IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FIRST BANK AND TRUST COMPANY, *Plaintiff/Appellee/Counter-Appellant,* v. THE CHEYENNE AND ARAPAHO TRIBES; JANICE PRAIRIE CHIEF-BOSWELL, in her representative capacity, if any, as the alleged Governor of the CHEYENNE AND ARAPAHO TRIBES, *Defendants/Appellants/Counter-Appellees,* and LESLIE WANDRIE-HARJO, in her representative capacity, if any, as the alleged Governor of the CHEYENNE AND ARAPAHO TRIBES, *Defendant.*	)	Supreme Court Case No.: **IN-110909** Trial Court Case No.: CV-2011-53

JOINT APPLICATION TO THE SUPREME COURT OF THE STATE OF OKLAHOMA TO STAY ENFORCEMENT OF JUDGMENT

Defendant Cheyenne and Arapaho Tribes ("Tribes"), and the Cheyenne and Arapaho Tribes' Executive Branch ("Executive Branch") by and through its Governor Janice Prairie Chief-Boswell ("Governor Boswell"), (collectively "Defendants"), apply to the Supreme Court to stay enforcement of the judgment, decree, or final order filed on September 17, 2012, during the pendency of their appeal.

Introduction

On October 27, 2011, Plaintiff First Bank & Trust Company ("the Bank") brought a declaratory judgment action asking the trial court to declare the identity of both the proper signatory for the Tribes' accounts and the Governor of the Tribes. (Pet. ¶ 16-17.) No other claims, counter-claims, cross-claims, or third-party claims were brought. On June 8, 2012, the trial court conducted a trial on the merits. On June 21, 2012, the trial court issued its judgment, decree, or final order overruling the one and only complained of issue: declaratory judgment. That judgment, decree, or final order, was later amended on August 6, 2012, based on the Supreme Court's direction of July 26, 2012. A copy of the June 21, 2012 judgment, decree, or final order and the August 6, 2012 amended version are attached as **Exhibits A** and **B**. The trial court did not stop there, however. Despite there being no complaint for injunctive relief, nor any of the following being present or considered:

(1) an affidavit or verified petition of the plaintiff,
(2) a demonstration of immediate or irreparable injury,
(3) notice to the parties to be enjoined,
(4) a bond posted by a moving party,
(5) a balancing of the equities,

the trial court issued an injunction against the Bank. Okla. Stat. tit. 12, §§ 1383, 1384.1(B)(1), 1386, 1392; *Malnar v. Whitfield*, 1985 OK 82, 708 P.2d 1093, 1095; *Sunray Oil Co. v. Cortez Oil Co.*, 1941 OK 77, 112 P.2d 792, 795.

To achieve that end, the trial court had to disregard that it lacked subject matter jurisdiction. It also had to disregard the due process rights of the parties. The trial court entered injunction *sua sponte* without notice nor a meaningful opportunity to be heard.

This lack of due process was extensively complained of by the Bank at a hearing held on September 17, 2012 and is also enjoined. Thirdly, the trial court had to disregard the contractual rights of the parties. And finally, the trial court had to disregard that the requirements of the adverse claims statute were not met. Okla. Stat. tit. 6, § 905.

Facts

1. On or about February 25, 2011, the Tribes, by and through its Governor Janice Prairie Chief-Boswell, opened certain depository accounts with the Bank. (Trial Tr. 74:3-4, June 8, 2012.) The depository accounts at issue are accounts of the Tribes'. *Id.* Tribal funds may only be expended upon signature of its Governor. (Trial Tr. 76:23 - 77:25, 242:2-4, June 8, 2012.) Janice Prairie Chief-Boswell was elected Governor of the Tribes and was sworn into office in January 2010. (Trial Tr. 242:1-2, June 8, 2012.) Governor Boswell opened the accounts, signed the signature cards, and is the sole signatory. Trial Tr. 74:3, June 8, 2012. Governor Boswell is recognized by the United States as the person authorized to administer federal programs and the sole signatore therefor. (Trial Tr. 242:1-2, June 8, 2012.) The Bank is contractually required to process items from the accounts maintained by the Tribes, is entitled to rely upon the authorization of Governor Boswell in paying funds from the accounts maintained by the Tribes, and pled the same throughout the case. The Bank's *Counter-Claim/Cross Claim*, p. 8, ¶ 7, *Wandrie, et al. v. Boswell, et al.,* CIV-11-171-F (W.D.Okla. April 15, 2011), attached to Defendants' *Joint Consolidated Motion for Summary Judgment* ("Summary Judgment") at Exhibit 4.

2. Nevertheless, on October 27, 2011, the Bank brought a declaratory judgment action asking the trial court to declare the identity of both the proper signatory for the Tribes' accounts and the Governor of the Tribes. (Pet. ¶ 16-17.) The Tribes and its Governor submitted both a *Joint Consolidated Motion to Dismiss for Lack of Subject Matter Jurisdiction, Failure to Join a Necessary and Indispensable Party, and Because Another Case is Pending* ("Motion to Dismiss") and a *Summary Judgment* stating they were sovereign immune from suit.

3. The trial court conducted a trial on the merits on the declaratory judgment action on June 8, 2012. The Bank introduced a so-called contract that is unsigned and undated that provides:

> [t]he authorized signer is merely designated to conduct transactions on the owner's behalf. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf.

It also provides:

> [t]his agreement is subject to applicable federal laws and the laws of the state of Oklahoma (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here.

Pl's. Trial Ex. 1.

4. The Bank's witness did not, however, testify that the so-called contract was ever provided to the Tribes' Governor. (Trial Tr. 38:12-20, June 8, 2012.) Further, the Tribes' Treasurer testified that indeed the so-called contract was <u>not</u> provided to the Tribes' Governor. (Trial Tr. 76:9-22, June 8, 2012). Instead, the contract the Tribes had in its vault was different from the so-called contract, and Executive Branch put into

evidence a complete set of the contract documents the Tribes had received. Thus, Defendants' Trial Exhibit A is the governing Account Agreement. The Tribes' Account Agreement did not contain language that the agreement was subject to applicable federal laws and the laws of the state of Oklahoma.

