lehrburger found that MSR Trust is a citizen only of the jurisdiction where its beneficial owner is a citizen. On that basis, he denied the motion to remand, finding that complete diversity existed.

'MSR Trust v. Nationstar'

MSR Trust is a Delaware statutory trust that owned the right to service residential mortgage loans. MSR Trust's trustee is US Bank Trust National Association (the Trustee), a national bank whose main office is in Delaware and who thus is a citizen of Delaware. MSR Trust's ultimate beneficial owner is Natixis S.A. (Natixis), a French company.

Nationstar is a Delaware limited liability company. For diversity purposes, Nationstar is a citizen of both Delaware and Texas.

In 2014, MSR Trust and Nationstar entered into agreements transferring MSR Trust's servicing rights to Nationstar. In 2021, MSR Trust filed a lawsuit against Nationstar in the Supreme Court of the State of New York, New York County, alleging breach of the 2014 agreements. Nationstar removed the action to the Southern District of New York, asserting diversity jurisdiction. MSR moved to remand, arguing a lack of complete diversity.

Whether complete diversity existed between the parties turned on who are the members of MSR Trust, because, as with any business trust, the members' citizenship is imputed to the Trust. MSR Trust argued that the members of the Trust include the Trustee, a citizen of Delaware, thus making the Trust a citizen of Delaware and destroying complete diversity. Nationstar argued that the sole member of MSR Trust is the Trust's ultimate beneficial owner,

Natixis, a citizen of France, thus making the Trust a citizen only of France and maintaining complete diversity.

In determining the citizenship of MSR Trust for purposes of diversity jurisdiction, Judge Lehrburger observed that “[c]lear rules govern the citizenship of individuals and corporations,” but not “unincorporated entities, such as joint-stock companies, limited partnerships, or trusts.” 2021 WL 4200720, at *3. Indeed, Judge Lehrburger noted that “[t]he Supreme Court has sought to clarify the citizenship of unincorporated entities on at least three occasions”—in *Navarro Savings Association v. Lee*, 446 U.S. 458 (1980), *Carden v. Arkoma Associates*, 494 U.S. 185 (1990), and *Americold Realty Trust v. Conagra*, 577 U.S. 378 (2016).

‘Navarro’, ‘Carden’ and ‘Americold’

Turning first to the three Supreme Court cases, Judge Lehrburger described the progression of the relevant law, starting with *Navarro*, in which the trustees of a Massachusetts trust filed suit in federal court in their own names, not in the name of the trust. 2021 WL 4200720, at *3. In evaluating whether diversity jurisdiction existed, the Supreme Court considered only the citizenship of the trustees—not that of the beneficial owners of the trust—“[b]ecause the trustees were ‘active trustees whose control over the assets held in their names [was] real and substantial,’ and were ‘not

naked trustees who act as mere conduits for a remedy flowing to others.” Id. (quoting *Navarro*, 446 U.S. at 465).

Ten years later, in *Carden*, the Supreme Court considered “whether, in a suit brought by a limited partnership, the citizenship of the limited partners must be taken into account to determine diversity of citizenship among the parties.” Id. (quoting 494 U.S. at 186). In that context, the Supreme Court held that “diversity jurisdiction in a suit by or against the entity depends on the citizenship of all the members.” Id. at *4 (quoting 494 U.S. at 195). The court distinguished *Navarro*, stating that it “had nothing to do with the citizenship of the trust, since it was a suit by the trustees in their own name.” Id. (quoting 494 U.S. at 191).

As Judge Lehrburger recognized, “*Carden* clarified the scope of *Navarro* and reaffirmed the Supreme Court’s ‘oft-repeated rule’ that the citizenship of an unincorporated entity for the purposes of diversity jurisdiction is determined by the citizenship of all of its members, [but the] Court did not define ‘members’ or provide guidance for how to determine what entities constitute the members of unincorporated entities.” Id.

Twenty-five years later, the Supreme Court revisited those issues in *Americold*, in order to “resolve confusion among the Courts of Appeals regarding the citizenship of unincorporated entities.” Id.

