

(10th Cir. 2009)(citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). The Court finds that Plaintiffs have failed to establish a likelihood of success on the merits and thus are not entitled to a temporary restraining order. Specifically, as noted above, there is an ongoing dispute regarding the governance of the Tribe.¹ Depending on which group prevails on the dispute over governance, the bank faces potential liability for the payment of money at the request of an unauthorized signator. In light of the ongoing governance issues, about which Plaintiffs have presented no evidence, the Court cannot conclude that Plaintiffs will ultimately prevail in their quest to have the administrative freeze lifted.

Additionally, Rule 65(c) of the Rules provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." In this case, in light of the issues presented, the Court would require that a bond be posted in the full amount of the accounts contents, in excess of six million dollars, in light of the potential liability of the Defendant in the event the Plaintiff is not ultimately deemed to be the governing authority for the Tribe. In light of the freeze it is apparent that Plaintiff will be unable to post any bond.

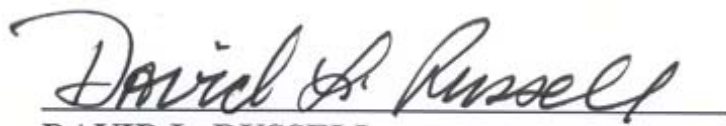
Finally, and most importantly, the Court questions the basis of its jurisdiction over this action. Plaintiffs cited 28 U.S.C. § 1331, the federal question jurisdiction provision in their Complaint. The only substantive federal claims presented are alleged to arise under 42 U.S.C. § 1983. 42 U.S.C. § 1983 requires state action. "[S]tate action requires both an alleged constitutional

¹ The Court acknowledges that not all competitors for governance of the Tribe are before the Court as parties. The existence of these competing claims, however, is nevertheless intertwined in this action.

deprivation 'caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible,' and that 'the party charged with the deprivation must be a person who may fairly be said to be a state actor.'" *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)). In this case Plaintiffs allege that Defendant administratively froze its assets, and from the complaint the Court is unable to discern any allegations which support the conclusion that the Bank may fairly be said to be a state actor. "We have never held that the mere availability of a remedy for wrongful conduct, even when the private use of that remedy serves important public interests, so significantly encourages the private activity as to make the State responsible for it." *Id.* at 53 (citing *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 485, (1988) ("Private use of state-sanctioned private remedies or procedures does not rise to the level of state action"))(further citations omitted).

Accordingly, and for the reasons set forth herein, Plaintiffs' Motion for Temporary Restraining Order is hereby DENIED.

IT IS SO ORDERED this 9th day of May, 2012.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE