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National Banks: Where Does Diversity Jurisdiction Lie?

JAMES T. SHEARIN AND PETER S. OLSON

Some federal courts hold that, for purposes of diversity jurisdiction a national bank is considered a resident of any state in which it has a branch. Other federal courts rule that a national bank's citizenship is determined either by the state identified in the bank's most recent charter or where the bank conducts its principal business operations. This article explores these two different schools of thought and concludes that the latter school is the most persuasive one.

The saying "home is where the heart is" isn't met with universal acceptance when it comes to determining the citizenship of a national bank for purposes of diversity jurisdiction.[1] Courts are almost evenly split, with half saying that the national bank is, for purposes of diversity jurisdiction, considered a resident of any state in which it has a branch, and the other half saying citizenship is determined either by the state identified in the bank's most recent charter or where the bank conducts its principal business operations.

The question is more complicated than it initially appears. What is the citizenship of a national bank when its original organizational certificate listed a particular state as its home state; its articles of association has since been amended to list a second state as the situs of its principal place of business

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and it has branches or some other presence in many of the other 50 states? The answer hinges on the interplay of 28 U.S.C. §1348 (stating that a national banking institution is deemed a citizen of the state in which it is located) and 28 U.S.C. §1332 (providing for diversity jurisdiction where the suit is between citizens of different states).

THE *IACONO* RULING

The oldest line of cases interpreting these statutes traces its roots back to a decision by the United States District Court for the District of Rhode Island in *Connecticut National Bank v. Iacono.*[2] In *Iacono*, the plaintiff bank brought an action in federal court on a promissory note held by a national bank.[3] One defendant sought dismissal of the action, and argued that since the plaintiff bank maintained branch offices in Rhode Island, it should be considered a citizen of Rhode Island, destroying diversity.[4] The district court agreed and dismissed the case, holding that a national bank was located under 28 U.S.C. § 1348 in each state in which it maintained a branch office.[5]

Iacono rejected what had been well-settled law that, like any other corporate entity, a national banking association should be considered a citizen of the state in which it had its principal place of business, irrespective of where its branches might be located.[6] That court held that citizenship under § 1332 was defined by reference to the "location" in § 1348. Therefore, no diversity jurisdiction could be deemed to exist if a bank had a branch (i.e., was located) in the same state as the opposing party. *Iacono* was the first of a series of cases that adopted the *Iacono* ruling and occupied the field from 1992 until 2000.[7]

Iacono departed from the notion of treating national banks like corporations based in large part upon its reading of the United States Supreme Court's 1977 decision in *Citizens and Southern National Bank v. Bougas.*[8] In *Bougas*, the Supreme Court interpreted a venue provision in the National Banking Act, 12 U.S.C § 94. At the time *Bougas* was decided, § 94 provided that venue could be effectuated in any district court in which the *"association may be established"* or any state, county or municipal court *"in which said association is located."*[9] Noting that the statute used the term *"estab-*

lished" and *"located"* differently, *Bougas* concluded that for *venue* purposes, a suit against a national bank could be commenced wherever the bank might maintain a branch. *Iacono* took *Bougas* decision on venue one step further, and construed the word *"located"* in 28 U.S.C § 1948 as it was construed in *Bougas*. For *jurisdictional* purposes, a national bank should be deemed a citizen wherever it maintained a branch office.

LEGISLATIVE HISTORY

Iacono bolstered its reasoning by reviewing the legislative history of § 94. It noted that in 1982 Congress had revised the statute. At that point, Congress concluded that venue existed against any National Banking Association for which the Federal Deposit Insurance Corporation had been appointed receiver or when the suit was against the FDIC as Receiver for the Association, by locating such suit in the district in which the Association maintained its *"principal place of business,"* or in the event it was a state court suit, wherever that National Association was located, i.e., at a branch office. The *Iacono* court concluded that since Congress had treated *"principal place of business"* as the parallel to the word *"establishment,"* it did two things: (1) it reconfirmed the notion that establishment meant principal place of business; and (2) it reconfirmed the notion that establishment and location were separate locations. *Iacono* further concluded that if Congress had wanted to change § 1348 to distinguish between the way in which *"located"* was interpreted there, it clearly knew how to do so by the words *"principal place of business."* It chose not to do so.

Iacono lastly concluded that its decision was correct under the principles of diversity jurisdiction compiled it to narrowly circumscribe its own authority.

