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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0043

In the Matter of:
HarborView Mortgage Loan Trust 2005-10.

Filed September 4, 2018
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-TR-CV-17-32

Gregg M. Fishbein, Kate M. Baxter-Kauf, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota; and

Peter W. Tomlinson (pro hac vice), Patterson Belknap Webb & Tyler LLP, New York, New York (for appellants Ambac Assurance Corporation, et al.)

Michael C. McCarthy, James F. Killian, Ana Chilingarishvili, Jesse D. Mondry, Michael Sheran, Mason LLP, Minneapolis, Minnesota (for respondent U.S. Bank National Association)

Considered and decided by Florey, Presiding Judge; Peterson, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this proceeding brought under the Minnesota Trust Code, Minn. Stat. §§ 501C.0201-.0208 (2016), appellant trust insurers challenge the district court's exercise of jurisdiction over the trust. We affirm.

FACTS

Respondent U.S. Bank National Association (the bank) is the trustee for the HarborView Mortgage Loan Trust 2005-10 (the trust). The bank is a national banking association incorporated under the National Bank Act, 12 U.S.C. §§ 1 *et seq*. The bank's articles of association state that the main office of the bank shall be in Cincinnati, Ohio. The bank's principal place of business is in Minnesota.

In 2003, Countrywide Home Loans, Inc., a mortgage lender, originated more than 4,000 residential mortgage loans with a total principal balance of approximately $1.75 billion. Countrywide sold the loans to Greenwich Capital Financial Products, Inc. (GCFP), which sold the loans to Greenwich Capital Acceptance, Inc. (GCA). GCFP, GCA, and the bank aggregated the loans into a securitization trust through a pooling and servicing agreement, with the bank serving as trustee. On the date that the pooling and servicing agreement was executed, the bank's principal corporate trust office at which trust business in connection with the pooling agreement was administered was in Boston, Massachusetts. The pooling agreement designated The Bank of New York as the custodian of the original documents for individual mortgage loans and provided that the agreement would be governed by New York law.

Certificates were created based on the trust assets and then sold to investors. Appellants Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation (collectively, Ambac) insured some of the trust certificates by guaranteeing payment if the cash flow from the mortgage-loan payments was inadequate.

Eventually, it became clear that the underlying mortgage loans would not support the represented income. In 2011, the bank sued Countrywide and its successor, Bank of America Corporation, in the New York Supreme Court, alleging breaches of contract and seeking to enforce Countrywide's obligation under the pooling and servicing agreement to repurchase defective loans. In December 2016, the bank received a settlement offer of $56,961,881 and up to $10,000,000 to cover litigation expenses. Some certificate holders notified the bank that they viewed the settlement offer as inadequate. Ambac and a certificate holder, Bonitas LLC, sued the bank in federal court in New York, seeking to block the settlement. The bank filed a petition in Minnesota under the Minnesota Trust Code seeking instruction from the court regarding interpretation and application of trust provisions related to the bank's acceptance or rejection of the proposed settlement and approval from the court of the bank's decision to accept or reject the proposed settlement. The bank asserted that the Minnesota court had in rem jurisdiction.

In April 2017, Ambac moved to dismiss the bank's petition for lack of subject-matter and personal jurisdiction. In June 2017, the bank filed an amended petition asserting that the district court had jurisdiction because the bank's principal place of business is in Minneapolis and, therefore, the bank is a trustee located in Minnesota. Because the bank's retained experts had advised the bank that the settlement offer was inadequate, the bank sought an order authorizing and instructing the bank not to accept the offer. Ambac filed an amended motion to dismiss for lack of subject-matter and personal jurisdiction. After a hearing on the motion to dismiss, the district court issued an order denying the motion. Ambac appeals from this order.

