

IN THE SUPREME COURT OF THE NAVAJO NATION

FILED
SUPREME COURT

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

2010 JUN 21 AM 10:25

Supreme Court No. SC-CV-24-10

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

APPELLANTS' OPENING BRIEF

On Appeal from the Shiprock District Court

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

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STATEMENT OF THE CASE

Despite a somewhat convoluted procedural history, this appeal stems from a dismissal based on lack of personal jurisdiction over one of the Defendants. The lower action involves a dispute between Appellant/Plaintiff Neptune Leasing, Inc. (“Neptune” or “Appellant”), Defendant/Appellee Mountain States Petroleum Corporation (“Mountain States”), and Defendant Nacogdoches Oil & Gas, Inc. (“Nacogdoches”). Neptune alleges it sold the assets of a helium plant to Mountain States, but maintained a security interest in the assets of the plant (the “Collateral”). Mountain States then allegedly sold the Collateral to Nacogdoches without Neptune’s consent. The helium plant at issue is located in San Juan County, New Mexico, on Navajo trust land within the territorial boundaries of the Navajo Nation. Neptune filed its Complaint on November 8, 2008, alleging that Mountain States breached its contract with Neptune and that Mountain States wrongfully has possession of the collateral. The Complaint seeks to repossess the Collateral and seeks monetary damages for wrongful possession under various common law claims, but not under the contract.

Mountain States filed a Motion to Dismiss the Complaint based on its assertion that a Texas court had jurisdiction. After the affected parties briefed the jurisdictional issue, the District Court held a preliminary hearing on August 19, 2009, at which Mountain States failed to appear. The District Court requested additional briefing and then held a hearing on Mountain States’ Motion to Dismiss on October 1, 2009, and Mountain States again failed to appear. 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 the case based on lack of personal jurisdiction over Mountain States.

This appeal of the District Court’s Order to Dismiss timely followed.

STATEMENT OF FACTS

Appellant's references to the record in its Statement of Facts are to the index numbers contained in the Record of Appeal filed by the Shiprock District court on May 21, 2010.

1. Neptune is a Texas Corporation with a principal place of business in Amarillo, Texas. Index 1, Complaint for Repossession, Conversion, And Unjust Enrichment/Breach of Dine' Bi Beenahaz' aani' ("Complaint"), ¶1.

2. Mountain States is a New Mexico Corporation with a principal place of business in Farmington, New Mexico. *Id.* at ¶2; and Index 10, *Mountain States' Answer*, ¶2.

3. Nacogdoches is a Texas Corporation with a principal place of business in Rockwall, Texas. Index 1, *Complaint*, ¶3; and Index 6, *Nacogdoches' Answer* 3.

4. Neptune, alleges that on November 17, 2006, Mountain States purchased the assets of a helium-bearing gas processing plant from Neptune. Index 1, *Complaint* at Ex. 1 Sect. 2, Ex.2. The helium plant at issue is located in San Juan County, New Mexico within the Navajo Reservation. *Id.* at Ex. 1; Index 27, *Nacogdoches Jurisdictional Brief*.

5. Neptune alleges that as part of the purchase, Mountain States agreed to pay Neptune through installment payments over a number of years. Index 1, *Complaint* at Ex. 2. Neptune alleges that, to secure Mountain States' payments, Mountain States gave Neptune a security interest in the physical and intangible assets of the plant (the "Collateral"), as evidenced by a Security Agreement dated November 17, 2006 (the "Security Agreement"). *Id.* at Ex. 3.

6. Neptune alleges that Mountain States entered into an agreement with Nacogdoches for the purchase and sale of the Collateral on August 31, 2007. Index 1, *Complaint*, ¶10; and Index 20, *Nacogdoches Response to Motion to Proceed with Repossession* at Ex. A, Sect. 4.

7. Neptune alleges that Mountain States breached the Security Agreement by attempting to sell the collateral without Neptune's consent and by failing to make payments. Index 1, *Complaint*.

8. Mountain States was in possession of the Collateral within the boundaries of the Navajo Reservation from November 17, 2006 (date of original Purchase Agreement) until the sale of assets to Nacogdoches on August 31, 2007 (date of Purchase Agreement with Nacogdoches).

