

IN THE SUPREME COURT OF THE NAVAJO NATION

FILED  
SUPREME COURT

2013 FEB 22 PM 3:50

NEPTUNE LEASING, INC., )  
)  
Plaintiff/Appellant, )  
vs. )  
)  
MOUNTAIN STATES PETROLEUM )  
CORPORATION and NACOGDOCHES OIL )  
AND GAS, INC., )  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

Supreme Court No. SC-CV-24-10 NAVAJO NATION

District Court No. SR-CV-088-09-CV

**APPELLANT'S SUPPLEMENTAL BRIEF**

On Appeal from the Shiprock District Court

Honorable Genevieve Woody  
District Court Judge  
SR-CV-088-09-CV

SUTIN, THAYER & BROWNE  
A Professional Corporation  
Christina S. West  
Attorneys for Appellants  
Post Office Box 1945  
Albuquerque, New Mexico 87103  
Telephone: (505) 883-2500  
Facsimile: (505) 888-6565

2673830.doc

**TABLE OF CONTENTS**

BACKGROUND ..... 1  
    A. Introduction..... 1  
ARGUMENT ..... 2  
    I. Preliminary Issue of Neptune’s position on status of Collateral..... 2  
    II. Issue One: The interests of the Navajo Nation would not be protected in a Texas  
    Court if the matter proceeded in Texas..... 3  
    III. Issue Two: If the Collateral included real property, a Texas court would not have  
    jurisdiction. .... 6  
    III. Issue Three: It is unlikely that a Navajo Court would give comity to a Texas order  
    for repossession..... 7  
RELIEF ..... 8

## TABLE OF CITATIONS

### **Navajo Supreme Court Cases**

<i>Bradley v. Lake Powell Medical Center</i> , No SC-CV-55-05.....	7
<i>Nelson v. Basin Motor Company</i> , 6 Nav. R. 399, 400 (Nav. S. Ct. 1991).....	5
<i>Reservation Business Services v. Albert</i> , No. SC-CV-05-94.....	5
<i>Russell v. Donaldson</i> , 3 Nav. R. 209 (1982).....	5

### **Rules**

25 U.S.C. § 177.....	5
5A N.N.C. § 1-101.....	4
5A N.N.C. § 9-501(D).....	2
5A N.N.C. §§ 9-501-107.....	8
Navajo Nation Business Site Leasing Act of 2000, 2 N.N.C. §724 and 5 N.N.C. §§2301-2306...	5
Navajo Nation Rules of Repossession Proceedings.....	8
Navajo Nation Trust Land Leasing Act, 25 U.S.C. §415(c).....	5

### **United States Supreme Court Cases**

<i>Montana v. United States</i> , 440 U.S. 544, 557 (1981).....	4
<i>Rice v. Olson</i> , 324 U.S. 786, 789 (1945).....	5, 6, 7
<i>United States v. Santa Fe Pac. R. Co.</i> , 314 U.S. 339 (1941).....	5
<i>White Mountain Apache Tribe v. Bracker</i> , 448 U.S. 136, 142-143 (1980).....	4
<i>Williams v. Lee</i> , 358 U.S. 217, 220 (1959).....	4
<i>Worcester v. Georgia</i> , 31 U.S. 515, 562-563 (1832).....	5, 7

### **United States Courts of Appeals Cases**

<i>Babbit Ford, Inc. v. Navajo Indian Tribe</i> , 720 F.2d 587 (9 <sup>th</sup> Cir. 1983).....	4
<i>Enterprise Management Consultants, Inc. v. Hodel</i> , 883 F.2d 890, 894 (10 <sup>th</sup> Cir. 1989).....	5

### **State Court Cases**

<i>Chischilly v. GMAC</i> , 96 N.M. 264, 266, 629 P.2d 340, 342 (Ct. App. 1980).....	5
--	---

## **BACKGROUND**

### **A. Introduction**

In the lower action, Neptune filed a complaint on November 8, 2008 against Defendants/Appellees Mountain States Petroleum Corporation (“Mountain States”) and Nacogdoches Oil & Gas, Inc. (“Nacogdoches”). Neptune alleged that it sold the assets of a helium plant as personal property to Mountain States, maintaining a security interest in the assets of the plant (the “Collateral”) to secure repayment of an obligation. Neptune alleged that Mountain States then wrongfully sold the Collateral to Nacogdoches without Neptune’s consent. The Collateral at issue is located on trust land subject to a Navajo business site lease in San Juan County, New Mexico, within the territorial boundaries of the Navajo Nation. Neptune’s complaint contained two requests for relief: repossession of the Collateral and monetary damages for wrongful possession of the Collateral under the common conversion/traditional law claims.

