UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

James and Lorie Jensen, et al.,

Plaintiffs,

vs.

Minnesota Department of Human Services, et al.,

Defendants.

Case No. 09-cv-01775 DWF-BRT

REPLY IN SUPPORT OF DISMISSAL FOR LACK OF JURISDICTION

INTRODUCTION

Plaintiffs spend all but a few pages of their "Settlement Class Brief Pursuant to Court Orders (Doc. 626, 630)" ("Response") (Doc. 634) arguing that Defendants have not complied with the Settlement Agreement ("SA"), a federal court has authority to enforce validly-issued orders, and a federal court may retain ancillary jurisdiction over a settlement agreement. Doc. 634, pp. 1-26, 31-32. These arguments are entirely unresponsive to the issue actually raised in Defendants' opening brief (Doc. 631): that the Court lacks any present jurisdiction to evaluate or enforce compliance with its orders, or the SA, because the limited ancillary jurisdiction it retained pursuant to *this* settlement agreement has expired. Plaintiffs' response on this point unpersuasively argues that the parties actually intended to grant the Court unlimited jurisdiction even though the SA contemplated the length of and the circumstances under which the Court could retain jurisdiction. The Court lacks jurisdiction over this case, and it should be closed.

ARGUMENT

I. PLAINTIFFS' EXTENSIVE DISCUSSION OF ALLEGED NONCOMPLIANCE WITH THE SA IS IRRELEVANT TO THE JURISDICTIONAL QUESTION.

Plaintiffs' Response spends nearly twenty-three of its thirty-three pages arguing that Defendants have failed to comply with the SA, largely by block-quoting or otherwise citing various orders of this Court. Doc. 634, pp. 1-3, 7-26, 31-32. Defendants' compliance, however, is irrelevant to whether the Court has jurisdiction, and the Court has no power to evaluate or enforce alleged noncompliance without jurisdiction.

As noted in Defendants' opening brief, "[a]ncillary jurisdiction to enforce a settlement agreement exists only 'if the parties' obligation to comply with the terms of the settlement agreement [is] made part of the order of dismissal – either by . . . a provision 'retaining jurisdiction' over the settlement agreement [] or by incorporat[ion of] the terms of the settlement agreement in the order.'" *Miener v. Missouri Dept. of Mental Health*, 62 F.3d 1126, 1127 (8th Cir. 1995) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381 (1994)). When its ancillary jurisdiction has expired, a federal court lacks power to hear a motion to enforce settlement. *Roberts v. Ocwen Loan Servicing*, LLC, 617 F. App'x 613, 614 (8th Cir. 2015) (dismissing a federal action to enforce settlement agreement when brought outside that agreement's 60-day jurisdiction retention period); *4:20 Commc'ns, Inc. v. Paradigm Co.*, 336 F.3d 775, 778 (8th Cir. 2003) (dismissing federal action to enforce settlement agreement when brought outside that

agreement's 90-day jurisdiction retention period). Plaintiffs have no response to this fundamental limitation on federal courts' power.[1]

II. PLAINTIFFS FAIL TO REBUT THAT THE COURT'S AUTHORITY OVER THIS MATTER IS CONFERRED SOLELY UNDER THE TERMS OF THE SA, AND JURISDICTION CAN NEITHER BE WAIVED NOR CONFERRED BY CONSENT OF THE PARTIES.

The Response otherwise does not rebut many of Defendants' other arguments, each of which establish that the Court's ancillary jurisdiction over this matter was governed solely by the terms of the SA. *See* Doc. 631, pp. 12-15.

First, Plaintiffs suggest that Defendants' position is rendered "incredulous, misleading, and meritless" in light of Defendants' "active involvement in the settlement implementation," Doc. 634, pp. 3-4 n.5, but do not rebut that jurisdiction cannot be waived or agreed to by the parties. *See* Doc. 631, pp. 13-14; *see also, e.g.*, *4:20 Commc'ns, Inc. v. Paradigm Co.*, 336 F.3d 775, 778 (8th Cir. 2003).

