

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 17-cv-60468-BLOOM/Valle

ASKER B. ASKER, *et al.*,

Plaintiffs,

v.

SEMINOLE TRIBE OF FLORIDA, INC.,
et al.,

Defendants.

ORDER ON MOTION TO MODIFY/VACATE THE COURT'S ORDER OF DISMISSAL

THIS CAUSE is before the Court upon Plaintiffs' Motion to Modify/Vacate the Order of Dismissal, ECF No. [40] ("Motion"). On May 4, 2017, the Court entered an order requiring Plaintiffs to show cause regarding what available relief they intend to seek against Defendant American Express Company ("AMEX"). *See* ECF No. [41] ("Order"). Defendants, the Seminole Tribe of Florida Trial Court, Hon. Moses B. Osceola ("Tribal Court") and the Seminole Tribe of Florida, Inc. ("STOFI"), filed responses to the Motion, ECF Nos. [42], [44]. On May 9, 2017, Plaintiffs filed their timely response to the Court's Order, stating that they are entitled to a default judgment awarding declaratory and injunctive relief against AMEX, following the entry of a clerk's default against AMEX for failure to appear in these proceedings. *See* ECF No. [43] ("Show Cause Response"). However, a defendant's "failure to appear and the Clerk's subsequent entry of default against him do[es] not automatically entitle Plaintiff to a default judgment." *Capitol Records v. Carmichael*, 508 F. Supp. 2d 1079, 1083 (S.D. Ala. 2007). Indeed, a default is not "an absolute confession by the defendant of his liability and of the

plaintiff's right to recover," *Pitts ex rel. Pitts v. Seneca Sports, Inc.*, 321 F. Supp. 2d 1353, 1357 (S.D. Ga. 2004), but instead acts as an admission by the defaulted defendant as to the well-pleaded allegations of fact in the complaint. "A default judgment cannot stand on a complaint that fails to state a claim." *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1370 n.41 (11th Cir. 1997). Therefore, before granting default judgment, "the district court must ensure that the well-pleaded allegations of the complaint . . . actually state a cause of action and that there is a substantive, sufficient basis in the pleadings for the particular relief sought." *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App'x 860, 863 (11th Cir. 2007).

Contrary to Plaintiffs' assertions, the allegations in the complaint, ECF No. [1] ("Complaint"), do not state a cognizable claim against AMEX. There is no allegation, nor do the attachments demonstrate, that the purportedly offending subpoena was ever issued in the underlying proceeding before the Tribal Court. *See* Complaint ¶ 16; ECF No. [1-2]. Therefore, Plaintiffs have failed to establish that they have standing to sue, or that this Court has jurisdiction in this matter. *Dillard v. Baldwin Cty. Comm'rs*, 225 F.3d 1271, 1275 (11th Cir. 2000) ("[S]tanding is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims."). There are no allegations in the Complaint, let alone evidence, of an injury in fact, causation or redressability in this case sufficient to satisfy the case-or-controversy requirement. *See Dermer v. Miami-Dade Cty.*, 599 F.3d 1217, 1220 (11th Cir. 2010) ("A court . . . lacks subject matter jurisdiction to hear a case if the requirements of Article III of the Constitution are not satisfied.") (citing *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005)). Moreover, while Plaintiffs' claims are premised upon the contention that the Tribal Court lacks the authority to issue and enforce a subpoena seeking information regarding non-members of the tribe from a non-tribal entity, there is no indication or

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allegation that Plaintiffs have sought to challenge that power in the Tribal Court in the first instance. *See Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985) (holding that the examination of the “existence and extent of a tribal court’s jurisdiction . . . should be conducted in the first instance in the Tribal Court itself.”). Plaintiffs cannot simply circumvent this Court’s jurisdictional requirements by attempting to take advantage of the procedural posture in this case.

Accordingly, it is **ORDERED AND ADJUDGED** that the Motion, **ECF No. [43]**, is **DENIED**. This case shall remain **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of May, 2017.

A handwritten signature in black ink, appearing to be 'JB' with a long horizontal stroke extending to the right.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record