No. 24A346

IN THE
SUPREME COURT OF THE UNITED STATES

RENEE ANNA NAJDA; ANDREW NAJDA,

Applicants,

v.

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1, et al.

Respondents.

APPLICATION TO THE HON. KETANJI BROWN JACKSON FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Pursuant to Supreme Court Rule 13(5), Renee and Andrew Najda (collectively, "Applicants") respectfully request an extension of time of 60 days, to and including February 1, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition is December 3, 2024.

In support of this request, Applicants state as follows:

1. The U.S. Court of Appeals for the First Circuit rendered its decision on July 12, 2024 (Ex. 1), and denied a timely petition for rehearing on September 4, 2024 (Ex. 2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case concerns the jurisdictional test, under *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458 (1980), for determining whether a trustee of an unincorporated entity is a real party when evaluating diversity jurisdiction. Specifically, the petition

will highlight how the *Navarro* test, four decades later, is being exploited nationwide by the financial industry. Investment advisors control unincorporated entities and file diversity actions, naming trustees as plaintiffs—without disclosing the trustees' passivity—to manipulate jurisdiction and maximize access to federal courts.

3. PNMAC Capital Management, LLC ("PNMAC"), an SEC-registered investment advisor[1], controls SWDNSI Trust Series 2010-3 ("S-Trust")[2], an unincorporated entity, not the original plaintiff and trustee Citibank, N.A. ("Citibank")[3]. Applicants argued, from 2016 onwards in motions, that the district court lacked diversity subject matter jurisdiction because Citibank was a passive trustee and, under *Navarro*, S-Trust's nondiverse citizenship controlled instead of Citibank's. The district court denied Applicants' jurisdictional challenges without issuing conclusions of law or findings of fact addressing the subject matter defect.

4. Applicants, on appeal, argued the district court lacked "congressionally [and Constitutionally] conferred [diversity] jurisdiction." *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 303 (2023). Twenty-three months after briefing concluded, the first panel "remanded to the district court for further fact finding and a determination whether there was minimal or complete diversity." Ex. 3 at 2. On remand, the district court quoted dicta to hold *Navarro* was a simple test: "when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes." Ex. 4 at 2 (quoting *Americold Realty Tr. v. Conagra*

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1 SEC No. 801-69113.

2 S-Trust is a Delaware statutory trust. Not a traditional trust.

3 Citibank, N.A., as Trustee for the Benefit of SWDNSI Trust Series 2010-3.

Foods, Inc., 577 U.S. 378, 383 (2016)). And cited *U.S. Bank Trust, N.A. v. Dedoming*, 308 F. Supp. 3d 579, 580 (D. Mass. 2018)[4], which had cropped *Navarro*, to stress *Navarro* is a simple test. Ex. 4 at 2. Thereby, erasing *Navarro's* requirement that Citibank have "real and substantial" control over S-Trust's assets and litigation for Citibank's citizenship to control. *Navarro*, 446 U.S. at 465. Misapplying *Navarro*, the district court made the conclusory finding "it was clear from evidence adduced at the trial that Citibank had the customary powers," "illuminated by no subsidiary findings or reasoning on all the relevant facts," to conclude there was complete diversity. Ex. 4 at 2; *Atl. Thermoplastics Co. v. Faytex Corp.*, 5 F.3d 1477, 1479 (Fed. Cir. 1993).

5. In turn, the second panel remanded a second time "for the district court to identify and detail the 'evidence adduced at the trial that Citibank had the customary powers to hold, manage, and dispose of assets for the benefit of others.'" Ex. 5 at 2. During the second remand, the district court did not specify trial evidence showing Citibank's substantial control over S-Trust. Nor acknowledged Citibank had voluntarily relinquished the chance to prove Citibank had real and substantial power over S-Trust when it stipulated to the exclusion of all trust documents. Ex. 6 at 10 (quoting Nov. 2, 2017 Hr'g Tr. 41:6-8). Instead, the district court quoted *Dedoming* to conclude a trustee merely "acting for the trust in bringing ... [the] action" means the trustee's citizenship controls. Ex. 6 at 2. By doing so, the district court mistook the

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4 *Dedoming* "distorted what the [*Navarro*] opinion[] stated by ... cropping" the five words "trustees who meet this standard" immediately preceding "sue in their own right, without regard to the citizenship of the trust beneficiaries." *Precision Specialty Metals, Inc. v. United States*, 315 F.3d 1346, 1357 (Fed. Cir. 2003); *Navarro*, 446 U.S. at 465-66; *Dedoming*, 308 F. Supp. 3d at 580.

applicable law. Nonetheless, the second panel affirmed the district court, without further legal analysis or even an explanation of the *Navarro* test. Ex. 1. Then applied clear error review to the district court's finding that Citibank's citizenship controlled based on it just being named plaintiff and in letters, not introduced at trial, "simply for purposes of collection." *Id.*; *Bullard v. Cisco*, 290 U.S. 179, 189 (1933). After two remands during the five-year appeal, the "[First Circuit's] perfunctory disposition[—affirming complete diversity based on the trustee's citizenship—]rests uneasily with the weighty issues presented by this appeal." *Ricci v. Destefano*, 530 F.3d 88, 96 (2d Cir. 2008) (Cabranes, J., dissenting) rev'd 557 U.S. 557 (2009).

6. The First Circuit's decision squarely conflicts with this Court's precedent and other courts of appeals. Thirty years after *Navarro*, this Court listed *Navarro* as one of the "[c]omplex jurisdictional tests." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (cf. *Navarro*, 446 U.S. at 464 n.13). Consistent with *Navarro* being a complex test, the Third, Fifth, Seventh, and Eleventh Circuits hold that a "[trustee] is the real party to the controversy (and therefore its citizenship is what matters in determining diversity jurisdiction) if its control over the [unincorporated entity's] assets is real and substantial." *Bynane v. Bank of N.Y. Mellon*, 866 F.3d 351, 356 (5th Cir. 2017); *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 37 (3d Cir. 2018); *Goldstick v. ICM Realty*, 788 F.2d 456, 458 (7th Cir. 1986); *CityPlace Retail, Ltd. Liab. Co. v. Wells Fargo Bank, N.A.*, No. 20-11748, 2021 U.S. App. LEXIS 21054, at *12 (11th Cir. July 15, 2021) (unpublished). These Circuits review trust documents to measure if a trustee's powers are substantial—not simply evaluate if a trustee

holds assets—because this Court reviewed trust documents.[5] *Navarro*, 446 U.S. at 459 ("declaration of trust gives the respondents exclusive authority").

7. The First Circuit reached a contrary result by defying this Court's precedent. The second panel affirmed the district court's conclusion that *Navarro* is a simple test: "when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes." Ex. 4 at 2 (quoting *Americold*, 577 U.S. at 383). Oversimplifing, neither the second panel nor district court reviewed trust documents for evidence Citibank had real and substantial control over S-Trust. Neither acknowledged Citibank relinquished the chance to prove it had substantial powers over S-Trust by stipulating to the exclusion of the trust documents. The First Circuit's profound error "impair[s] the certainty of [this Court's] jurisdictional rules." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 582 (2004). And is a boon to the financial industry in the First Circuit. Free to continue naming trustees as plaintiffs—without proving substantial control—to manufacture complete diversity.

8. The existence or non-existence of diversity, and consequently subject matter jurisdiction, must be consistent. The geographical location of litigants that are trustees of unincorporated entities should not result in variation. A circuit split on a fundamental jurisdictional issue—whether *Navarro* is a complex or simple test—should be resolved to ensure uniform procedural order among all lower courts. *See* U.S. Sup. Ct. R. 10(a).

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[5] The financial industry's post-*Navarro* shift from trustees to investment advisors controlling unincorporated entities, as outlined in trust documents, went unnoticed by others challenging jurisdiction who are unfamiliar with industry norms.

