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Dual Citizenship and Federal Diversity Jurisdiction Under 28 U.S.C. § 1332: Sadat v. Mertes, 615 Fd 1176 (7th Cir. 1980)

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DUAL CITIZENSHIP AND FEDERAL DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332

Sadat v. Mertes, 615 F.2d 1176 (7th Cir. 1980)

In *Sadat v. Mertes,*[1] the United States Court of Appeals for the Seventh Circuit struck down a dual national's[2] claim that his dual citizenship conferred jurisdiction upon a federal district court under 28 U.S.C. § 1332(a)(2).[3] In so doing, the Court of Appeals upheld the ruling of the district court[4] and, ultimately, reaffirmed the strict complete diversity principle of the case of *Strawbridge v. Curtis.*[5] This non-expansive interpretation of 28 U.S.C. § 1332 by the Seventh Circuit may indicate the need for congressional action to protect individuals such as the *Sadat* appellant.

The present action arose in the federal district court for the Eastern District of Wisconsin.[6] Sadat, the complainant, sought one million dollars in damages for injuries sustained in an automobile accident[7] involving himself and the appellees, Mertes and Galganites.[8] The nine appellees were alleged to be either citizens of Wisconsin or Connecticut. The accident occurred in Wisconsin while Sadat was on his way to O'Hare International Airport in Chicago, Illinois.[9]

Sadat asserted the jurisdiction of the federal district court upon the basis of "diversity of citizenship"[10] pursuant to 28 U.S.C. § 1332(a)(1) or 28 U.S.C.

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1. 615 F.2d 1176 (7th Cir. 1980).
2. A dual national is one who is a citizen of two or more states possessing the privileges, rights and duties as defined by the Constitution of that nation-state. *See* Perkins v. Elg, 307 U.S. 344 (1939).
3. 615 F.2d at 1178.
4. Sadat v. Mertes, 464 F. Supp. 1311 (E.D. Wisc. 1979).
5. 7 U.S. (3 Cranch) 267, 2 L. Ed. 435 (1806).
6. Sadat v. Mertes, 464 F. Supp. 1311 (E.D. Wisc. 1979).
7. *See* 615 F.2d at 1178.
8. *Id.*
9. 615 F.2d at 1179.
10. Diversity of citizenship is a phrase used with reference to the jurisdiction of the federal courts, which under U.S. Const. Art. III, § 2, extends to cases between citizens of different states, designating the condition existing when the party on one side of a lawsuit is a citizen of one state, and the party on the other side is a citizen of another state, or between a citizen of a state and an alien. The requisite jurisdictional amount must, in addition, be met. 28 U.S.C.A. § 1332(a)(1).

§ 1332(a)(2).[11] In the context of the instant case, section 1332 creates federal diversity jurisdiction over actions between "citizens of different states," and between "citizens of a state and foreign states or citizens or subjects thereof."[12] Sadat asserted the jurisdiction of the court by claiming that when the action was commenced, he was a naturalized[13] American and a domiciliary of the United States. The appellant argued that on June 7, 1976 his domicile was in Pittsburgh, Pennsylvania,[14] and thus he was a citizen of a state within the meaning of section 1332(a)(1).

Alternatively, Sadat argued that he resided in Egypt at the commencement of the action on June 7, 1976.[15] The appellant asserted the jurisdiction of the court by claiming he was a citizen of Egypt; as such, he posited that district court jurisdiction existed pursuant to section 1332(a)(2).

Thus, the issues facing the court were: (1) whether a person possessing dual nationality, one of which is United States citizenship, is "a citizen or subject of a foreign state under 28 U.S.C. § 1332(a)(2);[16] and, (2) whether this suit is within the jurisdiction of the federal courts.[17]

The federal district court held that: (1) at the commencement of the action the plaintiff was domiciled in Cairo, Egypt; although he was a naturalized citizen of the United States, he was not "a citizen of a state" as required under subsection 1332(a)(1), thus, he was not able to invoke the provision of that subsection; and, (2) a naturalized U.S. citizen may not assert his foreign citizenship based upon birth to meet the requirements of 28 U.S.C. § 1332(a)(2), governing diversity jurisdiction between "citizens of a state" and aliens.[18]

Thus, the federal district court dismissed the suit filed by Sadat for lack of subject matter jurisdiction.[19]

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11. 28 U.S.C. § 1332(a)(2) Diversity of Citizenship; amount in controversy; costs:
    (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
        (1) citizens of different states;
        (2) citizens of a State, and foreign states or citizens or subjects thereof; and
        (3) citizens of different states and in which foreign states or citizens or subjects thereof are additional parties . . . .
12. *Id.*
13. A naturalized citizen is one who, being an alien by birth, has received citizenship under naturalization laws. BLACK'S LAW DICTIONARY (5th ed. 1979).
14. 615 F.2d at 1179, 1180.
15. *Id.* at 1178.
16. *Id.* at 1180, 1182.
17. *Id.* at 1188.
18. *Id.* at 1189. *See also* 28 U.S.C. § 1332(a)(2).
19. 464 F. Supp. at 1312.

