Becker v. Ute Indian Tribe of Uintah and Ouray Reservation, 11 F.4th 1140 (10th Cir. 2021)

- **Holding:** District court was ordered to dismiss without prejudice on exhaustion grounds a suit brought by a non-Indian independent contractor seeking to enjoin an ongoing tribal court proceeding brought by a tribe.
- **Summary:** This is another decision in a dispute between an independent contractor (Becker) against the Ute Tribe over amounts due the former under a 2004 agreement. The contract provided that "[t]his Agreement and all disputes arising hereunder shall be subject to, governed by and construed in accordance with the laws of the State of Utah. All disputes arising under or relating to this Agreement shall be resolved in the United States District Court for the District of Utah." It also contained a forum-selection provision:

  > The Parties hereto unequivocally submit to the jurisdiction of the following courts: (i) U.S. District Court for the District of Utah, and appellate courts therefrom, and (ii) if, and only if, such courts also lack jurisdiction over such case, to any court of competent jurisdiction and associated appellate courts or courts with jurisdiction to review actions of such courts. The court or courts so designated shall have, to the extent the Parties can so provide, original and exclusive jurisdiction, concerning all such Legal Proceedings, and the Tribe waives any requirement of Tribal law stating that Tribal courts have exclusive original jurisdiction over all matters involving the Tribe and waives any requirement that such Legal Proceedings be brought in Tribal Court or that Tribal remedies be exhausted.

  After the dispute arose, Becker sued the Tribe in federal court—thereby beginning a daisy chain of other suits in federal, state and tribal courts. Among these suits was a tribal court action filed by the Tribe in 2016 "seeking a declaration that the Agreement was void *ab initio* under federal and tribal law ... because it granted Becker a tribal trust asset without federal-government approval, in violation of both federal and tribal law, and because the Agreement's purported waiver of sovereign immunity was executed in violation of tribal law." Becker responded by filing a suit in federal court to enjoin that proceeding and eventually secured a preliminary injunction—only to have that relief vacated on appeal for failure to have established the absence of an obligation to exhaust court remedies. *Becker v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 868 F.3d 1199 (10th Cir. 2017) (concluding that Becker had failed to establish a likelihood success that the independent contractor agreement did not require federal approval and that the exhaustion waiver provision was otherwise severable). On remand, Becker again sought preliminary injunctive relief, and the district court, although initially denying the request, sua sponte revised the denial and granted the injunction. The Tribe appealed that grant.

  The Tenth Circuit vacated the preliminary injunction and this time remanded with a direction that the district court dismiss the action without prejudice until Becker had fully exhausted his remedies in the Ute judicial system. It reasoned:

  > At the heart of the dispute before us is a written contract—i.e., the Agreement—between the Tribe and a non-Indian that was to be performed, in part, on Tribal lands and the purpose of which was to promote the Tribe's mineral assets in order to produce revenues for the Tribe and its people. It is undisputed that the Agreement expressly purported to waive the Tribe's sovereign immunity and to have all disputes settled in a non-Indian court by way of Utah state law.

> Nevertheless, the Tribe has raised serious questions regarding the validity of the contract as a whole, as well as the validity of the purported waiver of sovereign immunity in particular. Out of respect for tribal self-government and self-determination, we conclude that the questions the Tribe has raised regarding the validity of the Agreement, as well as the threshold question of whether the Tribal Court has jurisdiction over the parties' dispute, must be resolved in the first instance by the Tribal Court itself. ... Of course, Becker asserts, in reliance on the Agreement itself, that the Tribe expressly waived Tribal Court jurisdiction. But that waiver provision is only applicable if the Agreement itself is determined to be valid, and, as we have noted, the Tribe has asserted nonfrivolous challenges to the validity of the Agreement.

It later remarked that "due in no small part to the district court's issuance of an injunction prohibiting the parties from proceeding in Tribal Court, Becker 'has not yet obtained appellate review' of the Tribal Court's conclusions."

- **Relevant (2021) Deskbook Section:** 6:5 n.17
- **Comment:** This opinion replaces a prior one issued on August 3, 2021 but makes no substantive changes. The case summary--including all quotations--remains unchanged.