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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 THE COEUR D'ALENE TRIBE,)
)
 Defendant)

Case No. 2:22-cv-00089-DCN

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S
SUPPLEMENTAL
MEMORANDUM AND
MOTION TO DISMISS**

Plaintiff Stimson Lumber Company (“Stimson”) respectfully submits its Response to Defendant Coeur d’Alene Tribe’s (“the Tribe”) Supplemental Memorandum and Motion to Dismiss. By this reference, Stimson incorporates all arguments, briefs, declarations and exhibits it previously submitted to this Court.

INTRODUCTION

The Tribe moved to dismiss this action for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. The Tribe claims there is no diversity of citizenship between the parties because the Tribe is not a citizen of any state for the purpose of diversity jurisdiction. In its motion, the Tribe first attacks the Amended Complaint on its face. This effort fails because, as discussed below, Stimson alleged facts that, if true, establish that the Tribe is a citizen of Idaho for the purpose of diversity jurisdiction. Next, the Tribe makes a factual attack by submitting witness testimony and an exhibit that purport to contradict Stimson’s allegations and to explain certain documents previously submitted by Stimson. (*See* Supplemental Declaration of Dan McFall, Ex. 2 (“McFall Decl.”)). By proffering evidence in support of its motion to dismiss, the Tribe converts its motion to dismiss into a motion for summary judgment. The record currently before the Court does not satisfy the standard under Rule 56, as discussed below. Indeed, the Tribe’s effort to contradict Stimson’s allegations only underscores the genuine issues of material fact regarding the Tribe’s corporate status. Accordingly, this Court should deny the Tribe’s motion or, in the alternative, order limited discovery to permit Stimson to collect evidence, which the Tribe exclusively controls, regarding the organization and relationship between the tribal government and its business development corporation.

In short, the Court need not look beyond the Amended Complaint and the documents submitted therewith to find that jurisdiction is proper here. However, if the Court considers extraneous material offered by the Tribe for purposes of dismissing Stimson’s well-pleaded

complaint, the Court should allow limited discovery so that Stimson has the same opportunity to present facts demonstrating that diversity jurisdiction exists.

LEGAL STANDARDS

For the purpose of diversity jurisdiction, a tribal corporation is a citizen of the state in which it has its principal place of business. *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 723 (9th Cir. 2008).

Generally, “when ‘matters outside the pleading are presented to and not excluded by the court,’ the 12(b)(6) motion converts into a motion for summary judgment under Rule 56.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (quoting Fed. R. Civ. P. 12(d)). Under such circumstances, “both parties must have the opportunity to present all the material that is pertinent to the motion.” *Id.* (internal quotation marks omitted). Typically, this rule is narrowly construed and exceptions are only made for matters of public record or documents incorporated by reference in the complaint. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (overruled on other grounds) (discussing the two exceptions to the general rule that consideration of extraneous materials converts a motion to dismiss to a motion for summary judgment); *see also Khoja*, 899 F.3d at 998-99 (“Yet the unscrupulous use of extrinsic documents to resolve competing theories against the complaint risks premature dismissals of plausible claims that may turn out to be valid after discovery. . . . [i]f defendants are permitted to present their own version of the facts at the pleading stage—and district courts accept those facts as uncontroverted and true—it becomes near impossible for even the most aggrieved plaintiff to demonstrate a sufficiently plausible claim for relief.”) (internal quotation marks omitted).

Similarly, a court “may look beyond the complaint” to determine if it has subject matter jurisdiction. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). The Court can consider extraneous documents and materials if the defendant launches a factual attack on the complaint by contesting “the *truth* of the plaintiff’s factual allegations” with respect to jurisdiction.

NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 614 (9th Cir. 2016) (emphasis in original). “When the defendant raises a factual attack, the plaintiff must support [its] jurisdictional allegations with competent proof under the same evidentiary standard that governs in the summary judgment context.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (internal citation and quotation marks omitted). In that case, limited discovery is proper—just as parties are entitled to discovery before a motion for summary judgment is decided—in order for a plaintiff to meet this burden. *See Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n. 24 (9th Cir. 1977) (“Discovery, however, should be granted where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary.”). “Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine dispute as to any material fact.” *Zetwick v. Cty. of Yolo*, 850 F.3d 436, 440 (9th Cir. 2017).

