Title

Litigating trust matters in the federal courts (U.S.): A jurisdiction primer

Text

The diversity jurisdiction of the federal courts generally does not extend to state probate matters. This so-called "probate exception to federal diversity jurisdiction" does not apply to trust disputes. See generally §8.15.19 of *Loring and Rounds: A Trustee's Handbook*, which is attached below to this posting as an Appendix. So we have a trust exception to the probate exception.

Federal courts generally have jurisdiction over controversies between "Citizens of different States" by virtue of 28 U.S.C. § 1332(a)(1) and U.S. Const., Art III, § 2. The citizens upon whose diversity a plaintiff grounds federal jurisdiction must be real and substantial parties to the controversy. For a federal court to take jurisdiction of a dispute between citizens of different states there must be "complete diversity." In other words, "no plaintiff may be from the same state as any defendant." *See* Smart v. Local 702 International Brotherhood of Electrical Workers, 562 F.3d 798 (2009). Or to put it another way, "[c]omplete diversity 'requires that all persons on one side of the controversy be citizens of different states than all persons on the other side.'" *See* Harvey v. Grey Wolf Drilling, Co., 542 F.3d 1077 (2008).In determining whether there is complete diversity among the litigants in a given trust matter are only the trustees' domiciles taken into account, or must the beneficiaries' as well? If the latter then the chances of a disqualifying overlap are generally greater. The U.S. Supreme Court determined back in 1808 that trustees of a traditional express trust are entitled to bring diversity actions in their own names and upon the basis of their own citizenships. *See* Chappedelaine v. Dechenaux, 4 Cranch 306, 8 U.S. 308 (1808). In 1845, the Court confirmed that the residences of those who may share the equitable interest are irrelevant. *See* Bonnafee v. Williars, 3 How. 574, 44 U.S. 577 (1845). A traditional express trust is a trust that lacks "juridical person status" but under which the trustee "possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others," as opposed to, say, a nominee trust under which the trustee's actions are fully controlled by those in whom the transferable shares of beneficial/equitable interest are vested. *See* Wang. v. New Mighty U.S. Trust, 843 F.3d 487 (2016). Such agency-like trusteeships are taken up generally in §9.6 of the *Loring and Rounds: A Trustee's Handbook*.

In addition, for a trust matter to be eligible for litigation in the federal courts, the matter in controversy must exceed the sum or value of $75,000. See 28 U.S. Code § 1332(a). In the trust context, much will depend upon whether the focus of the litigation is an alleged breach of some duty of the trustee, such as to invest prudently, or whether the litigation is ownership-focused, such as a competition among individuals for various packets of equitable interests. If the former, then the damages sought are computed with reference to the value of the underlying entrusted assets; if the latter, then things aren't so simple. Take the case of a vested equitable property interest subject to a condition subsequent, say, a future exercise of the trustee's discretion to invade principal. The condition subsequent would make any valuation of the discrete packets of equitable interests that are at stake speculative at best. For the difference between a vested (transmissible) contingent equitable property interest and one that is vested subject to complete divestment, see §8.30 of *Loring and Rounds: A Trustee's Handbook*.

The probate exception to federal diversity jurisdiction is taken up in §8.15.19 of *Loring and Rounds: A Trustee' Handbook*, which section is attached immediately below as an appendix to this posting.

Appendix

§8.15.19 *The Probate Exception (to Federal Diversity Jurisdiction)* [from *Loring and Rounds: A Trustee's Handbook* §8.15.19 [pages 1197-1198 of the 2017 Edition]].

The probate exception to federal diversity jurisdiction does not apply to trusts,[444] except perhaps to trusts employed as will substitutes.[445]

As far back as 1827,[446] the U.S. Supreme Court recognized that there were certain limits to federal jurisdiction over probate matters. In 1972, a court finally gave this aggregation of limits a name: the probate exception.[447] In 2006, the U.S. Supreme Court attempted once and for all to define its limits:

> Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.[448]

Why has the jurisdiction of state courts over strictly probate proceedings historically been considered exclusive? Because the equity power conferred on federal courts by the Judiciary Act of 1789 included only those powers held by the English Chancery Court in 1789. The probate of wills and the granting of letters of administration were not among them. Those activities were the domain of the English ecclesiastical courts.[449]

In England in 1789, on the other hand, controversies concerning trusts were not the exclusive jurisdiction of the ecclesiastical courts. "And 'it was early established that as to controversies that were not then [in 1789] regarded as probate matters federal jurisdiction could not be ousted by the mere

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[444]Weingarten v. Warren, 753 F. Supp. 491, 494 (S.D.N.Y. 1990); Curtis v. Brunsting, 704 F.3d 406 (5th Cir. 2013).

