COURT OF APPEALS
OF THE STATE OF NEW MEXICO

BOARD OF TRUSTEES OF CEBOLLETA LAND GRANT,
Plaintiff,
v.

ROBERT ARMIJO, CEBOLLETA RANCH LTD.,
SILVER DOLLAR RANCH LLC, PUEBLO, and All Unknown Claimants of
Interest in the Premises Adverse to the Plaintiff,
Defendants;

ROBERT ARMIJO
Cross Claimant/Appellee,

v. No. 29,893

PUEBLO OF LAGUNA,
Cross-Claim Defendant/Appellant.

ROBERT ARMIJO'S ANSWER BRIEF

Interlocutory Appeal from the Thirteenth Judicial District Court, County of Valencia
The Honorable William A. Sanchez, District Court Judge
Case No. D-1333-CV-2008-0405

Tibo J. Chavez, Jr.
PO Box 569
Belen, NM 87002
505/864-4428
and

Stephen K. Bowman
P.O. Box 1570
Corrales, New Mexico 87048
505/620-3527
Attorneys for Appellee Armijo

ORAL ARGUMENT IS REQUESTED

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SUMMARY OF PROCEEDINGS

I. NATURE OF THE CASE

In December 2008, the Board of Trustees of the Cebolleta Land Grant ("Board") brought an action in the Thirteenth Judicial District Court seeking to quiet title to Section 16, Township 12 North, Range 6 West in Cibola County ("Section 16"). In its complaint, the Board claimed to be the owner in possession of Section 16 and named Robert Armijo ("Armijo"), the Pueblo of Laguna ("Pueblo"), two non-appearing predecessors in title, and unknown claimants of interest. Armijo filed its answer in March 2009 and asserted counterclaims against the Board and cross-claims against the Pueblo. Also in March 2009 the Pueblo filed a Motion to Dismiss the Pueblo from the action on the grounds of (a) lack of subject matter jurisdiction based upon tribal sovereign immunity and (b) indispensability of the Pueblo to the action. In April 2009, the Board stipulated to dismissal of its complaint against the Board, citing the preclusive effect of two previous quiet title actions that allegedly included Section 16.

Armijo filed a brief in response to the Pueblo's motion to dismiss, and the matter was heard before District Court Judge William A. Sanchez in July 2009. The district court ruled that it has subject matter jurisdiction in the action and denied the Pueblo's motion to dismiss. The district did not make any ruling

on the Pueblo's claim of indispensability under Rule 1-019 NMRA. The Pueblo subsequently applied for interlocutory appeal of the district court's decision.

II. SUMMARY OF FACTS AND COURSE OF PROCEEDINGS

In its summary of facts relevant to appeal, the Pueblo seeks to influence this court by alleging background facts of a quiet title action affecting at least a portion of the private ranch property purchased by the Pueblo, yet on the other hand the Pueblo asserts sovereign immunity in an effort to prevent the state court from examining or deciding the title and ownership issues to the land. Pueblo of Laguna Brief in Chief, pp. 2,3.

The relevant factual background presented to the district court demonstrates that the subject 640 acres of private property has never been part of the Laguna Indian Reservation. The subject section of property was originally part of the Cebolleta Land Grant. Armijo, as a member of the land grant, acquired title in fee simple by warranty deed from the Cebolleta Land Grant. The Board and Armijo have run cattle and paid taxes on the subject property for generations. Thus, the facts of this case do not deal with reservation land or tribal trust land, nor are the facts regarding the title to private land affected by claims of tribal sovereign immunity. See Armijo's Response to Pueblo of Laguna's Motion to Dismiss, RP 132, 135.

ARGUMENT

I. INTRODUCTION

This interlocutory appeal centers upon the nature and extent of the doctrine of tribal sovereign immunity when raised in an attempt to deny a private landowner access to the court system in order to protect title to his property. The Pueblo asserts that the doctrine trumps all other interests without exception. Armijo asserts that the doctrine is applied on a case-by-case basis and did not prevail in *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 125 S.Ct. 1478, 161 L.Ed.2d 386 (2005) (*Sherrill*), *Oneida Tribe of Wi. v. Village of Hobart, Wi.*, 542 F.Supp.2d 908 (E.D. Wis. 2008) (*Hobart*), and other cases relied upon by the Pueblo.

Armijo also asserts that he has a natural, inherent, and inalienable right to possess and protect his property under Article II, Section 4 of the Constitution of New Mexico which cannot be defeated by the doctrine of tribal sovereign immunity.

Finally, Armijo submits to this Court that the Pueblo's claims of indispensability in this action under Rule 1-019 NMSA are premature and amount to a request for an advisory opinion, which is not favored by appellate courts.

II. STANDARD OF REVIEW

Armijo agrees with the Pueblo that the applicable standard of review is de novo. See *Sanchez v. Santa Ana Golf Club, Inc.,* 2005-NMCA-003, ¶ 4, 136 N.M. 682, 104 P.3d 548 (2004).

III. TRIBAL SOVEREIGN IMMUNITY DOES NOT PRECLUDE STATE COURT PROCEEDINGS DIRECTED TO ISSUES OF TITLE TO FEE LAND, AND EQUITABLE PRINCIPLES SHOULD BE APPLIED BY THE COURTS.

In response to the Pueblo of Laguna's claims that tribal sovereign immunity should be recognized over state court power to entertain lawsuits, the judiciary must exercise caution such that Indian tribes not be given special privileges beyond those afforded ordinary U.S. citizens regarding ownership of fee land. Governmental rights to make and enforce laws affecting fee land, whether federal, state or local, must not be restricted by Indian claims of sovereign immunity. Otherwise, a host of inequitable results would ensue. One only has to review New Mexico case law pertaining to tribal sovereign immunity to find examples. See *Gallegos v. Pueblo of Tesuque*, 2002-NMSC- 012, 132 N.M. 207, 46 P.3d 668 (Woman injured at a casino is left without a forum in which to litigate her claim) and *Hoffman v. Sandia Resort and Casino*, 2010-NMCA ___, ___ N.M. ___, ___ P.3d ___, No. 28,444 (N.M. Ct. App. Jan. 26, 2010) (Man wins $1.5 million in a

Sandia Resort and Casino slot machine and is left without a remedy after tribe refuses to pay).

With no concern regarding judicial intervention into their enterprises, tribes are able to purchase fee land in any location and put it to a variety of uses adverse to surrounding owners and governmental entities. For example, a tribe could purchase sizeable tracts of land and then re-fence the boundaries to extend and take in neighboring natural and mineral resources such as streams, water and oil wells without being subject to remedies of trespass, quiet title or suit for damages.

A body of law that generates and such absurd consequences should not be perpetuated by this Court without careful consideration of the equities involved in the case. Indeed, Justice Ginsberg, in delivering the U.S. Supreme Court opinion in *Sherrill*, invoked the equitable defense of laches in reaching the holding in that case.

In the case at bar, the equities are compelling. Armijo has kept cattle and other livestock on Section 16 for more than 20 years, making improvements to the land, paying property taxes, and maintaining constant possession of the land. If the Pueblo is successful in its efforts to get this matter dismissed on the grounds of tribal sovereign immunity, Armijo will be left without a ranch and without a remedy. Equity demands that at a bare minimum, Armijo has the opportunity to

defend his title to Section 16. The court should balance the equities of the case at bar and provide Armijo with the opportunity to prove up his title.

IV. Tribal Sovereign Immunity Does Not Apply to Issues Affecting Title to Off Reservation Fee Land.

The Pueblo seeks to avoid state court jurisdiction over title issues to fee land. The Pueblo incorrectly asserts in its argument that, ". . .tribal immunity from suit was not at issue in either of those cases as it is here, where the Pueblo is a defendant." Pueblo Brief in Chief, page 9. The Pueblo ignores that the cases cited by the Pueblo, *Sherrill* and *Hobart* primarily involved considerations of tribal immunity vs. state and local sovereignty over fee land, as well as issues of jurisdiction. Both cases were decided against the Oneida Indian Nation (OIN).

Similar to facts in this case, the decisions in *Sherrill* and *Hobart* dealt with claims of tribal sovereign immunity in the context of litigation over fee land acquired by an Indian tribe. In both cases the Oneida Indian Tribe made assertions of sovereign immunity and in both cases the assertion was rejected.

