Southern Natural Resources, LLC v. Nations Energy Solutions, Inc et al

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

SOUTHERN NATURAL RESOURCES, LLC,

Plaintiff, v. NATIONS ENERGY SOLUTIONS, INC., BERGSTROM RENEWABLES, LLC, ERIC BERGSTROM, ROBERT BERGSTROM, and DOES 1-20, INCLUSIVE,

Defendants.

Case No.: 20-CV-2144 TWR (AGS)

ORDER DENYING MOTION TO DISMISS (ECF No. 6)

Defendant Nations Energy Solutions, Inc. ("Nations Energy") has moved to dismiss or stay this case due to a related state proceeding in Missouri. (ECF No. 6.) For the reasons set forth below, the Court DENIES the motion.

BACKGROUND This case arises out of a contract for the development of windfarms. Plaintiff Southern Natural Resources, LLC ("Southe rn Natural") is a Delaware limited liability company. (First Amended Complaint, "FAC " (E CF No. 14) ¶ 3.) Defendant Nations Energy is an Oklahoma corporation, and Defendant Bergstrom Renewables, LLC ("Bergstrom ") is a Florida corporation. (Id. ¶¶ 4– 5.) In 2013, the three parties entered

into a contract known as the Asset Purchase Agreement (" the Agreement") to build windfarms in certain states. 1

(Id. ¶ 11.) Under the Agreement, Nations Energy granted Southern Natural the exclusive right to develop windfarm projects in certain parts of Alabama, Florida, Iowa, Mississippi, North Carolina, South Carolina, and Texas. (Id. ¶ 13.) The Agreement contained information such as the schedules of the windfarm projects and details of Southern Natural's assets, including "power purchase agreements, wind reports, and environmental reports." (Id.) Under the Agreement, Nations Energy was prohibited from developing any windfarms within a specific radius of Southern Natural's projects, including those in Iowa and Mississip pi. (Id. ¶ 14.) And subject to certain exceptions, the Agreement barred Nations Energy from soliciting proposals, negotiating contracts, or sharing confidential information related to the development of Southern Natural's projects. (Id.) Both parties

had the power to end the Agreement only if the terminating party had not breached any of its representations, warranties, or covenants in the contract. (Id. ¶ 17.)

This Agreement now lies at the center of litigation. In August 2020, seven years after the parties first entered into the Agreement, Nations Energy sent a letter to Southern Natural terminating the contract. (Id. ¶ 16.) In the letter, Nations Energy stated that the Agreement had actually been terminated in 2018, two years before the date of the letter. (Id.) Southern Natural had allegedly never made any payments as required under the Agreement, and it had failed to develop any of the windfarm projects, as promised. (Id. ¶ 22.) Further, Nations Energy stated that in 2018, the two parties had entered into a separate contract, known as the "NES Data Contract," which was allegedly formed at a

1 Southern Natural also entered into a separate agreement with Bergstrom and the individual Defendants, Robert and Eric Bergstrom (the "Co nsulting Agreement"). (FAC ¶ 2.) Southern Natural agreed to pay "hundreds of thousands of dollars" in return for Bergstrom's h elp in developing windfarms. (Id.) Further, Bergstrom promised to keep secret Southern Natural's c onfidential information and pledged not to develop any windfarms in Southern Natural's ex clusive territory. (Id. ¶ 20.) But things did not go as planned. Southern Natural alleges that Bergstrom and the individual defendants broke this promise and has sued them for breach of the Consulting Agreement. Bergstrom has filed a separate motion to dismiss that is set for a hearing on June 9, 2021. (ECF No. 21.)

bar in New Orleans between Nations Energy's in- house counsel and a corporate officer of Southern Natural that effectively terminated the original Agreement. (Id. ¶ 24.) Later memorialized through an exchange of emails, the NES Data Contract related to Southern Natural's attempt to build a wind farm in Missouri known as the "High Prairie Wind Farm." (Id. ¶ 23– 24; ECF No. 6 at 6.) Under this new agreement, Southern Natural promised to pay Nations Energy $9 million in exchange for Nations Energy's wind, environmental, and project data. (Id.) In short, the NES Data Contract provided new terms for the parties' working relationship.

