The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NORTH QUINAULT PROPERTIES, LLC, a Washington limited liability company; THOMAS LANDRETH, an individual, and BEATRICE LANDRETH,

Plaintiffs,

v.

QUINAULT INDIAN NATION, a federally recognized Indian tribe, in its own capacity, as a class representative, and as parens patriae; STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES; ALL OTHER PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE LAKE AND LAKEBED KNOWN AS LAKE QUINAULT,

Defendants.

NO. 3:14-cv-06025-RBL

STATE DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS (FED. R. CIV. P. 12(b)(6))

NOTE ON MOTION CALENDAR: Friday, February 20, 2015

I. INTRODUCTION

Defendants STATE OF WASHINGTON and its DEPARTMENT OF NATURAL RESOURCES (collectively referred to as "State Defendants") herein reply to the Plaintiffs' Response to State Defendants' Motion to Dismiss.

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

On February 17, 2015, Plaintiffs filed their Response to State Defendants' Motion to Dismiss, arguing that the Eleventh Amendment does not bar their claims against State Defendants.[1] Plaintiffs' arguments against State Defendants' motion fail because the Plaintiffs' suit is clearly against the State of Washington and its Department of Natural Resources, and there is simply no way to read Plaintiffs' Complaint as some form of limited admiralty action *in rem*. Accordingly, State Defendants respectfully request the Court grant this motion and dismiss all of Plaintiffs' claims against State Defendants.

II. ARGUMENT

A. Plaintiffs Have Brought This Action Directly Against the State of Washington and Its Department of Natural Resources. Dismissal Is Therefore Appropriate Under the Eleventh Amendment.

1. This Suit Is Not Any Type of *In Rem* Admiralty Action.

Plaintiffs' argument opposing State Defendants' motion is that this matter is really a form of *in rem* action in admiralty, which should not be dismissed under the Eleventh Amendment.[2] However, the unambiguous language of Plaintiffs' Complaint shows that this action was brought directly against State Defendants, and Plaintiffs are requesting declaratory and injunctive relief, as well as $5,000,000 in damages, against State Defendants.[3] There is no logical way to conclude this is any form of *in rem* action.

Plaintiffs state in their Complaint that this action is against "Defendant State of Washington" and its "Department of Natural Resources."[4] Plaintiffs' Complaint also lists specific "CAUSES OF ACTION AGAINST DEFENDANT STATE OF WASHINGTON."[5] Among these causes of action, Plaintiffs request Declaratory Relief that "Defendant Washington State has failed to preserve and maintain Lake Quinault for the public's use . . .

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[1] Dkt. 16. At that time, Plaintiffs also filed a response to the Quinault Indian Nation's Motion to Dismiss. Dkt. 15.

[2] Dkt. 16 at p. 3.

[3] Dkt. 1 at p.4; pp. 25-30. Dkt. 1-1 at p. 1.

[4] Dkt. 1 at p. 4.

[5] Dkt. 1 at p. 25 (emphasis in original).

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

[and] a declaration that Defendant Washington State is required to maintain and preserve Lake Quinault . . . ."[6] Plaintiffs also request a "permanent injunction enjoining the Defendants" as well as "monetary damages" against "the Defendants."[7] Accordingly, Plaintiffs' assertion that Washington State is a defendant in this action merely "to provide notice but not for personal liability," is simply not credible.[8]

2. The *Bouchard* and *Deep Sea Research* Line of Cases Do Not Support Plaintiffs' Position.

The cases relied upon by Plaintiffs to support their position are also not persuasive. For example, *Bouchard Transportation Co. Inc. v. Updegraff*, 147 F.3d 1344 (11th Cir. 1998) involved a limitation action by vessel owners seeking to limit their liability under the Limitation of Shipowner's Liability Act of 1851 ("Limitation Act") after a freighter collided with two tugs pushing petroleum-carrying barges. *Id.* at 1347. As the *Bouchard* court noted, "[l]ike an *in rem* proceeding, the plaintiffs in the limitation proceeding *neither named any specific entities as defendants in their complaints nor formally served process on any defendants." Id.* at 1349 (emphasis added). This is in stark contrast to the present matter, where Plaintiffs specifically named State Defendants in their Complaint and formally served process on State Defendants.[9]

Similarly, Plaintiffs' reliance on *California v. Deep Sea Research, Inc.*, 523 U.S. 491, 118 S. Ct. 1464, 140 L. Ed. 2d 626 (1998) is also misplaced. *Deep Sea Research* involved an *in rem* claim by salvors seeking salvage rights and title to a wreck which sank in 1865 off the coast of California. *Id*. at 494-495. The action in *Deep Sea Research* was specifically brought *in rem* under the federal courts' admiralty jurisdiction, and the State of California intervened. *Id.* at 496-497. As the Supreme Court noted in its decision, the *Deep Sea Research* holding

[6] Dkt.1 at p. 25.
[7] Dkt. 1 at pp. 28, 30.
[8] Dkt. 16 at p. 2.
[9] Dkt. 1 at p. 1; Dkt. 7.