5. Defendants raised the issues of sovereign immunity, the trial court lacking legal authority to allow anyone other than Governor Boswell to make application and draw down on the funds, and a violation of the adverse claims statute. Despite these issues having been raised to the trial court, the trial court took the unprecedented and impermissible step of *sua sponte*, and without notice and a meaningful opportunity to be heard thereon, to enjoin the parties from accessing the funds from any of the Tribes' depository accounts.

6. On July 2, 2012, Defendants sought a stay of enforcement of the judgment from the trial court, but the trial court denied the stay on September 17, 2012. *Court Order/Minute*, attached hereto as **Exhibit C.**

7. On July 19, 2012, Defendants commenced an appeal of the judgment, decree, or final order.

8. On August 24, 2012, the Bank filed an *Application to Close Accounts* to close the depository accounts based on the contract documents.

9. On September 17, 2012, the Court denied the *Application* but entertained a new theory that it would interplead the funds (without regard to the requirements of the interpleader statute). At that hearing, the parties discussed the June 21, 2012 order being a final order.

This situation calls for an immediate stay of the judgment, decree, or final order, which was denied by the trial court on September 17, 2012. Not only is a stay consistent with the sovereign immunity of the Tribes and its Governor, it is consistent with due process guarantees of the United States and Oklahoma Constitutions, the contractual rights of the parties, and the adverse claim statute.

Standard for Application for Stay in the Supreme Court

Pursuant to Okla. Sup. Ct. R. 1.15(c), an application for stay must address:

(a) The likelihood of success on appeal;
(b) The threat of irreparable harm to moving party if relief is not granted;
(c) The potential harm to the opposing party; and
(d) Any risk of harm to the public interest.

Oklahoma law does not require a movant to satisfy all four elements. *See Crowe & Dunlevy, P.C. v. Stidham*, 609 F.Supp.2d 1211, 1224 (N.D.Okla. 2009); *Okla. ex rel. Okla. Tax Comm'n v. Int'l Registration Plan, Inc.*, 455 F.3d 1107, 1113 (10th Cir. 2006); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255–56 (10th Cir. 2003).

Oklahoma courts may rely on federal case authority for guidance in its interpretation. *See Pan v. Bane*, 2006 OK 57, ¶7, 141 P.3d 555, 558–59.

I. DEFENDANTS ARE LIKELY TO PREVAIL ON APPEAL

The issues are: (1) whether the trial court has subject matter jurisdiction over Defendants and (2) whether the trial court can *sua sponte* and without notice to any of the parties and without compliance with the adverse claims statute, enjoin the parties from processing payments from the depository accounts.

A. The Trial Court Lacked Subject Matter Jurisdiction

1. The Tribes are Immune from Suit

The trial court lacked subject matter jurisdiction over this lawsuit.

Tribal sovereign immunity from suit is a judicially-accepted doctrine. "Indian tribes enjoy sovereign immunity from civil suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 760 (1998). "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Dilliner v. Seneca-Cayuga Tribe*, 2011 OK 61, ¶ 12, 258 P.3d 516, 519. Waivers of immunity cannot be implied, but must be unequivocally expressed. *Id.* Absent an effective waiver or consent, "a state court may not exercise jurisdiction over a recognized Indian tribe." *Id.* Tribal sovereign immunity extends to a tribe's commercial as well as to its governmental activities and protects the tribe or tribal entity regardless of whether its activities take place on or off a reservation. *State ex rel. Edmondson v. Native Wholesale Supply*, 2010 OK 58, ¶31, 237 P.3d 199, 210.

Tribal sovereign immunity applies to suits for damages as well as those for declaratory and injunctive relief. *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991). The issue of sovereign immunity is jurisdictional. *Ramey Construction Co., Inc. v. The Apache Tribe of the Mescalero Reservation*, 673 F.2d 315, 318 (10th Cir. 1982). While tribes can waive sovereign immunity, a court cannot find waivers of tribal immunity by inference or implication. Instead, to be

enforceable, a tribe's waiver of immunity must be clear, explicit and unambiguous. *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411, 418 (2001); *see also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). In determining the issue of waiver, a court cannot consider perceived inequities under the facts of the particular case. *See Ute Dist. Corp. v. Ute Indian Tribe*, 149 F.3d 1260, 1267 (10th Cir. 1998).

In this case, the trial court found that the Tribes waived their sovereign immunity by virtue of the so-called contract referenced on p. 5 above. Even if that document should have been admitted, a matter in dispute, it contains no clear and unequivocal waiver and no reference of the Tribes' and the Governor's sovereign immunity:

> [t]his agreement is subject to applicable federal laws and the laws of the state of Oklahoma (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here.

Pl.'s Trial Exh. 1.

A similar choice of law provision was interpreted in *Standing Rock*: [t]his note and the rights and obligations of all parties hereto shall be subject to and governed by the law of the District of Columbia. *American Indian Agricultural Credit Consortium, Inc. v. Standing Rock Sioux Tribe,* 780 F.2d 1374, 1381, n.4 (8th Cir. 1985). The *Standing Rock* court found that the promissory note "was a preprinted form agreement . . . designed for transactions involving individuals and not Indian tribes." *Id.* Thus, the court held that such a choice of law clause did not constitute a waiver of the tribe's sovereign immunity. *Id* at 1381.

Here, like *Standing Rock*, there has been no clear and unequivocal waiver. At trial, the Bank did not establish that the so-called contract was ever produced to the Tribes. (Trial Tr. 38:12-20, June 8, 2012). Moreover, the Tribes' Treasurer testified that the so-called contract was not provided to the Tribes, and the Treasurer submitted the actual contracts that were provided to the Tribes. (Trial Tr. 76:9-22, June 8, 2012). Nevertheless, the choice of law provision is not an express waiver of sovereign immunity and a governor would not even have had authority to enter into it if it were so. *See, e.g. Dilliner* at ¶12; *Seneca Telephone Co. v. Miami Tribe of Oklahoma*, 2011 OK 15, ¶5, 253 P.3d 53,55; *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1296 (10th Cir. 2008); and *Standing Rock*. Accordingly, the trial court lacked subject matter jurisdiction over this suit.

