

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

**DINE DEVELOPMENT CORPORATION
and NOVA CORPORATION**

Case No. 1:17-CV-00015

v.

ERIN FLETCHER

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Defendant Erin Fletcher ("I, me, myself") answers Plaintiffs', Dine Development Corporation ("DDC") and NOVA ("NOVA") Corporation, collectively referred to as the "Corporation" or "Plaintiff"

Application for Temporary Restraining Order:

1. Plaintiff has claimed they will suffer irreparable harm if I am allowed to proceed with my claim against Plaintiff's with the American Arbitration Association (AAA). No irreparable harm will be done as proceeding with the claim does not meet the definition of irreparable harm as explained by the D.C. circuit court: "First, the injury must be both certain and great; it must be actual and not theoretical. Injunctive relief 'will not be granted against something merely feared as liable to occur at some indefinite time.' It is also well settled that economic loss does not, in and of itself, constitute irreparable harm. . . . Implicit in each of these principles is the further requirement that the movant substantiate the claim that irreparable injury is 'likely' to occur. Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur. The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future." Thus, irreparable harm cannot come by proceeding to have my dispute heard before the AAA.

2. I will suffer irreparable harm if the Temporary Restraining Order is granted as it will prevent me from seeking a resolution to my dispute through the AAA, which is the method of resolution mandated upon me by the Plaintiff's.

3. The basis of the Plaintiff's Application for Temporary Restraining Order is to attempt to exceed the 60 day stay, which I agreed to, allowed for under the Employment Arbitration Rules and Mediation Procedures referenced in my previously submitted Response to Motion to Grant Preliminary Injunction. That 60 days has expired and, therefore, I should not be prevented from pursuing my case with the AAA.

4. The Plaintiffs' have claimed protection under sovereign immunity. Such immunity does not exist as supported by the U.S. Supreme Court's decision in *C & L Enterprises, Inc., v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001). The case centered on the impact of an arbitration agreement on a tribe's plea of suit. The court concluded that, "...under the agreement the Tribe proposed and signed, the Tribe clearly consented to arbitration and to the enforcement of arbitral awards in Oklahoma state court; the Tribe thereby waived its sovereign immunity from C & L's suit..." In her written opinion on the case J. Ginsburg stated the following:

"...This Court rejects the Tribe's contention that an arbitration clause is not a waiver of immunity from suit, but simply a waiver of the parties' rights to a court trial of contractual disputes. Under the clause, the Tribe recognizes, the parties must arbitrate. The clause no doubt memorializes the Tribe's commitment to adhere to the contract's dispute resolution regime. That regime has a real-world objective; it is not designed for regulation of a game lacking practical consequences. And to the real-world end, the contract specifically authorizes judicial enforcement of the resolution arrived at through arbitration. Also rejected is the Tribe's assertion that a form contract, designed principally for private parties who have no immunity to waive, cannot establish a clear waiver of tribal suit immunity. In appropriate cases, this Court applies the common-law rule of contract interpretation that a court should construe ambiguous language against the interest of the party that drafted it. That rule is inapposite here for two evident reasons. First, the contract is not ambiguous. Second, the Tribe did not find itself holding the short end of an adhesion contract stick: The Tribe proposed and prepared the contract; C & L foisted no form on the Tribe. Pp. 5-11.

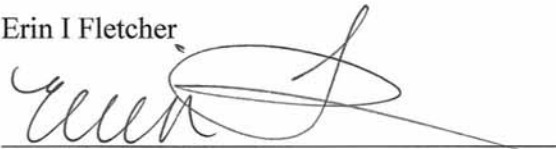
I find myself in the same situation as C & L in that I was required, as a condition of employment, to sign the arbitration agreement. By entering into the arbitration agreement, created and enforced by the Plaintiff's, they have waived sovereign immunity.

4. The Navajo Nation Arbitration Act § 1104 provides me with the right to seek relief through arbitration where an arbitration agreement exists. Such an agreement does exist as I was required to sign and agree to arbitration twice during the course of my employment with DDC & NOVA. Additionally, I complied with the jurisdictional preconditions of the Navajo Nation Sovereign Immunity Act set forth in 1 N.N.C. § 555 and the Navajo Nation Arbitration Act set forth in 11 N.N.C. §§ 1103 and 1111 by submitting my Notice of Intent to Initiate Arbitration against DDC & NOVA to the necessary offices of the Nation, evidence of which was provided as Exhibit D in my Answer to Complaint for Declaratory and Injunctive Relief. Therefore, sovereign immunity cannot be claimed as the Navajo Nation Arbitration Act supports my right to pursue such claims.

5. The Plaintiff's application for a Temporary Restraining Order against me is another vain attempt to prevent me from having the opportunity to have my case heard before the AAA. I pray to the court to block any further attempts by the Plaintiff's to prevent me from pursuing my claim with the AAA; let me have my day in court; allow me to have my case heard and then allow for a binding decision to be made through the channel enforced upon me by the Plaintiff's.

Respectfully submitted,

Erin I Fletcher

A handwritten signature in black ink, appearing to read 'Erin I Fletcher', written over a horizontal line.

Erin Fletcher
1933 Lindsay Drive
Taylorsville, UT 84129
Telephone: 801-558-8533
Email: efletcher193@gmail.com

CERTIFICATE OF SERVICE

I, Erin Fletcher, do hereby certify that a true and correct copy of my **DEFENDANT'S OPPOSITION TO PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER** has been furnished via email and sent via First Class Mail on March 9, 2017 to Plaintiff's counsel as follows:

Jeremy K. Harrison
Modrall Sperling
500 4th Street N.W., Suite 1000
Albuquerque, NM 87102

3/9/2017
Date


Erin Fletcher
1933 Lindsay Drive
Taylorsville, UT 84129
Telephone: 801-558-8533
Email: efletcher193@gmail.com