

David K. Isom (4773)
ISOM LAW FIRM PLLC
299 South Main Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: (801) 209-7400
david@isomlawfirm.com

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CLERK
U.S. DISTRICT COURT

Attorney for Defendant Lynn D. Becker

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UTE INDIAN TRIBE OF THE UINTAH &
OURAY RESERVATION, a federally
recognized Indian Tribe, et al.,

Plaintiffs,

vs.

HONORABLE BARRY G. LAWRENCE,
District Court Judge, Utah Third Judicial
District Court, in his Individual and Official
Capacities; and LYNN D. BECKER

**BECKER'S OPPOSITION TO
TRIBE'S MOTION TO ENFORCE
INJUNCTION, ISSUE ORDER TO
SHOW CAUSE AND IMPOSE
SANCTIONS**

Civil No. 2:16-cv-00579

Judge Tena Campbell

Defendant Lynn D. Becker opposes plaintiff Ute Tribe's June 27, 2023 Motion to Enforce Injunction, Issue Order to Show Cause and Impose Sanctions ("Motion"). Becker respectfully requests that the Court deny the Motion because Becker has not disobeyed this Court's February 28, 2022 injunction ("Injunction").

BACKGROUND

Becker sued the Tribe in this Court (Judge Dee Benson) in 2013 for breach of the Independent Contractor Agreement ("Agreement") between him and the Tribe. By the

Agreement, the Tribe expressly waived sovereign immunity and tribal court jurisdiction and exhaustion; stipulated that this Court has jurisdiction of any dispute under the Agreement; and agreed that if this Court lacked jurisdiction “any court of competent jurisdiction” could adjudicate any dispute about the Agreement. In addition to the contractual prohibition upon tribal court adjudication, the Tribe’s ordinances¹ prohibited then as they prohibit now tribal court jurisdiction of any claim against the Tribe.

Judge Benson dismissed for lack of Section 1331 subject matter jurisdiction and the Tenth Circuit affirmed. Becker thereupon sued the Tribe for breach in Utah state district court in February 2014 (Judge Barry Lawrence) and the State Court ruled that it had jurisdiction of the dispute.

After litigating the state court action for 28 months and losing on critical issues, the Tribe in June 2016 filed this action to enjoin the state court action.

Two months later, in August 2016, the Tribe filed an action in the Ute tribal court despite the ordinance and contractual bars of tribal court jurisdiction.² After the Tenth Circuit ruled that Becker was required to exhaust tribal court remedies as discussed below, all claims of the parties are now pending in the Ute tribal trial court. Once those claims are resolved by the tribal trial court, the claims are to be reviewed by the tribal appellate court.

¹ Ordinance 13-010, Section 1-2-3(5) (the courts of the Ute Tribe “shall not have jurisdiction to hear claims against” the Tribe.)

² The month after the Tribe sued in tribal court, Becker filed a separate action in this Court to enjoin the tribal court action in September 2016. 2:16-cv-958.

INJUNCTION

On January 6, 2022, in a 2-1 opinion, Tenth Circuit judges Allison Eid and Nancy Moritz ruled that the state court lacked jurisdiction of the dispute.³

In February 2022, implementing the foregoing Tenth Circuit order, this Court ruled that (1) this Court has jurisdiction of the dispute between Becker and the Tribe; (2) Becker was “permanently enjoined from taking any action in the Becker state court suit, except to dismiss the suit for lack of subject-matter jurisdiction;” and (3) this Court “retains jurisdiction over this action to enforce or modify this permanent injunction and to grant such additional relief as may be necessary or appropriate.” Dkt 240.

The Tribe warps this Court’s February 2022 Injunction beyond recognition. The Tribe treats the Injunction as if it ordered Becker to affirmatively move to dismiss the state court action. Obviously, the Injunction did not order Becker to take any affirmative action. Enjoining Becker from affirmatively “taking action” is utterly different from ordering Becker not to respond to any action the Tribe takes.

³ Judge Mary Briscoe, in a 12-page dissent, opined (1) that this Court should have abstained from ruling on State Court jurisdiction given the State Court’s undisputed ability to determine its own jurisdiction; (2) that the majority should not have ignored the parties’ clear contractual covenant that the State Court had jurisdiction; and (3) that the majority had no basis to convert this Court’s preliminary injunction into a permanent injunction. Though the U.S. Supreme Court denied certiorari of these issues, that Court may still decide these issues in future appeals of these actions.

Had this Court decided that the state court action should simply be dismissed, this Court could have ordered Judge Lawrence, as party to this action, to dismiss the state court action. This Court clearly did not do so.

The Injunction did not order that Becker must accede to any action that the Tribe decided to take. The Tribe fails to explain why, now 16 months after the Injunction was issued, it is important that the state court action be dismissed. The Injunction does not foreclose Becker's showing below that the Tribe's Motion should be denied. In a word, this Court's order that Becker not affirmatively "tak[e] action" in the state court is a far cry from barring Becker to respond to actions taken by the Tribe in this case.

To the contrary, as discussed below there are compelling reasons for this Court to deny the Motion. This Court has retained jurisdiction "to grant such additional relief as may be necessary or appropriate." This retained jurisdiction is entirely consistent with settled law that this Court may review the tribal court's determination of this dispute once tribal court remedies, including in the tribal appellate court, have been exhausted.

ARGUMENT

The Tribe here is like the Indian tribe in *C&L Enterprises, Inc. v. Citizens Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001): both the Ute Tribe here and the Potawatomi tribe there argued that the tribal court, state court and federal court lacked jurisdiction to adjudicate the contract at issue in the respective cases.⁴ At oral argument

⁴ The Tribe has admitted/argued in the Tribal court that the Tribal court does not have jurisdiction to adjudicate Becker's claims against the Tribe. The Tribe has argued that this Court has no jurisdiction to adjudicate the merits of Becker's claims. Of course, as discussed above, the Tribe claims that the state court lacks jurisdiction over Becker's claims.

in *C&L Enterprises*, the tribe's counsel made explicit what seems implicit in the Tribe's Motion here: no court has jurisdiction of the dispute "on earth or even on the moon." 532 U.S. at 421. The Supreme Court rejected that argument there and allowed relief in the Oklahoma state court. In the Injunction here, this Court has also rejected the Tribe's no-jurisdiction-nowhere argument by expressly holding that this Court has jurisdiction.

The Court should retain jurisdiction until the proper court for resolution of the entire action, including the merits, is fully and finally determined. As Becker has shown in opposing the Tribe's motion in the state court to have the state court action dismissed, under the Utah "savings" statute, dismissal of the state court action now would create the risk, however remote, that Becker's claims could be time-barred. The Tribe has shown no compelling reason for dismissal of the state court action. This Court should reject the Tribe's effort to have the state court action dismissed.

Because Becker has not disobeyed the Injunction, and because the Tribe has shown no compelling reason that the state court action must be dismissed, the Court should deny the Motion.

DATED: July 10, 2023.

ISOM LAW FIRM PLLC

/s/ David K. Isom
David K. Isom
Counsel for Lynn D. Becker

CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th day of July, 2023, the foregoing was served upon all parties by serving their counsel of record through the Court's electronic filing system.

/s/ David K. Isom