UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION, by and through its lawful governing body, the CAYUGA NATION COUNCIL,

Plaintiff,

v.

DUSTIN PARKER, NORA WEBER, JOSE VERDUGO, JR., ANDREW HERNANDEZ, PAUL MEYER, BLUE BEAR WHOLESALE, LLC, IROQUOIS ENERGY GROUP, INC., JUSTICE FOR NATIVE FIRST PEOPLE, LLC, C.B. BROOKS LLC, AND JOHN DOES 1-10,

Defendants.

Case No. 5:22-cv-128 (BKS/ATB)

DUSTIN PARKER, NORA WEBER, AND ANDREW HERNANDEZ,

Third-Party Plaintiffs,

v.

CLINT HALFTOWN,

Third-Party Defendant.

PAUL MEYER, JUSTICE FOR NATIVE FIRST PEOPLE, LLC, AND C.B. BROOKS LLC,

Third-Party Plaintiffs,

v.

CLINTON HALFTOWN AND JOHN DOES 1-10,

Third-Party Defendants.

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS THIRD-PARTY COMPLAINTS

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Third-Party Defendant, Clint Halftown, through undersigned counsel, respectfully submits this reply memorandum of law in further support of his motion to dismiss [ECF No. 76] the Third-Party Complaints [ECF Nos. 64 and 65] filed by Defendants Dustin Parker, Nora Weber, and Andrew Hernandez (collectively, the "Parker Defendants") and Paul Meyer, C.B. Brooks, LLC, and Justice for Native First People, LLC (collectively, the "Meyer Defendants") in response to the opposition papers filed by the Parker Defendants [ECF No. 80] and the Meyer Defendants [ECF No. 81].

PRELIMINARY STATEMENT

Defendants' third-party claims are identical to ten counterclaims previously-asserted against the Cayuga Nation, now directed against a Cayuga Nation official and reintroduced by way of gratuitous personal attacks. Faced with the insurmountable obstacle that the Cayuga Nation's tribal sovereign immunity bars all of their counterclaims, Defendants vainly search for an exception to assert the same claims against a tribal official. None applies.

All of the third-party claims are manifestly claims against the Cayuga Nation, and to the extent Mr. Halftown is alleged to have had any involvement, it was only in his capacity as a Cayuga Nation official participating in the Nation's governance. As a member of the Cayuga Nation Council and the Nation's Federal Representative, Mr. Halftown is not engaged in any conduct that could be enjoined (even had Defendants sought prospective injunctive relief, which they have not), and the fact that the conduct at issue occurred on the Cayuga Nation Reservation removes any claim that *Ex parte Young* could apply.

Even in the absence of tribal sovereign immunity, Defendants have also failed to demonstrate that joinder of the third-party claims is proper under the Federal Rules of Civil Procedure, or that this Court may exercise supplemental jurisdiction over the state law claims at

issue. Finally, Defendants fail to show that they have adequately pleaded any claim for relief, even if the third-party claims were not otherwise barred.

ARGUMENT

I. Defendants' Arguments That The Cayuga Nation's Tribal Sovereign Immunity Does Not Bar Their Third-Party Claims Are Without Merit

A. Defendants' Third-Party Claims Are Not Permitted Under *Ex parte Young*

The Meyer Defendants contend that their third-party claims are excepted from the Cayuga Nation's tribal sovereign immunity and may proceed against Mr. Halftown as a government official under *Ex parte Young*, 209 U.S. 123 (1908). Although *Ex parte Young* does not directly apply to tribal sovereign immunity, the Second Circuit has held "under a theory analogous to *Ex parte Young*, tribal sovereign immunity does not bar state and substantive federal law claims for prospective, injunctive relief against tribal officials in their official capacities for conduct occurring off of the reservation." *Gingras v. Think Fin., Inc.*, 922 F.3d 112, 120 (2d Cir. 2019). That theory does not apply here.

To start, Defendants do not assert any claim for prospective, injunctive relief. The Meyer Defendants have pleaded four causes of action that focus only on past wrongdoing, while the Parker Defendants have pleaded six such claims, and both groups of Defendants have exclusively sought monetary relief. Meyer Defs.' Third-Party Compl., pp. 7–10, ECF No. 64; Parker Defs.' Third-Party Compl., pp. 7–11, ECF No. 65. In addition, Defendants' claims are not for conduct occurring off the Cayuga Nation Reservation. *See* ECF Nos. 64 and 65. The Property at issue in the third-party claims indisputably rests entirely *inside* the Cayuga Nation Reservation.

