

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

THE QUEENS, LLC, and CHEROKEE)	
QUEEN, LLC,)	
)	
Plaintiffs,)	
v.)	
)	Case No. 19-cv-350-WPJ-CDL
THE SENECA-CAYUGA NATION)	
formerly known as the SENECA-CAYUGA)	
TRIBE OF OKLAHOMA,)	
)	
Defendant.)	

**PLAINTIFFS’ REPLY REGARDING THEIR MOTION FOR
DETERMINATION OF FEDERAL COURT JURISDICTION**

The plaintiffs, The Queens, LLC and Cherokee Queen, LLC (collectively “The Queens”), hereby submit this reply regarding their *Motion for Determination of Federal Court Jurisdiction*, and to rebut matters stated in the response filed by the defendant, the Seneca-Cayuga Nation (the “SCN”). For the reasons stated herein, the SCN’s response provides no legitimate basis to proceed without a determination of federal court jurisdiction under the unique status of this litigation.

INTRODUCTION AND SUMMARY

The SCN’s response brief grossly mischaracterizes the nature of The Queens’ motion and the status of this protracted litigation. The Queens simply requests a threshold determination whether this court has federal question or diversity jurisdiction as part of its pursuit of “Limited Recourse” as set forth in the Memorandum of Understanding between the parties (the “MOA”). The SCN argued extensively in Oklahoma state court, including through appeal and writ petitions, that this filing was necessary under the wording of the MOA’s limited waiver of tribal sovereign immunity, an issue on which the Oklahoma Court of Civil Appeals (the “COCA”) agreed. The SCN now treats this litigation as a game of “gotcha,” suggesting that The Queens voluntarily dismiss this case knowing that under the COCA’s decision that would leave The Queens with no forum in which to

pursue its Limited Recourse. Having conceded that it has defaulted in its payment obligation under the MOA, the result the SCN is pursuing—and which it has pursued throughout this dispute—is to keep valuable lakeside property and business assets for free, depriving The Queens of both the assets and compensation. This court should reject this tactic as contrary to applicable law and the MOA.

While the wording of the MOA’s limited waiver of tribal sovereign immunity has resulted in a unique circumstance which The Queens’ motion fully describes, there is nothing remotely unusual about The Queens’ request that this court determine its jurisdiction before addressing any other pending motion. This is required by the limited nature of federal court jurisdiction and is the result of a process to which the SCN agreed in the MOA and which it argued was the proper procedure from the outset. The Queens seeks merely to enforce its Limited Recourse, and this filing, and the need for a determination of federal court jurisdiction, is necessary as part of this pursuit.

ARGUMENT AND AUTHORITIES

The Queens’ motion is based on the wording of the MOA’s limited waiver of tribal sovereign immunity. The SCN agreed that upon its default The Queens could pursue its Limited Recourse to foreclose upon a portion of the lakeside realty and related business assets in a “court of competent jurisdiction . . . pursuant to the following order of priority: (i) in applicable federal courts in the State of Oklahoma with all rights of appeal therein, and (ii) in the event that a federal court in the State of Oklahoma determines that it does not have jurisdiction, first, in the courts of the State of Oklahoma, with all rights of appeal therein; and (iii) only if the Oklahoma courts determine that they do not have jurisdiction, any other court of competent jurisdiction.” (Doc. 2-1 (MOA § 13.01)).

The Queens filed its case originally in state court in Delaware County, Oklahoma (“State Court”) having determined at the time that the federal court requirement in the foregoing provision of the MOA’s limited waiver of tribal sovereign immunity would be futile based on numerous cases

that strongly suggest a lack of federal question or diversity jurisdiction.¹ The Queens made several arguments in this regard to the State Court, including concerns that a federal court filing could implicate Fed. R. Civ. P. 11 which requires a good faith basis when invoking federal court jurisdiction. The State Court agreed and proceeded to enter judgment for The Queens.

The SCN appealed and argued extensively that a federal court filing was first required. The Queens maintained its position, including concerns under Rule 11, because the legal authorities seemed to unanimously agree that federal court jurisdiction was lacking. However, the COCA agreed with the SCN holding that “it is not clear that a federal court along the chain of an appeal would necessarily find it lacks jurisdiction in such a context, or that it would find an argument for a change in the law to be frivolous.” (Doc. 32-1 (COCA Opp., at 11-12 n. 20)). The COCA further held that the MOA’s limited waiver of tribal sovereign immunity was “expressly conditioned on a federal court ‘determine[ing] that it does not have jurisdiction[.]’” (Doc. 32-1 (COCA Opp., at 11-12)).

