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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

LYNN D. BECKER Plaintiff, v. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, et al., Defendants, Counterclaim and Third-Party Plaintiffs, v. LYNN D. BECKER, et al., Counterclaim and Third-Party Defendants.	**BECKER'S OPPOSITION TO DEFENDANTS' MOTION FOR STAY PENDING APPEAL AND FOR WAIVER OF SUPERSEDEAS BOND** **Civil No. 2:16-cv-00958** **Judge Tena Campbell**

Plaintiff Lynn D. Becker requests that the Court deny Defendants' March 14, 2022 Motion for Waiver of Supersedeas Bond and to Stay Execution on Final Judgment ("Motion"). By the Motion, Defendants seek to stay execution on the February 11, 2022

Final Judgment ("Judgment") requiring Defendants to pay to Becker the principal amount of $236,392.75 and to pay Jurrius $93,879.50 in fees and costs that Becker incurred in responding to Defendants' intentional intimidation of a witness in this action.

A bond is required for a federal court to stay a final judgment unless the judgment debtor meets the "burden of demonstrating objectively that posting a full bond is impossible or impractical." *Farm Bureau Life Ins. Co. v. Am. Nat'l Ins. Co.,* 73 Fed. R. Serv. 3d 246, 2009 U.S. Dist. LEXIS 31333 (D. Utah April 8, 2009) ("*Farm Bureau*"). Two of the Defendants – the Uintah and Ouray Tribal Business Committee ("Business Committee") and Ute Energy Holdings, LLC ("Ute Energy") – have not even pretended to meet any burden. The other defendant, the Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe"), has done again what it has done so many times in the nine-year span of this action – filing motions and arguments to delay and multiply proceedings without citing apt legal authority or providing facts that actually support its arguments.

BACKGROUND

1. On January 7, 2019, John Jurrius testified in this Court pursuant to subpoena at the hearing on three questions that the Tenth Circuit had ordered this Court to consider. Jurrius also produced documents pursuant to the subpoena. Order dated March 31, 2021 ("Sanctions Order"), pp. 3 & 6, ¶¶ 2 & 11. ECF 260.

2. Just before Jurrius took the stand to testify, Jurrius' counsel expressed concern to the Court that the Tribe might view Jurrius' testimony as a breach of a 2009 settlement agreement between Jurrius and the Tribe ("2009 Settlement Agreement"). Sanctions Order, p. 6, ¶ 13. ECF 260.

3. The Court ordered the Tribe's counsel to assert at the hearing during Jurrius' testimony any privilege or other objection to Jurrius' testimony that the Tribe believed applied. The Tribe then asserted four objections to Jurrius' testimony at the hearing, and each objection was overruled. Sanctions Order, p. 6, ¶¶ 14-15. ECF 260.

4. Despite this, on January 15, 2019, the Tribe informed Jurrius that it claimed that his testifying and producing documents in this Court to be a breach of the 2009 Settlement Agreement. The Tribe brought an arbitration proceeding against Jurrius on these claims. Sanctions Order, pp. 7-12, ¶¶ 16-22. ECF 260; other cite.

5. On March 31, 2021, this Court found that the Tribe's actions against Jurrius constituted abuse of process; were done in retaliation for testifying at the hearing and/or to intimidate him from testifying in future proceedings in this action; and were done in bad faith, and were intentional, wanton, vexatious and "a sordid scheme of deliberate misuse of the judicial process." Sanctions Order, pp. 24-26. ECF 260.

6. The Court entered a sanctions order requiring the Defendants to pay the attorney fees that Becker and Jurrius had incurred in connection with the Defendants' abusive actions – $236,392.75 to Becker and Jurrius $93,879.50 (Jurrius sought to recover the remainder of his fees and costs in the arbitration). Order. ECF 297.

7. On August 15, 2021, the arbitration panel dismissed the Tribe's arbitration claims against Jurrius and awarded Jurrius $452,468.97 in attorney fees and costs. Jurrius then filed an action in Colorado state district court to convert the arbitration award to a court judgment. Under the Colorado rules, the process requires the commencement of a civil

action and service of a summons and complaint. Jurrius' Renewed Motion for Substituted Service p. 3 attached here as Exhibit A ("Jurrius Colorado Motion").

8. As the Jurrius Colorado Motion shows, more than three months after securing an arbitration award and filing the Colorado action, Jurrius had been unable even to effect service of process on the Tribe to begin collection of the award because of the shenanigans of the Tribe and its lawyers, Frances Bassett and Thomasina Real Bird (the same lawyers that represent the Tribe in this action and that represented the Tribe in the arbitration). These actions are a preview of the diversions that Becker is likely to face in trying to execute this Court's judgment against the Tribe if no bond were required now.

9. For example, tribal counsel Bassett and Real Bird refused to accept service of the papers needed to start the collection process even though they obviously had personal knowledge of the 2009 Settlement Agreement and the arbitration award and its terms. Jurrius Colorado Motion, pp. 2 & 6.

10. Chris Bertram, a retired police chief in Salt Lake County, professor of criminal justice and private investigator engaged to serve process on the Tribe in the Jurrius Colorado Action, was told by the Federal Bureau of Investigation, the Uintah County Sheriff and the Duchesne County Sheriff that the Tribe might charge him with a crime if he attempted to serve the process on the reservation without the Tribe's permission. Jurrius Arbitration Motion, pp. 2 & 6.

ARGUMENT

I. The Tribe Ignores Clearly Applicable Law

Judge Tena Campbell authored the controlling authority here – namely, *Farm Bureau Life Ins. Co. v. Am. Nat'l Ins. Co.,* 73 Fed. R. Serv. 3d 246, 2009 U.S. Dist. LEXIS 31333 (D. Utah April 8, 2009) ("*Farm Bureau")*. Judge Dale Kimball recently cited *Farm Bureau* at length with approval. *Advanced Recovery Sys., LLC v. Am. Agencies, LLC,* 2019 U.S. Dist. LEXIS 72683, *3 (Utah April 29, 2019). The Motion ignores these controlling authorities entirely, perhaps because these authorities are squarely against the Defendants' arguments.

Farm Bureau and Advance Recovery clearly require a bond here. These cases hold that, absent a showing of unusual circumstances, a court should not stay execution on a federal judgment pending appeal[1] unless the judgment debtor posts a supersedeas bond in an amount sufficient to cover the full judgment, including costs, interest and damages for delay. These cases are, of course, consistent with Tenth Circuit cases. E.g., *Olcott v. Delaware Flood Co.,* 76 F.3d 1538, 1559 (10th Cir. 1996) quoting *Grubb v. FDIC,* 833 F.2d 222, 226 (10th Cir. 1987) ("The purpose of requiring a supersedeas bond

1 In addition to a Rule 62(d) stay of execution pending appeal, Defendants also seek, apparently under Rule 62(b), a stay of execution pending resolution of their Rule 59(e) motion. Because Rule 62(b) stays pending resolution of Rule 59 motions are at least as restrictive as Rule 62(d) stays pending appeal, there is no need to analyze separately Defendants' Rule-59-based request for a stay here. *Peacock v. Thomas,* 516 U.S. 349, 359 n.8 (1996) ("[t]he district court may only stay execution of the judgment pending disposition of [Rule 59 motions]" with "proper" security); *Marland v. Asplundh Tree Expert Co.,* 2017 U.S. Dist. LEXIS 43470 n.3 (D. Utah March 23, 2017).

pending appeal 'is to secure the judgment throughout the appeal process against the possibility of the judgment debtor's insolvency'").

"The appellee should not have to undertake the risk that the appellant's financial situation will deteriorate while appellant's appeal is pending. The appellee won in the district court. In fairness it should be able to obtain immediate protection for the full amount that may ultimately be due if the appellant opts to withhold immediate payment while exercising its appellate rights." *Farm Bureau, supra,* quoting *N. River Ins. Co. v. Greater N.Y. Mut. Ins. Co.,* 895 F. Supp. 83, 84 (E.D. Pa. 1995).

"A court has discretion to waive or reduce the bond requirement only in unusual circumstances." *Advanced Recovery Sys., LLC v. Am. Agencies, LLC,* 2019 U.S. Dist. LEXIS 72683, *3 (Utah April 29, 2019).

This discretion is often informed by the following five factors, all of which confirm that a bond must be required here as a precondition of staying execution: "(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the appellant's ability to pay the judgment is 'so plain that the cost of a bond would be a waste of money'; and (5) whether the appellant is in such a precarious financial situation that the requirement to post a bond would place appellant's other creditors at risk." *Farm Bureau,* n.2.

II. The Tribe Has Not Provided Any Evidence of Inability to Pay for the Bond

Here, the Tribe has not shown any circumstance that would justify the waiver of a supersedeas bond. The Tribe's two main arguments are self-contradictory. The Tribe

argues (Motion p. 5), on the one hand, that a bond should be waived if the Tribe shows that it has the present and future ability to pay the judgment. On the other hand, the Tribe argues that a bond should be waived if posting the bond would cause the Tribe an undue financial burden. The Tribe fails to disclose which argument it is actually asserting. Whichever it is, the Tribe has not met its burden to satisfy either requirement.

The Tribe does not produce any fact suggesting that its inability-to-pay argument has any factual basis here. Where, as here, the Tribe is spending millions of dollars a year to defend this action, and hundreds of thousands of dollars to try to avoid paying Jurrius' six-figure arbitration award, the Tribe can hardly argue that the Judgment would cause the Tribe any financial hardship.

III. The Tribe Has Failed to Show that Any Funds Will Be Readily Available for Execution on the Judgment

The only support for the argument that the Tribe has the ability to pay the judgment in the future is Chairman Shaun Chapoose's gauzy statements that (1) the Tribe is located on the second-largest reservation in the Nation; (2) that the Tribe paid Jurrius $2.5 million 13 years ago under a settlement agreement between the Tribe and Jurrius; and (3) that the Tribe paid Becker nearly $17,000 per month for his services 15 years ago.