Furthermore, "Tribal immunity is a matter of federal law and is not subject to diminution by the States." *Kiowa Tribe v. Mfg. Techs. Inc.*, 523 U.S. 751, 756 (1998). As such, "state law has no bearing on who has the authority to waive the Tribe's sovereign Immunity." *Stillaguamish Tribe of Indians v. Pilchuck Group II, L.L.C.*, C10-995RAJ, 2011 WL 4001088, *6 (W.D. Wash. Sept. 7, 2011). The court in *Pilchuck* noted that federal courts have readily deferred to tribal law, at least where tribal law provides explicit rules regarding sovereign immunity waivers, citing *Memphis Biofuels, LLC v. Chickasaw Indian Indus., Inc.*, 585 F.3d 917 (6th Cir. 2009) and *Sanderline v. Seminole Tribe*, 243 F.3d 1282, 1288 (11th Cir. 2001), *Pilchuck* concluded that "where tribal law includes specific provisions governing immunity waivers, federal courts respect those provisions." *Id.*

The Tribes have a Constitution that clearly sets forth the procedure by which the Tribes' and Governor's immunity is waived; therefore, the trial court would have to look to Cheyenne and Arapaho Constitution ("Chey. & Arap. Const.") in determining whether there has been a waiver of the Tribe's sovereign immunity. The Chey. & Arap. Const. was admitted into evidence as the Pl.'s Trial Exh. 2.

Chey. & Arap. Const., art. X, § 1 provides:

> The Tribes shall possess Sovereign Immunity. Nothing in this Constitution shall be deemed to waive Sovereign Immunity from suit. Only the Legislature and the Tribal Council may authorize a waiver of Sovereign Immunity by law. Any authorization by the Legislature to waive Sovereign Immunity shall be specific, for a limited scope and duration, in writing, and shall be limited to a maximum of one hundred thousand dollars per party. Any authorization by the Tribal Council to waive Sovereign Immunity shall be specific, for a limited scope and duration, and in writing.

Id. (emphasis added). Chey. & Arap. Const. art. X, § 2 provides:

> The Tribes and its Officials and Employees acting in their official capacity or within the scope of their authority shall be immune from suit brought by any party not subject to the Jurisdiction of the Tribes except to the extent waived in accordance with the law.

Id. (emphasis added). Chey. & Arap. Const. art. X, § 3 provides:

> The Tribes and its Officials and Employees acting in their official capacity or within the scope of their authority shall be immune from suit except for suits in equity filed exclusively in the Courts of the Tribes by any party subject to the Jurisdiction of the Tribes to enforce rights and duties established by law or this Constitution. Any Member of the Tribes may bring a suit exclusively in the Judicial Branch to enforce the terms of this Constitution. Sovereign Immunity shall not extend to Officials and Employees acting outside their official capacity or beyond the scope their authority.

Id. (emphasis added).

Defendants raised *Seneca Telephone*, *Dilliner*, and the Chey. & Arap. Const. throughout the case, which require an express and unequivocal waiver for a finding of a waiver of sovereign immunity. *Seneca Telephone Co. v. Miami Tribe of Oklahoma*, 2011 OK 15, ¶ 5, 253 P.3d 53, 55; *Dilliner v. Seneca-Cayuga Tribe*, 2011 OK 61, ¶12, 258 P.3d 516, 519. Defendants further established at trial that the Bank had not demonstrated that Congress had waived the Tribes' or the Governor's sovereign immunity, nor that the Legislature or Tribal Council had waived the Tribes' or the Governor's sovereign immunity. (Trial Tr. 38:17-20, June 8, 2012.)

2. Their Governor is Immune from Suit

Parties should not be permitted to circumvent tribal immunity through a "mere pleading device" by nominally suing officials in their [unofficial] representative capacity. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 70–71 (1989). "The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." *Hawaii v. Gordon,* 373 U.S. 57, 58 (1963). Thus, determining whether the sovereign is the real party in interest depends upon the relief sought by the plaintiff. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100–01 (1984). The "real, substantial party in interest is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Regents of the Univ. of California v. Doe,* 519 U.S. 425, 429 (1997).

Tribal sovereign immunity extends to tribal officials and "generally immunizes tribal officials from claims made against them in their official capacities." *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.,* 546 F.3d 1288, 1296 (10th Cir. 2008). *Native*

American Distributing related tribal sovereign immunity to federal sovereign immunity and held that "officers of the United States possess no power through their actions to waive an immunity of the United States or to confer jurisdiction on a court in the absence of an express waiver of immunity." 546 F.3d at 1295. Thus, officers of a tribe cannot waive the tribe's sovereign immunity absent an express waiver.

Here, Governor Boswell shares in the Tribes' sovereign immunity. She is not a party to the alleged contract with the Bank in her individual capacity. Instead, her "activities are properly deemed to be those of the Tribes'." *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006). What was evident from the *Petition for Declaratory Relief* is the Bank wanted a declaratory judgment as to the identity of the Tribes' governor, and therefore who has control of the Tribes' account. (Pet. ¶ 16-17.) Such relief would clearly interfere with the public administration and affect the disposition of unquestionable sovereign property.

Accordingly, the Bank's pleading device of suing Governor Boswell in her [unofficial] "representative capacity" in an attempt to evade the Tribes' sovereign immunity should have been soundly rejected by the court. However, the trial court impermissibly assumed subject matter jurisdiction over Governor Boswell. Imperatively, the purpose of sovereign immunity is served by recognizing Governor Boswell's immunity.

B. The Parties Were Not Afforded Notice or an Opportunity to be Heard Before an Injunction was *Sua Sponte* Issued

The Fourteenth Amendment to the United States Constitution provides that no state, in enacting or enforcing any law, shall deprive any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. XIV § 1. Furthermore, the Fifth Amendment of the Bill of Rights provides a similar protection against deprivation of "life, liberty, or property, without due process of law." U.S. Const. Amend. X. While the clauses mirror one another, the Fifth Amendment Due Process Clause is applicable to the federal government, while the Fourteenth Amendment's clause is binding on the states. In practice this has been interpreted to require adequate notice of the request for judicial relief and an opportunity to be heard concerning the merits of such relief. The Supreme Court has continually protected individual rights through the "fundamental fairness" doctrine. Among the most fundamental of rights guaranteed by the Due Process Clauses is an individual's right to a fair trial.