Mountain States then filed a motion to dismiss the Complaint based on its assertion that a Texas court had jurisdiction. After the affected parties briefed the motion, the District Court held a preliminary hearing on August 19, 2009, at which Mountain States failed to appear.<sup>1</sup> The District Court requested additional briefing and then held a hearing on Mountain States’ motion to dismiss on October 1, 2009. Mountain States again failed to appear.<sup>2</sup> The Shiprock District Court then denied the Motion to Dismiss filed by Mountain States, and ruled that it had both subject matter and personal jurisdiction over the parties and the claims. Then, on March 26, 2010, the Court *sua sponte* issued an Order to Dismiss, without setting aside the previous order and dismissing the case based on lack of personal jurisdiction over Mountain States. On April 27, 2010, Appellant/Plaintiff Neptune Leasing, Inc. (“Neptune” or “Appellant”) filed its notice of

---

<sup>1</sup> Shortly after filing its motion to dismiss, the attorney for Mountain State withdrew. Since the withdrawal, Mountain States has failed to participate in any litigation, including this appeal.

<sup>2</sup> At this hearing, Nacogdoches asserted that the district court had jurisdiction in this matter. After the court’s *sua sponte* order of dismissal, Nacogdoches has reversed its position without explanation.

appeal, appealing the Shiprock District Court's Order to Dismiss and arguing that the Navajo Nation had jurisdiction to hear the dispute. Initial briefing was completed in 2010. Now, the Navajo Nation Supreme Court has requested supplemental and amicus briefing on three issues described below.

## **ARGUMENT**

### **I. Preliminary Issue of Neptune's position on status of Collateral**

Neptune has consistently asserted in both the lower tribunal and in this Court that the Collateral is not real property and is personal property.<sup>3</sup> Appellant's Reply Brief, p. 5. Neptune continues to assert that even if the property at issue was personalty, not real property, that the Navajo Nation has concurrent personal jurisdiction over the parties in this matter and exclusive subject matter jurisdiction of these claims. Even if all parties in this case are non-Indian entities, the Navajo Nation has the power to regulate non-Indian conduct on a business site lease on tribal land. Also, the Court has personal jurisdiction over the parties because the parties were clearly doing business in the Navajo Nation and had commercial relationships with the Navajo Nation at the time the action occurred. The Navajo Nation has subject matter jurisdiction over this matter because the Nation has the exclusive right to decide who can enter its reservation and determine the manner in which collateral is repossessed, even if the party is non-Indian. Texas lacks subject matter jurisdiction and cannot decide the manner of repossession when the repossession does not occur within the Texas borders. Therefore, Navajo jurisdiction is exclusive even if the property at issue is not real property.<sup>4</sup>

However, the Order for Amicus & Supplemental Briefing indicates that the "record suggests that the Navajo Nation may have the equivalent of a 'reversion' interest in the subject

---

<sup>3</sup> Also as stated in Neptune's reply brief, the district court has not made a final ruling on whether the property at issue is real or personal property. Therefore, the issue cannot be decided by this Court.

<sup>4</sup> Neptune also notes that 5A N.N.C. § 9-501(D) allows a creditor to proceed as to both the real property and the personal property if the security agreement covers both types of property. Even if some of the property were affixed, Neptune could still proceed with its claim.

matter of the litigation being sought to be repossessed, pursuant to both Federal law and Navajo Nation law pertaining to leaseholds on Federal Indian trust land.” Neptune infers that the Court’s request for supplemental briefing is based on the assumption that the property at issue is, or may be, real property based on Nacogdoches’s assertions about the same.<sup>5</sup> The questions asked do not concern whether the Navajo Nation is an indispensable party *per se*, but what affect the possible reversion interest of the Navajo Nation would have on the jurisdiction.

