

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

HALCÓN OPERATING CO., INC.,)
)
Plaintiff,)
)
vs.)
)
REZ ROCK N WATER, LLC; FRANK)
WHITE CALFE; Honorable MARY)
SEAWORTH, in her official capacity as)
Associate Judge of the Fort Berthold)
District Court; and FORT BERTHOLD)
DISTRICT COURT of the Three Affiliated)
Tribes of the Fort Berthold Indian)
Reservation,)
)
Defendants.)
)

Civil No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Halcón Operating Co., Inc., by and through its counsel, seeks a declaratory ruling regarding tribal court jurisdiction and injunctive relief over the Fort Berthold Indian Reservation Tribal Court’s exercise of jurisdiction over the dispute and injunctive relief over the arbitration stay order issued by the Tribal Court. Plaintiff hereby complains, alleges, and avers as follows:

PARTIES

1. Plaintiff Halcón Operating Co., Inc. (“Halcón”), is a corporation organized and existing under the laws of the State of Texas with its principal place of business in the State of

Texas. Halcón is engaged in the oil and gas industry within the boundaries of the Fort Berthold Indian Reservation (“FBIR”), which is located within the State of North Dakota.

2. Rez Rock N Water, LLC is a North Dakota limited liability company with its principal place of business in Garrison, North Dakota. The company is owned by Jackie Lynn White Calfe and Jessica Nicole White Calfe.

3. Frank Allen White Calfe (“White Calfe”) is an enrolled member of the Three Affiliated Tribes (“Tribes”) and the chief executive officer of Rez Rock N Water, LLC (White Calfe and the company collectively, “Rez Rock”). White Calfe resides in Garrison, North Dakota.

4. The Honorable Mary Seaworth is an Associate Judge with the Fort Berthold District Court. She is sued in her official capacity only. The Fort Berthold District Court is the judicial arm of the Tribes and is located in New Town, North Dakota (collectively with Honorable Mary Seaworth, the “Tribal Court”).

JURISDICTION AND VENUE

5. This Court has jurisdiction over the federal questions raised in this Complaint pursuant to the provisions of 28 U.S.C. § 1331. Tribal authority is controlled by federal law. *Plains Commerce Bank v. Long Family Land & Cattle*, 554 U.S. 316, 317-324 (2008); *Nevada v. Hicks*, 533 U.S. 353, 357-58 (2001).

6. An actual case and controversy exist between the parties as alleged herein. Therefore, a declaration from this Court is proper under 28 U.S.C. § 2201.

7. Exhaustion of tribal remedies is not required for this case because tribal jurisdiction is clearly absent. *Strate v. A-1 Contractors*, 520 U.S. 438, 449, 453 (1997) (tribal exhaustion is a prudential rule of comity only applicable in certain situations). Where there is no

colorable claim to tribal jurisdiction, or none of the *U.S. v. Montana* exceptions apply, federal courts do not require tribal exhaustion prior to ruling. *See Burlington Northern v. Red Wolf*, 196 F.3d 1059 (9th Cir. 2000) (also citing *Strate*, 520 U.S. 438, where the non-Indian company was not required to exhaust tribal remedies because no tribal jurisdiction existed). Exhaustion of tribal remedies is not required, as the Tribes clearly lack jurisdiction.

8. Venue lies in this Court under 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district. Upon information and belief, all Defendants reside in this judicial district.

GENERAL ALLEGATIONS

9. Effective April 2, 2013, Rez Rock entered into a Master Service Contract with Halcón to provide certain oilfield services to Halcón, including the provision of equipment rentals.

10. The Master Service Contract provided that “this Contract shall control and govern all Work ordered by Halcón and accepted by Contractor during the term hereof.”

11. The Master Service Contract contains an arbitration clause, which states as follows:

The parties agree to cooperate with each other in an attempt to resolve any dispute, controversy, or claim (a "Dispute") arising out of or in connection with this Contract. If the parties are not able to resolve the Dispute, they agree to submit the Dispute to mediation to be conducted in accordance with the American Arbitration Association ("AAA") mediation rules for commercial disputes. If the parties are not able to resolve the dispute by means of mediation, **the parties hereby agree the Dispute shall be referred to and determined by binding arbitration, as the sole and exclusive remedy of the parties as to the Dispute, conducted in accordance with the AAA arbitration rules for commercial disputes.** The arbitrator (the "Arbitrator") shall use the substantive laws of Texas, excluding conflicts laws and choice of law principles, in construing and interpreting this Contract. The Arbitrator shall be selected by agreement of the parties. In the event the parties cannot agree each party shall select

