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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

LYNN D. BECKER, Plaintiff, vs. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, *et al.*, Defendants, Counterclaim and Third-Party Plaintiffs, vs. LYNN D. BECKER, *et al.*, Counterclaim and Third-Party Defendants.	**JURRIUS'S OPPOSITON TO DEFENDANTS' MOTION FOR STAY PENDING A RULING ON DEFENDANTS' RULE 59(E) MOTION TO ALTER OR AMEND JUDGMENT, FOR STAY PENDING APPEAL, AND FOR WAIVER OF SUPERSEDEAS BOND** Case No. 2:16-cv-958-CW Judge Tena Campbell

The court should deny defendants' motion for a stay pending appeal and for waiver of a supersedeas bond (Dkt. 304).[1] The Tribe has failed to meet its burden to objectively demonstrate a good reason for departure from the usual full security requirement. Mr. Jurrius should be allowed either to pursue collection of the judgment, or the Tribe should be required to post a supersedeas bond covering the full amount of the judgment, including interest.

With past as prologue, the Tribe's representations that Mr. Jurrius's interests "will not be unduly endangered" (Tribe's Motion at pp. 4-5) and that "funds are readily available to satisfy the judgment" (*id*. at 5) are of no comfort. The Tribe's demonstrated history of bad faith, abuse of process, vindictive weaponizing of the arbitration process, and evading service of process and responsibility in a related matter confirm that the Tribe will resist every effort to collect and do everything within its power to avoid paying the judgment.

ARGUMENT

Based upon the barest of factual representations, the Tribe asks this court to exercise its limited discretion to stay execution. The Tribe's proffered reasons, however, are conclusory and unpersuasive. Consistent with other courts that have considered the issue, this court has recognized that the judgment debtor must overcome a presumption in

[1] Mr. Jurrius does not respond to that part of defendants' motion addressing a stay pending the ruling on a Rule 59(E) motion which appears to raise an issue solely between defendants and Mr. Becker.

favor of allowing a stay only upon posting of a supersedeas bond covering the full judgment:

> Rule 62(a) of the Federal Rules of Civil Procedure provides that an appealing party may obtain a stay on execution of judgment by posting a supersedeas bond. The bond's purpose is to protect the nonappealing party from loss resulting from the stay, including a potentially insolvent debtor. In most circumstances, a court sets the amount of the bond to cover the full judgment, including costs, interests, and damages for delay.

Farm Bureau Life Ins. Co. v American National Ins. Co., 2009 WL 961171 at *1 (D. Utah April 8, 2009). While recognizing that "[a] court has discretion to waive or reduce the bond requirement when the circumstances are appropriate," *id.*, this court also recognized:

> Courts exercise this discretion and reduce or waive the security required pursuant to Rule 62(d) only in unusual circumstances. In most cases, courts are simply unwilling to accept a bond that represents less than the full amount of the assessed judgment. The appealing party has the burden of demonstrating objectively that posting a full bond is impossible or impractical.

Id.; *see also* *Advanced Recovery Sys. v. Am. Agencies, LLC*, 2019 WL 1900343 (D. Utah April 29, 2019).

The Tribe has made no effort to satisfy its burden of demonstrating that posting a bond would be impossible or impractical. Instead, it offers a naked conclusion by the chairman of its Business Committee that the Tribe "has the ability to pay the sanction awards." But this establishes the *opposite* of what the Tribe must demonstrate. If the Tribe can afford to pay the judgments, then by definition posting a bond would not be impossible or impractical.