D E C I S I O N

1. Subject-matter jurisdiction under the Minnesota Trust Code

Ambac argues that the district court lacked subject-matter jurisdiction over the bank's instruction petition. We review subject-matter jurisdiction as a question of law. *Nelson v. Schlener*, 859 N.W.2d 288, 291 (Minn. 2015). "Subject-matter jurisdiction refers to a court's authority to hear and determine a particular class of actions and the particular questions presented to the court for its decision." *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 608 (Minn. 2016) (quotations omitted). "Whether a court has subject-matter jurisdiction to hear and determine a particular class of actions and the particular questions presented generally depends on the scope of the constitutional and statutory grant of authority to the court." *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 585 (Minn. 2016) (quotation omitted).

District courts in Minnesota have original jurisdiction over criminal and civil cases, Minn. Const. art. VI, § 3, but the question of subject-matter jurisdiction extends beyond general classes or categories of cases. *Bode v. Minn. Dep't of Nat. Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999), *aff'd* 612 N.W.2d 862 (Minn. 2000). A court does not have authority to hear and determine a matter that "exceed[s] statutory authority, contain[s] procedural irregularities, or [was] entered erroneously after the expiration of a time period." *Id*.

Generally, the Minnesota Trust Code does not apply to corporate trusts. Minn. Stat. § 501C.0102(c). But, under an exception from this general rule, Minnesota Statutes, "sections 501C.0201 to 501C.0208 apply to corporate trusts that are administered by *a*

trustee located in this state." Minn. Stat. § 501C.0208 (emphasis added). For purposes of applying this exception,

> (1) "Corporate trust" means any trust created pursuant to a corporate trust agreement; and
>
> (2) "Corporate trust agreement" means any indenture, pooling and servicing agreement, collateral agency agreement, or other contractual arrangement that establishes an express trust either before or upon the occurrence of an event of default and was entered into with a trustee as a party to facilitate a commercial transaction for the issuance of debt or equity securities or for the creation of other similar rights or interests, whether or not the securities are subject to any securities laws, including but not limited to the Trust Indenture Act of 1939, as amended.

Id. It is undisputed that the trust is a "corporate trust." Therefore, sections 501C.0201 to 501C.0208 apply to the trust if the bank is a trustee located in Minnesota.

The parties dispute whether the bank is a trustee located in Minnesota. The trust code does not define "located." Thus, whether the bank is "located" in Minnesota presents a question of statutory interpretation. This court reviews the interpretation of a statute as a question of law subject to de novo review. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). Statutory interpretation seeks "to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2016). The legislature has instructed:

> When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:
>
> (1) the occasion and necessity for the law;
>
> (2) the circumstances under which it was enacted;
>
> (3) the mischief to be remedied;
>
> (4) the object to be attained;
>
> (5) the former law, if any, including other laws upon the same or similar subjects;
>
> (6) the consequences of a particular interpretation;

> (7) the contemporaneous legislative history; and
> (8) legislative and administrative interpretations of the statute.

Id.

The bank argues that, because its principal place of business is in Minnesota, it is a trustee located in Minnesota. Ambac cites *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 126 S. Ct. 941 (2006), and argues that, because the bank's articles of association state that the bank's main office is in Cincinnati, Ohio, the bank is located in Ohio.

In *Wachovia*, the Supreme Court held that, for federal diversity-jurisdiction purposes, a national bank "is a citizen of the State in which its main office, as set forth in its articles of association, is located." 546 U.S. at 307, 126 S. Ct. at 945. The Supreme Court explained that "located" "is a chameleon word; its meaning depends on the context in and purpose for which it is used." *Id*. at 318, 126 S. Ct. at 951. The context in and purpose for which "located" was used in *Wachovia* was a federal banking law that defined the citizenship of national banks for federal diversity-jurisdiction purposes. *Id*. at 306, 126 S. Ct. at 944-45. The statute provided that, for diversity-jurisdiction purposes, "national banks 'shall . . . be deemed citizens of the States in which they are respectively located.'" *Id*. (omission in original) (quoting 28 U.S.C. § 1348).

