NOT FOR PUBLICATION

In the United States Court of Appeals For the Eleventh Circuit

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No. 24-12812
Non-Argument Calendar

EPI-USE SYSTEMS LIMITED,
n.k.a. Group Elephant Limited,
EPI-USE AMERICA, INC.,

Plaintiffs-Appellees-Cross Appellants,

versus

BI BRAINZ, LLC,
RUMICO TANG YUK,

Defendants-Appellants-Cross Appellees.

Appeals from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-02356-VMC

Before JORDAN, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Defendant-Appellant/Cross-Appellee Bi Brainz ("BIB") is a business intelligence and analytics company founded by Defendant-Appellant/Cross-Appellee Rumico Yuk. Plaintiff-Appellee/Cross-Appellant EPI-USE Systems Limited ("EUSL") is an international provider of human resources and payroll technology applications. Counterclaim Defendant/Third-Party Plaintiff/Appellee Cross-Appellant EPI-USE America, Inc. ("EUAM") is EUSL's domestic subsidiary company. This case arises out of the collapse of these entities' business relationship and the Defendants' alleged failure to make payments on loan agreements and promissory notes.

As explained later, the district court granted summary judgment in favor of EUSL, ruling that BIB and Ms. Yuk had failed to repay the loans in question. BIB and Ms. Yuk appeal the district court's determination that it had subject-matter jurisdiction over EUSL's claims against them. EUSL and EUAM cross-appeal the district court's decision not to exercise supplemental jurisdiction over EUAM's, BIB's, and Ms. Yuk's counterclaims and third-party claims.

I

EUSL is a foreign corporation, and its wholly-owned subsidiary, EUAM, is a citizen of Georgia and Delaware for purposes of diversity jurisdiction. BIB is also a citizen of Georgia and Delaware. Ms. Yuk is domiciled in Georgia.

In June of 2020, EUSL filed its initial complaint against BIB and Ms. Yuk, which it later amended to plead diversity jurisdiction. The complaint alleged that BIB and Ms. Yuk entered into a loan agreement with EUSL and EUAM in 2018. Under the loan agreement, BIB provided two promissory notes to EUSL for a loan with a principal amount of $300,000 and a line of credit of up to $100,000. In exchange, Ms. Yuk gave EUAM a 49% membership and ownership interest in BIB. BIB executed the two promissory notes for the $300,000 loan and the $100,000 line of credit provided by EUSL. Months later, BIB executed a promissory note amending the loan agreement, and EUSL provided BIB with an additional loan of $30,000. The complaint alleged that BIB and Ms. Yuk failed to repay the loans and the line of credit.

In September of 2020, BIB and Ms. Yuk filed their answer and a motion to join EUAM as a counterclaim defendant under Rule 20. The district court granted that motion. BIB and Ms. Yuk brought a counterclaim against EUAM for breach of fiduciary duty based on its 49% membership and ownership interest in BIB and for alleged mismanagement of certain BIB projects. BIB and Ms. Yuk also alleged that EUSL functioned as an alter ego of EUAM such that it too should be liable for breach of fiduciary duty, or, alternatively, for aiding and abetting EUAM's breach.

In early 2021, EUAM filed its answer and asserted counterclaims against BIB and Ms. Yuk for approximately $200,000 in unpaid invoices allegedly owed to EUAM for services rendered to BIB clients.

In January of 2022, the district court granted summary judgment in favor of EUSL on all the claims brought in the original complaint. In March of 2022, EUSL and EUAM moved for summary judgment on BIB's and Ms. Yuk's third-party claims and on EUAM's counterclaims against BIB.

Fourteen months later, in March of 2023, the district court granted summary judgment for EUSL on BIB's and Ms. Yuk's claims of aiding and abetting a breach of fiduciary duty, but denied summary judgment on their alter ego and breach of fiduciary duty claims. The court also granted partial summary judgment for EUAM on some of its breach of contract and action on open account claims, and it denied summary judgment on others. The court explained that although EUAM had undisputedly performed services for BIB on numerous projects, a genuine issue of material fact remained as to whether EUAM had performed services for other projects.

