Docket No: 17-16600

UNITED STATES COURT OF APPEALS
for the
NINTH CIRCUIT

SHINGLE SPRINGS BAND OF MIWOK INDIANS,

Petitioners–Appellants,

v.

UNITE HERE INTERNATIONAL UNION,

Respondent–Appellee.

Appeal from the Judgment of the United States District Court for the Eastern District of California
District Court Case No.: 2:16-cv-01057-TLN-EFB
The Honorable Judge Troy L. Nunley

UNITE HERE INTERNATIONAL UNION'S BRIEF

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UNITE HERE INTERNATIONAL UNION'S BRIEF

Statement of Jurisdiction

Appellant Shingle Springs Band of Miwok Indians ("Tribe") says that the Declaratory Judgment Act, 28 U.S.C. § 2201, gave the district court jurisdiction, but an independent basis for jurisdiction is required when claims are brought under the Declaratory Judgment Act. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950); *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). The district court had subject-matter jurisdiction over the

complaint pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 185 (as the Tribe alleged in the complaint, *see* ER[1] 69); and because Appellee UNITE HERE International Union ("Union") claims that the Tribe breached the parties' agreement. *See Textron Lycoming Reciprocating Engine Div. v. UAW*, 523 U.S. 653, 658 (1998) (when plaintiff seeks declaratory judgment that a labor contract is void or voidable, § 301 jurisdiction exists only if there is a claim that the contract has been breached). As we explain in Section B of the Argument, the Tribe's second and third claims for declaratory relief are not ripe for judicial review.

This Court has jurisdiction pursuant to 29 U.S.C. § 1291. The district court entered a final judgment on July 12, 2017. ER 4. The Tribe filed the notice of appeal on August 9, 2017, ER 1; which was timely. *See* Fed. R. App. P. 4(a)(1)(A).

Issue Presented For Review

The Tribe filed this case only after the Union filed a petition to compel arbitration, seeking declaratory judgments relating to the Union's right to arbitrate and the enforceability of the anticipated arbitration award. The district court exercised its discretion to dismiss the Tribe's case because it raised the same issues

[1] "ER" refers to the Appellant's Excerpts of Record. "RJN" refers to Appellant's Request for Judicial Notice.

as the earlier-filed petition to compel arbitration. Did the district court abuse its discretion in dismissing the Tribe's action?

Statutory Addendum

The pertinent statute (29 U.S.C. § 185) is contained in the Statutory Addendum to this brief.

Statement of the Case

A. The Union and Tribe have a dispute about whether the Tribe violated its agreement with the Union when it discharged two employees.

This case involves a labor dispute. The Union is a labor organization, and the Tribe owns and operates the Red Hawk Casino. ER 6-8 (¶¶ 1-2). The Union and the Tribe entered into a Memorandum of Agreement ("MOA") that establishes ground rules if the Union attempts to organize Red Hawk Casino employees to join the Union. ER 69 (¶ 7), 78-87. Paragraph 5 of the MOA requires the Tribe to remain neutral. The Tribe must "advise Bargaining Unit Employees that it is neutral to their selection of the Union as their exclusive representative" and refrain from "directly or indirectly stat[ing] or imply[ing] opposition to the selection by Bargaining Unit Employees of the Union as their exclusive representative." ER 81. The MOA also contains a dispute-resolution procedure which culminates in arbitration. It states:

> The Parties agree that any disputes over the interpretation or application of this Agreement shall be submitted first to mediation arranged through a mutually agreeable mediator such as, by way of

> illustration only, the American Arbitration Association. If after a minimum of 30 business days after submission of the dispute to a mediator, a mutually satisfactory resolution is not produced by mediation, or if after a maximum of 15 business days a mutually agreeable mediator is not chosen after impasse over any dispute, then either the Tribe or the Union may submit the dispute(s) to expedited and binding arbitration before an arbitrator selected from the TLP. The arbitrator shall not modify, add to or subtract from this Agreement.

