UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **ED CV 14-00007 DMG (DTBx)** Date June 2, 2015

Title ***Agua Caliente Band of Cahuilla Indians v. Riverside County, et al.*** Page 1 of 4

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS—ORDER GRANTING MOTIONFOR PARTIAL VOLUNTARY DISMISSAL [99]

On April 8, 2015, Agua Caliente Band of Cahuilla Indians ("Tribe") filed a motion for partial voluntary dismissal of its claims as to Defendant-Intervenor Desert Water Agency's ("DWA") ad valorem tax, groundwater replenishment fee, and water service charge pursuant to Federal Rule of Civil Procedure 41(a)(2). ("MVD") [Doc. # 99.] On May 15, 2015, DWA filed an opposition ("Opp.") [Doc. # 104.] On May 22, 2015, the Tribe filed a reply ("Reply"). [Doc. # 105.]

I.
LEGAL STANDARD

Federal Rule of Civil Procedure 41 governs voluntary dismissal of actions. Under Rule 41(a)(2), an action may be dismissed at the plaintiff's request by court order on terms that the court considers proper. Fed. R. Civ. P. 41(a)(2).[1] Unless the order states otherwise, a dismissal under this provision is without prejudice. *Id.* "Where the request is to dismiss without prejudice, a District Court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result." *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1059 n. 6 (9th Cir. 2011) (internal citations, quotation marks, and brackets omitted). "[T]he decision to grant a voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the district court." *Sams v. Beech Aircraft Corp.*, 625 F.2d 273, 277 (9th Cir. 1980).

[1] The Tribe must proceed under Rule 41(a)(2) because DWA has filed an Answer in Intervention. [Doc. ## 16, 17.]

II.
DISCUSSION

DWA asserts that it will suffer legal prejudice in that (1) it will be unable to fully protect its right to apply its taxes and charges on non-Indian Lessees on the Tribe's reservation; (2) it has extensively participated in litigation in this case concerning the issue of federal preemption and its arguments; (3) adjudication of its claims in a related appellate proceeding addressing the same issues raised here will be delayed. Opp. at 1.

The Ninth Circuit has defined "legal prejudice" as "prejudice to some legal interest, some legal claim, some legal argument." *Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001) (internal citation omitted). Legal prejudice does not result merely because a defendant is required to resolve the action in a different forum, the dispute remains unresolved, or the plaintiff gains a tactical advantage. *See WPP Luxembourg*, 263 F.3d at 1059 n. 6; *Smith*, 263 F.3d at 976 (internal citation omitted). Rather, "[p]lain legal prejudice may be shown where actual legal rights are threatened or where monetary or other burdens appear to be extreme or unreasonable." *Watson v. Clark*, 716 F. Supp. 1354, 1356 (D. Nev. 1989), *aff'd*, 909 F.2d 1490 (9th Cir. 1990).

The litigation has not advanced to such a late stage that voluntary dismissal would be unreasonable or unfair on the basis of waste of time or expense. *See Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996) ("We have explicitly stated that the expense incurred in defending against a lawsuit does not amount to legal prejudice."). While DWA has filed a motion for judgment on the pleadings jointly with the County of Riverside, that motion expressly excluded the claims at issue here, which are exclusively against DWA. *See* Motion for Judgment on the Pleadings as to Dismiss the Action Against the County of Riverside ("MJP") at 1 ("This motion seeks dismissal only of the Tribe's action against Riverside County, not the Tribe's action against DWA."). [Doc. # 42.] No summary judgment motions have been filed, and there is no indication that the Tribe is forum-shopping rather than simply abandoning these claims. *See Kern Oil & Ref. Co. v. Tenneco Oil Co.*, 792 F.2d 1380, 1389 (9th Cir. 1986) (denial of voluntary dismissal upheld where plaintiff did not request dismissal until after the granting of summary judgment and other circumstances suggested forum shopping).