But this letter did not go over well with Southern Natural. First, Southern Natural argues that Nations Energy did not have the power to terminate the Agreement because it had previously breached the Agreement's terms. 2

(Id. ¶ 22.) In particular, Nations Energy had developed windfarms in territories that fall within Southern Natural's exclusive territory in Iowa and Mississippi. (Id. ¶ 18.) Second, in pursuing those projects, Nations Energy allegedly used Southern Natural's confidential trade secrets, including its investment grade wind resource plan and technical windfarm and environmental data. (Id. ¶ 21.) And with respect to the Iowa windfarm known as the "Salt Cr eek Project," Southern Natural suspects that Nations Energy negotiated contracts and engaged in solicitation to raise local support, all of which violate the Agreement's terms. (Id. ¶¶ 18– 19.) Finally, Southern Natural argues that the NES

Data Contract is not an enforceable contract and thus has no power to terminate the Agreement. (Id. ¶ 24.)

In October 2020, two months after sending the letter, Nations Energy sued Southern Natural and its affiliates in Missouri state court. 3

(See ECF No. 6, Ex. 1.)

2 Southern Natural also argues that Nations Energy' s reason for ending the Agreement—t he failure to pay or build windfarms—does not justify termination under the Agreement' s terms. 3 The Court takes judicial notice of the complaint filed in Missouri state court under Fed. R. Evid. 201. See Harris v. Cty. of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012) (stating that under Fed. R. Evid. 201, the court may take judicial notice of " undisputed matters of public record, including documents on file in federal or state courts.") (internal citation omitted).

Nations Energy alleged that Southern Natural had breached the NES Data Contract and asserted claims for breach of contract, promissory estoppel, quantum meruit, and unjust enrichment. (See ECF No. 6, Ex. 1, ¶ 9.) Nations Energy claimed that Southern Natural failed to pay the $9 million as promised for using Nations Energy's wind, environmental, and project data to bid and ultimately build the High Prairie Wind Farm in Missouri. (Id. ¶ 23; ECF No. 6 at 6.) Southern Natural has moved to dismiss for improper venue, and that motion is currently pending before the Missouri state court. 4

(ECF No. 10, Ex. A.) But that is not all. Three weeks after learning about the Missouri state action, Southern Natural filed a lawsuit of its own here, asserting six causes of action. (FAC ¶¶ 28– 53; ECF No. 6 at 7.) Southern Natural asserts the following claims against Nations Energy: (1) the misappropriation of trade secrets under the Defend Trade Secrets Act, 18 U.S.C. § 1836, (2) breach of contract under the Agreement, (3) quantum meruit, (4) unjust enrichment, and (5) declaratory relief to establish, among other things, that the parties had not terminated the Agreement. (Id. ¶¶ 28– 36, 41– 53.) Southern Natural has also asserted a separate claim against the Bergstrom Defendants. (Id. ¶ 37– 40.)

In response, Nations Energy has moved to dismiss or stay this case in light of the Missouri state proceeding under the Wilton/Brillhart abstention doctrine or the Colorado River doctrine. (See generally ECF No. 6.) Southern Natural opposes. (ECF No. 10.) For the reasons set forth below, the Court DENIES Nations Energy's motion .

LEGAL STANDARD Federal Rule of Civil Procedure 12(b)(1) allows the dismissal of a case for lack of subject matter jurisdiction. "Rule 12(b)(1) jurisdictional attacks can be either facial or factual." White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). Facial attacks accept the "the truth of the plaintiff's allegations" but assert that they are "insufficient on their face to invoke federal jurisdiction." Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014)

4 The Court takes judicial notice of the motion to dismiss under Fed. R. Evid. 201 as an " undisputed matter[] of public record … on file in federal or state court[]." Harris v. Cty. of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012).

(internal quotation marks and citation omitted). The court reviews facial attacks as it would for a Rule 12(b)(6) motion to dismiss: by "[a]ccepting the plaintiff's allegations as true" and determining whether " the allegations are sufficient as a legal matter to invoke the court's jurisdiction." Id.