ER 69 (¶¶ 7-8), 84 (¶ 10)). The Tribe inaccurately characterizes this provision as "limited." No disputes under the MOA are excluded from coverage.

On about November 18, 2015, the Union notified the Tribe by letter of a dispute about the interpretation or application of the MOA. In that letter, the Union asserted that the Tribe violated the MOA's neutrality clause multiple times, including by terminating an employee because he "solicited support for the union during his break time." ER 70 (¶ 12), 58.[2] The Union invoked the MOA's dispute-resolution procedures, and on January 7, 2016 a mediation was held. ER 70 (¶ 13). Since February 4, 2016, the Tribe has refused to arbitrate the parties'

[2] The documents attached to the Declaration of Kristin Martin are properly considered in connection with a motion to dismiss because they are referenced in the complaint and their authenticity is unquestioned. *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. America West Holding Corp.*, 320 F.3d 920, 925 n.2 (9th Cir. 2003).

dispute about whether the Tribe violated the MOA when it discharged two employees because they supported the Union. ER 71-72 (¶¶ 14-19).

B. The case overlaps with the Union's petition to compel arbitration.

On February 22, 2016, the Union filed a petition to compel arbitration of its dispute with the Tribe about the employee discharges. RJN, Exh. 1. In response, the Tribe filed this action. On June 28, 2016, the district court issued a notice of related case order, deeming the cases "related" because both cases "involve the same parties, are based on the same claims, the same events, the same questions of fact and the same questions of law." ER 63-64.

The Tribe sought declaratory relief that it does not have to arbitrate its dispute with the Union, and advanced three overlapping theories. First, the Tribe alleged that its dispute with the Union over employee terminations is not covered by the MOA's arbitration provision:

> The Tribe further contends that Section 10 of the MOA is limited to disputes over the interpretation or application of the MOA, and the Tribe's intramural personnel decisions do not fall within the gambit of Section 10. To be sure, the MOA contains no provisions regarding employee discipline and/or termination and is further silent on any employee remedies such as back pay and/or reinstatement. Moreover, employees of the Tribe are not parties to the MOA and do not have standing to seek relief under the MOA. Accordingly, the Tribe refuses to arbitrate any employee termination and/or disciplinary action under the MOA as proceeding with such arbitration is tantamount to treating the MOA like a collective bargaining agreement, which it certainly is not.

ER 72 (¶ 20). In its first claim for relief, the Tribe sought a declaration that it cannot be required to arbitrate this dispute. ER 72-74 (¶¶ 22-31).

Second, the Tribe alleged that arbitrating the dispute over employee terminations would violate the NLRA:

> The Tribe contends that any arbitration over an intramural personnel decision prior to the Union establishing majority status is unlawful and violates § 8(a)(2) of the National Labor Relations Act . . . .

ER 72 (¶ 19). In its second claim for relief, the Tribe sought a declaration that arbitrating this dispute would violate federal law. ER 74-75 (¶¶ 32-40).

Third, the Tribe alleged that an arbitrator cannot lawfully order the Tribe and Union to engage in joint activities:

> The Tribe further contends that the MOA does not authorize joint activities of any nature between the Tribe and the Union. The Tribe contends that joint activities are reserved for organizations the Tribe supports, and any showing of Union support by the Tribe violates Section 8(a)(2) of the NLRA, as well as similar provisions under the MOA and the TLRO.

ER 72 (¶ 21). In its third claim for relief, the Tribe sought a declaration that an arbitral remedy requiring the Tribe to participate in joint meetings with the Union would violate the NLRA and the MOA. ER 75-76 (¶¶ 41-47).