Neptune asserts that the Navajo Nation has the power to regulate business that occurs on its trust land even if the parties are not members and regardless of whether the collateral is personalty or real property. However to comply with the Order for Amicus and Supplemental Briefing and answer the questions raised and without waiving its argument, Neptune will assume that the property at issue is real property for argument’s sake.

**II. Issue One: The interests of the Navajo Nation would not be protected in a Texas Court if the matter proceeded in Texas.**

The first issue proposed by the Navajo Nation Supreme Court is to explain how the interest of the Navajo Nation would be protected and how Navajo Nation laws would be brought to the attention of the adjudicating court, if this matter were to proceed in a Texas court<sup>6</sup> without Navajo Nation participation. Those interests would not be protected, and Navajo law would not be addressed in a Texas court.

As previously argued in the initial briefing, Neptune asserts that the Navajo Nation has exclusive jurisdiction. A tribe has a right to regulate nonmembers in activities occurring on land

---

<sup>5</sup> Ironically, Nacogdoches asserts the property at issue “may be” real property, but denies that the Navajo Nation has jurisdiction. Nacogdoches argues that because the property at issue is real property, the Navajo Nation is an indispensable party. Nacogdoches argues that the complaint must therefore be dismissed because the Navajo Nation could not be joined because of sovereign immunity. However, the Navajo Nation, through the Navajo Nation Department of Justice, asserted in the district court that it was not an indispensable party and Nacogdoches’s argument failed. Also, Nacogdoches did not appeal the district court’s denial of its motion to dismiss and the issue of whether the Navajo Nation is an indispensable party is not on appeal.

<sup>6</sup> The district court indicates that jurisdiction would be yielded to an existing Texas litigation. Neptune is aware that multiple Texas lawsuits involving these parties and other parties previously existed. However, none of that litigation is currently active. Neptune does not believe that such litigation could be easily revived and assumes that a new lawsuit would have to be filed.

belonging to the tribe. *Montana v. United States*, 440 U.S. 544, 557 (1981). There is no question that the Collateral is located on tribal lands and that Navajo Nation has the authority to regulate repossessions by nonmembers occurring on a business site lease. The manner of effectuating repossession of property upon lands subject to the jurisdiction of a tribe such as the Navajo Nation has been found to be an “internal affair” of the tribal government that concerns the maintenance of public peace and safety. *Babbit Ford, Inc. v. Navajo Indian Tribe*, 720 F.2d 587 (9<sup>th</sup> Cir. 1983). As this is an internal affair, the Navajo Nation has jurisdiction. *Id.*

Texas does not have jurisdiction over this matter. The United States Supreme Court has made clear that there are two independent, but related, barriers to the assertion of state authority over nonmembers within Indian country in instances such as these.<sup>7</sup> The exercise of tribal authority may be pre-empted by federal law, and state law only applies to nonmembers in Indian country if the state law does not infringe on the right of reservation Indians to make their own laws and be ruled by them. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-143 (1980) and *Williams v. Lee*, 358 U.S. 217, 220 (1959). There is no federal law indicating how property should be repossessed on tribal lands. State law regulating the conduct of parties doing business on a tribal business site lease would infringe on the rights of the tribe. The Navajo Nation has clearly regulated repossession by adopting a version of the Uniform Commercial Code and by adopting the Navajo Nation Rules of Repossession. 5A N.N.C. § 1-101, et. al. A Texas court would not have the subject matter jurisdiction to enforce Navajo laws as the occurrence is not happening in Texas and such regulation would infringe on the Navajo Nation.

