

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

MONSTER TECHNOLOGY GROUP, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-21-879-J
)	
GARRETT A. ELLER,)	
)	
Defendant.)	

ORDER

The Court has reviewed Plaintiff’s Verified Complaint for Declaratory and Injunctive Relief (Compl.), in which Plaintiff brings suit against a judge of the District Court of the Iowa Tribe of Oklahoma and seeks a declaratory judgment regarding the jurisdiction of that court. [Doc. No. 1].

It is within a court’s discretion to raise issues of comity sua sponte. *United States v. Tsosie*, 92 F.3d 1037, 1041 (10th Cir. 1996). The tribal court exhaustion rule provides that, “as a matter of comity, a federal court should not exercise jurisdiction over cases arising under its federal question or diversity jurisdiction, if those cases are also subject to tribal jurisdiction, until the parties have exhausted their tribal remedies.” *Id.* (affirming a district court’s sua sponte dismissal of an action under the tribal court exhaustion doctrine (internal quotation marks omitted)); *see also Becker v. Ute Indian Tribe of Uintah & Ouray Reservation*, -- F.4th --, No. 18-4030, 2021 WL 4057691, at *8 (10th Cir. Aug. 3, 2021) (affirming the tribal court exhaustion rule). And because “the existence and extent of a tribal court’s jurisdiction will require a careful examination of tribal sovereignty [and] the extent to which that sovereignty has been altered, divested, or diminished, . . . that examination should be conducted in the first instance in the Tribal Court itself.” *Nat’l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 855-56 (1985).

Plaintiff asserts that it need not exhaust tribal court remedies, Compl. at 4, which is not required in the following instances: (1) where an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) where the action is patently violative of express jurisdictional prohibitions; or (3) where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction. *Becker*, 2021 WL 4057691, at *8 (citing *Nat'l Farmers Union*, 471 U.S. at 856 n.21). Additionally, the Supreme Court has held that exhaustion may be excused "where it is clear that the tribal court lacks jurisdiction and that judicial proceedings would serve no purpose other than delay." *Id.* (internal quotation marks omitted); see also *Nevada v. Hicks*, 533 U.S. 353, 369 (2001). When a party asserts any of these exceptions, however, they are required "make a substantial showing of eligibility." *Becker*, 2021 WL 4057691, at *8 (internal quotation marks omitted). Here, Plaintiff makes only a conclusory assertion that "circumstances" sufficient to meet the exceptions are "plainly present here." Compl. at 4. Such statement does not satisfy Plaintiff's obligation to make a substantial showing.

Indeed, Plaintiff's Complaint clearly indicates that there is an appeal pending before the tribal appellate court. The District Court of the Iowa Tribe has ruled on the matter presented to this Court, finding that it "has subject matter jurisdiction." Compl. at 14; [Doc. No. 1-3]. After that ruling, Plaintiff then availed itself of tribal court jurisdiction by taking an interlocutory appeal to the Tribal Supreme Court. Compl. at 14. But because only one appellate judge is currently serving, Plaintiff contends "[t]he appeal could well languish for some time to come." *Id.* That the pending appeal may be delayed does not negate the requirement that "absent exceptional circumstances, federal courts typically should abstain from hearing cases that challenge tribal court jurisdiction until tribal court remedies, including tribal appellate review, are exhausted." *Becker*, 2021 WL 4057691, at *8 (internal quotation marks omitted). And because the Tribal Supreme

Court's review is not complete, Plaintiff has not exhausted its tribal court remedies. *See Thlopthlocco Tribal Town v. Stidham*, 762 F.3d 1226, 1237 (10th Cir. 2014) ("Until the tribal court's appellate review of the question presented in federal court is complete, the complaining party has not exhausted its tribal court remedies."); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16-17 (1987) ("[R]espect for tribal legal institutions requires that they be given a full opportunity to consider the issues before them and to rectify any errors. The federal policy of promoting tribal self-government encompasses the development of the entire tribal court system, including appellate courts." (internal quotation marks omitted)).

Although Plaintiff must exhaust available tribal remedies before bringing suit in federal court, the Tribal Supreme Court's determination of tribal jurisdiction may ultimately be subject to review. If the Tribal Supreme Court upholds the lower court's determination that it has jurisdiction, Plaintiff may challenge that ruling before this Court. *See Nat'l Farmers Union*, 471 U.S. at 853. But unless and until that happens, because the exhaustion of tribal court remedies is required before Plaintiff's claims may be considered by a federal court, and because Plaintiff has not exhausted its tribal court remedies, this case is hereby DISMISSED without prejudice.

It is unclear from the record whether Plaintiff has served Defendant. If so, Plaintiff is ordered to immediately provide Defendant with a copy of this Order.

IT IS SO ORDERED this 15th day of September, 2021.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE