IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LIBERTARIAN NATIONAL, COMMITTEE INC., Plaintiff, v. LIBERTARIAN PARTY OF NEW MEXICO, et al, Defendants.	CIVIL ACTION NO.: 1:26-cv-01562-MIS-KK

DEFENDANTS' MOTION TO DISMISS COUNT V UNDER RULES 12(b)(7) AND 19 FOR FAILURE TO JOIN REQUIRED AND INDISPENSABLE PARTIES, OR IN THE ALTERNATIVE TO COMPEL JOINDER, AND MEMORANDUM IN SUPPORT

I. MOTION

Defendants move under Federal Rules of Civil Procedure 12(b)(7) and 19 to dismiss Count V (conversion) for failure to join required and indispensable parties. By the Complaint's own allegations, the funds at issue in Count V are not held by any Defendant. They are held by a third party under a 2018 escrow agreement and disbursed to LPNM. The party that holds and administers those funds, the escrow agent or trustee, is not before the Court. Neither is the escrow or trust itself, nor the estate of the donor whose bequest created the fund. The Court cannot determine who is entitled to the escrowed funds or order them transferred without the party that holds them or the party who bequeathed them, and proceeding in those parties' absences would prejudice them and risk inconsistent obligations. Count V should be dismissed.

Pursuant to D.N.M.LR-Civ. 7.1(a), Defendants' counsel sought Plaintiff's concurrence in the relief requested. Plaintiff opposes this Motion.

II. INTRODUCTION

Count V is, in substance, a dispute about who is entitled to funds held by a neutral stakeholder (the trustee) and against the settlor's estate who established the trust and bequest to the LPNM. The Complaint alleges that a 2016 bequest is held in escrow under a July 2018 Escrow Agreement and disbursed each year to LPNM, and that, upon LPNM's disaffiliation, the funds "should have been transferred to the LNC." Compl. ¶¶ 81–83. The LNC did not sue the escrow agent that holds the funds, did not name the escrow or trust, nor the donor's estate. It instead sued the beneficiary, LPNM (and its officers), for conversion of money the beneficiary does not hold.

That structure cannot support an adjudication of entitlement to the escrowed funds. The holder of the funds is a required party under Rule 19(a), its absence cannot be cured here, and in equity and good conscience the claim cannot proceed without it. Count V should be dismissed under Rules 12(b)(7) and 19(b).

III. BACKGROUND

Count V alleges that, in 2016, a donor "left a bequest to the Libertarian Party of New Mexico," that the bequest "is held in escrow," and that "a portion thereof is disbursed each year to the Libertarian Party of New Mexico." Compl. ¶ 81. The Complaint alleges that the arrangement is governed by an "Escrow Agreement, July 2018," which the LNC attaches as Exhibit 24. *Id*. The annual disbursement "was limited to $5,500" at first and increased in later years, and "a substantial balance remains in escrow." *Id*.

The LNC alleges that, upon LPNM's disaffiliation, "the bequest should have been transferred to the LNC for distribution to its recognized local affiliate, but Defendants failed to do so," and that "Defendants have received annual distributions from the escrow funds in at least 2023, 2024, and 2025." Compl. ¶¶ 83–84.

On the face of the Escrow Agreement (Exhibit 24), the escrow agent that holds and administers the funds is a Michigan bank, which holds the res in Michigan. The Complaint does not name that trustee. It does not name the escrow or trust itself. Nor does it name the estate or successors in interest of the donor, David Marion Clinard, Jr., whose bequest created the fund. Compl. ¶ 81. The LNC possesses the Escrow Agreement, having attached it as its own Exhibit 24, and therefore knows the identity and location of the trustee.

IV. LEGAL STANDARD

Rule 12(b)(7) permits dismissal for "failure to join a party under Rule 19." Fed. R. Civ. P. 12(b)(7). The Court applies Rule 19's required party and indispensability inquiry. First, the Court asks whether the absent party is "required" under Rule 19(a). A party is required if, in its absence, the Court "cannot accord complete relief among existing parties," Fed. R. Civ. P. 19(a)(1)(A), or if the party "claims an interest relating to the subject of the action" and proceeding in its absence may "as a practical matter impair or impede the person's ability to protect the interest" or "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).