9. There is a closely related jurisdictional "question of federal law [impacting all circuits] that has not been, but should be, settled by this Court." U.S. Sup. Ct. R. 10(c). When *Navarro* was decided in 1980, trustees commonly managed business trusts containing investments. Indeed, *Navarro* concerned the jurisdictional analysis of a Massachusetts business trust managed by eight trustees. After *Navarro* was decided, entities qualifying as a real estate investment trusts ("REIT") became entitled, under subchapter M of chapter 1 of the Internal Revenue Code of 1986, to preferential tax treatment. In 1988, Delaware formalized its common law around trusts and became the first state to create a judicially-secure unincorporated entity: the Delaware statutory trust. Since Congress changed the tax treatment of certain entities and states introduced innovative new entities, unincorporated entities became popular vehicles for passive investment. REITs alone "collectively own more than $4 trillion in gross assets across the U.S." National Association of Real Estate Investment Trusts, https://www.reit.com/what-reit.

10. Four decades after *Navarro*, investment advisors often control unincorporated entities, e.g. Delaware statutory trusts and Maryland REITs. An advisor, managing an entity's assets, can be external, an SEC-registered investment adviser, or an internal director employed by an entity. Trustees are passive vestiges of a bygone era. The shift of control from trustees to advisors is reflected in trust agreements that specify an advisor (or internal director) controls an entity's assets and is paid a management fee. The financial industry's shift to investment advisors managing unincorporated entities has resulted in trustees of these entities—a

common litigant—no longer being considered real parties under the *Navarro* test. Despite this, the industry still names trustees, without revealing their passive role, to ensure access to federal courts for diversity actions. Leveraging a trustee's often single state citizenship[6] to artificially boost the probability of complete diversity. Acknowledging a trustee's passive role would mean, under *Navarro*, that the citizenship of an unincorporated entity, often spanning a majority of states, determines jurisdiction. This would significantly and appropriately limit federal court access for unincorporated entities owning trillions in assets.

11. "[T]he truth may run fine but will not break, and always rises above falsehood as oil above water." Cervantes Saavedra, Miguel de. *Don Quixote. Project Gutenberg*, March 30, 2023, https://www.gutenberg.org/ebooks/996. In this case, Applicants highlighted the significant impact of this seismic shift on jurisdiction. To establish the truth, Applicants introduced SEC documents that proved PNMAC, as investment advisor, controlled S-Trust. Ex. 6 at 12. Not Citibank as trustee. Therefore, Citibank was a passive trustee. Under the *Navarro* test, Citibank's citizenship did not control. S-Trust's nondiverse citizenship controlled. The district court lacked diversity subject matter jurisdiction. To find otherwise, the second panel and district court completely excised PNMAC's control of S-Trust from their jurisdictional analyses of Citibank. That is not hyperbole: PNMAC and the phrase "investment advisor" do not appear even once in their decisions. By erasing PNMAC's

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6 Trustees are often national banks that are citizens of the state specified in their articles of association as their main office. *Wachovia Bank, Nat'l Ass'n v. Schmidt*, 546 U.S. 303, 318 (2006).

control of S-Trust, the First Circuit "failed to grapple with the [jurisdictional] questions of exceptional importance raised in this appeal:" the application of *Navarro* to the financial industry's 21st-century practice of naming unincorporated entities' trustees as parties, without revealing their passive role, to ensure access to federal courts for diversity actions. *Ricci*, 530 F.3d at 101.

12. Absent this Court's intervention, lower courts will continue applying *Navarro* without assessing whether an investment advisor (or internal director) controls an unincorporated entity. Courts will miscalculate diversity based on a trustee's citizenship unaware of the controlling role of investment advisors. Thereby threatening the "early and accurate determination of jurisdiction" by lower courts. Fed. R. Civ. P. 7.1 advisory committee's note to 2022 amendment. Trustees of unincorporated entities, unable to establish complete diversity under *Navarro* without concealing their passivity, will still usurp jurisdiction and litigate state law claims in federal courts. This poses a far-reaching affront to "the rightful independence of state governments." *Indianapolis v. Chase National Bank*, 314 U.S. 63, 76 (1941). The time-tested rule that "[federal courts] scrupulously confine their own jurisdiction to the precise limits which [Congress] has defined" should not yield to the financial industry's jurisdictional chicanery. *Id.*