Courts have specifically found that allowing states to regulate repossession of property occurring on tribal lands would unlawfully infringe on tribal authority. *Russell v. Donaldson*, 3

---

<sup>7</sup> Neptune has not brought a breach of contract claim, but the claim for right of possession is based in part on Mountain State’s breach of a security agreement contained in a purchase and sale agreement and note. Although the purchase and sale agreement contains a provision by which the parties agree that Texas has jurisdiction, the same provision does not limit jurisdiction and venue exclusively to Texas. Complaint, Tab 1, Exhibit 1, ¶10(d). Even if it did, such a provision would be unenforceable in these circumstances.

Nav. R. 209 (1982) and *Chischilly v. GMAC*, 96 N.M. 264, 266, 629 P.2d 340, 342 (Ct. App. 1980). Repossessions within the Navajo Nation must come from a Navajo district court, not a state court. *Nelson v. Basin Motor Company*, 6 Nav. R. 399, 400 (Nav. S. Ct. 1991). The Navajo Nation Council declared the purpose of the repossession law is “to prevent violent and breach of the peace in the repossession of personal property.” *Reservation Business Services v. Albert*, No. SC-CV-05-94, citing Resolution No. CJN-53-69 (June 4, 2969), Preamble at § 5. The Navajo Nation has the exclusive subject matter jurisdiction over the repossession of property, and yielding to the Texas court is improper. The Texas court simply does not have the authority to order repossession of the Collateral based on its location on the Navajo Nation.

Assuming for arguments sake, that the property at issue is real property, then the Navajo Nation would have to be included as a party. *Enterprise Management Consultants, Inc. v. Hodel*, 883 F.2d 890, 894 (10<sup>th</sup> Cir. 1989). It appears that Nacogdoches had, or has, the right to possess the land because of a business site lease. It could be argued that if the property at issue were real property, that Neptune is either trying to take over Nacogdoches’s interest in the business site lease or is attempting to take ownership of the underlying property. Clearly any attempt to extinguish Indian title and convert trust land would fail, as tribal title can be extinguished only by an express and unambiguous act of Congress. 25 U.S.C. § 177 and *United States v. Santa Fe Pac. R. Co.*, 314 U.S. 339 (1941). Any attempt to transfer an interest in a business site lease would have to be approved by the Navajo Nation under the Navajo Nation Trust Land Leasing Act, 25 U.S.C. §415(c) and the Navajo Nation Business Site Leasing Act of 2000, 2 N.N.C. §724 and 5 N.N.C. §§2301-2306. Again, a Texas court would not have subject matter jurisdiction over these issues, and would not have personal jurisdiction over the Navajo Nation. *Worcester v. Georgia*, 31 U.S. 515, 562-563 (1832) and *Rice v. Olson*, 324 U.S. 786, 789 (1945). A state court would have no jurisdiction over matters concerning the possession federal trust land

outside the boundaries of the state, as it is deeply rooted in the federal law that Indians would be free from state jurisdiction and control. *Id.* State law is not applicable to Indian affairs within the territory of an Indian tribe, absent the consent of Congress. *Id.*

**III. Issue Two: If the Collateral included real property, a Texas court would not have jurisdiction.**

The second issue posed by the Navajo Nation Supreme Court is to explain whether any interest in assets located on the business site lease would revert to the Navajo Nation if present negotiations over the expired operating agreement and business site lease between the Navajo Nation and Nacogdoches failed, and the effect the same would have on Texas litigation. Neptune again asserts the property at issue is personalty and that the Navajo Nation does not have a reversion interest in the same. However if the Navajo Nation did have a reversion interest in real property, it would be even clearer that the Texas court did not have jurisdiction. Texas does not have personal jurisdiction over the Navajo Nation and the dispute is even more clearly an internal matter of the Navajo Nation.

Whether there is a reversion is controlled by contract. Neptune is not party to these leases, and discovery was merely beginning before the Shiprock District Court entered its dismissal. As such, Neptune does not have the necessary information to analyze if a reversion interest exists, and it is an issue of fact that should be determined by the lower tribunal.