Moreover, the claim that the Tribe "has the ability to pay" does not mean that the assets the Tribe would use are readily available for levy to satisfy the judgment. The Tribe

is not a simple commercial debtor. It aggressively asserts its sovereignty and erects every possible obstacle to the civil courts of the United States, just as it has done in this case. The Tribe's ability to make a voluntary payment thus affords no comfort to a judgment creditor and provides the court with no basis to conclude that the Tribe's assurances leave judgment creditors adequately protected. As this court explained in *Farm Bureau*:

> "The appellee should not have to undertake the risk that the appellant's financial situation will deteriorate while appellant's appeal is pending. The appellee won in the district court. In fairness it should be able to obtain immediate protection for the full amount that may ultimately be due if the appellant opts to withhold immediate payment while exercising its appellate rights. By the same token, the bond also allows the appellant to avoid the risks of trying to recover its money if it pays the judgment and then is successful on appeal."

2009 WL 961171 at *2 (quoting *N. River Ins. Co. v. Greater N.Y. Mut. Ins. Co.*, 895 F. Supp. 83, 84 (E.D. Pa. 1995)).

Here, the Tribe is asking this court for an indulgence, and so it is appropriate to revisit exactly why the subject judgments were issued. In this case, the Tribe attempted to retaliate against and intimidate a witness by filing a confidential arbitration. It then asserted that confidentiality in an unsuccessful attempt to conceal the retaliatory character of the arbitration from this court.

Mr. Jurrius prevailed in the retaliatory arbitration action. The arbitration panel on August 15, 2021 awarded Mr. Jurrius attorney's fees and costs of $452,468.97. The Tribe has not paid that award. Instead, on September 13, 2021 Mr. Jurrius filed a petition for confirmation of the arbitration award in Colorado. He then invested six months in unsuccessful attempts to accomplish service of the summons. In the course of those attempts, Mr. Jurrius was told that an order of the Tribal Court was required before service

could be attempted, and that permission of the Business Committee was required before the petition could be filed in Tribal Court. While attempting to get the Business Committee to stamp the document, the Tribe's counsel in this case, Thomasina Real Bird, came outside. When handed the document, she handed it back and said, "I'm not going to accept service." The paralegal responded that she was not trying to serve anything, and that the Tribal Court had simply sent her to the Business Committee office to have it stamped. Ms. Real Bird asked for the document again, and then said it belongs in the Tribal Court, not the Business Committee.

About 10 days later, a paralegal from Ms. Real Bird's office emailed Mr. Jurrius's counsel an order entered *by Mr. Chapoose on behalf of the Business Committee* (not the Tribal court) that day allowing service and describing a process by which the Business Committee—the very entity that entered the order—can be "served." The order provides in pertinent part:

> 1. Petitioner is hereby authorized to serve the Summons and Petition upon the Tribe in accordance with Tribal law, which requires each individual member of the Business Committee to be personally served with the Summons and Petition within the exterior boundaries of the Uintah and Ouray Reservation (the "Reservation") to effect service of process upon the Tribe. All alternative methods of service, including substitute service and service by publication, are prohibited with respect to service of process upon the Tribe.
>
> 2. The individual effecting such service must register with the Tribal Court as a process server and comply with all the Tribe's codes, laws, ordinances, and regulations with respect to obtaining access to and conducting business upon the Reservation, including but not limited to obtaining a Tribal business license and/or access permit as required by Tribal law.
>
> 3. The Tribe will not "designate and authorize" a particular person to serve the Business Committee members because the ULOC contains no such requirement. Petitioner may retain a person to serve process in accordance with Tribal law as set forth above. (Copy attached as Exhibit A.)

Mr. Jurrius tried for three months to comply with these requirements before the Colorado court, on March 19, 2022, lost patience with the Tribe's obstruction and entered an order authorizing substituted service. (See copy of order attached as Exhibit B. The order includes a copy of Mr. Jurrius's motion for substituted service, which in turn contains a more detailed description of the facts.)

The Tribe cites *Dutton v. Johnson County Bd. of County Com'rs*, 884 F. Supp 431 (D. Kan. 1995), for the proposition that courts have discretion to waive the bond requirement. The *Dutton* court was persuaded to waive the bond because the defendant had the ability to pay the judgment *and* "maintains a fund sufficient to cover any judgment in this case which simplifies the process of collecting on the judgment and would provide access to the funds within thirty days after the judgment is affirmed on appeal." *Id.* at 436. In other words, the court took into account both the defendant's wealth and the existence of a process by which the funds "will be available and easily accessed by plaintiff if the judgment is affirmed." *Id.*

Dutton drew a comparison between the facts before it and cases in which the wealth of the defendant was not in question but the ability to access the funds was. *See Brinkman v. Department of Corrections*, 815 F. Supp. 407, 409-10 (D. Kan. 1993) (Department of Corrections failed in establishing a readily available fund from which the creditor could promptly collect on the judgment); *Wilmer v. Board of County Commissioners*, 844 F. Supp. 1414, 1419 (D. Kan. 1993) ("Courts are generally reluctant to waive the bond requirement for governmental entities unless funds are readily available and an effective procedure is in place for paying the judgment"); *Lamon v. City of Shawnee*, 758

F. Supp. 654 (D. Kan. 1991) (rejecting argument that judgment is secured by city's power to tax; city failed to establish that city would suffer any undue hardship or irreparable injury if required to post a bond). *See* *Dutton*, 884 F. Supp. at 435.

The facts the Tribe brings before this court are a far cry from *Dutton*. First, the Tribe provides nothing other than a bare assurance that it has the ability to pay. No information is given concerning the source or location of funds for payment, or whether those funds would be subject to execution. No mechanism is provided to ensure that the funds will remain available. And—a critical distinction from *Dutton*—no assurance is provided that the funds will be voluntarily surrendered in the event of affirmance on appeal.

The present circumstances are not at all like those the court had before it in *Dutton*. There is no Reserve Fund, there is no assurance of payment, there is no disclosure of the source of funds available for payment, and there is clearly no assurance that the Tribe will cooperate such that the funds "will be available and easily accessed by plaintiff if the judgment is affirmed."

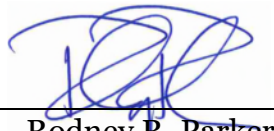
Finally, the court should reject the Tribe's request that litigation-related offsets between the Tribe and Mr. Becker be substituted for a bond. Those offsets, to the extent they are "assets" at all, are at best contingent. Most involve claims that have already been rejected by the court. They have nothing to do with Mr. Jurrius and would provide him no security whatsoever. They are freighted with litigation costs and uncertainty and the alleged security they provide is illusory. They do nothing to satisfy the Tribe's burden of establishing grounds for imposition of a stay without bond.

CONCLUSION

In its memorandum, the Tribe asserts that it has "establish[ed] that funds are readily available to satisfy the judgment." (Motion, p. 5.) If that is the basis for the motion, then the Tribe should make that statement true—by depositing funds in court or posting a bond. As things now stand, however, the assertion is not true. For the foregoing reasons, Mr. Jurrius requests that the deny the Tribe's motion, and require the Tribe to post a bond as contemplated by Rule 62(a) in order to obtain a stay of execution pending appeal.

DATED: March 28, 2022.

SNOW CHRISTENSEN & MARTINEAU



Rodney R. Parker
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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2022, a true copy of the foregoing JURRIUS'S OPPOSITON TO DEFENDANTS' MOTION FOR STAY PENDING A RULING ON DEFENDANTS' RULE 59(E) MOTION TO ALTER OR AMEND JUDGMENT, FOR STAY PENDING APPEAL, AND FOR WAIVER OF SUPERSEDEAS BOND was served by the method indicated below, to the following:

David K. Isom ISOM LAW FIRM 299 S. Main Street, Ste. 1300 Salt Lake City, UT 84111 david@isomlawfirm.com	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (X) Electronic Filing
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J. Preston Stieff J. PRESTON STIEFF LAW OFFICES 110 S. Regent St., Ste. 200 Salt Lake City, UT 84111 jps@stiefflaw.com	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (X) Electronic Filing

/s/ Rodney R. Parker

4855-7497-3976, v. 3