The Supreme Court considered the context and purpose of the statute and concluded:

> An individual who resides in more than one State is regarded, for purposes of federal subject-matter (diversity) jurisdiction, as a citizen of but one State. Similarly, a corporation's citizenship derives, for diversity jurisdiction purposes, from its State of incorporation and principal place of business.

> § 1332(c)(1). It is not deemed a citizen of every State in which it conducts business or is otherwise amenable to personal jurisdiction. Reading § 1348 in this context, one would sensibly "locate" a national bank for the very same purpose, *i.e.,* qualification for diversity jurisdiction, in the State designated in its articles of association as its main office.

Id. at 318, 126 S. Ct. at 951-52 (citations omitted).

This rationale for the Supreme Court's decision in *Wachovia* demonstrates that Ambac's reliance on *Wachovia* is misplaced. Federal diversity jurisdiction and the Minnesota Trust Code do not share either a context or a purpose, and the meaning of "located" in the diversity-jurisdiction statute at issue in *Wachovia* provides little guidance on its meaning in the trust code. Consequently, the Supreme Court's conclusion in *Wachovia* does not aid our analysis. Instead, we will consider the context in and purpose for which "located" is used in the trust code, which is consistent with the legislature's instruction that we may consider the occasion and necessity for the law, the circumstances under which the law was enacted, the mischief to be remedied, and the object to be attained.

Minnesota's current trust code was adopted in 2015 and replaced an earlier version of the code. The predecessor trust code, Minn. Stat. ch. 501B, did not refer to corporate trusts, and only one part of the current code applies to corporate trusts. That part, sections 501C.0201 to 501C.0208, provides a procedure that an interested person, including a trustee, may use to petition the district court and invoke its jurisdiction for specific matters involving a trust. *See* Minn. Stat. § 501C.0201(a) (providing that interested person may petition district court and invoke its jurisdiction for specific matters involving a trust); Minn. Stat. § 501C.0201(b) (stating that "interested person" includes, among others, acting

trustee, successor trustee, and any person seeking court appointment as trustee). The matters that the procedure may be used to address include several specifically identified matters directly related to trust administration. *See* Minn. Stat. § 501C.0202 (listing matters to which judicial proceeding under Minn. Stat. §§ 501C.0201 to .0208 may relate).

An apparent purpose of Minn. Stat. §§ 501C.0201-.0208 is to enable a trustee to obtain judicial rulings on a wide variety of matters related to trust administration. Because obtaining these judicial rulings is a function of trust administration, we conclude that when used in Minn. Stat. § 501C.0102(c), the phrase "a trustee located in this state" means a trustee of a corporate trust that is performing the functions of trust administration in this state.

The bank claims Minnesota as its principal place of business; although some trust functions are carried out in other states, the bank's decision-making officers are located in Minnesota, and employees in other states seek approval of actions from the officers in Minnesota. Because the bank performs the functions of administering the trust in this state, the district court did not err by determining that the bank is a trustee located in Minnesota and that the district court has subject-matter jurisdiction over the instruction petition.

2. In rem jurisdiction over the trust

Ambac argues that the district court erred by "holding that it may assume in rem jurisdiction over the Trust consistent with Minnesota law." "Personal jurisdiction is commonly thought to encompass jurisdiction in personam and in rem." *Nagel v. Westen*, 865 N.W.2d 325, 330 (Minn. App. 2015), *review denied* (Minn. Sept. 15, 2015). "'A judgment in personam imposes a personal liability or obligation on one person in favor of

another. A judgment in rem affects the interests of all persons in designated property. A judgment quasi in rem affects the interests of particular persons in designated property.'" *Id*. (quoting *Hanson v. Denckla*, 357 U.S. 235, 246 n.12, 78 S. Ct. 1228, 1235 n.12 (1958)).