The Oklahoma guarantee of Due Process of Law is found in Article 2, Section 7 of the Oklahoma Constitution: "No person shall be deprived of life, liberty, or property, without due process of law." Ok. Const. Art. 2, § 7 (emphasis added). In *Southwestern Commercial Capital, Inc. v. Cornett Packing Co*, when discussing the due process requirement of notice, the Oklahoma supreme court said:

> It is a fundamental tenet of constitutional law that one may not be deprived of a valuable property interest without first giving notice 'reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . ..

2000 OK 19, ¶16, 997 P.2d 849, 855. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Barry v. Barchi*, 443 U.S. 55, 66 (1979). "Judgment without such citation and opportunity lacks all the attributes of a judicial determination [and] it is judicial usurpation and oppression and can never be upheld where justice is fairly administered." 16B Am.Jur.2d Constitutional Law § 955 citing *Powell v. Alabama*, 287 U.S. 45 (1932).

Based on the due process provisions, courts have rejected *sua sponte* injunctions. *Weitzman v. Stein*, 897 F.2d 653, 658 (2d Cir. 1990)(holding that, in absence of notice prior to a hearing at which district court issued *sua sponte* order freezing party's assets, the order was entered in violation of due process); *MLE Realty Assoc. v. Handler*, 192 F.3d 259,262 (2d Cir., 1999)(vacating a *sua sponte* issued injunction because notice was not given); *Lau v. Meddaugh*, 229 F.3d 121, 123 (2d Cir. 2000)(vacating a *sua sponte* issued injunction); *Moates v. Barkley*, 147 F.3d 207, 208 (2d Cir. 1998)("district court may not impose a filing injunction on a litigant *sua sponte* without providing the litigant with notice and an opportunity to be heard."); *Brow v. Farrelly*, 994 F.2d 1027, 1035-39 (3d Cir. 1992)(vacating a *sua sponte* issued injunction); *Williams v. Cambridge Integrated Services Group*, 2005 U.S. App. LEXIS 18624,*7;148 Fed. Appx. 87 (3d Cir. 2005)(reversing and holding that: "Sufficient notice and opportunity to be heard are essential prerequisites to the entry of a pre-filing injunction."); *Gonzalez v. Usher Feiner*, 2005 U.S. App. LEXIS 8370,*12;131 Fed. Appx. 373 (3d Cir. 2003)(reversing a *sua sponte* issued injunction and questioning whether a pre-filing injunction is warranted based on Gonzalez's history of filing six frivolous cases in ten years.). "It is imperative

that the court afford the litigant notice and an opportunity to be heard prior to issuing such an injunction." *In Re Head*, 174 Fed. Appx. 167 (4th Cir. 2006)(vacated a 10 yr. old *sua sponte* injunction); *Tripati v. Beaman*, 878 F.2d 351,354 (10th Cir. 1989)(vacated and holding that the litigant is "entitled to notice and an opportunity to oppose the court's order before it is instituted."); *Procup v. Strickland*, 567 F.Supp. 146 (M.D. Fla., 1983)(court issued a show cause order); *Procup v. Strickland*, 760 F.2d 1107, 1110 (11th Cir. 1985) (held that district court did give adequate notice and opportunity to be heard before issuance of the injunction); *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002) (holding that injunctions "may not be expanded beyond the meaning of its terms absent notice and an opportunity to be heard.").

Not only do courts reject *sua sponte* injunctions, it is well settled that orders issued in violation of due process are void. Generally, a judgment is void "if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if acted in a manner inconsistent with due process of law." *United States v. Assad*, 179 F.R.D. 170, 173 (M.D.N.C. 1998). A judge is void if the trial court lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. *Swartz v. United States,* 976 F.2d 213, 217 (4th Cir. 1992)(quoting 11 Wright & Miller, Federal Practice and Procedure § 2863 at 198-200 (1973)); *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001); *U.S. v. Boch Oldsmobile*, Inc., 909 F.2d 657, 661-62 (1st Cir. 1990); *Beller & Keller v. Tyler*, 120 F.3d 21, 23 (2d Cir. 1997); *Union Switch & Signal v. Local 610*, 900 F.2d 608, 612 n.1 (3d Cir. 1990); *Eberhardt v. Integrated Design & Const., Inc.*, 167 F.3d 861, 871 (4th Cir. 1999); *New York Life Ins. Co. v.*

Brown, 84 F.3d 137, 143 (5th Cir. 1996); "No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party." *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 15 (1907).

Here, the Tribe was deprived of their depository accounts. Those depository accounts are clearly property interests, and the notice and opportunity to be heard requirements for issuing an injunction were not met. There was no pleading for an injunction by affidavit or verified petition; no notice that an injunction would be considered; no bond posted by a moving party (there wasn't even a moving party); and there was no opportunity for the Tribes or their Governor to discuss the issuance of an injunction. Such departure offended the standards of due process and deprived the Tribes and their Governor (and the Plaintiff) of their fundamental rights to notice and an opportunity to be heard.

There is simply no support in the law authorizing a trial court to enter an injunction *sua sponte* and without notice and an opportunity to be heard. Consequently, the *sua sponte* injunction is void.

1. The Circumstances of the Case Did Not Warrant the Extraordinary Remedy of an Injunction

The granting of an injunction is the exercise of an extraordinary remedy, and should not be resorted to unless the basis therefore is plain. *See Shell Pipe Line Corp. v. State ex rel. Brett*, 1945 OK 286,164 P.2d 970, 971 (Okla. 1945); *see also First American Bank & Trust Co. v. Sawver*, 1993 OK CIV APP 115, 865 P.2d 347, 350, citing *Amoco Production Co. v. Lindley*, 609 P.2d 733, 745, (Okla. 1980)("Injunction is an

extraordinary remedy and relief by this means should not be lightly granted"); *Smith v. Soil Conservation Service*, 563 F.Supp. 843, 844 (W.D. Okla. 1982)("the Court's injunctive power should be exercised with great caution"). "The right to [an] injunction must be established with certainty, and the evidence must be clear, convincing and satisfactory. A mere fear, apprehension, or possibility that injury may result is insufficient." *Roye Realty & Developing. Inc. v. Southern Seismic*, 1985 OK CIV APP 43, 711 P.2d 946, 949. "The discretion of the Court [in granting or denying injunctive relief] must be exercised within sound equitable principles, taking in all the facts and circumstances in the case." *Amoco Production Co.*, 609 P.2d at 745. "The injunction avenue of redress is misused if there is no real emergency, no irreparable harm or there is truly an adequate remedy at law." *First American Bank & Trust Co.*, 865 P.2d at 352-53.

Here, the basis for the issuance of the injunction was <u>not</u> plain. Rather, there was no pleading for an injunction, nor were any of the usual requirements for an injunction met. Okla. Stat. tit. 12, §§ 1383, 1384.1(B)(1), 1386, 1392; *Malnar v. Whitfield*, 1985 OK 82, 708 P.2d 1093, 1095 ; *Sunray Oil Co. v. Cortez Oil Co.*, 1941 OK 77, 112 P.2d 792, 795. No one proved up that the extraordinary remedy and relief by injunction should be granted, nor did the trial court use such power with great caution. The right to an injunction was not established by any party, and there was no clear, convincing, or satisfactory evidence put into the record. The trial court may have entertained the thought that there was some sort of emergency, irreparable harm and that no adequate remedy at law exists, but the parties would have no way of knowing because the trial court did so *sua sponte*, and without notice and an opportunity to be heard on the matter.

2. The Injunction Directly Contravened the Contractual Rights of the Parties

The account at issue is an account of the Tribes'. (Trial Tr. 38:6-8, 74:3-4, June 8, 2012.) Governor Janice Prairie-Chief Boswell opened the accounts, signed the signature cards, and is the sole signatory. (Trial Tr. 242:1-2, June 8, 2012.)

The Bank is required to process items from the accounts maintained and is entitled to rely upon the authorization of Governor Boswell in paying funds from the accounts. The Bank's *Counter-Claim/Cross Claim*, p. 8, ¶ 7, *Wandrie, et al. v. Boswell, et al.*, CIV-11-171-F (W.D.Okla. April 15, 2011), attached to *Summary Judgment* at Exhibit 4. The Bank has even indicated it has no obligation to monitor transactions to determine that they are on the owner's behalf: "[t]he authorized signer is merely designated to conduct transactions on the owner's behalf. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf." *Id* (emphasis added).

Additionally, on May 24, 2012, Bureau of Indian Affairs issued an *Interim Recognition Decision* ("Decision") to recognize, for a period of 60 days, Janice Prairie Chief-Boswell as the Governor of the Cheyenne and Arapaho Tribes for the purpose of administration of federal funds and program administration. (Trial Tr. 218:14-25, 219:1-9, June 8, 2012; and Defendant's Trial Exh. 9. That *Decision* specifically recognized Janice Prairie Chief-Boswell as the Governor of the Tribes for purposes of pending and future P.L. 93-638 drawdown payments and "any other action necessary to fulfill both the Tribe[s] and Governments contractually obligated responsibilities." *Id.* It went on to provide that "Janice Prairie Chief-Boswell is currently the only 'authorized' signature on

file with the bureau to approve P[.L. 93-]638 payments [on behalf] of the Cheyenne and Arapaho Tribes." *Id* (emphasis added).

Based on the Account Agreement, this account is an account of the Tribes, and Governor Boswell is sole signatory to those accounts. The Bank is required to process the Tribes' payments and withdrawals based on the authorization of Governor Boswell. It has no obligation to monitor transactions to determine that they are on the Tribes' behalf. The funds in that accounts are derive from federal contracts, and the federal government has indicated that Governor Boswell is the only signatory they have on file, and she gets to draw down on federal funds to fulfill her contractual obligations.

3. The Injunction Directly Contravened the Adverse Claims Statute

"The relationship between a bank and its depositor is generally considered contractual. Improper refusal to make the funds available would generally be considered a contractual breach of the Bank's obligation to pay [Plaintiff its] money." *Beshara v. South Nat'l Bank*, 1996 OK 90, 928 P.2d 280, 288. When a bank deposit is made without limitations or qualifications, as are usually made in due course of business, subject to being drawn out on demand, the deposit is a 'general deposit,' and is in legal effect a loan to the bank, and the legal relation between the bank and the depositor is that of debtor and creditor. *Board of County Comm'r v. State Nat'l Bank of Idabel*, 1934 OK 436, 36 P.2d 281, 284. The contract entered into when the depositor opens a general checking account at a bank is generally implied, and the depositor delivers his funds to the bank in return for which the bank assumes the obligation to pay out on his demand or order a sum equal to the deposit balance. *Brown v. Eastman Nat'l Bank of Newkirk*, 291 P.2d 828, 830

(Okla. 1955). Thus, the agreement between the depositor and bank is that the bank will accept the depositor's money and keep it safe until the depositor demands it or orders it paid to others. *Ingram v. Liberty Nat'l Bank & Trust Co. of Oklahoma,* 1975 OK 45, 533 P.2d 975, 980.

The adverse claims statute governs adverse claims to deposits held by banks and sets conditions under which a bank may recognize an adverse claim to a depository account with the bank. Okla. Stat. Ann. tit. 6, § 905. An adverse claim may be recognized only if the adverse claimant procures an order from a court of competent jurisdiction in an action in which the account holder is a party or executes a bond indemnifying the bank. *Id.*

The adverse claims statute was recognition by the Oklahoma legislature of the precarious position banks may be placed in by adverse claims to an account. *W.L. Fletcher v. Bank of Meeker*, 1962 OK 192, 376 P.2d 263, 266. The Supreme Court of Oklahoma stated that the adverse claims statute makes it the duty of the adverse claimant to first serve the bank with appropriate process, and to do so in order to protect both banks and their depositors from unreasonable interference with their relationships, rights, and obligations by the claims of strangers. *Id.* at 266-67. If an adverse claimant does not comply with the statute, the bank is under no obligation to hold the account funds. *Id.* at 266.