one arbitrator, and the two arbitrators so selected shall select a third arbitrator who shall act as Arbitrator. The arbitration shall be in Houston, Texas, and the proceedings shall be conducted and concluded as soon as reasonably practicable, based upon the schedule established by the Arbitrator. The Arbitrator shall issue a written award, signed by the Arbitrator and setting forth the findings of fact and conclusions of law. No award shall be made for punitive, special, exemplary, or consequential damages, including loss of profits or loss of business opportunity. The decision of the Arbitrator pursuant hereto shall be final and binding upon parties. Judgment upon the award rendered by the Arbitrator pursuant hereto may be entered in, and enforced by, any court within the jurisdiction where the party against whom enforcement is sought has property. Each party shall share the expense of the Arbitrator and other expenses incurred by the Arbitrator, unless the Arbitrator shall determine that fairness requires that such fees and expenses be allocated among the parties in a different manner, including without limitation, requiring the losing party to pay all such expenses. Each party shall bear its own expenses, including expenses of its counsel. It is the desire of the parties that any Dispute is resolved quickly and at the lowest possible cost, and the Arbitrator shall act in a manner consistent with these intentions, including limiting discovery to only that which is absolutely necessary to enable the Arbitrator to render a fair decision which reflects the parties' intent set forth in this Contract. The parties hereby agree that this **Paragraph 21 shall not preclude, limit or otherwise restrict a party from seeking immediate equitable relief against the other party in connection with this Contract, including without limitation, a restraining order or injunction, when the facts, circumstances and/or possible damages warrant such action.**

(Emphasis added).

12. The Master Service Contract also contains a forum selection clause as follows:

This Contract shall be governed, construed and enforced in accordance with the General Maritime Law of the United States ("Maritime Law") whenever any performance is contemplated in or above navigable waters, whether onshore or offshore. In the event that Maritime Law is held inapplicable, the internal laws of the State of Texas which shall apply without regard to principles of conflicts of law except to the extent otherwise expressly provided herein. **Subject to the terms of Paragraph 21 below [i.e., the arbitration clause], the parties agree that any cause of action brought to enforce the terms of this Contract shall be brought in either a federal or state court located in Harris County, Texas. The parties consent to the jurisdiction and venue of any such federal or state court located in Harris County, Texas.**

(Emphasis added).

13. After entering into the Master Service Contract, a dispute arose between the parties regarding payments owed on equipment rentals.

14. The Master Service Contract defines such rentals as part of the “Work” governed by the contract. Accordingly, Halcón commenced proceedings to resolve the dispute by mediation or arbitration as required by the Master Service Contract.

15. Consistent with the Master Service Contract’s arbitration clause, Halcón filed an Original Statement of Claim and Demand for Mediation and Arbitration with the American Arbitration Association (“AAA”) on May 13, 2016.

16. The Arbitration Demand recounted that the parties had previously submitted to a mediation in North Dakota on April 6, 2016, and requested that the matter be submitted to mediation in the event that Rez Rock were to contend that the previous mediation did not satisfy the mediation requirement under the Master Service Contract.

17. In response to the Demand for Arbitration, the AAA opened a mediation file.

18. On June 16, 2016, the AAA closed its mediation file, preparing the way for binding arbitration.

19. Although arbitration proceedings were set to go forward, they were subsequently held in abeyance during Halcón’s Chapter 11 Bankruptcy in 2016.

20. After Halcón emerged from bankruptcy, Frank White Calfe and Rez Rock N Water, LLC, filed a competing lawsuit in the District Court of the Three Affiliated Tribes, Civil Case No. 2017-0148, claiming false representations, fraud, breach of contract (implied), *quatum valebant*, unjust enrichment, and tortious interference.

21. Meanwhile, Halcón advised the AAA that bankruptcy proceedings were concluded and requested that the arbitration matter proceed. In response to this letter, the AAA proceeded with administration of the arbitration and directed the parties to designate their party-appointed arbitrators on or before May 1, 2017. By letter dated April 24, 2017, Rez Rock's counsel opposed reinstatement of the arbitration proceedings until the Tribal Court rendered a decision in the Tribal Court matter. Halcón responded on May 16 and Rez Rock replied on May 17.

22. On May 3, 2017, Rez Rock moved the Tribal Court to stay the AAA arbitration proceedings, claiming that the arbitration clause was invalid and did not provide for arbitration of contract validity, enforceability, or scope.

23. On May 22, 2017, the AAA advised that it would proceed with the administration of the arbitration unless there was an agreement by the parties or a court order staying the arbitration.

24. Halcón appropriately designated an arbitrator. The AAA requested that Rez Rock designate a party-appointed arbitrator, and advised that if Rez Rock failed to do so, the AAA would administratively appoint an arbitrator and proceed. Rez Rock never designated an arbitrator, and so the AAA administratively appointed one, and ultimately confirmed an arbitration Panel on August 23, 2017.