9. The Navajo Nation allows Nacogdoches to utilize the Collateral in its current location on Navajo land while negotiations continue on a lease and operating agreement. Index 37, *Position Statement of Navajo Nation Department of Justice* at page 2, ¶ 2.

Procedural History

10. On March 19, 2009, Neptune filed its Complaint in the Shiprock District Court against Mountain States and Nacogdoches. Index 1, *Complaint*. The purpose of the Complaint was to recover the Collateral located on the Navajo Nation. *Id.*

11. Appellee Nacogdoches filed an answer to the complaint on May 15, 2009. Index 4, *Answer to Complaint*.

12. Appellee Mountain States failed to file a response to the complaint by April 30, 2009, the response deadline. Neptune then filed a Motion for Entry of Default, Default Judgment, and Notice of Default against Mountain States on May 21, 2009. Index 7, *Motion for Entry of Default, Default Judgment, And Notice of Default*. On June 2, 2009, Mountain States filed an Answer.

13. Mountain States replied to Neptune's Motion for Entry of Default, Default Judgment, and Notice of Default on June 4, 2009, and filed a Motion for Sanctions and a Motion to Dismiss. Mountain States' Motion to Dismiss is based on the Texas lawsuit that Mountain States argues deprives the Navajo Courts of jurisdiction. Index 12, *Defendant Mountain States' Response*

to *Plaintiff's Motion for Entry of Default*. The Court denied Neptune's Motion for Entry of Default, Default Judgment, and Notice of Default against Mountain States on July 2, 2009 and set a preliminary hearing for August 19, 2009 to determine whether the court had jurisdiction over the parties and the dispute, and to examine the motions raised by Mountain States. Index 14, *Order Denying Motion for Default Judgment, Order for Preliminary Hearing*.

14. On July 6, 2009, counsel for Mountain States filed a Motion to Withdraw as Counsel. Index 16, *Motion for Withdraw*. The Court granted Mountain States' Motion to Withdraw on July 8, 2009, and stated that Mountain States had 10 days to retain new counsel or would be deemed pro se. No substitute counsel has entered an appearance on behalf of Mountain States, and no pleadings have been filed by Mountain States since the July 8, 2009 withdrawal of counsel. Index 17, *Order on Motion for Withdraw*.

15. Neptune filed a Motion to Proceed with Repossession on July 20, 2009. Index 19, *Motion to Proceed*. In response to Neptune's Motion, Nacogdoches filed a rule 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted. Index 20, *Nacogdoches Response to Motion to Proceed and Motion to Dismiss* at page 6. Nacogdoches also filed a rule 12(b)(7) Motion For Failure to Join an Indispensible Person, stating that Neptune failed to join the Navajo Nation as a party necessary for adjudication. *Id* at page 2.

16. Mountain States failed to appear at the preliminary hearing on August 19, 2009 regarding jurisdiction and the issues it raised in its Motion. Index 47, *Transcript of August 19, 2010 Hearing* at page 1. An additional hearing was scheduled for October 1, 2009 to re-examine the jurisdictional issue raised by Mountain States. Index 26, *Notice of Hearing* at page 1.

17. On August 27, 2009, Neptune filed a Reply in Support of Motion to Proceed with Repossession and Response to Motion to Dismiss. Index 24, *Plaintiff's Reply to Defendant Nacogdoches*.

18. Mountain States again failed to appear on October 1, 2009 for the scheduled hearing regarding its Motion to Dismiss, Motion for Sanctions, and jurisdictional challenge. Index 48, *Transcript of October 01, 2010 Hearing* at page 1. The Motions were denied, and the Court concluded that it had subject matter and personal jurisdiction over the parties and claims. *Id.* at page 22; Index 32, *Order Denying Mountain States' Motion to Dismiss* at page 2. The Court issued a deadline of November 2, 2009 for The Navajo Department of Justice to file a position statement regarding to the issues raised in Nacogdoches' Motion to Dismiss for Failure to Join an Indispensible Person. *Id.* The Navajo Department of Justice stated on November 11, 2009, in its position statement, that the Navajo Nation is not an indispensable party to the proceedings and need not be joined as a party to Neptune's action. Index 37, *Position Statement of Navajo Nation Department of Justice* at page 7.

19. Neptune served discovery requests on Mountain States and Nacogdoches. Index 39, *Certificate of Service of Plaintiff's First Set of Interrogatories*. No responses were filed or have been received from Mountain States.