13. This Court has granted review to restate important jurisdictional rules to ensure their correct application as entities litigating in federal courts evolve over decades. For example, this Court reiterated "[its] oft-repeated rule that diversity jurisdiction in a suit by or against the entity depends on the citizenship of 'all [its]

members'" from *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990) twenty-six years later in *Americold*, 577 U.S. at 381. Applicants' petition will argue this Court should restate the *Navarro* test to address the 21st-century practice of investment advisors controlling unincorporated entities that litigate through passive trustees to inflate the odds of complete diversity.

14. With this framework in place, Applicants request a 60-day extension to prepare a petition that thoroughly addresses the complex jurisdictional issues raised by the lower court decisions. These decisions both conflict with other circuit courts and overlook the common practice of unincorporated entities, controlled by investment advisors, litigating through trustees, without disclosing their passivity, to artificially boost access to federal courts. These issues have nationwide implications, and the extension will allow Applicants to frame them in a way that will be most helpful to the Court. An extension of time will allow the self-represented Applicants to thoroughly research relevant jurisdictional law spanning several decades. Additionally, they must condense an unusually lengthy and complex appellate record, which covers five years and includes two remands. Accordingly, Applicants request an extension to file a well-researched and cogent petition for a writ of certiorari.

For the foregoing reasons, Applicants request that an extension of time to and including February 1, 2025, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

/s/ Andrew Najda
Andrew Najda

/s/ Renee Najda
Renee Najda
71 Flint Road,
Concord, MA 01742

October 7, 2024

United States Court of Appeals
For the First Circuit

Nos. 19-1434
20-1057
23-1284
23-1758

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1,

Plaintiff/Counter-Defendant - Appellee,

v.

RENEE ANNA NAJDA; ANDREW NAJDA,

Defendants/Counter-Plaintiffs - Appellants,

CITIMORTGAGE, INC.; PENNYMAC LOAN SERVICES, LLC; PENNYMAC, CORP.; SPECIALIZED LOAN SERVICING LLC,

Counter-Defendants - Appellees,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Counter-Defendant,

ANY AND ALL OCCUPANTS,

Defendant.

Before

Kayatta, Lynch and Howard,
Circuit Judges.

JUDGMENT

Entered: July 12, 2024

By order entered June 9, 2023, this court remanded these consolidated appeals to the district court for a second time for limited proceedings relating to the issue of the district court's subject-matter jurisdiction. The district court on September 7, 2023, issued its second "Opinion and Order" concerning this issue (the "Second Opinion and Order"). We ordered supplemental briefing, which is now complete. We assume the parties' familiarity with the case history and issues.

We bypass any question about this court's statutory appellate jurisdiction. See United States v. Pedró-Vidal, 991 F.3d 1, 4 (1st Cir. 2021) ("The long-standing rule in this circuit is that 'bypassing jurisdictional questions to consider the merits is appropriate where, as here, the jurisdictional question is statutory' and does not arise under Article III of the federal constitution.") (quoting Sinapi v. R.I. Bd. of Bar Exam'rs, 910 F.3d 544, 550 (1st Cir. 2018)).

We apply de novo review to the legal framework and legal conclusions underpinning the district court's jurisdictional analysis. See Bower v. EgyptAir Airlines Co., 731 F.3d 85, 90 (1st Cir. 2013) ("We review the district court's conclusion that it had subject matter jurisdiction over the complaint *de novo*."); accord Amoche v. Guarantee Tr. Life Ins. Co., 556 F.3d 41, 48 (1st Cir. 2009) ("The ultimate question of whether jurisdiction exists is subject to de novo review.").

However, the district court's jurisdictional analysis "may turn on or be influenced by [its] role as the decider of disputed facts." Amoche, 556 F.3d at 48. "There may be [] cases in which the key facts are disputed and the district court resolves the dispute; in those situations, appellate review of that portion of the district court's assessment of subject matter jurisdiction composed of factual findings would be for clear error." Id. (citing Skwira v. United States, 344 F.3d 64, 72 (1st Cir. 2003), Valentín v. Hosp. Bella Vista, 254 F.3d 358, 365 (1st Cir. 2001)).