TURNING TIDE

The *Iacono* tide first began to turn in 1999, with the United States District Court for the Eastern District of Pennsylvania's decision in *Financial Software Systems, Inc. v. First Union National Bank.*[10] In *Financial*

Software, the plaintiff claimed that the defendant national bank failed to pay for a computer software system.[11] The case was filed in federal court, alleging diversity jurisdiction because the plaintiff was a citizen of Pennsylvania, while the defendant national bank was a citizen of North Carolina.[12] The court denied the defendant national bank's motion to dismiss. That court concluded that for purposes of §1348,[13] "a national bank was 'located' in, and thus a citizen of, the state of its principal place of business."[14]

Financial Software approached the issue from a different perspective than *Iacono* had. It started with a review of the history of § 1348 and compared it with relevant provisions from the National Banking Act of 1863. It noted initially that the National Banking Act had originally been interpreted to provide for federal question jurisdiction over suits by or against national banks. The approach was changed in 1882, however, when Congress amended the statute to eliminate reliance upon federal question jurisdiction as a basis for suits involving national banks. The *Financial Software* court pointed out, however, that Congress' intention in making that amendment was to put National Banking Associations on the same "footing as banks of the state where they are located for all the purposes of jurisdiction in the courts of the United States."[15] *Financial Software* thus viewed § 1348 as treating national banks the same as their domestic counterparts.[16]

Financial Software also took issue with *Iacono's* reliance on *Bougas*. First, it pointed out that *Bougas* was purely deciding venue, and nothing more. Secondly, it argued that to extrapolate from 12 U.S.C. § 94 to 28 U.S.C. § 1348 was a step that the United States Supreme Court did not take, and was not a step a district court should take. It also rejected the notion that courts should self-regulate their own diversity jurisdiction, holding, instead, that if Congress wanted to effectuate a result in that regard, it could and would do so.

APPELLATE RULING

The reasoning expressed in *Financial Software* was adopted by the only appellate authority to date on this question, *Firstar Bank, N.A. v. Faul*.[17] In *Firstar*, the defendant moved to dismiss an action brought by the plaintiff national bank for lack of diversity jurisdiction.[18] The plaintiff national bank

claimed that it was a citizen only of Ohio, even though it maintained branch offices in Illinois, while the defendant was a citizen of Illinois.[19] The district court, relying on *Iacono*, granted the motion to dismiss, and dismissed the action.[20] The Seventh Circuit reversed.

Firstar first arrived at the same historical statutory conclusion as did *Financial Software*: Congress must have intended the word "located" in § 1348 to refer to the national bank's principal place of business, so that national banks could continue to enjoy the same diversity access to federal courts as other corporations.[21] However, *Firstar* expanded on *Financial Software*, and concluded that at least *two* locations exist for national banks: (a) the principal place of business, as held in *Financial Software*, and (b) the place listed on the bank's organization certificate where its operation of discount and deposit are carried on.[22]

Importantly, the *Firstar* court was aided with an *amicus curiæ* brief filed by the Office of the Comptroller of the Currency ("OCC"), the federal agency responsible for regulating national banking.[23] The OCC took the position that Congress intended to give national banks the same access to federal courts as its state counterpart. That is, the governmental authority that regulates national banks argued that 28 U.S.C. § 1348 should be interpreted to provide for a limited definition of citizenship of national banks for diversity purposes.

Firstar has been generally accepted by the district courts.[24] Indeed, since *Firstar* was decided, no district court has followed the *Iacono* reasoning. However, *Firstar* has been subject to some fine tuning by the district courts that have analyzed it. In *Evergreen Forest Products of Georgia, LLC v. Bank of America, N.A.*, the court noted that the organization certificate relied on by Firstar only stated, pursuant to 12 U.S.C. § 22, "[t]he place where [operations] of discount and deposit are to be carried on, designating the State, Territory, or District, and the particular county and city, town, or village." Temporally speaking, since these certificates are never updated, the place stated in the organization certificate would not reflect the current place where the national bank transacted business.

As such, *Evergreen Products* concluded that "a bank's most recent articles of association provide a more accurate standard for determining a bank's current citizenship."[25] Indeed, in *Evergreen*, the defendant Bank of America's

original organization certificate listed California as its location, although it had moved its main office and "operations of discount and deposit" to North Carolina.[26] Under *Firstar*, therefore, Bank of America would be considered a citizen of California.[27]

> This conclusion reveals a flaw in *Firstar's* reasoning. Without some method to account for the fact that a national bank can change the location of its operations, application of *Firstar* could result in national banks being deemed citizens of states where they no longer maintain significant contacts.[28]

Accordingly, *Evergreen Products* concluded that a national bank was a citizen of both the state in which it maintained its principal place of business, and the state listed in its most recent articles of association.

Evergreen Products has been directly supported by the OCC and the only two district court opinions that have considered this question since *Evergreen* was decided.[29] More specifically, in 2002, in response to a request by Bank of America for clarification, the OCC stated that "[w]e believe the interpretation of the statute and fundamental reasoning of the *Firstar Bank, N.A. v. Faul* court are correct. National Banks are to be treated for diversity jurisdiction purposes in a manner similar to state banks."[30] Likewise, in *RDC Funding, Inc. v. Wachovia Bank, N.A.* and *Adams v. Bank of America, N.A.*, both district courts adopted the *Evergreen* interpretation of 28 U.S.C. § 1338, an interpretation that greatly enhances the potential for national banks to resolve disputes in federal court, rather than state court.

