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United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ČESKÁ ZBROJOVKA DEFENCE SE ("CZ"),

Plaintiff - Appellant,

v.

VISTA OUTDOOR, INC.,

Defendant - Appellee.

No. 22-3095

Appeal from the United States District Court
for the District of Kansas
(D.C. No. 2:21-CV-02482-JAR-TJJ)

TK Smith (Kenneth E. Barnes with him on the briefs), The Barnes Law Firm, LLC, Kansas City, Missouri, for Plaintiff-Appellant.

Brian A. Sutherland, Reed Smith, LLP, San Francisco, California (John C. Scalzo, Reed Smith LLP, New York, New York, and William Ford and Taryn A. Nash, Lathrop GPM LLP, Kansas City, Missouri, on the brief) for Defendant-Appellee.

Before **HOLMES**, Chief Judge, **TYMKOVICH**, and **CARSON**, Circuit Judges.

TYMKOVICH, Circuit Judge.

Česká zbrojovka Defence SE, which we call "CZ Czech," is a firearms manufacturer based in the Czech Republic. To do business in the United States, it has several subsidiaries, including CZ USA, CZ Czech's Kansas-based

subsidiary. Vista Outdoor, Inc. is a Minnesota company that designs, manufactures, and markets outdoor recreation and shooting products. In November 2018, Vista and CZ Czech entered into an expense reimbursement agreement covering CZ Czech's potential acquisition of a Vista firearm brand. Under the contract, Vista was obligated to reimburse CZ Czech for certain reasonable expenses in connection with its evaluation and negotiation of the proposed transaction. Even though the sale was not consummated, Vista refused CZ Czech's subsequent reimbursement demands.

This case arises from the resulting suit for breach of contract. As it turns out, CZ USA, not CZ Czech, filed a federal diversity action in the District of Kansas against Vista. The obvious twist was that there was no contract between CZ USA and Vista, nor was CZ USA a beneficiary of the contract. CZ Czech, soon realizing the mistake, attempted to amend the complaint under Rule 15 of the Federal Rules of Civil Procedure and substitute itself as the party-plaintiff. The district court rebuffed this strategy, finding that the original complaint controlled and that CZ USA, as a non-party to the contract, lacked standing to sue, meaning the court lacked subject-matter jurisdiction over the dispute.

We affirm. As a non-party, CZ Czech could not amend CZ USA's complaint. Only a *party* may amend its complaint under Rule 15. And because the only party—CZ USA—lacked an injury under the contract, it lacked standing to sue. Accordingly, the district court lacked subject-matter jurisdiction and correctly dismissed the lawsuit.

I. Background

On October 22, 2021, CZ Czech's subsidiary, CZ USA, sued Vista in the District of Kansas for breach of the contract, unjust enrichment, and breach of the implied covenant of good faith and fair dealing. The complaint's caption listed the plaintiff as "Česká zbrojovka Defense SE ('CZ') CZ USA, LLC" with CZ USA's Kansas address.[1] App. 8. The allegations in the complaint identified the only plaintiff as "CZ USA, LLC," a Delaware LLC "with its principal place of business in the State of Kansas" that has "been headquartered in Kansas City, KS since 1998." App. 8–9. "ATTORNEYS FOR PLAINTIFF CZ USA, LLC" submitted the complaint. App. 13–14.

Interestingly, the civil cover sheet's "plaintiffs" box lists "Ceska zbrojovka Defense SE; CZ USA LLC." App. 15. That semicolon could indicate multiple plaintiffs. But because the complaint names only a single plaintiff—CZ USA—and the parties agree that only CZ USA filed the original complaint, we do not entertain the possibility that CZ Czech was originally a plaintiff.

In the complaint, CZ USA alleged that it was the one who entered into an expense reimbursement agreement with Vista that "governed the due diligence period regarding the potential" acquisition of a Vista firearm brand and allowed CZ USA to seek reimbursement from Vista for half of its "reasonable and documented out-of-pocket costs and expenses . . . in connection with [its] evaluation and negotiation of

[1] The initial pleadings incorrectly spelled "Defence" with an "s" instead of a "c."

the potential transaction." App. 10. And after the acquisition failed to materialize, CZ USA submitted a reimbursement request, which Vista denied, allegedly breaching the agreement.

