UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GRAYSON SERVICE, INC., Plaintiff, v. CRIMSON RESOURCE MANAGEMENT CORP. et al., Defendants.	Case No. 1:14-cv-01125-SAB ORDER GRANTING DEFENDANTS' MOTION TO DISMISS (ECF Nos. 13, 21, 26) THIRTY-DAY DEADLINE

Currently before the Court is Defendants Crimson Resource Management ("Crimson") and Cal Royalty LLC's ("Cal Royalty") motion to dismiss the first amended complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure.

The Court heard oral arguments on December 23, 2014. Counsel Douglas Lawrence Mahaffey appeared for Plaintiff Grayson Service, Inc., and counsel Ericka F. Houck Englert appeared for Defendants Crimson and Cal Royalty. Having considered the moving, opposition and reply papers, the declarations and exhibits attached thereto, arguments presented at the December 23, 2014 hearing, as well as the Court's file, the Court issues the following order.

I.

PROCEDURAL BACKGROUND

Plaintiff Grayson Service, Inc. filed this action on July 17, 2014, against Defendants

Crimson and Cal Royalty.[1] On July 29, 2014, Plaintiff filed a first amended complaint alleging breach of contract, breach of the covenant and right to quiet enjoyment and possession, and seeking declaratory relief. On October 31, 2014, Defendants filed a motion to dismiss this action pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for failure to state a claim and failure to join an indispensable party and a request for judicial notice. Plaintiff filed an opposition to the motion to dismiss on December 10, 2014. Defendants filed a reply on December 17, 2014.

II.

FIRST AMENDED COMPLAINT ALLEGATIONS

A lease originated in 1936 when Kern County Land Company ("lessor") conveyed to the Ohio Oil Company ("lessee") the right to extract water, minerals and other hydrocarbon substances from a 23 acre parcel of property located in Kern County (hereafter "Ohio Lease"). (First. Am. Compl. ¶ 8,[2] ECF No. 4.) The agreement provided that the term of the lease would be for twenty years and so long after as oil, gas, or other hydrocarbon substances were produced from the property in amounts deemed to be paying quantities by the lessee, unless the lease in whole or part was terminated sooner. (Id. at ¶ 9.)

The lease further provided that the property was to be in the sole and exclusive possession of the lessee, except that the lessor reserved the right to use or lease the land for agricultural purposes that did not unnecessarily interfere with the operation of the land. (Id. at ¶ 10.) The lease provided that the lessee could develop water on the parcel and the lessor reserved the right to any unused water on the parcel as long as it did not interfere with the lease unnecessarily. (Id. at ¶ 11.)

The lessor was not liable or responsible to the lessee in damages from any defects, liens, or encumbrances on title to the land or the assigned rights. The lessee agreed to defend and indemnify the lessor in the event of an assertion by others of a claim against the lessor due to the

[1] The parties have consented to the jurisdiction of the magistrate judge. (ECF Nos. 5, 16.)

[2] All references to pagination of specific documents pertain to those as indicated on the upper right corners via the CM/ECF electronic court docketing system.

extraction or removal of water, oil, gas or other hydrocarbon substance, except for that portion that was the lessor's royalty, provided the lessor notified the lessee of any suit with reasonable promptness and allowed the lessee's attorney to appear in the action. (Id. at ¶ 12.)

Plaintiff contends that it is a lessee and was assigned the right to occupy 23 acres of real property and the balance of approximately 250 acres in Kern County that stems from this lease. (Id. at ¶¶ 5, 6.) Plaintiff maintains a water well and pressure tank on the property which is essential to their operations. (Id. at ¶ 7.) Plaintiff alleges that Defendant Crimson agreed that, to defend claims challenging Plaintiff's title, they would enter into an attorney client relationship with Plaintiff's attorneys. (Id. at ¶ 13.)

In 2012, the Kern Water Bank Authority ("KWBA") filed an action alleging that in 1996 the property and mineral rights under the Ohio Lease were transferred to KWBA. (Id. at ¶ 14.) Plaintiff notified Defendant Crimson of these claims and requested they participate in defending Plaintiff in the action. (Id. at ¶ 15.). Defendant Crimson initially assisted by providing records establishing the chain of title. (Id. at ¶ 16.) Additionally, their agent appeared and testified during the KWBA trial that Plaintiff had full possession to the surface rights subject only to Defendant Crimson's use of the same surface rights as necessary for their oil operations and that Plaintiff had rights to the remaining property subject to the lease restrictions for future development. (Id. at ¶ 16.) Defendant Crimson acknowledged that the Ohio Lease gave Plaintiff all rights arising under the lease, including surface access to all of the approximately 250 acres to produce minerals, including the future rights to explore, drill and develop the leased minerals. (Id. at ¶18.)

On February 10, 2014, judgment was entered in favor of KWBA which impacted Plaintiff's right to use and possess the 23 acres. (Id. at 19.) The judgment included the immediate right for KWBA to have and recover possession of the 23 acres. (Id. at ¶ 20.) The judgment provided that a writ of possession could be issued by the Kern County Sheriff evicting Plaintiff from the property. (Id. at ¶ 21.) Plaintiff contends that there are no surface rights available for KWBA due to the assignment recorded November 18, 1988 in the County records. (Id. at ¶ 22.)

Plaintiff contacted Defendant Crimson in June 2014 and advised them of the judgment, that a motion for new trial had been filed, and that Plaintiff wanted them to cooperate. (Id. at ¶ 23.) Defendant Crimson was requested to intervene or assign their rights to Plaintiff so that Plaintiff could prevent the judgment from becoming final. (Id. at ¶¶ 24, 25.) Plaintiff requested the Defendant Crimson assign their mineral interests with a modest reduction in royalty payment so Plaintiff could pursue claims arising out of the leasehold estate and the assignment of mineral interests against KWBA. (Id. at ¶ 27.)

KWBA has entered into the balance of the 250 acres of the Ohio lease and installed and is operating water extraction wells. (Id. at ¶ 31.) Defendant Crimson has refused to take any steps to remove or cooperate in removing KWBA from the property. (Id. at ¶ 32.)

Plaintiff brings this action against Defendants Crimson and Cal Royalty alleging breach of contract, breach of the covenant and right to quiet enjoyment and possession, and for declaratory relief that Defendant Crimson must defend the title to the property.

III.

LEGAL STANDARD

A. Failure to State a Claim

Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss on the grounds that a complaint "fail[s] to state a claim upon which relief can be granted." A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In assessing the sufficiency of a complaint, all well-pleaded factual allegations must be accepted as true. Iqbal, 556 U.S. at 678-79. However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678.

In deciding whether a complaint states a claim, the Ninth Circuit has found that two principles apply. First, to be entitled to the presumption of truth the allegations in the complaint

"may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). Second, so that it is not unfair to require the defendant to be subjected to the expenses associated with discovery and continued litigation, the factual allegations of the complaint, which are taken as true, must plausibly suggest an entitlement to relief. Starr, 652 F.3d at 1216.

B. Failure to Join a Party

Rule 12(b)(7) provides that a party can move to dismiss for "failure to join a party under Rule 19." In determining if a party is indispensable under Rule 19, the court first must decide if the party is necessary and then determine whether the party is indispensable so that the suit must be dismissed. Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990). In determining if the party is necessary, the court must decide if complete relief is possible among those already party to the suit, or alternately, whether the absent party has a legally protected interest in the suit that will be impaired or impeded by its absence or expose the parties to a risk of multiple or inconsistent obligations by reason of that interest. Makah Indian Tribe, 910 F.2d at 558; Dawavendewa v. Salt River Project Agr. Imp. And Power Dist., 276 F.3d 1150, 1155 (9th Cir. 2002). If the party satisfies either of these alternative tests it is considered a necessary party in this action. Dawavendewa, 276 F.3d at 1055. The necessary and indispensable inquiry under Rule 19 is practical and fact specific and designed to avoid the harsh results of rigid application. Hendricks v. Bank of America, N.A., 408 F.3d 1127, 1136 (9th Cir. 2005).

IV.

DISCUSSION

Defendants Crimson and Cal Royalty move to dismiss Plaintiff's first amended complaint pursuant to Rule 12(b)(6) for failure to state a claim on the grounds that 1) Plaintiff's first and second causes of action are premised on a lease to which Plaintiff has not alleged Defendants are a party; and 2) neither the lease nor California law establishes the obligations Plaintiff alleges have been breached; and pursuant to Rule 12(b)(7) for failure to join an indispensable party under Rule 19. In their moving papers, both parties are seeking for the Court to consider facts

outside of those plead in the complaint. However, as a general rule, the court may not consider any material outside the pleadings in ruling on a Rule 12(b)(6) motion. United States v. Corinthian Colleges, 655 F.3d 984, 998 (9th Cir. 2011). There are two exceptions to this rule, when the complaint necessarily relies on the documents or where the court takes judicial notice of documents. Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001). Therefore, the Court will only consider those facts properly plead in the complaint, documents relied on in the complaint, and proper requests for judicial notice.

