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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY, Plaintiff, v. THE COEUR D'ALENE TRIBE, Defendant.	Case No. 2:22-cv-00089-DCN **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiff Stimson Lumber Company ("Stimson") submits this Reply in support of its Motion for Temporary Restraining Order and Preliminary Injunction.

II. ARGUMENT

A. This Court Has Subject Matter Jurisdiction

The Mill is located in Plummer, Idaho ("the Mill"). The Tribe is incorporated. In Section 19.4.1 of the Agreement the Tribe represented and warranted that:

> Lessor is a federally recognized Indian Tribe duly and validly organized under a constitution and bylaws ratified by members of the Tribe. Lessor exercises corporate powers over the Leased Assets. Lessor has heretofore made available to Lessee complete and correct copies of their articles of incorporation and bylaws (or other comparable documents), as currently in effect.

(See Declaration of Daniel McFall ("McFall Dec."), Ex. 1, Section 19.4.1.) As an incorporated entity endowed with corporate powers over its land and facilities, for the purposes of diversity jurisdiction, the Tribe is a citizen of the state in which it maintains its principal place of business—Idaho. *Cook v. AVI Casino Enterprises, Inc., 548 F.3d 718, 723* (9th Cir. 2008) (holding that "for diversity purposes, a tribal corporation formed under tribal law [is a citizen of the state in which it has] its principal place of business"). Stimson is a citizen of Oregon. There is complete diversity of citizenship between the parties, and the amount in dispute exceeds $75,000. Therefore, under 28 U.S.C. 1331(a), this Court has subject matter jurisdiction.[1]

B. The Tribe Waived Sovereign Immunity

Under Section 19.1 of the Agreement, entitled "Limited Waiver of Immunity," the Tribe expressly waived sovereign immunity for disputes relating to the Agreement:

> Lessor hereby consents to suit, arbitration, enforcement and collection of judgments, awards, injunctions and declaratory judgements as to any obligation arising out of this agreement. Lessor hereby expressly waives any claim or assertion of sovereign immunity from suit in actions to interpret or enforce any provision or rights granted in this Agreement …

[1]If, at this juncture, the Court requires additional evidence beyond the Tribe's written admission of its corporate status in a contract, as set forth in Section 19.4.1 of the Agreement, the Court should permit limited discovery on that topic. Seemingly, this should not be necessary. Surely the Tribe did not deceive its business partner in a written contract.

(*Id.*, Section 19.1.) The Tribe and Stimson (and its predecessor) expressly acknowledged the significance of the waiver:

> Lessor further acknowledges that Lessee would not enter into this Agreement with Lessor if Lessor could defeat or hinder enforcement against them of the rights granted to Lessee by claiming sovereign immunity or asserting any other attribute of tribal sovereignty that may be applicable.

Because there is no reasonable dispute that the Tribe waived its sovereign immunity for claims relating to the Agreement, the Tribe is forced to argue that the terms of the Agreement expired and are therefore no longer binding. This is not true.

Following the expiration of the last Renewal Term, Stimson continued to operate the Mill and timely pay rents to the Tribe. (*Id.*, ¶ 6.) Consequently, under Section 21 of the Agreement, the Agreement was extended. Section 21, which is entitled "Holdover," provides that if Stimson should "occupy the [the Mill] with the consent of Lessor after the expiration of the Agreement, and rent is accepted by the Lessee, such occupancy and payment shall be construed **as an extension of this Agreement** for a month-to-month tenancy from the date of the expiration, unless other terms of such extension are endorsed in writing and signed by the parties …." (*Id.*, Ex. 1, Section 21) (emphasis added.) The holdover tenancy is not a new lease, as the Tribe now argues, but rather an **extension** of the Agreement. As such, all of the terms of the Agreement remain in force and effect, unless the parties agree to new terms in writing. The Tribe's limited waiver of sovereign immunity, and all of the other terms of the Agreement, carried over in full force and effect during the holdover tenancy. In sum, the Agreement continues to govern the parties' relationship, just as it has for the past two decades.

Recently, the Tribe did an about-face. By letter from a new set of lawyers, the Tribe told Stimson to stop paying rents, and sent a check purporting to return the rents Stimson paid during the holdover tenancy. The check has not been cashed, and was returned to the Tribe. The fact that this set of lawyers attempted to return two years of rent speaks volumes; they have read the Agreement and understand that Stimson's holdover tenancy operated to extend the entire

Agreement. Only by pretending that this holdover period never happened could they argue that the Agreement – and the waiver it contains – has expired. The Tribe's attempt to re-write history is misguided. Stimson remains the Tribe's tenant under the terms of the Agreement.