As to the first statement, Chapoose offers no evidence to support his argument that the size of the reservation matters. For example, the Tribe often proclaims that its vast lands make the Tribe "a major oil- and gas-producing tribe,"[2] but warns that numerous factors may "disrupt and delay economic development" of those resources.

2 "Indian Country Today" article attached as Exhibit B.

Chapoose simply provides no specific fact that meets the Tribe's burden of assuring the future availability of assets to pay the Judgment. His failure to provide any detail or reliable information about Tribal property available for execution on the Judgment shows an intent to hide assets, not to assure that assets will be available.

Chapoose's statements about payments the Tribe made to Jurrius and Becker more than a decade ago prove nothing about what assets the Tribe currently owns that would assure payment now or in the future. The Tribe has failed to satisfy its burden to prove that Becker and Jurrius are protected "for the full amount that may ultimately be due if the [Tribe] opts to withhold immediate payment while exercising its appellate rights." *Farm Bureau.*

IV. The Tribe Is Not a "Public Entity" in any Relevant Sense

The Tribe appears to argue that the Court should waive the bond because the Tribe is a "public entity" that has "establish[ed] that funds are readily available to satisfy the judgment…." Motion p. 5. As shown above, the Tribe has not advanced a single fact to prove that funds are or will be readily available to satisfy the judgment.

And the Tribe is not a "public entity" entitled to any special treatment here. The Tribe cites *Grubb v. FDIC,* 833 F.2d 222 (10th Cir. 1987) which held that the *United States* was not required to post a bond for appeal. This result is now dictated by Rule 62(e). The Tribe, of course, is not the United States.

The Tribe cites *Dillon v. Chicago,* 866 F.2d 902 (7th Cir. 1988)[3] to suggest that, because the City of Chicago as a public entity was allowed to appeal without a bond, the Tribe as a public entity should likewise not be required to post a bond. But the *Dillon* court did not excuse a bond by the City because the City was a public entity, but only because the City satisfied the rigorous five criteria that the Seventh Circuit weighed to justify the waiver of a bond. The court, for example, found that the City's appropriation of $484 million to the fund that would pay $115,359.59 backpay award plus $51,882.53 in costs and attorney fees "appear[ed] to be more than adequate."

As this litigation has demonstrated in so many ways, the Tribe repeatedly asserts that its status as an Indian tribe makes it *less* subject, not *more*, to the normal financial responsibilities shouldered by other commercial and public entities.

V. The Five *Farm Bureau-Dillon* Factors Require a Bond Here

Though the Tribe cites *Dillon,* the Tribe ignores the five *Dillon* factors that this Court has held in footnote 2 of *Farm Bureau* to be relevant here. All these factors weigh in favor of requiring a bond here.

As to the first factor – the complexity of the collection process – the Tribe has shown in the Jurrius arbitration related to this very action that the Tribe is likely to make the collection process as long and expensive and tortured as possible. The expense, harassment and delay that Jurrius and his counsel and agents have suffered to try to collect the arbitration award is complex, deplorable and emblematic. Paragraphs 8-10

3 As shown below, the Tribe ignores the pertinent fact that this very Court has cited *Dillon* for the five factors that should be considered here that the Tribe ignores.

above. Nothing suggests that the Tribe would be any less tenacious in trying to escape or delay enforcement of this Court's judgment against it than it has been to try to skirt the arbitration award.

The second factor – the amount of time likely to be required to enforce the judgment without a bond – is equally daunting. The Tribe's history in this action suggests that there will be no limit to the resources and time the Tribe would invest to delay enforcement of the Judgment.

As to the third and fourth factors – the ability to pay the judgment and the availability of funds to satisfy the judgment – the Tribe has not pointed to a single asset or fund that could assure payment.

As to the fifth factor -- whether the Tribe is in such a precarious financial situation that the requirement to post a bond here would place the Tribe's other creditors at risk – the Tribe has not even hinted that this circumstance exists or weighs in favor of a stay of execution without a bond.

In sum, the Tribe has failed to meet its burden of demonstrating objectively that posting a full bond is impossible or impractical or that the factors pertinent to the presumptive requirement to post a bond for a stay of execution justify foregoing the bond here.

CONCLUSION

Plaintiff Lynn Becker respectfully requests that the Court require the Tribe to post a bond pending appeal underwritten by a bona fide bond entity sufficient to assure

payment of the principal amount of $236,392.75 to Becker and $93,879.50 to Jurrius required by the Judgment, together with costs, interest and damages for delay.

DATED: March 28, 2022

ISOM LAW FIRM PLLC

/s/ David K. Isom
David K. Isom
Attorney for Defendant Lynn D. Becker

CERTIFICATE OF SERVICE

The undersigned certifies that on this 28th day of March, 2022, the foregoing was served upon all parties by serving their counsel of record through the Court's electronic filing system.

/s/ David K. Isom