The tribal immunity claim was directly addressed in *Sherrill* when the Court stated, that the OIN seeks declaratory and injunctive relief recognizing its present

and future sovereign immunity from local taxation on parcels the Tribe purchased in the open market, properties that had been subject to state and local taxation for generations. *Sherrill,* 544 U.S. at 213-214. The appropriateness of such relief must be evaluated in light of the long history of state sovereign control over the territory. The city of Sherrill and State of New York had developed justifiable expectations that their sovereignty over the parcels would not be disturbed.

The Court further reasoned against the assertion of tribal immunity in *Sherrill* by stating that if OIN may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent it from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls that protect all landowners in the area. The option available to an Indian tribe was clearly stated by the Court in its conclusion that, recognizing these practical concerns, Congress has provided, in 25 U.S.C. § 465 a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well being. Section 465 provides the proper avenue for OIN to reestablish sovereign authority over territory last held by the Oneidas 200 years ago. *Sherrill,* 544 U.S. at 220.

A recent federal court decision of March 31, 2008 expanded upon the holding in *Sherrill* by subjecting Indian fee land to local jurisdiction and title foreclosure proceedings. *Hobart, Id.* 542 F.Supp.2d 908.

In the *Hobart* case, the federal district court issued a detailed, soundly reasoned opinion in favor of the Village of Hobart. It gave approval for a local government in Wisconsin to assert jurisdiction over fee lands owned by the Oneida Nation. In a 47-page decision, Judge William Griesbach acknowledged that the *Indian Reorganization Act* put an end to allotment of the tribe's 64,000-acre reservation. However, he affirmed that the tribe must go through the land-into-trust process before asserting properties it recently acquired.

The decision drew upon prior U.S. Supreme Court decisions pertaining to fee lands, by stating, "[t]he Village's understanding of the purpose and effect of the Allotment Acts and the IRA finds strong support in the Supreme Court's decisions in *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 112 S.Ct. 683, 116 L.Ed.2d 687 (1992), *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 118 S.Ct. 1904, 141 L.Ed.2d 90 (1998), and *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 125 S.Ct. 1478, 161 L.Ed.2d 386 (2005). In *Yakima*, the Court rejected the argument, almost identical to the Tribe's here, that a county could not impose an ad valorem property tax on reservation land within its boundaries that was held in fee by a tribe or tribal members. As in this case, the property at issue, though located within the original boundaries of the Yakima Reservation, was no longer held in trust for the benefit

of the Tribe by the United States." *Hobart,* at *916.*

Judge Griesbach, relying upon the Supreme Court's decision in *Sherrill.* stated, "Unless a state or local government is able to foreclose on Indian property for nonpayment of taxes, the authority to tax such property is meaningless, and the [Supreme] Court's analysis ... amounts to nothing more than an elaborate academic parlor game." *Hobart,* at *921.* Judge Griesbach concluded as follows:

"For the reasons set forth above, I conclude that fee land within the original boundaries of the Tribe's reservation which was allotted pursuant to federal law, transferred to third parties, and subsequently acquired by the Tribe in fee simple on the open market, is subject to the Village's power of eminent domain. In addition, I conclude that the land is subject to special assessments levied against the property for improvements that specially benefit it. The Tribe's motion for partial summary judgment is therefore denied, and the Village's motion for summary judgment is granted. The clerk is directed to enter final judgment in the favor of the Village setting forth the court's determination that the Village of Hobart has condemnation, special assessment and taxation authority over lands purchased in fee by the Oneida Tribe of Indians of Wisconsin, in accordance with Wisconsin law, unless

and until the Tribe's application to place such land in trust pursuant to 25 U.S.C. § 465 is granted. All other claims are dismissed with prejudice, with the exception of the Tribe's claim under Wis. Stat. 66.0703(11), which is dismissed without prejudice." *Hobart,* at *935.* As shown in *Sherrill* and *Hobart*, federal jurisprudence is clearly moving in the direction of denying tribal claims of sovereign immunity when those claims stem from tribal acquisition of fee simple land by private purchase. Just as it is a hollow victory to tax without the ability to foreclose, it is a hollow victory to possess the right to file a quiet title action over fee land, but be prohibited from joining all of the necessary parties.

