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U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

<p>Lynn D. Becker,</p> <p>Plaintiff,</p> <p>vs.</p> <p>Ute Indian Tribe of the Uintah and Ouray Reservation, a federally recognized Indian tribe; the Uintah and Ouray Tribal Business Committee, and Ute Energy Holdings, LLC, a Delaware LLC,</p> <p>Defendants</p>	<p>Becker's Opposition to Motion to Dismiss</p> <p>Civil No. 2:25-cv-00643-DAK</p> <p>Judge: Dale A. Kimball</p>
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Plaintiff Lynn Becker requests that the Tribe's¹ Motion to Dismiss ("Motion") be denied for the following reasons.

I. The Tribal Court Has Ruled that it Lacks Jurisdiction Over Becker's Claims and Dismissed Becker's Claims

Defendants' pivotal position is demonstrably wrong. They say that Becker's claim that "all parties now agree, and the tribal court has now held that tribal court jurisdiction

¹ As in the Verified Complaint, this memorandum refers to the defendants – the Nation, the Business Committee and Ute Energy Holdings – as "defendants" or the "Tribe."

over Becker's claims is expressly prohibited" is "patently false." Motion p. 12. But Becker's claim is patently true.

In his Verified Complaint, Becker showed that the Tribe agreed in its February 26, 2018 memorandum that "Becker's claims against the Tribe have been destroyed by §1-2-3(5) Accordingly, this Court should enter an order dismissing all of Becker's counterclaims." ECF 2 at ¶ 56. Becker further showed that "[m]ore than six years later ... the tribal court finally ruled that, because of Section 1-2-3(5), the tribal court lacks jurisdiction of Becker's counterclaims...." ECF 2 at ¶ 58. The tribal court therefore dismissed Becker's counterclaims with prejudice based upon the jurisdictional prohibition of Section 1-2-3(5). ECF 2 at ¶ 59.

The fact that the tribal court took six years – from 2018 when all parties agreed that the tribal court lacked jurisdiction of Becker's claims through 2024 – does not change the fact that in the tribal court all parties agreed and the tribal court ultimately ruled that the tribal court lacks jurisdiction of Becker's claims and therefore dismissed all of Becker's claims.

II. Becker's Exhaustion Claims Are Correct

Correcting this pivotal falsehood guts the Tribe's exhaustion claims. Because all parties agreed and the tribal court held that it lacks jurisdiction of Becker's claims, Becker has shown both sides of the same coin -- that the jurisdictional exception to any tribal court exhaustion duty abrogates any exhaustion duty and that he has fully exhausted his tribal court remedies. Since all parties agreed with Judge Pechota's ruling and with the judgment that the tribal court lacks jurisdiction of Becker's claims, no appeal of the dismissal of Becker's claims is possible or required.

The Tribe's exhaustion argument refutes itself. The Tribe argues that Becker "can (and *must* per direction from the *Becker II* and *III* mandates) appeal any decisions he disagrees with in the [tribal] trial court to the tribal appellate court. If still unsatisfied, he may appeal the Tribal Court's upholding of its jurisdiction in [Federal] District Court." *Becker III* at 1150. Motion p. 13. The point is that Becker agrees with the tribal court's judgment that the tribal court lacks jurisdiction of his claims so there is nothing about his claims to appeal to the tribal appellate court.

The Tribe continues to do what the tribal court did for years – ignore the distinction between tribal court jurisdiction over the Tribe's claims against Becker, on the one hand, and Becker's claims against the Tribe on the other hand. The Tribe argues that "Section 1-2-3(5) ... was ruled on multiple occasions in the Tribal Court in favor of Tribal Defendants...." Motion p. 12. It is true that the tribal court ruled beginning in February 2018 that it had jurisdiction over the Tribes's claims against Becker. But the statement of Becker that the Tribe challenges is clearly limited to Becker's claims against the Tribe: "all parties now agree, and the tribal court has now held that tribal court jurisdiction over Becker's claims is expressly prohibited" by Section 1-2-3(5). (Emphasis added.) The Tribe's denial of this statement is just plain wrong.