Second, if a required party cannot be joined, the Court determines "whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed,"

weighing the four factors in Rule 19(b). Fed. R. Civ. P. 19(b); *Citizen Potawatomi Nation v. Norton*, 248 F.3d 993, 997–98 (10th Cir. 2001); *Sac & Fox Nation of Mo. v. Norton*, 240 F.3d 1250, 1258–59 (10th Cir. 2001); *Davis ex rel. Davis v. United States*, 343 F.3d 1282, 1288–89 (10th Cir. 2003).

V. ARGUMENT

A. The escrow agent / trustee is a required party because the Court cannot accord complete relief without it. Rule 19(a)(1)(A).

The relief Count V seeks is the transfer of the escrowed funds to the LNC. Compl. ¶ 83. By the Complaint's own allegations, those funds are held by a third-party escrow agent under the 2018 Escrow Agreement, not by any Defendant. Compl. ¶ 81. The Court cannot order the holder of the funds to release or transfer them, and cannot adjudicate entitlement to the escrowed res, without the holder before it. Complete relief cannot be accorded among the existing parties alone. Fed. R. Civ. P. 19(a)(1)(A); see also *Hanson v. Denckla*, 357 U.S. 235, 254 (1958) (trustee was indispensable to adjudication affecting trust property). The escrow agent / trustee is therefore a required party under Rule 19(a)(1)(A).

B. The trustee is a required party because it claims an interest that would be impaired, and its absence risks inconsistent obligations. Rule 19(a)(1)(B).

The escrow agent administers the Escrow Agreement and owes duties under it. It plainly claims an interest "relating to the subject of the action," the escrowed funds and the agreement governing their disposition. Adjudicating entitlement to those funds in the agent's absence would impair the agent's ability to protect that interest and would expose both the agent and the Defendants to a substantial risk of inconsistent obligations: a federal judgment directing the funds

to the LNC would conflict with the agent's duties under the Escrow Agreement and the donor's expressed intent, and could subject the agent to competing demands from the LNC, LPNM, and others. Fed. R. Civ. P. 19(a)(1)(B); *Citizen Potawatomi Nation*, 248 F.3d at 998–1001; *Sac & Fox Nation*, 240 F.3d at 1258–60. The escrow or trust itself, whose terms govern who receives the funds, is for the same reasons a required party that is not before the Court.

C. The donor's estate or successors in interest are also required parties.

The question Count V poses, whether the escrowed funds belong to the LNC, to LPNM, or to neither, cannot be answered without construing the instrument that governs the bequest and the donor's intent. Compl. ¶ 81. The LNC assumes that LPNM's disaffiliation entitled the LNC to the funds, Compl. ¶ 83, but that is a conclusion that depends entirely on the instrument's terms. Depending on those terms, the disaffiliation may instead trigger a reversion or gift-over to the donor's estate or successors in interest, rather than any transfer to the LNC. The donor's estate or successors therefore hold a potential interest in the very funds at issue, an interest that competes with the claims of both existing parties.

Adjudicating entitlement to the funds in the estate's absence would, as a practical matter, impair the estate's ability to protect that interest and could expose the trustee and the Defendants to inconsistent obligations should the estate or its successors later assert a claim. Fed. R. Civ. P. 19(a)(1)(B); *Hanson*, 357 U.S. at 244-45, 254; *Citizen Potawatomi Nation*, 248 F.3d at 998-1001. The estate or successors are thus required parties whose absence is an additional reason Count V cannot proceed. Defendants do not ask the Court to decide on this motion whether the bequest reverts; that question is precisely what cannot be decided without the trustee and the estate before

the Court. The point is narrower and dispositive: the entitlement question is live and instrument-dependent, and the parties who would establish the answer are not here.