The doctrine of sovereign immunity does not find favor in the common law of New Mexico. See *Padilla v. Pueblo of Acoma*, 107 N.M. 174, 754 P.2d 845 (1988), cert. denied, 490 U.S. 1029, 109 S.Ct. 1767, 104 L.Ed.2d 202 citing *Hicks v. State*, 88 N.M. 588, 544 P.2d 1153 (1975) (*Padilla*). In *Padilla*, the New Mexico Supreme Court held that "a district court may exercise jurisdiction over an Indian tribe when the tribe is engaged in activity off of the reservation...". *Padilla,* at 107 N.M. 180.

The case law relied upon by Laguna in its Brief in Chief does not involve fee

land acquired by the tribe. The Pueblo argues that *Padilla* has been "implicitly overruled" by the U.S. Supreme Court in *Kiowa Tribe of Okla. V. Mfg. Techs., Inc.* 522 U. S. 751 (1998) ("Kiowa"). In *Kiowa*, the U.S. Supreme Court ruled that "tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." *Kiowa* at 760. In his dissenting opinion in *Kiowa*, Justice Stevens noted "we have treated the doctrine of sovereign immunity from judicial jurisdiction as settled law, but in none of our cases have we applied the doctrine to purely off-reservation conduct." *Kiowa* at 764. In the same case, Justice Kennedy, writing for the majority, stated "our case law to date often recites the rule of tribal immunity from suit. While these precedents rest on early cases that assumed immunity without extensive reasoning, we adhere to these decisions...". *Kiowa* at 753.

State court jurisdiction was recognized over Indian tribe claims of sovereign immunity in the more recent U.S. Supreme Court decision of *Sherrill.* In this case the subject matter of the parties' claims involve off reservation fee land, such that the New Mexico common law reasoning in *Padilla,* coupled with that in *Sherrill* is applicable to the facts of this case.

The Pueblo claims ownership of the 640 acres in dispute in this action via a purchase of over 8,000 acres from Silver Dollar Ranch LLC, a private New Mexico limited liability company. The land in dispute is not a part of the reservation lands of the Laguna Pueblo, so by definition, the Pueblo's acquisition of this land was an off-reservation activity. Armijo submits that this issue is controlled by the holding in *Padilla v. Pueblo of Acoma*, 107 N.M. 174, 754 P.2d 845 (1988), cert. denied, 490 U.S. 1029, 109 S.Ct. 1767, 104 L.Ed.2d 202 (1989), and state court has subject matter jurisdiction in this case.

The Court in *Padilla* applied extensive analysis and reasoning in arriving at its decision, noting that the State of New Mexico, an entity clearly cloaked in sovereign immunity, allows breach of contract actions to be brought against the state (citing NMSA 1978 Sec. 37-1-23). Importantly, the Padilla Court found that "we believe the exercise of jurisdiction over a sovereign Indian tribe for off-reservation conduct is solely a matter of comity." *Padilla* at Paragraph 31. Compare these conclusions to the Court in *Kiowa*, which by its own admission has never applied extensive reasoning to the issue of tribal sovereign immunity for off-reservation activities.

Padilla has not been overruled and remains valid law in the State of New Mexico. With federal law in transition on the issue of sovereign immunity for

federally-recognized Indian tribes, this Court should follow the clear reasoning of *Padilla* and deny the Pueblo's motion to dismiss.

This court should decline to follow the federal district court decision in *Pueblo of Santo Domingo v. Rael*, which is not based upon any cited precedent. See *Pueblo of Santo Domingo v. Rael,* 209 F.R.D. 470 (D,N.M. 2002), as cited in Pueblo of Laguna's Brief in Chief at p. 8.

V. THE CONSTITUTION OF NEW MEXICO GRANTS ARMIJO THE NATURAL, INHERENT, AND INALIENABLE RIGHT TO POSSESS AND PROTECT HIS PROPERTY. THIS RIGHT CONSTITUTES AN ADEQUATE AND INDEPENDENT STATE GROUND FOR AFFIRMATION OF THE DIOSTRICT COURT'S DECISION.

