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INJUNCTION ORDER UPHELD IN *NAVAJO NATION V. RJN CONSTRUCTION MANAGEMENT INC.*

The Navajo Nation Supreme Court has affirmed an order of the Shiprock District Court in *Navajo Nation v. RJN Construction Management, Inc., et al*, No. SC-CV-13-11, in which the Shiprock court permanently enjoined RJN Construction Management, Inc., Robert Nelson, and the Home for Women and Children (HWC) from interfering with or preventing the Navajo Nation's access to and construction of the Shiprock Home for Women and Children.

The suit began when the Navajo Nation started bidding out the final phase of the project in November 2010, at which RJN's counsel wrote letters to prospective bidders and either HWC or RJN placed padlocks on the fence enclosing the shelter project. The Navajo Nation filed for an injunction in the Shiprock District Court to enjoin HWC and RJN from interfering with the construction of the shelter project.

In their defense, HWC claimed that it owned the facility under construction and RJN claimed it both owned the design for the facility and was entitled to complete the project even though the contract budget had been depleted. They stated that they had to pursue self-help measures because their protest letter to the Navajo Nation Controller was refused and returned. The Navajo Nation stated that their actions threatened to delay the building of the facility and the Nation may lose New Mexico grant funding.

Three years after the shelter project first began, the project is still not completed. The budgets of the original contracts have been depleted. In February 2010, the Navajo Nation obtained a fresh New Mexico Indian Affairs Department grant for \$1.145 million for the project.

The Supreme Court stated that the Navajo Nation's responsibility to manage its lands under the Business Site Leasing Regulations included requiring that lease approvals are subject to "best interest of the Navajo Nation" (meaning the Navajo people) balancing of interests. Since the case involves land, the interests of the collective must be figured prominently.

Unlike private land use transactions, the rights of lessor and lessee "are tempered by the collective good," the Court stated.

The Supreme Court stated that the right of possession of a business site leasehold is based on provisions in the Navajo Nation Business Site Leasing Regulations of 2005 (BSLR) and the terms of the lease itself. It then stated that the BSLR clearly provides that the leaseholder has the right of possession and use to the extent of the approved "specific purpose."

HWC's original lease had the specific purpose to "develop, use and operate" a shelter. After a 2010 amendment to HWC's lease, the development of the shelter project shifted to the Navajo Nation. As a result the Supreme Court stated that HWC lost its right of possession over the worksite as a matter of law.

The Supreme Court then stated that an injunction may be granted "to the government on behalf of the people when the conduct in question threatens public funds and delays completion of a needed public facility, as in this case."

The Supreme Court stated that the elements for an injunction as set forth in the Navajo Rules of Civil Procedure have been met.

The Shiprock court had barred RJN's contract-based justifications on the basis of sovereign immunity. The Supreme Court stated that the district court had erred, because the defendants were merely offering reasons for their actions to be considered by the court as it considered the equitable remedy of an injunction, and were not pursuing money damages nor asking the court to rule on the merits of their contract-based claims.

However, the Supreme Court stated that the error was harmless as the justifications offered by the defendants were meritless. Defendants had the same access to tribal dispute resolution forums and should not have resorted to self-help measures that may have caused a public nuisance or worked to the detriment to the Navajo people. Additionally, the Supreme Court could not see how a contract whose budget had been depleted could serve as the basis of future work. Finally, the Supreme Court stated it found no evidence of any kind in the record that supported defendant's claim that it owned the facility design. The equity court must rule as fairly as it can on the evidence that is before it, and there was nothing in the record that would have influenced a court that an injunction would be unfair to defendants.

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