20. The Shiprock District Court entered an Order to Dismiss the case based on jurisdictional grounds on March 26, 2010. Index 43, *Order to Dismiss by Judge Woody*. The District Court determined it had no personal jurisdiction over Mountain States and concluded it would defer to the Texas District Court regarding Neptune's claim for repossession. *Id.* at page 6.

21. This appeal from the District Court's decision timely followed.

STATEMENT OF ISSUES PRESENTED

1. Whether the Navajo Nation has jurisdiction to adjudicate this dispute.

ARGUMENT

I. Scope and Standard of Review

The Supreme Court should review issues of law *de novo*. *Navajo Housing Authority v. Clark*, No. SC-CV-53-05, slip op. at ¶ 18 (Nav. Sup. Ct. 2006); *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at ¶ 18 (Nav. Sup. Ct. 2005).

II. Introduction

The central issue on appeal involves jurisdiction over the parties to this case. Appellants assert that the March 26, 2010 Order to Dismiss issued by the Shiprock District Court was improper and that the District Court had jurisdiction over the subject matter and the parties. In its Order to Dismiss, the Shiprock District Court finds that it has subject matter jurisdiction over all the parties, but that it does not have personal jurisdiction over one of the defendants – Mountain States. The dismissal was in error for three reasons: 1) the record shows that Mountain States did business on the Navajo Nation, and there is no evidence to the contrary; 2) the matter should not be deferred to the Texas Court because the Texas Court does not have subject matter jurisdiction over the property; and 3) the District Court failed to set aside its previous order which found that the District Court had jurisdiction over Mountain States and Mountain States' waived any jurisdictional objections by failing to appear at two hearings. The Complaint was therefore dismissed in error.

III. Under both Navajo and Federal Law, Mountain States has had minimum contacts with the Navajo Nation to establish personal jurisdiction

After admitting that the Collateral is located on Navajo Nation land, and not on fee lands, the Court states that the “Navajo Nation does have exclusive jurisdiction over property being repossessed on the Navajo Nation.” Index 43. *Order to Dismiss*, pg. 3. The Court therefore determines that it has subject matter jurisdiction over all parties, but that it will “yield jurisdiction to the Texas court to hear the matter of breach of contract and failure to pay

promissory note.” Index 43 *Order to Dismiss*, pg. 5. Although the Court’s Order to Dismiss is largely an analysis of subject matter jurisdiction, the dismissal is based on lack of personal jurisdiction over Mountain States. The Order to Dismiss provides negligible explanation of its justification for concluding that the Court does not have personal jurisdiction over Mountain States. It appears the only basis for the Court’s decision on personal jurisdiction is that Mountain States does not have “contacts, business or otherwise with the Navajo Nation.” The record does not support this conclusion.

As the District Court provides little if any understanding of the legal standards used for determining personal jurisdiction, Appellants assert their understanding of the same.

Navajo law clearly provides that the Navajo District Court has jurisdiction over the Defendants because the property Neptune is seeking to repossess is on Navajo trust land, and both Defendants have done extensive business on Navajo land. The Navajo Supreme Court ruled in *Dale Nicholson Trust v. Chavez*, No. SC-CV-69-00 (Nav. Sup. Ct. January 6, 2004) that the Treaty of 1868 gave the Navajo Nation absolute jurisdiction over non-Indians on tribal lands within the Navajo Nation, making no distinction between land held by the Navajo Nation or by individuals. Indian governments have inherent and exclusive authority to regulate their “internal affairs” even when those affairs involve non-Indians. *Thompson v. Wayne Lovelady’s Frontier Ford*, 1 Nav. R. 282 Paragraph 25 (Nav. Ct. App. 1978), citing *Williams v. Lee*, 358 U.S. 217, 3 L.Ed.2d 251, 255-56 (1959); see also *Babbitt Ford, Inc. v. Navajo Nation Indian Tribe*, 720 F.2d 587 (9th Cir. 1983) (tribal power includes a broad measure of civil jurisdiction over the activities on non-Indians on Indian reservation lands in which tribes have a significant interest). The Court in *Thompson* further stated that “[w]hen a non-Indian enters Indian land for the purpose of doing business thereon, he may very well be considered to have submitted himself to the jurisdiction of

the Indian Courts.” *Thompson v. Wayne Lovelady’s Frontier Ford*, 1 Nav. R. 282, Paragraph 25 (Nav. Ct. App. 1978) (internal citations omitted).