Second, Plaintiffs cite nine cases for the proposition that "[f]ederal courts have the authority to sanction parties to a settlement," Doc. 634, p. 5, but ignore that this and any other authority cannot exist unless the Court first has jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998) ("The requirement that jurisdiction be

[1] Plaintiffs also fail to respond to the fact that they, the Court, and the Court Monitor have decided to evaluate compliance based on whether Defendants have shown "substantial compliance" with every term of the SA, when the SA places no such burden on Defendants. *See* Doc. 631, pp. 7, 11. To the contrary, the SA places on *Plaintiffs* the burden to show "a pattern and practice of substantial non-compliance with Attachment A," Doc. 136-1, p. 39, and the law governing ancillary jurisdiction requires *Plaintiffs* to bring a motion to enforce during the jurisdictional period in the event they believe Defendant is violating the SA. *Roberts v. Ocwen Loan Servicing*, LLC, 617 F. App'x 613, 614 (8th Cir. 2015); *4:20 Commc'ns*, 336 F.3d at 778.

established as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'") (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884); *Crawford v. F. Hoffman-La Roche Ltd.*, 267 F.3d 760, 764 (8th Cir. 2001) ("It is axiomatic that a court may not proceed at all in a case unless it has jurisdiction.").

III. PLAINTIFFS FAIL TO REBUT THAT THE COURT'S ANCILLARY JURISDICTION EXPIRED NO LATER THAN DECEMBER 4, 2014 UNDER THE TERMS OF THE SA.

As noted in Defendants' opening brief, the SA term governing the length of ancillary jurisdiction reads as follows:

> The Court shall retain jurisdiction over this matter for two (2) years from its approval of [the SA] for the purposes of receiving reports and information required by [the SA], or resolving disputes between the parties to [the SA], or as the Court deems just and equitable. . . . [After a meet-and-confer process], [s]hould Plaintiffs continue to believe a pattern and practice of substantial non-compliance with Attachment A exists, Plaintiffs may . . . file a motion with the Court to extend the reporting requirements to the Court under [the SA] for an additional one (1) year.

Doc. 136-1, p. 39.[2]

A. The SA Unambiguously Provides For A Jurisdictional Period Of No More Than Three Years.

As Defendants have noted, "where the language of the contract is clear and unambiguous, there is no opportunity for interpretation or construction." *Wessels, Arnold & Henderson v. Nat'l Med. Waste, Inc.*, 65 F.3d 1427, 1436 (8th Cir. 1995);

[2] Plaintiffs' Response ignores everything after the first sentence of this provision, including the SA's specific, bargained-for procedure for extending jurisdiction no longer than "an additional one (1) year," and Plaintiffs' burden to show "a pattern and practice of substantial non-compliance with Attachment A." Doc. 136-1, p. 39.

Doc. 631, p. 16. Here, the SA unambiguously provides for two-year jurisdiction followed by a potential additional one year. Doc. 163-1, p. 39. The SA otherwise provides that the Court's jurisdiction has three "purposes": (1) "receiving reports and information required by [the SA]"; (2) "resolving disputes between the parties to the [SA]"; and (3) purposes "the Court deems just and equitable." *Id.*

In arguing to the contrary, Plaintiffs rely on the proposition that the clause "as the Court deems just and equitable" modifies the initial grant of jurisdiction, rather than setting forth one of the purposes of jurisdiction, which is the set of clauses in which that language appears. Doc. 634, p. 27 ("The parties' intentional use of a comma followed by the disjunctive 'or' in the clause: ', or as the [C]ourt deems just and equitable' clearly authorizes the Court's retention of jurisdiction over the settlement 'as it deems just and equitable,' not just for two years.").