A. Breach of Contract

Initially, Defendants contend that Plaintiff's first cause of action, breach of contract, fails to state a claim because Plaintiff has not pled the existence of a contract between the parties. (Notice of Mot. and Mot. to Dismiss Pl.'s First Am. Compl. Pursuant to Fed. R. Cvi. P. 12(b)(6) and (12(b)(7) 5, ECF No. 13.) Plaintiff counters that the complaint pleads sufficient facts to show that a lease exists between Plaintiff and Crimson. (Opp. to Mot. to Dismiss Pl.'s First Am. Compl. Pursuant to Fed. R. Civ. P. 12(b)(6) and (12(b)(7) 8-9, ECF No. 21.)

Plaintiff's first cause of action against Defendants Crimson and Cal Royalty is for breach of contract. Since this is a diversity action, California law applies to the state law claims. Freund v. Nycomed Amersham, 347 F.3d 752, 761 (9th Cir. 2003). "Under California law, '[a] cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach.' " Ehret v. Uber Technologies, Inc., __ F.Supp.3d __, 2014 WL 4640170, at *11 (N.D. Cal. Sept 17, 2014) (quoting CDF Firefighters v. Maldonado, 158 Cal.App.4th 1226, 1239 (2008).)

Plaintiff alleges that it has rights to occupy the subject property that arise under a lease entered into by Kern County Land Company and Ohio Oil Company. (ECF No. 4 at ¶¶ 5-8.) This lease was assigned to Plaintiff. (Id. at ¶ 5.) By virtue of the lease, Defendant Crimson agreed to enter into an attorney-client relationship to defend claims challenging Plaintiff's title to the property. (Id. at ¶ 13.) At trial, Defendant Crimson's agent testified that Plaintiff had full possession of the surface rights, subject only to Crimson's right to the same surface rights as

necessary to their oil operation and that Plaintiff had rights to the remaining acreage. (Id. at ¶ 17.) Crimson acknowledged that the Ohio Lease reserved all rights under the lease to Plaintiff. (Id. at ¶ 18.) After judgment was entered against Plaintiff, a motion for new trial was filed. (Id. at ¶ 23.) Plaintiff contacted Defendant Crimson to advise them of the judgment and requested Defendant Crimson to either assign their rights under the lease to Plaintiff or intervene to prevent the judgment from becoming final. (Id. at ¶¶ 23-24.) KWBA has moved onto the property and Defendant Crimson refuses to take steps to remove or cooperate in removing KWBA or intervene to protect Plaintiff. (Id. at ¶ 32.)

While Plaintiff alleges that it was assigned the lease and by virtue of the lease, Crimson agreed to enter into a relationship to defend claims challenging Plaintiff's title, Plaintiff has not alleged any facts to link Defendant Crimson to the Ohio Lease or to establish that any other contract existed between the parties presently before the Court. The essential elements of a contract under California law are parties capable of contracting, consenting parties, a lawful object, and consideration. Cal. Civ. Code § 1550. "Ordinarily, the obligations arising out of a contract are due only to those with whom it is made; a contract cannot be enforced by a person who is not a party to it or in privity with it, except under a real party in interest statute or, under certain circumstances, by a third-party beneficiary." 17A Am.Jur.2d, Contracts § 416. Plaintiff's factual allegations regarding the Ohio Lease are sufficient to establish that a contract was entered into between Kern County Land Company and the Ohio Oil Company and at some point Plaintiff was assigned some rights under the lease. However, Plaintiff's conclusory statement that Defendant Crimson is a lessor under a lease in which it is not named does not show that Plaintiff and Defendant Crimson were both parties under that lease.

In order for there to be a breach of contract, Plaintiff must allege sufficient facts to show that Plaintiff and Defendants Crimson and Cal Royalty are all parties to a contract. Although Plaintiff argues in opposition to the motion to dismiss that the Lessor has an obligation to defend the rights of the lessee, Plaintiff has not alleged any facts in the complaint that Defendants Crimson or Cal Royalty were lessors in any contract with Plaintiff. Plaintiff's allegations that Defendants' agent testified at the underlying trial regarding the rights to the property at issue

here is not sufficient for the Court to conclude that a contract existed between Plaintiff and Defendant Crimson. Further, other than the statement that Cal Royalty is a California Foreign Limited-Liability Company whose nerve center and principal place of business is in Denver, Colorado, the complaint is devoid of any mention of Cal Royalty. Plaintiff has failed to state a plausible claim for breach of contract; and Defendants' motion to dismiss the first cause of action for breach of contract shall be granted.

