

SCANNED

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FILED IN OPEN COURT

1-27 2017

WHATCOM COUNTY CLERK

By _____
Deputy

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

RABANG,

Plaintiff

No. 16-2-02029-8

v.

[PROPOSED] ORDER OF
DISMISSAL

GILLILAND, et al.,

Defendants.

This matter came before the Court on the Defendants' motion for an order dismissing the action for the following bases:

1. The Court lacks jurisdiction pursuant to R.C.W., Chapter 37.12;

060

BFB

KA

~~2. The Defendants possess sovereign immunity; and~~

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[Handwritten signature]

~~3. The Plaintiffs failed to join a necessary party;~~

BFB

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2 The Court heard the oral argument of counsel, reviewed the record and considered the pleadings filed herein.

3 Based on the argument of counsel and evidence presented, the Court finds:

4 this Court lacks jurisdiction in the underlying matter pursuant to R.C.W. §§ 37.12.050-060.

5 The Plaintiff filed an action stating an underlying claim for trespass. Trespass, by its
6 very nature, is an action requiring the Plaintiff to demonstrate her right to possess certain
7 property.

8 In this case, the Plaintiff must demonstrate she has the right to demonstrate she has the
9 right to possess real property belonging to the Nooksack Indian tribe which is held in
10 trust by the United States.

11 Pursuant to R.C.W. § 37.12.050-060, this Court lacks jurisdiction pursuant to applicable
12 state law. Further, pursuant to PL-280, this Court lacks jurisdiction pursuant to federal
13 law for the same above-stated reasons.

14 ~~this Court lacks jurisdiction in the underlying matter pursuant to applicable state and federal
15 law concerning sovereign immunity.~~ BB

16 The Defendants in this action are law enforcement officers of the Nooksack Indian Tribe,
17 acting in their stated capacities. As such, the Defendants are cloaked in the Tribe's
18 sovereign immunity.

19 As such, this Court lacks jurisdiction absent a clear and unequivocal waiver of the Tribe's
20 immunity.

21 Plaintiffs have failed to identify any such waiver.

22 Therefore, under applicable state and federal law, this Court lacks jurisdiction. *Santa
23 Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978), *Okla. Tax Comm'n v. Citizen Band
24 Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991). R

25 the Plaintiff has failed to join a necessary party under CR 19.

As stated above, the Plaintiff brought an action for trespass for real property belonging to
the Nooksack Indian Tribe which is held in trust by the United States.

The Plaintiff failed to name the Nooksack Indian Tribe in this action. The Tribe cannot
be joined in this action because the Tribe possess sovereign immunity, and the Tribe's

immunity would deprive this Court of jurisdiction. *Martinez*, 436 U.S. 49, *Okla. Tax Comm'n*, 498 U.S. 505.

The Tribe has an interest relating to the subject matter of this action and any determination by this Court would impede or impair the Tribe's ability to protect that interest, and would subject the Tribe to multiple inconsistent obligations, as is demonstrated by the Tribal Court already prosecuted concerning the Plaintiff and Tribe. CR-19(b)(1-4); *Mudarri v. State*, 147 Wn. App. 590, 604-05 (2008).

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Based on the above findings, it is ordered that:

Defendant's motion to dismiss is granted.

ORDERED THIS 27 DAY OF 2017, January. *AG*
1/27/17 *AG*

WHATCOM COUNTY SUPERIOR COURT

Deborra E. Garrett
Honorable Judge Deborra E. Garrett
Dept. 2

Presented by:

R
Rickie W. Armstrong, WSBA 34099
For Defendants

Present:
Agreed:

BBA Cramme
Bree Black Horse, WSBA 47903
For Plaintiff