

Jacob J. ZhuckKAHosee #12554-089

Federal Correctional Institution

P.O. Box 7007

Marionna, FL. 32447

PLAINTIFF PRO SE

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JACOB J. ZHUCKKAHOSEE,

Plaintiff,

CASE NO. 16-3600

(Judge: Susan G. Brader)

v.

THE UNITED STATES,

Defendant.

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS; And/or MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS And/or MOTION TO AMEND WITH LEAVE

COMES NOW the Plaintiff Jacob J. ZhuckKAHosee acting pro se with: PLAINTIFF'S OPPO-
SITION TO DEFENDANT'S MOTION TO DISMISS; And/or MOTION FOR EXTENSION OF TIME TO FILE OPP-
OSITION TO DEFENDANT'S MOTION TO DISMISS And/or MOTION TO AMEND WITH LEAVE OF COURT

FACTS IN SUPPORT

1. On June 29, 2016 directly related Plaintiff/ Sioux Indian Ronald Gene Kenyon ("Kenyon")
filed in this Court a directly related "Response To Defendant's Motion To Dismiss Plaintiff's
Amended Complaint; Motion To Stay; Motion For Relief Under All Writs Act, 28 U.S.C. §
1651" alleging, in part: "Mr. Kenyon contends the RICO statute is overly vague and ambiguous
and unclear whether the use of the private right of action in the RICO statute by foreign
litigants is permissible in light of related litigant of this Court Victor L. Fourster, Jr.'s allega-
tion of a domestic injury to his property in question in his Indian Probate proceedings at
bar in Fourster v. Garden City Group, Inc., et al., and to Kenyon's allegation of fraud ag-
ainst the defendant United States. RIR Nabisco Inc. v. European Cmty., 2016 BL 195655,
U.S., NO. 15-138, 6/20/16; And see, Kiobel v. Royal Dutch Petroleum Co., 81 U.S.L.W. 4241,
2013 BL 103044 (U.S. April 17, 2013)". See, Kenyon v. U.S., U.S. CT. of Fed. Cl., NO. 16-2230 (Tu-

dge: Susan G. Braden); And see, attached July 6, 2016 Order in Fowstar v. Garden City Group, Inc., et al., U.S. Court of Appeals For The District of Columbia Circuit, No. 15-5049 (listing a August 10, 2016 Amicus Curiae Appointed for Appellant's Brief/Appellant's Brief); April 25, 2016 Notice of Docketing and Order Setting Briefing schedule in Indian Probate Hearings And Appeals proceedings Estate of Victor Charles Fowstar, Sr., U.S.D. of I., IBIA, No. IBIA 16-042

2. On July 21, 2016 Plaintiff Jacob A. ZhuckKahosee ("ZhuckKahosee") filed a directly related motion under 28 U.S.C. § 2255 alleging his criminal conviction and sentence is invalid and prejudicial pursuant to the Supreme Courts holding in U.S. v. Johnson, 135 S.Ct. 2261 (2015) and Welch v. United States, 136 S.Ct. 1257 (2016), and McDonnell v. U.S., No. 15-474 (S.Ct. 6/27/16), and inherently prejudicially under Foster v. Chatman, 2016 BL 162869, U.S., No. 14-8349, reversed and remanded 5/23/16, and contrary to U.S. Sentencing Guidelines holdings in Narvaez v. U.S., 674 F.3d 621, 625-26 (7th Cir. 2011), and Montgomery v. Louisiana, 136 S.Ct. 718 (2016), and BTR Nabisco v. European Cmty., 99 CrL 393, 6/22/16

ARGUMENT

This is a opposition to defendant's motion to dismiss and/or motion for extension of time to file opposition to defendant's motion to dismiss and/or motion to amend complaint with leave of court by plaintiff ZhuckKahosee.

Mr. ZhuckKahosee contends the aforementioned facts and evidence relating to Victor C. Fowstar, Jr.'s Bivens Complaint and Indian Probate Appeal proceedings are material to the jurisdiction of this Court pursuant to Fowstar's intended Taking clause claims in this Court that would effectively place ZhuckKahosee's claims outside the sphere of motion to dismiss under Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (CFCA) and would require a merits hearing on whether the Court enjoys jurisdiction to hear Fifth Amendment takings claims. See, Moder v. United States, 404 F.3d 1335, 1341 (Fed. Cir. 2005). Accordingly, the Court should grant Plaintiff leave of court

to amend complaint to allege mismanage of funds under the Cobell v. Salazar Indian Trust Settlement for which Mr. ZhuckKahosee is/was a party to where "a [valid] exercise of the Government's sovereign authority resulted in the taking of private property for public use without just compensation.

