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Attorney for Specially Appearing Defendant, Wood's Roofing Inc., a California Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADMIRAL INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
)
BLUE LAKE RANCHERIA TRIBAL)
COURT; LESTER J. MARSTON, Chief)
Judge of the BLUE LAKE RANCHERIA)
TRIBAL COURT; WOOD'S ROOFING)
INC., a California Corporation, DOES 1-10.)
)
Defendants.)
_____)

CASE NO. CV12-01266 LHK

**DEFENDANT WOOD'S ROOFING INC.'S
OPPOSITION TO ADMIRAL INSURANCE
COMPANY'S RENEWED EX PARTE
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER**

I.

**Plaintiff Admiral Insurance Company's Renewed Ex Parte
Application for a Temporary Restraining Order to Enjoin the
Defendants from Proceeding with imposing sanctions against
Plaintiff Admiral Insurance for failure to comply with the
Tribal Court's Order to file cross-motion for Summary Judgment
and ruling upon a cross-motion for Summary Judgment filed by**

Wood's Roofing Inc. in the Tribal Action as Admiral Insurance allegedly cannot oppose the same until jurisdictional issues are resolved in the Tribal Action." [Admiral Insurance Renewed Application - page 1/line 26 and page 2/lines 1-4] must be denied in total based on the following facts and law and is without merit as set forth below and is moot and violates the Tribal Court's Order and inter alia Admiral Insurance fails to show that immediate and irreparable injury, loss or damage will result before Admiral Insurance can be heard in opposition.

A.

Admiral Insurance's Renewed Ex Parte Application for Temporary Restraining Order must be denied because it is in violation of this Court's March 20, 2012 Order - Denying Ex Parte Application for Temporary Restraining Order and it was not served on Wood's Roofing Inc. on March 22, 2012 and not filed by March 22, 2012 as ordered.

As set forth in the **Document #24 (Exhibit #A)** attorney Hartman's letter to Admiral Insurance dated March 22, 2012 with attached improper Proof of Service and **Exhibit #B** Plaintiff Admiral Insurance knew that attorney Hartman was not authorized to accept service for Wood's Roofing Inc. but still delivered the Renewed Ex Parte Application for Temporary Restraining Order to attorney Hartman's office on March 22, 2012.

B.

Wood's Roofing Inc. has never been served with Admiral Insurance's Summons and Complaint in this action or with any Application for Temporary Restraining Order (original or renewed) and will file a Motion to Quash for Lack of Service by False Declaration.

The Proof of Service (**Document #25 - Exhibit #C**) indicating sub-service on Wood's Roofing Inc. on March 21, 2012 is false. It should be noted that the Proof of Service lists service of **Plaintiff Admiral's Ex Parte Application for Temporary Restraining Order** and assuming arguendo that Wood's Roofing Inc. was served (**which they were not**),

1 Plaintiff Admiral Insurance served the “old (original)” Ex Parte Application for
 2 Temporary Restraining Order and not the Renewed Ex Part Application for Temporary
 3 Restraining Order and the **Renewed Application** must be denied.

4
 5 **C.**

6 Wood’s Roofing Inc. did not file opposition to the original (old) Ex Parte Application
 7 for Temporary Restraining Order of March 20, 2012 because Wood’s Roofing Inc. was never
 8 lawfully served. Wood’s Roofing is therefore “specially appearing” by their opposition. It
 9 appears from **Document #13 - Court Order Denying “old” Ex Parte Application for**
 10 **Temporary Restraining Order Application** that the Court assumed that Admiral Insurance
 11 had already lawfully served Wood’s Roofing Inc. and Wood’s Roofing’s opposition is
 12 expected. Wood’s Roofing Inc. has never been served.

13
 14 **D.**

15 Admiral Insurance’s specious argument that if it had obeyed the Tribal Court Order
 16 of January 9, 2012 (**Exhibit #D**) and Tribal Court Order of December 20, 2011 (**Exhibit #E**)
 17 ordering Admiral Insurance and Wood’s Roofing Inc. to file reciprocal court ordered cross-
 18 motions for Summary Judgment on the issues of **jurisdiction** and **tender of defense** by
 19 March 15, 2012 **before** Admiral Insurance could file its’ Motion to Dismiss for Lack of
 20 Jurisdiction that Admiral Insurance would have subjected itself to the jurisdiction of the
 21 Tribal court. Plaintiff Admiral Insurance’s argument makes no sense.