The fact that adjudication of claims in a related appellate proceeding will be delayed is also not sufficient to establish legal prejudice. "[P]lain legal prejudice does not result merely because the defendant will be inconvenienced by having to defend in another forum or where a plaintiff would gain a tactical advantage by that dismissal." *Smith*, 263 F.3d at 976 (internal citation omitted). Dismissal of the claims in this action does not preclude DWA from levying its existing taxes and fees, asserting its legal rights in any future proceeding, or participating in the resolution of the remaining claims in this action to the extent they affect DWA's interests. The fact that another similar dispute may remain temporarily unresolved is not sufficient to give rise

to a finding of legal prejudice, particularly where the Tribe has explicitly disclaimed any intent to challenge the ad valorem tax, groundwater replenishment fee, and water service charge in this action. Given the Tribe's representations to the Court, it would be barred by judicial estoppel from asserting otherwise.

In assessing prejudice to an actual legal right, courts have considered whether a dismissal would result in the loss of a federal forum, the right to a jury trial, or a statute of limitations defense. *See Westlands*, 100 F.3d at 97. The Ninth Circuit has found that legal prejudice may exist where dismissal of a party would have rendered the remaining parties unable to conduct sufficient discovery to defend themselves against complex fraud charges. *Id*. (citing *Hyde & Drath v. Baker*, 24 F.3d 1162, 1169 (9th Cir. 1994)). DWA has not established any similar type of threat to its legal interests, claims, or arguments.

DWA asserts that, because the Tribe makes similar arguments in support of its motion for voluntary dismissal to those previously rejected by the Court in the context of DWA's motion to intervene, the Tribe is merely trying to avoid the consequences of that ruling by attempting to dismiss these claims.[2] Even if that were the case, it does not follow that dismissal of these claims would result in legal prejudice to DWA. This is a complex case with a number of novel legal questions, and it is reasonable for claims and legal theories to develop as the case proceeds. The Tribe is under no obligation to pursue claims which it does not wish to pursue so long as the dismissal of the claims will not result in legal prejudice to DWA. The Court finds that it will not.

[2] In its April 21, 2014 order granting DWA's motion to intervene, the Court held that the Tribe's claim of federal preemption, if upheld, would impair DWA's ability to impose its charges, including its groundwater replenishment assessment and water service charge, because the Bureau of Indian Affairs ("BIA") regulation that underpins the Tribe's preemption claim applies to "any fee, tax, assessment, levy, or other charge" imposed by a state or local agency." [Doc. # 34.] DWA asserts that, in requesting this voluntary dismissal, the Tribe is attempting to preclude this Court from determining whether DWA's charges are preempted by federal law, even though this Court has already granted intervention so that DWA would be able to litigate this issue. Opp. at 2-3.

The Tribe counters that its legal theory in this case is that the PIT assessed and collected by Riverside County is unlawful under the balancing of interests test prescribed by the United States Supreme Court in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) or 25 U.SC. § 465, or both. The Tribe does not contend, and explicitly disclaims any contention, that the PIT is expressly preempted by 25 C.F.R. § 162.017, the regulation which contains the language regarding "any fee, tax, assessment, levy or other charge. . . ." The Tribe asserts that, because the *Bracker* analysis is extremely fact-specific and substantially different for every tax and charge, any ruling by the Court on the Tribe's challenge to the PIT will not necessarily determine the validity of the additional DWA tax and charges that the Tribe did not challenge in its Complaint and now seeks to voluntarily dismiss. MVD at 5. The Tribe contends that, at worst, DWA would face the threat of a second lawsuit challenging this tax and these charges, but the litigation would involve separate, discrete factual inquiry and application of the *Bracker* balancing test that would not be controlled by the outcome of this case. "Uncertainty because a dispute remains unresolved is not legal prejudice." *Westlands*, 100 F. 3d at 96.

III.
CONCLUSION

For the foregoing reasons, the Tribe's motion for partial voluntary dismissal is **GRANTED** without prejudice. The hearing scheduled on June 5, 2015 is **VACATED**.

IT IS SO ORDERED.