Becker agrees with the second part of the Tribe's argument – namely the Tribe's concession that after exhaustion this Court has jurisdiction to review the tribal court proceedings. Motion p. 13.

Thus, Becker has fully exhausted his claims against the Tribe and the Tribe's exhaustion arguments fail. As the Tenth Circuit directed, it is now time for this Court to adjudicate this dispute.

III. All of the Tribe's Arguments Are Factual Attacks, Not Facial

The Tribe correctly argues that a Rule 12(b)(1) facial attack upon this Court's jurisdiction is confined to the allegations within the four corners of the Verified Complaint and that a factual attack is one that includes any fact beyond the four corners of the Verified Complaint. Though the Tribe asserts that some of its challenges are facial attacks, they are all factual attacks because all Rule 12(b)(1) attacks rely upon facts outside of the Verified Complaint.

For example, Defendants base their jurisdictional attacks on their false factual premise that Becker has not exhausted his tribal court claims. Defendants argue, for example, that because of failure of exhaustion, this action is not ripe (Motion p. 10), this action is precluded by res judicata (Motion pp. 13 & 14), there is no case or controversy (Motion p. 15), a declaratory judgment is not available (Motion p. 15), and this Court lacks federal question jurisdiction (Motion pp. 17 & 18). These arguments are non-starters because the starting factual premise – that the tribal court has jurisdiction of Becker's claims – is wrong.

IV. Defendants' Other Factual Assertions Are Untrue and Unsupported

Defendants make other factual assertions. But facts supporting a factual attack must be real facts, such as facts supported by "affidavits, other documents [or] a limited evidentiary hearing...." See *Rural Water Dist. 2 v. City of Glenpool*, 698 F.3d 1270 n. 1 (10th Cir. 2012); *Tri-Cities Restoration LLC v. ERC Specialists, LLC*, 2025 U.S. Dist. LEXIS 140277 *8 (D. Utah, July 22, 2025).

Defendants' Motion is based upon unsupported factual assertions that cannot be considered in a Rule 12(b)(1) factual attack.

For example, defendants argue without support that "[t]he issues raised in the Complaint have already been litigated and lost three times in the Tenth Circuit Court of Appeals." Motion p. 3. For support, they cite only three Tenth Circuit opinions from 2014, 2017 and 2021. They do not explain what issues in the Verified Complaint are the same issues that Becker lost in those appeals. They simply are not the same. For example, many of the important facts in this action occurred after the dates of these opinions such as the Tribe's and the tribal court's bad faith and the tribal court's 2024 ruling that it lacked jurisdiction. These issues therefore could not have been addressed in these three Tenth Circuit opinions.

Other examples:

- The Tribe asserts that Holdings is wholly owned by the Nation and that the Nation intended that Holdings would have sovereign immunity (Motion p. 23). This is belied by Section 18.9 of the Holdings Operating Agreement (attached here as Exhibit A) which provides that Holdings "waives any sovereign immunity it may have by reason of the character of its Members or otherwise."
- Defendants claim that they have not acted in bad faith (Motion p. 12). The Verified Complaint shows extensive evidence of bad faith, but defendants do not offer a stick of evidence to counter the evidence of their bad faith.

Factual attacks under Rule 12(b)(1) require real, supported facts. These factual assertions are neither real nor supported.

V. Becker Has Served All Defendants

Defendants acknowledge that the summons and Verified Complaint were served upon Holdings (see ECF 28) but argue that neither the Nation nor the Business Committee has been served. Becker has now filed certificates of service that show that the Nation and the Business Committee have also been served. ECF 30 & 31. This Court therefore has personal jurisdiction over all defendants.

VI. This Court Is Not Bound by the Tribal Court's Rulings

Defendants argue, based upon the tribal court's rulings, that there has been no waiver of sovereign immunity because the tribal court held the Tribe's waiver of sovereign immunity in the Agreement was void (Motion pp. 10 & 20) and that the Nation is an indispensable party that cannot be joined because of sovereign immunity. Motion p. 20. Ergo, the defendants argue, this action must be dismissed pursuant to Rule 19.

But this Court is not bound by these rulings of the tribal court. In part, this is because the tribal court lacked jurisdiction to make those determinations and because the whole purpose of the review by this Court of the tribal court proceedings that the Tenth Circuit has directed it to determine whether the tribal court's rulings were correct.

In *Ute Indian Tribe v. Lawrence*, 312 F. Supp 3d 1219, 1225, 1240-44 (D. Utah 2018), this Court held that the tribal court's rulings at issue there (and still at issue here) were not entitled to preclusion for numerous reasons, including that the tribal court lacked jurisdiction, that this Court has independent authority to evaluate and reverse tribal court rulings, and that upon review of the February 28, 2018 opinion of Judge Pechota "this court has ample doubts about the quality, extensiveness, or fairness of the procedures followed by the Tribal Court." *Id.* at 1241.

In that opinion, this Court also recognized that the Tribe had agreed that the tribal court's rulings could have no preclusive effect if the tribal court lacked jurisdiction. *Id.* at 1240. Thus, even the Tribe recognized that the tribal court's rulings had no preclusive effect if, as the parties have agreed and the tribal court has now ruled, the tribal court lacked jurisdiction of Becker's claims.

VII. Defendants' Rule 12(b)(6) Motion Should Be Denied

The Motion's conclusion (ECF 19, p. 25) seeks dismissal under Rule 12(b)(6) for failure to state a claim. Dismissal under Rule 12(b)(6) is required only if the Verified Complaint, viewed in the light most favorable to plaintiff, lacks enough facts to state a claim for relief that is plausible on its face. E.g., *Erc Specialists, LLC v. Boring Co.*, 2025 U.S. Dist. LEXIS 168411 *3 (D. Utah, Aug. 28, 2025). The Court must take as true all well-pleaded facts, view all reasonable facts in favor of the non-moving party and liberally construe the complaint. *Id.*²

Defendants' only Rule 12(b)(6) claim is that Becker has not alleged that Holdings is a party to the Agreement or that Holdings caused Becker harm. The Verified Complaint defines all three defendants, including Holdings, as the "Tribe." ECF 2, ¶¶ 7-11. The Verified Complaint alleges that the Tribe – defined to include the Nation, the Business Committee and Holdings, proximately caused injury to Becker. E.g., ECF 2, ¶¶ 159, 160 & 163.

² Though, as shown above, Becker does not discern that the Tribe has made a Rule 12(b)(1) facial attack, such an attack would be governed by the same standard as governs a Rule 12(b)(6) motion. *Muscogee Nation v. Okla. Tax Comm'n*, 611 F.3d 1222, 1227 n.1 (10th Cir. 2010).

The Agreement, attached to the Verified Complaint as Exhibit 1, defines the tribal parties to the Agreement as “the Ute Indian Tribe ... and its subsidiaries and affiliates....” ECF 4-1, Preamble. Becker claims that Holdings was an affiliate of the Ute Nation that was included as a party to the Agreement. Though the Verified Complaint does not expressly aver that Holdings was an affiliate of the Nation, it does allege that Holdings breached the Agreement and thereby damaged Becker. ECF 2, ¶¶ 151-160. Viewed in the light most favorable to Becker, he has alleged that Holdings is a party to the Agreement.

CONCLUSION

Plaintiff Lynn Becker respectfully requests that defendants’ Motion to Dismiss be denied.

Date: September 30, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 30th day of September, 2025, the foregoing was served by ECF upon the following attorneys for defendants:

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/s/ David K. Isom