Adverse claims present banks with a dilemma: face liability to the account holder by denying payment on checks drawn on the account or face liability to the claimant for paying out funds in the knowledge of an adverse claim. Adverse claims statutes are

designed to eliminate this dilemma by requiring an adverse claimant to satisfy certain prerequisites. *First Nat'l Bank & Trust Co. of Tulsa*, 292 P.2d 160 (the duty of the adverse claimant is to procure a restraining order, injunction, or other appropriate process against the bank in an action which the depositor is made a party, or furnish an indemnity bond). *See also*, 10 Am. Jur. 2d Banks and Financial Institutions § 761 (same); 62 A.L.R.2d 1116 (same). If the requirements are not met, the bank should be able to ignore the claim. *See W.L. Fletcher*, 376 P.2d at 266 (plaintiff's failure to comply with statutory requirements meant the bank had no legal obligation to hold account funds).

According to the adverse claims statute, an adverse claimant must procure an order from a court of competent jurisdiction in an action in which the account holder was a party or execute a bond. Okla. Stat. Ann. tit. 6, § 905. The purpose of such bond is to protect the stayed party from damage resulting from an erroneous decision.

In this case, there was no adverse claim made, no order from a court of competent jurisdiction in an action in which the account holder was a party, and there was no bond posted by such adverse claimant. (Trial Tr. 242:1-2, June 8, 2012.) Leslie Wandrie-Harjo claimed to be an adverse claimant at a hearing on September 17, 2012. Defendants require the above referenced stay of enforcement because the trial court's judgment, decree, or final order goes against the *status quo* as set forth in the adverse claims statute. It also threatens disbursement from the depository accounts to persons other than Governor Boswell, who is the only person recognized by the United States to administer federal programs and funds.

II. DEFENDANTS WILL SUFFER IRREPARABLE HARM IF THE STAY IS NOT GRANTED

A. Irreparable Harm

Indian tribes possess sovereignty over its members and its territory. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332-33 (1983). Intrusion upon an Indian tribe's sovereignty constitutes irreparable injury as a matter of law. *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1171–72 (10th Cir. 1998)(" The Tribe's full enjoyment of its sovereign immunity is irrevocably lost once the Tribe is compelled to endure the burdens of litigation"); *Winnebago Tribe of Nebraska v. Stovall*, 216 F.Supp.2d 1226, 1233 (D. Kan. 2002), *affirmed* 341 F.3d 1202 (10th Cir. 2003); and *EEOC v. Karuk Tribe Housing Authority*, 260 F.3d 1071, 1077 (2001).

In *Hoover*, a tribe brought an action against the defendants pursuant to 42 U.S.C. § 1983, alleging both that the defendants, some of whom had brought breach of contract actions against the tribe in state court, had deprived the Tribe of its rights, privileges and immunities secured by the Constitution and deprived the tribe of its right to sovereign immunity. *Hoover*, 150 F.3d at 1168. The tribe also sought a preliminary injunction in the trial court to enjoin the defendants from seizing tribal property, *inter alia*. *Id.* The trial court denied the tribe's request for an injunction, determining that the plaintiff had not demonstrated irreparable injury. *Id.* The Tenth Circuit reversed. *Id.* at 1172.

On appeal, in pertinent part, the Tenth Circuit determined that, contrary to the trial court's finding, the tribe had established irreparable injury as a matter of law:

> First, the seizure of tribal assets, including severance taxes owed to the Tribe, and the concomitant prohibition against full enforcement of tribal

> laws, significantly interferes with the Tribe's self-government. Second, the Tribe should not be compelled 'to expend time and effort on litigation in a court that does not have jurisdiction over them. The Tribe's full enjoyment of its sovereign immunity is irrevocably lost once the Tribe is compelled to endure the burdens of litigation.

Id. at 1171–72 (emphasis added).

Likewise, in *Winnebago Tribe*, the court determined that the mere fact that state defendants seized the tribe's assets for an alleged violation of Kansas statutes constituted irreparable injury as a matter of law. *Winnebago Tribe*, 216 F.Supp.2d at 1233. In that case, the tribe brought an action and sought a preliminary injunction against officials of the state of Kansas, arising out of the State's attempt to enforce a Kansas statute. *Id.* at 1230. The tribe requested that the defendants return the seized property. *Id.* The trial court granted the request for preliminary injunction, finding first, that the tribe had satisfied irreparable injury element:

> The court finds that plaintiffs have demonstrated that they will suffer irreparable injury in that monetary damages will not be sufficient to undo the damage with which plaintiffs are currently faced. As noted by the court at the July 8, 2002 hearing, this is not a matter of how much capital will be lost if the injunction is not imposed. Instead, the issues concern the scope of tribal sovereignty, an issue that cannot be measured in dollars.

Id. at 1233 (emphasis added).

Defendants appealed and the Tenth Circuit affirmed. *Winnebago Tribe*, 341 F.3d at 1232. At the Tenth Circuit, defendants argued that the trial court abused its discretion in granting the temporary restraining order and preliminary injunction. *Id.* The Tenth Circuit rejected this contention, stating that, as to the irreparable injury element, the trial

court correctly determined that that element weighed in the tribe's favor because more than economic damages were at stake. *Id.* at 1233.

Here, the trial court did not have authority to disregard the Tribes' sovereign immunity. Further, neither did the court have authority to disregard the adverse claims statute and take jurisdiction over the Tribes' funds. The violation of the Tribes' statutory rights in their depository accounts triggers a finding of irreparable injury because violations of constitutional rights are presumed irreparable. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

The irreparable injury is clear and compelling. The seizure of the Tribes' depository accounts and the concomitant prohibition on the expenditure of funds significantly interferes with the Tribes' self-government. Others, who lack authority to administer federal programs, should not be allowed to apply for nor gain access to the funds. Allowing them to attempt to draw down on those funds constitutes irreparable injury. The irreparable injury may be cured by a stay of that part of the judgment, decree, or final order.

B. The Bank Will Suffer No Harm if a Stay is Ordered

Defendants are not aware of any person or entity who would suffer harm of any kind from the granting of the requested stay. No one made application under the adverse claims statute. No one other than Governor Boswell is authorized to administer federal programs or funds. Leslie Wandrie-Harjo is not authorized or equipped to administer such programs or funds. No one else responded to the *Motion for Discretionary Stay*, nor is anyone but the Bank, the Tribes, and the Governor parties to the appeal.

