

Wells Fargo Bank, N.A. v Chukchansi Economic Dev. Auth.
2013 NY Slip Op 33125(U)
December 2, 2013
Supreme Court, New York County
Docket Number: 652140/13
Judge: Melvin L. Schweitzer
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: **DELVIN L. SCHWETZER**
Justice

PART 45

Index Number : 652140/2013
WELLS FARGO BANK, N.A., AS
VS.
CHUKCHANSI ECONOMIC
SEQUENCE NUMBER : 016
DISMISS

INDEX NO. 652140/13
MOTION DATE _____
MOTION SEQ. NO. 016

The following papers, numbered 1 to _____, were read on this motion to/for dismiss

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance
with the attached Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: December 2, 2013

DELVIN L. SCHWETZER, J.S.C.
DELVIN L. SCHWETZER

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

-----X
WELLS FARGO BANK, N.A., AS TRUSTEE,

Plaintiff,

-against-

CHUKCHANSI ECONOMIC DEVELOPMENT
AUTHORITY, THE BOARD OF THE CHUKCHANSI
ECONOMIC DEVELOPMENT AUTHORITY, THE
TRIBE OF PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS, THE TRIBAL COUNCIL OF
THE TRIBE OF PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS, THE PICAYUNE
RANCHERIA TRIBAL GAMING COMMISSION,
RABOBANK, N.A., GLOBAL CASH ACCESS, INC.,
NANCY AYALA, TRACEY BRECHBUEHL, KAREN
WYNN, CHARLES SARGOSA, REGGIE LEWIS,
CHANCE ALBERTA, CARL BUSHMAN, and BANK
OF AMERICA, N.A.,

Defendants.
-----X

Index No. 652140/13

DECISION
AND ORDER

Motion Sequence Nos.
006, 009, 011, 013, 015 and
016

MELVIN L. SCHWEITZER, J.:

Currently pending before the court are the following motions: by the Lewis Faction, to modify the court's July 2, 2013 Decision and Order, and for other relief (seq. no. 006); by the Ayala Faction, cross-motion to dismiss cross-claims against co-defendants Nancy Ayala, Dr. Karen Wynn, Charles Sargosa and Tracey Brechbuehl (seq. no. 009) ; by the Ayala Faction, to file documents under seal (seq. no. 011); by the Lewis Faction to further modify the court's July 2, 2013 Decision and Order (seq. No. 013); by the Lewis Faction, to clarify the September 27, 2013 order appointing a referee (seq. no. 015); and by Wells Fargo, to dismiss the Lewis Faction's counterclaim (seq. no. 016). These motions are joined for disposition. As the parties are familiar with the facts, the court will forego a detailed recitation.

Discussion

Lack of Jurisdiction

Wells Fargo's motion to dismiss (seq. no. 016) is granted. The court does not have subject matter jurisdiction over the counterclaim against Wells Fargo. The counterclaim requires the court to determine which faction is the legitimate CEDA and Issuer of the Indenture, which is an internal tribal dispute. The Lewis Faction acknowledges that resolution of the tribal dispute would require the court to interpret tribal laws and by-laws. *See* Counterclaim ¶ 56. This "fall[s] within the exclusive jurisdiction of tribal institutions." *Attorney's Process & Investigation Servs. v Sac & Fox Tribe*, 609 F3d 927, 943 (8th Cir 2010). Because the cross-claims are based on the same internal tribal dispute as the counterclaim, the court dismisses them *sua sponte* for lack of subject matter jurisdiction.

The Ayala Faction's cross-motion to dismiss defendants Nancy Ayala, Dr. Karen Wynn, Charles Sargosa and Tracey Brechbuehl (individual Ayala defendants) (seq. no. 009) is granted. The court lacks personal jurisdiction over the individual Ayala defendants. *See* CPLR 301, 302. Wells Fargo's Complaint asserts breaches of the Indenture and related agreements, to which the individual Ayala defendants are not parties. Thus, they are not bound by the consent to jurisdiction in the courts of New York State contained in the agreements. Additionally, the individual Ayala defendants have no other contacts with New York State. They are dismissed. The court lacks personal jurisdiction as to defendants Reggie Lewis, Chance Alberta and Tracey Brechbuehl for the exact same reasons, and dismisses these individual defendants *sua sponte*.

For the reasons discussed *ante*, the court lacks subject matter jurisdiction to determine whether individual Ayala (or Lewis) defendants are legitimate tribal officials with sovereign

immunity. *See United States v Oregon*, 657 F2d 1009, 1012 n.8 (9th Cir 1981) (“Tribal sovereign immunity extends to tribal officials acting within their representative capacity and within the scope of their authority.”); *see also Puyallup Tribe, Inc. v Department of Game of Washington*, 433 US 165, 173 (1977); *Chayon v Chao*, 355 F3d 141, 143 (2d Cir 2004).

Additional Motions

The Lewis Faction’s motion to modify the court’s July 2, 2013 Decision and Order, and for other relief (seq. no. 006) is denied, except to the extent of the court’s prior orders addressing the submission and production of financial information and appointment of a referee. The Ayala Faction’s motion to file documents under seal (seq. no. 011) is now moot in light of the parties’ execution of a confidentiality stipulation. The Lewis Faction’s motion to further modify the court’s July 2, 2013 Decision and Order (seq. no. 013) is denied for lack of jurisdiction because it is also based on the internal tribal dispute. Finally, for the same reasons, the Lewis Faction’s motion to clarify the court’s order appointing a referee (seq. no. 015) is denied. Accordingly, it is hereby

ORDERED that motion sequence nos. 009 and 016 are granted, the cross-claims and the counterclaim are dismissed, and thus the individual defendants named herein are likewise dismissed, and the dismissed claims and parties are severed from the remaining action; and it is further

ORDERED that motion sequence no. 011 is moot; and it is further

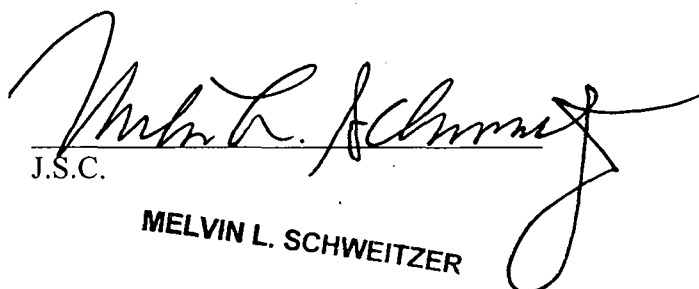
ORDERED that motion sequence nos. 013 and 015 are denied; and it is further

ORDERED that motion sequence no. 006 is denied except as set forth above; and it is further

ORDERED that no party is entitled to attorney's fees and costs related to these motions.

Dated: December 2, 2013

ENTER:


J.S.C.
MELVIN L. SCHWEITZER