[445]*See, e.g.*, *In re* Marshall, 392 F.3d 1118, 1133–1135 (9th Cir. 2004); Golden *ex rel.* Golden v. Golden, 382 F.3d 348, 359 (3d Cir. 2004); Macken *ex rel.* Macken v. Jensen, 333 F.3d 797, 799 (7th Cir. 2003); Salis v. Jensen, 294 F.3d 994, 999 (8th Cir. 2002).

[446]Armstrong v. Lear, 25 U.S. 169, 176 (1827) (involving the unsuccessful efforts of one claiming to be a legatee under the will of Continental Army General Thaddeus Kosciuszko to have the matter heard in federal court).

[447]Magaziner v. Montemuro, 468 F.2d 782, 787 (3d Cir. 1972). *See also* Estate of Masters, 361 F. Supp. 2d 1303 (E.D. Okla. 2005); Peter Nicolas, *Fighting the Probate Mafia: A Dissection of the Probate Exception to Federal Court Jurisdiction*, 74 S. Cal. L. Rev. 1479, 1493–1494 & n.70 (2001); John F. Winkler, *The Probate Jurisdiction of the Federal Courts*, 14 Probate L.J. 77 (1997).

[448]Marshall v. Marshall, 547 U.S. 293, 310–11 (2006) (the court suggesting that the probate exception in part is rooted in the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*.).

[449]Barnes v. Brandrup, 506 F. Supp. 396, 398–399 (1981).

internal arrangement of the state courts.'"[450] Accordingly, while there may be other doctrines that from time to time constrain a federal court from asserting jurisdiction over a local trust matter,[451] the probate exception is not one of them.

As early as 1808, the U.S. Supreme Court stated that trustees of an express trust are entitled to bring diversity actions in their own names and upon the basis of their own citizenship.[452] The residence of those who may have the equitable interest is "irrelevant," for example, in an action by the trustee against a third party for breach of contract.[453] Note, however, that "[i]n a number of representative cases it has been held or recognized that for the purpose of determining federal jurisdiction based on diversity of citizenship, the citizenship of a business trust is that of the owners of beneficial interest."[454] The U.S. Supreme Court has held that a Maryland real estate investment trust (REIT) may not be deemed a "citizen" for purposes of determining federal diversity-of-citizenship jurisdiction,[455] although Maryland statutory law treats a REIT as a "'separate legal entity' that itself can sue or be sued."[456] Nor is the citizenship of the trustee determinative, as would be the case with a "traditional trust."[457] The holding: For purposes of diversity jurisdiction, the citizenships of the REIT's shareholders, not just the citizenships of the trustees, are taken into account.[458]

The general topic of judicial jurisdiction (both state and federal) over trustees is covered in §8.40 of this handbook. At the end of the section there is a discussion of the federal "complete diversity" requirement in the context of the adjudication of trust disputes.

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[450]Barnes v. Brandrup, 506 F. Supp. at 399 (quoting Beach v. Rome Trust Co., 269 F.2d 367, 373 (2d Cir. 1959)).

[451]*See generally* Barnes v. Brandrup, 506 F. Supp. 396 (1981).

[452]Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 462–463 (1980).

[453]Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 462–463 (1980). *See generally* 5 Scott & Ascher §28.1.

[454]Herbert B. Chermside, Jr., *Modern Status of the Massachusetts or Business Trust*, 88 A.L.R.3d 704, §63 (2006).

[455]"Adopting the Tenth Circuit's reasoning [which the U.S. Supreme Court has done] would treat those REITs as citizens of every one of those states for purposes of federal diversity jurisdiction. That would largely deprive REITs of access to the federal courts sitting in diversity: they would be unable to remove actions to federal court based on diversity, 28 U.S.C. §1441(b)(2) (an action brought in state court in a state where a defendant is a citizen may not be removed to federal court based on diversity), and likely would not be able to establish even the minimal diversity required for removal of large class actions." Brief for National Association of Real Estate Investment Trusts as Amicus Curiae Supporting Petitioners, p. 1–2, Americold Realty Trust v. ConAgra Foods, Inc., 136 S. Ct. 1012 (2016) (available at <http://www.scotusblog.com/wp-content/uploads/2015/12/14-1382_amicus_pet_NAREIT.authcheckdam.pdf>) (last accessed Sept. 4, 2016).

[456]Americold Realty Trust v. ConAgra Foods, Inc., 136 S. Ct. 1012 (2016).

[457]Americold Realty Trust v. ConAgra Foods, Inc., 136 S. Ct. 1012 (2016).

[458]Americold Realty Trust v. ConAgra Foods, Inc., 136 S. Ct. 1012 (2016).