

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Eminent Consulting, LLC v. RightSourcing, Inc.

Eminent Consulting · No. 2:24-cv-02646-JAM-CSK · Decided April 8, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Eminent Consulting, LLC’s motion to dismiss RightSourcing, Inc.’s counterclaim for lack of subject matter jurisdiction. The court concluded that the counterclaim did not satisfy the amount-in-controversy requirement for diversity jurisdiction and did not share a common nucleus of operative fact with the complaint for purposes of supplemental jurisdiction. Dismissal was granted with leave to amend within twenty days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	John A. Mendez
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 8, 2025
DOCKET	2:24-cv-02646-JAM-CSK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(b)(1) to dismiss Defendant's counterclaim for lack of subject matter jurisdiction. The court granted the motion with leave to amend.
STANDARD OF REVIEW	For a facial Rule 12(b)(1) jurisdictional challenge, the court accepts the complaint's factual allegations as true and construes them in the light most favorable to the plaintiff. The party asserting federal subject matter jurisdiction bears the burden of establishing it.
PRECEDENTIAL VALUE	unknown

TOPICS

- subject matter jurisdiction
- motions to dismiss
- civil procedure
- breach of contract
- commercial litigation

PRACTICE AREAS

- civil procedure
- contracts
- commercial litigation

QUESTIONS PRESENTED

1. Whether the counterclaim satisfied the amount-in-controversy requirement for diversity jurisdiction under 28 U.S.C. § 1332(a)(1).
2. Whether the counterclaim fell within the court's supplemental jurisdiction under 28 U.S.C. § 1367(a) because it shared a common nucleus of operative fact with the complaint.
3. Whether RightSourcing should be granted leave to amend its counterclaim to plead additional allegations establishing subject matter jurisdiction.

HOLDINGS

1. The counterclaim did not establish original diversity jurisdiction because it alleged only \$65,000 in damages, which was below the \$75,000 amount-in-controversy requirement, and the pleading made clear that no other source of damages was alleged.
2. The court lacked supplemental jurisdiction over the counterclaim because the complaint and counterclaim did not share a common nucleus of operative fact and therefore were not part of the same Article III case or controversy.
3. Leave to amend was warranted because RightSourcing might be able to plead additional facts establishing diversity or supplemental jurisdiction, and there was no showing of undue delay, bad faith, prejudice, or futility.

KEY QUOTATIONS

“Federal courts are courts of limited jurisdiction, and possess only that power authorized by the Constitution and by statute.” (at 2)

“The only connection between these claims is they involve the same parties and concern an agreement, which falls short of establishing that they are part of the same case or controversy.” (at 5-6)

FACTUAL BACKGROUND

Eminent Consulting, a staffing and recruiting company, and RightSourcing, a vendor contracting with New York City hospitals, entered several written contracts and separately agreed on rates for health care professionals. Eminent Consulting alleged that RightSourcing failed to pay agreed rates and all hours worked by Eminent Consulting's employees. RightSourcing's counterclaim sought express contractual indemnity based on an indemnification provision in a Participation Agreement, alleging that Eminent Consulting failed to defend or indemnify it in an employment-law dispute and that RightSourcing paid a \$65,000 settlement.

PROCEDURAL HISTORY

Eminent Consulting filed an action arising from alleged nonpayment under contracts concerning staffing services. RightSourcing filed a single counterclaim for express contractual indemnity. Eminent Consulting moved to dismiss the counterclaim for lack of original and supplemental subject matter jurisdiction; after briefing, the court granted the motion and allowed RightSourcing twenty days to file an amended counterclaim.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. If RightSourcing elects to amend, it must file an amended counterclaim within twenty days of the order, limited to allegations establishing diversity or supplemental jurisdiction. Plaintiff must respond within twenty days thereafter.