On November 8, 2021, before Vista was served or filed a responsive pleading, an amended complaint was filed naming CZ Czech—"a foreign company with its principal place of business in the Czech Republic with various subsidiaries throughout North America, including the State of Kansas"—as the plaintiff. App. 18. CZ USA simply disappeared as a party-plaintiff. The underlying claim was restyled to apply only to CZ Czech, *i.e.*, Vista improperly declined to reimburse *CZ Czech* for its reasonable expenses in doing due diligence into whether to acquire the firearm brand.

Vista then moved to dismiss the lawsuit, challenging the original complaint filed by CZ USA, and arguing CZ USA was not a proper party and the court therefore (1) lacked subject-matter jurisdiction, (2) lacked personal jurisdiction, and (3) was an improper venue. CZ Czech, conceding personal jurisdiction and venue did not lie in Kansas, moved to transfer the case to the District of Minnesota.

The Kansas district court dismissed without prejudice for lack of subject-matter jurisdiction. It concluded that because CZ USA lacked standing when it filed the complaint, CZ USA lacked standing to amend on behalf of CZ Czech. The court denied the transfer motion as moot.

Following dismissal, CZ Czech sued Vista in the District of Minnesota, where Vista raised the statute of limitations as grounds for dismissal.[2] That court stayed the case pending the outcome of this appeal and consequently denied without prejudice Vista's motion to dismiss. *Česká zbrojovka Defence SE v. Vista Outdoor, Inc.*, No. 22-cv-1256, 2023 WL 171886, at *5 (D. Minn. Jan. 12, 2023).

II. Analysis

This appeal turns on *who* amended (or attempted to amend) the complaint. The record establishes that a non-party, CZ Czech, tried to amend the complaint of a party, CZ USA, and substitute itself in as plaintiff. But because only a party may amend under Rule 15, CZ Czech's amendment was invalid.

Article III of the Constitution requires a plaintiff have standing to sue. *Shields v. Pro. Bureau of Collections of Md., Inc.*, 55 F.4th 823, 827 (10th Cir. 2022). If a plaintiff lacks standing, the court lacks subject-matter jurisdiction. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). When a district court dismisses

[2] Vista bases its statute of limitations defense on the fact that CZ Czech first requested reimbursement in late December 2018, followed by requests in January and February 2019. On February 21, 2019, Vista notified CZ Czech it would not pay. CZ Czech's claims are subject to a three-year statute of limitations. *See* Del. Code Ann. tit. 10, § 8106. So, CZ Czech apparently had until February 21, 2022, to sue. CZ USA filed its Kansas complaint on October 22, 2021, and CZ Czech attempted to file its amended complaint on November 8, 2021, nearly four months before the likely time bar. This means there was time for CZ Czech to sue Vista in Minnesota before the Kansas district court dismissed the suit on April 25, 2022. Instead, CZ Czech continued to defend the amended complaint in Kansas and only sued in the District of Minnesota on May 6, 2022.

for lack of subject-matter jurisdiction, our review is de novo. *Marcus v. Kan., Dep't of Revenue*, 170 F.3d 1305, 1309 (10th Cir. 1999). CZ USA could not sue Vista to enforce the reimbursement agreement under Delaware law, which governed any contractual dispute, because it was not a party to nor a third-party beneficiary of the agreement. *See Browne v. Robb*, 583 A.2d 949, 954 (Del. 1990). In other words, Vista's alleged breach never injured CZ USA. And because CZ USA lacked an injury, it lacked Article III standing and could not sue in federal court. *See Shields*, 55 F.4th at 827 (acknowledging that Article III standing requires a concrete injury). Thus, the district court's dismissal was correct.