CONCLUSION

The issue of a national bank's citizenship for diversity purposes is one that raises significant constitutional issues, and one which has evenly divided the courts. The better outcome is the practical one adopted in *Evergreen* that treats national banks like their domestic counterparts.

NOTES

[1] *See* 28 U.S.C. §1332(a).

[2] *Connecticut National Bank v. Iacono,* 785 F. Supp. 30 (D.R.I. 1992).

[3] *Iacono, supra,* 785 F.Supp. at 31.

[4] *Iacono, supra,* 785 F.Supp. at 30.

[5] *Iacono, supra,* 785 F.Supp. at 34.

[6] *See American Surety Company v. Bank of California,* 44 F. Supp. 81 (D. Ore. 1941), aff'd, 133 F. 2d 160 (9th Cir. 1943).

[7] *See, e.g. Frontier Insurance Company v. MTN Owner Trust,* 111 F. Supp. 2d 375 (S.D.N.Y. 1998); *Schmidt v. Fleet Bank,* 16 F. Supp. 340 (S.D.N.Y. 1998); *Ferraiolo Construction, Inc. v. Keybank, N.A.,* 978 F. Supp. 225 (D.Maine 1997); *Norwest Bank Minnesota, N.A. v. Patton,* 924 F. Supp. 114 (D. Colo. 1996); *Bank of New York v. Bank of America,* 861 F. Supp. 225, 230 (S.D.N.Y. 1994).

[8] *Citizens and Southern National Bank v. Bougas,* 434 U.S. 35 (1977).

[9] 12 U.S.C. § 94.

[10] *Financial Software Systems, Inc. v. First Union National Bank,* 84 F. Supp. 2d 594 (E.D. Pa. 1999).

[11] *Financial Software, supra,* 84 F.Supp.2d at 595.

[12] *Financial Software, supra,* 84 F.Supp.2d at 595.

[13] A national bank is organized under federal law pursuant to the National Banking Act. As such, it is its Organizational Certificate that acts as its official indication of incorporation. There is no state of incorporation. *See Evergreen Forest Products of Georgia, LLC v. Bank of America, N.A.,* 262 F. Supp. 2d 1297, 1301 (N.D. Ala. 2003).

[14] *Financial Software, supra,* 84 F. Supp.2d at 595.

[15] *Financial Software Systems, Inc.* 84 F. Supp. 2d at 599, quoting *Leather Manufacturers National Bank v. Cooper,* 120 U.S. 778, 780 (1887).

[16] *Financial Software Systems, Inc.*, 84 F. Supp. 2d at 600.

[17] *Firstar Bank, N.A. v. Faul,* 253 F. 3d 982 (6th Cir. 2001).

[18] *Firstar, supra,* 253 F.3d at 985.

[19] *Firstar, supra,* 253 F.3d at 985.

[20] *Firstar, supra,* 253 F.3d at 985.

[21] *Firstar, supra,* 253 F.3d at 987-998.

[22] *Firstar, supra,* 253 F.3d at 992.

[23] *See* 2001 WL 34106718, at *3 (Appellate Brief).

[24] *See Pitts v. First Union National Bank,* 217 F.Supp.2d 629, 630-31 (D.Md.2002); *Bank One, N.A. v. Euro-Alamo Investments., Inc.,* 211 F.Supp.2d 808, 810 (N.D.Tex.2002); *Bank of America, N.A. v. Johnson,* 186 F.Supp.2d 1182, 1183-84

(W.D.Okla.2001); *see also, Baker v. First American National Bank*, 3 F. Supp.2d 799, (W.D. La. 2000).

[25] *Evergreen, supra,* 262 F.Supp.2d 1303 (emphasis added).

[26] *Evergreen, supra,* 262 F.Supp.2d 1307.

[27] *Evergreen, supra,* 262 F.Supp.2d 1307.

[28] *Evergreen, supra,* 262 F.Supp.2d 1307.

[29] *See Evergreen Forest Products of Georgia, LLC v. Bank of America, N.A.,* 262 F.Supp.2d 1297 (M.D.Ala. May 13, 2003); *RDC Funding Corporation v. Wachovia Bank, N.A.,* Civil Action No. 3:03cv01360 (JBA), 2004 WL 717111 (D.Conn. March 31, 2004); *Adams v. Bank of America, N.A.,* 317 F.Supp.2d 935 (S.D.Iowa May 4, 2004).

[30] Letter, Eric Thompson to Scott Cammarn, Bank of America, N.A., October 23, 2002, at 5-6 (http://www.occ.treas.gov/interp/feb03/int952.pdf).