In May of 2023, EUSL filed a motion for certification of final judgment, arguing that because the district court had granted summary judgment on all the claims in its complaint, its January of 2022 summary judgment order "constitutes a final judgment pursuant to F.R.C.P. 54(b)." D.E. 167 at 8. EUSL argued that the remaining claims and counterclaims were "separately enforceable and do not overlap with the remedies sought in" EUSL's complaint. *See id.* at 6–8. It asserted that there was no just reason to delay relief because "[EUSL's] damages are certain, easily calculable, and there are no factual issues remaining as to Defendants' liability for the amounts

due." *Id.* at 10. While this motion was pending, the court ordered briefing regarding "the basis for supplemental jurisdiction over [EUAM's] counterclaims and [to] explain how the Court's exercise of supplemental jurisdiction would be consistent with the jurisdictional requirements of 28 U.S.C. § 1332 and 28 U.S.C. § 1367(b)." D.E. 190 at 2.

The district court subsequently declined to exercise supplemental jurisdiction over BIB's and EUAM's third-party claims under 28 U.S.C. § 1367. The court reasoned that:

> The purpose of § 1367(b) is to prevent a plaintiff from smuggling in claims that it would not otherwise be able to litigate in federal court. If it were permissible to adjudicate the nondiverse claims related to EUAM, a plaintiff could defeat the statutory requirement of complete diversity by the simple expedient of suing only those defendants who were of diverse citizenship and waiting for the defendants to bring counterclaims against their nondiverse corporate subsidiary. . . .
>
> At the time of the original complaint, EUSL was aware of the potential claims EUAM had against Defendants and chose not to bring those claims in favor of choosing the federal forum. The Court should not reward the gamesmanship of EUSL anticipating the likelihood of Defendants seeking to litigate its entire relationship with EUSL and its subsidiaries in one action.

D.E. 203 at 18–19 (citation and quotation marks omitted).

The district court also found that if it were to exercise supplemental jurisdiction over the counterclaims it "would be required to realign EUSL and EUAM as plaintiffs, destroying diversity." *Id.* at 20. The court reasoned that EUSL's and EUAM's interests were aligned because, as the parent company and subsidiary, they were on the same side of the transaction with BIB and they were represented by the same counsel. The court dismissed EUAM from the action for lack of subject-matter jurisdiction, thereby dismissing BIB's and Ms. Yuk's third-party claims against EUAM and EUAM's counterclaims against them. As a consequence, the court vacated two prior orders: (1) the order adding EUAM as a counterclaim defendant and (2) the March 2023 order granting partial summary judgment in favor of EUSL and EUAM.

The district court nonetheless concluded that it had subject-matter jurisdiction over EUSL's original claims because the promissory notes and the loan agreement solely listed EUSL as the lender, so EUAM was not an indispensable party under Federal Rule of Civil Procedure 19(b) to EUSL's action on the notes. BIB and Ms. Yuk moved for reconsideration under Federal Rule of Civil Procedure 59(e), arguing for the first time during the lengthy litigation that the court lacked diversity jurisdiction from the outset because EUAM is a joint obligee of EUSL. BIB and Ms. Yuk maintained that this lack of jurisdiction required the district court to vacate the January of 2022 summary judgment order as well. Relying on the "high burden to qualify for relief under Rule 59(e)[,]" the court denied the motion for reconsideration and reiterated its ruling on the lack of Rule 19 indispensability.

On appeal, BIB and Ms. Yuk challenge the district court's determination that it had subject-matter jurisdiction over EUSL's original claims against BIB. EUSL and EUAM, represented by joint counsel, cross-appeal the court's decision not to exercise supplemental jurisdiction over EUAM's, BIB's, and Ms. Yuk's counterclaims and third-party claims.

II

"We review a district court's decision regarding the joinder of indispensable parties for abuse of discretion." *Winn-Dixie Stores, inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1039 (11th Cir. 2014). Likewise, we review a district court's denial of a Rule 59(e) motion to alter or amend a judgment for abuse of discretion. *See Chery v. Bowman*, 901 F.2d 1053, 1054 (11th Cir. 1990). A district court abuses its discretion when it "applies an incorrect legal standard, relies on clearly erroneous factual findings, or commits a clear error of judgment." *United States v. $79,679.00 in U.S. Currency*, 929 F.3d 1293, 1300 (11th Cir. 2019).

