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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ANGELITA M. CHEGUP, et. al, Plaintiffs v. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, et al., Defendants.	**DEFENDANTS' MEMORANDUM ON DETERMINATION OF VALIDITY OF TRIBAL ORDINANCE** Civil Case No. 2:19-cv-00286-BSJ Judge Bruce S. Jenkins

Pursuant to the Order of the Court issued at the conclusion of the July 12, 2022 Evidentiary Hearing in this matter, Defendants Ute Indian Tribe of the Uintah and Ouray Reservation; Tribal Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation; Luke Duncan; Tony Small; Shaun Chapoose; Edred Secakuku; Ronald Wopsock; and Sal Wopsock ("Defendants") respectfully submit this Memorandum on Determination of Validity of Tribal Ordinance.

BACKGROUND

Following the district court's entry of its Judgment in favor of the Defendants in this case (Dkt. 86), Plaintiffs appealed to the Tenth Circuit. The Tenth Circuit reversed the district court's decision and remanded "with instructions to first decide whether tribal exhaustion precludes the banished members from proceeding in federal court." *Chegup v. Ute Indian Tribe of the Uintah and Ouray Reservation,* 28 F.4th 1051, 1071-72 (10th Cir. 2022). As ordered by this Court, the parties filed supplemental memoranda on the tribal exhaustion issue (Dkt. 110 and 115), and the Court held an evidentiary hearing on that issue on July 12, 2022.

At the evidentiary hearing, and also in Plaintiffs' Brief Re: Secretarial Approval, filed July 18, 2022 (Dkt. 126), Plaintiffs contend that Ordinance No. 13-022 prohibited the Tribal courts from hearing appeals from the banishment orders. As shown by Defendants, however, the provisions of Ordinance No. 13-022 on which Plaintiffs rely were superseded by the later-enacted Tribal Ordinance No. 14-004, the Ute Indian Exclusion & Removal Code. (*Suppl. Mem. on Tribal Exhaustion* at 10-11 and Ex. A thereto) (Dkt. 115). The Tenth Circuit stated that the Plaintiffs' argument based on Ordinance 13-022 "is not compelling." *Chegup*, at 1068. In fact, the Plaintiffs admitted in their appeal that the relevant provisions of Ordinance No. 13-022 had been "arguably superseded". *Id*.

At the evidentiary hearing, however, Plaintiffs contended that Ordinance No. 14-004 is invalid because it allegedly violated the Ute Indian Tribe Constitution. At the conclusion of the evidentiary hearing, the Court ordered the parties to submit

additional memoranda on that issue. Plaintiffs' realleged their claim that the ordinance is invalid in Plaintiffs' Brief Re: Secretarial Approval (Dkt. 126). As shown below, however, determination of whether the ordinance is valid is an issue of internal tribal law that must be decided by the Ute Indian Tribal Courts, not by the federal courts, and the Tenth Circuit's remand order does not authorize this Court to decide that issue.

ARGUMENT

I. It Is the Exclusive Responsibility of Tribal Courts to Determine the Validity of Tribal Laws Such as Ordinance No. 14-004 and Federal Court Have No Legal Authority to Adjudicate the Issue.

The United States Supreme Court has long recognized the exclusive responsibility of Indian tribes to rule upon issues of internal tribal law. *E.g., Talton v. Mayes*, 163 U.S. 376, 384 (1896) (Indians "always have been regarded … as a separate people with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union, or of the State within whose limits they resided."). The Tenth Circuit has acknowledged the Supreme Court's unwavering position on this issue. "[T]he Supreme Court has uniformly recognized that one of the fundamental aspects of tribal existence is the right to self-government." *Wheeler v. United States*, 811 F.2d 549, 551 (10th Cir. 1987) (citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-45 (1980); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172-73 (1973)).

The Tenth Circuit has further recognized that federal courts lack jurisdiction over issues of interpretation of tribal law. "The federal courts … have stated that when a dispute is an intratribal matter, the Federal Government should not interfere." *Wheeler,*

at 551 (citing *Prairie Band of Pottawatomie Tribe of Indians v. Udall*, 355 F.3d 364, 367 (10th Cir. 1966), along with other authority). In *Wheeler*, the court held that where an Indian tribe "has a system for interpreting tribal law, and, when a tribal forum is available, courts have specifically held that the aggrieved party must seek relief in that forum." *Id.* at 553. In this case, the Ute Indian Tribe has a system of tribal courts for interpreting its tribal law, and the forum is available to Plaintiffs. Plaintiffs must therefore turn to the Ute tribal courts for determination of the validity of Ordinance No. 14-004.