B. Obligation to Defend

Defendants also argue that even if a contract exists, the obligation to defend Plaintiff's title is not part of the contract. Paragraph 24 of the Ohio Lease states:[3]

> The Lessee accepts as satisfactory to itself the title of the Lessor to the demised premises, and agrees that (a) the Lessor shall not be liable or responsible to the Lessee in damages or otherwise by reason of any defects in or liens or encumbrances on the Lessor's title or any want of title in the Lessor to the demised premises or any portion thereof or to any oil, gas or other hydrocarbon substances therein contained or found or produced thereon or taken, therefrom, and (b) that in the event of the assertion by others of any claim against the Lessor on account of the extraction or removal from the demised premises of oil, gas or other hydrocarbon substance by the Lessee; the Lessee will defend and indemnify and save and hold the Lessor harmless from all of such claims except such portion thereof as represents the Lessor's royalty; provided that upon receiving notice thereof, the Lessor shall notify the Lessee with reasonable promptness of the filing of any action or suit for the assertion of any such claim and shall allow the Lessee the privilege of having its attorneys appear therein either alone or in association with the Lessor's attorneys (as the Lessor may elect) in defending any such action or suit on behalf of the Lessor, each party paying the expenses of its own attorneys.

(Oil and Gas Lease – The Ohio Oil Company, "B" Lease ¶ 24, attached as Exhibit 1 to Compl.)

While Plaintiff argues that the contract creates an obligation for the lessor to defend any challenges to the lessee's title, Defendants argue that such a reading of the lease is directly contrary to the language of the lease itself. Defendants contend that the only duty regarding title the lessor has under the lease occurs only where the lessor receives notice of a claim "against the Lessor on account of the extraction or removal from the [Property] of oil, gas or other

[3] The incorporation by reference doctrine allows material that is attached to the complaint to be considered on a motion to dismiss, as well as "unattached evidence on which the complaint 'necessarily relies' if : (1) the complaint refers to the document; (2) the document is central to plaintiff's claim; and (3) no party questions the authenticity of the document." Corinthian Colleges, 655 F3d at 999. Since the Ohio lease is attached to Plaintiff's complaint, is referred to in the complaint, is central to Plaintiff's claims, and no party questions the authenticity of the document, the Court shall consider the Ohio lease in deciding the motion to dismiss.

hydrocarbon substances of the Lessee." (ECF No. 13 at 7.) The only duty the lessor has in this circumstance is to notify the lessee and allow the lessee's attorney to appear in any such action, "as the Lessor may elect." (Id.) At the December 23 hearing, Defendants also argued that the lease only provides for the lessee to indemnify the lessor. (See ECF No. 11 at ¶ 23.)

A contract "provision is ambiguous when it is capable of two or more constructions both of which are reasonable." Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co. (Bay Cities), 5 Cal.4th 854, 867 (1993) (quoting Suarez v. Life Ins. Co. of North America 206 Cal.App.3d 1396, 1402 (1988)). "Language in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract." Bay Cities, 5 Cal. 4th at 867 (citations omitted.) The Court finds that the terms of the contract claims relevant to the issues addressed here are unambiguous and therefore resolution on a motion to dismiss is proper. Monaco v. Bear Stearns Residential Mortg. Corp., 554 F.Supp.2d 1034, 1040 (C.D. Cal. Jan. 28, 2008); Rennie & Laughlin, Inc. v. Chrysler Corp., 242 F.2d 208, 209-12 (9th Cir. 1957).

While paragraph 23 provides that the lessee shall indemnify the lessor, no similar provision exists for the lessor to indemnify the lessee. Paragraph 24 of the Ohio Lease states that the lessee accepts that the title to the leased property is satisfactory and that the lessee agrees to two issues regarding liability.

First, under subsection (a), the lessor is not liable or responsible to the lessee for any defects in or liens or encumbrances on the title, or any want of title in the lessor to any portion of the property or to any gas or other hydrocarbon substances contained, found or produced on or taken from the property. Second, under subsection (b), the lessee agrees to defend, indemnify, and hold harmless the lessor from any claims asserted against the lessor due to the extraction or removal of the property of any gas, oil, or hydrocarbon substance from the property. Review of the plain language of the lease itself does not contain any agreement that the lessor will defend the title to the property. On the contrary, the lease states that the lessee accepts the title as satisfactory and the lessor is not liable or responsible for any defects in the title. Neither paragraph 24 nor other language in the lease that the lessor agrees not to unnecessarily interfere

with the operations of the lessee show that the lessor specifically agreed to defend the lessee's rights to the surface against a third party claiming superior title. (ECF No. 21 at 11).

Plaintiff also alleges that pursuant to the lease, Defendants have an obligation to defend the title if they are promptly notified of any suit. However, the contract provides that the lessor must notify the lessee of the assertion of any claim and allow the lessee to have its attorneys appear in the action to defend an action on behalf of the lessor. There is no allegation that a suit was brought against the lessor, so the obligation to allow the lessee's attorney to defend such an action is not at issue here.

The language of the lease itself does not create an obligation for the lessor to defend the title of the property on behalf of the lessee. Defendants' motion to dismiss on this ground shall be granted.

