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Attorney for Defendant Ernest Tso

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Navajo Housing Authority,)	
)	
Plaintiff,)	
vs.)	
)	No. CV'06 1206 PCT PGR
)	
Crownpoint District Court; the)	
Honorable Rudy Bedonie, Probationary)	
Judge; the Judicial Branch of the Navajo)	
Nation; the Navajo Nation Department of Law)	
Enforcement; and Ernest Tso,)	
)	
Defendants.)	
_____)	

MOTION TO LIFT THE STAY AND DISMISS THE CASE

Defendant Ernest Tso, through his legal counsel, respectfully requests the Court to lift the stay and dismiss the case for lack of subject matter jurisdiction and states:

INTRODUCTION AND PROCEDURAL INFORMATION

1. Defendant Ernest Tso is a member of the Navajo Nation, and resides within the Navajo Nation reservation.
2. The Crownpoint District Court and the Navajo Nation Supreme Court are tribal courts of the Navajo Nation. The Navajo Nation is a federally recognized sovereign Indian Tribe with authority to address civil matters over tribal entities, departments and individual Navajos.

3. The plaintiff, Navajo Housing Authority (NHA), is a tribal entity under the Navajo Nation Statute. 6 N.N.C. § 602. It receives federal funds through the Native American Housing and Self Determination Act (NAHASDA). 25 U.S.C. § 4101 et seq.
4. On March 27, 2006, the Crownpoint District Court issued a writ of execution authorizing Navajo Law Enforcement to seize \$63,915.94 from the bank of NHA.
5. On May 1, 2006, NHA filed a complaint, a motion for temporary restraining order, and a motion for preliminary injunction with this court. NHA moved to enjoin the Crownpoint District Court from ordering plaintiff NHA to pay damage in violation of OMB Circular A-87.
6. On April 4, 2006, NHA had filed a Notice of Appeal with the Navajo Nation Supreme Court (NNSC) appealing the court order of the Crownpoint District Court.
7. This court held a hearing on January 9, 2007. The court denied the motion for temporary restraining order and denied the motion for preliminary injunction. The court granted the motion to dismiss filed by the Navajo Nation Department of Justice but stayed the proceeding pending the resolution of the tribal proceedings, particularly the ruling of the NNSC.
8. On December 6, 2007, the NNSC remanded the case to the Crownpoint District Court with instruction to find non-exempt funds to pay the judgment. On January 7, 2008, NHA filed a motion for reconsideration which was denied on April 4, 2008.

MEMORANDUM OF LAW

A. Motion to Lift Stay

This court has dismissed the above-captioned matter on May 1, 2006. Upon agreement by the parties, a stay was put in place disallowing the execution of the writ of execution of the Crownpoint District Court pending the decision of the NNSC. Since then, the NNSC has rendered its decision.

The NNSC held that federal regulations (OMB Circular A-87) prohibit NHA from expending federally-granted money in satisfaction of the judgment. See, page 6 of NNSC opinion. As a result of the holding, NNSC vacated the writ of execution releasing \$63,915.94 that was held in escrow account by Wells Fargo. It was not clear as to whether the writ of execution attached federal funds or non-exempt funds. The NNSC then remanded the case to the Crownpoint District Court, instructing the tribal court to find non-federal money to pay the judgment.

The stay that was put in place on January 7, 2007 should be lifted because the NNSC held that federal funds cannot be attached by a judgment vacating the tribal court's writ of execution.

B. Reinstating the Dismissal and Dismiss the Case

On January 9, 2007, the court denied the motion for a temporary restraining order, and the motion for a preliminary injunction. Additionally, the court dismissed the complaint as well. It should reinstate the dismissal upon lifting the stay.

In addition to the above, the case should be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b) of the Rules of Practice of the United States District Court for the District of Arizona. This complaint was filed under 28 U.S.C. § 1331 (Compl. P. 2, lines, 4-5) alleging that the tribal judgment violated OMB Circular A-87.

The NNSC recognized that federal money could not be used to satisfy the judgment and lifted the tribe's writ of execution. Based upon the ruling of the NNSC, the federal question raised by NHA does not exist anymore, and as such, this court does not have subject matter jurisdiction over the case. This case should be dismissed for lack of subject matter and mootness.

CONCLUSION

Upon agreement by the parties, a stay was put on the case pending the decision of the

NNSC. There was an issue as to whether the judgment of the tribe violated OMB Circular A-87, and the NNSC recognized the potential violation. It lifted the writ of execution. It instructed the tribal court to find non-federal money to pay the judgment, thus removing the federal issue that was before this court. Mr. Tso is requesting this court to lift the stay, reinstate the dismissal and dismiss this case for lack of subject matter jurisdiction and mootness.

Respectfully submitted on the 20th day of May 2008.

_____/S/_____
Sampson Martinez
Attorney for Defendant Tso

CERTIFICATION OF SERVICE

I certify that a true copy of the foregoing was mailed to the opposing party and defendants on the 20th day of May 2008.

By: _____/S/_____