On July 12, 2017, the district court granted the Union's petition to compel arbitration, explaining that "the parties have reserved for the arbitrator the question

of arbitrability" and this case "falls squarely within [a] rule" that allows parties to do so. RJN Exh. 6. The court then exercised its discretion to dismiss the Tribe's declaratory judgment action, which it explained as follows:

> This lawsuit breaks no new ground on the first issue – whether the parties' dispute is arbitrable – because the Court recently issued an order in the related case ordering the parties to arbitrate arbitrability. Any judicial resolution of the first issue here would be entirely duplicative. The Court also concludes that it would be unwise to resolve the second and third issues – whether arbitration or a particular arbitral award would violate federal law – in this context. The second and third issues may never crystallize because their need for judicial resolution presupposes that the arbitrator will conclude the parties must arbitrate their underlying dispute. That outcome is uncertain at this juncture. Thus, this lawsuit will not "serve a useful purpose in clarifying the legal relations at issue." At bottom, all the issues presented have been, or can be, better resolved elsewhere.

ER 5-7 (internal citations omitted).

Summary of the Argument

The district court did not abuse its discretion by declining to decide the Tribe's declaratory-relief claims. The Tribe raised the same issues in response to the Union's first-filed petition to compel arbitration, so there was no reason to address the issues again in the Tribe's later-filed declaratory judgment action.

In addition, the Tribe's second and third claims for relief are not ripe. The Tribe wants declarations that the Union's interpretation of the MOA (as prohibiting the Tribe from discharging employees for supporting the Union) and ordering a

joint-meeting between the Union and the Tribe as a remedy for violations would violate the National Labor Relations Act. Since the arbitrator has not yet interpreted the agreement in the way the Union advocates or awarded the remedy that the Union seeks, these claims are premature.

Alternatively, the Court may affirm the dismissal because the Tribe failed to exhaust nonjudicial remedies by submitting the dispute to arbitration. Since it is clear from the face of the Tribe's complaint that this dispute is arbitrable, dismissal under Federal Rule of Civil Procedure 12(b)(6) would also be proper.

Standard of Review

The district court's decision whether to exercise jurisdiction over a declaratory judgment action is reviewed for an abuse of discretion. *See Wilton v. Seven Falls Co.*, 515 U.S. 277, 289-90 (1995); *R.R. Street & Co. Inc. v. Transport Ins. Co.*, 656 F.3d 966, 973 (9th Cir. 2011); *Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1156-57 (9th Cir. 2007).

Argument

A. The district court properly exercised its discretion to decline to hear the Tribe's claims for declaratory relief.

There is not an automatic right to declaratory relief. "[D]istrict courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282

(1995); *Huth v. Hartford Ins. Co. of the Midwest*, 298 F. 3d 800, 802 (9th Cir. 2002) ("The exercise of jurisdiction under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a), is committed to the sound discretion of the federal district courts. . . . Even if the district court has subject matter jurisdiction, it is not required to exercise its authority to hear the case.").

"In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Wilton*, 515 U.S. at 288. One circumstance in which a court may decline to hear a declaratory relief claim is when the litigation is duplicative. *RR Street & Co. Inc. v. Transport Ins. Co.*, 656 F. 3d 966, 975 (9th Cir. 2011); *Harford Ins. Co.*, 298 F.3d at 803. Also relevant to the Court's determination is "whether the declaratory action will settle all aspects of the controversy"; "whether the declaratory action is being sought merely for the purposes of procedural fencing"; and "the availability and relative convenience of other remedies." *Principal Life Ins.*, 394 F.3d at 672. "It should go without saying that a declaratory judgment action must serve some purpose in resolving a dispute. If the relief serves no purpose, or an illegitimate one, then the district court should not grant it." *Exxon Shipping Co. v. Airport Depot Diner, Inc.*, 120 F. 3d 166, 168-69 (9th Cir. 1997).

The district court dismissed the Tribe's case because deciding the case would not serve any purpose. Before the Tribe filed this case, the Union had sued the Tribe to compel arbitration. In that case, the district court decided that, under the language of the parties' agreement, arbitrability is for the arbitrator to decide, and ordered the Tribe to arbitrate. *See* RJN, Exh. 6. Issuing the first declaratory judgment sought by the Tribe – i.e., deciding whether the parties' dispute is arbitrable -- would have been duplicative of the court's decision in the first-filed suit.