In *Native American Church v. Navajo Tribal Council*, 272 F.2d 131, 135 (10th Cir. 1959), the Tenth Circuit held that "neither under the [United States] Constitution or the laws of Congress, do the Federal courts have jurisdiction of tribal laws or regulations." In that case, the court affirmed the district court's dismissal of the federal court case because "the court was without jurisdiction over matters concerning the validity of the acts of the Navajo Tribal Council." *Id.* at 133, 135. Similarly, in this case, this Court does not have jurisdiction to decide the validity of Ordinance No. 14-004.

Other federal circuits have held the same. In an Eighth Circuit case in which the issue was whether an employee benefit plan created under tribal law was valid, the court recognized that "the Supreme Court has determined that 'tribal courts are best qualified to interpret and apply tribal law'". *Prescott v. Little Six, Inc.*, 387 F.3d 753, 756 (8th Cir. 2004) (quoting *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1986)). The court further held that "in this Circuit we 'defer to the tribal courts' interpretation' of tribal law." *Id.* (quoting *City of Timber Lake v. Cheyenne River Sioux Tribe,* 10 F.3d 554, 559 (8th Cir. 1993) (deferring to tribal court's interpretation of tribal constitution)). The court then went

on to reverse the district court's decision because the lower court had failed to give proper deference to a tribal court's determination that the employee benefit plan was invalid.

In a case with facts parallel to those of the present case, *Basil Cook Enters. v. St. Regis Mohawk Tribe*, 117 F.3d 61 (2d Cir. 1997), the court rejected the claim that federal courts have jurisdiction to interpret a tribe's constitution. In that case, the plaintiffs claimed they were excused from exhausting their remedies in tribal court because, they alleged, "the Tribal Court is a nullity because it was established in violation of the tribal constitution." *Id*. at 66. The Second Circuit denied the plaintiffs' request that it rule on that issue. "First, to hold that the St. Regis Mohawk Tribal Court is a nullity under the tribal constitution would require this court to construe tribal law. This we may not do." *Id*. Citing *Talon v. Mayes,* 163 U.S at 385, the court stated that, "[t]he Supreme Court has long recognized the exclusive responsibility of Native American tribes to construe their own law." *Basil Cook*, at 66. "Federal courts, as a general matter, lack competence to decide matters of tribal law …." *Id.* To challenge the status of the tribal court under the tribal constitution, the plaintiffs "must direct their arguments to the Tribal Court in the first instance." *Id*. "Plaintiffs invite us to [interpret tribal law and] enter into this interpretative thicket. We decline to do so. These constitutional questions are, for good reason, matters of tribal law reserved to the tribal judiciary to resolve." *Id*. at 68.

Applying these holdings to the present case, Plaintiffs' claim – that Tribal Ordinance No. 14-004 is invalid under the Tribal constitution – is a claim that must be decided by the Ute Indian Tribal courts, not this Court.

II. The Tenth Circuit's Remand Does Not Authorize this Court to Interpret the Validity of a Tribal Ordinance under the Tribal Constitution.

A trial court's authority on remand is circumscribed by the terms of the appellate court's remand order. *See Texaco, Inc. v. Hale*, 81 F.3d 934, 937 (10th Cir. 1996) (citing *Sierra Club v. Lujan*, 949 F.2d 362, 365 (10th Cir. 1991) (a limited remand circumscribes the scope of the issues for litigation to those defined in the remand order)). Further, the "mandate rule" "provides that a district court must comply strictly with the mandate rendered by the reviewing court." *Huffman v. Saul Holdings, Ltd. P'ship*, 262 F.3d 1128, 1132 (10th Cir. 2001).

In this case, the Tenth Circuit's mandate states as follows: "We REMAND with instructions to first decide whether tribal exhaustion precludes the banished members from proceeding in federal court." *Chegup, at 1071-72.* The limited remand order does not authorize this Court to interpret internal tribal law and thereby deprive the tribal courts of that responsibility. The Court should therefore defer to the Tribal courts on the issue of the validity of Ordinance No. 14-004.

CONCLUSION

The United States Supreme Court, the Tenth Circuit, and the other federal courts that have addressed the issue have uniformly held that it is the exclusive responsibility of tribal courts to interpret tribal constitutions and tribal laws. Those courts have further held that federal courts are to refrain from doing so. The limited remand order in this case does not give this Court that responsibility. The issue of the validity of Ordinance

No. 14-004 under the Constitution of the Ute Indian Tribe is therefore an issue to be decided by the Ute Indian Tribal courts.

DATED this 15th day of August, 2022.

J. PRESTON STIEFF LAW OFFICES, LLC

/s/ J. Preston Stieff
J. Preston Stieff
Attorney for Defendants

CERTIFICATE OF SERVICE

I certify that on the 15th day of August, 2022, I caused a true and correct copy of the foregoing **DEFENDANTS' MEMORANDUM ON DETERMINATION OF VALIDITY OF TRIBAL ORDINANCE** to be filed electronically with the Court which will send notification of such filing to all parties of record.

/s/ J. Preston Stieff
J. Preston Stieff