NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MAG US LOUNGE MANAGEMENT, LLC, a Delaware limited liability company,

Plaintiff-Appellant,

v.

ONTARIO INTERNATIONAL AIRPORT AUTHORITY, a California joint powers authority,

Defendant-Appellee.

No. 22-55230

D.C. No. 2:21-cv-04909-ODW-RAO

MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Argued and Submitted December 6, 2022
Pasadena, California

Before: KELLY,[**] M. SMITH, and COLLINS, Circuit Judges.

Invoking the district court's diversity jurisdiction under 28 U.S.C. § 1332, Plaintiff-Appellant MAG US Lounge Management, LLC ("MAG US") sued Defendant-Appellee Ontario International Airport Authority ("OIAA") in federal court for breach of contract and related claims. After issuing two orders to show

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Paul J. Kelly, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

cause, the district court ultimately held that diversity jurisdiction had not been proved and dismissed the case. We have appellate jurisdiction under 28 U.S.C. § 1291, and we reverse.

1. The district court clearly erred in concluding that MAG US's evidentiary presentation failed to establish its citizenship by a preponderance of the evidence. *See Wilkins v. United States*, 13 F.4th 791, 793 (9th Cir. 2021) (stating that factual determinations made in the course of determining subject matter jurisdiction are reviewed for clear error); *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) ("The plaintiff bears the burden of proving by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction has been met.").

For diversity jurisdiction purposes, "an LLC is a citizen of every state of which its owners/members are citizens." *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). MAG US introduced uncontroverted evidence of its citizenship in the form of a declaration from its CEO, Martin Jones. Jones averred that MAG US is an LLC with one and only one member and owner, *viz*., Manchester Airport Group US Holdings Inc. ("MAG Holdings"). Under *Johnson*, the citizenship of MAG US therefore turns on the citizenship of MAG Holdings. As to the latter point, Jones averred that MAG Holdings is a corporation "organized and existing under the laws of Delaware"; that it "maintains a principal place of business at 100 N. LaSalle Street, Chicago, Illinois 60602"; and that

"MAG Holdings does not maintain any other principal places of business except its headquarters in Illinois." Online records from the Secretaries of State of Illinois and Delaware were also submitted to the district court, and they confirm that Jones is also the President of MAG Holdings; that the address of the President and Secretary of MAG Holdings is "100 N. LaSalle St. Suite 900 Chicago IL 60602"; and that MAG Holdings is a corporation organized under the laws of Delaware. OIAA did not submit any contradictory evidence concerning the citizenship of MAG US or MAG Holdings. This record amply and indisputably establishes that MAG Holdings—and therefore MAG US—is a citizen of Delaware (the State of its incorporation) and of Illinois (the State of its only principal place of business). *See* 28 U.S.C. § 1332(c)(1).

In concluding otherwise, the district court held that MAG US had not made a sufficient "showing" as to Jones's "personal knowledge of the facts" that Jones set forth as to MAG US and MAG Holdings. The district court erred. Jones was the CEO of MAG US and the President of MAG Holdings, and we have followed the common-sense rule that "[p]ersonal knowledge can be inferred from an affiant's position" in a company. *Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 206 F.3d 1322, 1330 (9th Cir. 2000). Jones attested to his personal knowledge of these matters under penalty of perjury, and OIAA presented no contrary evidence on these points. On this record, there was no

reasonable basis for concluding that Jones lacked personal knowledge of the basic points of corporate structure to which he averred.

In its second order to show cause, which preceded its dismissal order, the district court also rejected the online record that MAG US submitted from the website of the Secretary of State of Delaware. However, the court lacked any reasonable basis for doing so. That record was submitted with a request for judicial notice in which counsel confirmed that it was a "true and accurate copy" of the "State of Delaware's Entity Details" as to MAG Holdings. The document on its face shows that it was printed from the "Delaware.gov" website and that it sets forth the "Entity Details" for MAG Holdings from the "Department of State: Division of Corporations." And contrary to the district court's speculation that the Delaware report did not show that MAG Holdings was organized under the laws of Delaware "at the time [MAG US] brought suit," that report is dated January 14, 2022 and shows that MAG Holdings was incorporated in Delaware as of February 18, 2015. Notably, after wrongly rejecting this report, the district court stated that "[b]etter evidence, such as a declaration from a competent director or officer of MAG Holdings, is required" to show MAG Holdings's state of incorporation. But, as we have explained, when MAG US thereafter presented just such a declaration,

the district court wrongly found that inadequate as well.[1]

Accordingly, MAG US has amply established, by a preponderance of the evidence, that it is a citizen of Delaware and of Illinois. The district court's contrary conclusion was clearly erroneous.

2. The district court also clearly erred in concluding that MAG US had failed to show that the defendant—OIAA—was a "citizen" of California rather than an arm of the State of California. *See Moor v. County of Alameda*, 411 U.S. 693, 717 (1973) (holding that, although "a State is not a 'citizen' for purposes of the diversity jurisdiction," a "political subdivision of a State" is considered to be a "citizen," "unless it is simply 'the arm or alter ego of the State'").