25. On May 24, 2017, Halcón specially appeared before the Tribal Court and moved for dismissal of the case based on a lack of tribal jurisdiction. That same day, Halcón filed its opposition to the motion to stay arbitration proceedings, arguing, among other things, that the dispute is subject to arbitration and the Tribal Court does not have jurisdiction to stay the arbitration proceedings.

26. On May 25, 2017, the Tribal Business Council of the Three Affiliated Tribes (the “Tribal Council”) filed an amicus curiae brief urging the Tribal Court to exercise jurisdiction and stay the arbitration proceedings, and arguing that the arbitration clause in the parties’ contract is invalid by virtue of a tribal law purporting to void any provision in a contract restricting a party from enforcing his rights under it by usual legal proceedings in court.

27. On May 30, 2017, Rez Rock submitted a (Proposed) Order Staying Arbitration.

28. On June 6, 2017, Halcón responded to the amicus brief, explaining that the Federal Arbitration Act (“FAA”) requires enforcement of an arbitration clause in any contract affecting commerce, and that any tribal law purporting to void arbitration clauses is preempted by the FAA.

29. On September 11, 2017 the Tribal Court issued an order purporting to stay the AAA arbitration proceedings. The order granted Rez Rock’s motion to stay arbitration and provided “that the Stay of American Arbitration Association Case NO. 02-16-0001-7844 shall remain in place until all Tribal Court remedies, including appellate review, have been exhausted.” The order does not recite what facts or law support the order, or explain how the Tribal Court acquired jurisdiction over the dispute or over arbitration proceedings in Texas. Instead, the Tribal Court simply signed a proposed order filed by Rez Rock in conjunction with its motion.

**COUNT I
DECLARATORY JUDGMENT**

30. Halcón incorporates by reference, as if fully stated herein, the allegations set forth above.

31. An actual controversy exists between Halcón and the Defendants regarding the jurisdiction of the Tribal Court over the contractual dispute between Halcón and Rez Rock.

32. Additionally, an actual controversy exists between Halcón and the Defendants regarding the jurisdiction of the Tribal Court over the AAA arbitration proceedings in Texas.

33. Pursuant to 28 U.S.C. § 2201, Halcón seeks a judgment from this Court declaring that the Tribal Court lacks jurisdiction over the contractual dispute between Halcón and Rez Rock and lacks jurisdiction over the AAA arbitration proceedings in Texas.

COUNT II
INJUNCTIVE RELIEF

34. Halcón incorporates by reference, as if fully stated herein, the allegations set forth above.

35. The Tribal Court's exercise of jurisdiction over the contractual dispute between Halcón and Rez Rock is unlawful.

36. The Tribal Court's exercise of jurisdiction over the AAA arbitration proceedings in Texas is unlawful.

37. Rez Rock's efforts to have the Tribal Court exercise jurisdiction are unlawful.

38. Unless Defendants are enjoined from their unlawful conduct, Halcón will face irreparable harm by, among other things, litigating in a forum that does not have jurisdiction over the dispute and being barred from resolving the dispute in the contractually agreed upon manner and forum.

39. Rez Rock will not be harmed if it is required to litigate in a forum with valid jurisdiction. The balance of harms thus favors an injunction.

40. Public policy favors the enforcement of arbitration and forum selection clauses and militates against the assertion of tribal jurisdiction where no colorable jurisdiction exists.

41. The Tribal Court should be enjoined from exercising jurisdiction over the dispute between Halcón and Rez Rock and from exercising jurisdiction over the AAA arbitration proceedings in Texas.

42. Rez Rock should be enjoined from further requesting the Tribal Court to exercise jurisdiction over the contractual dispute and/or the AAA arbitration proceedings.

WHEREFORE, Halcón prays as follows:

1. For a declaratory judgment that the Tribal Court has no jurisdiction over the contractual dispute between Halcón and Rez Rock.
2. For a declaratory judgment that the Tribal Court has no jurisdiction over the AAA arbitration proceedings in Texas.
3. For an injunction prohibiting the Tribal Court from exercising jurisdiction over the contractual dispute between Halcón and Rez Rock.
4. For an injunction prohibiting the Tribal Court from exercising jurisdiction over the AAA arbitration proceedings.
5. For an injunction prohibiting Rez Rock from further requesting the Tribal Court to exercise jurisdiction over the contractual dispute and/or the AAA arbitration proceedings.
6. For costs and disbursements as allowed by law.
7. For such other and further relief as the Court may deem appropriate.

DATED this 27th day of September, 2017.

/s/ Paul J. Forster

Joshua B. Cook (ND #07067)

Paul J. Forster (ND # 07398)

CROWLEY FLECK PLLP

Attorneys for Plaintiff

100 West Broadway, Suite 250

PO Box 2798

Bismarck, ND 58502-2798

Phone: (701) 223-6585

Fax: (701) 222-4853

jcook@crowleyfleck.com

pforster@crowleyfleck.com