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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COEUR D'ALENE TRIBE, a federally)	Case No.: 2:16-cv-00366-CWD
recognized Indian Tribe,)	
)	
Plaintiff,)	
)	RESPONSE TO THE MOTION TO DISMISS
vs.)	OR STAY
)	
STEVE W. HAWKS and DEANNE A.)	
HAWKS, husband and wife,)	
)	
Defendants)	

INTRODUCTION

Pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1362, and *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S. Ct. 2447 (1985), this Court has federal question jurisdiction over this matter. Defendant's Motion to Dismiss must be denied.

This matter raises a unique issue different from the state court proceedings. This action will not hinder any state court proceeding nor result in inconsistent outcomes. Defendants objection attempts to connect unrelated legal claims.

The Motion to Stay must be denied.

FACTUAL AND PROCEDURAL HISTORY

On May 13, 2016, the Coeur d'Alene Tribe ("Tribe") filed a Complaint for Damages and Eviction in the Tribal Court of the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation ("Tribal Court"). Defendants Steve and Deanne Hawks unlawfully maintained a dock and pilings on submerged lands owned by the Tribe. The encroachments are a trespass.

The Tribe served the Defendants with a summons and complaint on May 24, 2016. Defendants did not answer the complaint.

A hearing was held on June 21, 2016 at 11:00 a.m. At the hearing, the Tribe put on evidence and testimony. Defendants did not appear at the hearing.

On July 15, 2016, the Tribal Court entered its Findings of Fact and Conclusions of Law. The Tribal Court correctly entered an Order of Eviction and a Judgment in the amount of \$3,900.00. Defendants did not appeal the Judgment

On August 12, 2016, the Tribe filed this lawsuit seeking recognition and enforcement of the Tribal Court's Judgment.

DISCUSSION

I. Jurisdiction of this Court is based on a federal question – not diversity.

The Tribe agrees with Defendants that jurisdiction of this Court is not based on diversity of citizenship. Jurisdiction based on diversity does not exist for two reasons.

First, tribes are not state citizens. *Am. Vantage Companies, Inc. v. Table Mountain Rancheria*, 292 F.3d 1091, 1095 (9th Cir. 2002), *as amended on denial of reh'g* (July 29, 2002). Tribes are domestic sovereigns. *Id.* at 1097. "[D]omestic sovereigns are not citizens of states for purposes of diversity jurisdiction." *Id.*

Second, the diversity statute makes no mention of Indian tribes. Congress has not intended to apply diversity jurisdiction to tribes. *Id.*

Defendants cite *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997) in support of the argument that “[t]he jurisdictional requirements for diversity jurisdiction were met [in *Wilson*.]” See, *Def.s’ Memo in Supp. of Mot. To Dismiss or Stay*, p. 5. This is wrong.

In *Wilson*, the Ninth Circuit Court of Appeals never addressed diversity or federal question jurisdiction. See generally, *Wilson*, 127 F.3d 805.

The District Court in *Wilson* concluded that “an action prosecuted for the purpose of seeking recognition and enforcement of a judgment entered by an Indian tribal court presents a ‘federal question’ within the meaning of 28 U.S.C. § 1331.” 934 F. Supp. 1187, 1191-92 (1996) (relying on *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S. Ct. 2447 (1985)). The District Court’s conclusion regarding federal question jurisdiction was neither addressed, nor reversed, on appeal. See generally, *Wilson*, 127 F.3d 805.

This action seeks recognition and enforcement of a Tribal Court Judgment, which proclaims to exercise civil jurisdiction of the Tribal Court over non-Indian property owners, Defendants. Federal question jurisdiction clearly applies to this action. *National Farmers* squarely addressed the jurisdiction issue now before the Court:

This Court has frequently been required to decide questions concerning the extent to which Indian tribes have retained the power to regulate the affairs of non-Indians. We have also been confronted with a series of questions concerning the extent to which a tribe's power to engage in commerce has included an immunity from state taxation. In all of these cases, the governing rule of decision has been provided by federal law. In this case the petitioners contend that the Tribal Court has no power to enter a judgment against them.¹ Assuming that the power to resolve disputes arising within the territory governed by the Tribe was once an attribute of inherent tribal sovereignty, the petitioners, in essence, contend that the Tribe has to some extent been divested of this aspect of sovereignty. More particularly, when they invoke the jurisdiction of a federal court under § 1331, they must contend that

¹ *National Farmers* presented a scenario reverse from that in the case at bar. In that case, the Plaintiffs sought an injunction restraining the Crow Tribe from executing on a tribal court judgment against Plaintiffs whereas here it is the Tribe seeking to enforce the Tribal Court Judgment. 471 U.S. at 848, 105 S.Ct. at 2449. Regardless of the reverse factual outlay, the legal conclusions reached by the United States Supreme Court in that case are equally applicable to the case at bar.

federal law has curtailed the powers of the Tribe, and thus afforded them the basis for the relief they seek in a federal forum.