D. The dispute is in substance a stakeholder dispute, which cannot be resolved without the stakeholder.

New Mexico conversion requires a defendant's wrongful exercise of dominion or control over personal property in denial of or inconsistent with the owner's rights. *Muncey v. Eyeglass World, LLC*, 2012-NMCA-120, ¶ 22, 289 P.3d 1255. By the Complaint's allegations, the funds are held by the escrow agent, not by Defendants. A contest between two claimants, the LNC and LPNM, over money held by a neutral stakeholder is the paradigmatic circumstance in which the stakeholder must be before the court, and in which the proper vehicle is a proceeding (including, potentially, interpleader) that brings the stakeholder and all claimants together. *See* Fed. R. Civ. P. 19(a)(1); Fed. R. Civ. P. 22(a)(1); 28 U.S.C. § 1335. The LNC's decision to sue the beneficiary for conversion of funds it does not hold, rather than to bring the stakeholder and the competing claims before the Court, is precisely the structural defect Rule 19 exists to correct.

E. The required parties cannot be joined here, and in equity and good conscience Count V must be dismissed. Rule 19(b).

Joinder of the trustee, the trust, and the donor's estate is not feasible in this action, for two independent reasons.

First, the Court lacks personal jurisdiction over the trustee. The escrow agent is a Michigan bank that holds and administers the res in Michigan. It is not at home in New Mexico and is not subject to general jurisdiction here, and the LNC cannot establish specific jurisdiction over the trustee for a dispute concerning funds the trustee holds and administers in Michigan. *Daimler AG*

v. Bauman, 571 U.S. 117, 137–39 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 924 (2011); *Hanson v. Denckla*, 357 U.S. 235, 251–54 (1958) (Florida lacked jurisdiction over out-of-state trustee and trust res where trustee had not purposefully availed itself of Florida). A required party over whom the Court cannot exercise personal jurisdiction cannot be joined, and its absence is therefore assessed under Rule 19(b). *Citizen Potawatomi Nation*, 248 F.3d at 997–1002. This Court could not compel the Michigan trustee's joinder in this District.

Second, and independently, Count V has no basis for federal subject-matter jurisdiction. As set out in Defendants' concurrently filed Motion to Dismiss, the Complaint invokes only federal-question jurisdiction under 28 U.S.C. § 1331, the conversion claim does not arise under federal law, it shares no common nucleus of operative fact with the Lanham Act claims for purposes of 28 U.S.C. § 1367(a), and no diversity jurisdiction is pleaded or apparent. There is thus no jurisdictional vehicle by which the absent parties could be brought into this federal action on this claim.

Because the required parties cannot be joined, the Rule 19(b) factors govern, and each favors dismissal:

1. Prejudice.

A judgment rendered without the escrow agent would prejudice the agent and the absent beneficiaries, and would risk inconsistent obligations on the Defendants and the agent. Fed. R. Civ. P. 19(b)(1).

Whether prejudice can be lessened. The prejudice cannot be cured by shaping the relief or by protective provisions, because the funds are held by the absent party and any effective relief requires its participation. Fed. R. Civ. P. 19(b)(2).

2. Adequacy of a judgment in the party's absence.

A judgment rendered without the holder of the funds would be inadequate; the Court could neither order the funds transferred nor quiet the competing claims to them. Fed. R. Civ. P. 19(b)(3).

3. Adequate remedy if dismissed.

The LNC has an adequate alternative remedy. A state-court action, or an interpleader proceeding, can join the escrow agent, the trust, the donor's estate, LPNM, and the LNC in a single forum and determine entitlement to the funds completely. Dismissal does not leave the LNC without recourse; it directs Count V to the only forum in which it can be fully and fairly resolved. Fed. R. Civ. P. 19(b)(4).

In equity and good conscience, Count V cannot proceed without the absent parties and should be dismissed. Fed. R. Civ. P. 19(b); *Citizen Potawatomi Nation*, 248 F.3d at 1001–02; *Sac & Fox Nation*, 240 F.3d at 1260–61.

VI. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss Count V under Rules 12(b)(7) and 19(b) for failure to join required and indispensable parties. In the alternative, if the Court determines that joinder is feasible, Defendants request that the Court order the LNC to join the escrow agent or trustee, the trust, and the donor's estate as parties to Count V.

Although, because joinder is not feasible for the reasons stated, dismissal is the appropriate remedy.

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Respectfully submitted,

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