Generally, we review a district court's decision not to exercise supplemental jurisdiction for abuse of discretion. *See Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 738 (11th Cir. 2006). But if the district court declined to exercise supplemental jurisdiction because of a perceived lack of subject-matter jurisdiction, our review is *de novo*. *See Soul Quest Church of Mother Earth, Inc. v. U.S. Att'y Gen.*, 92 F.4th 953, 964 (11th Cir. 2023).

III

BIB and Ms. Yuk assert that EUAM is an indispensable party under Rule 19(b) because EUSL and EUAM are joint obligees—and that diversity jurisdiction is therefore lacking and the district court's judgment must be vacated. Although BIB and Ms. Yuk moved to join EUAM under Rule 20, they argued that EUAM's joinder was mandatory under Rule 19 in their Rule 59(e) motion. Critically, this was only after the district court *sua sponte* analyzed the matter and concluded that EUAM was not an indispensable party.

"When the judgment appealed from does not in a practical sense prejudicially affect the interests of the absent parties, and those who are parties have failed to object to non-joinder in the trial court, the reviewing court will not dismiss an otherwise valid judgment." *Jeffries v. Ga. Residential Fin. Authority*, 678 F.2d 919, 928 (11th Cir. 1982) (quoting *Sierra Club v. Hathaway*, 579 F.2d 1162, 1166 (9th Cir. 1978)). *See also McCulloch v. Glasgow*, 620 F.2d 47, 51 (5th Cir. 1980) (declining to vacate a judgment on Rule 19(b) grounds).

Moreover, as the district court correctly noted, a Rule 59(e) motion generally cannot be used to "raise argument or present evidence that could have been raised prior to the entry of judgment." *See Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005). Reasoning that a Rule 19(b) joinder would destroy subject-matter jurisdiction, and that a challenge to subject-matter jurisdiction can be raised at any time, the court nonetheless

reviewed the matter. Regardless of whether we construe BIB's and Ms. Yuk's motion as a challenge to subject-matter jurisdiction or as a Rule 19(b) issue, the court did not err in considering the Rule 19 argument on the merits. *See Kimball v. Fla. Bar*, 537 F.2d 1305, 1307 (5th Cir. 1976) ("A party does not waive the defense of failure to join an indispensable party by neglecting to raise it; an objection can be raised at any time[.]").

Rule 19 sets out two steps for determining whether a party must be joined as indispensable. First, the court determines whether the party is "required" to be joined because, for example, a judgment in the absence of the party would "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 19(a)(1). Second, if the absent party is required to be joined, but joinder would deprive the court of subject-matter jurisdiction, then the court must consider whether, "in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). In making this determination, the court weighs several factors, including the interests of the plaintiffs, the defendants, and the absent parties. *See id.*

The district court reasoned that (1) "the promissory notes and the Loan and Security Agreement solely list EUSL as lender, so EUAM isn't a necessary party to an action to enforce the note[;]" and (2) EUAM is not an indispensable party. *See* D.E. 216 at 21–22. We cannot say that the court abused its discretion in reaching this conclusion. To begin with, the Supreme Court has cautioned that

where defendants raise a Rule 19(b) argument for the first time *after* judgment has already been entered against them, they must meet a heightened standard. *See Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 112 (1968) (noting a plaintiff's "interest in preserving a fully litigated judgment should be overborne only by rather greater opposing considerations than would be required at an earlier stage when the plaintiffs' only concern was for a federal rather than a state forum").

On appeal, BIB and Ms. Yuk argue that EUAM is an indispensable party because a judgment solely in favor of EUSL on the loan agreement exposes them to the possibility of duplicative litigation for the same debts by EUAM. EUSL and EUAM admit that this is a theoretical possibility, but contend that BIB and Ms. Yuk owe repayment of the loan to EUSL only (and not to EUAM).

The Supreme Court has cautioned that "the defendant may properly wish to avoid multiple litigation, or inconsistent relief," but if "[a]fter trial, if the defendant has failed to assert this interest, it is quite proper to consider it foreclosed." *Provident Tradesmens Bank*, 390 U.S. at 110 (applying Rule 19(b)'s equity and good conscience test and declining to set aside an otherwise valid judgment for failure to join an indispensable party) (footnote omitted). Given BIB's and Ms. Yuk's failure to meet this heightened post-judgment standard, the district court did not abuse its discretion in determining that EUAM was neither a required nor an indispensable party.

