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NAVAJO NATION SUPREME COURT ISSUES OPINION IN *NNOGC V. WINDOW ROCK DISTRICT COURT*

On Friday, June 20, 2014, the Navajo Nation Supreme Court issued an opinion clarifying its May 1, 2014 permanent writ of prohibition directed to the Window Rock District Court in *Navajo Nation Oil and Gas Company v. Window Rock District Court and Robert Joe, Real Party in Interest*, No. SC-CV-25-14. The Court was asked to issue such a clarification because the parties remained confused after issuance of the May 1, 2014 writ.

In its writ, the Supreme Court prohibited the district court from hearing a complaint filed by NNOGC CEO Robert Joe seeking to prevent five members of the Board of Directors from holding a meeting on January 17, 2014 at which the removal of Mr. Joe was on the agenda. The directors then filed counterclaims. The Supreme Court stated that the district court had no jurisdiction to hear the case because the five members of the Board of the Directors were protected by sovereign immunity since procedures within the corporation's charter to waive immunity were not followed.

The Navajo Nation is the sole shareholder of NNOGC and is represented in NNOGC by Navajo Nation Council delegates. The Court stated that the Council-ratified corporate charter is mandatory Navajo law. The Court also said that there are immunity exceptions for internal governmental disputes, but none of the parties asked for these to be applied to Navajo Nation enterprises.

The Court was not persuaded by Mr. Joe's claims that the five directors were not covered by immunity because they had been suspended or removed by vote of four shareholder representatives. The Court found that the removals and suspensions were invalid because the mandatory corporate procedures for removal or suspension of directors were not followed.

Mr. Joe and four shareholder representatives further argued that NNOGC is not covered by immunity as it is a private for-profit corporation which Mr. Joe's counsel described as "no different from a McDonald's or Circle K." The Court found their argument "perplexing," because

the Navajo Nation Council-ratified corporate charter plainly sets forth coverage under sovereign immunity. Additionally, the Court reminded them that all NNOGC officials are trustees of a valuable public asset, held by the Navajo Nation for the true owners who are the Navajo people. The Court also noted that this type of internal struggle over authority could have been forestalled if the government had heeded previous legal advice that having delegates involved in enterprise business operations may create problems of conflict of interest.

Finally, the Court stated that both parties cannot be NNOGC. The Court found that Mr. Joe filed the suit beyond the scope of his authority without following procedures to waive immunity. Therefore, the Court stated that Mr. Joe was not authorized to file as NNGOC.

The Court clarified the effects of its writ as follows: the five members of the Board of Directors were not legally removed or suspended; all orders of the Window Rock District Court are invalid upon issuance; and all counterclaims against Mr. Joe individually survive because the writ only dismissed the underlying complaint. The Court's opinion states that the district court should address those counterclaims as soon as possible.

It must be emphasized that the Court did not issue an order placing Mr. Joe on paid leave, as may have been misinterpreted from one newspaper article.

The opinion will be posted on the www.navajocourts.org website after the 20-day reconsideration period has passed.

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