UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

METROPOLITAN LIFE INSURANCE COMPANY and TRINET HR XI, Inc., Plaintiffs, v. DURIN MUNDAHL, Individually, and as the Personal Representative of the Estate of Joye M. Braun, and MORGAN BRINGS PLENTY, Individually, Defendants.	Civ. No.:24-cv-3029 **DEFENDANTS' DURIN MUNDAHL, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOYE M. BRAUN, AND MORGAN BRINGS PLENTY'S REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STAY OR DISMISS**

COME NOW, Defendants Durin Mundahl, Morgan Brings Plenty and the Estate, by and through their counsel of record, Robin Zephier, and, these Defendants submit their joint Reply to Plaintiffs' Response In Opposition to Defendants' Motion for Stay, or, for Dismissal, and in further support of Defendants' joint Motion to Stay, or Dismiss, state the following:

The Defendants preliminarily observe that the Plaintiffs' characterize Defendant's Motion to Stay as "cursory," and "procedurally improper" and "substantively unsupported." (Doc. 31, p. 1). The Plaintiffs' arguments, however, fail to recognize the interrelationship between Defendants' Motion to Stay and the Defendants' Response in Opposition to Plaintiffs' injunctive relief. Both the Motion to Stay and Defendants' Response were filed "concurrently." The Motion to Stay "incorporated Defendants' Response in Opposition, affidavits and the filed documentary exhibits, as well as Defendants' arguments and authorities in the Response in

opposition." *Def's Motion to Stay Br. at 2*. Further, Defendants suggested that, "in lieu of a stay, the Court dismiss Plaintiffs' action without prejudice." *Id*.

As the Court will recall, the Defendants' filed a Response in opposition to the preliminary injunction sought by Plaintiffs. The brief supporting the Defendants' position was submitted near the 30-page limit of this Court's Local Rules. *See DSD LR 7.1.B.1.* ("Briefs must not exceed 30 pages…"). Contrary to the Plaintiffs' representations, the Defendants' Motion to Stay is amply supported by the evidence, documentary exhibits, 23 statements of uncontroverted fact, affidavits, pleadings and arguments Defendants made to both the Cheyenne River Sioux Tribal Court and to this Court. The Plaintiffs were apprised *in Defendants' Respo*nse that the Motion To Stay was filed, "concurrently with Defendants' Response," Defendants' Response Br. at 18-19; *see also Defendants' Br. at I.B*. (*"*This Court is requested to order the stay of these proceedings; if not the dismissal of the Plaintiffs' Complaint and their Motion for Preliminary Injunction;" *Br. at 18-19*). To their collective error, the Motion to Stay, and the incorporated Defendants' Response cites plenary legal authority, including case law authority from this Court, which satisfies Defendant's burden for requesting a motion to stay, as well as for dismissal of the injunctive relief sought by Plaintiffs in this Court. As argued by Defendants, this Court should first allow these proceedings to exhaust themselves in the Cheyenne River Sioux Tribal Court, where they were first instituted before the captioned proceedings.

In short, the Plaintiffs must allow the Cheyenne River Sioux Tribal Court, which originally asserted jurisdiction, to hear the case. The Plaintiffs filing for injunctive relief is, in essence, an impermissible *de facto* removal action from the Tribal Court. Furthermore, the Plaintiffs are unable to meet the equitable prerequisites for injunctive relief, as they have not done equity, the Plaintiffs possess unclean hands and have an adequate remedy at law which is

through the Tribal Court. Plaintiffs must first exhaust their tribal remedies, before seeking equitable relief through this Court.

Arguments and Authorities

I. Civil Jurisdiction Over the Activities of Non-Indians on Reservation Lands Presumptively Lies in the Cheyenne River Sioux Tribal Court, Thereby Supporting the Defendants' Request to Stay or Dismiss the Federal Action

A. This Court's Exercise of Jurisdiction Over Matters Relating To Reservation Affairs As Sought By Plaintiffs Would Irreparably Impair the Authority of the Cheyenne River Sioux Tribal Court

The Plaintiffs' initiation of the present federal action, in direct response to Defendants' Tribal Court proceedings, threatens Cheyenne River Sioux tribal self-governance, and operates to impair the Tribal Court's authority. The Defendants separately supported the motion to stay or dismiss by submitting authorities which establish the mandatory, compelling nature of first exhausting tribal remedies before invoking equity and extraordinary relief. The Plaintiffs' federal action precludes development of tribal court authority; thereby ignoring the burdens of access to the Cheyenne River Sioux Tribe and its reservation by non-members.