C. The Public Interest Will be Harmed if a Stay is Not Granted

Oklahoma's adverse claims statute was enacted to "lay down the procedure necessary to be taken by an adverse claimant to assert his claim, thereby affording protection to both banks and their depositors from unreasonable interference with their relationships, rights and obligations by the claim of strangers." *W.L. Fletcher*, 376 P.2d at 266-267. The statute was meant to bring clarity to the law and provide protection to each party in an adverse claims case. Thus, following the procedures set out by the statute protects the public interest by promoting a uniform process and resolution for adverse claims.

The statute sets out a clear process for addressing adverse claims actions, which has not been followed in this case. As a result, the parties are inadequately protected. Disregarding the statutory process puts account holders, including individuals, at risk of having their funds frozen in response to frivolous adverse claims in which claimants do not comply with the statutory process. Such a situation could result in great uncertainty and erosion of the public's trust in banking institutions.

It is in the public interest that the stay of judgment be granted. Depositors expect that their rights in depository accounts will be respected and improper persons will not be allowed access to those depository accounts. Allowing improper persons access to those depository accounts necessarily interferes with their rights improperly, and in this case affects provision of essential governmental functions. (Trial Tr. 109:18-25, June 8, 2012.) The governmental functions Governor Boswell administers can and do benefit both tribal members and Oklahomans alike. (Trial Tr. 127:14-22, June 8, 2012.)

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Supreme Court of Oklahoma grant its application to stay the enforcement of the trial court's judgment, decree, or final order. Simply put, no person not a signatore to the Account Agreements and not following the adverse claims statute should have access to the tribe's depository accounts which at one time contained $6.9 million.

Respectfully submitted this 12th day of October, 2012.

FREDERICKS PEEBLES & MORGAN LLP

Martha L King

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Attorney for Executive Branch of the Cheyenne and Arapaho Tribes (captioned below as Janice Prairie Chief-Boswell, in her official capacity, if any), Defendant/Appellant

CHEYENNE & ARAPAHO TRIBES

/s/ Kimberly Richey Martha L King for KR

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Phone: (405) 422-7421
Attorneys for Cheyenne and Arapaho Tribes, Defendant/Appellant

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

The undersigned certifies that on October 12, 2012, the original + 14 copies of the foregoing **JOINT APPLICATION TO THE SUPREME COURT OF THE STATE OF OKLAHOMA TO STAY ENFORCEMENT OF JUDGMENT** in this matter was mailed to the Office of the Court Clerk, Oklahoma Supreme Court, Oklahoma. Also on this day, a copy was mailed via U.S. Mail, postage pre-paid to:

Scott Meacham, Esq.
Crowe & Dunlevy
20 North Broadway, Suite 1800
Oklahoma City, Oklahoma 73102
Attorney for Plaintiff/Appellee

District Court, Custer County, Oklahoma
603 B St.
P.O. Box D
Arapaho, Oklahoma 73620-0240

The undersigned certifies that the following parties identified below are not direct parties to this appeal but appeared for a party in a prior trial:

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Attorney for Leslie Wandrie-Harjo

Thomas S. Ivester, Esq.
IVESTER, IVESTER & IVESTER
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"Attorney for Cheyenne and Arapaho Legislative Branch"

John E. Parris, Esq.
Cheyenne and Arapaho Tribes
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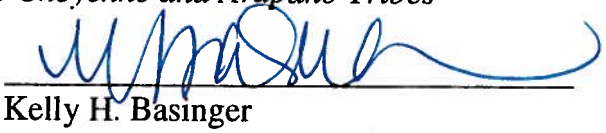
Attorney for the Fourth Legislature of the Cheyenne and Arapaho Tribes



Kelly H. Basinger

IN THE DISTRICT COURT OF CUSTER COUNTY
STATE OF OKLAHOMA
COURTHOUSE
ARAPAHO, OKLAHOMA
Monday, June 21, 2012

FILED
DISTRICT COURT
Custer County, Okla.
JUN 21 2012
STACI HUNTER
COURT CLERK

FIRST BANK AND TRUST COMPANY,
Plaintiff,

v.

THE CHEYENNE AND ARAPAHO TRIBES; JANICE PRAIRIE CHIEF-BOSWELL, in her Representative capacity, if any, as the alleged Governor of the CHEYENNE AND ARAPAHO TRIBES; LESLIE WANDRIE-HARJO, in her Representative capacity, if any, as the alleged Governor of the CHEYENNE AND ARAPAHO TRIBES,
Defendants.

Matters and Materials Considered

- All evidence and arguments presented at the trial on June 8, 2012
- All briefs filed in this case to include Motions
- Arguments of counsels

History of this case

This petition was filed on October 27, 2011 by the First Bank and Trust Company of Clinton. They ask that the court declare whether Boswell or Harjo should be the authorized signatory for the Tribal Accounts at the Bank. The Bank also asks that they be absolved of any and all liability as to disputes concerning the signatory authority for Tribal Accounts.

All of the defendants appearing in this trial represent two competing governments of the Cheyenne-Arapaho Tribe. Defendant's Prairie Chief-Boswell and Harjo both claim to be the lawful governor of the tribe. Three attorneys appear for the two people who claim to be the lawful attorney general of the tribe(Counsels Morris and Richey appear and are allied with defendant Prairie Chief-Boswell, and counsel Oliver appears for the attorney general allied with defendant Harjo). Competing legislatures have separate attorneys, counsels Ivester and Paris. There are competing court systems.

It appears uncontested that the Bank has received conflicting instructions regarding disposition of funds on deposit for the tribe.

