

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

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|----------------------------------|---|--|
| NOLAN J. SOLOMON, PRO SE |) | Case No. 8:17-CV-328 |
| |) | |
| DEFENDANT |) | PRO SE DEFENDANT SUBMITS MOTION TO |
| |) | DISMISS THE CONDEMNATION PROCEEDING IN ITS |
| vs. |) | ENTIRETY |
| |) | |
| |) | |
| NORTHERN NATURAL GAS COMPANY,)) |) | |
| |) | |
| PLAINTIFF |) | |

MOTION TO DISMISS

COMES NOW Pro Se Defendant moves this court, pursuant to Rule 19 and Rule 71 to Dismiss this proceeding in its entirety.

1. Under Rule 19(a), defendant contends the Omaha Tribe of Nebraska is a required party.
2. Under Rule 71(c)(1) the Omaha Tribe is an indispensable party to these proceedings.
3. Rule 71(c)(1) requires Plaintiff *“must add defendants all those persons who have or claim an interest”*.
4. The Plaintiff has not nor attempted to add the Omaha Tribe of Nebraska as a defendant.
5. The Omaha Tribe has not been afforded the right to representation in these matters before the court.
6. Pro Se defendant, believes the Department of Justice represents only the Bureau of Indian Affairs and is only monitoring to ensure the proceedings are in the interests of the Bureau of Indian Affairs, not the defendants or the Omaha Tribe of Nebraska.
7. Pro Se defendant represents only the majority interest owners in this proceeding, and not the Omaha Tribe of Nebraska.

8. Further, the Court decision to proceed with these proceedings goes against the basic principles and construct of contract law. The Court referenced the Right-of-Way agreement (approved in December 2017) between Northern Natural Gas and the Omaha Tribe of Nebraska, essentially incorporating tracts 742-2 and 742-4. Each contract should be interpreted within the "4 corners" of the document itself and not any other "non-existent" contract.

Pro Se defendant, provides a Brief to Support this Motion to Dismiss and respectfully enters this Motion to Dismiss this condemnation complaint (8:17-CV-328) in its entirety and enter an order.

Dated this 31st day of August, 2018



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CERTIFICATE OF SERVICE

I certify that on the 27th day of February 2018, I electronically filed the foregoing with the Clerk of the Court using the CFM/ECF system, which will send notification of such filing to all attorneys of record who participate in the CM/ECF system.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

| | | |
|----------------------------------|---|---|
| NOLAN J. SOLOMON, PRO SE |) | Case No. 8:17-CV-328 |
| |) | |
| DEFENDANT |) | PRO SE DEFENDANT BRIEF TO SUPPORT |
| |) | MOTION TO DISMISS THE CONDEMNATION |
| |) | PROCEEDING IN ITS ENTIRETY FOR FAILURE TO |
| |) | JOIN AN INDISPENSABLE PARTY UNDER RULE 19 |
| |) | AND RULE 71.1. |
| vs. |) | |
| |) | |
| NORTHERN NATURAL GAS COMPANY,)) |) | |
| |) | |
| PLAINTIFF |) | |

I, Nolan J. Solomon, Pro Se defendant, hereby submit this Brief in Support of Motion to Dismiss the Condemnation proceeding in its entirety.

ARGUMENT

1. Plaintiff has filed a condemnation of Indian trust lands, under 25 USC § 357. The Indian trust lands are located within the exterior boundaries of the Omaha Reservation, Thurston County, in the state of Nebraska. The identified lands, specifically tracts 742-2 and 742-4 are held in trust by the United States Government.
2. The Omaha Tribe of Nebraska has ownership interests in tracts 742-2 (.0033333333) and 742-4 (.0033333333).
3. District Court decisions have acknowledged and ruled 25 USC § 357 does not apply when a tribe has ownership interests in lands held in trust by the United States Government.
4. *Enterprise Management Consultants, Inc. v. United States ex re. Hodel*, 883 F.2d 890, 894 (10th Cir. 1989). Under Rule 19(a), the Nation is a required party. The defendants

contend under Rule 19 that the Eastern Shoshone Tribe and the United States were indispensable parties and the case *“in equity and good conscience”* should be dismissed. The district court agreed and dismissed the case. The Tenth Circuit affirmed and concluded that the Eastern Shoshone Tribe was an indispensable party because it had an *“interest relating to the subject of the action,”* namely the *“Indian Country”* status of the land, and a determination of that status in its absence would impair its ability to protect its one-half interest in the land.

5. *Public Service Company of New Mexico vs. Barboan*, on May 26, 2017 recently upheld a New Mexico federal district court ruling that tribal ownership of even a very small fractional interest in an allotment bars condemnation of any interest in the allotment, therefore 25 USC § 357 does not apply. Further, the court ruled *“the Nation is an indispensable party”*, under Rule 71.1(c)(1), *“all persons having an interest in property to be condemned must be joined as parties”* and that Rule 71.1 requires that a plaintiff *“must add as defendants all those persons who have or claim an interest”* as a limitation of §357’s authorization of condemnation.
6. The Plaintiff and this court acknowledge the Omaha Tribe of Nebraska has ownership in tracts 742-2 and 742-4.
7. The Omaha Tribe of Nebraska as a sovereign nation has never been afforded the right to representation. The Plaintiff has made no attempt to *“add as defendants all those persons who have or claim an interest”* (Rule 71.1). The Omaha Tribe of Nebraska has a right to representation.

8. Pro Se believes that the Department of Justice represents only the Bureau of Indian Affairs and is only monitoring to ensure the proceedings are in the interests of the Bureau of Indian Affairs, not the defendants or the Omaha Tribe of Nebraska.
9. Pro Se defendant represents only the majority interest owners of tracts 742-2 and 742-4 in this proceeding, and not the Omaha Tribe of Nebraska.
10. Pro Se defendant contends the initial court ruling to proceed is improper, since Plaintiff has not added the Omaha Tribe of Nebraska as a party. This court has ruled the condemnation action may proceed without proper notification to the Omaha Tribe of Nebraska, the court has ruled that the Omaha Tribe of Nebraska has consented to the condemnation proceeding based upon language within a separate approved Right-of-Way (ROW) agreement (identified as "New" within the Courts ruling). Taken in full context, the "New" ROW agreement between NNG and the Omaha Tribe of Nebraska is specifically for the identified tracts within the agreement and further, the language *"The Tribe agrees that if it acquires an interest in an allotment tract during the term of the Right-of-Way consented to herein"*, that this provision is specific to acquiring ownership in tracts specific only to the "New" ROW and does not include tracts 742-2 and 742-4.
11. Further, the "New" ROW agreement should stand on its own and not be interpreted to carry-over into another "non-existent" contract or ROW agreement. Each contract should be interpreted to stay within the "4 corners" of the document itself. Any other interpretation would go against the principles and construct of contract law.

CONCLUSION

For the foregoing reasons, Pro Se defendant, respectfully requests this condemnation proceeding (8:17-CV-328) be Dismissed in its entirety.

Dated this 31st day of August, 2018

A handwritten signature in blue ink that reads "Nolan J. Solomon". The signature is written in a cursive style with a large initial 'N'.

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