Because the Supreme Court and the Eighth Circuit have "repeatedly emphasized that tribal courts play a 'vital role' in tribal self-governance," and that "because a federal court's exercise of jurisdiction over matters relating to reservation affairs can impair the authority of tribal courts, as a matter of comity, the examination of tribal sovereignty and jurisdiction should be conducted *in the first instance* by the tribal court itself." *Prescott v. Little Six, Inc*., 897 F.Supp. 1217, 1222 (U.S.D.C. Minn. 1995), quoting *Duncan Energy Co. v. Three Affiliated Tribes,* 27 F.3d 1294, 1299 (8th Cir.1994) (citing *National Farmers Union Ins. Cos. v. Crow Tribe of Indians,* 471 U.S. 845, 856, 105 S.Ct. 2447, 2453–54, 85 L.Ed.2d 818 (1985)), *cert. denied,* —— U.S. ——, 115 S.Ct. 779, 130 L.Ed.2d 673 (1995). *Duncan Energy* and *National*

Farmers Union held that exhaustion of tribal court remedies was required "*before* a case may be considered by a federal district court." *Duncan Energy,* 27 F.3d at 1300. (Emphasis provided). The 10th Circuit held these cases established an " 'inflexible bar' to the federal courts' [consideration of an action]….which may not be waived by the parties." *Smith v. Moffett*, 947 F.2d 442, 445 (10th Cir.1991). The 9th Circuit characterized exhaustion of tribal remedies as "mandatory." *Crawford v. Genuine Parts Co*., 947 F.2d 1405, 1407 (9th 1991).

It is undisputed that the Plaintiffs have not attempted to exhaust their tribal remedies. Defendants' motion to stay or dismiss seeks to prevent irreparable impairment of Cheyenne River Sioux Tribal Court authority. The Plaintiffs entered into a consensual relationship with the decedent, a member of the Cheyenne River Tribe residing on the reservation, accepted the financial benefits of the relationship and now must submit this dispute to the authority of the Tribal Court "in the first instance." *Montana v. United States*, 450 U.S. 544, 565-66.

B. Compelling Legal Authorities Require Exhaustion of Tribal Court Remedies Prior To Federal Action

Defendants' motion to stay or dismiss is further supported by authorities already raised in Defendants' briefing, and supplemented herein. The Defendants assert that various federal courts addressing the issue raised by Defendants' briefing have observed that, "[c]ivil jurisdiction over the activities of non-Indians on reservation lands is an important part of tribal sovereignty that presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or by federal statute." *Prescott v. Little Six, Inc*., 897 F.Supp. 1217, 1221 (U.S.D.C., D. Minn. 1995), citing *Iowa Mutual Ins. Co. v. La Plante,* 480 U.S. 9, 18, 107 S.Ct. 971, 977–78, 94 L.Ed.2d 10 (1987). The exhaustion requirement applies in both diversity and federal question cases. *Iowa Mutual,* 480 U.S. at 16, 107 S.Ct. at 976.