Under the Constitution of the State of New Mexico, citizens of New Mexico have natural, inherent, and inalienable rights to possess and protect property. See N.M. Const. art. II, Section 4. By answering the original complaint filed by Plaintiff Board of Trustees of the Cebolleta Land Grant, bringing counterclaims against the Board of Trustees of the Cebolleta Land Grant and bringing cross-claims against Appellant Pueblo of Laguna pursuant to Rule 1-013 NMSA, Appellee Armijo is utilizing his right to possess and protect his rights to Section 16.

By its nature, protection of property rights requires access to the courts. The New Mexico legislature, in recognition of this self-evident truth, has enacted a host of statutes regarding actions and proceedings related to property. See generally NMSA 1978, Chapter 42. Among these actions is NMSA 1978, Sections 42-6-1 through 42-6-17, entitled "Quieting Title". This is the vehicle prescribed for use by our legislature when title disputes surface. It is important to note that (a) a landowner must have access to the district court to commence and action and (b) the legislature has provided no secondary action or procedure for settling title disputes. Thus, a landowner must proceed to district court to resolve title disputes. Furthermore, the landowner faces dismissal of his quiet title action if he fails to join parties necessary to the action. See Rule 1-019 NMRA.

When Armijo, exercising his inalienable right to protect his property, proceeded to protect his property rights through litigation, he found that Congress and the courts, both state and federal, had purported to create a special class of citizens (federally recognized Native American tribes) who are not subject to the reach of any court of the land. This special class of citizens can apparently avoid liability for torts occurring on their property (See *Gallegos)* and avoid possible liability for breach of contract claims (See *Kiowa*) simply by claiming sovereign immunity.

None of the various cases cited by the Pueblo provide Congressional or judicial rationale for the creation of this special class. In *Kiowa,* Justice Kennedy noted that the doctrine of tribal sovereign immunity "developed almost by accident." *Kiowa* at 756. He also notes that the case of *Turner v. United States*, 248 U.S. 354 (1919) is cited as authority for the doctrine, but "examination shows it simply does not stand for that proposition." *Kiowa* at 756.

Accidental or not and supported by prior case law or not, the doctrine creates a class (Indian tribes) that are treated much differently than other citizens of New Mexico. The doctrine of tribal sovereign immunity creates a favored class who may not be hailed into any court in America. This doctrine unconstitutionally prevents Armijo from protecting his property, a right specifically identified in the New Mexico Constitution, by preventing Armijo from bringing or keeping necessary parties to the district court action.

In order for the doctrine of tribal sovereign immunity to pass constitutional scrutiny, the governmental purpose for the creation of different classes must be examined. Here the classification scheme created by Congress and the judiciary fails, as no rational governmental purpose is advanced by providing tribes with the benefit of avoiding lawsuits if they wish. This is a benefit that is not provided to the State of New Mexico or any of its political subdivisions, all of whom may be sued under certain conditions.

As the party challenging the doctrinal scheme of tribal sovereign immunity, Armijo has the burden of showing that the doctrine is not rationally related to a legitimate government purpose. See *Breen v. Carlsbad Mun. Schools*, 138 N.M. 331, ¶ 11, 120 P.3d 413 (N.M. 2005).

In the great majority of cases cited by both the Pueblo and Armijo in this case, it is apparent that the doctrine of tribal sovereign immunity is being utilized by the tribes to avoid possible liability from tort claims, breach of contract, and even payment of casino winnings. In the entire American legal system, no other group received such a valuable legal advantage from Congress and the U.S. Supreme Court. There is no conceivable legitimate government purpose for perpetuation of the tribal sovereign immunity doctrine, and application of the doctrine to New Mexico citizens results in deprivation of constitutional rights.

VI. THE DISTRICT COURT MADE NO WRITTEN ORDER OR JUDGMENT IN THIS CASE REGARDING THE ALLEGED INDISPENSIBILITY OF APPELLANT PUEBLO. THEREFORE, NO ORDER OR RULING EXISTS FOR APPELLANT TO APPEAL.