EXHIBIT
tabbies
A

Received
JUL 13 2012
Fredericks Peebles & Morgan

In a related case, CIV-11-171-F, styled Leslie Wandrie-Harjo v. Janice Prairie Chief-Boswell, (W.D. Oklahoma), the dispute regarding who the lawful Governor is was dismissed for lack of subject matter jurisdiction. (Order of August 15, 2011)

In still another related action, CR-12-514-F, styled Cheyenne and Arapaho Tribes, on its own behalf, et al, v. First Bank and Trust Company, all of the parties appeared before The Honorable Judge Friot on June 6, 2012. This court was joined as a defendant in that case. Plaintiff sought a declaration that the District Court of Custer County did not have jurisdiction to proceed in the instant case. Judge Friot said as follows:

The fact is that the controversy within the tribe turned
3 the bank into a stakeholder. When a stakeholder, such as the
4 bank, is put in a position of holding funds and disbursing
them
5 only at its peril, which is clearly the case here, that
6 stakeholder is entitled to hold the stake until the matter has
7 been clarified, even in the absence of that sort of an
8 agreement. And as I have said, I certainly do not criticize
9 the bank for deciding that it could disburse these funds only
10 at its peril.
11 I'm going to conclude by saying it is devoutly to be
12 desired that this matter get resolved at least so far as
13 signatory authority is concerned by the District Court of
14 Custer County in the hearing this Friday. The District Court
15 of Custer County has jurisdiction.

On May 31, 2012, the Cheyenne and Arapaho Tribe filed a motion for summary judgment. No response was filed to that motion. Plaintiff Bank contends they never received a copy of the motion. Defendant Harjo filed a trial brief on June 4, 2012 in which they respond to the issues raised in the Motion for Summary Judgment. Defendant Tribe and Boswell raise the same argument they raised in the Motion to Dismiss filed March 16, 2012. The issue raised is Sovereign Immunity. This court overruled the motion to dismiss and by this writing this court overrules the Motion for Summary Judgment filed by the Tribe and Boswell because summary disposition is not appropriate.

DECISION

I have reviewed Bittle v. Bahe, 192 P.3d 810. It was a part of the analysis in that case that the tribe agreed to be bound by state law when they applied for a liquor license. In the present case, the tribe agreed to be bound by state law when they opened this account. In Bittle, the tribe acknowledged that the casino's agreement to be bound by state law constituted a waiver of any immunity to the subject matter jurisdiction of the Oklahoma courts when the state initiated an action on a violation.

In Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751, the court found that the tribe was immune from suit in state court on its contract. However, the contract in that dispute contained a clause that provided that the tribe did not give up any authority of the tribe. The depository contract in the instant case contained no such provision of which this court has been informed. To the contrary, the tribe in the instant case agreed that their account relationship would be governed by state law.

The plaintiff in the instant case has access to tribal courts only at plaintiff's peril. It is an element of the preemption analysis discussed in Bittle that all citizens must be assured that they have access to the court system.

Tribal court jurisdiction is not general jurisdiction. I believe this court has jurisdiction over this account because this is a state chartered bank and its accounts are governed by state law.

I do deny the petition for declatory relief, but I do assume jurisdiction over these funds and I direct the bank not to dispense these funds except on the courts order. In order for these funds to be dispersed tribal authorities must make application to this court with notice to all contestants. Dispersement will be ordered based upon a yet to be determined standard. It is possible that no dispersement can be authorized until tribal turmoil has been resolved.

To do anything other than convert this account to a court supervised account would be tantamount to deciding which of the rival tribal governments is legitimate. I do not believe this court has the authority to make that decision.

I do find that this is a appealable order.

I would like to order the disputing parties to mediation, or judicial settlement discussions, but I do not believe I have the authority to do that without the consent of all disputing parties.

Doug Haught
District Judge

I, Staci Hunter, Court Clerk for Custer County, Okla., hereby certify that the Foregoing is a true, correct and Complete copy of the instrument Herewith set out as appears of record in the Court Clerk's Office of Custer County, Okla. This 10 day of July, 2012

Staci Hunter
Court Clerk, Custer County

By _____ Deputy

IN THE DISTRICT COURT OF CUSTER COUNTY
STATE OF OKLAHOMA
COURTHOUSE
ARAPAHO, OKLAHOMA
Monday, June 21, 2012

FILED
DISTRICT COURT
Custer County, Okla.
JUN 21 2012
STACI HUNTER
COURT CLERK

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Plaintiff,

v.

FILED
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Doug Haught
District Judge

IN THE DISTRICT COURT OF CUSTER COUNTY, STATE OF OKLAHOMA

FIRST BANK & TRUST COMPANY

Plaintiff(s)

--vs--

THE CHEYENNE AND ARAPAHO TRIBES
JANICE PRAIRIE CHIEF-BOSWELL
IN HER REPRESENTATIVE CAPACITY IF ANY,
AS THE ALLEGED GOVERNOR OF THE CHEYENNE & ARAPAHO TRIBES
LESLIE WANDRIE-HARJO
IN HER REPRESENTATIVE CAPACITY IF ANY,
AS THE ALLEGED GOVERNOR OF THE CHEYENNE & ARAPAHO TRIBES

Defendant(s)

ADAM C HALL
SCOTT MEACHAM

Attorney(s) for Plaintiff(s)

FILED
DISTRICT COURT
Custer County, Okla.
SEP 17 2012
STACI HUNTER
COURT CLERK

Case No. CV-2011-00053

JEREMY D. OLIVER
MARTHA L. KING
KIMBERLY RICHEY
THOMAS S. IVESTER
CHARLES MORRIS

Attorney(s) for Defendant(s)

COURT ORDER/MINUTE

Date: 09-17-2012 Judge: DOUG HAUGHT

CM:DH/KG
PARTIES APPEAR FOR HEARING; WITNESSES SWORN AND EXAMINED; ARGUMENTS HEARD; MOTION FOR DISCRETIONARY STAY OVERRULED; PLAINTIFF'S APPLICATION TO CLOSE ACCOUNTS OVERRULED.

Doug Haught
JUDGE

EXHIBIT
C

Received
SEP 28 2012
Fredericks Peebles & Morgan

DISTRICT COURT CLERK
SEAL OF THE STATE OF OKLAHOMA
1907
CUSTER COUNTY, OKLAHOMA

I, Staci Hunter, Court Clerk for Custer County, Okla., hereby certify that the Foregoing is a true, correct and Complete copy of the instrument Herewith set out as appears of record in the Court Clerk's Office of Custer County, Okla. This 17th day of Sept 2012

Staci Hunter
Court Clerk, Custer County
By Betty Pritchard Deputy

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CNA v. First Bank

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