C. Stimson Is Likely To Prevail on the Merits.

(The Purchase Option Did Not Expire)

The Tribe argues that Stimson cannot prevail on the merits because the Purchase Option was not available during Stimson's holdover tenancy. According to the Tribe, only provisions relating to the "landlord-tenant" relationship carried over. The Tribe relies on *Lewiston Pre-Mix Concrete, Inc. v. Rohde,* 718 P.2d 551, 556 (Idaho Ct. App. 1985) to support this argument. That case is inapposite. In *Lewiston,* the Court was charged with determining the parties' respective rights in a holdover tenancy that was created by operation of common law. *Id.* at 645 ("Its right to possession, if any, is not based upon the original lease, but upon a new tenancy created by law.") In *Lewiston,* there was no written agreement governing the parties' relationship. The term of the lease expired and the tenant simply stayed on and paid rents. In that case, the *Lewiston* court appropriately determined that only "common law" principles of the landlord-tenant relationship carried over.

Here, as discussed above, Stimson's holdover tenancy was not created by law. Rather, it was created by the parties' written agreement. Again, under Section 21 of the Agreement, Stimson became a holdover tenant. (McFall Dec., Ex. 1, Section 21.) All of the terms of the Agreement survived and continued, except for those terms changed and memorialized in writing by the parties. (*Id.*) Those extended terms included the Purchase Option. At no time did the parties agree that the Purchase Option was terminated.

It is clear that the parties intended the Purchase Option to survive after the last Renewal Period. Under Section 14.1(c), the parties plainly expressed their intent that the Purchase Option would terminate only if (1) the option was exercised or (2) the Agreement terminated. (*Id.*, Ex. Section 14.1(c).) Neither condition has occurred. Accordingly, the Purchase Option continues.

The only remaining question is whether the parties intended for Stimson to be able to exercise the Option during its holdover tenancy. Of course they did. Any other result would be absurd.

In *Steel Farms, Inc. v. Croft & Reed, Inc.*, 154 Idaho 259, 266, 297 P.3d 222, 229 (2012), the Idaho Supreme Court wrestled with a question of what to do with a Lease and Option under which the lessee was granted an option during a holdover period and at the same time precluded from exercising the option during the holdover period. The Court appropriately determined that this situation was "nonsensical." The Court remanded the case and ordered the trial court to examine parole evidence to determine the parties' intent.

Stimson certainly welcomes the opportunity to submit evidence of the parties' intent regarding the transfer of ownership of the Mill. But the Agreement itself provides plenty of evidence. Under Section 14.1(d), having leased the Mill for the full 20-year term, Stimson was entitled to purchase the Mill for no additional consideration. Stimson need only exercise the Purchase Option, which it did, and the Tribe was obliged to transfer ownership. In short, through the payment of rents for 20 years, Stimson (and its predecessor) paid for the Mill in full. Clearly, the parties' intention, as express consistently throughout the Agreement, is that Stimson would own the Mill at the end of the day.

The Tribe needs the Court to ignore Section 14.1(c), and pretend that the Purchase Option expired at the end of the last Renewal Period. Idaho law does not permit an interpretation of the Agreement which ignores its plain terms. In Idaho, contracts must be construed in a manner that gives meaning to all terms. *See* Restatement (Second) of Contracts §203. Stimson's interpretation does so—the Tribe's does not.

(Stimson Exercised the Purchase Option)

Next, the Tribe argues that, even assuming the option was still valid, Stimson did not exercise it because the exercise was "conditional." This argument misstates facts and applicable law. Stimson exercised its option by a May 27, 2020 letter from its Chief Operating Officer, Daniel McFall. In his letter, McFall stated "Stimson hereby submits to the Tribe Stimson's notice of exercise of the Option for immediate effect." (*Id.*, Ex. 2.)

Nothing more is required to exercise an option. An option holder must simply communicate "unequivocally" that it is exercising its option; "silence and inaction" do not constitute acceptance. *Justad v. Ward*, 211 P.3d 118, 121 (Id. Sup. Ct. 2009). The exercise is effective if "an objective, reasonable person would be justified" in concluding that the holder of the option intended to exercise it. *Id.* (quoting 17A Am. Jur. 2d Contracts §91 (2d Ed. 2008)).