The *Prescott* case, utilizing both Supreme Court and 8th Circuit decisions, dismissed the federal action. The Court held that the federal district court did not have exclusive jurisdiction to determine whether ERISA plans were valid, and was required to abstain from exercising jurisdiction pending exhaustion of tribal court remedies. *Id*., at 1221-22. Similarly, in *Geroux v. Assurant, Inc.,* 2010 U.S. District LEXIS 2487 (U.S.D.C. W.D. MI, N.D. 2010), the District Court granted a motion to remand the federal case back to the tribal court, observing, in part, that, "[u]ntil the preliminary issue of ERISA status is decided, [plaintiff] may not seek the exclusive federal protections available to an ERISA plan." *Geroux*, *Id*., at * 17, quoting, *International Assoc. Of Entrepreneurs of Americas v. Angoff*, 58 F. 3d 1266, 1269 (8th Cir. 1995) *reh'g denied*, 1995 U.S. App. LEXIS 21047 (Aug, 4, 1995). *See also Koopman v. Forest County Potawatomi Member Benefit Plan*, 2006 WL 1785769 (E.D. Wis.2006) (Defendant's motion to stay or dismiss granted, stating, in part, "this case presents a paradigmatic opportunity to defer to the tribal court,"). *Id*., at *3. *Tail v. Prudential Ins. Co. of Am*., 915 F.Supp. 153, 155 (U.S.D.C. D.N.D. 1995)("this court would allow the tribal court an opportunity to determine the scope of its jurisdictional powers as a matter of comity.") (Citations omitted).

Although proceedings were originally filed in the Cheyenne River Sioux Tribal Court, leading to Plaintiffs initiating injunctive relief in this case, the issue whether tribal proceedings actually preceded Plaintiffs' federal action is not relevant to determining whether exhaustion will be required. *Crawford v. Genuine Parts Co.,* 947 F.2d at 1407 (9th Cir.1991), *cert. denied,* 502 U.S. 1096, 112 S.Ct. 1174, 117 L.Ed.2d 419 (1992).

The cases cited by Defendants arguably exhibit that *Prescott*, *Geroux*, *Koopman* and *Tail*, among others, are not outliers. They exist as a support for the legal principle that Tribal Courts

should be allowed to determine the scope of their jurisdictional powers. The Cheyenne River Sioux Tribal Court should be allowed to do so in this matter.

C. This Court Does Not Possess Exclusive Jurisdiction To Determine Whether An ERISA Plan Exists Or Whether Benefits Were Wrongfully Denied

The 8th Circuit has held that, "ERISA nowhere makes federal courts the exclusive forum for deciding the ERISA status *vel non* of a plan or fiduciary. *International Assoc. Of Entrepreneurs of Americas v. Angoff*, 58 F. 3d 1266, 1269 (8th Cir. 1995), *reh'g denied*, 1995 U.S. App. LEXIS 21047 (Aug, 4, 1995). The Defendants' cited cases support that legal principle. *See Prescott*, *Id*., 897 F.Supp. at 1222; *Geroux*, *Id*., at *17. The *Geroux* court, citing *Prescott*, *Id*. at 1222, found that, "ERISA does not expressly bar the tribal court from considering whether [defendant's] benefit plans are valid ERISA plans. Defendants assert that because ERISA is silent on the matter of the power to declare ERISA status, the Cheyenne River Sioux Tribal Court has the power, in the first instance, to determine whether an ERISA plan exists and whether benefits were wrongfully denied.

D. Plaintiffs Fail To Allege That Exhaustion Is Inapplicable Or Otherwise Futile Because Of A Desire To Harass, Bad Faith Conduct Or Plaintiffs" Lack Adequate Opportunity To Challenge This Court's Jurisdiction

The Defendants submit that tribal exhaustion compels this Court to grant a stay or dismissal pursuant to FRCP 41(a)(2), without prejudice. The Plaintiffs have not met their burden to establish that tribal exhaustion is inapplicable. Furthermore, the Plaintiffs do not complain that tribal exhaustion is the product of Defendants; a desire to harass the Plaintiffs, that Defendants have acted in bad faith or Plaintiffs have not had adequate opportunity to challenge this Court's jurisdiction. Consequently, this Court should order dismissal of the present action under FRCP 41(a)(2), without prejudice. In the alternative, this Court should abstain from proceeding, or issue an indeterminate stay of these proceedings.

WHEREFORE, the Defendants request that the Plaintiff's Motion for Preliminary Injunction (Doc. # 13) be denied, their Complaint (Doc.# 1) be dismissed, without prejudice, under FRCP 41(a)(2) and Defendants' separate motion for Motion for Stay or Dismissal, filed concurrently with Defendants' Response, be likewise granted for the above reasons as this Court finds just, equitable and reasonable.

DATED this 18th day of August, 2025.

ZEPHIER & LAFLEUR, P.C.

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