The Tribe implicitly admits that this is so. In its opening brief, the Tribe does not argue that its declaratory judgment action raised issues that were different from the issues it raised in response to the Union's petition to compel arbitration. Instead, the Tribe simply cut-and-pasted the "argument" section from its opening brief in its appeal of the district court's order compelling arbitration (Ninth Circuit Case No. 17-16599) into the "argument" section of its opening brief in this case.

The district court also refrained from deciding issues that the Tribe raised in its second and third claims for declaratory relief because doing so would be premature. The second and third claims seek judgments about the anticipated arbitral award. Until an arbitrator adopts the Union's interpretation of the MOA's neutrality clause or grants the Union a remedy, it is premature for the Court to decide whether the Tribe or Union is correct. *See Building Materials & Constr.*

Teamsters Local No. 216 v. Granite Rock Co., 851 F.2d 1190, 1197 (9th Cir. 1988) (compelling arbitration and "declin[ing] to render an advisory opinion on the validity" of contract clause); *United Food & Commercial Workers Int'l Union v. Alpha Beta Co.*, 736 F.2d 1371, 1376 (9th Cir. 1984) ("[A] conflict between an arbitrator's decision and federal labor law is necessarily speculative when the arbitrator has yet to rule. Such conflicts can be resolved when they become manifest in an action to enforce the award. The mere possibility of conflict, however, is no barrier to arbitration."); *R.B. Elec., Inc. v. Local 569, IBEW*, 781 F.2d 1440, 1442 (9th Cir. 1986) (refraining from issuing declaratory judgment that contract clause unlawful before dispute arbitrated); *Hosp. & Institutional Workers Union Local 250 v. Marshal Hale Mem'l Hosp.*, 647 F.2d 38, 42 (9th Cir. 1981) (compelling arbitration because "[c]onflicts between the arbitrator and the NLRB can be resolved when they become manifest in an action to enforce the award. The mere possibility of conflict, however, is no barrier to arbitration"). *Cf. Univ. of Chicago v. Faculty Assn.*, 2011 WL 13470, at *4 (N.D. Ill. Jan. 4, 2011) (declining to exercise jurisdiction over claim for declaratory judgment that dispute was not arbitrable because arbitration had not yet occurred).

Another way of saying this is that the Tribe's second and third claims are not ripe. Article III courts' "[j]urisdiction to award declaratory relief exists only in an actual case or controversy." *Aydin Corp. v. Union of India*, 940 F.2d 527, 527 (9th

Cir. 1991). When claims are not ripe for review, there is not an "actual case or controversy." *Principal Life Ins.*, 394 F.3d at 669; *Aydin Corp.*, 940 F.2d at 528. *Cf. Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 95 (1993) (declaratory judgment plaintiff has the burden of proving that its claim is ripe). The Tribe seeks declarations that how the Union wants the arbitrator to interpret the MOA (as prohibiting discharges of employees for engaging in pro-union activity) and a remedy the Union will ask the arbitrator to award (requiring the Tribe to hold a joint meeting with the Union to reaffirm its commitment to the MOA) – would violate the NLRA. These claims are not ripe because the arbitrator has not yet interpreted the MOA as the Union advocates or issued such a remedy. *Aydin Corp.*, 940 F.2d at 528 (claim for declaratory judgment about enforceability of arbitral award not ripe because award had not yet issued).[3]

[3] Before the district court, the Tribe relied on a passage in *Aydin Corp.* that sets out the uncontroversial proposition that a claim for declaratory relief about arbitrability is ripe prior to arbitration. But the main holding of *Aydin Corp.* – that a declaratory judgment regarding enforceability of an arbitral award is not ripe until the award issues – supports the Union's argument for dismissal of the Tribe's second and third claims. The Tribe also relied on *Principal Life Ins.*, *supra*, for the proposition that a suit seeking a declaration about a contract's meaning is ripe if the contracting parties disagree about the meaning. The contract in *Principal Life* did not have an arbitration clause. When the contract provides for arbitration, a dispute ripens prior to arbitration only if the contract's arbitration clause is unlawful on its face. *Buckeye Check Cashing v. Cardegna*, 546 U.S. 440 (2006).