C. Breach of the Covenant and Right to Quiet Enjoyment and Possession

Defendants argue that as a matter of law, the doctrine of quiet enjoyment and California Civil Code section 1927 do not require a landlord to defend claims on title made against a tenant. (ECF No. 13 at 7-8.) Plaintiff contends that by failing to intervene to protect the title challenge by KWBA Defendants interfered with their right to quiet enjoyment and possession of the property in violation of the contract and Civil Code section 1927. (ECF No. 21 at 11-15.)

In the absence of contrary language, "every lease contains an implied covenant of quiet enjoyment." Petroleum Collections Inc. v. Swords, 48 Cal.App.3d 841, 846 (1975). Additionally, California law provides that "[a]n agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same." Cal. Civ. Code § 1927. "Section 1927 and "the covenant of quiet enjoyment on the part of the lessor means that the tenant shall not be evicted or disturbed by the lessor, or by persons deriving title from him, **or by virtue of a title paramount to his**." Lost Key Mines v. Hamilton, 109 Cal.App.2d 569, 572-73 (1952) (emphasis added). The implied covenant of quiet enjoyment imposes upon each of the parties an obligation to do everything that the contract presupposes they will do to accomplish the contract's purpose. Andrews v. Mobile Aire Estates, 125 Cal.App.4th 578, 589 (2005).

Initially construed as only protecting the lessee against physical interference, this right to quiet enjoyment has been expanded to protect "the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." Petroleum Collections, Inc., 48 Cal.App.3d at 846. An actionable breach of the implied covenant need not be by the landlord personally, but can be caused by a neighbor or another claiming under the landlord. Andrews, 125 Cal.App.4th at 589.

Defendants rely on Andrews to argue that the covenant does not apply where a third party claiming title is the cause of the disturbance. While the covenant has been expanded to include interference other than those directly related to title, the covenant of quiet enjoyment is "the grantor's promise that the grantee's possession will not be disturbed by any other claimant with a superior lawful title." 21 C.J.S. Covenants § 19. A third party's claim to superior title would be within the covenant of quiet enjoyment. See McAlester v. Landers, 70 Cal. 79, 82 (1886) (the rule for the covenant of quiet enjoyment is that the lessor had title to the property leased and the power and right to demise it); Standard Live Stock Co. v. Pentz, 204 Cal. 618, 632-33 (1928) (suit by lessee against lessor due to foreclosure on the leased property); Kelly v. Dutch Church of Schenectady, 2 Hill 105, 109-110 (Sup. Ct. N.Y. 1841) (in action for breach of covenant of quiet enjoyment plaintiff must prove that he was evicted by a person who had lawful title to the property and that the evictor had such title before or at the time the property was conveyed by the defendant).

However, as discussed above, Plaintiff has not alleged any facts that a lease existed between Plaintiff and Defendants Crimson or Cal Royalty. Therefore, Plaintiff fails to state a claim for breach of the covenant and right to quiet enjoyment and possession.

Further, while Defendants ask the Court to find as a matter of law that the right to quiet enjoyment does not require them to defend Plaintiff's title in the state law suit, neither party has cited a case that specifically addresses the issue. Plaintiff cites Petroleum Collections Inc. which held that a "the landlord's failure to fulfill an obligation to repair or to replace an essential structure or to provide a necessary service can result in a breach of the covenant if the failure

substantially affects the tenant's beneficial enjoyment of the premises." 48 Cal.App.3d at 846. However, the duty to repair or replace is not coextensive with a duty to defend a lawful challenge to the title of the property.

Plaintiff also cites to Andrews for the proposition that a landlord has a duty to protect a tenant from third parties interfering with their right to quiet enjoyment of the property. Initially, the Court notes that Andrews is distinguishable as it dealt with the Mobilehome Residency Law which is an extensive statutory scheme governing mobilehome park tenancies and expressly authorizes a mobilehome park owner to take necessary steps to preserve the quiet enjoyment of the tenants of the mobilehome park. Andrews, 125 Cal.App.4th at 591-92. Further, the lease in Andrews contained a provision that the landlord would try to maintain the peace and quiet in the mobilehome park. Id. at 594. The Court in Andrews found this provision expressly provided that the landlord undertook to try to protect mobilehome resident's quiet enjoyment of the premises and this required the landlord to do everything the contract presupposes that will be done to accomplish its purpose. Id.

In the Ohio lease, the lessor maintained the exclusive rights to use the surface or allow others to use the surface in a manner that does not interfere with the lessee's interests. (ECF No. 1-1 at ¶ 3.) However, in this instance, Defendants are not allowing others to use the surface of the land. The state court has determined that KWBA has the sole legal right to possession of the land and Plaintiff previously had a lease with the State that addressed the rights to the surface of the property.