Federal Indian law establishes that the Navajo Nation possesses an independent, inherent authority to regulate commercial activities with non-Indians on its territory. It is indisputable that “the sovereignty retained by tribes includes the power of regulating their internal and social relations.” *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983). As part of this sovereignty and self-governance, the Supreme Court has consistently held that Indian Tribes may regulate, without state interference, commercial transactions entered into between members and non-members of the tribe on tribal territory. *See Williams v. Lee*, 358 U.S. 217, 219, (1959) (determining that state jurisdiction over commercial activities between non-Indians and Indians on reservation territories would impermissibly interfere with Tribes’ rights to govern themselves); *Montana v. United States*, 450 U.S. 544, 565 (1981) (“A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.”); *Mescalero Apache Tribe*, 462 U.S. at 335 (“[W]e have held that tribes have the power to manage the use of their territory and resources by both members and nonmembers, to undertake and regulate economic activity within the reservation...”); *Donovan v. Navajo Forest Prods. Indus.*, 692 F.2d 709, 713 (10th Cir. 1982) (“But over all the lands of the reservation, whether owned by the tribe, by members thereof, or by outsiders, the tribe has the sovereign power of determining the conditions upon which persons shall be permitted to enter its domain, to reside therein, and to do business...”).

It is clear under both Navajo law and Federal law that both defendants have minimum contacts with the Navajo Nation to establish personal jurisdiction.¹ The record clearly indicates that the property at issue, the helium plant operated by both defendants at different times, is located on Navajo trust land. Index 43. *Order to Dismiss*, pg. 3 (“In this case, the helium plant is located on the Navajo Nation and not fees lands within the Navajo Nation.”). Nacogdoches, a defendant in this case, clearly admits the court has personal and subject matter jurisdiction because the property is located on Navajo land. “Because this lawsuit regards possession of the Plant, and the Plant is on trust land, there is no question that under Navajo law this Court has jurisdiction.” Index 27, *Nacogdoches Oil and Gas, Inc.’s Briefing Regarding Jurisdiction and Texas Proceeding*, p. 2. See also, *Second Affidavit of Michael L. Finley filed on October 1, 2009*. Mountain States itself never made any affirmative statement denying that the property at issue was on Navajo land. See, Index 10, *Defendant Mountain States’ Answer to Plaintiff’s Complaint*. Appellant asserts that by the fact that Mountain States has an interest in property located on Navajo land, and that fact alone, establishes the minimum contact for the Court to establish personal jurisdiction over Mountain States. By allowing property to be placed within the boundaries of the Navajo Nation, even if on fee land, the defendants have subjected themselves to the jurisdiction of the Navajo tribal court.² Just as repossession companies, many of whom reside off the reservation, subject themselves to the jurisdiction of the court for a wrongful repossession claim by seizing a vehicle that they have a security interest in that is

¹ Nacogdoches did not dispute that the District Court had personal and subject matter jurisdiction over Nacogdoches and Mountain States, as stated in the Order to Dismiss. Although Nacogdoches initially raised the defense in its answer, Nacogdoches later changed its position and affirmatively stated on multiple occasions to the Court that the Court had personal and subject matter jurisdiction. See, Nacogdoches Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted and for Failure to Join an Indispensible party, footnote 1; and October 1, 2009 transcript, pgs. 14-15.

² Appellants have analyzed jurisdiction under *Montana* in its brief to show that the District Court would have jurisdiction over the matter, even if the property were on fee land within the boundaries of the Navajo Nation. However, as there is no dispute that the property is on trust land, Appellants have refrained from making this argument in this brief.

located on Navajo land, Defendants subject themselves to the Court's jurisdiction by maintaining property with Navajo boundaries.

Even if it were necessary to show that Mountain States also did business within the Navajo Nation, the record clearly shows the Mountain States transacted business on the Navajo Nation. First, Mountain States never affirmatively denies that it did, or does, business on the Navajo Nation, but rather states that it "is without sufficient information to admit or deny". Index 10, *Mountain States Answer to Complaint*, ¶2. Nowhere in its Motion to Dismiss does Mountain States claim that the Court does not have personal jurisdiction because Mountain States did not do business on the Navajo Nation; rather, Mountain States discuss the Texas action. The helium plant concerns mineral rights owned by the Navajo Nation, and if Mountain States had an interest in the property, it was clearly doing business on the Navajo Nation.