22 Defendant Wood’s Roofing Inc. timely complied with the Tribal Court order and filed
 23 its cross-motion for Summary Judgment on March 15, 2012. However, Admiral Insurance
 24 in contempt of the Tribal Court Order did not file the mandatory cross-motions for Summary
 25 Judgment.

26 Instead of complying with the Tribal Court Orders of December 20, 2011 and January
 27 9, 2012 (mandatory cross-motions for Summary Judgment - **Exhibits #D, #E, #F**), Admiral

Insurance in defiance of these Tribal Court Orders and without Court's permission in violation of the Tribal Court Order of March 12, 2012 (**Exhibit #F**) that cross-motions for Summary Judgment were still due but and no further filings of Ex Parte Motions to Dismiss re: Jurisdiction by Admiral Insurance or requests for default of Admiral Insurance (Default filed 2 times by Wood's Roofing Inc. after Admiral Insurance was personally served on October 21, 2011 - **Exhibit #G**) and to this day Admiral Insurance has refused to file an **Answer** in violation of CRPTCT - Rule 15/ Answer and Rule 34(b)(1) - Default by Clerk), Admiral Insurance in violation as set forth above sent to Wood's Roofing on March 15, 2012 Admiral Insurance's Notice of Motion to Quash Service of Summons and Dismiss Wood's Roofing Inc.'s Cross-Complaint instead of filing the Court ordered cross-motions for Summary Judgment on March 15, 2012.

This improper Admiral Insurance "**rogue**" Motion is not set to be heard to April 6, 2012 or April 15, 2012 and violates the above Court Orders. Wood's Roofing will not file any opposition until the Tribal Court issues an Order that Admiral Insurance's April 16, 2012 "**rogue**" **Motion to Dismiss** has been ordered by the Court to be filed on April 16, 2012. There exists no authority by the Tribal Court for filing the Motion to Dismiss by Admiral Insurance.

E.

In addition, Admiral Insurance has already subjected itself to Tribal Court Jurisdiction because it has made a **general appearance** at every proceeding and pleading made to the Tribal Court and has not reserved it's right to contest jurisdiction by instead **specially appearing** and Admiral Insurance's renewed Ex Parte Application for Temporary Restraining Order is **moot** and must be denied because Admiral Insurance has made numerous general appearances in the Tribal Court and the issue of jurisdiction is moot.

F.

Admiral Insurance's sole contention is that the Tribal Court should have heard its Motion to Dismiss on Jurisdictional Grounds **before** the mandatory cross-motions for Summary Judgment. However, Court ordered cross-motions for Summary Judgment will be dispositive of the **Jurisdictional Issues** and the **Tender of Defense issue**. If Admiral Insurance had obeyed the Court's order re: cross-motions for Summary Judgment then Admiral Insurance would have had a fully contested, briefed and oral argument on April 16, 2012 before the Tribal Chief Judge, the Admiral Insurance alleged need for a Motion to Dismiss (Jurisdiction) by Admiral Insurance would not necessary. Ex Parte Application for Temporary Restraining Order is therefore **moot** and must be **denied** and must also be denied for failure to **exhaust Tribal remedies**. The dispositive cross-motions for Summary Judgment was a Tribal Remedy for both Admiral Insurance and Wood's Roofing Inc. but Admiral Insurance failed to exhaust this remedy and instead filed in Federal Court.

G.

"Although the Federal Courts have jurisdiction to determine whether tribal courts properly exercised their jurisdiction over a matter, that question must first be litigated in the tribal court. *National Farmers Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985)."

Admiral Insurance has made no showing that it has exhausted its remedies in the Tribal Court system and the Renewed Ex Parte Application for Temporary Restraining Order must be denied.

"Before the Federal Courts will review a tribal court's determination of jurisdiction the party challenging jurisdiction must exhaust all available remedies in the tribal court system (id)".

Admiral Insurance has not exhausted its tribal remedies by disobeying the Tribal Court's orders to file a mandatory cross-motion for Summary Judgment on March 15, 2012.

H.

Admiral Insurance has failed to show that immediate and irreparable loss or damage will result before Admiral Insurance can be heard in opposition because Admiral Insurance has in effect committed **“Legal Suicide”** on March 15, 2012 or March 17, 2012 by violating the Tribal Court’s Orders by not filing a Court ordered mandatory cross-motions for Summary Judgment that would be a **fair fight** between Admiral Insurance and Wood’s Roofing Inc. and dispositive. Admiral Insurance’s specious argument on jurisdiction would be decided by the Tribal court and cross-motions for Summary Judgment would be a stronger dispositive remedy than a Motion to Dismiss on Jurisdiction filed by Admiral Insurance. The jurisdictional issue is moot. The cross-motions for Summary Judgment were filed (at least by Wood’s Roofing Inc.) In the Tribal Court on March 15, 2012 and Admiral Insurance filed its Renewed Ex Parte Application for Temporary Restraining Order on March 22, 2012 in the Federal Court **without** first serving Wood’s Roofing Inc. All alleged irreparable harm to Admiral Insurance has already occurred and the court is unable to give relief. **The March 15, 2012 legal suicide by Admiral Insurance** means the harm and injury to Admiral Insurance has already happened by Admiral Insurance’s own hands.

I.

Admiral Insurance failed to exhaust the Tribal Court remedies as set forth above . Additionally Admiral Insurance has already subjected itself to Tribal Court Jurisdiction by showing complete contempt for the Tribal court and failure to exhaust the Tribal Court Remedy of Summary Judgment and Appeal. If Admiral Insurance had obeyed the Tribal Court Orders and if it eventually lost the mandatory cross-motions for Summary Judgment, Admiral Insurance could still have appealed the Tribal Court Judgment to the Appellate Federal Tribal process which follows the Appellate rule and that constituted a Tribal Court Remedy.

J.

Admiral Insurance renewed Ex Parte Application for Temporary Restraining Order dated March 22, 2012 must be denied based of comity and the United States District Court - Central District of California Ruling of December 9, 2011 under Case No. CV11-10161JAK(SHX)/United Contractors Insurance (UCIC) vs. Blue Lake Rancheria Tribal Court, Wood's Roofing Inc. (Exhibit #H) ruled that, inter alia, in a similar case as Admiral Insurance v. Blue Lake Rancheria Tribal Court, Wood's Roofing Inc. / Case No. CV12-01266 LHK that **plaintiff UCIC failed to exhaust its Tribal Court remedies** (Relief from Default failed to utilize) and because of comity.

The public interest favors rejecting United Contractors' petition. Considerations of comity with the Blue Lake Rancheria Tribal Court weigh strongly against this Court's consideration of that court's determination of jurisdiction, when United Contractors has not exhausted its remedies there. See Iowa Mutual insurance Co. v. LaPlante, 480 U.S. 9, 16 n.8 (1987) ("Exhaustion is required as a matter of comity, not as a jurisdictional prerequisite."). (Exhibit #H)

In the case at bar, Admiral Insurance has failed to exhaust its Tribal Court remedies and the public interest favors rejecting Admiral Insurance's Renewed Ex Parte Application for Temporary Restraining Order and denying it with prejudice.

Comity means the courts of one jurisdiction giving effect to the laws and judicial decisions of another court not as a matter of obligation but out of deference and respect Franzen v. Zimmer, 35 N.Y. 5, 612, 90 Hun 103.

In the case at bar, this Federal Court should give comity to the ruling of the Central District as it applies to facts of this case and comity to the orders of the Blue Lake Rancheria Tribal Court and it's Chief Tribal Court Judge and deny Admiral Insurance's Renewed Application.

Admiral Insurance has shown great disrespect for the subject Tribal Court and Chief Judge Lester Marston as set forth above in this brief and displayed outright contempt of the

1 Tribal Court and even naming Chief Judge Marston as a defendant in this Federal Court case -
2 Case No. CV12-01266LHK which is not permitted.

3
4 **K.**

5 Based upon the facts and statutory and case law cited, Admiral Insurance's
6 Renewed Ex Parte Application for Temporary Restraining Order must be denied with
7 prejudice.

8 Admiral Insurance and its attorneys should not be rewarded for presenting untruthful
9 evidence to this Court and wilfully disobeying the Tribal Court's Orders and being
10 contemptuous of the Tribal Court and the Chief Tribal Court Judge.

11 It should also be noted that Admiral Insurance and its attorneys knew on **October 21,**
12 **2011** that Admiral Insurance had been personally served in the Tribal Court lawsuit and
13 Admiral Insurance did not need **"Proof of Service"** because Admiral Insurance knew
14 instantly when they were served by hand receiving the Summons and Cross-Complaint of
15 Wood's Roofing Inc. (**Exhibit #G**) on October 21, 2011 of the Tribal Court action and
16 mandatory requirement to answer or be defaulted.

17 Respectfully submitted,

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20
21 Dated: March 27, 2012

By: /s/ Eric F. Hartman
Eric F. Hartman
Specially Appearing for Wood's Roofing Inc.