In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1199

YANCHENG SHANDA YUANFENG EQUITY INVESTMENT PARTNERSHIP, a Limited Partnership Organized Under the Laws of China,

Plaintiff-Appellee,

v.

KEVIN WAN,

Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois.
No. 2:20-cv-02198 — **Colin S. Bruce**, *Judge*.

ARGUED SEPTEMBER 23, 2022 — DECIDED JANUARY 31, 2023

Before ROVNER, RIPPLE, and BRENNAN, *Circuit Judges*.

RIPPLE, *Circuit Judge*. In May 2019, Yancheng Shanda Yuanfeng Equity Investment Partnership ("Yancheng Shanda") filed a contract claim in a Chinese court against Kevin Wan, his company, and his brother. The Chinese court entered a default judgment against Mr. Wan after he failed to appear. In July 2020, Yancheng Shanda filed a complaint in the United

States District Court for the Central District of Illinois, seeking enforcement of the Chinese judgment under the Illinois foreign judgment recognition law. In that complaint, it predicated subject matter jurisdiction on diversity of citizenship.

The district court, determining that the Chinese judgment was enforceable under Illinois law, granted Yancheng Shanda's motion for summary judgment. Mr. Wan now appeals the judgment of the district court. Because the factual predicates for the district court's jurisdiction are not established firmly in the existing record, we vacate the judgment of the district court and remand the case for further proceedings consistent with this opinion.

I

BACKGROUND

A.

The Underlying Litigation

The underlying litigation is a contract dispute between Yancheng Shanda and Mr. Kevin Wan. According to Yancheng Shanda's allegations in the Chinese court, it had entered into an agreement with Mr. Wan under which Mr. Wan would repurchase shares of his company from Yancheng Shanda. In the following paragraphs, we set forth the background as it appears in the record before us.

Yancheng Shanda is a partnership based in Yancheng Shanda City, Jiangsu Province, People's Republic of China. Mr. Wan is a United States citizen and the founder, owner, and chief executive officer of Zmodo Technology Shenzhen Corp., Ltd. ("Shenzhen Zmodo"), a Chinese company and global provider of security cameras.

Beginning around 2013, Shenzhen Zmodo, Mr. Wan, and Mr. Wan's brother and business partner, Keija Wan, who also worked at Shenzhen Zmodo, occupied office 25F at the Financial Technology Building in Shenzhen City. Between 2015 and 2019, Mr. Wan traveled to China almost every month for business. Around early 2019, Shenzhen Zmodo moved to a smaller office space within the Financial Technology Building, and Mr. Wan ceased to maintain a personal office within Shenzhen Zmodo's space there. In June 2019, Mr. Wan traveled to the United States for business reasons; he claims that he has not been able to return to China since then due to the pandemic. Mr. Wan did not inform anyone of a change of address or provide a forwarding address when he last departed China.

In May 2019, shortly before Mr. Wan's departure for the United States, Yancheng Shanda commenced the underlying action in Chinese court against Mr. Wan, Keija Wan, and Zmodo (Jiangsu) Digital Technology Co., Ltd. ("Jiangsu Zmodo"), a subsidiary of Shenzhen Zmodo,[1] for breach of the share repurchase agreement. On July 9, 2019, the court mailed a summons and complaint to Mr. Wan at office 25F at the Financial Technology Building, the address listed on the parties' agreement. The court also mailed copies to Keija Wan at the same address. Although by this time Shenzhen Zmodo had moved to a new office within the Financial Technology Building, the package containing the notice of the lawsuit was

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[1] Yancheng Shanda notes that, contrary to the assertion in Mr. Wan's opening brief, *see* Appellant's Br. 34, Shenzhen Zmodo was not sued in the Chinese action. Appellee's Br. 5–6, 5 n.2; *see* R.22-1 at 33. In his reply brief, *see* Reply Br. 21 n.6, Mr. Wan concedes the error and withdraws the argument that was based on that error.

signed for at the building, and Keija Wan received the notice. Jiangsu Zmodo, located in a different city and region, also received the court's summons at its office address.

Both Keija Wan and Jiangsu Zmodo appeared in the Chinese court proceedings. Mr. Wan did not make an appearance, and the court deemed him to have waived his right to respond. Accordingly, the court entered judgment against him and found him and Keija Wan jointly and severally liable.

In the present action to enforce the Chinese court's judgment, Mr. Wan maintains that he did not receive the summons mailed by the Chinese court or any other physical mail regarding the Chinese suit. He claims that he had no notice of the underlying action until August 3, 2020, when he received notice of the present attempt to enforce the judgment.

B.

District Court Proceedings

1.