Also, Mountain States and Nacogdoches clearly have a consensual relationship with the Navajo Nation through their commercial dealings, contracts, leases and other arrangements with the Navajo Nation. In its Response to Motion to Proceed with Repossession and Exhibits attached thereto, Nacogdoches states that "the plant sits on land leased by the Navajo Nation in a 1974 business site lease and is now leased to Nacogdoches...these leases are now to payments of rents or royalties to the Nation." See, Index 27, *Nacogdoches' Briefing Regarding Jurisdiction and Texas Proceeding* Index 20; *Nacogdoches' Response to Motion to Proceed with Repossession and Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted and for Failure to Join an Indispensible Person* at pp.1-2, *Affidavit of Michael Finley*, Ex. A ¶5. See also, Index 31, *Second Affidavit of Michael L. Finley*, ¶3, "I am personally aware that Mountain States had leases and other agreements with the Navajo Nation." Mountain States previously was a party to the business site lease. The payment of rents or royalties clearly constitutes commercial dealings. Mountain States and Nacogdoches have therefore entered into

agreements with the Navajo Nation and have subjected themselves to tribal civil jurisdiction.³
Id., and Index 37, *Navajo Nation Position Statement*.

The Court found that it had personal jurisdiction over Nacogdoches “because of its business dealings, and Neptune has consented to the jurisdiction of the Navajo Nation Court.” Index 43, *Order to Dismiss*, pg. 5. However, the Court inexplicably concludes that Mountain States “does not have any business contracts or dealings in place with contacts with the Navajo Nation, substantial enough to establish personal jurisdiction...” Index 43 *Order to Dismiss*, pgs. 5-6. Contrary to the Court’s conclusion, Mountain States maintained the same “business dealings” that Nacogdoches currently maintains. Neptune’s Complaint centers on the activities of Mountain States while it had business contacts in place with the Navajo Nation. The Court is in no way divested of jurisdiction simply because Mountain States no longer conducts business with or on the Navajo Nation, especially in light of Neptune’s claims that selling to Nacogdoches was a breach of Mountain States’ obligations.

It is clear that defendants had the minimum contacts required for a Navajo Court to maintain personal jurisdiction over them by doing business within and with the Navajo Nation. The Shiprock Court had jurisdiction over the parties and subject matter, and dismissal was therefore improper. The Navajo Nation has the independent, inherent authority to regulate the conduct of Appellees, and Neptune’s claims were properly before the Shiprock District Court.

IV. Texas Court does not have subject matter jurisdiction over a claim of repossession of property on the Navajo Nation

Appellants agree with the Court’s conclusion that the “Navajo Nation Courts (have) exclusive jurisdiction over the action of repossession.” The manner of effectuating a repossession of property upon lands subject to the jurisdiction of the Navajo Nation is an

³ The Navajo Nation in its position statement does not clearly address whether it had any agreements with Mountain States, because the Navajo Nation was not requested to take a position on that issue. Rather, the Navajo Nation was asked to provide its opinion if it needed to be included as an indispensable party in this action based on Nacogdoches’ motion to dismiss for failure to include an indispensable party.

“internal affair” of the Navajo Government that concerns the maintenance of public peace and safety. *Babbit Ford, Inc. v. Navajo Indian Tribe*, 720 F.2d. 587 (9th Cir. 1983) . Since the Court had exclusive subject matter jurisdiction over the property, yielding to the Texas court was improper. The Texas court simply does not have the authority to order repossession of the Collateral based on its location on the Navajo Nation.

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. The exercise of tribal authority may be pre-empted by federal law, and the application of state law may unlawfully infringe on the right of reservation Indians to make their own laws and be rules by them. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-143 (1980). States cannot regulate the repossession of property occurring on lands under the jurisdiction of the Navajo Tribe. *Russell v. Donaldson*, 3 Nav. R. 209 (1982) and *Chischilly v. GMAC*, 96 N.M. 264, 266, 629 P.2d 340, 342 (Ct. App. 1980). Repossession of consumer goods 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).

