

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION

AVOYELLES WATER  
COMMISSION

CIVIL ACTION NO. 1:24-CV-01400

VERSUS

JUDGE EDWARDS

WARD 3 AVOYELLES  
WATERWORKS DISTRICT

MAGISTRATE JUDGE  
PEREZ-MONTES

---

**MEMORANDUM IN SUPPORT OF MOTION FOR REMAND**

**INTRODUCTION**

This lawsuit was instituted by a Petition for Injunctive Relief filed by the Commission seeking to enjoin Ward 3 from impeding the Commission's representatives from accessing the water main located on tribal property. Although this lawsuit is between nontribal entities and portions of the infrastructure (the 12 inch pipe) are located on tribal and non-tribal land, the contractual conduct involved directly has an impact on the Tunica-Biloxi people.

**ARGUMENT**

Remand is required for at least four separate, independently dispositive reasons. *First*, the removal statute, 28 U.S.C. § 1441 et seq., plainly does not authorize removal from tribal court. *Second*, even if Ward 3 *could* remove from tribal court, its attempted removal is time-barred. *Third*, this Court lacks jurisdiction over issues involving tribal land. And *fourth*, even if there is concurrent jurisdiction, well-established precedent requires this Court to defer to tribal court jurisdiction. Ward 3 cannot use the removal statute as an end-run around tribal jurisdiction. Given the impropriety of Ward 3's removal of this matter, the Court should, pursuant to 28 U.S.C. § 1441(c), award the Commission fees and costs incurred to remand this action to Tunica-Biloxi Tribal Court.

**a. Legal Standard**

The removal statute is strictly construed against removal and in favor of remand *Coman v. Int'l Playtex, inc.*, 713 F. Supp. 1324, 1326 (N.D. Cal 1989) (citing *Shamrock Oil Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941)). Section 1441(a) provides that “any civil action **brought in a State court** of which the district court of the United States has original jurisdiction, may be removed by the defendant or defendants” to the local U.S. District Court. 28 U.S.C. § 1441(a) (emphasis added). The Defendant must file the Notice of Removal within 30 days of being served with the Complaint. 28 U.S.C. § 1446(b)(1). A plaintiff opposing removal on a procedural basis must seek remand within 30 days of the Notice of Removal. 28 U.S.C. § 1447(c). The case “**shall** be remanded” if, at any time before final judgment, “it appears that the district court lacks subject matter jurisdiction.” *Id.* (emphasis added). In remanding a case, the district court “may require payment of just costs and any actual expenses, including attorney’s fees, incurred as a result of the removal.” *Id.*

**b. The Removal Statute does not Authorize Removal from Tribal Court**

Ward 3 cannot remove the Commission’s lawsuit against it because the removal statute, which must be strictly construed, and does not authorize removal from tribal court. The plain language of Section 1441(a) limits removal to “civil actions brought in State court.” 28 U.S.C. § 1441(a). “There is no ambiguity in the text of 28 U.S.C. § 1441: it refers specifically to state courts, and state courts only.” *Gorneau v. Love*, 915 F. Supp. 150, 153 (D. North Dakota, 1994); *see also Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1021 (9<sup>th</sup> Cir. 2016) (noting absence of “dedicated removal provisions for tribes” in Section 1441).

Multiple courts interpreting the language of Section 1441 in the context of attempted removal from tribal courts have held that such removal is improper “inasmuch as § 1441 provides

only for removal from a ‘state court’ and does not authorize removal from tribal court.” *Williams-Willis v. Carmel Financial Corp.*, 139 F.Supp.2d 773, 775 (S.D. Miss. 2001) (collecting cases and secondary sources affirming that Section 1441 does not authorize removal from tribal court); *cf. Becenti v. Vigil*, 902 F.2d 777, 780-81 (10<sup>th</sup> Cir. 1990) (“Until Congress authorizes the removal of such tribal court proceedings, the federal courts may not exercise jurisdiction over them.” (citing *Martin v. Hunter’s Lessee*, 14 U.S. 1 (1 Wheat.) 304, 349 (1816))); *see also Nevada v. Hicks*, 533 U.S. 353, 368 (2001) (foreclosing §1983 claims in tribal court based, in part, on recognition that §1441 refers only to removal from state court, and thus, allowing such claims that originate in tribal court would deprive §1983 defendants of a federal forum).

In short, the removal statute does not contemplate removal from tribal court. Thus, removal of this matter from Tunica-Biloxi Tribal Court to this Court is simply not available. *See Coman, supra*. (Section 1441 is strictly construed against removal). This Court must remand to allow the lawsuit to proceed in Tunica-Biloxi Tribal Court. *See e.g. Gorneau*, 915 F. Supp. at 153 (remanding back to tribal court following improvident removal under Section 1441).

**c. Ward 3’s Attempted Removal is Time-Barred**

Even if Ward 3 *could* remove this action from tribal court to federal court, its attempt to do so came too late. Section 1446 of the removal statute requires a defendant seeking removal to file a Notice of Removal within 30 days of being served with the initial complaint. 28 U.S.C. § 1446 (b)(1). Where an initial pleading “affirmatively reveals on its face the facts necessary for federal court jurisdiction,” the 30 day period runs from defendant’s receipt of that initial pleading. *Eminence Invs., LLP v. Bank of New York Mellon*, 24 F. Supp. 3d 986, 971 (E.D. Cal. 2014) (citing *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 690-91 (9<sup>th</sup> Cir. 2005)) (internal quotations

omitted). “Failure to remove timely waives the right to remove.” *Id.* (citing *Cantrell v. Great Republic, Inc.*, 873 F.2d 1249, 1256 (9th Cir. 1989)).