Having received a default judgment against Mr. Wan in the Chinese proceedings, Yancheng Shanda filed a complaint in the Central District of Illinois on July 13, 2020. It sought recognition and enforcement of the Chinese court's judgment against Mr. Wan under Illinois's Uniform Foreign-Country Money Judgments Recognition Act ("Recognition Act"), 735 ILCS 5/12-661 *et seq*. Invoking the district court's diversity jurisdiction, Yancheng Shanda alleged that it was "a limited partnership organized under the laws of China" and therefore was "a citizen of a foreign state."[2]

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[2] R.1 at 2.

The next day, the district court ordered Yancheng Shanda to make "adequate jurisdictional allegations."[3] The court explained that a partnership has the citizenship of all the partners and that, because Yancheng Shanda did not list its partners and their citizenships, its allegations were "insufficient to adequately establish diversity jurisdiction."[4] Yancheng Shanda then filed an amended complaint with an attachment alleging the Chinese citizenship of each of its four partners. Specifically, Yancheng Shanda alleged that each of its partners was a limited liability company ("LLC") "organized under the laws of China and with its principal place of business in China."[5] Of particular relevance here, Yancheng Shanda alleged that one partner, Jiangsu Zhonghan Yancheng Industrial Park Investment Co., Ltd. ("Jiangsu Zhonghan"), was a Chinese LLC owned by six Chinese state or state-owned entities, each of which was "a foreign state as defined in 28 U.S.C. § 1603(a)."[6]

2.

On September 23, 2020, Mr. Wan filed a Rule 12(b)(6) motion to dismiss. In his motion, Mr. Wan pointed out that, under the Recognition Act, a court may decline to recognize and enforce a judgment when the "defendant in the proceeding in the foreign court did not receive notice of the proceeding in

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3 R.2 at 2.

4 *Id*. at 1.

5 R.3-4 at 1–2.

6 *Id*. at 2–3. The allegation is attached as an exhibit to the amended complaint, but it does not purport to be a declaration or affidavit.

sufficient time to enable the defendant to defend."[7] This provision was applicable, argued Mr. Wan, because he had no notice of the Chinese proceedings. Specifically, he submitted that there were "no allegations regarding how, when, or where he was 'summoned'" and there was "*no* notice that would have afforded [him], or any defendant, 'reasonable time to appear and defend his rights.'"[8]

Responding to the motion, Yancheng Shanda submitted that it was reasonable to infer from the allegations of the complaint that Mr. Wan had notice of the underlying lawsuit and that service of the summons at Mr. Wan's office, which was the same address that Mr. Wan used in the underlying contractual agreements, constituted sufficient notice of the complaint. Noting that Mr. Wan bore the burden of establishing lack of notice, Yancheng Shanda maintained that it was not plausible for Mr. Wan to claim that he did not know of the underlying lawsuit. In any case, continued Yancheng Shanda, disagreement on whether there had been adequate notice made a Rule 12(b)(6) dismissal inappropriate.

The district court denied the motion to dismiss. It characterized Mr. Wan's argument as a claim that, because he was not served in the Chinese action, he had been deprived of due process. Relying on our decision in *Ma v. Continental Bank, N.A.*, 905 F.2d 1073 (7th Cir. 1990), the district court identified the standard for adequate service as "whether the plaintiff

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[7] R.9 at 3–4 (quoting 735 ILCS 5/12-664(c)(1)).

[8] *Id.* at 4–5 (quoting *Najas Cortés v. Orion Sec., Inc.*, 842 N.E.2d 162, 168 (Ill. App. Ct. 2005)). The motion to dismiss also raised other arguments that were not presented on appeal.

use[d] a method reasonably calculated to produce actual notice."[9] The court then determined that the questions of service and notice presented "a fact-intensive inquiry that will be better suited for summary judgment" and, accordingly, denied Mr. Wan's motion to dismiss.[10]

3.

Yancheng Shanda later moved for summary judgment. It submitted that, "based on the undisputed facts, the method of service was reasonably calculated to produce actual notice."[11] Yancheng Shanda maintained that the district court had articulated correctly the key issue as whether a method of service employed was reasonably calculated to apprise Mr. Wan of the pendency of the action and was based on "constitutional notions of due process as set forth in the Recognition Act."[12] Actual notice, continued Yancheng Shanda, was not required; "an adequate attempt to provide actual notice" sufficed.[13] Because Mr. Wan "did not tell Yancheng Shanda he was moving permanently to the United States," service "delivered by the Court in China to what was reasonably believed to be [Mr. Wan's] current address …

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9 R.13 at 9–10 (quoting *Ma v. Cont'l Bank, N.A.*, 905 F.2d 1073, 1076 (7th Cir. 1990)).

10 *Id.* at 10–11.

11 R.22 at 10.

12 *Id.* at 10–11.