Here, that standard is easily satisfied. Indeed, not only could a reasonable person conclude that Stimson intended to exercise its option, but that is what the Tribe actually concluded. On July 1, 2020, the Tribe's lawyer sent Stimson a letter in response to McFall's letter. In that letter, the Tribe's lawyer wrote that McFall's "letter purported to exercise the option to purchase the Property." (McFall Dec., Ex. 4.) The Tribe knew exactly what Stimson intended. There was no confusion or misunderstanding, and to suggest otherwise at this late date ignores the parties' contemporaneous communications.

In McFall's letter, he also suggested that, in light of the COVID-19 pandemic, the parties might simply extend the lease a year and revisit the issue then. This suggestion did not render the exercise of the option ineffective. McFall unequivocally wrote that Stimson was exercising the Purchase Option with immediate effect, and the Tribe's lawyers plainly understood that this was Stimson's intent.

The case law that the Tribe cites does not support its arguments. The Tribe primarily relies on *Ward*. In that case, the holder of an option had the right to exercise upon the death of her sister. The sister died, and the option holder sent her daughter to court for a probate proceeding. Apparently, she intended her daughter to exercise the option verbally at the hearing, but the daughter spoke only a few words, never mentioning the option or expressing any intention to exercise anything. *Ward*, 211 P.3d 118, 121. The Court held that it could not conclude that she intended to exercise the option, since she never mentioned it. Contrast this situation, where Stimson stated, in writing, that it was exercising the Option, and the Tribe understood that Stimson had "purported to exercise the option to purchase the Property."

United States Postal Service v. Ester, 836 F.3d 1189 (9th Cir. 2016) provides even less support for the Tribe's arguments. In *Ester* (which applies Washington, not Idaho, law), the Court found that the plaintiff had effectively exercised its option, despite the fact that it had not perfectly complied with the option. *Id.* at 1197. Central to the Court's analysis was the fact that—as in this case—the lessor had received written notice of the intent to exercise, even though there were some defects in performance. *Ester* supports Stimson's arguments, not the Tribe's.

Finally, the Tribe argues that after exercising the Option in writing, Stimson failed to follow through on some steps necessary to complete the purchase, chiefly establishment of an escrow. This argument ignores two fundamental points. First, under the plain terms of the Agreement (*see* Section 14.2), Stimson's exercise of the Option triggered a series of duties on the part of the Tribe. (*e.g.* delivering property descriptions and title reports), none of which the Tribe performed. Any additional duties on Stimson's part were predicated on the Tribe's performance. Second, the Tribe told Stimson, in writing, that its offices were closed due to the pandemic and that it could take no action in response to McFall's letter. (McFall Dec., Ex. 3.) This communication came the day after McFall sent his letter exercising the Option. The Tribe's next communication came on July 1, 2020, when its lawyer acknowledged Stimson's exercise of the Purchase Option but stated (wrongly) that it had expired. (*Id.*, Ex. 4.) Stimson exercised its option. Suggesting, as the Tribe does now, that Stimson's failure to open an escrow account somehow shows that it did not really want to buy the Mill simply ignores the Agreement and the Tribe's own contemporaneous actions (and inactions).

E. Stimson Will Suffer Immediate Irreparable Harm

If this injunction is not granted, Stimson will suffer immediate, irreparable harm. Over the course of Agreement, Stimson paid the entire purchase price to acquire the Mill. That investment, and the valuable attendant rights, will be forfeited forever if injunctive relief is not granted. The Tribe does not even try to rebut the obvious point that rights in real estate are different than other rights. Because land is unique, injunctive relief is more readily available in real estate disputes; money damages cannot compensate for loss of unique property. *See Thomas*

v. Campbell, 107 Idaho 398, 405 (1984). The Mill is uniquely valuable to Stimson because it is located near Stimson's timberlands. Stimson has fitted the Mill with equipment that allows it to process the smaller-diameter "ton wood" logs harvested in the area. An award of money damages cannot adequately compensate Stimson under the circumstances.