The district court found that it has in rem jurisdiction over the trust. This court has identified seven factors to be considered when determining whether a district court has jurisdiction over a multi-state trust:

> (1) the location of the trust property (the situs of the trust assets), (2) the domicile of the trust beneficiaries, (3) the domicile of the trustees, (4) the location of the trust administrator, (5) the extent to which the litigation has been resolved, (6) the applicable law, and (7) an analysis of *forum non conveniens* principles.

In re Trusteeship Created by City of Sheridan, 593 N.W.2d 702, 705 (Minn. App. 1999)

Considering all of these factors in light of this court's decision in *Sheridan*, we agree with the district court's conclusion that it has in rem jurisdiction over the trust.

(1) The location of the trust property

In *Sheridan*, the trust property was primarily real estate in Colorado, and its location was not an issue. *Id.* at 706. Here, the trust property is primarily mortgage loans and contract rights under the trust documents. The settlement offer that is the subject of the bank's petition arose in the bank's action claiming a breach of Countrywide's contract obligations under the trust documents. Ambac argues that because the mortgage-loan documents are not in Minnesota, the trust property is not in Minnesota.

But the property that the trust possesses is not simply physical documents; the trust also possesses rights created by the language that appears in the documents. These rights

are intangible property, and the Supreme Court has addressed how the location of intangible property may be determined in the context of stock certificates and dividends. The Supreme Court said:

> It is true that fiction plays a part in the jurisprudential concept of control over intangibles. There is no fiction, however, in the fact that choses in action, stock certificates and dividends held by the corporation, are property. Whether such property has its situs with the obligor or the obligee or for some purposes with both has given rise to diverse views in this Court.
>
> We see no reason to doubt that, where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can only arise from control or power over the persons whose relationships are the source of the rights and obligations. Situs of an intangible is fictional but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible.

Standard Oil Co. v. New Jersey, 341 U.S. 428, 439-40, 71 S. Ct. 822, 829 (1951) (footnotes omitted) (quotation omitted). Like the intangible property in *Standard Oil*, control over the rights and obligations created by the mortgage-loan and trust documents can only arise from control or power over the persons who acquired rights or obligations under the documents. Because the parties do not dispute that the parties in the relationships created by the trust documents are within the jurisdiction of the district court, we conclude that the intangible property created by the mortgage-loan and trust documents is located in Minnesota. This factor weighs more strongly in favor of jurisdiction in this case than it did in *Sheridan*.

(2) The domicile of the trust beneficiaries

In *Sheridan*, Colorado was the domicile of most of the trust beneficiaries. 593 N.W.2d at 706. Here, the domiciles of the certificate holders are generally not known, and certificate holders could reside in any state or even outside the United States. Although some certificate holders may live in Minnesota, this case is comparable to *Sheridan* with respect to this factor, in that the record does not show that Minnesota is the domicile of the trust beneficiaries.

(3) The domicile of the trustee

Commentators have stated that "the domicile of a corporate trustee normally refers to the state in which the trustee has its principal place of business, which, in the case of a corporate trustee, may or may not be the same as the state of its incorporation." Norman M. Abramson, et al., *The Law of Trusts and Trustees* § 291, at 8 (3rd ed. 2014). As we stated above, the bank's principal place of business is in Minnesota. Thus, we conclude that, as in *Sheridan*, 593 N.W.2d at 706, the domicile of the trustee is in Minnesota.

(4) The location of the trust administrator

As already discussed, the bank administers the trust in Minnesota, as was the case in *Sheridan*. *Id.*

(5) The extent to which the litigation has been resolved

Unlike *Sheridan*, where the issues raised regarding the administration of the trust had, for the most part, been resolved, and the district court had exercised jurisdiction over the trust for five years, *id.*, the bank's action in New York has not been resolved, and the

district court has played no role in the action. Thus, this factor does not favor the district court's exercise of jurisdiction as strongly as it did in *Sheridan*.