In examining the issues presented to the district court, the Court of Appeals first addressed the issue of whether or not the appellant was a citizen of any of the United States.[20] The court held that the plaintiff was not a citizen of any state of the United States at the time of the commencement of the action because he resided in Egypt; therefore, diversity jurisdiction did not exist under section 1332(a)(2).[21] The determining factor was the appellant's status at the time of the commencement of the action, "because that is the time at which the jurisdiction of the court is determined."[22]

Even though the appellant argued that he intended to return to Pennsylvania, and that he never intended to make Cairo his home, the court stated that, "his statement of intent is entitled to little weight when in conflict with the facts." Sadat failed to establish Pennsylvania was his domicile.[23] The appellant left Pennsylvania in 1973 for Lebanon and he never established, "the physical presence necessary to reestablish his domicile in Pennsylvania."[24] The court ruled that, "a domicile once established continues until it is superseded by a new domicile."[25]

The second issue addressed by the Court of Appeals was whether the plaintiff was a citizen or subject of a foreign state.[26] Section 1332(a)(2) vests the federal district court with jurisdiction over suits between citizens of a state and citizens of foreign states; such jurisdiction is referred to as alienage jurisdiction.[27] The court emphasized the dominant policy consideration for the statute's jurisdictional provisions by relying on *Blair v. Rubenstein*,[28] which held that section 1332(a)(2) "was intended to provide the federal courts with a form of protective jurisdiction over matters implicating international relations where the national interest was paramount.[29] The criterion applied by the court to determine whether the appellant was a foreign citizen within the meaning of section 1332(a)(2) was: "whether the country in which citizenship is claimed would so recognize him."[30] This criterion was also enunciated by the court in *Blair*,[31] which held that "it is the undoubted right

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20. 615 F.2d at 1181.
21. *Id.* at 1182.
22. *Id.* at 1180.
23. *Id.* at 1181.
24. *Id.*
25. *Id.*
26. *Id.* at 1182.
27. Alienage jurisdiction — 28 U.S.C. § 1332(a)(2).
28. 133 F. Supp. 496 (S.D.N.Y. 1955).
29. 615 F.2d at 1182.
30. Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 12 April 1930, 179 L.N.T.S. 89, 5 Hudson Int'l. Legislation 359.
31. 133 F. Supp. 499 (S.D.N.Y. 1955).

of each country to determine who are its nationals and it seems to be general international usage that such a determination will usually be accepted by other nations.[32]

The Court of Appeals maintained that, notwithstanding Sadat's U.S. naturalization, Egypt still regarded the appellant as an Egyptian citizen.[33] To prove his Egyptian citizenship, Sadat produced a letter from the Egyptian Consulate General,[34] granting him permission to be naturalized with United States citizenship while maintaining his Egyptian citizenship. He was also issued an Egyptian driver's license and international driver's license by the Egyptian government.[35] Based upon the evidence presented, the court concluded that despite Sadat's naturalization in the United States, he was an Egyptian citizen and was so recognized by Egypt under their laws.[36] Therefore, he possessed dual citizenship and was a dual national.[37]

In the case at bar, the Court of Appeals held that the appellant could not rely on his status as a dual national to be considered a subject of a foreign state within the meaning of section 1332(a)(2).[38] The court examined two district court decisions to reach its conclusion.[39] In *Aquirre v. Nagel,*[40] the plaintiff, an American citizen of Mexican parentage who was regarded by Mexico as a Mexican citizen,[41] brought a personal injury suit in federal district court pursuant to section 1332(a)(1).[42] In *Aquirre,* both the plaintiffs and defendants were alleged to be citizens of Michigan.[43] The district court ruled that the plaintiff's jurisdictional claim could not be based on section 1332(a)(1) because the action was not between citizens of different states. However, the district court did have jurisdiction under section 1332(a)(2). The parents of the plaintiff were citizens of Mexico and Mexico regarded her as a citizen by virtue of her parentage.[44] In *Sadat,* the Court of Appeals rejected the holding in *Aquirre* because of its expansive nature and because

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32. *Id.* at 499.
33. 615 F.2d at 1183.
34. This is to certify that the Egyptian government does not have any objections for its citizens to officially apply for American citizenship provided that they have no standing criminal records, no financial liabilities to the government, have served in the military service and seek the permission of the Egyptian Government beforehand.
35. 615 F.2d at 1184.
36. *Id.* at 1183.
37. *Id.*
38. *See* 615 F.2d at 1187.
39. *Id.* at 1185.
40. 270 F. Supp. 535 (E.D. Mich. 1967).
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*

of the *Aquirre* court's failure to examine the literal language of the statute without regard for the underlying policies of alienage jurisdiction.[45]