Nonetheless, it is true CZ USA filed the original complaint, apparently on behalf of CZ Czech. Although the district court's dismissal order indicates the court believed CZ USA amended the complaint, App. 214, CZ Czech, realizing the real-party-in-interest problem, did so to substitute itself as the party-plaintiff.[3] The amended complaint's caption lists "Česká zbrojovka Defense SE ('CZ')" as the only plaintiff, uses the Czech Republic address, and was submitted by "ATTORNEYS FOR PLAINTIFF ČESKÁ ZBROJOVKA DEFENSE SE." App. 17,

[3] The district court applied the so-called time-of-filing rule, which "measures all challenges to subject-matter jurisdiction premised upon diversity of citizenship against the state of facts that existed at the time of filing." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 571 (2004). Because the original plaintiff, CZ USA, lacked standing to sue when it filed the complaint, the court reasoned CZ USA lacked standing to amend. We conclude CZ Czech filed the amended complaint, so we do not review the time-of-filing analysis.

20. It does not mention CZ USA at all; CZ Czech was substituted in while CZ USA "simply disappeared." *United States ex rel. Little v. Triumph Gear Sys., Inc.*, 870 F.3d 1242, 1245 (10th Cir. 2017). The district court docket states that CZ Czech filed the amended complaint, and the relevant entry notes, "Modified on 12/6/2021 to change filing party name." App. 5. Presumably, the docket initially showed CZ USA filed the amended complaint before being corrected to reflect that CZ Czech did so. All the allegations in the complaint substituted CZ Czech for CZ USA.

Under Federal Rule of Civil Procedure 15(a)(1) (emphasis added),

> A *party* may amend its pleading once as a matter of course within (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

And under Rule 15(c)(1)(B), "An amendment to a pleading relates back to the date of the original pleading when the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Together, these subsections mean that if a party amends its complaint as a matter of course, the new allegations relate back to the date of the original pleading if they arose out of the same conduct, allowing the party to avoid statute of limitations issues.

Importantly, that right to amend is limited to parties. As we explained in *Little*, non-parties have "no right" to amend a complaint. 870 F.3d at 1248. In that case, the plaintiff, Joe Blyn, sued under the False Claims Act, alleging fraud by

a government contractor. Blyn was initially represented by attorney Donald Little. Apparently without Blyn's approval, Little amended the complaint to name himself and another individual as the sole plaintiffs, removing Blyn "without explanation" and substituting himself for Blyn "without regard for the resulting incongruities." *Id.* at 1245. In other words, Blyn "simply disappeared from the action." *Id.*

The district court permitted the amendment because under Rule 15 the defendant "hadn't yet been served with the original complaint." *Id.* at 1248. But we reversed, observing that Rule 15 empowers only a "party" to amend a complaint, meaning only Blyn could amend. *Id.* Although it was "unclear" how Little and the other individual entered the case, we concluded "it wasn't a Rule 15 addition—or an addition of any kind. Nor could it have been, because [they] weren't parties and thus had no power to amend the complaint." *Id.* at 1249. We observed that Little and the other individual could not enter the case through Rule 17, which addresses situations where an action was not "prosecuted in the name of the real party in interest," Fed. R. Civ. P. 17(a)(1), because no one, not even the defendant, ever argued Blyn was not the real party in interest, *Little*, 870 F.3d at 1250.

Little acknowledged what Rule 15's plain language says: Only a party may amend a complaint. Accordingly, CZ Czech could not invoke Rule 15 to substitute itself for CZ USA because CZ Czech was not a party.

Resisting this conclusion, CZ Czech points to *United States ex rel. Precision Co. v. Koch Industries* (*Precision II*), 31 F.3d 1015, 1019 (10th Cir. 1994), to assert its amendment was proper. But that case involved a *plaintiff* who

amended its complaint as a matter of course to *add* plaintiffs to cure a jurisdictional defect. *Id.* Indeed, we acknowledged this critical distinction in *Little*, 870 F.3d at 1249 (distinguishing "this case from *Precision* [*II*], where the *existing plaintiff* added the new relators"). As Rule 15 permits, the original party, CZ USA, could have pursued a similarly straightforward strategy: File an amended complaint as a matter of course adding CZ Czech as a party-plaintiff to the litigation. But it did not do so. *See* Michelle L. Nabors, Comment, *Relation Back of Amendments Adding Plaintiffs Under Rule 15(c)*, 66 Okla. L. Rev. 113, 120 (2013) (noting the Federal Rules "dictate that parties have wide latitude to correct and clarify pleadings").

