

THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

WOOD GROUP POWER, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 10-CV-04034-NKL
	)	
MARCIAL TRUJILLO,	)	
	)	
Defendant.	)	

**ORDER**

Before the Court is Plaintiff Wood Group Power, Inc.’s Motion to Dismiss Defendant Marcial Trujillo’s Counterclaim for lack of subject-matter jurisdiction [Doc. # 54]. For the following reasons, the motion is denied.

**I. Background**

On November 13, 2009, Wood Group Power, Inc. (“Wood Group”), filed a complaint against Marcial Trujillo (“Trujillo”) in Texas state court. Wood Group is a Delaware oilfield services corporation whose principal place of business is Houston, Texas. Trujillo is a Pettis County, Missouri, resident and a former employee of the company. The case was removed to the United States District Court for the Southern District of Texas on diversity of citizenship grounds pursuant to 28 U.S.C. § 1332(a). The case was then transferred to this Court. On June 7, 2010, Wood Group filed an amended complaint. Trujillo filed his answer to the amended complaint which included a

counterclaim. Wood Group now moves to dismiss that counterclaim for lack of subject-matter jurisdiction.

In its complaint, Wood Group alleges that Trujillo, after resigning from the company, retained a Wood Group computer drive containing confidential information and accessed the computer drive after beginning employment with a competing company. Wood Group brings its claims against Trujillo under contract and tort law, alleging conversion, violation of a duty of loyalty and violation of employment and intellectual property agreements.

Trujillo, in his counterclaim, alleges that on March 30, 2009, Wood Group informed him by letter that he was to receive a performance bonus of \$48,816.08. Wood Group indicated in the letter that Trujillo was to receive the final \$7,579.00 of the bonus in March 2010. Trujillo alleges that Wood Group failed to pay this amount.

## **II. Discussion**

“[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” 28 U.S.C. § 1367(a). Claims within an action are part of the same case or controversy if they “derive from a common nucleus of operative fact.” *Myers v. Richland County*, 429 F.3d 740, 746 (8th Cir. 2005) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)).

It has been held that a claim for setoff is part of the same case or controversy for purposes of supplemental subject matter jurisdiction. *See Ambromovage v. United Mine Workers of America*, 726 F.2d 972, 990 (3rd Cir. 1984). *Also see, Jones v. Ford Motor Credit Co.*, 358 F.3d 205 (Ca. 2nd 2004). Counsel for Trujillo has stated that he seeks to set off Trujillo's claim for the bonus against any damages that may be assessed in favor of Wood Group. At a minimum, this gives the Court supplemental subject matter jurisdiction for purposes of setoff.

Further, on this record, the Court finds it has supplemental subject matter jurisdiction over Trujillo's affirmative claim for relief, even though that claim is permissive. This is because it appears that compliance with the terms of his employment is a condition precedent to Trujillo qualifying for a bonus. Indeed, the facts suggest that the nonpayment may have been triggered by Wood Group's investigation of Trujillo's computer after he quit. Given the current record before the Court, there is sufficient factual overlap between Wood Group's claim and Trujillo's counterclaim that it would be expected they would be tried in the same lawsuit. *See* 13 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3567.1 (3d ed.1998).

### **III. Conclusion**

Accordingly, it is hereby ORDERED that Wood Group's Motion to Dismiss Trujillo's Counterclaim [Doc. # 54] is DENIED.

s/ Nanette K. Laughrey  
NANETTE K. LAUGHREY  
United States District Judge

Dated: September 8, 2010  
Jefferson City, Missouri