CASES CITED

- Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994)
- Attorneys Trust v. Videotape Computer Products, Inc., 93 F.3d 593, 595 (9th Cir. 1996)
- Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006)
- Rattlesnake Coal. v. U.S. E.P.A., 509 F.3d 1095, 1102 n.1 (9th Cir. 2007)
- Savage v. Glendale Union High Sch., 343 F.3d 1036, 1039 n.2 (9th Cir. 2003)
- Li v. Chertoff, 482 F. Supp. 2d 1172, 1175 (S.D. Cal. 2007)
- United States v. One 1997 Mercedes E420, 175 F.3d 1129, 1130-31 n.1 (9th Cir. 1999)
- Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003)
- Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010)
- Bahrapour v. Lampert, 356 F.3d 969, 978 (9th Cir. 2004)
- Okanogan Highlands All. v. Crown Res. Corp., 526 F. Supp. 3d 872, 877 (E.D. Wash. 2021)
- Ader v. SimonMed Imaging Inc., 324 F. Supp. 3d 1045, 1051 (D. Ariz. 2018)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)
- Intri-Plex Techs., Inc. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007)
- In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005)
- Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989)

OPINION

Eminent Consulting, LLC v. RightSourcing, Inc.

PER CURIAM.

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9 UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA

11

12 EMINENT CONSULTING, LLC, a No. 2:24-cv-02646-JAM-CSK

Tennessee limited liability 13 company, ORDER GRANTING PLAINTIFF'S

MOTION TO DISMISS COUNTERCLAIM

14 Plaintiff, 15 v.

16 RIGHTSOURCING, INC., a New

York corporation; and DOES 1- 17 10, inclusive, 18 Defendants. 19 20 Before the Court is Eminent Consulting LLC's ("Plaintiff") 21 motion to dismiss RightSourcing Inc.'s ("Defendant") 22 Counterclaim. See Mot., ECF No. 12; Counterclaim, ECF 8. 23 Defendant opposed. See Opp'n, ECF No. 14. Plaintiff replied. 24 See Reply, ECF No. 15. For the following reasons, Plaintiff's 25 motion is GRANTED WITH LEAVE TO AMEND.¹ 26 27 1This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was 28 scheduled for March 25, 2025.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 This controversy arises out of a contract dispute between 3 Plaintiff and Defendant. See Compl. ¶¶ 13-16, ECF No. 1. 4 Plaintiff is a staffing and recruiting company for nurses and 5 other health care professionals. Id. ¶ 5. Defendant is a vendor 6 that contracted with New York City hospitals. Id. ¶¶ 7-8. 7 Plaintiff and Defendant entered several written contracts and 8 separately agreed on the rates to be paid to health care 9 professionals. Id. ¶¶ 8, 10. Defendant failed to pay Plaintiff 10 at the agreed upon rates and for all hours worked by Plaintiff's 11 employees. Id. ¶ 10. Plaintiff filed suit and brought five 12 causes of action, including breach of contract. Id. at 1. 13 Defendant then filed the Counterclaim, which is a single cause of 14 action for express contractual indemnity. Counterclaim at 12. 15 Plaintiff now moves to dismiss the Counterclaim for lack of 16 subject matter jurisdiction. See Mot. at 2. Defendant asserts 17 the Court has original and supplemental jurisdiction. See Opp'n 18 at 4.

19 II. OPINION

20 A. Legal Standard 21 Federal courts are courts of limited jurisdiction, and 22 possess only that power authorized by the Constitution and by 23 statute. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 24 U.S. 375, 377 (1994) (internal citations omitted). Federal 25 courts are presumptively without jurisdiction over civil 26 actions, and the burden of establishing the contrary rests upon 27 the party asserting jurisdiction. Id. Lack of subject matter 28 jurisdiction is never waived and may be raised by either party 1 or the court at any time. *Attorneys Trust v. Videotape Computer 2 Products, Inc.*, 93 F.3d 593, 595 (9th Cir. 1996). Because 3 jurisdiction is a threshold matter, a case can proceed no 4 further if a court lacks jurisdiction to hear it. See *Arbaugh 5 v. Y & H Corp.*, 546 U.S. 500, 514 (2006) ("[W]hen a federal 6 court concludes that it lacks subject-matter jurisdiction, the 7 court must dismiss the complaint in its entirety."). 8 Dismissal is appropriate under Federal Rule of Civil

