

HONORABLE RICHARD A. JONES

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 395 LAMPE, LLC, et al.

10 Plaintiffs, Counterclaim
11 Defendants,

v.

12 KAWISH, LLC, et al.,

13 Defendants, Counterclaim
14 Plaintiffs, Third-Party
15 Plaintiffs,

v.

16 WAYNE L. PRIM, et al.,

17 Third-Party Defendants.

CASE NO. C12-1503RAJ

ORDER

18 **I. INTRODUCTION**

19 This matter comes before the court on the Prim Entities' motion to compel joinder
20 of a claim pending in King County Superior Court and the Blixseth Entities' motion to
21 remand this action to King County Superior Court. For reasons stated herein, the court
22 DENIES both motions. Dkt. ## 181, 191. This order concludes with instructions to the
23 Prim Entities to dispose of the Collateral WPT Interest, seek court approval for a
24 disposition of that interest, or show cause why the court should not initiate proceedings to
25 determine the consequences of their failure to effect a disposition of the Collateral WPT
26 Interest.

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28 ORDER – 1

II. BACKGROUND & ANALYSIS

1 The court proceeds, as it consistently has, on the assumption that the principal
2 dispute underlying the morass of claims and counterclaims between the Blixseth Entities
3 and the Prim Entities is a dispute over the proper disposition of what the court has called
4 the Collateral WPT Interest. The Collateral WPT Interest, a one-third interest in a limited
5 liability company called Western Pacific Timber, once belonged to the Blixseth Entities,
6 who pledged it as collateral for a series of loans from the Prim Entities. It now belongs to
7 the Prim Entities, who seized it when the Blixseth Entities defaulted on those loans.
8 Perhaps the court is mistaken in its assumption about the centrality of this dispute; but the
9 parties have never suggested another way to bring this case to a resolution. Indeed, the
10 parties seem disinterested in bringing this case to a resolution.

11 To illustrate the parties' disinterest, the court notes that when it last considered the
12 dispute over the Collateral WPT Interest, in July 2014, it noted various concerns about
13 the Prim Entities' plan to sell that interest at an "auction" where one of the Prim Entities
14 was all but certain to be the only bidder. But the court did not resolve those concerns,
15 because an entity called Keewaydin, which stands in the shoes of those who own another
16 one-third interest in WPT, intervened to assert that the Prim Entities could not dispose of
17 the Collateral WPT Interest at all because of limitations in the WPT operating agreement.
18 The court put the central dispute on hold, so that it could address the dispute between the
19 Prim Entities and Keewaydin. That was a frustrating process, as described in a series of
20 the court's orders in September and October 2014. But perhaps it ended well, because in
21 December 2014, Keewaydin voluntarily dismissed its claims with prejudice. 2014 ended
22 with a statement from the Prim Entities that they "intend[ed] to proceed with a public sale
23 of the [Collateral WPT Interest]," presumably with Keewaydin's consent. That was
24 December 30. Since then, the court has no indication that the Prim Entities have done
25 anything to dispose of the Collateral WPT Interest.
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1 **A. The Parties Have Started a New Dispute in State Court.**

2 Why the delay? Surely not because of the motions now pending before the court,
3 which have nothing to do with the disposition of the Collateral WPT Interest. Those
4 motions instead concern the Prim Entities' efforts to seize other collateral from the
5 Blixseth Entities. After this District's bankruptcy court dismissed two bankruptcy actions
6 in which the Blixseth Entities sought to protect a mansion in Medina secured by a deed of
7 trust to one of the Prim Entities, the Prim Entities sought to foreclose that deed of trust.
8 They succeeded, it appears. The mansion sold in a June 2014 foreclosure sale in which
9 one of the Prim Entities was apparently the sole bidder.

10 The Blixseth Entities sued the Prim Entities (and the foreclosure trustee) in King
11 County Superior Court. They asked that court to set aside the trustee's sale, among other
12 relief. The Prim Entities filed a motion to dismiss that was almost entirely successful. In
13 an October 6, 2014 order, the Superior Court dismissed the complaint except as to one
14 narrow issue. It held that the Blixseth Entities could continue to pursue a claim for
15 declaratory judgment in which Tim Blixseth sought "a determination of his personal
16 liability, as guarantor pursuant to RCW 61.24.100(5), through the establishment of the
17 fair value of the [Medina] property at the time of sale." It also allowed the Prim Entities
18 to pursue a claim for damages caused by the Blixseth Entities' wrongful filing of a lis
19 pendens on the Medina property.

