

IN THE CHANCERY COURT, STATE OF WYOMING

2024 WYCH 4

AishangYou Limited, Dada Business Trading Co.,
Limited, Dongping Liu, Fengzhen Ai, Min Li,
Peifeng Yu, Pijun Liu, Wenwen Yu, and Yanqin
Chen,

Plaintiffs and Counterclaim-
Defendants,

v.

WeTrade Group, Inc.,

Defendant, Counterclaimant, and

Third-

Party Plaintiff,

Biming Guo,

Defendant,

v.

Zheng Dai and Lina Jiang,

Third-Party Defendants
(dismissed from action).

WY Chancery Court
Apr 24 2024 09:05AM
CH-2023-000028
72819228
N/A

Case No. CH-2023-000028

FILED

Order on Response to Notice of Intent to Dismiss

[¶ 1] Pending are defendant WeTrade Group, Inc.'s response to the court's notice of intent to dismiss this action as well as plaintiffs' limited response to WeTrade's response. The notice and responses stem from third-party defendants Zheng Dai and Lina Jiang's Rule 3(a) objection to proceeding in chancery court. After reviewing the responses and considering third-party defendants' dismissal from this action and Rule 3(a)'s purpose, the court finds the motion moot and declines to dismiss this action.

BACKGROUND

Named, but not served, third-party defendants objected under Rule 3(a).

[¶ 2] This case is in a unique procedural posture. Despite never being served, third-party defendants Dai and Jiang moved to dismiss for lack of personal jurisdiction. *Mot. to Dism.*, Jan. 17, 2024 (FSX No. 71821417). Following that motion, which flagged the lack of process, defendant and third-party plaintiff WeTrade caused summonses to be issued to the third-party defendants. *Praecipe for Sum.*, Jan. 30, 2024 (FSX Nos. 71896350, 71906786).

[¶ 3] Before those summonses were served, the third-party defendants objected to proceeding in chancery court under Rule 3(a). *Obj.*, Feb. 13, 2024 (FSX No. 72027111). That rule premises chancery court jurisdiction on the full consent of all parties, allowing any party to object to proceeding in chancery court “on or before the date its first pleading is due.” W.R.C.P.Ch.C. 3(a). If the objection is timely filed, the chancery court must dismiss the case without prejudice. *Id.* But if untimely, the objection is waived. *Id.*

[¶ 4] Dai and Jiang asserted their objection was timely because no due date had been established for their first pleading, as they were never served with a complaint or other pleading requiring a response. *Reply re Obj.*, Feb. 15, 2024 (FSX No. 72054344).

Based on the objection, the court noticed its intent to dismiss this action.

[¶ 5] Plaintiffs were silent on the objection. But WeTrade responded, urging the court to deem Dai and Jiang’s objection waived for two reasons. *Rsp to Obj.* Feb. 14, 2024 (FSX No. 72041479). First, by filing the motion to dismiss (according to WeTrade, a responsive pleading) without objecting to proceeding in chancery court, the third-party defendants waived their right to object under Rule 3(a). Second, the third-party defendants could not raise Rule 3(a) because they had waived service-based defenses by filing a motion to dismiss (again, according to WeTrade, a responsive pleading) without challenging service of process.

[¶ 6] The court disagreed with WeTrade’s central premise that motions to dismiss are responsive pleadings. *Not. of Intent to Dism.*, Feb. 26, 2024 (FSX No. 72147984). It disagreed because the Wyoming Supreme Court has held that motions to dismiss are not responsive pleadings. *In re Paternity of IC*, 941 P.2d 46, 50 (Wyo. 1997). *See*

also Kegler v. U.S. Dep't of Just., 436 F. Supp. 2d 1204, 1208 n.2 (D. Wyo. 2006) (“[A] motion to dismiss is not a responsive pleading. . . .”). And Rule 7(a) limits pleadings to specific types, and a motion to dismiss is not included in that list. W.R.C.P.Ch.C. 7(a). *See also PPEX, LLC v. Buttonwood, Inc.*, No. 21-CV-53-F, 2021 WL 7210650, at *4 n. 2 (D. Wyo. July 13, 2021) (“Rule 7 defines what filings count as a ‘pleading,’ and a motion is not among them.”).

[¶ 7] The court noted that Rule 3(a) deems an objection waived only when “not brought within the time periods in this rule.” Those time periods require objecting “on or before the date [the objector’s] first pleading is due.” W.R.C.P.Ch.C. 3(a). Based on this plain language, the court concluded this action was subject to dismissal because third-party defendants objected before the date their first pleading was due. The court was nonetheless concerned about the impact dismissal would have on the initial parties, who had litigated for months and stipulated to a preliminary injunction. With this concern in mind, the court noticed its intent to dismiss, giving any party 10 days to show why the case should not be dismissed under Rule 3(a). *Not. of Intent to Dism.*, Feb. 26, 2024 (FSX No. 72147984).

Defendant opposes dismissal, plaintiffs do not.

[¶ 8] After receiving the court’s notice, WeTrade dismissed its claims against Dai and Jiang under Rule 41(a)(1)(A)(i) and (c)(1) and argued this dismissal mooted the objection. *Not. of Dism.*, Mar. 5, 2024 (FSX No. 72248245) and *Rsp to Not. of Int. to Dism.*, Mar. 7, 2024 (FSX No. 72322990). WeTrade further argued that Dai and Jiang had no standing to object when they objected because they were not yet parties, as they had not been served.