(quoting 577 U.S. at 380). In *Americold*, the court addressed the citizenship of a real estate investment trust (REIT) organized under Maryland law. Id. The court held that the REIT’s citizenship depended on the citizenship of its members, which under Maryland law, were the REIT’s shareholders, not its trustees. Id. at *5. The court rejected the REIT’s argument that “anything called a ‘trust’ possesses the citizenship of its trustees alone, not its shareholder beneficiaries as well.” Id. (quoting 577 U.S. at 382). In doing so, the court clarified that *Navarro* applies only when a trustee files a lawsuit in its own name, rather than when a trust files suit as a legal entity. Id.

MSR Trust’s Citizenship Is Determined by Its Beneficial Owner

Having reviewed the relevant precedent, Judge Lehrburger observed that “[n]either MSR Trust nor Nationstar dispute that the Trust’s citizenship is determined by the citizenship of its members.” Id. Rather, “[t]he sole disagreement center[ed] on who properly qualifies as a ‘member’ of the Trust: the Trustee, the ultimate beneficial owner Natixis, or both.” Id. Although “*Americold* does not directly answer that question,” Judge Lehrburger concluded that “taking into account [MSR Trust’s] Trust Agreement, the Delaware law governing the Trust, and the Supreme Court’s holdings and rationales provided in *Americold* and its predecessors ... , a clear answer emerges: MSR Trust’s only

member is its beneficial owner Natixis.” Id.

Consistent with the Supreme Court’s approach in *Americold*, Judge Lehrburger first looked at MSR Trust’s governing Trust Agreement, to determine whether it “shed light on identifying MSR Trust’s members.” Id. at *6. Although the Trust Agreement “does not define ‘members’ ... [or] otherwise identify the Trust’s members,” Judge Lehrburger observed that it does provide that “[l]egal title to all the Trust Property ... shall be vested at all times in the Trust as a separate legal entity.” Id. That fact would be significant to Judge Lehrburger’s ultimate conclusion.

“Following the next step of the approach taken in *Americold*,” Judge Lehrburger next “turn[ed] to the relevant state law governing unincorporated entities.” Id. That law is Delaware law, because “MSR Trust is a statutory trust organized under Delaware law.” Id. Although the relevant Delaware statute “does not define or identify the members of [an unincorporated] trust,” Judge Lehrburger observed that it does “distinguish[] between the role of a trustee and that of a beneficial owner”—providing that “‘property is ... managed ... by a trustee ... for the benefit of ... [the] beneficial owners.’” Id. (quoting Del. Code Ann. tit. 12, §3801(i)). Judge Lehrburger found that to be “significant because [in *Americold*,] the Supreme Court likened the REIT’s beneficial owners, or shareholders, to the constituents

that the court has deemed to be the members of other unincorporated entities.” Id.

Based on the Delaware statute and the Trust Agreement—the latter of which (consistent with the statute) provides that the Trustee has no ownership interest in the Trust’s property—Judge Lehrburger concluded that “the only member of [] MSR Trust is Natixis.” Id. at *7. Judge Lehrburger reasoned that Natixis is “[t]he only entity with an ownership interest ... , and thus is the only constituent of the Trust like the shareholders of a joint-stock company or the partners of a limited partnership that the [Supreme] Court has deemed to be ‘relevant entities.’” Id.

In concluding that MSR Trust’s citizenship is determined by the citizenship of its beneficial owner, Natixis, rather than its Trustee, Judge Lehrburger emphasized “the distinction between traditional trusts and business trusts, ... in their capacity to sue or be sued.” Id. Specifically, “a traditional trust is not a separate legal entity but rather a fiduciary relationship between multiple people and therefore not a thing that could be haled into court.” Id. (citation and quotation marks omitted). “That is why,” Judge Lehrburger explained, “traditionally, lawsuits involving a trust were brought by or against the trustee in [its] own name”—such as in *Navarro*. Id. A business trust, by contrast, is “a separate legal entity that itself can sue or be sued,” and the citizenship analysis in *Ameri-*

cold applies to such entities. See id.

Conclusion

When a business trust is a party to a lawsuit, a fact-specific analysis is necessary to determine who are the trust’s members for purposes of determining the trust’s citizenship and whether diversity jurisdiction exists. The trust’s trustee may or may not be a member, but as a general matter, will not be a member—and its citizenship therefore will be irrelevant—when it lacks an ownership interest in the trust’s property.

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