20 The Superior Court also stayed the action "to allow any party to move the federal
21 court to accept supplemental jurisdiction of this matter." The court understands the
22 impetus for that order. The Medina mansion was collateral for many of the same loans
23 for which the Collateral WPT Interest was collateral. The Blixseth Entities insist that the
24 Collateral WPT Interest is worth enough money to extinguish all of their debts. They
25 have so far had no success in proving that assertion, but they have made it again in the
26 state court. The dispute over the value of the Medina mansion, like the dispute here, is
27 one in which a court must determine the value of collateral the Prim Entities seized to

1 determine how much the Blixseth Entities still owe. It would be sensible to resolve that
2 dispute in this court. The problem is that that Blixseth Entities have not chosen that
3 sensible approach.

4 **B. The Court Cannot Expand This Action by “Compelling Joinder” of the**
5 **Blixseth Entities’ State Law Claims, and It Will Not Remand this Action to**
6 **State Court.**

7 Two motions followed the Superior Court’s invitation: one that that court cannot
8 grant, and one that the court will not grant. The first was the Prim Entities’ “motion to
9 compel joinder” of the claims the Blixseth Entities asserted in state court. The Prim
10 Entities ask the court to order the Blixseth Entities to bring their most recent state court
11 claims here.

12 **1. Motion to Compel Joinder**

13 The court is aware of no authority that permits a federal district court to “compel
14 joinder” of state law claims. That is so even if the court would have jurisdiction over
15 those claims if they were brought before it. The Prim Entities insist that the court has
16 supplemental jurisdiction over those claims, because they relate to the claims in this
17 action. But the Prim Entities have put the cart before the horse. The court cannot
18 consider whether it has jurisdiction over a claim until someone brings that claim before it.
19 Federal law provides many mechanisms to bring claims before it. A party can voluntarily
20 bring its claims to federal court. Where a removal statute applies, a defendant can bring a
21 plaintiff’s claims to federal court. The Prim Entities have not removed the Superior
22 Court action, and they do not suggest they can do so. The court can compel the joinder of
23 a “required party” via Rule 19 of the Federal Rules of Civil Procedure, but there is no
24 suggestion that the Rule applies here. Where no removal statute applies, and no other
25 statute or rule allows the court to wrest control over a state court suit, the court cannot
26 act. The Prim Entities cite no authority to the contrary, and the court is aware of none.

27 The Blixseth Entities will not agree to bring their state court claims here. They
28 assert that the court could not exercise supplemental jurisdiction over those claims. The

1 court need not decide whether the Prim Entities or the Blixseth Entities have the better
2 view of supplemental jurisdiction. Both of them ignore the fundamental question: what
3 authority permits a federal district court, absent consent or a ground for removal, to take
4 control of claims asserted in state court?

5 Moreover, no party addresses another concern: the Superior Court has already
6 adjudicated all but one portion of one claim in the action before it. The Superior Court
7 issued no judgment as to the claims it adjudicated. *See* Wash. CR 54. Nonetheless, the
8 Blixseth Entities have petitioned the Washington Court of Appeals for discretionary
9 review via Washington Rule of Appellate Procedure 2.3(b). So far as the court is aware,
10 the Court of Appeals has neither granted nor denied that petition. The Prim Entities thus
11 ask the court to wrest jurisdiction from not only the Superior Court (which has already
12 ruled, in large part), but from the Court of Appeals. The court observes that it is likely
13 that the Superior Court and Court of Appeals would be happy to have jurisdiction wrested
14 from them. But again, there is no authority that allows the court to do so.

15 There are perhaps ways to put the sole unadjudicated dispute from the Superior
16 Court action in front of this court without the Blixseth Entities' consent. The Prim
17 Entities, for example, might seek declaratory judgment in this court as to Mr. Blixseth's
18 liability as a guarantor of the loans secured by the Medina mansion. The court suggests
19 no view on actions the state courts might take to defer or tailor resolution of the claims
20 before them pending a resolution in this court. The court regrets that the parties have
21 steered a portion of this dispute to state court, but the court cannot cure that problem by
22 inventing a compulsory joinder procedure.