ARGUMENT

I. The Tribe’s Facial Attack Against Stimson’s Amended Complaint Fails.

In its Amended Complaint, Stimson properly alleges facts sufficient to establish diversity jurisdiction under 28 U.S.C. § 1332. Stimson alleges: (1) that “there is complete diversity of citizenship between the parties,” (2) that “Stimson is an Oregon corporation with its principal place of business in Oregon,” (3) that the “Tribe is incorporated with its principal place of business in Idaho,” and that the “amount in controversy exceeds \$75,000, exclusive of interest and costs.” (Amended Complaint, ¶¶ 2, 3, 4.) Stimson’s allegations are complete.

But Stimson offers more. The Agreement is attached to the Amended Complaint, and therefore is treated as part of the Complaint. At Section 19.4 of the Agreement, entitled “**Representations and Warranties of Lessor**,” the Tribe promised:

[The Tribe] exercises corporate powers over [the Plummer Mill]. [The Tribe] has heretofore made available to [Stimson’s predecessor] complete and correct

copies of their articles of incorporation and bylaws (or other comparable charter documents), as currently in effect.

(McFall Decl., Ex. 1, Section 19.1.1.) The Agreement is signed by Chairman Ernest L. Stensgar. This contractual promise by the Tribe, if true, is sufficient to establish diversity jurisdiction. *See Cook*, 548 F.3d at 723. As noted above, if the Tribe in fact has engaged with the Mill through a corporation, as it represented, then it is a citizen of Idaho, and this Court has jurisdiction.

Accordingly, Stimson's allegations, as supported by the attached Agreement, not only satisfy the requirements for diversity jurisdiction, they also contain a promise and assurance from the Tribal Chairman that the Tribe is incorporated. Further, the Chairman's promise and assurance were buoyed by the presentation of legal documents guaranteeing their veracity.

Stimson has satisfied its pleading burden, and the Tribe's facial attack on the Amended Complaint fails.

II. The Tribe is Not Entitled to Summary Judgment.

No doubt understanding that its facial attack lacks merit, the Tribe also asserts a factual attack against Stimson's allegations. The Tribe now provides a new argument and evidence purporting to show that its contractual promises were false, and that any supporting documents it provided were fraudulent. Simply put, the Tribe now argues that it lied when it signed the Agreement, that it really was not engaging with the Mill through a corporation, and that this Court therefore lacks jurisdiction.

By doing so (assuming that the Court decides to consider this new evidence), as the authorities cited above provide, the Tribe converts its motion to dismiss into a motion for summary judgment. But the Tribe's motion does not satisfy the standard for granting summary judgment—genuine issues of material fact exist regarding the Tribe's corporate status, including issues regarding the legal organization of the tribal government, the legal organization of the tribal development corporation, and the relationship between them.

On the one hand, the record contains a representation and warranty from the Tribe, which appears over the signature of its Chairman, that the Tribe is acting in corporate form. The record also contains assurances from the Tribe, again over the Chairman's signature, that the Tribe's Articles of Incorporation and Bylaws (or similar documents) were presented to Stimson's predecessor to verify the Tribe's corporate status. (*Id.*) The record also contains copies of Tribal Resolutions and other documents evidencing the tribal development corporation's involvement in the Agreement. (McFall Decl., Exs. 1, 2.) On the other hand, the record contains a declaration from a tribal employee who assumed his current position the year after the Agreement was executed, which directly contradicts the Tribe's and Chairman's assurances described above. (Declaration of Eric Van Orden, ¶ 2.) These contradictory statements cannot both be true. Accordingly, the record contains evidence of genuine issues of material fact regarding the Tribe's incorporation that must be resolved before summary judgment could be granted.

III. This Court Should Deny the Motion or Permit Limited Discovery.

A. The Court Should Deny the Motion

In its revised motion, the Tribe now asks the Court, in effect, to accept at face value that it is now telling the truth when it says that it lied before. This is a remarkable argument. It is black letter law that a party cannot even create a material issue of fact at summary judgment by contradicting its prior sworn statements. But here, the Tribe is trying to go a step further. Having previously promised in the Agreement that it was acting as a corporation, the Tribe now tries to not only declare that its signed promise was false (thereby contradicting its prior statement and creating a factual dispute), but also to have the Court resolve that dispute in the Tribe's favor immediately, without any further discussion or discovery.

