

# A Question of Diversity

BY LAWRENCE SAVELL

One of the great benefits of the introduction of the automobile was the role it, like the railroads and other means of transportation before it, played (and continues to play) in allowing individuals the ability to travel to distant places and meet new people. Consistent with that legacy, the car collecting hobby and business, through shows, auctions, and offerings including those reported and/or advertised in this magazine, frequently involves transactions between persons from different states, or even different countries.

As readers of this column know, sometimes those transactions end up in disputes, and sometimes those disputes end up in court. In such event, sometimes the question arises: which court — state court or federal court (and, beyond that, which state court or which federal court)?

Some guidance on this issue comes from the United States Constitution. Article 3, Section 2 provides that the federal judicial power shall extend to "Controversies . . . between citizens of different States . . . and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." In accordance with that directive, Title 28, Section 1332 of the United States Code provides that the federal "district [trial] courts shall have original jurisdiction of [the right to handle from the outset] all civil actions where the matter in controversy exceeds the sum or value of \$50,000, exclusive of interest and [court] costs, and is between . . . citizens of different States [or] citizens of a State and citizens or subjects of a foreign state . . ."

This grant of power to the federal courts is known as "diversity of citizenship" jurisdiction. (There are other bases for jurisdiction of certain cases in federal courts besides "diversity.")

If a defendant is sued in federal court allegedly based on diversity, he or she may want to challenge whether the requirements (1) regarding the dollar amount, or (2) that the parties are from different states or countries, were indeed met. The latter issue was recently raised in *Wolgin v. Smith*, resulting in a July 20, 1995 decision by the United States District Court for the Eastern District of Pennsylvania.

According to the Court, the case (which spawned other later rulings by it as well) involved allegations of fraud related to the sale of three collector cars: a 1948 Talbot, a 1934 Mercedes 540K, and a 1930 Packard 745. In his federal court complaint, plaintiff Norman Wolgin asserted diversity jurisdiction, based on his assertion that he was a citizen of Florida and that the defendants were citizens of Pennsylvania. Defendant Mark Smith challenged that assertion, arguing that Wolgin was actu-

ally a citizen of the same state of Pennsylvania, thus undermining the requisite diversity. Smith asked the court to dismiss the lawsuit on that basis. The Court held a hearing and received evidence to decide the issue.

The Court began its analysis of the issue by noting that the existence of federal diversity jurisdiction is determined by examining the citizenship of the parties at the time the action is commenced. When diversity jurisdiction is challenged, the party seeking to invoke the jurisdiction of the federal Court must prove the required diverse citizenship by a preponderance of the evidence.

The Court set forth the main legal considerations: "A person is considered a citizen of a state if the person is domiciled in that state . . . . Domicile is a person's 'true, fixed home and principal establishment' and the place to which the person intends to return after an absence. . . . Although where one lives is *prima facie* [preliminary] evidence of domicile, mere residency in a state is insufficient for purposes of diversity. Residency must be coupled with a finding of an intent to remain indefinitely, and to determine such intent, the Court must consider all of the circumstances such as the party's declarations, exercise of political rights [e.g., voting], payment of personal taxes, house of residence, and place of business. . . . The Court may also consider associations with clubs, churches and other organizations, as well as a person's driver's license and automobile registration."

The Court then turned to the facts. Based on a lengthy recitation of significant connections Wolgin had with Florida, and a much shorter list of connections he had with Pennsylvania, the Court concluded that Wolgin had carried his burden of proving by a preponderance of the evidence that diversity of citizenship existed on December 13, 1994 when the action was filed. It concluded that, on that date, Wolgin was a domiciliary and, therefore, a citizen of the State of Florida in that he both resided there and intended it to be his principal residence for an indefinite period of time. Accordingly, the Court denied Smith's motion to dismiss Wolgin's complaint for lack of jurisdiction. (The opinion dealt only with jurisdiction and did not assess the merits of the underlying claims.)

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