On September 29, 2009, a document entitled "ORDER DENYING PUEBLO'S MOTION TO DISMISS" was filed in the office of the District Court Clerk of the Thirteenth Judicial District. RP 185-86, 216. In that

document, District Court Judge William A. Sanchez found that the Court has subject matter and personal jurisdiction over Defendant Pueblo of Laguna because this matter arose outside the reservation. The trial judge also noted that the Pueblo of Laguna asserts that the Court does not have subject matter jurisdiction in this matter based on tribal sovereign immunity. However, the order is silent with respect to Pueblo's argument of alleged indispensability under Rule 1-019 NMRA. It is apparently from that order that the Pueblo attempts to base its appeal. However, no appeal will lie from anything other than an actual written order or judgment signed by a judge and filed with the clerk of the court. *State v. Lohberger,* 2008-NMSC-033, ¶ 6, 144 N.M. 297, 187 P.3d 162.

In the instant case, the District Court reviewed briefs, heard oral argument, and subsequently issued an actual written order or judgment signed by a judge and filed with the clerk of the court, but the court only ruled on the Pueblo's motion to dismiss based upon tribal sovereign immunity. Indeed, at oral argument in the District Court, Appellant announced to the court that " The only thing that's at issue here is the Pueblo's purely legal motion regarding subject matter jurisdiction." See Transcript of Proceedings from Audio CD page 5. The District Court properly rendered no decision regarding the Pueblo's alleged indispensability under Rule 1-019 NMRA because the District Court's

denial of the Pueblo's motion to dismiss mooted its indispensability claim under Rule 1-019 NMRA. Additionally, review of the Pueblo's alleged indispensability at this time would amount to an advisory opinion, as the Pueblo may or may not be eventually dismissed from the instant case and become a non-party. Advisory opinions are not favored by the appellate courts of New Mexico. See *Roybal v. Fuente,* 2009 -NMCA- 114, ¶ 28, 218 P.3d 879, citing *City of Las Cruces v. El Paso Elec. Co.,* 1998-NMSC-006, ¶ 18, 124 N.M. 640, 954 P.2d 72 (stating that appellate courts avoid giving advisory opinions).

Unless and until the Pueblo is actually dismissed from this case, the Pueblo's alleged indispensability under Rule 1-019 NMRA is premature and speculative. It should not be considered by this Court.

VII. THE PUEBLO IS NOT AN INDISPENSIBLE PARTY TO THIS ACTION UNDER RULE 1-019 NMRA.

Appellant Armijo submits that this matter is not properly before this Court because (a) the District Court issued no order or ruling on the Pueblo's alleged indispensability under Rule 1-019 NMRA, and (b) a review of the Pueblo's claim of indispensability under Rule 1-019 NMRA at this time would amount to an advisory opinion because the Pueblo is currently a party to this action. However, should this Court conclude that the issue of Appellant's alleged indispensability under Rule 1-019 NMRA is properly before this Court,

Appellant Armijo argues that the Pueblo is not an indispensable party pursuant to the terms set forth in Rule 1-019 NMRA.

New Mexico District Court Rule of Civil Procedure 1-019(A) addresses the situation in which a *non-party* who is arguably indispensable to the action has not been joined. However, Rule 1-019(A) has no application to the case at bar because the Pueblo was in fact joined as a party defendant by the original Plaintiff Board of Trustees of the Cebolleta Land Grant. Subsequently, Armijo brought cross-claims against defendant Pueblo. The Pueblo is currently a party to this action and therefore Rule 1-019(A) is not applicable.

Rule 1-019(B) NMRA provides the following guidance in determining the indispensability of a nonparty:

"The court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth,

whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder."

The rule requires the district court to balance the factors set forth in the rule to determine whether the action should continue in the absence of an indispensable party. See *Reichert v. Atler,* 11856, 117 N.M. 628 (N.M.App. 1992), citing *C.E. Alexander & Sons, Inc. v. DEC Int'l, Inc.,* 112 N.M. 89, 811 P.2d 899 (1991).

Using equity and good conscience as a guide, the first factor to be considered by the Court is to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties. This determination involves a "functional analysis of the effects of the person's absence upon the existing parties, the absent person, and the judicial process itself. However, no precise formula exists." *Gallegos v. Pueblo of Tesuque*, 2002-NMSC- 012, ¶ 42, 132 N.M. 207, 46 P.3d 668, citing *Srader v. Verant*, 1998-NMSC-025, 125 N.M. 521, 964 P2d 82.