Rith Energy, Inc. v. United States, 247 F.3d 1355, 1365 (Fed. Cir. 2001); And see, (25 U.S.C.A. § 162a, 413)

Accordingly, an extension of time to reply to motion to dismiss should be granted pending disposition of Fourster's proceedings.

WHEREFORE Plaintiff opposes defendants motion to dismiss and requests leave of court and extension of time to amend complaint and file opposition to motion to dismiss.

Executed on this 21st day of July, 2016 X Jacob ZhuckKahosee
Jacob T. ZhuckKahosee

CERTIFICATE OF SERVICE

I, Jacob J. ZhuckKahosee, hereby swear and declares under penalty of perjury 28
U.S.C. § 1746 that I mailed this original REPLY TO DEFENDANT'S MOTION TO DISMISS on this
21st day of July, 2016 by pre-paid First Class Postage through FCI-MARTINIA, FL reg-
almail procedures to the following: Office of the Clerk, U.S. Court of Federal Claims,
717 Madison Place, N.W., Room 103, Washington, D.C. 20005; Albert S. Tarossi, Jr.
ial Attorney, Commercial Litigation Branch, Civil Division, U.S. Dept. of Justice,
P.O. Box 480, Ben Franklin Station, Washington, D.C. 20044

X Jacob ZhuckKahosee
Jacob J. ZhuckKahosee



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

Received by Mr. [Name] April 21, 2016

ESTATE OF VICTOR CHARLES FOURSTAR, SR.) Notice of Docketing and Order Setting
) Briefing Schedule
))
) Docket No. IBIA 16-042
))
) April 25, 2016

Victor C. Fourstar, Jr. (Appellant) appealed to the Board of Indian Appeals (Board) from a January 28, 2016, Order Denying Rehearing by Administrative Law Judge (ALJ) R. S. Chester, in the estate of Victor Charles Fourstar, Sr. (Decedent), deceased Fort Peck Indian, Enrollment No. 206C008298, Probate No. P000095667P.¹

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter.

Regulations governing appeals to the Board are found in 43 C.F.R. Part 4. A copy of these regulations was enclosed with the Board's February 22, 2016, pre-docketing notice.

The record of all proceedings conducted prior to the issuance of the decision appealed from in this case was received by the Board from the Bureau of Indian Affairs, Rocky Mountain Region Land Titles and Records Office (LTRO), on April 22, 2016, including a table of contents. A copy of the table of contents is enclosed. A conformed copy of the record is filed with the LTRO, where it is available for examination by all parties. If a party desires to obtain copies of documents in the administrative record, and the volume of the documents sought exceeds 100 pages, the Board requests that the party make arrangements with the LTRO to obtain the desired copies.

¹ The Order Denying Rehearing denied a petition filed by Appellant, in which he objected, among other things, to the ALJ's approval of Decedent's Last Will and Testament, executed on July 1, 2004. The residuary clause in the Will, which the ALJ found applicable to Decedent's trust property, devised the balance of his estate to one of his daughters, Tonya Vera Stevens-Biggs. Decision, Aug. 22, 2014, at 2.

Alternative Dispute Resolution

The parties are advised that the Board strongly encourages the voluntary resolution of disputes brought before it. Such resolutions might take the form of traditional settlement discussions, or might involve the use of some form of alternative dispute resolution (ADR), such as mediation.

If the parties wish to discuss the possibility of settling this dispute or engaging in ADR, they should so inform the Board. Upon receiving such notification, the Board may stay further proceedings before it while the parties are exploring other possibilities.

If the parties would like to use mediation or another form of ADR, but have questions about the process, would like assistance in locating a neutral, or have other concerns, they may contact the Department's Office of Collaborative Action and Dispute Resolution (CADR). CADR does not normally provide neutrals, but can answer questions about ADR processes and assist parties in locating a mutually acceptable neutral. CADR assistance can be reached by contacting Matt Costello at 703-235-3791, or via email at Matthew_Costello@ios.doi.gov.

The parties are also advised that the Board reviews all appeals, usually on several occasions, to determine whether it believes that the parties might benefit from the use of ADR. If it believes that the parties might benefit from the use of ADR, the Board may order them to participate in an assessment conference to determine whether ADR is likely to be successful. The Board will not, however, order the parties to mediation or any other form of ADR over their objections.