But the two cases Plaintiffs cite actually support *Defendants'* position. In the first, the Eighth Circuit (applying Minnesota contract law) held that a contract term containing "two independent clauses, separated by a comma and the disjunctive 'or,' . . . indicates that the sentence contains two separate provisions under which default may occur." *Winthrop Res. Corp. v. Eaton Hydraulics, Inc.*, 361 F.3d 465, 470 (8th Cir. 2004).[3] The court did not hold that the second of those comma clauses was somehow unrelated to

[3] This case interpreted the following provision: "(a) The nonpayment by Lessee of any Lease Charges when due, or the nonpayment by Lessee of any other sum required hereunder to be paid by Lessee which nonpayment continues for a period of twenty (20) days after written notice thereof from Lessor." *Id.*

default, but recognized it was part of a list of two default conditions. Here, the pertinent language is part of a list of three "purposes."

In the second case Plaintiffs rely upon, this Court simply held that a defendant in a breach of contract action may not ignore that a "[f]ee Agreement entitled Cummins to five percent of 'any amounts recovered on behalf of Norman as a result of a settlement *or* post-judgment collection.'" *Cummins Law Office, P.A. v. Norman Graphic Printing Co.*, 826 F. Supp. 2d 1127, 1129 (D. Minn. 2011). Again, the Court did not hold that "post-judgment collection" was anything other than the second of two types of "amounts" to which the contract entitled the plaintiff, and did not conclude – as Plaintiffs apparently would – that this provision actually modified some previous term of the contract.

Plaintiffs' argument is an attempt to rewrite the SA, removing "for the purposes of receiving reports and information required by [the SA], or resolving disputes between the parties to [the SA]" to create a new sentence reading, "The Court shall retain jurisdiction over this matter for two (2) years from its approval of [the SA] . . . or as the Court deems just and equitable." Doc. 634, p. 27. But courts do not rewrite contracts or ignore language in a contract. *Storms, Inc. v. Mathy Const. Co.*, 883 N.W.2d 772, 776 (Minn. 2016) ("When a contractual provision is unambiguous, we do not 'rewrite, modify, or limit its effect by a strained construction.'") (quoting *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010)). This case should be closed.[4]

[4] While Plaintiffs apparently believe the SA unambiguously favors their position, they also attempt to introduce extrinsic evidence of the "just and equitable" clause's meaning through an affidavit from Plaintiffs' counsel assuring the Court that he intended this
(Footnote Continued on Next Page)

B. Even If The SA Were Ambiguous, Plaintiffs' Reading Is Contrary To Binding Principles Of Minnesota Contract Law.

Even if the "just and equitable" language upon which Plaintiffs rely were ambiguous, their reading makes no sense. As noted by Defendants, *see* Doc. 631, p. 16, Minnesota courts "construe a contract as a whole and attempt to harmonize all clauses of the contract." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990). "Phrases and sentences cannot be dissected and read separately and 'out of context with the entire agreement.'" *River Valley Truck Ctr., Inc. v. Interstate Companies, Inc.*, 704 N.W.2d 154, 163 (Minn. 2005) (quoting *Metro Office Parks Co. v. Control Data Corp.*, 205 N.W.2d 121, 124 (Minn. 1973)). "Because of the presumption that the parties intended the language used to have effect, [Minnesota courts] attempt to avoid an interpretation of the contract that would render a provision meaningless." *Chergosky*, 463 N.W.2d at 526; *River Valley Truck Ctr., Inc. v. Interstate Companies, Inc.*, 704 N.W.2d 154, 163 (Minn. 2005)

Plaintiffs' reading would violate each of these binding principles of construction. It impermissibly fails to harmonize all clauses of the SA's jurisdiction retention provision, instead reading the "just and equitable" clause out of context. *See Chergosky*, 463 N.W.2d at 525; *River Valley Truck Ctr.*, 704 N.W.2d at 163. Plaintiffs also do not

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clause to grant unlimited jurisdiction. *See* Doc. 635, p. 1. Minnesota's parol evidence rule, however, forbids consideration of extrinsic evidence in interpretation of an unambiguous contract. *Mollico v. Mollico*, 628 N.W.2d 637, 642 (Minn. Ct. App. 2001) (parol evidence inadmissible "to contradict the unambiguous terms of the original writing.").

explain why – if the parties simply intended to confer unlimited jurisdiction upon the Court – they agreed upon a process by which the two-year period could be extended at most an additional year. Doc. 634, pp. 27-28. Other than the "just and equitable" clause, Plaintiffs' reading would impermissibly "render meaningless" and of no effect the entire five-sentence Section XVIII.B of the SA. *See* Doc. 136-1, p. 39. *Chergosky*, 463 N.W.2d at 526.[5]

Even if the Court were to conclude that the SA's jurisdiction retention provision is ambiguous, it must still conclude that the SA provides for no more than three years of ancillary jurisdiction, and close this case.