9 Procedure 12(b)(1) when a district court lacks subject matter

10 jurisdiction over the claim. Fed. R. Civ. P. 12(b)(1). "Once 11 challenged, the party asserting subject matter jurisdiction has 12 the burden of proving its existence." *Rattlesnake Coal. v. U.S. 13 E.P.A.*, 509 F.3d 1095, 1102 n.1 (9th Cir. 2007). There are two 14 permissible jurisdictional attacks under Rule 12(b)(1): a facial 15 attack, where the court's inquiry is limited to the allegations 16 in the complaint; or a factual attack, which permits the court 17 to look beyond the complaint at

affidavits or other evidence. 18 *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003). If the moving party asserts a facial challenge, the
20 court must assume that the factual allegations asserted in the 21 complaint are true and must construe those allegations in the 22 light most favorable to the plaintiff. *Li v. Chertoff*, 482 23 F.Supp.2d 1172, 1175 (S.D. Cal. 2007) (citing *United States v.*
24 *One 1997 Mercedes E420*, 175 F.3d 1129, 1130–31 n.1 (9th Cir.
25 1999) and *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 26 1139 (9th Cir. 2003)). 27
/// 28 /// 1 B. Analysis 2 1. Original Jurisdiction 3 28 U.S.C. Section 1332 provides that district courts have 4 original jurisdiction of all civil actions if (1) there is 5 diversity of citizenship and (2) the amount in controversy 6 exceeds \$75,000. 28 U.S.C. § 1332(a)(1). 7 Defendant alleges it is a citizen of Delaware and 8 California, and Plaintiff is a citizen of Tennessee. See 9 Counterclaim ¶ 1. Plaintiff alleges that Defendant is 10 incorporated in New York and therefore captions Defendant as “a 11 New York corporation” on the face of the Complaint. See Compl. 12 at 1, ¶ 1. The Court’s inquiry is limited to the Counterclaim 13 and thus the allegation in the Complaint regarding Defendant’s 14 citizenship is irrelevant to the present analysis. See *Savage v. Glendale Union High Sch.*, 343 F.3d at 1039 n.2. Also, 16 regardless of whether Defendant is incorporated in New York, 17 neither party alleges that Defendant is a citizen of Tennessee, 18 which is the only state where Plaintiff resides. Thus, there is 19 complete diversity of citizenship. 20 Defendant alleges that because Plaintiff failed to defend 21 or indemnify Defendant, it had to pay \$65,000 to claimants to 22 settle a dispute. Counterclaim ¶ 20. Defendant further alleges 23 it “has been damaged in an amount in excess of \$65,000.” *Id.* 24 ¶ 22. Defendant’s Counterclaim does not, however, mention any 25 other source of damages other than the \$65,000 settlement. 26 Because from the face of the complaint “it is obvious that the 27 suit cannot involve the necessary amount,” the Court grants 28 Plaintiff’s motion to dismiss the Counterclaim on the grounds it 1 lacks diversity jurisdiction. See *Geographic Expeditions, Inc. 2 v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1106 (9th
3 Cir. 2010).

4 2. Supplemental Jurisdiction 5 28 U.S.C. Section 1367 provides that, in any civil action 6 of which the court has original jurisdiction, the court has 7 supplemental jurisdiction “over all other claims that are so 8 related to claims in the action within such original 9 jurisdiction that they form part of the same case or controversy 10 under Article III of the United States Constitution.” 28 U.S.C. 11 § 1367(a). “A state law claim is part of the same case or 12 controversy when it shares a ‘common nucleus of operative fact’ 13 with the federal claims and the state and federal claims would 14 normally be tried together.” *Bahrampour v. Lampert*, 356 F.3d 15 969, 978 (9th Cir. 2004). 16 The Complaint includes allegations regarding negotiations 17 made outside of a written agreement between the parties. 18 Plaintiff alleges, “The rates [Defendant] agreed to pay were not 19 specified in the written agreements but were left to the 20 parties’ negotiations. [Plaintiff], [Defendant], and the NYC 21 Entities subsequently agreed on the rates.” Compl. ¶ 10. The 22

