

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CURTIS WILSON, an individual,

Plaintiff,

vs.

UNITED STATES OF AMERICA, JOHN OR  
JANE DOE, Director of the Department of  
Licensing, a subdivision of the State of  
Washington, in his/her official capacity and the  
STATE OF WASHINGTON and HORTON'S  
TOWING, a Washington  
Corporation,

Defendants.

Case No: 2:15-cv-00629-JCC

MEMORANDUM IN OPPOSITION  
TO MOTION OF HORTON'S  
TOWING FOR SUMMARY  
JUDGMENT

THIS MEMORANDUM is submitted in opposition to the motion of Horton's  
Towing for an order on summary judgment of dismissal of plaintiff's claim for  
conversion.

Horton premises his argument that in support of its motion for summary judgment  
of dismissal on its contention that plaintiff cannot show that his truck was taken from  
Horton without lawful justification. The question presented is whether the service of

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Lummi Notice of Seizure upon Horton's was a lawful justification for its action in releasing plaintiff's truck to the Lummi Police Officer.

The factual portion of Horton's motion relevant here is found at page 3 lines 3 to 10 of its Motion for Summary Judgment where it is stated:

Plaintiff alleges that Horton's compliance with the Lummi Nation Notice of Seizure releasing the vehicle to Officer Gates, constituted the tort of conversion. Horton's disputes this contention because the alleged tortious actions including the tow of the vehicle (at the direction of the WSP) and complying with the official Notice of Seizure (issued by the Lummi Nation) were done pursuant to lawful authority. Under such circumstances claim for conversion cannot stand and dismissal is appropriate.

#### ARGUMENT

1. There is no legal basis for civil jurisdiction of forfeitures under the Lummi Code over non tribal members who violate the tribal code in its tribal court. Lummi Nation Officer Brandon Gates had no lawful authority to enforce the Lummi drug code against Curtis Wilson, a non tribal member, and his presentation of the Lummi Notice of Seizure was a nullity and provided no legal basis for Horton to release the 1999 Dodge Ram Pickup to Gates.

Wilson has already moved for summary judgment on this very issue arguing that Horton's and the United States are liable because Gates, acting as an Officer of the Lummi Nation, had no authority under federal or state law to exercise Lummi tribal jurisdiction over Wilson or his Pickup. Wilson repeats here the argument made in his summary judgment motion.

The legal question presented is whether a tribal court has jurisdiction over a non-tribal member to forfeit his automobile if the tribal prosecutorial authorities can establish

probable cause to believe that he has used his automobile to transport illegal drugs inside an Indian reservation. A secondary question could be whether the 1999 Ram Pickup was lawfully seized by Lummi Nation Officer Brandon Gates by his service of the Lummi Nation forfeiture process upon Horton's outside the territorial limits of the Lummi Nation.

Wilson contends that the forfeiture of his car for violation of the tribal criminal law is prohibited by *Oliphant v. Suquamish Indian Tribe* 98 S. Ct. 1011 (1978). In that case, the United States Supreme Court ruled that absent an express grant of authority by the Congress, tribal courts had no jurisdiction to prosecute non-tribal members for criminal acts committed on Indian reservations. Wilson reads the prohibition contained in the *Oliphant* case to apply to the tribal prosecution of quasi-criminal forfeitures against non-tribal members for the commission of criminal acts on Indian reservations. The ordinance passed by the Lummi tribe vesting authority in the tribal court is not sufficient, as an act of Congress would be required to vest the tribal courts with such jurisdiction.

Wilson understands that *Miner Electric, Inc. v. Muscogee (Creek) Nation* 464 F. Supp.2d 1130, N. D. Okla. (2006) 505 F3d 1007 (2007) was vacated by the 10<sup>th</sup> Circuit at 505 F.3d 1007 (2007). However plaintiff adopts as his position the district court opinion of District Judge H. Dale Cook. That is a scholarly opinion and a correct statement of federal law. The 10<sup>th</sup> circuit decision vacating the lower court was based upon the assertion by the Indian Tribe of its sovereignty, not that the reasoning of the district court

on whether the Indian tribe had subject matter jurisdiction to forfeit the non tribal member's automobile for violation of the tribe's drug laws was in error.

The nature of a forfeiture actions was commented upon by the Washington Supreme Court in *Deeter v. Smith* 106 Wn2d 376, 721 P.2d 519 (1986). In that case, the Washington Supreme Court described the forfeiture as follows:

In *One 1958 Plymouth Sedan v. Pennsylvania* 380 US 693, 85 S. Ct. 1246, 1250-51, 14 L.Ed.2d 170 (1965), the United States Supreme Court held that the Fourth Amendment exclusionary rule applies not only to criminal proceedings, but also to those forfeiture proceedings which are quasi-criminal in character. That case also indicated that a forfeiture proceeding is quasi-criminal if it is intended to impose a penalty on an individual for a violation of the criminal law.

