

**United States Court of Appeals
for the Ninth Circuit**

FILED SEP 10 2019
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 18-17463
D.C. No. 3:18-cv-05538-VC
Northern District of California, San Francisco

ENVIRONMENTAL RESEARCH CENTER, INC.,
PLAINTIFF-APPELLEE,

v.

HOTZE HEALTH WELLNESS CENTER
INTERNATIONAL ONE, LLC, INDIVIDUALLY
AND ALLEGEDLY DOING BUSINESS AS HOTZE
VITAMINS; *ET AL.*,

DEFENDANTS-APPELLANTS.

ORDER

Before: SILVERMAN, TALLMAN, and MURGUIA,
Circuit Judges.

Appellants have filed a combined motion for reconsideration and motion for reconsideration en banc and a related notice of supplemental authority (Docket Entry Nos. 11, 12).

The motion for reconsideration is denied (Docket Entry No. 11) and the motion for reconsideration en banc (Docket Entry Nos. 11, 12) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

**United States Court of Appeals for the
Ninth Circuit**

FILED MAR 21 2019
MOLLY C. DWYER,
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ENVIRONMENTAL RESEARCH CENTER, INC.,
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HOTZE HEALTH WELLNESS CENTER
INTERNATIONAL ONE, LLC, INDIVIDUALLY
AND ALLEGEDLY DOING BUSINESS AS HOTZE
VITAMINS; *ET AL.*,

DEFENDANTS-APPELLANTS.

Submitted: June 14, 2018, Decided: June 18, 2018

ORDER

Before: SILVERMAN, TALLMAN, and MURGUIA,
Circuit Judges.

Appellee's motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 4) is granted. See 28 U.S.C. § 1447(d); *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127 (1995); *Kunzi v. Pan Am. World Airways, Inc.*, 833 F.2d 1291, 1293 (9th Cir. 1987).

Appellants' motion to order the district court to recall the case and stay proceedings pending appeal (Docket Entry No. 6) is denied as moot.

DISMISSED.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ENVIRONMENTAL RESEARCH CENTER, INC.,

PLAINTIFF,

v.

HOTZE HEALTH WELLNESS CENTER

INTERNATIONAL ONE, L.L.C., *ET AL.*,

DEFENDANTS.

Case No. 18-cv-05538-VC

ORDER GRANTING MOTION TO REMAND

Re: Dkt. Nos. 19, 21.

The Environmental Research Center's motion to remand the case to Alameda County Superior Court is granted. The defendants have not shown that Environmental Research Center would have Article III standing to pursue their Proposition 65 action in federal court. *Cf. Environmental Research Ctr. v. Heartland Prods.*, 29 F. Supp. 3d 1281, 1282 (C.D. Cal. 2014). The defendants argue that Environmental Research Center has standing as a qui tam assignee of the State of California's claims under *Vermont Agency of Nat. Res. v. U.S. ex. rel. Stevens*, 529 U.S. 765, 773 (2000). Even assuming that *Stevens* applies, that theory raises significant concerns that California is the real party in interest to this case, such that there is no diversity jurisdiction. *See Moor v. Alameda Cty.*, 411 U.S. 693, 717 (1973); *New Mexico ex rel. Nat'l Educ. Ass'n of New Mexico, Inc. v. Austin Cap. Management Ltd.*, 671 F. Supp. 2d 1248, 1251 (D.N.M. 2009). Because the removal statute is strictly construed against jurisdiction and any doubt as to the right of removal

is resolved in favor of remand, the motion to remand is granted. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

Environmental Research Center's request for attorney's fees and the defendants' request for 28 U.S.C. § 1292(b) certification are denied. The defendants' motion to transfer is denied as moot.

IT IS SO ORDERED.

Dated: December 21, 2018

VINCE CHHABRIA
United States District Judge

**United States Court of Appeals
for the Ninth Circuit**

FILED SEP 18 2019
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 18-17463
D.C. No. 3:18-cv-05538-VC
Northern District of California, San Francisco

ENVIRONMENTAL RESEARCH CENTER, INC.,
PLAINTIFF-APPELLEE,

v.