The question whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a “federal question” under § 1331. Because petitioners contend that federal law has divested the Tribe of this aspect of sovereignty, it is federal law on which they rely as a basis for the asserted right of freedom from Tribal Court interference. They have, therefore, filed an action “arising under” federal law within the meaning of § 1331. The District Court correctly concluded that a federal court may determine under § 1331 whether a tribal court has exceeded the lawful limits of its jurisdiction.

471 U.S. at 852–53, 105 S. Ct. at 2451–52 (emphasis added).

National Farmers made clear that the extent of an Indian tribe’s jurisdiction over nonmembers, like the Hawks, is a federal question. This Court has jurisdiction to consider this action pursuant to both 28 U.S.C. § 1331 and 28 U.S.C. § 1362.² *Id.*; *Arizona Pub. Serv. Co. v. Aspaas*, 77 F.3d 1128, 1132 (9th Cir. 1995). Defendants’ Motion to Dismiss must be denied.

II. This Action is not parallel to the state court proceedings. It should not be stayed.

This action seeks recognition and enforcement of a Judgment entered by the Tribal Court under principles of comity. The Judgment is based upon the law of the land, including the Tribe’s exclusive sovereignty, authority, jurisdiction, and control, over the submerged lands and waters within the Coeur d’Alene Tribal Reservation. *See, Idaho v. United States and Coeur d’Alene Tribe*, 533 U.S. 262 (2001); Coeur d’Alene Tribal Code Sections 44-1.01 and 44-24.01(e). Despite notice and opportunity, Defendants failed to appear and defend in the Tribal Court action.

² The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

Defendants use *Colorado River Water Conservation District v. United State*, 424 U.S. 800, 96 S.Ct. 1236 (1976)³ to insinuate that the issues in this action are identical to the issues pending in state court. *Def.s' Memo in Supp. Of Mot. To Dismiss or Stay*, p. 7. They are not.

The state CSRBA action involves water rights, i.e. the right to withdraw water for domestic uses. This case is not about water rights. This case is about a Judgment entered because Defendants' dock and pilings were and are trespassing upon Tribal lands.

The Tribe is not asking this Court to make any declaration of water rights. The Tribal Court Judgment involves a dock and pilings that trespass onto Tribal lands. The CSRBA involves the right to withdraw water for domestic uses. Despite Defendants' suggestions, the two are not the same. The issues presented in this action are in no way identical to the CSRBA.

The ordinary high water mark is 2,128. *See* Complaint, Ex. 2: Tribal Court Findings of Fact and Conclusions of Law, p. 2, ¶ 4. Yet, Defendants' argument regarding a change in the ordinary high water mark can be easily disposed of because even if the ordinary high water mark was as Defendants propose, it would make no difference to the validity of the Tribal Court Judgment and Defendants continuing trespass. Even at an ordinary high water mark of 2,121 ½, as proposed by Defendants, Defendants' dock and pilings remain encroachments. Defendants' dock and pilings are at a water depth of 2,113, well below Defendants' proposed ordinary high water mark. *See* Complaint, Ex. 2: Tribal Court Findings of Fact and Conclusions of Law, p. 2, ¶ 6.

This case is also not like *Coeur d'Alene Tribe v. Johnson*, Benewah County Case No. CV-2016-0025, Idaho Supreme Court Docket No. 44478-2016. That case involves different parties, the Johnsons, not the Hawks. It involves different submerged lands and encroachments.

³ This case is not like *Colorado River*. In *Colorado River*, the State of Colorado was undergoing a water adjudication process similar to that being completed in Idaho. *Colorado River*, 424 U.S. at 804, 96 S. Ct. at 1240 (1976). Apparently in an effort to circumvent the state adjudication process, the United States and two Indian tribes brought a federal suit seeking declaration of their water rights in certain waterways. *Id.* at 805, 96 S. Ct. at 1240. Thus, the issues in the state adjudication litigation and in the federal declaratory action were identical as both the state and federal actions sought declaration of rights in the waterways. That situation is not comparable to the case at bar.

