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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF WHATCOM

In re Gabriel S. Galanda, pro se, Anthony S.
Broadman, pro se, and Ryan D.
Dreveskracht,

No. 16-2-01663-1

Petitioners,

NOOKSACK INDIAN TRIBE'S MOTION
TO VACATE ORDER DOMESTICATING
FOREIGN JUDGMENT AND QUASH OR
BAR EXECUTION AND ENFORCEMENT
EFFORTS

vs.

NOOKSACK TRIBAL COURT,

Respondent.

I. INTRODUCTION AND REQUEST FOR RELIEF

The Nooksack Indian Tribe ("Tribe") submits this Motion to Vacate the Court's Order domesticating the September 21, 2016 Order and Judgment of the Nooksack Tribal Court of Appeals, and to quash or bar execution and enforcement efforts by petitioners against the Tribe's Police Chief, Rory Gilliland.

II. FACTS

The Tribe is a federally recognized Indian tribe and a signatory to the Point Elliott treaty of 1855, with all rights and privileges inherent in its sovereign status. The Nooksack Tribal Court, the Nooksack Tribal Court of Appeals, and the Nooksack Supreme Court are divisions of the Tribal government, created by the Tribal Council pursuant to the Constitution and By-Laws of the Nooksack Indian Tribe. Decl. of C. Bernard, Exhs. B-F. Rory Lee Gilliland is the Chief of the Nooksack Tribal Police.

1 On September 21, 2016, the Northwest Intertribal Court System, a Washington non-
2 profit corporation, acting under its assumed authority granted by agreement as the Nooksack
3 Tribal Court of Appeals, entered an Order and Judgment Awarding Costs against an individual
4 identified only as "the Nooksack Tribe's Chief of Police." The Nooksack Tribal Court of
5 Appeals, an appellate body created by ordinance under Nooksack law, lacks original jurisdiction
6 and is not a court of general jurisdiction. Decl. of C. Bernard, Exhs. E-F. In addition, the judges
7 who signed the decision lacked a current appointment to serve as judges for the Nooksack Tribal
8 Court of Appeals, and therefore had no authority to act. See Decl. of C. Bernard, Exhs. B-C;
9 Order Vacating Tribal Court of Appeals Orders as Void, *In re: Orders Entered by Nooksack*
10 *Tribal Court of Appeals After May 30, 2015*, Nooksack Supreme Court Case No. 2016-CI-SC-
11 002; and Mandate, *In re: Orders Entered by Nooksack Tribal Court of Appeals After May 30,*
12 *2015*, Nooksack Supreme Court Case No. 2016-CI-SC-002.

13 On October 17, 2016, the Supreme Court of the Nooksack Indian Tribe vacated all of the
14 orders entered by those same judges, based on their lapsed appointments and absence of
15 authority to act as the Nooksack Tribal Court of Appeals. See *id.* Included among those orders
16 that were vacated on October 17, 2016 was the September 21, 2016 Order and Judgment
17 Awarding Costs that petitioners have domesticated with this Court. *Id.*

18 III. AUTHORITY

19 A. The Judgment must be Vacated Because the Underlying Court Lacked Jurisdiction and 20 the Order was Vacated

21 Washington law provides for the entry of a foreign judgment as follows:

22 A copy of any foreign judgment authenticated in accordance with the act of
23 congress or the statutes of this state may be filed in the office of the clerk of
24 any superior court of any county of this state. The clerk shall treat the foreign
25 judgment in the same manner as a judgment of the superior court of this state.
26 *A judgment so filed has the same effect and is subject to the same
procedures, defenses, set-offs, counterclaims, cross-complaints, and
proceedings for reopening, vacating, staying, or extending as a judgment of*

1 a superior court of this state and may be enforced, extended, or satisfied in
2 like manner.