There is an additional reason why dismissal was prudent. The declaratory judgment action burdened the district court with reading an additional set of briefs and deciding an additional motion, thereby slowing down its resolution of the Union's petition to compel arbitration. By doing so, the Tribe's suit interfered with federal labor policy, which favors the speedy resolution of labor disputes. *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 558 (1964) (delay of "speedy arbitrated settlement" of labor dispute is "contrary to the aims of national labor policy"); *SEIU United Healthcare Workers-W. v. Los Robles Reg'l Med. Ctr.*, 812 F.3d 725, 733 (9th Cir. 2015) (delaying labor arbitration is a breach of the duty of good faith); *Phoenix Newspapers, Inc. v. Phoenix Mailers Union Local 752, Int'l Bhd. of Teamsters*, 989 F.2d 1077, 1084 (9th Cir. 1993) ("One of the central purposes of arbitration proceedings is to achieve speedy and fair resolutions of disputes."); *Camping Const. Co. v. Dist. Council of Iron Workers*, 915 F.2d 1333, 1345 (9th Cir. 1990) (value of arbitration lost if delayed); *see also* Cox, *Reflections upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1517-18 (1959) (recognizing that one of the greatest advantages of arbitration is speedy resolution of labor disputes).

B. The Complaint was properly dismissed because it presents an arbitrable dispute.

The Court may affirm the district court's judgment on any ground supported by the record. *Fang Lin Ai v. United States*, 809 F.3d 503, 514 (9th Cir. 2015);

Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121 (9th Cir.2008). An alternative ground for affirming the district court's judgment is that the Tribe's claims for declaratory relief are properly resolved through arbitration. *Inlandboatmens' Union of the Pacific v Dutra Group*, 279 F.3d 1075, 1084 (9th Cir. 2002) (dismissing complaint brought under § 301 of the Labor Management Relations Act because it was clear from the complaint's face that plaintiff failed to exhaust nonjudicial remedies); *see also Albino v. Baca*, 747 F.3d 1162 1166 (9th Cir. 2014) (en banc) ("In the rare event that a failure to exhaust is clear on the face of the complaint, a defendant may move for dismissal under Rule 12(b)(6)."). If the district court had decided all of the issues about which the Tribe sought declaratory judgments, the court would have usurped the arbitrator's role by deciding matters that are for the arbitrator to decide.

The Union's answering brief in the Tribe's appeal of the district court's order compelling arbitration (Case No. 17-16599) explains why the parties' disputes about interpretation of the MOA's arbitration and neutrality clause are for the arbitrator to decide, as are the Tribe's claims that arbitrating and holding joint-meetings with the Union will violate the National Labor Relations Act. The Tribe's brief in this case does not raise any different issues. As explained above, its argument is simply copied from its argument in Case No. 17-16599. Instead of burdening the Court by copying the Union's responsive argument into this brief,

the Union is simultaneously filing a motion to consolidate this case with Case No. 17-16599.

Conclusion

For all of the foregoing reasons, the district court's dismissal of the Tribe's complaint for declaratory relief should be affirmed.

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Dated at San Francisco, CA this 17th day of January, 2018

STATEMENT OF RELATED CASES

UNITE HERE International Union v. Shingle Springs Band of Miwok Indians, Docket No. 17-16599, is a related case pending before this court. There are no other related cases.

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CORPORATE DISCLSOURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(c), UNITE HERE International Union certifies that it has no parent companies and that no publicly held corporation owns 10 percent of UNITE HERE International Union.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), UNITE HERE International Union certifies that its brief contains 3,378 words of proportionally-spaced, 14-point type. The word processing system used was Microsoft Word 2013.

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Dated at San Francisco, CA this 17th day of January, 2018

ADDENDUM

STATUTORY ADDENDUM

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Statutes

29 U.S. Code § 185 - Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process

The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

9th Circuit Case Number(s) 17-16600

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