On appeal, CZ Czech invokes Rule 17(a)(3):

> The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

It argues that the interplay between Rule 17 and Rule 15 allows the real party in interest (here, CZ Czech) to insert itself into the case as the party-plaintiff by amending the existing complaint. *See* 6A Charles Alan Wright & Arthur R. Miller, *Fed. Prac. and Proc.* § 1501 (3d ed. Apr. 2023 update) (observing "the liberal attitudes toward substitution of the real party in interest prescribed by both Rule 17(a) and Rule 15(c) are closely related"). Indeed, "Rule 15(c) has been used in conjunction with Rule 17(a) to enable an amendment substituting the real party in

interest to relate back to the time the original action was filed." *Id.* § 1555.[4] But CZ Czech did not invoke Rule 17 below. It instead relied only on Rule 15, which caused the district court to do the same. But because CZ Czech does not now argue plain error, we do not consider its Rule 17 argument. *See United States v. Leffler*, 942 F.3d 1192, 1196 (10th Cir. 2019) ("When an appellant fails to preserve an issue and also fails to make a plain-error argument on appeal, we ordinarily deem the issue waived (rather than merely forfeited) and decline to review the issue at all—for plain error or otherwise.").

Only CZ USA, as a party, could amend the complaint. But it did not. And because non-party CZ Czech's attempted amendment was invalid, the operative complaint is the original, under which CZ USA indisputably lacked standing and the district court lacked subject-matter jurisdiction.

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[4] Notably, the commentary for the 1966 amendment to Rule 15 provides,

> The relation back of amendments changing plaintiffs is not expressly treated in revised Rule 15(c) since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs. Also relevant is the amendment of Rule 17(a) (real party in interest). To avoid forfeitures of just claims, revised Rule 17(a) would provide that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed for correction of the defect in the manner there stated.

Fed. R. Civ. P. 15 advisory committee's note to 1966 amendment.

III. Conclusion

For the foregoing reasons, we affirm.[5]

[5] Because we find the district court lacked subject-matter jurisdiction, we do not consider whether it erroneously denied CZ's motion to transfer.

22-3095, *Česká zbrojovka Defence SE ("CZ") v. Vista Outdoor, Inc.*

TYMKOVICH, Circuit Judge, concurring.

I briefly note that the Federal Rules of Civil Procedure provide several avenues for litigants to become involved in cases. Here, for example, CZ USA could have amended its complaint under Rule 15 to add CZ Czech as a plaintiff. CZ USA or CZ Czech could have invoked Rule 17, arguing that CZ Czech, as the real party in interest, should be substituted in as the party-plaintiff.[1] Rules 19 through 21 raise the possibility of relief through joinder, and Rule 24 raises it through intervention. And, of course, CZ Czech could have sought to initiate its own case before the Kansas district court dismissed CZ USA's case. But it did not. Rather, it continued to litigate in Kansas even though it knew CZ USA had wrongfully initiated the suit.

[1] Of course, there is no guarantee this invocation would have been successful. In *Intown Properties Management, Inc. v. Wheaton Van Lines, Inc.*, 271 F.3d 164, 167 (4th Cir. 2001), Intown unsuccessfully moved under Rules 15 and 17 to amend a complaint to which it was not a party. It appealed, and the Fourth Circuit affirmed. The court noted that "Rule 15 allows liberal amendment by *parties*, not non-parties," meaning that rule was not available to Intown. *Id.* at 169. Addressing Rule 17, the court concluded, "Although Rule 17 does limit *dismissal* of an action on the grounds that it is not prosecuted in the name of the real party in interest, nothing in the text of the rule provides a non-party a right to *join* a case on those grounds." *Id.* But at least the district court here could have considered this argument.