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1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

applies only to situations involving "*vessels* that are not in the possession of a sovereign." *Id.* at 507 (emphasis added). The Court went on to conclude that "[w]e have no occasion in this case to consider any other circumstances under which an *in rem* admiralty action might proceed in federal court despite the Eleventh Amendment." *Id* at 508. As such, *Deep Sea Research* is not applicable in the present matter.

Plaintiffs also cite several cases that all involve limitation proceedings *in rem*, none of which were brought directly against a state, much less seeking damages, declaratory, and injunctive relief against a state. *See A/S J.Ludwig Mowinckels Rederi*, 268 F. Supp. 682, 688 (D.C.N.Y. 1967) ("a limitation proceeding is a defensive action . . . of a unique sort . . . ."); *In the Matter of Sand Bar I, Inc. & F&L Towing, Inc.*, 1993 A.M.C. 1312, 1314 (E.D. La., 1992) ("[a] limitation of liability petition does not seek to enjoin a party from certain action or to command it to perform some duty."); and *In the Matter of Abaco Treasure Ltd.*, 1993 A.M.C. 1976, 1976-1977 (S.D. Fla. 1993) ("[h]ere the petitioner was not bringing an action against the state in admiralty, nor was it seeking any damages from the state."). Unlike the cases relied upon by Plaintiffs, the present action *is* an action directly against the State. Plaintiffs' attempts to re-characterize this action as something it is not cannot overcome State Defendants' immunity.[10]

3. State Defendants Are Immune From Plaintiffs' Suit Under the Eleventh Amendment.

The Eleventh Amendment immunizes states from suit in federal court regardless of the relief sought, barring suits for equitable relief as well as suits for damages.

[10] Plaintiffs also incorrectly assert that the standard for the Court to apply in evaluating State Defendants' motion is whether "there are no conditions under which the plaintiff can recover." Dkt. 16 at p. 3 (emphasis in original). This standard was applicable under *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957), but was subsequently abrogated by the Supreme Court in *Bell Atlantic Corp. v. Twombley*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Under *Twombley-Iqbal*, to survive a motion to dismiss "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (*quoting Twombley*, 550 U.S. at 570). Nevertheless, dismissal of Plaintiffs' Complaint is appropriate under either the *Conley* or the *Twombley-Iqbal* standards.

Seminole Tribe v. Florida, 517 U.S. 44, 58, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996). The bar also applies to state agencies. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). Plaintiffs have clearly brought this action directly against the State, seeking what amounts to a quiet title to the bed of Lake Quinault. While Plaintiffs assert in their Response to State Defendants' Motion that their claims against State Defendants are "merely a procedural device to provide notice,"[11] they conversely assert in their Response to the Quinault Indian Nation's Motion that the ownership issue they seek to litigate regarding the bed of Lake Quinault goes to "a fundamental aspect of sovereignty."[12] Given the nature of the Plaintiffs' claims, State Defendants are entitled to immunity under the Eleventh Amendment. *See Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997) (Quiet title action brought by the Coeur d'Alene Tribe against the State of Idaho regarding ownership of the bed of Lake Coeur d'Alene was barred by the Eleventh Amendment.).

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[11] Dkt 16 at p. 3.
[12] Dkt. 15 at p. 9.

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

III. CONCLUSION

The Eleventh Amendment bars all of Plaintiffs' claims against State Defendants. Accordingly, State Defendants respectfully request the Court grant this motion and enter an order dismissing all such claims.

DATED this 20th day of February, 2015.

ROBERT W. FERGUSON
Attorney General

s/ Edward D. Callow
EDWARD D. CALLOW, WSBA #30484
Assistant Attorney General
Natural Resources Division

s/ Terence A. Pruit
TERENCE A. PRUIT, WSBA #34156
Assistant Attorney General
Natural Resources Division

Attorneys for Defendants State of Washington and its Department of Natural Resources

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Thomas L. Dickson, Dickson Law Group PS**
  tdickson@dicksonlegal.com
- **Elizabeth Thompson, Dickson Law Group PS**
  ethompson@dicksonlegal.com
  Counsel for Plaintiffs North Quinault Properties, LLC; Thomas Landreth; and Beatrice Landreth

- **Rob Roy Smith, Kilpatrick Townsend & Stockton LLP**
  RRSMith@kilpatricktownsend.com
- **Claire Newman, Kilpatrick Townsend & Stockton LLP**
  CNewman@kilpatricktownsend.com
  Counsel for Defendant Quinault Indian Nation

DATED this 20th day of February, 2015.

s/ *Brenda M. Larson*
BRENDA M. LARSON
Legal Assistant
Natural Resources Division