The Court of Appeals also examined and ultimately relied upon the authority established in *Raphael v. Hertzberg*.[46] The *Raphael* court disallowed access to the federal courts under alienage jurisdiction.[47] In *Raphael,* the plaintiff, a naturalized U.S. citizen, averred that he was also a citizen of the United Kingdom.[48] The action was brought against defendant residents of California for breach of contract, a variety of torts, including negligence and breach of fiduciary duty.[49]

In *Sadat,* the court's justification for its holding commenced with the statutory requirement of completed diversity. The Court of Appeals stated that to allow naturalized citizens access to the federal district courts, "would give naturalized citizens nearly unlimited access to the federal district courts, access which has been denied to native-born citizens."[50] The court further stated that "such favored treatment is unsupported by the policies underlying 28 U.S.C. § 1332."[51] The court then refrained from extending the scope of section 1332.

Essentially, the Seventh Circuit's stance is a return to the complete diversity rule of *Strawbridge v. Curtis*.[52] The rule was established when the Supreme Court of the United States, in 1806, held that where the interest is joint, each of the persons concerned in that interest must be competent to sue or liable to be sued in federal courts.[53] In *Strawbridge,* the complainants appealed from the dismissal of a bill in chancery by a Massachusetts circuit court for want of jurisdiction.[54] Some of the complainants were averred to be citizens of Massachusetts. The defendants were similarly alleged to be citizens of that same state. Only one citizen, Curtis, was a citizen of another state, Vermont. In an opinion delivered by Chief Justice Marshall, the Court looked to the language of the District Court's Jurisdiction Act, to find that diversity exists only "where an alien is a party, or the suit is between a citizen of [the] state where the suit is brought and a citizen of another state."[55]

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45. 615 F.2d at 1186.
46. 470 F. Supp. 984. (C.D. Cal. 1979).
47. *Id.*
48. *Id.*
49. *Id.*
50. 615 F.2d at 1186.
51. *Id.*
52. 7 U.S. (3 Cranch) 267, 2 L. Ed. 435 (1806).
53. *Id.*
54. *Id.*
55. *Id.*

The holding of the Court of Appeals appears to have been based on the intentions of the legislators who framed section 1332.[56] The situation presented in *Sadat* was one of first impression at the circuit level.

The Court of Appeals applied the holding of *Raphael* to the facts of *Sadat*.[57] However, the *Raphael* case did not present the same or a similar factual situation. Moreover, the court returned to the complete diversity rule of *Strawbridge v. Curtis* to prevent the appellant from gaining access to the federal district court. The *Strawbridge* rule as applied by the Seventh Circuit might give a native born[58] plaintiff, who is a citizen of a state, the ability to manipulate his suit by preventing a defendant, who is a naturalized U.S. citizen of a state, possessing dual citizenship, from any access to the federal district courts — providing that the plaintiff can find another citizen of his own state who would be a proper co-defendant.[59] Such an anomalous situation defeats the requirement of complete diversity under 28 U.S.C. § 1332 and the jurisdictional claim of the defendant. The plaintiff would then be able to proceed to state court, regardless of any possible bias to the defendant or any possible foreign relations repercussions. This type of "favored treatment" has not been supported by the policies of the legislation.[60] The situation presented in *Sadat* fell squarely within either 28 U.S.C. § 1332(a)(1) or § 1332(a)(2). The court in *Aquirre*[61] held that it was not "good law to deny the existence of jurisdiction under subsection (2) on the grounds of non-existence of jurisdiction under subsection (1)."[62] One of the two diversity provisions should be applicable to *Sadat*.

The Court of Appeals decision has left the future of 28 U.S.C. § 1332 strictly within the province of Congress. For the time being, the *Sadat* holding leaves intact the general principle of complete diversity of *Strawbridge* and the strict interpretation of 28 U.S.C. § 1332. The court declined to extend the scope of section 1332, concluding: "The statutory terms 'citizens of different states' and 'citizens or subjects of a foreign state' are presumably amenable to some congressional expansion consistent with constitutional limitations."[63] *Sadat v. Mertes* indicates that the courts are waiting for

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56. 615 F.2d at 1182.

57. *Id.* at 1188.

58. Native born is a natural born subject or citizen; a citizen who owes his domicile or citizenship to the fact of his birth within the country referred to.

59. *See* Note, *Abolishing Diversity*, 92 HARV. L. REV. 963, 966–68 (1979).

60. 615 F.2d at 1186.

61. 270 F. Supp. 535 (E.D. Mich. 1967).

62. *Id.* at 536.

63. 615 F.2d at 1189.

Congress to act. As long as Congress remains silent, the courts will refuse to grapple with the intracacies of federal diversity jurisdiction based upon dual citizenship within the meaning of 28 U.S.C. § 1332(a)(2) and will instead continue to apply the inflexible and strict *Strawbridge* rule of complete diversity.

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