3 RCW § 6.36.025(1)(emphasis added).

4 1. **The Underlying Court Lacked Jurisdiction to Issue the Judgment.**

5 A “foreign judgment” is “any judgment, decree or order of a court of the United States or
6 of any state or territory which is entitled to full faith and credit in this state.” RCW 6.36.010.
7 Tribal court decrees are entitled to full faith and credit to the same extent as decrees of sister
8 states. *In re Adoption of Buehl*, 87 Wn.2d 649, 663, 555 P.2d 1334 (1976). However, full faith
9 and credit need not be extended to a foreign judgment – or a tribal judgment - if the court lacked
10 jurisdiction to hear a case in the first place. *City of Yakima v. Aubrey*, 85 Wn. App. 199, 203,
11 931 P.2d 927 (1997), citing *In re Estate of Stein*, 78 Wn. App. 251, 261, 896 P.2d 740 (1995) (“a
12 decree of a sister state may be subject to collateral attack for want of jurisdiction over the subject
13 matter of the action); *State ex rel. Eaglin v. Vestal*, 43 Wn. App. 663, 667, 719 P.2d 163 (1986).

14 A judgment entered by a Tribal court is enforceable “unless the superior court finds the
15 tribal court that rendered the order, judgment or *decree (1) lacked jurisdiction over a party or*
16 *the subject matter, (2) denied due process as provided by the Indian Civil Rights Act of 1968, or*
17 *(3) does not reciprocally provide for recognition and implementation of orders, judgments and*
18 *decrees of the superior courts of the State of Washington.” CR 82.5(c)(emphasis added).*

19 Here, treating the Nooksack Tribal Court of Appeals’ September 21, 2016 Order and
20 Judgment Awarding Costs “as a judgment of the superior court of this state” requires the
21 vacation of the judgment, and the barring of any efforts to execute on such judgment, because
22 the Nooksack Court of Appeals lacked personal and subject matter jurisdiction. N.T.C.
23 80.03.040 (“The Court of Appeals is an appellate body only and does not have original
24 jurisdiction to hear and decide non-appellate matters. . .”); N.T.C. 10.00.100 (“The court shall
25 have no jurisdiction over any suit brought against the Nooksack Indian Tribe, its officials, its
26 entities, or employees without the consent of the Tribe.”).

1 Even if the Nooksack Tribal Court of Appeals did have personal and subject matter
2 jurisdiction at the time it entered the Order and Judgment – which it did not - the underlying
3 judgment has been vacated, and thus is void. Civil Rule 60(b) provides, among other bases, that
4 a party shall be granted relief from a judgment or order because the judgment is void, or the
5 prior judgment upon which it is based has been reversed or otherwise vacated. CR 60(b)(5), (6).
6 Vacation of this Court’s Order domesticating petitioners’ judgment is warranted based on both
7 grounds.

8 The timing of the Tribe vacating the underlying judgment is irrelevant; the underlying
9 court’s judgment has been vacated and is unenforceable. When a trial court is faced with a void
10 judgment, it has no discretion and the judgment must be vacated. *Mitchell v. Kitsap County*, 59
11 Wn. App. 177, 797 P.2d 516 (1990). A void judgment may be vacated at any time. *Allstate Ins.*
12 *Co. v. Khani*, 75 Wn. App. 317, 877 P.2d 724 (1994). A judgment is void if entered without
13 subject matter jurisdiction. *In re Marriage of Ortiz*, 108 Wn.2d 643, 649, 740 P.2d 843 (1987)
14 (citing *Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490 (1968)). “Jurisdiction over the subject matter
15 of an action is an elementary prerequisite to the exercise of judicial power.” *In re Buehl*, 87
16 Wn.2d 649, 655, 555 P.2d 1334 (1976).

17 A party may raise the lack of subject matter jurisdiction at any time: before there is a
18 final judgment, pursuant to CR 12(h)(3) and RAP 2.5(a)(1); and after a final judgment has been
19 entered, pursuant to CR60(b)(5). A judgment may be vacated if there was no subject matter
20 jurisdiction, even though a mandate has been issued. *Bour v. Johnson*, 80 Wn. App. 643, 646-
21 647 (1995). Proceedings to vacate judgments are equitable in nature and the court should
22 exercise its authority liberally to preserve substantial rights and do justice between the parties.
23 *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 599 P.2d 1289 (1979); *In re Hardt*, 39 Wn. App.
24 493, 693 P.2d 1386 (1985).