It involves different judgments of the Tribal Court. It involves a different issue full faith and credit, not comity.

To warrant a stay of proceedings under *Colorado River*, the circumstances must be exceptional. It is clear that the circumstances here are far from exceptional. Contrary to Defendants' assertions, the eight factors for assessing the appropriateness of a stay or dismissal under *Colorado River* do not cut in favor of granting Defendants' motion.⁴

Defendants argue that the Idaho state court first assumed jurisdiction over the water rights adjudication. *Def.s' Memo in Supp. Of Mot. To Dismiss or Stay*, p. 9-10. That is of no relevance to this case. The Tribe is not requesting that this Court determine water rights. The Tribe is simply seeking recognition and enforcement of a duly entered and valid Judgment involving trespass, not water rights. The first *Colorado River* factor does not weigh in favor of a stay.

The second factor is convenience, or lack thereof, of the federal forum. Defendants do not take a position on this factor either for or against. This factor does not warrant a stay of this matter.

The third factor is the desire to avoid piecemeal litigation. In arguing this point, Defendants fling mud and cast slurs in an attempt to distract the Court from the real issue, recognition and enforcement of the Judgment under comity. *Def.s' Memo in Supp. Of Mot. To Dismiss or Stay*, p. 11.

⁴ "Drawing from *Colorado River*, *Moses H. Cone* and subsequent Ninth Circuit cases, we have recognized eight factors for assessing the appropriateness of a *Colorado River* stay or dismissal: (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court." *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978–79 (9th Cir. 2011).

Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results. The mere possibility of piecemeal litigation does not constitute an exceptional circumstance. Instead, the case must raise a special concern about piecemeal litigation which can be remedied by staying or dismissing the federal proceeding.

R.R. St. & Co. Inc. v. Transp. Ins. Co., 656 F.3d 966, 979 (9th Cir. 2011) (internal citations omitted).

As already discussed in detail above, the issues in this case are not the same as those present in state court actions. One case is about water rights and extracting water from the river. The other is about recognition and enforcement of a Judgment for trespass of Defendants' dock and pilings onto Tribal lands. The courts will not be duplicating their efforts. Because the issues are not the same, there is no risk that the tribunals will reach inconsistent results. Based upon these considerations, the third *Colorado River* factor does not favor a stay.

The fourth factor considers the order in which the forums obtained jurisdiction. The state cases and this case are not "competing actions." *Def.s' Memo in Supp. Of Mot. To Dismiss or Stay*, p. 10. The state cases are wholly distinguishable in both the substance and issues presented, Consideration of this factor does not favor a stay.

The fifth factor is whether federal law or state law provides the rule of decision on the merits. This case is about recognition and enforcement of a Tribal Court Judgment under the federal doctrine of comity. Federal law provides the rule of the decision on the merits in this case. This factor strongly militates against a stay.

The sixth factor is whether the state court proceedings can adequately protect the rights of the federal litigants. They cannot. The issues pending before this Court are not pending before the state courts. The rights of the litigants are not even being considered by the state court on

these issues as the CSRBA court is not considering the trespass of Defendants dock and pilings. This factor weighs against a stay.

The seventh factor is the desire to avoid forum shopping. Again, this case involves different issues from the CSBRA action and it avoids different parties from the Benewah County action. This is an entirely different case. This action is not an attempt at forum shopping.

The eighth and final factor is whether the state court proceedings will resolve all issues before the federal court. They will not. The issues in this case are unique from the issues in the state court proceeding. The outcome of the state court proceedings will have no bearing on the issues in this case. CSBRA does not involve the same, or even similar, issues. The Benewah County action does not involve the same parties. Because the state court proceedings will not resolve the issues before this Court, a stay is not appropriate.

This case is wholly different from those actions pending in the state courts. The resolution of the state court matters will not result in incongruent results. Nor will the decisions of the state courts have any influence or impact upon the issue in this case. For these reasons, Defendants' Motion to Stay must be denied.

CONCLUSION

This Court has federal question jurisdiction over this matter. Defendants' Motion to Dismiss must be denied. This case is distinct from the state court actions. There is no reason to stay these proceedings. Defendants' Motion to Stay must be denied.

DATED this 7th day of October, 2016.

SMITH + MALEK, PLLC

/s/
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of October 2016, I filed the foregoing with the Clerk of the Court electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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