Aside from failing under *Gingras* and being barred by the Nation's tribal sovereign immunity, any claim for injunctive relief against Mr. Halftown would also fail for the simple reason that there is no conduct by him to enjoin. The Cayuga Nation indisputably owns and

possesses the Property, not Mr. Halftown, and Defendants do not provide a single fact to support any claim that Mr. Halftown even once stepped foot on the Property after the Nation took ownership and possession of it—let alone that he occupies the Property today.

B. Defendants' Third-Party Claims Are Not Permitted Against Mr. Halftown in His Individual Capacity

Defendants contend that their third-party claims are asserted against Mr. Halftown in his individual capacity, not as a Cayuga Nation government official, and therefore the claims are not barred by the Nation's tribal sovereign immunity. And yet apart from swapping out the names of the parties (*e.g.* "Halftown" for "Plaintiff"), Defendants' third-party claims against Mr. Halftown are word-for-word identical to the counterclaims they have asserted against the Cayuga Nation. *Compare* ECF No. 60 (Counts II–VII) and ECF No. 65 (Counts I–VI); ECF No. 61 (Count I, IV, V, and VI) and ECF No. 64 (Count I, IV, V, and VI). It is plain that Defendants are attempting to impermissibly "circumvent tribal immunity by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity." *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 727 (9th Cir. 2002).

In sum, the *Cayuga Nation* purchased the Property from the Seneca-Cayuga Nation of Oklahoma, the *Cayuga Nation* then took possession of it, and the *Cayuga Nation* now owns and operates the Lakeside Trading store on it. Because the Cayuga Nation can only act at the behest of its lawful governing body, the five-member Cayuga Nation Council, it necessarily acted by means of the Council's governance in all matters related to the Property. No matter how framed against Mr. Halftown, the Cayuga Nation is the target of Defendants' claims, and tribal sovereign immunity applies. *Allegany Capital Enter., LLC v. Cox*, No. 19-CV-160S, 2021 U.S. Dist. LEXIS 27846, *14 (W.D.N.Y. Feb. 12, 2021).

Defendants attempt to obscure this fact with accusations of illicit motives derived from the allegation that Mr. Halftown is the officer of a Cayuga Nation-owned business (Great Swamp Enterprises) that supplies merchandise to the Cayuga Nation-owned Lakeside Trading store on the Property. It is not clear how this demonstrates any illicit motive, but Defendants contend it means that Mr. Halftown can be alleged to have acted in his individual capacity like the smoke shop owner in *Gristede's Foods, Inc. v. Unkechauge Nation*, 660 F. Supp. 2d 442 (E.D.N.Y. 2009). *Gristede's*, however, is entirely inapposite. The Unkechauge Nation did not own the smoke shop at issue in that case; Chief Wallace owned and operated it personally. *Id.* at 478. Accordingly, once the court determined that the smoke shop was not an arm of the tribe, it permitted Chief Wallace to be sued in his individual capacity as the business owner. *Id.* Here, there is no dispute that the Cayuga Nation owns the Property and the Lakeside Trading store, and that Mr. Halftown does not.

Defendants' reliance on *Maxwell v. County of San Diego*, 708 F.3d 1075, 1079–1081 (9th Cir. 2013) is equally misplaced because the tribal defendants there were sued for allegedly negligent conduct while acting as paramedics off of reservation land. The tribal government, and defendants' role in it, had nothing to do with the facts of the case. *See id*. Defendants' reliance on *Lewis v. Clark*, 581 U.S. 155, 159–160 (2017) is even further afield, as the defendant there was a limousine driver for the Mohegan Tribal Gaming Authority who caused a car accident while transporting casino patrons outside of the reservation. He was not even a member of the Mohegan tribe, much less a tribal official carrying out his role in the Mohegan nation's government. *Id.*

The Cayuga Nation's governance, and Mr. Halftown's role in it, is squarely at issue here. And under the Cayuga Nation's system of government, the only role Mr. Halftown could have in the Nation's acquisition and possession of the Property was in his capacity as a Council representative. As a result, the Cayuga Nation's tribal sovereign immunity bars Defendants' third-

party claims. *Chayoon v. Chao*, 355 F.3d 141, 143 (2d Cir. 2004); *Frazier v. Turning Stone Casino*, 254 F. Supp. 2d 295, 307 (N.D.N.Y. 2003).

