## IN THE SUPREME COURT OF THE NAVAJONATION COURT

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NEPTUNE LEASING, INC.,	) NAVAJO HATIGU
Plaintiff/Appellant, vs.	) ) ) Supreme Court No. <u>SC-CV-24-10</u>
MOUNTAIN STATES PETROLEUM CORPORATION and NACOGDOCHES OIL AND GAS, INC.,	) District Court No. SR-CV-088-09-CV )
Defendants/Appellees.	) ) )

### **NOTICE OF APPEAL**

Pursuant to Rule 7, N.R.C.A.P., Appellant Neptune Leasing, Inc. ("Appellant") hereby gives notice that Appellant appeals to the Supreme Court of the Navajo Nation from the final Order to Dismiss entered by the Shiprock District Court of the Navajo Nation on March 26, 2010. A certified copy of the Order to Dismiss is attached hereto as Exhibit A.

SUTIN, THAYER & BROWNE A Professional Corporation

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I hereby certify that a true and correct copy of the foregoing pleading was sent by first class mail to:

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I further certify that a true and correct copy of the foregoing pleading was sent by overnight delivery to:

Shiprock District Court Highway 491 and Highway 64 Next to Police Department Shiprock, New Mexico 87420

on the 22<sup>nd</sup> day of April 2010.

SUTIN, THAYER & BROWNE A Professional Corporation

Christian S. SVest

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# DISTRICT COURT OF THE NAVAJO NATION JUDICIAL DISTRICT OF SHIPROCK, NEW MEXICO

NEPTUNE LEASING, INC,	) No. SR-CV-088-09-CV
Plaintiff,	ORDER TO DISMISS
v.	)
MOUNTAIN STATES PETROLEUM	) ·
CORP. and NACOGDOCHES OIL AND	)
GAS, INC.,	
Defendants.	)

A hearing was held on October 1, 2009, in the above captioned matter concerning whether the Navajo Nation has jurisdiction over this case. Based upon the arguments presented at the hearing and the pleadings filed on the matter, the Court finds that it does not have personal jurisdiction over Mountain States Corporation. In order to properly examine this matter it is necessary to have all three parties participate in this matter. Therefore, the court will DISMISS this case. The Court further explains its reasoning below:

#### **FACTS**

1. On March 31, 2009, Neptune Leasing, Inc. (hereinafter "Neptune" or "Plaintiff") filed its Complaint for Repossession, Conversion, and Unjust Enrichment/Breach of Diné Bi Beenahaz'áanii against Mountain States Petroleum Corporation (hereinafter "Mountain States" or "Defendant 1") and Nacogdoches Oil and Gas, Inc. (hereinafter "Nacogdoches" or "Defendant 2").



- 2. On May 18, 2009, Nacogdoches files its Answer to the complaint. The Defenses raised that the Navajo Nation (1) lacks subject matter jurisdiction, and (2) lacks personal jurisdiction over Nacogdoches.
- 3. On May 26, 2009, Neptune filed a Motion for Entry of Default, Default Judgment, and Notice of Default against Mountain States Answer to the complaint. The Defenses raised (1) Failure to state a claim which relief can be granted, (2) the Navajo Nation lacks subject matter jurisdiction, and (3) the Navajo Nation lacks personal jurisdiction over Mountain States.
  - 4. On June 04, 2009, Mountain States filed a Response to Plaintiff's Motion for Entry of Default.
  - 5. On June 24, 2009, Neptune filed its Reply to Mountain States' Response to Motion for Entry of Default.
  - 6. On September 22, 2009, Defendants, Nocogdoches Oil and Gas, Inc. (hereinafter "Nocogdoches" or "Defendant") filed a motion to Dismiss for Failure to State a Claim upon which Relief May Be Granted and For Failure to Join an Indispensible Party.
  - 7. On September 24, 2010, Neptune Leasing, Inc. (hereinafter "Neptune" or "Plaintiff") filed its brief on Jurisdiction.
  - 8. October 1, 2009, a hearing was held on this Court's jurisdiction over the matter and parties. At the hearing the Court requested that the Navajo Nation Department of Justice file its position as an indispensable party.
  - 9. On November 19, 2010, the Navajo Nation Department of Justice filed its Position Statement.

#### DISCUSSION

The major issue in this matter is the jurisdiction question. Whether the Navajo Nation has jurisdiction over this matter? All three parties are non-Indian entities. The Navajo Nation Supreme Court has recognized that the Treaty of 1868 has given the Navajo Nation authority over non-Indian parties in civil matters when the cause of action is within the boarders of the Navajo Nation. Ford Motor Co. v. Kayenta District Court, Slip op., No. SC-CV-33-07 (Nav. Sup. Crt. Dec. 18, 2008) (Ford was subjected to the jurisdiction of the Navajo Nation because it entered into a contract to supply the Nation with 360 vehicles for government use. A Navajo Nation police officer was killed due to an alleged defective vehicle purchased from the sales contract.) However, the Navajo Nation Supreme Court also addressed the "minimum contacts" test established by the United States Supreme Court in the Montana v. U.S., 450 U.S. 544 (1981) (The two prong test for civil jurisdiction over non-Indian entity; (1) a consensual relationship exists, and (2) if action(s) of the non-Indian entity threatens either the political integrity, economic safety, or the health or welfare of the tribe). Id. at 564-66. The Navajo Nation Supreme Court did mention that the Montana test was not the test to utilize for conclusion of jurisdiction because the test was created for non-Indian parties doing business or having association with the tribe on fee lands within tribal lands, and there was not a question of the death of the officer being on fee land.