The Queens then filed a *Petition for a Writ of Certiorari* with the Oklahoma Supreme Court and maintained its position that a federal court filing should not be a required condition for enforcing the MOA’s limited waiver of tribal sovereign immunity. Thus, there should be no surprise that The Queens’ cert petition (a copy of which is attached by the SCN by exhibit to its response) states this position. The Oklahoma Supreme Court has since rejected the petition and the COCA’s determination that a federal court filing could proceed in good faith is now law of the case. Thus, The Queens’ filing in this court is no longer problematic. The COCA has not only provided guidance, it has in fact *required* that The Queens file with this court first and seek a determination of federal court jurisdiction in order to pursue its contract remedies.

This is precisely what The Queens’ motion seeks—a determination by this court if it has

¹ The legal precedents in this regard are cited in The Queens’ motion at footnotes 2 and 3.

federal question or diversity jurisdiction. The SCN's arguments to avoid a determination of federal court jurisdiction are an unfounded and transparent attempt to preclude the Queens from exercising its recourse to which the SCN agreed in the event of its payment default. The SCN first mischaracterizes the Queens' motion as akin to a motion to dismiss under Fed. R. Civ. P. 12(b). This misrepresents The Queens' fundamental purpose in filing its motion which is clearly described. Having lost its argument before both the COCA and Oklahoma Supreme Court it is no longer clear that this court lacks federal question or diversity jurisdiction, and the Queens does not ask for dismissal but for a determination by the court of its jurisdiction as required by the COCA as a condition to pursue its Limited Recourse under the MOA. If this Court determines that it has jurisdiction over the matter, The Queens will pursue its Limited Recourse in this case. If federal jurisdiction is found to be lacking and deems proper to dismiss, the condition described by the COCA will have been satisfied, and the remedy can again be pursued in State Court.

The SCN's suggestion that The Queens voluntarily dismiss is absurd and is asserted in bad faith knowing that such a result would preclude The Queens from pursuing its Limited Recourse in any forum. The SCN knows the language of the limited waiver of tribal sovereign immunity, the arguments made to the state trial and appellate courts, the results of those appeals, and the reason why The Queens has filed this case in federal court. The SCN in fact argued extensively that this procedure was the proper mechanism under the MOA and prevailed on that issue before the COCA. It now disingenuously suggests that The Queens' past arguments somehow preclude the very procedure which is now being followed—a federal court filing and a request for a determination of whether federal court jurisdiction exists over the dispute. The COCA not only resolved any concerns about a federal court filing, it in fact ordered that this filing occur for this case to proceed.

As with any case in federal court, federal question or diversity jurisdiction is fundamentally a threshold issue that must be determined before any other matter. *See, inter alia, Sinochem Intern.*

Co. Ltd. v. Malaysia Intern. Shipping Corp., 549 U.S. 422, 430-31 (2007) (holding that “[w]ithout jurisdiction the [federal] court cannot proceed at all in any cause[.]”) The Queens’ motion brings this issue to the court’s attention and provides a list of authorities.² The SCN argues that the court should bypass this question and proceed directly to a determination of its sovereign immunity defense and the scope of the contractual waiver of tribal sovereign immunity. These motions present fact-based questions and the merits of the SCN’s defense. This court can only address those questions if it is first satisfied that it has federal question or diversity jurisdiction.

Thus, this court should first determine its federal-question and diversity jurisdiction, and only if jurisdiction exists can this case proceed to the merits of the SCN’s merits-based defenses.

CONCLUSION

FOR THE FOREGOING REASONS, The Queens requests that the Court determine before any other matter whether it has federal question or diversity of citizenship jurisdiction (or jurisdiction on any other basis) and enter a ruling accordingly.

Respectfully submitted,

s/ Daniel E. Gomez

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² Even if not raised by motion, district courts are obligated to inquire into their own jurisdiction *sua sponte* if necessary. *See, inter alia, Koerpel v. Heckler*, 797 F.2d 858, 861 (10th Cir. 1986).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 6th day of October, 2022, the foregoing document was filed with the Clerk of Court using the court's CM/ECF system and that the following participant(s) in this case are registered CM/ECF users and will be served using the CM/ECF system.

Graydon D. Luthey, Jr.
R. Trent Shores

s/ Daniel E. Gomez