Assuming *arguendo* that the Pueblo in the future becomes a non-party to this action, there is no prejudicial effect to the remaining parties, as their interests in the land (if any) do not stem from the Pueblo. The Board of Trustees of the Cebolleta Land Grant, by stipulation, dismissed its complaint to quiet title against the Pueblo based on recognition of the preclusive effect of the prior

quiet title decree between the Board of Trustees of the Cebolleta Land Grant and the Pueblo' predecessors in title. RP 118-119. The nonappearing defendants Cebolleta Ranch LTD and Silver Dollar Ranch LLC are the Pueblo's predecessors in title to the land in dispute and have not claimed any interest in the disputed land adverse to the Pueblo.

Armijo has a claimed interest in the land adverse to the Pueblo, but Armijo's continuation of his claim against the Cebolleta Land Grant and the nonappearing defendants Cebolleta Ranch LTD and Silver Dollar Ranch LLC would not be prejudicial to the Pueblo. Any judgment rendered could be limited and shaped by the court to determine only the respective interests of the remaining defendants in the property and would not be binding on the hypothetical non-party Pueblo, who would be free to bring its own quiet title action against Armijo if it chose to do so.

The last factor to be considered by the Court under Rule 1-019(B) is whether Appellee Armijo will have an adequate remedy if the action is dismissed for nonjoinder. Assuming that the Pueblo is dismissed in the future from this action and cannot be joined thereafter, Armijo would have no ability to adjudicate his ownership dispute with the Pueblo in any court. Armijo would be left with no forum in which to litigate his land ownership dispute against the Pueblo, and title to the land would remain clouded.

Appellee Armijo would request this Court remand this matter to the District Court for a balancing of the equities in this case, including the inconvenience and expense (if any) to the Pueblo in defending its title to the property versus the harm to Appellee Armijo in being left with no forum in which to adjudicate title to the land in question.

CONCLUSION

Armijo submits to the Court that:

1. The state court has subject matter jurisdiction of this action pursuant to the New Mexico Supreme Court ruling in *Padilla* coupled with the decision of the U.S. Supreme Court in *City of Sherrill*, which is applicable to the fee land title facts of this case.
2. Armijo requests that this Court decline to review Appellant's claim of indispensability because the issue is not properly before this Court. In the alternative, Appellee Armijo requests that this Court remand this matter to the District Court for a determination of whether the Pueblo is an indispensable party to this action within the meaning of Rule 1-019(B) NMSA. See *C.E. Alexander & Sons, Inc. v. DEC Int'l, Inc.,* 112 N.M. 89, 92, 811 P.2d 899, 903 (1991).

3. Application of the doctrine of tribal sovereign immunity to Armijo deprives him of his constitutional right to possess and protect his property.
4. For the foregoing reasons this court should deny the Pueblo's appeal, award Armijo's costs and attorney fees on appeal and remand this case for further proceedings, including trial on the merits.

Reason for Requested Oral Argument:

This is a case of first impression in New Mexico involving constitutional rights of a New Mexico landowner to preserve and protect his property, against jurisdictional claims of tribal sovereign immunity as applied to off reservation fee land. Oral argument will allow supplementary explanation of the issues, argument and applicable case law.

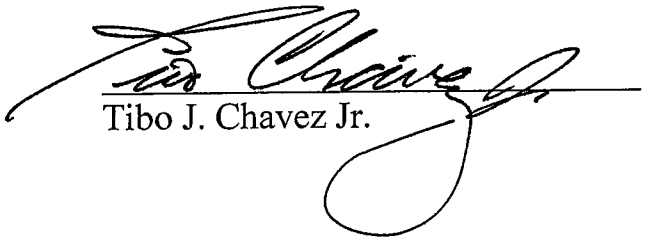
Respectfully submitted,

Tibo J. Chavez, Jr.
PO Box 569
Belen, NM 87002
505/864-4428
and

Stephen K. Bowman
P.O. Box 1570
Corrales, New Mexico 87048
505/620-3527
Attorneys for Appellee Armijo

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was faxed and mailed to opposing counsel on March 25, 2010.



Tibo J. Chavez Jr.