In this case, the helium plant is located on the Navajo Nation and not fee lands within the Navajo Nation. The Navajo Nation does have exclusive jurisdiction over property being repossessed on the Navajo Nation. 7 N.N.C. § 254; See Navajo Nation Council Resolution No. CF-26-68 (February 7, 1968); Also see Reservation Business

Services v. Albert, 7 Nav. R. 123 (Nav. Sup. Ct. March 16, 1995). The Navajo Nation does not allow for "self-help" repossession, as does the Uniform Commercial Code, "where the creditor has a general right to repossess secured property without notice to the debtor when the creditor determines the purchase agreement is broken." Id. at 124. The Navajo Nation requires that the creditor get written consent from the debtor before repossessing property, or a court order permitting repossession. Id. The Navajo Nation requires this "to prevent violence and breach of the peace in repossession of personal property." Id.

Since the helium plant is located on the Navajo Nation and the Nation does have jurisdiction over property to be repossessed on its land, it appears that the Navajo Nation Court does have subject matter jurisdiction over this case. However, both Defendants have argued that Navajo Nation does not have subject matter jurisdiction because (1) the contracts in question of breach have specifically stated the venue for suit would be brought in the state of Texas and the Texas Laws would apply; (2) There is a case pending in the Texas court on the same matter. See Defendant Mountain State's Response to Plaintiff's Motion for Entry of Default, filed June 4, 2009 at 3.

Plaintiff did acknowledge to the Court that there is a pending case in the Texas Court. However, Plaintiff claims there is not a claim for repossession in the Texas court and the Navajo Nation has the exclusive jurisdiction over repossession. The Court agrees with Plaintiff that the Navajo Nation Courts has exclusive jurisdiction over the action of repossession; meaning, any property to be repossessed within the Navajo Nation shall come before the Navajo Nation Courts for an order granting the action of repossession. However, a foreign order for repossession can be domesticated in the Navajo courts. So

the state of Texas can hear the case and if the conclusion is breach of contract and finds rights for repossession in order to recover debt, the Plaintiff can file that final order from Texas to be recognized by the Navajo Nation. Once the foreign order is domesticated repossession could proceed.

Because there is already an on going case on the same cause of action the Navajo Nation will yield jurisdiction to the Texas court to hear the matter of breach of contract and failure to pay promissory note.

#### PERSONAL JURISDICTION

Even if subject matter jurisdiction is established, the question whether the Navajo Nation court has personal jurisdiction over all the parties is not evident.

This Court concludes that it does have personal jurisdiction over Nocogdoches because of its business dealings, and Neptune has consented to the jurisdiction of the Navajo Nation Court. Conversely, Mountain States has not acquiesced to the jurisdiction of the Navajo Nation court. For repossession relief, Neptune would have to present and argue the merits of its original contract with Mountain State. See Rule 4 ("In all cases where the right to repossess personal property is regulated by a contract, the court shall apply the terms of that contract …"). Nocogdoches would also have to argue its contract with Mountain State.

The Court does not have personal jurisdiction over Mountain State. Mountain State is a New Mexico Corporation and is not filed as a foreign Corporation with the Navajo Nation, and it is not evident it has contacts, business or otherwise with the Navajo Nation. In fact Navajo Nation Department of Justice in its Position Statement stated that the Navajo Nation does not have any business contracts or dealings in place with

Mountain State. Since it has not been proven to this Court that Mountain State has any contacts with the Navajo Nation, substantial enough to establish personal jurisdiction, this court concludes it does not have personal jurisdiction over Mountain State. See Position Statement of Navajo Nation Department of Justice Regarding Issue Raised in Nacogdoches' Motion to Dismiss filed November 19, 2009 at 3.

It appears that the Texas Court has both subject matter and personal jurisdiction over the parties in order to properly examine and decide on this matter.

#### CONCLUSION

In order to properly examine this matter, all three parties and both contracts would have to be considered. Since this Court lacks personal jurisdiction over Mountain State, proper relief maybe limited. The Texas court having personal jurisdiction over all three parties and subject matter jurisdiction would be the more appropriate venue. Once the matter is concluded and if breach of contract is determined, Plaintiff can file to domesticate the Texas court's final order in the Navajo court in order to proceed with repossession.

IT IS THEREFORE ORDERED this matter will be DISMISSED for lack of jurisdiction. All pending motions are vacated.

SO ORDERED this 26th day of March 2010.

I HEREBY CERTIFY THAT THIS IS A
TRUE AND CORRECT COPY OF THE
INSTRUMENT ON FILE IN THE
COURTS OF THE NAVAJO NATION.

CLERK, COURTS OF THE NAVAJO NATION

Frial Court Judge of the Navajo Nation

Calendared for the By:
Date:
Suite Thouse & Howers

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