This would be grossly unfair to Stimson, which has done nothing more than rely on the signed promises of its contracting partner. The Court would be well within its powers to deny

this motion entirely, given that the Agreement and resolutions in the record are sufficient on their face to establish jurisdiction. This would not unduly prejudice the Tribe, which, after all, signed a contract in which it promised (1) that it was acting as a corporation and (2) that it would not contest federal court jurisdiction. *See, e.g.,* McFall Decl., Ex. 1, Section 19.3.2: “Each Party hereby irrevocably waives any objection which it may have at any time to the venue of any Proceedings brought in the United States District Court for the District of Idaho, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal, whether federal, state or tribal.”

If, after ordinary discovery, the Tribe continued to believe that the evidence is sufficient to show that its contractual promises, supporting documents and resolutions were false, then it could move again for summary judgment, since jurisdictional motions are never waived.

B. At a minimum, the Court Should Allow Limited Discovery

In the alternative, the Court should allow Stimson to conduct discovery on the issues directly pertaining to this jurisdictional dispute. The Tribe has introduced evidence seeking to create a factual dispute between its signed statements now and its signed representations and promises in the Agreement. As noted above, by introducing “matters outside the pleading” into this Motion, the Tribe has converted it “into a Motion for summary judgment under Rule 56.” *Khoja*, 899 F.3d at 998. Stimson is entitled to limited discovery to allow it to assess and respond to the Tribe’s factual arguments. *See Wells Fargo*, 556 F.2d at 430 n. 24.

This would not need to be an onerous or lengthy process. To avoid prejudice, it would only be necessary for Stimson to take discovery related to this jurisdictional dispute. Once Stimson had taken this discovery, it could respond to the Tribe’s factual disputes under the summary judgment standard. Discovery and proceedings on the merits of the case would not be

necessary. But neither Stimson nor the Court can properly evaluate the question whether the Tribe was telling the truth then, or whether the Tribe is telling the truth now, without some discovery.

In order to properly address this jurisdictional question, the Court should grant Stimson the opportunity to take written discovery and depositions on issues related to:

- The Tribe's statements regarding its corporate structure in the Agreements and Resolutions;
- The corporate documents that the Tribe provided in connection with the Agreement;
- The role, if any, of the tribal development corporation at the Mill; and
- Changes, if any, in the Tribe's corporate structure during the term of the Agreement.

The parties could work together to ensure that discovery was limited to subjects relevant to this jurisdictional dispute, with the Court resolving any disputes.

This discovery is particularly important because the Tribe appears to be the only source for most of the relevant documents. (Declaration of Darian Stanford in Support of Plaintiff's Response to Defendant's Supplemental Memorandum and Motion to Dismiss at ¶ 4.) The law firm that represented the original lessee in the negotiation of the Agreement, and which would presumably have received and reviewed the corporate documents that the Tribe provided, has destroyed all documents related to the negotiation. (*Id.* at ¶ 3). Accordingly, without discovery from the Tribe, Stimson (and the Court) will have no ability to meaningfully evaluate this jurisdictional argument.

Respectfully, it would be unfair and inappropriate for the Court to simply accept the Tribe's jurisdictional arguments and evidence at face value. After all, the Tribe's argument is that this Court lacks jurisdiction because the Tribe lied in the Agreement and supporting documentation. We hope and trust that the Tribe did not deliberately deceive its business partner when it entered into this Agreement, and that this present argument is simply an attempt at clever

lawyering. But in any case, it is impossible for Stimson or the Court to evaluate the Tribe's argument – which, again, boils down to “believe us now when we tell you we were lying before”– without some reasonable discovery.

IV. Conclusion.

Plaintiff Stimson Lumber Co. respectfully requests that this Court deny Defendant's Motion to Dismiss or, in the alternative treat it as a Motion for Summary Judgment under F.R.C.P. 56 and allow Plaintiff limited discovery to respond to the Motion.

DATED: April 18, 2022

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