25 A party to the record, adversely affected by a void judgment, may have the judgment
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1 vacated as a matter of right. *Ballard Sav. & Loan Ass'n v. Linden*, 188 Wash. 490, 492, 62 P.2d
2 1364 (1936), citing *Batchelor v. Palmer*, 129 Wash. 150, 224 P. 685 (1924), *Hole v. Page*, 20
3 Wash. 208, 54 P. 1123 (1898). Here, the Tribe had the "foreign judgement" underlying this case
4 vacated by the Nooksack Supreme Court. As such, this Court must vacate its order granting the
5 Petition for entry of foreign judgment of October 21, 2016.

6 **2. The underlying Tribal judgment has been vacated.**

7 It is black letter law that a judgment entered by a court lacking the proper jurisdiction is
8 void. *In re Powell*, 84 Wn. App. 432, 927 P.2d 1154 (1996). Courts have a nondiscretionary
9 duty to vacate void judgments. *Leen v. Demopolis*, 62 Wn. App. 473, 815 P.2d 269 (1991),
10 *review denied*, 118 Wn.2d 1022, 827 P.2d 1393 (1992). A vacated judgment has no effect. *In*
11 *re Marriage of Leslie*, 112 Wn.2d 612, 618, 772 P.2d 1013 (1989). The rights of the parties are
12 left as though the judgment had never been entered. *Anacortes v. Demopoulos*, 81 Wn.2d 166,
13 500 P.2d 546 (1972); *Weber v. Biddle*, 72 Wn.2d 22, 28, 431 P.2d 705 (1967); *In re Estate of*
14 *Couch*, 45 Wn. App. 631, 634, 726 P.2d 1007 (1986).

15 Here, the Nooksack Supreme Court vacated the underlying Order and Judgment. *See*
16 October 17, 2016 Order Vacating Tribal Court of Appeals Orders as Void, *In re: Orders*
17 *Entered by Nooksack Tribal Court of Appeals After May 30, 2015*, Nooksack Supreme Court
18 Case No. 2016-CI-SC-002, at 2-3. That vacation included the September 21, 2016 Order and
19 Judgment Awarding Costs that petitioners have taken steps to domesticate. *Id.* Because the
20 Order and Judgment has been vacated, it has no effect and cannot form the basis of a
21 domesticated judgment that may be executed upon.

22 **3. The Underlying Order and Judgment is Void.**

23 The reason for which the Nooksack Supreme Court vacated the Order and Judgment
24 provides an additional basis for vacating this Court's order domesticating the judgment: the
25 terms of the judges who entered the September 21, 2016 Order and Judgment expired on May
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1 30, 2015, and therefore the judges lacked a current appointment by the Tribal Council and were
2 not authorized to act as the Nooksack Tribal Court of Appeals. *See Burton v. Ascol*, 105 Wn.2d
3 344, 351-52, 715 P.2d 110 (1986) (all actions taken by a judge without authority to act are null
4 and void), *citing National Bank of Washington v. McCrillis*, 15 Wn.2d 345, 359, 130 P.2d 901
5 (1942), *superseded by statute as stated in Zachman v. Whirlpool Fin. Corp.*, 123 Wn.2d 667,
6 869 P.2d 1078 (1994); *Mitchell v. Kitsap County*, 59 Wn. App. 177, 181, (1990) (if a party has
7 not consented to the appointment of a judge pro tempore, the appointed pro tempore judge lacks
8 jurisdiction, and without jurisdiction, the entire proceedings before the judge pro tempore are
9 void), *citing McCrillis*, 15 Wn.2d at 359; CR 60(b)(5) (“the court may relieve a party or the
10 party’s legal representative from a final judgment, order or proceeding [where] . . . the judgment
11 is void.”).