In the Texas action, there are many additional parties with multiple claims. The claims brought against Mountain States and Nacogdoches by Neptune in the Texas action are for breach of contract and failure to pay a promissory note. The remedy sought in that action is to recover the unpaid principal balance of the promissory note from Mountain States and Nacogdoches after the collateral or helium plant was wrongfully sold. The Texas action does not include the claims for repossession or conversion. As discussed above, the Texas court cannot rule on the repossession claim as it is an issue within the exclusive jurisdiction of the Navajo Nation Courts. By deferring to a Texas court, the Court is essentially giving up its inherent authority to hear a matter to a court that lacks jurisdiction.

This is not a case involving two separate courts who have concurrent jurisdiction since the Navajo Nation is the *only* court with the ability to hear the repossession claim. The doctrine of comity says that “one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers have had an opportunity to pass upon the matter.” See *Hubbard v. Chinle School District Nos. 24/24, et al*, 3 Nav. R. 167, 171 (Nav. Ct. App. 1982) citing *Darr v. Burford*, 399 U.S. 200, 204 (1949). As discussed above, the Texas court does not have the power to hear the repossession claim against Defendants and therefore does not have concurrent power to even pass on the matter.

Navajo jurisdiction is also appropriate because this matter is brought pursuant to the Navajo Rules for Repossession. Rule 1 of the Navajo Rules for Repossession of Personal Property (the “Rules of Repossession”) states: “This rule is applicable to the repossession of personal property and chattels where such property constitutes a security to protect payment pursuant to any agreement for extension of credit. This rule shall apply whether or not credit was extended within the Navajo Nation and shall apply in all situations *where the security is located, possessed, garaged, kept or otherwise found within the Navajo Nation.*” Rule 1, Rules of Repossession (emphasis added). Since the Collateral is located within the territorial boundaries of the Navajo Nation⁴, the Rules of Repossession apply and the Court has jurisdiction. See *Reservation Business Services v. Albert*, 7 Nav. R. 126 (Nav. Sup. Ct. 1995) (discussing procedure for repossession of property located within the Navajo Nation). Pursuant to the Rules of Repossession, the Texas court simply does not have the authority to grant the relief requested by Neptune. Since Mountain States purchased the assets of the plant located within the Navajo Nation, and did business in the Navajo Nation, it consented to jurisdiction of the Navajo Courts.

⁴ As stated in Nacogdoches’ Brief on Jurisdiction, received by Neptune on September 24, 2009, the Collateral is located approximately ten miles southwest of the town of Shiprock and two miles southeast of Shiprock itself. It is therefore undisputed that the Collateral is located on the Navajo Nation. Index 27.

V. **The Shiprock Court's Finding of Jurisdiction Was Never Set Aside**

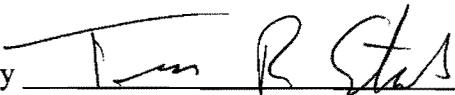
On October 1, 2009, the Shiprock District Court held a second hearing on Mountain States' Motion to Dismiss for lack of jurisdiction, at which Mountain States again failed to appear. On October 27, 2009 and as a result of the October 1 hearing, the District Court determined that it had jurisdiction over the parties and claims. Since Mountain States failed to appear at both the August 19 and October 1 hearings and never contested the District Court's determination that it did have subject matter and personal jurisdiction, Mountain States should be deemed to have waived jurisdiction as a defense. At a minimum, the Court should have set aside the previous determination that jurisdiction was proper. It chose not to do so, however, and issued the competing Order to Dismiss on March 26, 2010. It is difficult to comprehend how the Court dismissed based on jurisdictional grounds when no reference was made (in the Order to Dismiss or otherwise) to the earlier finding that jurisdiction was proper.

RELIEF

For all of the foregoing reasons, Neptune respectfully requests this Court's Order that jurisdiction is proper in the Shiprock District Court, and for such other and further relief as the Court deems just and proper.

Respectfully Submitted:

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By  _____

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Plaintiff/Appellant,)

vs.)

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Defendants/Appellees.)

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m/s
NAVAJO NATION

) Supreme Court No. SC-CV-24-10

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

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on the 21st day of June, 2010 a true and correct copy of Appellants' Opening Brief, along with this Certificate of Service, was sent by First Class Mail to:

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