II. Defendants' Third-Party Claims Should Be Stricken for Misjoinder

Rule 14(a) provides that "[a] defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty *who is or may be liable for all or part of the claim against it*." Fed. R. Civ. P. 14(a) (emphasis added). Courts have interpreted this language to mean that "[t]hird-party practice or impleader is permitted under Fed. R. Civ. P. 14 only where defendant can show that if he is found liable to the plaintiff, then the third party will be liable to it (the defendant)" and "may be utilized only when the third-party complaint necessarily depends on the outcome of the main claim against the defendant." *Index Fund, Inc. v. Hagopian*, 417 F. Supp. 738, 743–744 (S.D.N.Y. 1976); *Sidik v. Royal Sovereign Int'l, Inc.*, No. 2:17-cv-07020, 2019 U.S. Dist. LEXIS 229593, *4 (E.D.N.Y. Mar. 5, 2019).

Defendants do not even attempt to argue that their third-party claims satisfy this standard. *See* Parker Defs.' Opp'n Mem. of Law, ECF No. 80; Meyer Defs.' Opp'n Mem. of Law, ECF No. 81. Instead, without addressing this authority or providing any of their own, the Meyer Defendants simply declare that "Rule 14(a)(3) does not say the device only authorizes derivative liability for 'claim overs,' [t]he language is much broader," ECF No. 81, p. 10, while the Parker Defendants more obliquely contend that "nothing in Rule 14(a) limits third-party actions in this unusual circumstance." ECF No. 80, p. 15. If anything, Defendants' argument is not that Rule 14(a) allows claims against Mr. Halftown to be joined, but that it is unfair that Rule 14 does not allow it. *See* ECF No. 80, p. 15; ECF No. 81, p. 10. That is not a meritorious argument, but simply an expression of disagreement with the Rule's unavoidable result.

Recognizing that their third-party complaints are indeed impermissible under Rule 14(a), Defendants announce they "will seek leave to join Halftown as a Plaintiff/Counterclaim-Defendant under Rule 20 of the Federal Rules of Civil Procedure." ECF No. 80, p. 16; ECF No. 81, p. 11. Defendants' potential resort to this maneuver epitomizes that their third-party claims are nothing more than counterclaims against the Cayuga Nation, dressed up as claims against Mr. Halftown in an effort to circumvent the Nation's tribal sovereign immunity.

III. Defendants Have Not Asserted a Viable Basis for Supplemental Jurisdiction Over Their State Law Third-Party Claims

Mr. Halftown's opening papers squarely establish that supplemental jurisdiction under 28 U.S.C. § 1367 is required over all of Defendants' state law third-party claims, and that it cannot be found here because those claims do not arise from the same common nucleus of operative fact as the Nation's original federal RICO claims. *See Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 335 (2d Cir. 2006). Yet Defendants barely engage with this argument, briefly making two arguments that are inapposite.

Defendants argue that all of the third-party claims are part of the same "case or controversy" because they arise from the application of the Cayuga Nation's Business Ordinance: that is, "if the Parker Defendants are permitted to sell tobacco related products, then the Nation does not have viable RICO claims and their confiscation of the Parker Defendants' business and property was unlawful." ECF No. 80, p. 8; ECF No. 81, p. 13. But this Court already rejected the argument that the Business Ordinance has anything to do with this case. *See* Memorandum-Decision and Order, p. 12, ECF No. 49 ("Here, Defendants argue that the application of the Ordinance 'lies at the heart' of the present suit . . . . The Court disagrees[.]"); *see also id.* at p. 13 n.15 ("[T]here is no contention that the Court would be required to render a decision making any

determination regarding the Ordinance to resolve this case[.]”). Defendants’ argument fares no better the second time around.

In addition, the Parker Defendants argue that this Court should assert jurisdiction over the third-party claims even if they are not permissible under 28 U.S.C. § 1367 because “it is illogical for the Parker Defendants to file this complaint against the Nation in another jurisdiction where doing so may delay, impede, or contradict the disposition of this Court’s decision.” ECF No. 80, p. 8. Even if there were some pragmatic appeal for asserting jurisdiction over Defendants’ third-party claims (and there is not), the test remains the “same case or controversy” rule set forth in 28 U.S.C. § 1367(a)—which Mr. Halftown’s opening papers demonstrate cannot be satisfied here. *See* Third-Party Def.’s Opening Mem., pp. 8–9, ECF No. 76-1. Naked appeals to policy do not suffice.

Ultimately, the principal facts underlying the Cayuga Nation’s RICO claims, on the one hand, and Defendants’ real and personal property third-party claims, on the other hand, are categorically different. Because the Nation’s federal RICO claim did not, and could not, necessarily bring Defendants’ state law third-party claims before the Court, this Court lacks supplemental jurisdiction. *Achtman*, 464 F.3d at 335.

IV. Defendants’ Third-Party Claims Must Also Be Dismissed Because They Fail to State a Claim

Defendants’ opposition papers confirm that this Court also should dismiss all of their third-party claims for failure to state a claim. Defendants do not—and cannot—resolve the pleading inadequacies Mr. Halftown has identified. Rather, Defendants largely ignore Mr. Halftown’s

arguments, and try to cloud the issues by spending many pages discussing matters that are irrelevant to the issues at hand.[1]

First, with regard to the tortious interference claims, Mr. Halftown specified that a key element of any tortious interference claim is defendant's intentional inducement of the third-party's breach of the contract, and that there is no allegation here that the Seneca-Cayuga Nation of Oklahoma (the third-party) breached the Commercial Lease by selling the Property to the Cayuga Nation. Defendants do not address this argument, or contend that the Seneca-Cayuga Nation of Oklahoma breached the Commercial Lease in some other way.

Instead, Defendants argue that Mr. Halftown is personally bound by the Commercial Lease because, they say, it passed to him upon the sale of the Property. But the relevant question for purposes of Defendants' third-party tortious interference claim is whether Mr. Halftown induced the Seneca-Cayuga Nation of Oklahoma to breach the Commercial Lease, not whether he is presently a party to it. In any event, it is indisputable that the Cayuga Nation, not Mr. Halftown, purchased and owns the Property. The fact that Defendants conflate the two parties is further evidence that their third-party claims are a subterfuge for claims against the Cayuga Nation.

Defendants' arguments with respect to the conversion claims proceed in much the same way. Mr. Halftown identified that those causes of action were inadequately pleaded because Defendants failed to describe the specific and identifiable property allegedly converted. The Meyer Defendants simply ignore the argument. The Parker Defendants respond that "the complaint

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[1] The Meyer Defendants do not even make the effort in their opposition papers to directly address the argument that they have failed to state a claim against Mr. Halftown, saying only "[w]ith respect to the sufficiency of the pleadings contained in the Third-Party Complaint, the Meyer Third-Party Plaintiffs incorporate by reference herein their arguments respecting the sufficiency of the counterclaims, as set forth in Dkt 78." ECF No. 81, p. 5. If their arguments carry over that easily, it can only be because their third-party claims against Mr. Halftown are little more than thinly-veiled claims against the Cayuga Nation.

alleges Halftown hired private armed, security guards who took the *goods sold* by Pipekeepers and resold them in the Nation's own store Lakeside Trading." ECF No. 80, p. 12 (emphasis added). Once more, the Parker Defendants conflate Mr. Halftown and the Cayuga Nation, when it is the Nation that indisputably took possession of the Property. In addition, "goods sold" is as vague a description as one could imagine, and certainly not one that sufficiently describes the "specific and identifiable property [allegedly] converted by the defendant[.]" *Walden Terrace, Inc. v. Broadwall Mgmt. Corp.*, 213 A.D.2d 630, 631 (2d Dep't 1995).

As for Defendants' trespass claims, Mr. Halftown identified in his opening papers that Defendants provide no facts to support a claim that he even once entered the Property after the Cayuga Nation took possession, let alone that he did so outside his capacity as a Cayuga Nation official. *See* Third-Party Def.'s Opening Mem., p. 13, ECF No. 76-1. Defendants' opposition papers do not address any of this or, for that matter, make a single argument in support of their trespass claims against Mr. Halftown. *See* ECF Nos. 80 and 81. The Cayuga Nation indisputably owns and possesses the Property, and Defendants' effort to plead a trespass claim against Mr. Halftown individually fails.

Finally, with respect to the Parker Defendants' Computer Fraud and Abuse Act claim, Mr. Halftown has highlighted that it does not contain a single allegation identifying who had access to the computers, what they accessed, when they accessed, how they used the information, or even what type or number of computer devices are at issue. *See* Third-Party Def.'s Opening Mem., p. 16, ECF No. 76-1. The Parker Defendants do not dispute any of this. If anything, they just double-down on the vagueness of their claim, arguing that "[t]he Property, and all of the possessions contained on and within the property were confiscated," while conceding that "[t]he Parker

Defendants are unable to specifically pinpoint how Halftown, or any of his agents, accessed the computer[.]" ECF No. 80, pp. 14–15.

At bottom, Defendants fail to offer any plausible reading of their claims that would cure the defects Mr. Halftown has identified, and all of Defendants' third-party claims should therefore also be dismissed for failure to state a claim.

CONCLUSION

For the reasons set forth in this memorandum together with Mr. Halftown's opening memorandum, and any other reasons that may appear to the Court or be presented at any hearing on the motion, Mr. Halftown respectfully requests that his motion to dismiss Defendants' third-party claims be granted in full and Defendants' third-party complaints be dismissed with prejudice.

Dated: November 10, 2022

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