[¶ 9] This argument rests on Rule 3(a)’s language and timing requirement. The rule states a civil action is commenced when service is complete and permits “any party” to file an objection before its first pleading is due. To support its argument that third-party defendants could not object because they never became parties, WeTrade cites cases reasoning one becomes a party once served. *Rsp to Not. of Int. to Dism.* (citing *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (“[O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.”); *Felders v. Bairrett*, 885 F.3d 646, 652 (10th Cir. 2018) (same); and *Yavuz v. 61 MM, Ltd.*, 576 F.3d 1166, 1175 (10th Cir. 2009) (“[plaintiff] has never served either of these parties; they were never made parties to the district court action.”)).

[¶ 10] Plaintiffs argue that WeTrade overstates the cases and, in any event, Dai and Jiang received the summons on February 29, 2024. *Rsp to Rsp to Not. of Int. to Dism.*, Mar. 14, 2023 (FSX No. 72522792). Plaintiffs offer no support for this assertion, however, and to date no proof of service on the third-party defendants has been filed in this case. Since arguing for dismissal of the entire action based on Dai and Jiang’s objection, plaintiffs dismissed their claims in this case against WeTrade and Biming Guo. *Ord. re Stip. Not. of Dism.*, Apr. 8, 2024, (FSX No. 72698614).

[¶ 11] In sum, the procedural posture is unique. Plaintiffs, who initiated this action but have since dropped their claims, support dismissal of the entire action based on the objection of third-party defendants who were dismissed from this action before being served. Meanwhile, defendant, who has not dropped its counterclaims, opposes dismissal.

DISCUSSION

[¶ 12] This court must determine whether an objection by a named—but not yet served—third-party defendant who was dismissed from the case before service requires dismissal of an action that has been litigated for months with over 380 documents eFiled, four court hearings, and a stipulated preliminary injunction on a fundamental issue of who controls the defendant corporation.

[¶ 13] Though there is dispute over whether third-party defendants were “parties” at the time of objection under Rule 3(a), there is no dispute that third-party defendants are no longer parties to this action following their dismissal from the case. This dismissal rendered the objection moot.

[¶ 14] Wyoming “courts should not consider issues which have become moot” *Stewart Title Guar. Co. v. Tilden*, 2003 WY 31, ¶ 8, 64 P.3d 739, 742 (Wyo. 2003). The dismissal of third-party claims renders pending motions related to those claims moot. *Genon Mid-Atl., LLC v. Stone & Webster, Inc.*, No. 11 CV 1299 HB, 2012 WL 1372150, at *9 (S.D.N.Y. Apr. 18, 2012). *Cf. DiCesare v. McAnally*, 657 F. App’x 800, 803 (10th Cir. 2016) (Plaintiff’s motions became moot upon case dismissal). In this case, the third-party defendants’ objections to proceeding in chancery court became moot upon their dismissal from this chancery court case.

[¶ 15] This result aligns with Rule 3’s purpose. Rule 3 presumes that chancery court is a full-party consent jurisdiction and protects parties who do not wish to litigate

in an accelerated forum with limited discovery and no juries. The rule need not protect from chancery court individuals who are not obligated to proceed in chancery court because they have been dismissed from the case.

[¶ 16] Plaintiffs and WeTrade opted to proceed in chancery court and have moved forward on an accelerated schedule for months now. Rule 3(a) does not require that they discard this work and begin anew in another jurisdiction because named third-party defendants, who have since been dismissed from this action, objected to proceeding in chancery court.

[¶ 17] Plaintiffs argue that proceeding outside of chancery court is best because the case has “ballooned” to include “third-party practice and dueling breach of fiduciary claims” requiring examination of “asset and equity sales and Bitcoin transactions.” *Rsp to Rsp to Not. of Int. to Dism.*, Mar. 14, 2023 (FSX No. 72522792). The court does not find this argument compelling because any increased complexity introduced into the case by inclusion of the third-party defendants has been resolved by their dismissal. As to the other issues: it was plaintiffs who selected chancery court in the first place. Plaintiffs who bring claims in chancery court risk defending counterclaims in chancery court.

[¶ 18] In concluding dismissal rendered the objection moot, the court need not—and will not—address whether Dai and Jiang are parties under Rule 3(a) when they moved to dismiss for lack of personal jurisdiction without raising service-related defenses, appeared for a scheduling conference, and then objected without ever being served.

[¶ 19] But the court acknowledges that Rule 3(a) may incentivize plaintiffs in multi-party actions, as well as defendants acting as third-party plaintiffs, to dismiss claims against objecting parties to avoid dismissal. Rule 3(a) might also encourage defendants, after they have had the opportunity to gauge the court's view of the issues through pre-answer motions and interactions, to add third-party plaintiffs, who will then object to proceeding in chancery court. Any deficiencies in, or unintended consequences of, Rule 3(a) should be addressed through rule amendment after careful consideration of the most appropriate language and all consequences (both intended and unintended) stemming from rules changes, rather than through rulings on motions practice in unique cases like this one

[¶ 20] In conclusion, this court rules that the Dai and Jiang's Rule 3(a) objection to proceeding in chancery court is moot and does not affect the remaining claims in this action. It is **ORDERED** that this case is not dismissed.

Dated: 4/24/2024

/s/ Richard L. Lavery

HONORABLE RICHARD LAVERY