BIG money

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WHERE IN THE WORLD ARE THE PARTIES "LOCATED?"

Supreme Court Rules on Adjudication of National Bank Cases

by Timothy A. Lambirth and Diane Bucka

In a unanimous decision, the Supreme Court has reversed a 4th Circuit Court of Appeals ruling that a national bank is "located" in, and therefore a citizen of, any state in which it has a branch. *Wachovia Bank, NA v. Schmidt*, 126 S. Ct. 941 (2006). The high court ruling helps ensure that national banks will have access to a federal forum for diversity-jurisdiction purposes.

The plaintiffs sued Wachovia in a South Carolina state court for fraudulently inducing them to participate in an illegitimate tax shelter. Wachovia then filed a petition in federal district court, seeking to compel arbitration of the dispute. In seeking federal court jurisdiction, Wachovia relied solely on the parties' diverse citizenship. Federal courts have "diversity jurisdiction" over cases between citizens of different states, even if the underlying dispute is based entirely on state law. Wachovia is headquartered in North Carolina and argued it was not "located" in South Carolina, even though it has branches there. Ultimately, the outcome hinged upon the definition of the term "location."

The Supreme Court opinion points out errors in the Fourth Circuit's interpretation of 28 USC § 1348, holding that a national bank is a citizen of the State in which its *main office* is located, as set forth in its articles of association. In its decision, the lower court had suggested that the term "located" refers to "physical presence in a place," based on definitions in dictionaries. That court had further relied on a 1977 Supreme Court case, *Citizens & S. Nat'l Bank v. Bougas*, 434 U.S. 35, for its interpretation of the term "located" as encompassing any county in which a bank maintains a branch office and blending the venue and jurisdictions statutes by concluding that under the *in pari material* canon, the two could be interpreted consistently.

In the present decision, today's Supreme Court distinguished the apples from the oranges, stressing that:

> "...venue and subject-matter jurisdiction are not concepts of the same order. Venue, largely a matter of litigational convenience, is waived if not timely raised. Subject matter jurisdiction, on the other hand, concerns a court's competence to adjudicate a particular category of cases; a matter far weightier than venue, subject-matter jurisdiction must be considered by the court on its own motion, even if no party raises an objection."

In evaluating congressional intent, the court noted that when the governing statutes were enacted, national banks could not even operate a branch outside their home state, and that the terms "located" and "established" were used somewhat interchangeably in the law. The term "located" does not have a fixed, plain meaning in the National Bank Act. In some provisions of the related statutes, "located" refers to a bank's main office, but in others it includes branch offices. At the end of the day, the analysis likened national banks to corporations which are considered citizens only of states in which they are incorporated or maintain their principal place of business. To do otherwise, the court stated, would unduly restrict national banks' access to diversity jurisdiction relative to the access granted to other comparable corporations.

This case preserves the federal courts as the "go to" jurisdiction for federally-chartered financial institutions, one that is seen as generally more favorable to corporate interests.

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