HOTZE HEALTH WELLNESS CENTER
INTERNATIONAL ONE, LLC, INDIVIDUALLY
AND ALLEGEDLY DOING BUSINESS AS HOTZE
VITAMINS; *ET AL.*,

DEFENDANTS-APPELLANTS.

MANDATE

The judgment of this Court, entered March 21, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

**MOLLY C. DWYER
CLERK OF COURT**

By: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

FED. R. APP. P. 35(a)(1)

Rule 35. En Banc Determination

(a) WHEN HEARING OR REHEARING EN BANC MAY BE ORDERED. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

FED. R. APP. P. 47(a)

Rule 47. Local Rules by Courts of Appeals

(a) LOCAL RULES.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with—but not duplicative of—Acts of Congress and rules adopted under 28 U.S.C. §2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

NINTH CIR. RULE 27-10

MOTIONS FOR RECONSIDERATION

(a) Filing for Reconsideration

(1) Time limit for orders that terminate the case

A party seeking further consideration of an order that disposes of the entire case on the merits, terminates a case, or otherwise concludes the proceedings in this Court must comply with the time limits of FRAP 40(a)(1). (Rev. 7/1/16)

(2) Time limit for all other orders

Unless the time is shortened or expanded by order of this Court, a motion for clarification, modification or reconsideration of a court order that does not dispose of the entire case on the merits, terminate a case or otherwise conclude proceedings in this Court must be filed within 14 days after entry of the order. (Rev. 12/1/09; Rev. 7/1/16)

(3) Required showing

A party seeking relief under this rule shall state with particularity the points of law or fact which, in the opinion of the movant, the Court has overlooked or misunderstood. Changes in legal or factual circumstances which may entitle the movant to relief also shall be stated with particularity.

(b) Court Processing

Motions Panel Orders: A timely motion for clarification, modification, or reconsideration of an order issued by a motions panel shall be decided by that panel. If the case subsequently has been assigned to a merits panel, the motions panel shall contact the merits panel before disposing of the motion. A party may file only one motion for clarification, modification, or reconsideration of a motions panel

order. No answer to a motion for clarification, modification, or reconsideration of a motions panel's order is permitted unless requested by the Court, but ordinarily the Court will not grant such a motion without requesting an answer and, if warranted, a reply. The rule applies to any motion seeking clarification, modification, or reconsideration of a motions panel order, either by the motions panel or by the Court sitting en banc. (New 1/1/04; Rev. 12/1/09; Rev. 7/1/16)

Orders Issued Under Circuit Rule 27-7: A motion to reconsider, clarify, or modify an order issued pursuant to Circuit Rule 27-7 by a deputy clerk, staff attorney, circuit mediator, or the appellate commissioner is initially directed to the individual who issued the order or, if appropriate, to his/her successor. The time to respond to such a motion is governed by FRAP 27(a)(3)(A). If that individual is disinclined to grant the requested relief, the motion for reconsideration, clarification, or modification shall be processed as follows: (New 1/1/04; Rev. 7/1/16)

- (1) if the order was issued by a deputy clerk or staff attorney, the motion is referred to an appellate commissioner;
- (2) if the order was issued by a circuit mediator, the motion is referred to the chief circuit mediator;
- (3) if the order was issued by the appellate commissioner or the chief circuit mediator, the motion is referred to a motions panel.

Ninth Circuit General Order ¶6.11

6.11. Motions for Reconsideration En Banc

Any motion or petition seeking en banc review of an order issued by a motions or oral screening panel

shall be processed as a motion for reconsideration en banc. The Clerk shall forward a motion for reconsideration en banc of a motion previously considered by a motions or oral screening panel to the appropriate staff attorney for processing. If the motion was decided by published order or opinion, the motion will be circulated to all active judges. In cases involving judgments of death, the Clerk shall forward all motions for reconsideration en banc to Associates.

The motion shall be referred by the staff attorney to the panel which entered the order in issue. The panel may follow the relevant procedures set forth in Chapter 5 in considering the motion for rehearing en banc, or may reject the suggestion on behalf of the Court. *(Rev. 3/24/04; 12/13/10; 9/17/14)*