OIAA is a "joint powers authority" formed by the County of San Bernardino and the City of Ontario under California's Joint Exercise of Powers Act. *See* CAL. GOV. CODE § 6500.1. That Act allows two or more public agencies to work together to accomplish a common objective by entering into an "agreement" under which they "may jointly exercise any power common to the contracting parties." *Id*. § 6502. As in this case, such an agreement may "provide[] for the creation of

[1] The district court also initially concluded that the printout from the Illinois Secretary of State's office, which stated that the address of the President and Secretary of MAG Holdings was located in Chicago, Illinois, was insufficient by itself to establish that MAG Holdings's principal place of business was in Illinois. Even assuming that conclusion was correct, we note that the information contained in that printout was consistent with, and provided yet further corroboration for, the facts subsequently set forth by Jones in his declaration.

an agency or entity that is separate from the parties to the agreement." *Id*. § 6503.5; *see also id*. § 6506. When such an agency is created, it is deemed to be "a public entity separate from the parties to the agreement." *Id*. § 6507. Such an entity "shall have the power to sue and be sued in its own name," and it may "make and enter contracts" and "incur debts, liabilities or obligations." *Id*. § 6508. Any such "debts, liabilities, and obligations of the agency shall be debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise." *Id*. § 6508.1; *see also Tucker Land Co. v. State of California*, 114 Cal. Rptr. 2d 891, 897 (Ct. App. 2001) (rejecting the notion that the act imposes nondelegable "liability on constituent members for the contractual obligations of the [joint powers authority]").

Against this backdrop, there was no conceivable basis for the district court's speculation that OIAA was an arm of the State of California. OIAA was formed by two local government entities that are each citizens for purposes of diversity jurisdiction, and the joint entity that these local governments created is likewise not an arm of the State. As a creature of two local government entities, OIAA can only exercise those powers possessed in common by the city and the county. CAL. GOV. CODE § 6502. Moreover, OIAA is controlled by the local government entities that created it: the agency is governed by a five-member commission in which four members are appointed by the Ontario City Council and one member

by the County of San Bernardino. And OIAA is responsible for its own debts. Although the Joint Exercise of Powers Act establishes a default rule that the public entities creating the joint agency are liable for its debts, the Act also states that the agreement creating the joint agency may "specif[y] otherwise." *Id*. § 6508.1. Here, the agreement creating the OIAA states that the "debts, liabilities, and obligations of [OIAA] shall be those of [OIAA], and do not constitute debts, liabilities, or obligations" of the City of Ontario or the County of San Bernardino. Moreover, the primary function of OIAA—the operation of an airport—is one that the Supreme Court has recognized as among those commonly exercised by local governments. *See Moor*, 411 U.S. at 719–20 (noting that California counties "are authorized to provide a variety of public services such as . . . airport facilities").

OIAA is thus an entity created by local governments to exercise local government powers; it is governed by a board controlled by local government entities; it may sue and be sued in its own name; and its debts are its own and not those of the other local governments (much less the State of California). Given these considerations, there is no arguable sense in which OIAA may be deemed an "arm" of the State of California. *See Mitchell v. Los Angeles Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988) (articulating factors that must be considered in determining whether an entity is an arm of the State for Eleventh Amendment purposes); *Ronwin v. Shapiro*, 657 F.2d 1071, 1073 (9th Cir. 1981) (noting that "a

similar rule controls the determination of diversity jurisdiction"). Indeed, in the district court proceedings, OIAA never even contended that it was an arm of the State of California. Accordingly, OIAA is a citizen of the State of California for purposes of diversity jurisdiction.

Because MAG US is a citizen of Delaware and Illinois and OIAA is a citizen of California, there was complete diversity of citizenship. Because it is undisputed (and indisputable) that the amount in controversy exceeds $75,000, the district court had diversity jurisdiction under § 1332(a).[2]

3. In "unusual circumstances," reassignment to a different judge on remand may be appropriate, where necessary "to preserve the appearance of justice." *United States v. Sears, Roebuck & Co.*, 785 F.2d 777, 780 (9th Cir. 1986). We conclude that, in the unique circumstances presented, the assigned district judge should not preside over these parties' dispute. Here, the district court has shown "adamance in making erroneous rulings," *id.*, including by ignoring the obvious implications of uncontested facts, raising specious objections to the evidence and arguments presented, and moving the goalposts in its successive orders to show cause (*e.g.*, by asking for a declaration to establish undisputed facts and then rejecting the requested declaration on baseless grounds). We therefore order reassignment to a new judge to preserve "the healthy administration of the judicial

[2] MAG US's motion to amend its jurisdictional allegations is denied as moot.

and appellate processes, as well as the appearance of justice." *Id*.

REVERSED AND REMANDED. The Clerk of the District Court is instructed to reassign this case forthwith to a new district judge.

The mandate shall issue forthwith.