Steven K. Linscheid
Chief Administrative Judge

Enclosure
Distribution: See attached list.

Order Setting Briefing Schedule

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). Parties who choose to serve and file by U.S. mail may use regular first-class mail; they do not need to use certified mail unless they wish to do so for their own record keeping purposes. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will not accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

In accordance with 43 C.F.R. § 4.311(e), Appellant's opening brief is due on or before June 6, 2016. The regulations require an appellant to submit a written statement of the errors of fact or law upon which the appeal is based. If this statement was included with the notice of appeal, Appellant may still, but is not required to, file an opening brief. Appellant is advised that he bears the burden of proving error in the decision being appealed.

Opposing parties or their counsel may file an answer(s) within 30 days from receipt of Appellant's opening brief. If no opening brief is filed, opposing parties may file a brief(s) within 30 days from the date Appellant's opening brief was due. Appellant shall have 15 days from receipt of any answer brief(s) in which to file a reply brief.

If any party wishes to, it may include with the paper copy of its filing an electronic copy of that filing on a CD-ROM in Microsoft Word® or Adobe PDF®.

The Board's Internet website, containing a free, searchable database of its decisions, is located at www.doi.gov/ohia/organization/ibia. In addition, this website contains links to copies of the Department of the Interior's probate regulations. Copies of current and past versions of Federal regulations and statutes, including the Indian Land Consolidation Act, as amended by the American Indian Probate Reform Act, 25 U.S.C. § 2201 *et seq.*, are available on the U.S. Government Printing Office's website located at www.gpo.gov/fdsys. The Board's decisions are also available on the for-fee websites of WestLaw and Lexis-Nexis. There may be some delay in providing Board decisions to the operators of these sites, but they are relatively current.

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RECEIVED

APR 22 2016

For the Estate of Victor Charles Fourstar, Sr., 206U008298

Docket No. IBIA 16-042

Probate Number: P0000 956671P

OFFICE OF HEARINGS AND APPEALS
BOARD OF INDIAN APPEALS

<u>Exhibit</u>	<u>Description</u>	<u>Date</u>
01.	0HA-7-Probate Package for the Estate of: Victor Charles Fourstar, Sr., Birth Certificates, Death Certificates, Marriage Certificates, Divorce Decrees, CIB's, Will, Historical Query, BIA INV.	3-12-2014
02.	Order Granting Appellant's Motion for Clarification, Order Denying Motion in Remaining Part, and Order for Preparation and Submission of Transcript and Record From: Steven K. Linscheid, Chief Administrative Judge, Arlington, Virginia	3-28-2016
03.	Pre-Docketing Notice, Order for Appellant to Complete Service, Order for Appellant to Submit Statement of Reasons, and Order Concerning Appellant's Request for Appointment of Counsel From: Steven K. Linscheid, Chief Administrative Judge, Arlington, Virginia	2-22-16
04.	Order Denying Rehearing From: R. S. Chester, Administrative Law Judge, Billings, Montana	1-28-2016
05.	Decision Order From: R. S. Chester, Administrative Law Judge, Billings, Montana	8-22-2014

APPENDIX 1
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06.	Attendance Roster From: R. S. Chester, Administrative Law Judge, Billings, Montana	7-14-2014
07.	Notice of Initial Hearing From: R. S. Chester, Administrative Law Judge, Billings, Montana	1-18-2014
08.	Email Correspondence From: Lynelle Bixby, Legal Instrument Assistant, Billings, Montana	7-31-2009

APPENDIX 1
Page 2 of 2

Distribution: IBIA 16-042

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Robert S. Chester, Administrative Law Judge
Probate Hearings Division - OHA
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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-5049

September Term, 2015

1:15-mc-00076-UNA

Filed On: July 6, 2016 [1623218]

Victor Charles Fourstar, Jr.,

Appellant

v.

Garden City Group, Inc., et al.,

Appellees

*Received on
July 13, 2016 by
legis mail procedures*

ORDER

Upon consideration of the consent motion of court-appointed amicus curiae for extension of time, it is

ORDERED that the motion be granted. The following revised briefing schedule will now apply in this case:

Amicus Curiae Appointed for Appellant's Brief	August 10, 2016
Appellant's Brief	August 10, 2016
Appendix	August 10, 2016
Appellees' Brief	September 9, 2016
Amicus Curiae Appointed for Appellant's Reply Brief	September 23, 2016
Appellant's Reply Brief	September 23, 2016

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk