

UNITED STATES COURT OF APPEALS April 13, 2012
FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

TINA MARIE SOMERLOTT,

Plaintiff - Appellant,

v.

No. 10-6157

CHEROKEE NATION DISTRIBUTORS,
INC., an Oklahoma corporation; CND,
L.L.C., an Oklahoma limited liability
company,

Defendants - Appellees.

ORDER

Before **MURPHY**, **BRORBY**, and **GORSUCH**, Circuit Judges.

This court has previously acknowledged that “[t]ribal sovereign immunity is deemed to be coextensive with the sovereign immunity of the United States.” *Miner Elec., Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007, 1011 (10th Cir. 2007) (citation omitted). Regarding the sovereign immunity of the United States, other circuits have held that where the United States is the sole shareholder of an entity incorporated under state law, the United States’ sovereign immunity does not extend to the entity. *See Panama R. Co. v. Curran*, 256 F. 768, 771-72 (5th Cir. 1919) (quoting *Bank of the United States v. Planters’ Bank of Georgia*, 22 U.S. 904, 907–08 (1824)); *Salas v. United States*, 234 F. 842, 844–45 (2d Cir.

1916). The parties are therefore directed to submit supplemental briefs regarding the following issues:

a) Does CND's organization as a separate legal entity under Oklahoma's Limited Liability Company Act preclude it from sharing in the Cherokee Nation's sovereign immunity?

b) Is the issue whether CND's organization under Oklahoma law precludes it from sharing in the Nation's sovereign immunity properly before this court in light of the briefing to the district court and the initial round of briefing to this court?

c) If the issue in (a) was not adequately preserved before the district court but has been adequately presented before this court, has CND waived or forfeited any argument that the issue is forfeited by failing to argue forfeiture on appeal? If not, does the district court's order withstand plain error review? *See Richison v. Ernest Group, Inc.*, 634 F.3d 1123, 1128 (10th Cir. 2011).

Both appellant and appellee shall submit a supplemental brief on this issue, not to exceed 20 pages, by April 27, 2012. Absent extraordinary circumstances, extensions of time shall not be granted.

ENTERED FOR THE COURT



Elisabeth A. Shumaker, Clerk