Counterclaim, however, concerns an indemnification provision in 23 a Participation Agreement with the New York City Department of 24 Education, in which Plaintiff agreed to defend and indemnify 25 Defendant for all claims relating to Plaintiff’s employees. 26 Counterclaim ¶¶ 10-14. Defendant received notice of alleged 27 violations of employment law and thereafter tendered a claim for 28 indemnification to Plaintiff. Id. ¶¶ 18-19. Though Plaintiff 1 accepted tender of the claims, it failed to provide “meaningful 2 defense” or indemnification, which forced Defendant to pay 3 \$65,000 to settle the dispute. Id. ¶ 20. 4 Based on these allegations, the Court finds the Complaint 5 and the Counterclaim do not share a “common nucleus of operative 6 fact.” See *Bahrapour v. Lampert*, 356 F.3d at 978. While the 7 Complaint concerns a verbal agreement between the parties 8 regarding the rates for services—though this verbal agreement is 9 enforceable by the written contracts—the Counterclaim stems from 10 an indemnification provision in a particular contract that does 11 not appear to be at issue in the Complaint. The only connection 12 between these claims is they involve the same parties and 13 concern an agreement, which falls short of establishing that 14 they are part of the same case or controversy. See *Okanogan 15 Highlands All. v. Crown Res. Corp.*, 526 F. Supp. 3d 872, 877 16 (E.D. Wash. 2021) (holding the court lacked supplemental 17 jurisdiction because the only commonality between claims was the 18 defendant’s operation of a mine); *Ader v. SimonMed Imaging Inc.*, 19 324 F. Supp. 3d 1045, 1051 (D. Ariz. 2018) (holding the court 20 lacked supplemental jurisdiction because the only commonality 21 between claims was the plaintiff’s employment relationship with 22 the defendant). Plaintiff’s motion to dismiss on the grounds the 23 Court lacks supplemental jurisdiction over the Counterclaim is 24 granted. 25 C. Leave to Amend 26 A court granting a motion to dismiss a claim must then 27 decide whether to grant leave to amend. Leave to amend should 28 be “freely given” where there is no “undue delay, bad faith or 1 dilatory motive on the part of the movant, . . . undue prejudice 2 to the opposing party by virtue of allowance of the amendment, 3 [or] futility of [the] amendment” *Foman v. Davis*, 371 4 U.S. 178, 182 (1962); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 5 F.3d 1048, 1052 (9th Cir. 2003) (listing the *Foman* factors as 6 those to be considered when deciding whether to grant leave to 7 amend). Dismissal without leave to amend is proper only if it 8 is clear that “the complaint could not be saved by any 9 amendment.” *Intri-Plex Techs., Inc. v. Crest Group, Inc.*, 499 10 F.3d 1048, 1056 (9th Cir. 2007) (citing *In re Daou Sys., Inc.*, 11 411 F.3d 1006, 1013 (9th Cir. 2005); *Ascon Props., Inc. v. Mobil 12 Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (“Leave need not be 13 granted where the amendment of the complaint . . . constitutes 14 an exercise in futility”)). 15 Here, leave to amend is proper because Defendant may be 16 able to plead additional allegations establishing jurisdiction. 17 Because Defendant has not previously amended its Counterclaim 18 and this motion is the first dispositive motion brought in this 19 action, granting leave to amend does not create unnecessary 20 delay or prejudice Plaintiff. The leave granted is limited to 21 pleading allegations that give rise to diversity or supplemental 22 jurisdiction.

23 III. ORDER

24 For the reasons set forth above, Plaintiff's motion to 25 dismiss Defendant's Counterclaim is
GRANTED WITH LEAVE TO AMEND. 26 If Defendant elects to file an Amended Counterclaim,
it must 27 do so within twenty (20) days of this Order. Plaintiff shall 28 file its response to the
Amended Counterclaim within twenty (20)

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1 days thereafter. 2 IT IS SO ORDERED. 3 Dated: April 8, 2025 SM ey

JOHN A. MENDEZ

6 SENIOR UNITED*STATES DISTRICT JUDGE

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