Nonetheless, Neptune would note that Nacogdoches attached a 1974 Business Site Lease and several production lease agreements to its motion to dismiss. Tab 20, Exhibit B. The business site lease is executed between Western Helium Corporation and the Navajo Nation. Paragraph 8 of the lease provides that “all structural alterations, improvements, additions, machinery or fixtures installed after the execution of this lease may be removed by the Leasee at its option on the expiration or termination of this lease or any renewal thereof within ninety (90) days after such termination or expiration.” Tab 20, Exhibit B, p. 10-11. If the same is not

removed within the ninety (90) days, then it becomes the property of the lessor. *Id.* Paragraph 9 of the Oil and Gas Mining Leases appear to assert the same. Tab 20, Exhibit C-1, p. 7. However, it is unclear if Nacogdoches was assigned these leases, when the lease terminated or expired, and if amendments to the agreements were made. As such, Neptune cannot properly analyze if the property reverted to the Navajo Nation, and this would be an issue of fact appropriate for the district court.

If the district court did find that the Nation has a reversion interest in the property, a Texas court would not have jurisdiction over the subject matter of the action, because the issue would be who is the proper holder of the business site lease or termination of tribal title. *Worcester v. Georgia*, 31 U.S. 515, 562-563 (1832) and *Rice v. Olson*, 324 U.S. 786, 789 (1945). A state court does not have jurisdiction over matters concerning the possession federal trust land, as it is deeply rooted in the federal law that Indians would be free from state jurisdiction and control. *Id.* State law is not applicable to Indian affairs within the territory of an Indian tribe, absent the consent of Congress. *Id.* As such, jurisdiction should remain with the Navajo Nation.

**III. Issue Three: It is unlikely that a Navajo Court would give comity to a Texas order for repossession.**

The third issue posed by the Navajo Nation Supreme Court is to explain how a repossession order from a Texas Court may be enforced pursuant to Navajo Nation law or federal law concerning assets located on Navajo trust land and in which the Navajo Nation may have an interest.

The Navajo Nation Supreme Court has indicated that there are three considerations in deciding whether to grant comity to a state decision: 1) the right of the separate sovereign tribunal to issue the judgment, 2) the propriety of the proceeding, and 3) any relevant public policy of the Navajo Nation. *Bradley v. Lake Powell Medical Center*, No SC-CV-55-05. One cannot speculate about the propriety of the proceeding at this point. However, whether Texas

has the right to issue judgment is clearly questionable. A Texas court would not have subject matter jurisdiction to issue an order of repossession occurring outside the state of Texas. If the property was found to be permanently affixed to trust land, then Texas would have also have no personal jurisdiction over the Navajo Nation and would not have the right to issue judgment against the Nation. Under these circumstances, a Navajo district court would likely not give comity to a Texas court decision because it lacked the power to issue the judgment. It would be a waste of time and judicial efficiency.

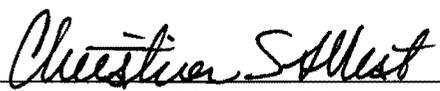
If comity was given, it is unclear what procedure would be followed as replevin is a possessory action based in both statute and court procedure. 5A N.N.C. §§ 9-501-107 and Navajo Nation Rules of Repossession Proceedings. See also, *Reservation Business Services* at section III. It could be argued that the Rules for Repossession Proceedings would have to be followed as an enforcement mechanism, but Nacogdoches has argued that this procedure is inapplicable in commercial matters. See, Nacogdoches' Response to Motion to Proceed with Repossession, Tab. 20. If Nacogdoches's argument prevailed, there would be no applicable Navajo procedure, and Texas procedure would have to be followed. Therefore, Navajo procedure and law would not be followed, and the Navajo court would have to defer to the Texas order. Regardless, it would be likely that a Navajo Court would refuse to grant comity as Texas lacks subject matter jurisdiction over repossession and personal jurisdiction over the Navajo Nation and domestication of such a judgment would be improper.

**RELIEF**

For all of the foregoing reasons, Neptune respectfully requests this Court find that jurisdiction is proper in the Shiprock District Court.

Respectfully Submitted:

SUTIN, THAYER & BROWNE  
A Professional Corporation

By   
Christina S. West

Attorneys for Appellants  
Post Office Box 1945  
Albuquerque, New Mexico 87103  
Telephone: (505) 883-2500  
Facsimile: (505) 888-6565  
2673830.doc