23 **2. Motion to Remand**

24 While the motion to compel joinder was pending, the Blixseth Entities moved to
25 remand this entire action to King County Superior Court. They pointed out that they
26 removed this action here via 28 U.S.C. § 1452, which permits removal of "any claim or
27 cause of action in a civil action" where the "district court has jurisdiction of such claim or

1 cause of action under section 1334 of this title.” Section 1334, for its part, grants district
2 courts “original but not exclusive jurisdiction of all civil proceedings arising under title
3 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). At the time of
4 removal, the Blixseth entities had a “civil proceeding[] . . . arising in or related to [a]
5 case[] under title 11”—a petition pending in this District’s bankruptcy court. As of July
6 2014, the bankruptcy court had dismissed all petitions. This case remained here, and no
7 party suggested that it should return to state court. That changed in November 2014,
8 when the Blixseth Entities filed their opposition to the Prim Entities’ motion to compel
9 joinder. They argued for the first time that not only was the court powerless to force
10 them to join their claims from the pending Superior Court action, but that remand of this
11 case was mandatory. They later filed their motion to remand to make the same argument.

12 The court retains subject matter jurisdiction over this action. It had original
13 jurisdiction via 28 U.S.C. § 1334(b). It retained jurisdiction after the bankruptcy
14 proceedings terminated. *In re Carraher*, 971 F.2d 327, 329 (9th Cir. 1992). It had (and
15 still has) discretion to discontinue its exercise of jurisdiction, subject to many of the same
16 factors that guide the court’s exercise of discretion of claims over which it exercises
17 supplemental jurisdiction. *Id.* The Blixseth Entities mistakenly rely on *Sea Hawk*
18 *Seafoods, Inc. v. Alaska (In re Valdez Fisheries Development Ass’n, Inc.)*, 439 F.3d 545
19 (9th Cir. 2006). There, the court held that a bankruptcy court could not exercise
20 jurisdiction via 28 U.S.C. § 1334(b) when, after dismissing the bankruptcy case *and all*
21 *related proceedings*, the parties returned to the bankruptcy court for a determination on a
22 new state-law claim related to the bankruptcy case. *Id.* at 547-49. That ruling has no
23 application here, where the claims currently in this action (save one that the Prim Entities
24 added last summer) were pending here when the bankruptcy court dismissed the petitions
25 before it.

26 The court has discretion to decline to exercise jurisdiction over this case.
27 *Carraher* declares as much. So does 28 U.S.C. § 1452(b), which permits a court to

1 remand a claim removed to the court via § 1334 “on any equitable ground.” But the court
2 is firmly convinced that the only appropriate exercise of discretion is to retain jurisdiction
3 over this case. The court has invested substantial resources in this case, and any other
4 court who hears it will be forced to duplicate that effort. Moreover, declining jurisdiction
5 over this case would only reward the Blixseth Entities (who selected this forum) in their
6 forum-shopping campaign. The court has chronicled that campaign in its past orders, and
7 does not repeat the discussion here. It suffices to conclude that the court will not permit
8 the Blixseth Entities to continue that campaign as long as the court has discretion to do
9 otherwise.

10 **C. The Parties Must Move This Action Forward.**

11 Having rejected the parties’ efforts to expand or remand this action, the court
12 returns to the disputes before it. Again, the court proceeds on the assumption that a
13 disposition of the Collateral WPT Interest is a predicate to resolving all claims and
14 counterclaims in this action. The parties are free to suggest a different approach; but they
15 have not done so for years.

16 No later than April 30, 2015, the Prim Entities shall elect one of the following
17 options:

- 18 1) They shall file a motion proposing a proper disposition of the Collateral WPT
19 Interest;
- 20 2) They shall inform the court that they are effecting a disposition of the
21 Collateral WPT Interest, explain that disposition, and explain to the court when
22 it is likely to be complete; or
- 23 3) They shall show cause why the court should not initiate proceedings to
24 determine the consequences of their failure to effect a disposition of the
25 Collateral WPT Interest.

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III. CONCLUSION

For the reasons stated above, the court DENIES the Prim Entities' motion to compel joinder (Dkt. # 181) and DENIES the Blixseth Entities' motion to remand (Dkt. # 191). The Prim Entities shall comply with the court's instructions in Part II.C.

DATED this 8th day of April, 2015.



The Honorable Richard A. Jones
United States District Court Judge