(6) The applicable law

The pooling and servicing agreement provides that the agreement is governed by New York law. This factor provides no basis for distinguishing this case from *Sheridan*, where the trust instrument's choice-of-law provision made Colorado law applicable. *Id.* Minnesota courts routinely apply the law of other states. Addressing the bank's petition requesting an instruction regarding the bank's decision not to accept a settlement offer in the bank's New York lawsuit will likely involve analysis of New York law, but it is not apparent that the petition presents a novel issue for the district court.

(7) Forum non conveniens

"The doctrine of forum non conveniens allows a district court with jurisdiction over the subject matter and the parties discretion to decline jurisdiction over a cause of action when another forum would be more convenient for the parties, the witnesses, and the court." *Paulownia Plantations de Panama Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009). "Generally, a strong presumption exists in favor of the plaintiff's choice of forum." *Id.* at 137. Ambac does not identify reasons why this presumption is overcome, and, although another forum may be available, we find no basis to conclude that another forum would be more convenient. As in *Sheridan*, this factor does not disfavor exercise of jurisdiction by a Minnesota court.

With respect to these seven factors, the most significant difference between *Sheridan* and this case is that the trust property in this case is intangible property located

in Minnesota, instead of real estate located in Colorado. This difference makes this a stronger case than *Sheridan* for exercising jurisdiction in Minnesota. The other difference is that, in *Sheridan*, the issues were closer to resolution, which weakened the case for exercising jurisdiction in Minnesota. But, because that difference is less significant than the location of the trust property, the case for exercising jurisdiction in Minnesota is greater here than in *Sheridan*.

3. Due Process

But our analysis does not end here. The United States Supreme Court has explained that the Due Process Clause of the United States Constitution requires that, in order to exercise in personam jurisdiction over a defendant that is not within the territory of the forum, the defendant must have certain minimum contacts with the forum such that maintaining the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). The Supreme Court has extended this principle to all assertions of state-court jurisdiction and has explained that

> in order to justify an exercise of jurisdiction *in rem*, the basis for jurisdiction must be sufficient to justify exercising jurisdiction over the interests of persons in a thing. The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum-contacts standard elucidated in *International Shoe*.

Shaffer v. Heitner, 433 U.S. 186, 207, 97 S. Ct. 2569, 2581 (1977) (footnote omitted) (quotation omitted).

In rem jurisdiction is predicated on the presence of the subject property, either tangible or intangible, within the forum state. *Hanson*, 357 U.S. at 246, 78 S. Ct. at 1236. The district court's basis for exercising in rem jurisdiction is that the relevant trust property, the right to pursue litigation against Countrywide, is located in Minnesota where the bank administers the trust and where decisions regarding the action against Countrywide are made.

The instruction proceeding was not initiated to provide a basis for the bank to pursue litigation against Countrywide; the bank brought the action against Countrywide in New York before it initiated the instruction proceeding. *See Shaffer*, 433 U.S. at 209, 97 S. Ct. at 2582 (stating that due process would be compromised if only role played by property that serves as basis for state-court jurisdiction is to provide basis for bringing defendant into court). The bank later initiated the instruction proceeding to obtain instructions from the court regarding the bank's participation in the New York action.

And the district court did not rely on the presence of the trust property alone as a basis for jurisdiction. *See id.* (stating that presence of property alone would not support state's jurisdiction). The heart of the district court's decision is that the trust's intangible right to pursue litigation against Countrywide is inextricably connected with the bank's decision-making processes, which determine whether the right will be asserted and how it will be asserted. Those decision-making processes occur in Minnesota and potentially affect any interest a person may have in the New York action. This contact between the trust property and Minnesota satisfies the minimum-contacts standard in *International Shoe*. The inextricable connection between the trust's right to pursue litigation and the

bank's authority as trustee to assert that right is sufficient to justify the district court's exercise of jurisdiction over the interests of persons in the litigation. Maintaining the instruction proceeding and exercising jurisdiction over the trust in the state where the bank exercises the right to pursue the litigation does not offend traditional notions of fair play and substantial justice.

Affirmed.