12
13 **a. The Appellate Judges Lacked Authority to Act.**

14 A judgment is void for purposes of CR 60(b)(5) if the court lacked jurisdiction over the
15 parties or the subject matter of the suit or if it lacked the inherent power to make or enter the
16 particular order involved. *State ex rel. Turner v. Briggs*, 94 Wn. App. 299, 302-03, 971 P.2d
17 581 (1999) (“A void judgment is a ‘judgment, decree or order entered by a court which lacks
18 jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or
19 enter the particular order involved.’”) (*quoting Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490
20 (1968)); *see, also, Bergren v. Adams County*, 8 Wn. App. 853, 509 P.2d 661, *review denied*, 82
21 Wn.2d 1009 (1973). Here, even if the Nooksack Supreme Court had not acted to vacate the
22 Court of Appeals Order and Judgment, this Court would be obligated to vacate the order
23 domesticating the judgment because the Tribal Court of Appeals lacked personal and subject
24 matter jurisdiction over the Tribe and its Chief of Police, Rory Gilliland. The three appellate
25 judges who signed the Order and Judgment lacked authorization to act because their terms had
26 expired, and without authority to act, they did not constitute the Court of Appeals. *See October*

1 17, 2016 Order Vacating Tribal Court of Appeals Orders as Void, *In re: Orders Entered by*
2 *Nooksack Tribal Court of Appeals After May 30, 2015*, Nooksack Supreme Court Case No.
3 2016-CI-SC-002, at 5-6.

4 **b. The Court of Appeals Lacked Jurisdiction Because the Tribe Had**
5 **Not Waived its Sovereign Immunity.**

6 In addition, under Noosack law the Court of Appeals lacked jurisdiction to enter the
7 Order and Judgment because the Tribe had not waived its sovereign immunity or the sovereign
8 immunity of its agents and officers acting within the scope of their authority.

9 A court must have both personal and subject matter jurisdiction in order to have
10 authority to act. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539 (1994) (a void
11 judgment exists whenever the issuing court lacks personal jurisdiction over the party or subject
12 matter jurisdiction over the claim). Where jurisdiction is lacking, any judgment entered is void.
13 *In re Marriage of Ortiz*, 108 Wn.2d 643, 649 (1987) (“A judgment, decree or order entered by a
14 court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent
15 power to make or enter the particular order involved, is void.”).

16 Subject matter jurisdiction is more than a determination as to whether sovereign
17 immunity prevents any lawsuit, but whether the court hearing the lawsuit has authority to hear
18 the type of lawsuit brought before it. *See Wright v. Colville Tribal Enter. Corp.*, 159 Wn.2d
19 108, 115, 147 P.2d 1275 (2006), (Madson, J., concurring).

20 It is well-established that “Indian tribes possess the common-law immunity from suit
21 traditionally enjoyed by sovereign powers.” *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S.
22 751, 756-60 (1998); *Val-U Constr. Co. v. Rosebud Sioux Tribe*, 146 F.3d 573, 576 (8th Cir.
23 1998); *United States v. James*, 980 F.2d 1314 (9th Cir. 1992). The doctrine applies broadly to a
24 tribe’s commercial activities and to activities outside its reservation. *See Okla. Tax Comm’n v.*
25 *Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 510-11 (1991); *Santa Clara*
26 *Pueblo v. Martinez*, 436 U.S. 49, 59 (1978).