The record does not reveal the exact date that Ward 3 was served, but it is apparent that they were served because Ward 3 filed an Answer and trial on the matter was held in December of 2023. That Complaint stated all facts necessary for Ward 3’s purported removal of this action. Ward 3 filed its Notice of Removal more than 30 days after it was served with the Commission’s Complaint. Accordingly, to the extent that Ward 3 ever had any right to remove (which for the reason set forth above, it did not), Ward 3 lost that right by waiting more than 30 days to do so. On this basis alone, this Court must remand this action to the Tunica-Biloxi Tribal Court.

**d. This Court does not have jurisdiction over issues involving tribal land**

The 12 inch water pipe that supplies the Tunica-Biloxi reservation with its water, and the fenced in water main located on tribal property are at the heart of this dispute. There can thus be no credible dispute that the Tunica-Biloxi Tribal Court has personal jurisdiction over the Commission and Ward 3, and subject matter jurisdiction over this lawsuit. *See Montana v. U.S.*, 450 U.S., 450 U.S. 544, 565 (1981) (“A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements.”) (internal citations omitted); *FMC Corp. v. Shoshone-Bannock Tribes*, 942 F.3d 916, 932 (9th Cir. 2019) (test for objective consent to tribal jurisdiction is “whether under the circumstances the non-Indian defendant should have reasonably anticipated that its interactions might have triggered tribal authority.”) (internal citations omitted).

**e. Under the Tribal Exhaustion Rule, this Court Must Defer Jurisdiction to the Tribal Court**

Even if this Court had subject matter jurisdiction over this matter (it does not), well-established principles of comity and tribal exhaustion require deference to Tunica-Biloxi Tribal Court jurisdiction. Ward 3 cannot leverage the removal statute as an end-run around long-standing federal precedent requiring deference to tribal courts.

Well-established precedent thus requires this Court to defer to tribal jurisdiction under basic principles of comity and tribal sovereignty. The tribal exhaustion rule dictates that “when a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court precedence and afford it full and fair opportunity to determine the extent of its own jurisdiction over a particular claim or set of claims.” *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Housing Auth.*, 207 F.3d 21, 31 (1<sup>st</sup> Cir. 2000); *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9<sup>th</sup> Cir. 2008) (adopting tribal exhaustion rule, citing *Iowa Mut. Insurance Co. v. LaPlante*, 480 U.S. 9 (1987) and *National Farmers Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985)). The existence of parallel diversity jurisdiction does not nullify this rule; even where it has diversity jurisdiction, a federal court must defer to concurrent tribal court jurisdiction. *See Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1229 (9<sup>th</sup> Cir. 1989) (“[t]he diversity statute ... makes no reference to Indians and nothing in the legislative history suggests any intent to render inoperative the established federal policy promoting tribal self-government.”) (quoting *Iowa Mutual*, 480 U.S. at 17.)

This fundamental principle squarely applies where a tribal court proceeding is “removed” to federal court. *See e.g. Williams-Willis v. Carmel Financial Corp.*, 139 F.Supp.2d at 777-78. Although Ward 3 has challenged the Tunica-Biloxi Tribal Court’s jurisdiction, the Tribal Court has

first rights to determine its own jurisdiction under the tribal exhaustion rule. The removal statute, invoked on the basis of jurisdiction, cannot constitute an end-run around this fundamental principle. Even if this court disagrees that the Commission's case is subject to remand for any of the reasons discussed above, well-established precedent requiring comity in instances of parallel jurisdiction amongst a tribal and federal court should compel this Court to remand.

**f. The Court should Award the Commission its Fees Under 1447(c)**

The Commission's bases for remand of this action present no issues of first impression, or even any difficult or close questions of law. Ward 3's removal was entirely improvident, running contrary to (1) the plain language of the federal removal statute, and (2) fundamental principles of comity that require federal courts to defer to tribal jurisdiction where, as here, there is no credible debate that the Tribal Court has jurisdiction over the case. Under any rational assessment, Ward 3 "lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Corp.*, 546 U.S. 132, 141 (2005). The Commission thus asks the Court, in its discretion, to award the Commission attorney's fees and costs incurred in bringing this Motion for Remand pursuant to Section 1447(c) of the removal statute. 28 U.S.C. § 1447(c). Should the Court grant the Commission's request for fees, the Commission will submit supplemental briefing in support of this fee request.

**CONCLUSION**

For each or any of the foregoing reasons, this Court should reject Ward 3's improvident attempt to remove this case from Tunica-Biloxi Tribal Court and remand to that body for proper adjudication. Any contrary outcome would endorse Ward 3's use of the removal statute as an end-run around. Such a result is wholly unsupported by the plain text of the removal statute and entirely contrary to fundamental principles of comity between federal and tribal courts.

Respectfully submitted,

/s/ Jonathan T. Gaspard

---

Jonathan T. Gaspard La. Bar No. 27474  
P.O. BOX 546  
MARKSVILLE, LA 71351  
318-240-7329

Attorney for Plaintiff