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Second Circuit Holds a National Bank's Citizenship Is Determined Exclusively by Location of Main Office, Not Principal Place of Business

For purposes of assessing the existence of federal subject matter jurisdiction based on diversity of citizenship, national banking associations—*i.e.*, corporate entities chartered not by any State, but by the Office of the Comptroller of the Currency, an independent bureau of the US Treasury—are deemed to be citizens of the State in which they are “located.”¹ In 2006, in *Wachovia Bank v. Schmidt*, the US Supreme Court held that a national bank is “located” in, and thus a citizen of, the State designated in its articles of association as the locus of its designated “main office,” but is not additionally “located” in, and thus a citizen of, every State in which it has established a branch.² The Supreme Court, however, left open whether a national bank might also be considered a citizen of the State of its principal place of business, if its principal place of business were located in a different State than its main office, observing that such treatment would be necessary to achieve jurisdictional parity between national and state-chartered banks.³ In *OneWest Bank, N.A. v. Melina*, No. 15-3063, 2016 WL 3548346 (2d Cir. June 29, 2016), the Second Circuit agreed with the other Circuit Courts to have considered that question post-*Wachovia* and held that a national bank is a citizen only of the State listed in its articles of association as its main office, and not also of any other State where it may have its principal place of business.⁴ In so holding, the *OneWest* Court rejected the notion that the concept of jurisdictional parity should be read into the relevant statutes. As a result, insofar as national banks can be deemed to be a citizen of one and only one State, they will be in a preferred position vis-à-vis state-chartered banks, which can be deemed to be citizens of more than one State, for purposes of invoking diversity jurisdiction within the Second Circuit.

Background

OneWest Bank, N.A. (“OneWest”) is a national bank whose main office is in California. In September 2014, it commenced a foreclosure action in the Eastern District of New York against Robert Melina, a citizen of New York,

¹ 28 U.S.C. § 1348.

² See 546 US 303, 307 (2006).

³ See *id.* at 315-17 & nn. 8, 9.

⁴ See, e.g., *Rouse v. Wachovia Mortg.*, FSB, 747 F.3d 707, 708 (9th Cir. 2014); *Wells Fargo Bank, N.A. v. WMR e-PIN, LLC*, 653 F.3d 702, 706-10 (8th Cir. 2011).

invoking the court's diversity jurisdiction. In response to OneWest's motion for summary judgment, Melina moved to dismiss the action for lack of subject matter jurisdiction, contending that OneWest's principal place of business was New York, meaning that there was no diversity of citizenship between the parties. The district court (Gleeson, J.) denied Melina's motion and granted OneWest's motion for summary judgment. The District Court held, *inter alia*, that a national bank is a citizen only of the State in which its main office is located.

The OneWest Decision

On appeal, Melina argued, among other things, that a national bank should be deemed to be a citizen not only of the State designated as its main office, but also of the State of its principal place of business, in order to "maintain parity between national and state banks."⁵ Specifically, State banks, usually chartered as corporate bodies by a particular State, ordinarily are subject to the prescription of the diversity statute, whereby a State bank is deemed to be a citizen of the State "by which it has been incorporated" and also of the State "where it has its principal place of business."⁶

The Second Circuit noted that in the first statute to address the citizenship of national banks, enacted in 1882, Congress did provide for jurisdictional parity between national and state-chartered banks.⁷ However, the language tying national bank jurisdiction to state bank jurisdiction was removed in 1887. Thereafter, including through the current version of § 1348, enacted in 1948, Congress provided that the citizenship of a national bank is deemed to be that of the State in which it is "located." That language was not subsequently changed, notwithstanding the adoption in 1958 of a provision (now codified in § 1332(c)(1)) providing that state-chartered corporations—which include state-chartered banks—are citizens of both their State of incorporation and the State of their principal place of business.⁸

The Second Circuit explained that the meaning of a statute's terms is to be determined as of the time it became law.⁹ Thus, because the statutory concept of "principal place of business" did not exist when § 1348 was enacted, the term "located" as used in that statute could not be read as providing for subject matter jurisdiction in reference to a national bank's principal place of business.¹⁰ The Second Circuit further observed that whether jurisdictional parity between national and state banks ought to be revived by way of an amendment to § 1348 is a policy question

⁵ *OneWest*, at 12.

⁶ 28 U.S.C. § 1332(c)(1).

⁷ *OneWest*, at 9.

⁸ See *id.* at 9-10.

⁹ *Id.* at 10 (citing *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 US 218, 228 (1994)).

¹⁰ *Id.* The *OneWest* Court stated that the Second Circuit's dicta in *World Trade Center Properties, L.L.C. v. Hartford Fire Insurance Company*, 354 F.3d 154, 161 (2d Cir. 2003) (a national bank "is deemed to be a citizen of every state in which it has offices"), had been abrogated by the Supreme Court's decision in *Wachovia Bank*. *OneWest*, at 12.

for Congress, not the federal courts.¹¹ Accordingly, the Second Circuit concluded that only the location of OneWest's main office was relevant for purposes of assessing the existence of diversity jurisdiction.¹²

The Significance of *OneWest*

The *OneWest* decision was a per curiam opinion, perhaps suggesting that the question presented was more straightforward than some had argued. Prior to the Supreme Court's decision in *Wachovia*, the Fifth and Seventh Circuits had held that § 1348 should be interpreted in light of § 1332 in order to honor the principle of jurisdictional parity.¹³ The question has also become increasingly prevalent in recent decades with the rise of interstate branching by national banks. Federal law was amended in 1994 to permit interstate branching through acquisition¹⁴ and the Dodd-Frank Wall Street Reform and Consumer Protection Act further expanded the interstate branching capabilities of national banks by relaxing restrictions on de novo interstate branching.¹⁵ In any event, the question is now settled in the Second Circuit.

It is also worth keeping in mind that the jurisdictional parity debate is a matter that concerns diversity jurisdiction alone. Nothing in the reasoning of *OneWest* or the other decisions discussed above has any bearing on a national bank's ability or inability to invoke the jurisdiction of a federal court on federal question grounds. This includes, for example, removal from state courts under the Edge Act, which provides that civil suits to which a corporation organized under the laws of the United States (e.g., a national bank) is a party and which arise out of certain types of offshore banking transactions or financial operations are "deemed to arise under" federal law.¹⁶

¹¹ *OneWest*, at 11.

¹² The *OneWest* Court also concluded that the district court had, in any event, correctly held that *OneWest's* principal place of business was, like its main office, in California. In this connection, the Second Circuit rejected Melina's argument that *OneWest's* principal place of business was New York because, at the time the complaint was filed, *OneWest's* parent company was being purchased by a company headquartered in New York. In particular, the Second Circuit held that a subsidiary has its own principal place of business for diversity purposes unless it is merely an "alter ego" or agent of the parent company, and that, relatedly, a subsidiary does not assume the principal place of business of its future corporate parent solely as a result of its subsidiary status. See *OneWest*, at 13-15.

¹³ See *Horton v. Bank One, N.A.*, 387 F.3d 426, 435 (5th Cir. 2004); *Firststar Bank, N.A. v. Faul*, 253 F.3d 982, 988 (7th Cir. 2001).

¹⁴ See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (Sept. 29, 1994).

¹⁵ Pub. L. No. 111-203, 124 Stat. 1376, § 613 (July 21, 2010).

¹⁶ See 12 U.S.C. § 632.

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