It is incongruous to this counsel that Oliphant would prohibit a tribe from criminally prosecuting a non-tribal member for the commission of criminal acts on an Indian reservation and yet grant to the tribe the authority to punish a non-tribal member by confiscating his property for the commission of a criminal act. Unless there is express authority from Congress vesting this authority in the Indian tribes, such action is prohibited.

Such a result does not hamstring the tribe in protecting the integrity of its reservation. As here, the criminal charge was referred to the state authorities and so could the companion criminal forfeiture be pursued by the state authority or federal authority.

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Wilson contends that any argument based upon the inherent authority of the tribe based upon the so-called second exception of *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed2d 493 (1981) is foreclosed by the *Oliphant* decision.

The basis of the tribe's claim here is that its inherent authority power recognized in *Montana v. United States*, specifically the second exception. However, in all of the cases where Indian Tribes have sought civil jurisdiction over non tribal members in its tribal courts, it is always by consent, that is, persons contracting with the tribe, a circumstance not present here. So truly this case represents the claim by an Indian tribe, here the Lummi Nation, to have jurisdiction, civil in nature, in which a non Indian can be compelled to defend his financial interests in a tribal court when the accusation is made by a tribal prosecutor accusing the non tribal member of violation of the tribe's criminal code for actions taken on the Indian reservation.

All of the Supreme Court cases considering claims of civil jurisdiction before, *Strate v. A-1 Contractors*, 520 US 438 (1997), *Plains Commercial Bank v. Long Family Land and Cattle Company*, 128 S.Ct. 2709 (2008) have rejected the tribes' argument to recognize its jurisdiction civilly over non Indians. *Strate* is relevant because in that case the United States Supreme Court held tribal courts could not entertain a civil action against allegedly negligent driver and driver's employer, neither of whom was a member of tribe, absent a statute or treaty authorizing tribe to govern conduct of nonmembers on a highway inside an Indian reservation. That principle is true with respect to traffic on the Lummi Shore Road, which is a state road. The same should be true here. Again, in *Plains*

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Commercial Bank, the United States Supreme Court held that the tribal court did not have civil jurisdiction to entertain a discrimination claim against a bank, which was doing business on the reservation.

Wilson has commenced a civil case against Horton's for releasing his car to the Tribe and also the Department of Licensing to prevent the Department from changing title in the 1999 Dodge Ram Pickup and transferring title to the Tribe or anybody else. Wilson was entitled to obtain the return of his 1999 Pickup upon payment of tow fees and to pursue a hearing in court if he wished to contest the matter. Horton's was obligated to honor Wilson's rights under the Washington Impound statute. Horton's should have advised Lummi Nation Officer Gates that he would not honor the Lummi Nation seizure process. Horton's release of Wilson's truck renders Horton's liable as a matter of law.

2. Horton's had a duty to keep custody of the 1999 Ram Pickup and only allow the registered and legal owner to redeem the truck under state law and breached its duty by giving the truck away to an entity which had no right to seize or possess the truck.

CR 82.5 requires that to be enforceable in Washington State Courts, a tribal judgment must be filed with the Superior Court and the Superior Court must rule and determine as a matter of law that the tribal court had subject matter jurisdiction to enter the tribal judgment and had personal jurisdiction of the party affected. Obviously the Rule does not contemplate enforcement of tribal process such as seizure orders prior to judgment, at least in the eyes of Washington state law. Only after a tribal lawsuit has been reduced to judgment can the prevailing party hope to enforce the tribal court judgment in Washington State. In addition there is no federal court decision to the

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knowledge of plaintiff's counsel which allows seizure process from tribal court to "lawfully" attach or seize personal property outside the confines of the Indian reservation inside Washington State.

Conversion is rooted in the common law action of trover and occurs when a person intentionally interferes with chattel belonging to another, either by taking or unlawfully retaining it, thereby depriving the rightful owner of possession. *Daveport v. Wash. Educ. Ass'n*, 147 Wash. App. 704, 721-722, 197 P.3d 686 (2008) *Lang v. Hougan* 136 Wash. App. 708, 718, 150 P.3d 622 (2007). Rooted in the common law action of trover, that tort occurs when, without lawful justification, one willfully interferes with, and thereby deprives another of, the other's right to a chattel. It requires that the plaintiff have a possessory or other "property interest" in the chattel, *In re Marriage of Langham* 153 Wn2d 553, 564, 106 P.3d 212 (2005). Plaintiff meets the requirements because Horton gave away plaintiff's truck to an entity, which had no lawful authority to seize it.

#### CONCLUSION

For the above stated reasons, plaintiff respectfully requests that the court deny the motion of Horton's Towing of Summary Judgment Dismissing Plaintiff's claims against Horton's.

Dated this 11<sup>th</sup> day of February, 2016 at Bellingham, Washington

  
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WILLIAM JOHNSTON, WSBA 6113  
Attorney for Plaintiff CURTISS WILSON