Thus, to the extent there are factual findings reflected in the district court's jurisdiction-related rulings, "while its ultimate assessment of jurisdiction remains subject to de novo review," id., clear error deference applies as to the findings, see, e.g., Padilla-Mangual v. Pavía Hosp., 516 F.3d 29, 32 (1st Cir. 2008) (treating finding on domicile as a "mixed question of law and fact" subject to clear error review) (internal quotation marks omitted). This means that we review for clear error the district court's finding that the plaintiff-appellee ("Citibank Trustee") had the "customary powers" of a trustee and thus was the "real party" in interest for jurisdictional purposes. See Amoche, 556 F.3d at 48.

Applying this deferential standard, we have considered the district court's jurisdictional analysis and the arguments raised in various filings before and after the remand. Even if the record leaves some room for doubt, we "must accept the court's findings and the conclusions drawn therefrom unless the whole of the record leaves us with 'a strong, unyielding belief that a mistake has been made.'" Valentín, 254 F.3d at 365 (quoting Cumpiano v. Banco Santander, 902 F.2d 148, 152 (1st Cir. 1990)). Under this rubric, we discern no clear error, and thus must reject Appellants' argument that federal subject-matter jurisdiction was lacking at the outset of the underlying action.

Finally, turning to the merits, after carefully reviewing the merits arguments in Appellants' original opening brief, we discern no abuse of discretion or reversible error as to the challenged district court rulings. For instance, none of Appellants' evidentiary challenges establish any abuse

of discretion. See Lawes v. CSA Architects & Engineers LLP, 963 F.3d 72, 90 (1st Cir. 2020) (applying abuse-of-discretion review to expert exclusion); United States v. Altvater, 954 F.3d 45, 52 (1st Cir. 2020) ("Normally, we would review a challenge to the exclusion of evidence for abuse of discretion."); United States v. Lara, 181 F.3d 183, 195 (1st Cir. 1999) ("We review challenges to the admission of evidence for abuse of discretion."). As a further example, Appellants also have not shown any reversible error as to the district court's conclusions that Citibank Trustee held the relevant note and gave sufficient notice under relevant provisions of law (again, these are just examples, and the foregoing should not be read to imply that the court considered anything less than all of the challenges Appellants developed in their opening brief).

The judgment of the district court is **AFFIRMED**. See Local Rule 27.0(c). Any remaining motions or requests, to the extent not mooted by the foregoing, are **DENIED**.

By the Court:

Maria R. Hamilton, Clerk

cc:
Kevin Patrick Polansky
Daniel Curran
Renee Anna Najda
Andrew Najda
Jeffrey S. Patterson

United States Court of Appeals
For the First Circuit

Nos. 19-1434
20-1057
23-1284
23-1758

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1,

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RENEE ANNA NAJDA; ANDREW NAJDA,

Defendants/Counter-Plaintiffs - Appellants,

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Counter-Defendants - Appellees,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Counter-Defendant,

ANY AND ALL OCCUPANTS,

Defendant.

Before

Barron,* Chief Judge,
Lynch, Howard, Kayatta, Gelpí,
Montecalvo, Rikelman and Aframe, Circuit Judges.

* Chief Judge Barron is recused and did not participate in the determination of this matter.

ORDER OF COURT

Entered: September 4, 2024

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Kevin Patrick Polansky
Renee Anna Najda
Andrew Najda
Jeffrey S. Patterson

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RENEE ANNA NAJDA; ANDREW NAJDA,

Applicants,

v.

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1, et al.

Respondents.

CERTIFICATE OF SERVICE

I, Andrew Najda, hereby certify that one copy of the attached Application to the Honorable Ketanji Brown Jackson for an Extension of Time to File a Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit was served on:

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Service was made by first-class mail on October 7, 2024.

/s/ Andrew Najda
Andrew Najda