13 *Id.* at 11.

more than satisfie[d] the requirements of notice under the Act."[14]

Responding to the summary judgment motion, Mr. Wan submitted that there was indeed a disputed issue of material fact. In his view, construing the facts in the light most favorable to him as the nonmoving party, the record reflected that he had not received notice of the Chinese lawsuit and therefore was not able to defend himself in those proceedings. Mr. Wan submitted that the method of service employed "was not reasonably calculated to provide actual notice."[15] He further submitted that the "conditions in this case did not permit physical mail to be a reasonably certain method for providing actual notice" and that "customary substitutes" such as "emails, text messages, or electronic chats" would have been more appropriate.[16] Mr. Wan urged that *Ma* should not control because, even though we determined there that "mail service to the last known address was appropriate," the party in that case had actual notice of the proceedings.[17]

The district court granted summary judgment for Yancheng Shanda. The court held that actual notice was not required and that the correct standard was "whether the plaintiff used a method *reasonably calculated* to produce actual

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14 *Id.* at 12.

15 R.23 at 7.

16 *Id*. at 9.

17 *Id.* at 9–10.

notice."[18] Relying on *Ma*, the district court stated that process mailed to a defendant at his residence is sufficient. The court then noted that it was undisputed that Mr. Wan was the CEO of Shenzhen Zmodo, that he maintained an office at 25F in the Financial Technology Building until at least early 2019, and that the 25F office address was listed on the share repurchase agreement. The court further noted that Keija Wan had received a copy of the summons that was mailed to office 25F and that Mr. Wan never had informed anyone that he was changing locations. Given these undisputed facts, the court held that "the service of process effected for the Chinese lawsuit was reasonably calculated to produce notice" to Mr. Wan and that the Chinese judgment should be enforced.[19] The district court therefore granted Yancheng Shanda's motion for summary judgment and entered judgment against Mr. Wan in the amount of $20,169,843.81.

II

DISCUSSION

This case presents several knots on the question of subject matter jurisdiction that we must untangle.

In the district court, subject matter jurisdiction was not raised initially by the parties. Rather, upon its initial examination of the complaint immediately after filing, the court raised the issue sua sponte. Mindful of its obligation to ensure that subject matter jurisdiction was present, *see Smith v. Am. Gen. Life & Accident Ins. Co., Inc.*, 337 F.3d 888, 892 (7th Cir.

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[18] R.27 at 9 (citing *Ma*, 905 F.2d at 1076).

[19] *Id*. at 12.

2003), the court issued a rule to show cause as to why the case ought not be dismissed for lack of jurisdiction. In that order, the court explicitly invited Yancheng Shanda's attention to the established rule that, for purposes of the statute conferring diversity jurisdiction on the district court, 28 U.S.C. § 1332, the citizenship of all partners in a limited partnership must be taken into consideration. *See Elston Inv., Ltd. v. David Altman Leasing Corp.*, 731 F.2d 436, 439 (7th Cir. 1984). After considering Yancheng Shanda's amended jurisdictional allegations, the court ruled that it had jurisdiction. Although the court was under a continuing obligation to evaluate any development throughout the litigation that might call into question its earlier determination, it was not obligated, absent additional information, to return to the issue.

Our obligation on subject matter jurisdiction is identical to that of the district court: We review de novo subject matter jurisdiction determinations, *Dexia Credit Loc. v. Rogan*, 629 F.3d 612, 619 (7th Cir. 2010), and we have an independent obligation to satisfy ourselves that jurisdiction is secure, *Carroll v. Stryker Corp.*, 658 F.3d 675, 680 (7th Cir. 2011); *see Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011).

The information before the district court was inadequate to establish subject matter jurisdiction. Yancheng Shanda, which had the burden on this issue, failed to present "competent proof" of its citizenship. *Hertz Corp. v. Friend*, 559 U.S. 77, 96–97 (2010). Yancheng Shanda did not present any evidence establishing its citizenship or the citizenship of its several partners. It submitted a declaration by its employee Mei Hu who stated simply that Yancheng Shanda "is and was domiciled in Yancheng City, Jiangsu Province, People's Republic

of China."[20] However, a partnership does not have a "domicile" for purposes of diversity jurisdiction. Rather, to establish subject matter jurisdiction based on diversity of citizenship, the citizenship of each partner must be established. *See Elston Inv.*, 731 F.2d at 439. There was no evidence in the district court record establishing the citizenship of each of Yancheng Shanda's four Chinese LLC partners. As a result, there is no evidence to support a finding of complete diversity.

In this appeal, Yancheng Shanda presents a new declaration of employee Mei Hu. This declaration states that each of Yancheng Shanda's partners "is a citizen of China" and further details characteristics of each partner's business structures in an effort to establish that, as a matter of federal jurisdictional law, Yancheng Shanda's partners are corporations and thus are considered citizens of their place of incorporation and principal place of business.[21] Although United States LLCs are treated as partnerships for purposes of assessing diversity of citizenship, Yancheng Shanda submits that, based on our decision in *BouMatic, LLC v. Idento Operations, BV*, 759 F.3d 790 (7th Cir. 2014), Chinese LLCs should be treated as corporations for purposes of § 1332. In *BouMatic*, we identified factors for determining whether a foreign business entity is a "corporation" for diversity purposes, including whether the company has personhood, limited liability for shareholders, and shares that can be bought and sold subject to restrictions declared by the business. *Id.* at 791. The Mei Hu

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[20] R.22-1 at 4.

[21] Appellee's Br. Add. 2.

declaration states, albeit in summary fashion, that Chinese LLCs have these characteristics.

In *Sarnoff v. American Home Products Corp.*, we noted that we "can do two things besides dismissing" when we notice a jurisdictional problem on appeal. 798 F.2d 1075, 1079 (7th Cir. 1986), *abrogated on other grounds by Hart v. Schering-Plough Corp.*, 253 F.3d 272 (7th Cir. 2001). First, if the problem can be easily resolved by affidavit, we can allow the parties to supplement the record. *Id*. Alternatively, if there is greater factual uncertainty, we can remand the case to give the parties an opportunity to introduce evidence in the district court and obtain a jurisdictional finding by the district judge. *Id*.

There are situations where the first course is entirely appropriate. But such an approach should be employed only when the path is a straightforward one. "Classification of a foreign business entity can be difficult because other nations may use subsets of the characteristics that distinguish corporations from other business entities in the United States." *BouMatic*, 759 F.3d at 791 (citation omitted). In the case of Chinese business entities, however, we already have indicated that significant care needs to be taken in determining the precise characteristics of the organization in question. *See Fellowes, Inc. v. Changzhou Xinrui Fellowes Off. Equip. Co. Ltd.*, 759 F.3d 787 (7th Cir. 2014). Accordingly, in the present case, we vacate the district court's judgment and remand the case so that the district court may explore in more depth the nature of the Chinese businesses in question and determine whether the requirements of diversity jurisdiction have been fulfilled. The district court is in a better position than this court to give the parties a plenary and even-handed opportunity to present evidence on the nature of these entities.

On remand, the district court must first address whether Yancheng Shanda's partners can be characterized as corporations and, if so, the jurisdiction of their incorporation and of their principal place of doing business. If the district court determines that these entities do not qualify as corporations under the diversity statute, the court must treat them as partnerships. Because partnerships take the citizenship of each of their partners, the court must identify each partner's citizenship.

Finally, the district court must address particular questions about one of the partners, Jiangsu Zhonghan, and its six state or state-owned entity owners.[22] If this entity is directly and majority-owned by a "foreign state or political subdivision thereof," it is itself a "foreign state" for purposes of federal jurisdiction. 28 U.S.C. §§ 1332(a)(4), 1603(a), (b)(2); *Dole Food Co. v. Patrickson*, 538 U.S. 468, 473–77 (2003). In its amended complaint, Yancheng Shanda alleged that Jiangsu Zhonghan is owned by six Chinese state or state-owned entities, but the record contains no evidence of the breakdown of their ownership interests. A finding that Jiangsu Zhonghan (if it is treated as a corporation) or one of its owners (if it is instead treated as a partnership) is a "foreign state" would require confronting Mr. Wan's argument that Yancheng Shanda—being a partnership whose partners include both

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[22] The exact shape of this inquiry will depend upon whether the district court determines that Jiangsu Zhonghan, as a Chinese LLC, should be treated as a corporation or a partnership under § 1332. If it is a corporation, then the district court should evaluate Jiangsu Zhonghan itself for potential status as a "foreign state" under §§ 1332(a)(4) and 1603(a). If, instead, it is a partnership, the district court will need to evaluate each of Jiangsu Zhonghan's partners.

"citizens" of a foreign state and a "foreign state"—cannot invoke diversity jurisdiction because no provision of § 1332 explicitly applies to such a "hybrid" entity. *But see Ruggiero v. Compania Peruana de Vapores Inca Capac Yupanqui*, 639 F.2d 872, 875–77 (2d Cir. 1981). The district court should require the parties to address the specific nature of each of the component entities in Jiangsu Zhonghan and determine whether Jiangsu Zhonghan or the relevant component entity is directly and majority-owned by a "foreign state or political subdivision thereof." In light of these findings, it should then evaluate Mr. Wan's arguments concerning the applicability of § 1332.[23]

CONCLUSION

Accordingly, the judgment of the district court is vacated, and the case is remanded for further proceedings consistent with this opinion. The parties will bear their own costs in this appeal.

VACATED and REMANDED. No Costs Awarded.

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[23] We defer addressing Mr. Wan's argument on the question of notice under the Recognition Act until the question of subject matter jurisdiction is resolved.