

Federal Court Diversity Jurisdiction and Non-Corporate Entities

REIT Is a Citizen of Every State Where Its Owners Are Citizens

Americold Realty Trust v. ConAgra Foods, et al.
136 S.Ct. 1012 (2016)

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Introduction

Business entities in Illinois and elsewhere often prefer to litigate matters in federal court rather than state court. Speed of adjudication and more efficient case administration are among the reasons that most companies would prefer “duking it out” in federal court. But unless the litigation involves a federal question, the only way for a case to be heard in federal court is if there is diversity of citizenship between the parties, *i.e.*, the controversy is between citizens of different states.

Indeed, the first thing a federal judge is required to do when a complaint is filed is to review the court’s jurisdiction and to raise the issue of the propriety of federal jurisdiction *sua sponte*. See, *e.g.*, *Rickets v Midwest Nat’l Bank*, 874 F.2d 1177, 1182 (7th Cir. 1989). In order to invoke “diversity jurisdiction” for suits between citizens of different states, the parties must demonstrate that there is “complete diversity” of plaintiffs and defendants – meaning that every plaintiff must be a citizen of a different state from every defendant.

Determining the citizenship of an individual is relatively straightforward, but it can be more complicated when dealing with legal entities such as corporations and partnerships. The federal

diversity jurisdiction statute provides that a **corporation** is deemed a citizen of the state of its incorporation and the state in which it has its principal place of business. 28 U.S.C. §1332(c)(1). However, the citizenship of other “unincorporated” business entities (limited liability companies and limited partnerships, for example) is determined by the citizenship of each of its “members.” *Cosgrove v Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998).

Over the years the Supreme Court has applied this principle to a number of different business entities: the members of an association are its owners; the members of a partnership, its partners; the members of a union, its affiliated workers; and the members of a joint-stock company, its shareholders.

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But it was still an open issue as to how the federal courts should treat certain other non-corporate entities for diversity jurisdiction purposes. In a little-noticed case from 2016, a unanimous Supreme Court addressed the application of the federal diversity statute to non-corporate entities for the first time in a quarter century.

The Court held that, for purposes of diversity jurisdiction, the citizenship of a Maryland real

estate investment trust (a "REIT") is based on the citizenship of *each* of its members. *Americold Realty Trust v. Conagra Foods et al.*, 577 US ____ ; 136 S.Ct. 1012 (2016). So for a federal court to exercise jurisdiction over a state law claim involving a REIT, it must be demonstrated that every one of its members/owners is a resident of a different state from every opposing party.

The *Americold* Court reiterated that in determining an entity's citizenship for diversity jurisdiction purposes, (i) one citizenship rule applies to *corporations*, and (ii) a different rule applies to *all other "non-corporate artificial entities,"* including REITS. Consequently, unless the citizenship of the members/owners of each such non-corporate entity is affirmatively demonstrated, and complete diversity established, a federal court has no jurisdiction to hear or decide the case.

The Court also resolved some confusion about the nature and status of trusts under the diversity statute, drawing a distinction between traditional common law trusts and "trusts" that are a creature of state law, and which are recognized as a separate legal entity from its beneficiaries or owners. The Court noted that traditionally a "trust" was not considered a distinct legal entity but a fiduciary relationship between multiple people. *Americold*, 136 S.Ct. at 1016. Consequently, legal proceedings involving a trust were traditionally brought by or against the trustees in their own name. Therefore, when a trustee files a lawsuit or is sued in his or her own name, the trustee's citizenship is all that matters for diversity purposes. *Id.* Not so with a REIT.

Although it is nominally a "trust," a REIT has little in common with a traditional trust, including the fact that state law treats the real estate investment trust as a separate legal entity that can be sued in its own name. For that reason, and because it is an "unincorporated business" (*i.e.*, not a corporation), a REIT is deemed to possess the citizenship of all its members. *Id.*

Facts of the Case

Americold Realty Trust owned a warehouse in Kansas. After a fire at the warehouse, Conagra and two other companies sought compensation from *Americold* in what the Court called "a typical state-law controversy." *Americold*, 136 S.Ct. 1012, 1014.

The plaintiff corporations filed their suit in a Kansas state court but *Americold* removed the suit to federal court. The Federal District Court for the District of Kansas accepted jurisdiction and resolved the dispute in favor of *Americold*. On appeal, the Tenth Circuit Court of Appeals questioned whether the district court had jurisdiction to hear the matter. After supplemental briefing on the jurisdictional question (and although all the parties contended that federal court jurisdiction was appropriate because "the suit involved 'citizens of different states'"), the Tenth Circuit concluded that the parties had "failed to demonstrate that the plaintiffs were citizens of different states than the defendants" because while the three plaintiff corporations were citizens of Delaware, Nebraska and Illinois (the respective states of incorporation and principal places of business for those corporations), there was nothing in the record to demonstrate the citizenship of *Americold* Realty Trust. *Id.* at 1015.

The Supreme Court's Opinion

Writing for a unanimous Court, Justice Sotomayor noted that in the early days of the Republic, the Supreme Court had ruled that "only a human could be a citizen for jurisdictional purposes. *When a legal entity was a party, the relevant citizens were its members.*" *Id.*, citing *US v. Deveaux* (1809). Later, the Court created a limited exception for corporations: "a corporation itself could be considered a citizen of its State of incorporation". *Id.* Congress subsequently codified and expanded that exception, writing into federal law the rule that "a corporation should also be considered a citizen of the State where it has its

principal place of business.” 28 U.S.C. Sec. 1332(c).

However, “Congress never expanded this grant of citizenship to include artificial entities other than corporations.” For all unincorporated entities, “diversity depends on the citizenship of ‘all of its members.’” *Id.* The Court applied this general rule to the defendant real estate investment trust. It rejected Americold’s argument that a trust should be governed by a different rule and that anything called a “trust” possessed the citizenship of its trustees alone. Under Maryland law, a REIT is treated as a separate legal entity from its owners (which common law trusts are not), and the relevant statute expressly states that the REIT itself can sue or be sued. Consequently, for purposes of diversity jurisdiction analysis, a Maryland REIT is treated like any other unincorporated entity—it possesses the citizenship of all of its members.

Practical Takeaway

LLCs, LLPs and REITS are subject to different rules than a corporation in determining whether there is federal court jurisdiction over state law claims. *Americold Realty Trust* was an 8-0 decision (decided shortly after Justice Scalia’s death) and represents a clear statement by the Supreme Court that it desires to strictly limit the number of non-federal question cases in the federal courts.

As a policy matter, it would probably make sense to afford limited liability companies the same access to the federal courts as corporations; in most states, LLCs are now, or are fast becoming, the most popular form of business entity, largely replacing corporations as the entity of choice for privately held businesses of all sizes. But the Court in *Americold Realty Trust* explicitly affirmed that “it is up to Congress if it wishes to incorporate other entities into 28 USC 1332(c)’s special jurisdictional rule [for corporations].” *Id.* at 1017.

[CLICK HERE](#) to view the Supreme Court decision.

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