IV

In its cross-appeal, EUAM argues that the district court erred in applying 28 U.S.C. § 1367(b) and the doctrine of realignment to determine that it did not have supplemental jurisdiction over the third-party claims of Ms. Yuk and BIB as well as EUAM's own counterclaims.[1]

As a general rule, supplemental jurisdiction exists, "once proper subject matter jurisdiction of the main claim has been established, to adjudicate as incident thereto a related claim based wholly upon state law asserted by the defendant against a non-diverse impleaded third-party defendant." *Rogers v. Aetna Cas. & Sur. Co.*, 601 F.2d 840, 843 (5th Cir. 1979) (citation omitted). *See also* 6 Wright & Miller, Fed. Prac. & Proc. Civ. § 1444 (3d ed. 2010 & 2023 Supp.). Thus, the question before us is whether the district court erred in carving out an exception to this general rule where the third party is a wholly-owned subsidiary of the plaintiff. The answer is yes for a few reasons.

First, it seems to us that the district court erred by invoking the doctrine of realignment. It is true that "federal courts are

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[1] EUSL also brings this cross-appeal, but it prevailed below. *See Tufts v. Hay*, 977 F.3d 1204, 1210 (11th Cir. 2020) ("[I]n most cases, the prevailing party does not have standing to appeal because it is assumed that the judgment has caused that party no injury.") (internal quotation marks and citation omitted). We do not reach EUSL's argument about conditional or protective cross-appeals because it is sufficient that EUAM has standing to cross-appeal. *See Massachusetts v. EPA*, 549 U.S. 497, 518 (2007) ("Only one of the petitioners needs to have standing to permit us to consider the petition for review.").

required to realign the parties in an action to reflect their interests in the litigation." *City of Vestavia Hills v. Gen. Fid. Ins. Co.*, 676 F.3d 1310, 1313 (11th Cir. 2012). The "necessary" precondition for realignment, however, is a "collision of interests" created by the existing posture of the parties. *See Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 68 (1941) (quoting *Dawson v. Columbia Trust Co.*, 197 U.S. 178, 181 (1905)). In this case, there was no need to "arrange the parties according to their sides in the dispute" because EUSL and EUAM were never on opposite sides of the dispute. *See id.* (quoting *Dawson*, 197 U.S. at 180). Indeed, BIB and Ms. Yuk brought their third-party claims against EUAM along with the counterclaims against EUSL. Further, none of EUAM's own counterclaims created a collision of interests as they were all against BIB. Therefore, the doctrine of realignment did not require EUAM to be realigned as a plaintiff.

Second, we think the district court erred by relying on the purpose of 28 U.S.C. § 1367(b) rather than the text and settled Eleventh Circuit precedent. This provision states as follows:

> In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such

> claims would be inconsistent with the jurisdictional requirements of section 1332.

28 U.S.C. § 1367(b). We have held that "'claims by plaintiffs' in § 1367(b) refers to claims by only the *original* plaintiffs to the action—not third-party plaintiffs, counter plaintiffs, or cross plaintiffs." *PTA-Fla, Inc. v. ZTE USA, Inc.*, 844 F.3d 1299, 1311 (11th Cir. 2016) (emphasis in original). Accordingly, § 1367(b) "plays no role in claims, such as counterclaims and crossclaims, asserted by defendants or third-party defendants." *Id.* (quoting 13D Wright & Miller, Fed. Prac. & Proc. § 3567.2 (3d ed. 2004)). In this case, we find no basis to depart from the rule that § 1367(b) is simply inapplicable to counterclaims or third-party claims asserted by defendants.

We reverse the dismissal of EUAM from the action and remand for further proceedings consistent with this opinion.

V

We conclude the district court did not abuse its discretion in ruling that EUAM is not a necessary or indispensable party under Rule 19 and thus affirm its grant of summary judgment in favor of EUSL. We reverse the district court's conclusion that EUAM's joinder as a counterclaim defendant divested it of subject-matter jurisdiction.

AFFIRMED in part, REVERSED in part, and REMANDED.