The Tribe speaks glibly about how easy it would be to compensate "lost employees, business and land" with an award of money damages. Putting aside the Tribe's apparent disregard for the "lost employees" who will have to figure out how to feed their families if the Mill closes in two weeks, this casual reliance on the availability of money damages runs counter to the rest of the Tribe's argument. The Tribe has argued that there is no Agreement; no Purchase Option; no jurisdiction in this Court; no waiver of sovereign immunity; and no right to mediate or arbitrate. Despite having signed a contract—and accepted over 20 years in rents—with assurances that Stimson could vindicate its rights in court if necessary, the Tribe now proudly breaks its word and declares that it is beyond the reach of the law and that it cannot be made to honor its promises. Under the circumstances, glib assurances of the availability of money damages are suspect.

Fundamentally, the Tribe's argument is that Stimson's allegations of harm are too speculative to be meaningful. It is hard to know what to make of this argument. Stimson has a valuable Purchase Option, which it exercised. The Tribe did not honor Stimson's exercise of the option, and seeks to extinguish it immediately. That is harm. Stimson has valuable lease rights. The Tribe seeks to extinguish them immediately. That is harm. Stimson has an operating sawmill that employs over 80 workers. The Tribe seeks to close it immediately. That is harm, and not just to Stimson. The forfeit of the Purchase Option and lease rights and the closure of the Mill are, themselves, irreparable injuries.

F. The Balance Of Hardships Tips Sharply In Stimson's Favor

If the injunction is granted, Stimson will continue to pay rent, as it has for years. The Tribe will continue to collect revenue from the Mill. And dozens of Mill employees will retain their jobs while the litigation proceeds.

If the injunction is not granted, on the other hand, the situation will be bleak. The Tribe in late February 2022 announced its intent to eject Stimson after March 31, 2022. This would result in immediate closure of the Mill. The Tribe's suggestion that it will simply plug in another tenant is a fantasy. Stimson's equipment is what makes the facility a sawmill; before the lease it was an aged building and a hodgepodge of outdated equipment. Even assuming another timber company would do business with the Tribe after its recent treatment of Stimson—a dubious proposition—it would take a massive influx of capital and labor to return the mill to working condition after Stimson's departure. There would be significant lag time before the Mill were operational again. Jobs would be lost; families would lose paychecks.

This says nothing of the harm to Stimson, which stands to immediately lose its valuable Purchase Option and lease rights. To cause these rights to be forfeited without an adequate opportunity for trial would cause great hardship on Stimson and would run contrary to strong presumption against forfeiture in Idaho law. *See, e.g.*, *Schlegel v. Hanson*, 98 Idaho 614, 615, 570 P.2d 292, 293 (1977) ("[F]orfeiture is not favored by the courts, and the provisions permitting forfeiture will be strictly construed.").

In its single paragraph on this issue, the Tribe struggles to articulate any way in which it would be harmed if the injunction were granted. It states that it will suffer "forgone opportunities and other consequences," without even attempting to define what "opportunities" it might have if it immediately possessed the shell of a former sawmill in rural Idaho. It also speaks vaguely about the need to seek new tenants. But, of course, if the injunction is granted, the Tribe will continue to have a tenant, and it will continue to collect rents. Here, the balance of equities strongly favors injunction.

G. An Injunction Supports the Public Interest

The Tribe's argument that an injunction is contrary to the public interest is specious. The Tribe contends that an injunction would negatively impact its ability to maximize the revenues at the Mill. Not true. As discussed above, if Stimson leaves the Mill with its equipment, the Mill will effectively no longer be a sawmill. To restore mill operations, the Tribe would be forced to

spend millions of dollars over the course of many months. Instead of being a revenue generator for the Tribe, as it currently is, the Mill be become an expense. If obtaining revenues from the Mill is consistent with the public interest, as the Tribe argues, then the Tribe should welcome Stimson's continued tenancy. Indeed, if public interest favors keeping income flowing at the Mill for the Tribe's benefit, as the Tribe contends, then the injunction should issue.

III. CONCLUSION

Stimson and the Tribe made promises to one another decades ago. Stimson has honored its word. Stimson simply asks the Tribe to do the same. Meanwhile, Stimson respectfully requests that this Court grant the preliminary injunction, maintaining the status quo during the pendency of the adjudication, so that Stimson and others do not suffer irreparable harm.

DATED: March 14TH, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14TH day of March, 2022, I filed the foregoing **Plaintiff's Reply Brief in Support of Motion for Temporary Restraining Order and Motion for Preliminary Injunction** electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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