
CMBS TRUSTS MAINTAIN ACCESS TO FEDERAL COURTHOUSE AFTER *AMERICOLD*

In March 2016, the trial team from Thompson & Knight’s Real Estate Capital Markets Group released a Client Alert evaluating the United States Supreme Court’s decision in *Americold Realty Trust v. Conagra Foods, Incorporated* as follows:

[T]he Court held that when a trustee sues or gets sued in its own name (as trustee), the trustee’s citizenship is considered, not all of the trust’s beneficiaries. But where a trust sues or gets sued, and that trust is not a traditional trust—meaning it is a trust that may operate and sue or be sued in its own name, as *Americold* did—all trust beneficiaries must be diverse for diversity jurisdiction to exist.

CMBS trusts or similar trusts that specifically (and irrevocably) allocate exclusive authority to the trustee to act on the trust’s behalf, including the authority to bring and defend against lawsuits, should argue that their trustee’s citizenship governs the diversity analysis under the traditional trust principals set forth in *Americold*.

In sum, so long as a CMBS Trust’s formation documents mandate that it act through its trustee like a traditional trust, *Americold* looks to the citizenship of the trustee. To view the full Thompson & Knight Client Alert from March 2016, please follow [this link](#).

Nevertheless, after *Americold*, litigants opposing CMBS Trusts in federal court immediately began filing motions to dismiss for lack of subject-matter jurisdiction. Confusion ensued. Some CMBS Trusts were forced to litigate in state court. Others lived to fight another day at the federal courthouse.

In a case litigated by Thompson & Knight, the United States Court of Appeals for the Fifth Circuit helped clarify things on Friday, February 3, 2017. In *Hometown 2006-1 1925 Valley View, LLC v. Prime Income Asset Management, LLC et al.*, the Fifth Circuit accepted the Thompson & Knight team’s view of *Americold* by ruling that, for a CMBS Trust (which the court agreed was a “traditional trust”), the citizenship of the trustee is all that matters for diversity purposes. Indeed, writing for a unanimous three-judge panel, Judge Patrick E. Higginbotham penned the following passage:

There is no dispute that U.S. Bank is a national bank with citizenship in Ohio. Defendants argue that our inquiry does not stop there; citing to *Americold Realty Trust v. Conagra Foods, Inc.*, Defendants reason that since U.S. Bank in its capacity as a trustee is the sole member of *Hometown*, the citizenship of the ‘members’ of that trust ought be accounted for. We disagree. *Americold* involved a Maryland Real Estate Investment Trust, nominally a trust but in reality an unincorporated business entity recognized by

statute. For traditional trusts, the *Americold* court held that ‘when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes.’ We need look no further than U.S. Bank’s citizenship to conclude that Hometown is a citizen of Ohio.

To view the full opinion, please follow [this link](#).

In summary, a CMBS Trust still has access to federal court, even after *Americold*, so long as the CMBS Trust’s formation documents mandate that it act through its trustee like a traditional trust.

Please contact the Thompson & Knight LLP attorney with whom you regularly work or one of the attorneys listed below to discuss any questions you have regarding the impact of this case on your policies and practices.

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