IV. THE LAW OF THE CASE DOCTRINE DOES NOT GOVERN JURISDICTION.

The Court has previously stated that the SA's "just and equitable" language grants it unlimited jurisdiction. Doc. 340, p. 9. Plaintiffs argue that the "law of the case doctrine" prevents the Court from revisiting this conclusion. Doc. 634, pp. 29-31. Plaintiffs are incorrect for four reasons.

First, "[s]ubject matter jurisdiction is something the courts have a duty to examine at all stages of the litigation . . . and the law of the case doctrine does not foreclose

[5] As discussed above, parol evidence may only potentially be considered upon a finding that the SA is ambiguous. *Mollico*, 628 N.W.2d at 642. To the extent the Court concludes the SA is ambiguous and considers Plaintiffs' counsel's affidavit, however, the meaning of the "just and equitable" language must be construed against Plaintiffs because Plaintiffs' counsel asserts that Plaintiffs included that language in the SA. Doc. 635, p. 1; *Swift & Co. v. Elias Farms, Inc.*, 539 F.3d 849, 854 (8th Cir. 2008) (Minnesota "follow[s] the maxim that an ambiguous contract will be construed against the drafter, but this rule applies only as a last resort, after all other evidence fails to demonstrate the intent of the parties.").

reconsideration of subject matter jurisdiction." *Hall v. USAble Life*, 774 F. Supp. 2d 953, 955 (E.D. Ark. Mar. 28, 2011) (citing *Crawford v. F. Hoffman–La Roche, Ltd.*, 267 F.3d 760, 764 n.2 (8th Cir.2001) and *Baca v. King*, 92 F.3d 1031, 1035 (10th Cir.1996)); *see also Giove v. Stanko*, 977 F.2d 413, 415 (8th Cir. 1992) (rejecting argument that Eighth Circuit could not reconsider an earlier ruling on the timeliness of an appeal because "[i]f we lack jurisdiction . . . the law of the case doctrine may not grant it.").

Second, the law of the case doctrine only serves to "prevent the relitigation of a settled issue in a case." *Gander Mountain*, 540 F.3d at 830 (citing *United States v. Bartsh*, 69 F.3d 864, 866 (8th Cir.1995)). The only order in which the Court relied on the "just and equitable" language was issued *sua sponte*, with no discussion of governing law. Doc. 340, p. 9. Indeed, if this issue were "settled," there would be no reason for the Court's order requiring briefing.

Third, the law of the case doctrine only applies to final orders, and does not apply to interlocutory orders. *Gander Mountain Co. v. Cabela's, Inc.*, 540 F.3d 827, 830 (8th Cir. 2008). The orders in which the Court previously expressed its view about the "just and equitable" language are not final, so the law of the case doctrine does not apply to them. *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 798, 109 S. Ct. 1494, 103 L. Ed. 2d 879 (1989) (citations omitted) (a final order is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.").

Finally, in any event, "[l]aw of the case is a doctrine of discretion, not a command to the courts." *Little Earth of the United Tribes, Inc. v. U.S. Dep't of Hous. & Urban*

Dev., 807 F.2d 1433, 1440 (8th Cir. 1986) (citations omitted). A previous decision may be revisited if it "is clearly erroneous and works manifest injustice." *Id.* at 1441 (citations omitted). For the reasons discussed above, that is the case here.

CONCLUSION

For the foregoing reasons, DHS respectfully requests that the Court dissolve its orders that require DHS to take any action after December 4, 2014, discontinue monitoring or supervision, and direct the clerk to close this case.

Dated: June 2, 2017.

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