Factual attacks, by contrast, " contest[] the truth of the plaintiff' s factual allegations, usually by introducing evidence outside the pleadings." Id. Further, under factual attacks, " a court may look beyond the complaint to matters of public record without having to convert the motion into one for summary judgment." White, 227 F.3d at 1242 (citation omitted). The court " need not presume the truthfulness of the plaintiffs' allegations." Id.

ANALYSIS Nations Energy moves to dismiss or stay this case under Wilton/Brillhart or the Colorado River doctrine. Nations Energy argues that Wilton/Brillhart applies because the declaratory relief claim asserted here overlaps with the claims before the Missouri state court. (ECF No. 6 at 10– 13.) Alternatively, Nations Energy argues that this Court should stay this case under the Colorado River doctrine because, on balance, the relevant factors weigh in favor of a stay. Neither argument is convincing.

A. Wilton/Brillhart

The Wilton/Brillhart doctrine provides broad discretion to district courts to abstain as long as it "fu rthers the Declaratory Judgment Act's purpose of enhancing "judicial economy and cooperative federalism." R.R. St. & Co. Inc. v. Transp. Ins. Co., 656 F.3d 966, 975 (9th Cir. 2011) (internal quotation marks and citation omitted). The Declaratory Judgment Act states that "[i]n a case of actual controversy within its jurisdiction … any court of the United States … may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a) (emphasis added). Because of the " permissive nature of the Declaratory Judgment Act," the distr ict court has discretion to "d ismiss a federal declaratory judgment action" when a pending state court proceeding can better decide the issues at hand. R.R. St. & Co. Inc., 656 F.3d at

975. In exercising its discretion, the court considers three factors set forth in Brillhart v. Excess Insurance Co. of America, 316 U.S. 491, 62 S.Ct. 1173, 86 L.Ed. 1620 (1942): (1) "avoiding needless determination of state law issues"; (2) "discou raging forum shopping"; and (3) "avoi ding duplicative litigation." Id. (internal quotation marks omitted).

But "[c] laims that exist independent of the request for a declaration are not subject to the Declaratory Judgment Act' s discretionary jurisdictional rule." Snodgrass v. Provident Life & Acc. Ins. Co., 147 F.3d 1163, 1167 (9th Cir. 1998). After all, [r]emanding only the declaratory component of

such an action will frequently produce piecemeal litigation." Id. Thus, the court "should not, as a general rule, remand or decline to entertain the claim for declaratory relief" when it is joined by other independent claims. Id. (emphasis added). "A claim is independent if it would continue to exist if the request for a declaration simply dropped from the case." Scotts Co. LLC v. Seeds, Inc., 688 F.3d 1154, 1158 (9th Cir. 2012) (internal quotation marks and citation omitted).

Here, Wilton/Brillhart does not apply. In addition to seeking declaratory relief, Southern Natural has asserted a separate, independent claim for the misappropriation of trade secrets, which would remain even " if the request for a declaration simply dropped from the case." Scotts Co. LLC, 688 F.3d at 1158 (internal quotation marks and citation omitted). Further, Southern Natural has also sued Bergstrom and the individual defendants, who are not parties to the Missouri action. 5

(FAC ¶¶ 37– 40.) Nations Energy provides no convincing response, as it merely emphasizes the overlap caused by the declaratory relief claim here and does not address the other, independent causes of action currently before the Court. (See ECF No. 22 at 2– 4.) This case seeks more than mere declaratory relief, and as a result, the Wilton/Brillhart abstention doctrine does not

5 Because Bergstrom was in bankruptcy proceedings when this case started, an automatic stay prevented Southern Natural from pursuing its claims against Bergstrom. Now that the stay has been lifted (see ECF No. 8), Southern Natural faces no impediments in pursuing all its claims.

apply. See Travelers Prop. Cas. Co. of Am. v. Mountain Movers Eng'g Co., Inc., No. 16- CV-02127-H (WVG), 2016 WL 6472606, at *4 (S.D. Cal. Oct. 31, 2016) (declining to grant abstention because the plaintiff's c omplaint contained causes of action that were independent of the declaratory relief claims).