1 Sovereign immunity extends not only to the tribe itself, but also to tribal officers and
2 tribal employees, as long as their alleged misconduct arises while they are acting in their official
3 capacity and within the scope of their authority. *Wright*, 159 Wn.2d at 116; *Cook v. AVI Casino*
4 *Enters., Inc.*, 548 F.3d 718, 726-27 (9th Cir. 2008), *cert. denied*, 556 U.S. 1221, 129 S. Ct. 2159,
5 173 L. Ed. 2d 1156 (2009). “The principles that motivate the immunizing of tribal officials
6 from suit—protecting an Indian tribe's treasury and preventing a plaintiff from bypassing tribal
7 immunity merely by naming a tribal official—apply just as much to tribal employees when they
8 are sued in their official capacity.” *Cook*, 548 F.3d at 727 (*quoting Will v. Mich. Dep't of State*
9 *Police*, 491 U.S. 58, 70-71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989)).

10 An Indian tribe has the undisputed authority to “employ police officers to aid in the
11 enforcement of tribal law and in the exercise of tribal power.” *State v. Schmuck*, 121 Wn.2d
12 373, 382, 850 P.2d 1332 (1993) (*quoting Ortiz-Barraza v. United States*, 512 F.2d 1176, 1179
13 (9th Cir. 1975)). The Tribe employs Chief Gilliland to aid in the enforcement of Nooksack law
14 and in the exercise of Nooksack power. Chief Gilliland is protected by the Tribe's sovereign
15 immunity from claims arising from acts and omissions undertaken in the scope of his official
16 duties as Chief of Police. *Young v. Duena*, 164 Wn. App. 343, 262 P.3d 527 (2011). Chief
17 Gilliland is also protected from the domestication of the underlying vacated judgment.

18 3. A Void Judgment May Not be Executed Upon

19 The Washington Supreme Court has long held that “[a] void judgment is, in legal effect,
20 no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in
21 itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.
22 All acts performed under it and all claims flowing out of it are void. The parties attempting to
23 enforce it may be responsible as trespassers.” *State ex rel. Reed v. Gormley*, 40 Wash. 601, 605,
24 82 P. 929 (1905).

25 Where a judgment is void, actions authorized in aid of execution are similarly void. *See*,

1 e.g., *TCAP Corp. v. Gervin*, 163 Wn.2d 645, 653, 185 P.3d 589 (2008) (because the underlying
2 foreign judgments had become unenforceable, writs of execution were improperly issued and
3 had to be quashed); *Hardin v. Day*, 29 Wash. 664, 665, 70 P. 118 (1902) (sale that occurs after
4 the lien has expired is void because “[t]here being no lien in existence, there could have been no
5 authority for the sale in any execution that might have been issued.”) (*quoting Packwood v.*
6 *Briggs*, 25 Wash. 530, 535, 65 P. 846 (1901) (competing mortgage and judgment liens, held
7 execution void because lien ceased to exist prior to sale); *Mueller v. Miller*, 82 Wn. App. 236,
8 248, 917 P.2d 604 (1996) (execution through sheriff’s sale was void at the outset because lien
9 had expired).

10 Because the underlying Tribal Court of Appeals Order and Judgment has been vacated,
11 this Court’s Order domesticating the judgment is void, and no writs or remedies in aid of
12 execution may be issued.

13 **4. A Fee Award is Warranted**

14 An award of attorney’s fees to a party who successfully opposes a writ of garnishment is
15 mandatory under RCW 6.27.230. *Lindgren v. Lindgren*, 58 Wn. App. 588, 598, 794 P.2d 526
16 (1990), *review denied*, 116 Wn.2d 1009 (1991), *citing Hinote's Home Furnishings, Inc. v. Olney*
17 *& Pederson, Inc.*, 40 Wn. App. 879, 886, 700 P.2d 1208 (1985). Where the challenge to the writ
18 required a party to vacate the underlying judgment, the party is entitled to an award of attorney's
19 fees for that effort. *Allstate Ins. v. Khani*, 75 Wn. App. 317, 327, 877 P.2d 724 (1994), *citing*
20 *Lindgren*, 28 Wn. App. at 598. The Tribe should be granted an award against petitioners for the
21 fees and costs it has incurred in this matter.
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RESPECTFULLY MOVED THIS 3rd DAY OF NOVEMBER, 2016.

NOOKSACK INDIAN TRIBE



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