While Plaintiff alleges that KWBA are trespassers on the property, the state court has adjudicated this issue and found KWBA to have the right to possession of the property. KWBA are clearly not trespassers. To the extent that Plaintiff seeks a declaration otherwise, this Court finds that KWBA is an indispensable party as described below and the issue cannot be adjudicated in this forum.

Finally, Plaintiff alleges in the complaint facts to show that Defendants did assist in defending Plaintiff's title in the state court case by providing documents and an individual to testify on Plaintiff's behalf at trial regarding the chain of title. To the extent that the issue of

failure to defend is raised in the amended complaint, absent specific legal authority on point, it appears that whether Defendants' efforts in the state court action were sufficient to satisfy their duty under the covenant or whether Defendants breached the covenant by failing to participate in the challenge to the state court decision is a matter to be decided by the trier of fact and is not suitable for decision in a motion to dismiss.

D. Assignment

Plaintiff states that it was assigned the right to occupy 23 acres of real property and the balance of approximately 250 acres in Kern County under the Ohio Lease. Mere assignment of a lease does not establish that the terms of the lease were assumed by the assignee. Kelly v. Tri-Cities Broadcasting, Inc., 147 Cal.App.3d 666, 673 (1983). Other than the conclusory statement that Plaintiff was assigned the lease, Plaintiff has set forth no factual allegations regarding the assignment.

A lease has a dual character as it conveys an estate for years and creates a contract between the lessor and the lessee. Kelly, 147 Cal.App.3d at 676. These dual obligations under the lease are created by the terms of the agreement of the parties which arise by privity of contract, and obligations imposed under the law from the creation of the tenancy which arise from privity of estate. Id. Absent an express assumption of the obligations of the lease there is no privity of contract between the original landlords and the assignee. Id.

> Covenants of title or possession are not implied in the assignment of a lease, even though the words "grant" or "demise" are used in the assignment, since the object is to put the assignee in the place of the lessee. Since the assignor parts with his or her entire interest, an assignee evicted by the lessor ordinarily has no cause of action for damages against the assignor. . . .

49 Am. Jur. 2d Landlord and Tenant § 950.

Based upon the assignment of the rights under the lease, Plaintiff may be entitled to proceed against the lessor for the breach of the lease or the implied covenant of quiet enjoyment. Marchese v. Standard Realty & Dev. Co., 74 Cal.App.3d 142, 147 (1977). However, Plaintiff has not alleged that Defendants Crimson and Cal Royalty are parties to the Ohio Lease, and therefore Plaintiff cannot state a claim against these defendants based upon the Ohio Lease. Id.

at 147. Further, it is unclear that assuming some agreement exists between Plaintiff and Defendants Crimson and Cal Royalty, that they would be lessors under the Ohio Lease. If Defendants Crimson or Cal Royalty were lessees who assigned their rights to Plaintiff, they would be assignors, not lessors under the Ohio Lease. Pacific Coast Agr. Export Ass'n v. Sunkist Growers, Inc., 526 F.2d 1196, 1207-8 (9th Cir. 1975) (assignee steps into the shoes of its assignors).

E. Indispensable Party

Defendants argue that this action must be dismissed as KWBA is an indispensable party and its joinder in this action would destroy diversity jurisdiction. (ECF No. 13 at 9-13.) Plaintiff counters that KWBA is neither necessary nor indispensable in this action as it deal specifically with the malfeasance of Defendant Crimson in failing to fulfill its obligations to defend title to the property. (ECF No. 21 at 15-19.)

The Court agrees with Plaintiff that to the extent that this action is based on any failure by Defendant Crimson to fulfill obligations that were created by contract, KWBA is not a necessary party. However, the first amended complaint also seeks a declaration that Crimson has sole and exclusive use of the surface of the subject 23 acres, except for oil and gas lessee rights, and that KWBA cannot continue to operate the water wells located on the Ohio Lease. (ECF No. 4 at ¶ 52.)

Joinder of parties in this action is a procedural issue governed by the Federal Rules of Civil Procedure. Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102 125 (1968). Whether KWBA is a necessary party to this action is governed by Federal Rule of Civil Procedure 19. Rule 19 provides that a party who will not deprive the court of subject-matter jurisdiction must be joined if "in that person's absence, the court cannot accord complete relief among existing parties;" or that person's absence "would as a practical matter impair or impede the person's ability to protect the interest;" or would "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. . . ." Fed. R. Civ. P. 19(a)(1(B). This involves a three step inquiry: 1) Is the absent party necessary? 2) If the party is necessary, is it feasible to order the absent party to be joined in the action? and 3) If

joinder is not feasible, can the action proceed without the absent party, or is the party indispensable requiring the action to be dismissed. Salt River Project Agr. Imp. And Power Dist. v. Lee, 672 F.3d 1176, 1179 (9th Cir. 2012). If a non-party is determined to be required in the action, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California ("Colusa"), 547 F.3d 962, 969 (9th Cir. 2008) (quoting Fed.R.Civ.P. 19(b)). In this instance, Defendants have demonstrated that KWBA is a necessary party under subsection (B).

KWBA filed suit in Kern County Superior Court against Plaintiff seeking declaratory relief, an injunction, ejectment, and restitution. (First Am. Compl. attached at EC No. 14-1.) The action alleged that the State of California transferred land that is the subject of the Ohio Lease to KWBA and the state assigned all leases to KWBA in a document recorded in 1996. (Id. at ¶¶ 7-9.) KWBA asserted that their lease with Plaintiff terminated on March 21, 2010 and Plaintiff removed some improvements from the property but did not surrender complete possession of the property.[4] (Id. at ¶¶ 14-15.) KWBA sought an injunction that Plaintiff must surrender the property and deliver a quit claim deed to KWBA, and must vacate and cease operations on the property; ejectment from the property; and damages. (Id. at p. 10-11.) Plaintiff filed a cross complaint against KWBA asserting that it leased the mineral rights to the property and had the right to access all service area of the property. (Cross-Complaint of Grayson Service, Inc. ¶¶ 5-7, ECF No. 14-2.) Plaintiff alleged that KWBA had conveyed the oil and gas leases to other companies and sought a declaration that KWBA had no right to interfere with the gas and oil operations and the lease to Plaintiff was in force and effect and valid. (Id. at p. 3-4.)

Following a trial in state court, the judge issued a ruling denying Plaintiff's counter-claim and finding that Plaintiff was wrongfully occupying the 23 acres that is the subject of the Ohio

[4] It is unclear from the allegations in the first amended complaint whether there is a second lease that the state court suit adjudicated. At the hearing, the parties agree that there was a second surface lease that existed until it was terminated as alleged in the state court action. A copy of this second lease is attached as Exhibit 2 to the motion to dismiss. (ECF No. 13-2.)

Lease, and that Plaintiff must immediately surrender possession of the property to KWBA, deliver a recordable quit claim deed to KWBA, and shall not conduct any business operation on the property. Kern Water Bank Authority v. Grayson Service, Inc., No. S-1500-cv-275141-WDP (Sup. Ct. Feb. 10, 2014) (attached as Exhibit 4 at ECF No. 14-3).

1. KWBA Has a Legally Protected Interest in the Subject Manner of this Litigation

First, the Court must consider if KWBA has a legally protected interest in this action. The legally protected "interest must be more than a financial stake and more than speculation about a future event." Makah Indian Tribe, 910 F.2d at 558 (internal citations omitted). The fact that the outcome of litigation may have some financial consequence for a non-party is not sufficient to make the non-party necessary in the action. Colusa, 547 F.3d at 972. If the court finds that a legally protected interest exists, the court must determine whether the interest of the absent party will be impaired or impeded by the suit. Makah Indian Tribe, 910 F.2d at 558.

KWBA has previously brought suit and has been adjudicated to have title to the property that is the subject of this litigation. Plaintiff's request for a declaration that Crimson has the sole and exclusive rights to the surface area and that KWBA cannot continue to operate its water wells on the property is aimed at KWBA. Colusa, 547 F3d at 972. Clearly, KWBA, having already been determined to have the legal right to possession of the property, has a legally protected interest in the adjudication of this matter.

The parties currently before the Court in this action are not positioned to represent the interests of KWBA. Plaintiff's interests are clearly adverse to KWBA and there is no reason for Defendants, who are not associated with KWBA to represent their interests. Litigating the surface rights of the property without the presence of KWBA in this action will prejudice KWBA. KWBA has a legally protectable interest in the subject of this litigation such that a decision without KWBA's presence would impair or impede its ability to protect that interest.

2. The Decision in this Action Could Subject KWBA to Inconsistent Obligations

Alternately, KWBA would be required to be joined under Rule 19(a)(B)(ii) if the result of the current litigation would subject them to inconsistent obligations. "Inconsistent obligations are not the same as inconsistent adjudications or results." Colusa, 547 F.3d at 976 (internal

punctuation and citations omitted). "Inconsistent obligations occur when a party is unable to comply with one court's order without breaching another court's order concerning the same incident. Inconsistent adjudications or results, by contrast, occur when a defendant successfully defends a claim in one forum, yet loses on another claim arising from the same incident in another forum." Id. at 976 (citations omitted).

Since the state court has issued a decision that KWBA is entitled to sole possession of the property, a ruling by this Court that Defendant Crimson is entitled to possession of the property would subject the parties to inconsistent obligations because operating under one court's order would necessarily involve violating another court's order regarding the same issue. Colusa, 574 F.3d at 976. Accordingly, the Court finds that KWBA is a necessary party to the requests for declaratory relief regarding title and possession of the property.

3. KWBA is an Indispensible Party to the Claims for Declaratory Relief

"If an absentee is a necessary party under Rule 19(a), the second stage is for the court to determine whether it is feasible to order that the absentee be joined." Camacho v. Major League Baseball, 297 F.R.D. 457, 462-63 (S.D. Cal. 2013) (quoting Equal Emp. Opportunity Comm'n v. Peabody W. Coal Co., 400 F.3d 774, 779 (9th Cir.2005)). Joinder is not feasible where venue is improper, the absent party is not subject to personal jurisdiction, or joinder would destroy subject matter jurisdiction. Camacho, 297 F.R.D. at 464. At the December 23 hearing, the parties stated they do not dispute that joinder of KWBA in this action will destroy diversity jurisdiction.[5]

Having determined that KWBA is a necessary party to the claims in this action, the Court must determine whether KWBA is indispensable so that the action must be dismissed. Makah Indian Tribe, 910 F.2d at 558. This requires the court to consider another four-part analysis: 1) the prejudice to any party that might result from judgment; 2) whether the relief can be shaped to

[5] Defendants have submitted a declaration stating that KWBA is a public entity, sometimes referred to as "Joint Powers Authority," formed around October 1995 pursuant to the Joint Exercise of Powers Act, California Government Code § 6500 et seq. (Decl. of Jonathan Parker ¶ 2, ECF No. 13-1.) In determining whether joinder is required the Court may consider the Court can consider evidence outside the pleadings. Camacho v. Major League Baseball, 297 F.R.D. 457, 461 (S.D. Cal. 2013). "[A]n entity created by the State which functions independently of the State with authority to sue and be sued, such as an independent authority or a political subdivision of the State, can be a "citizen" for purposes of diversity jurisdiction. S. Carolina Dep't of Disabilities & Special Needs v. Hoover Universal, Inc., 535 F.3d 300, 303 (4th Cir. 2008).

avoid dismissal; 3) if an adequate remedy can be awarded without the absent party; and 4) whether the plaintiff has an adequate remedy if the action is dismissed for nonjoinder. Id. at 560.

As discussed above, KWBA has a legally protected interest in subject property which has been decided by the state court. There is no representative present in this action to protect KWBA's interest in adjudicating whether another party has superior rights to the property. KWBA would suffer prejudice were this court to adjudicate whether Defendant Crimson has sole and exclusive rights to the same property that has been held by the state court to belong to KWBA. Here, there is no manner in which this Court can shape the requested relief in regards to who has the surface rights to the property and KWBA's right to water wells on the property to avoid prejudice to KWBA.

There is an adequate forum for Plaintiff to adequately remedy the claims as Plaintiff is adjudicating the claim regarding whether KWBA has superior property rights in state court. Accordingly, the Court finds that KWBA is an indispensable party in regards to the surface rights on the property. These claims shall be dismissed without leave to amend. Plaintiff shall be provided with an opportunity to amend the complaint to cure the deficiencies in the remaining claims.

4. Amendment

Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend 'shall be freely given when justice so requires,'" Fed. R. Civ. P. 15(a), and "[l]eave to amend should be granted if it appears at all possible that the plaintiff can correct the defect," Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (internal citations omitted). However, courts "need not grant leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile." Id.

Defendants seek to have this complaint dismissed without leave to amend. However, as discussed above, it is not clear that Plaintiff cannot amend his complaint to show that a contract exists between the parties here and that the contract was breached. Further, if Plaintiff is able to plead facts to show that a contract exists, Plaintiff may be able to allege facts sufficient to state a plausible claim that the contract and implied covenants have been breached. Plaintiff shall be

granted leave to amend its claims consistent with this opinion.

V.

CONCLUSION AND ORDER

Based on the foregoing, the Court finds that Plaintiff has failed to state any cognizable claims in the complaint. Further, the Court finds that KWBA is an indispensable party whose joinder in this action would defeat diversity jurisdiction.

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' motion to dismiss, filed October 31, 2014, is GRANTED;
2. Plaintiff's claims for declaratory relief regarding rights to possession of the property are DISMISSED without leave to amend;
3. Within thirty (30) days, Plaintiff shall file an amended complaint to cure the deficiencies in the remaining claims; and
4. Failure to file an amended complaint in compliance with this order will result in this action being dismissed.

IT IS SO ORDERED.

Dated: **December 24, 2014**

UNITED STATES MAGISTRATE JUDGE