B. Colorado River Doctrine

The Colorado River doctrine does not apply here, either. "[W] here there are mixed declaratory relief claims and independent claims," as is the c ase here, "the Cou rt must analyze whether it may dismiss or stay the claims under the jurisdictional doctrine set forth in Colorado River." United Specialty Ins. Co. v. Bani Auto Grp., Inc., No. 18-CV- 01649-BLF, 2018 WL 5291992, at *4 (N.D. Cal. Oct. 23, 2018) (citing Scotts Co. LLC v. Seeds, Inc., 688 F.3d 1154, 1159 (9th Cir. 2012)). Due to the " virtually unflagging obligation of the federal courts to exercise the jurisdiction given them," Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 96 S. Ct. 1236, 1246, 47 L. Ed. 2d 483 (1976), a stay under Colorado River is appropriate only under "e xceedingly rare" circumstances. Smit h v. Cent. Ariz. Water Conservation Dist., 418 F.3d 1028, 1033 (9th Cir. 2005). For the Colorado River doctrine to apply, "exact paralle lism ... is not required," though " substantial similarity of claims is necessary before abstention is available." Seneca Ins. Co., Inc. v. Strange Land, Inc., 862 F.3d 835, 845 (9th Cir. 2017) (internal quotation marks and citation omitted). The Ninth Circuit has "repeatedly emphasized that a Colorado River stay is inappropriate when the state court proceedings will not

resolve the entire case before the federal court." United States v. State Water Res. Control Bd., 988 F.3d 1194, 1204 (9th Cir. 2021).

The court considers eight factors in determining whether the Colorado River doctrine applies:

" (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum

shopping; and (8) whether the state court proceedings will resolve all issues before the federal court." R .R. St. & Co. Inc. v. Transp. Ins. Co., 656 F.3d 966, 978– 79 (9th Cir. 2011) (citation omitted). " These factors are not a mechanical checklist," a nd "some may not have any applicability to a case." Seneca In s. Co., Inc., 862 F.3d at 842 (internal quotation marks and citation omitted).

The threshold question is whether the state and federal actions are " substantially similar." S ee Seneca Ins. Co., Inc., 862 F.3d at 845 ("[S] ufficiently similar claims are a necessary precondition to Colorado River abstention.") . Here, they are not. To begin, and like the discussion above, this case involves claims that the Missouri state proceeding does not entail: the misappropriation of trade secrets and the independent claims against the Bergstrom defendants. And according to the Ninth Circuit, "[t]here is a strong presumption that the presence of an additional claim in the federal suit means that Colorado River is inapplicable." United States v. State Water Res. Control Bd., 988 F.3d 1194, 1206 (9th Cir. 2021). Apart from the request for declaratory relief, the two cases involve different claims and are therefore not substantially similar. As a result, the Colorado River doctrine does not apply.

To be sure, the Court recognizes the potential difficulties in proceeding with this case due to some overlap of issues with the Missouri state proceeding. But as noted above, the Ninth Circuit has repeatedly stressed that a "Colo rado River stay is inappropriate when the state court proceedings will not resolve the entire case before the federal court." See United States v. State Water Res. Control Bd., 988 F.3d 1194, 1204 (9th Cir. 2021). Plus, given that even partial Colorado River stays are generally impermissible, see id. at 1205, the fact that the Missouri state court might adjudicate some of the claims raised here is " not reason enough to stay those particular claims in federal court." Id. at 1208. Despite the potential inconveniences of moving forward with this case, the Court DENIES Nations Energy's moti on to stay or dismiss under the Colorado River doctrine. / / /

CONCLUSION Because this case involves claims that are different and independent from the ones asserted in the Missouri state proceeding, the Court DENIES Nations Energy' s motion to dismiss or stay under Wilton/Brillhart and Colorado River.

IT IS SO ORDERED.

Dated: May 6, 2021