UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILIP C. BELLFY, ARTICLE 32.ORG, pro per; MONICA CADY, pro per; WILLIAM J. PERAULT, pro per; MARTIN REINHARDT, pro per; NATHAN J. WRIGHT, HERBAL LODGE, pro per; John Does; and Mary Does,

Plaintiffs, pro se litigants

v

KEITH CREAGH,

Defendant.

No. 1:15-cv-00282

HON. PAUL L. MALONEY

MAG. ELLEN S. CARMODY

/

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MOTION TO STRIKE UNDER RULE 12(f)

Under Rule 12(f), Plaintiffs move this honorable Court to strike all references to "the public" from any and all pleadings, responses, briefs, etc. proffered to this Court by the Defendant's counsel.

The function of a 12(f) Motion to Strike is to avoid the expenditure of time and money that must arise from litigating spurious issues. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Given that DNR Director Creagh, the Defendant, has made a binding judicial admission, admitted in this Court as "new evidence," that the proposed sale of Ceded Territory will "impact tribal Treaty rights," any reference to "the public" by Defendant's counsel constitutes a spurious issue and claim. Additionally, any reference to "the public" constitutes an insufficient defense; actually, all references to "the public" by the Defendant's counsel is no defense whatsoever, given that the sole issue before this Court is whether or not the proposed sale of Ceded Territory will "impact tribal Treaty rights," and Director Creagh has made a binding judicial admission of that fact –the proposed sale will impact the Plaintiffs' 1836 Treaty of Washington Article XIII "usual privileges of occupancy" tribal Treaty rights. Any references to "the public" have no role to play in this lawsuit, despite the Defendant's counsel's many and varied attempts to inject that spurious issue into this litigation. *Anchor Hocking Corp. v. Jacksonville Elec. Authority,* 419 F. Supp. 992, 1000. A defense is insufficient as a matter of law if, on the face of the pleadings, it is patently frivolous, as this "public right defense" clearly is, given that the Defendant has made a binding judicial admission to the contrary. *Shenandoah Life Ins. Co. v. Hawes,* 37 F.R.D. 526, 529 (E.D.N.C. 1965).

References to "the public" by the Defendant's counsel are immaterial in that they have no essential or important relationship to the claim for relief sought by the Plaintiffs (eliminating the impact on tribal Treaty rights that will be suffered by the Plaintiffs if the proposed sale is allowed to move forward) or the defenses being pleaded (as noted above, the "defense" that has been proffered by

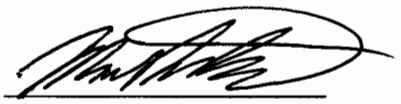
the Defendant's counsel only references the rights of "the public," completely ignoring Director Creagh's binding judicial admission that the sale would "impact tribal Treaty rights'). Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 706-07. (1990) *Fantasy, Inc.v. Fogerty*, 984 F.2d 1524 (9th Cir. 1993)

Any reference to "the public" by the Defendant's counsel is impertinent, consisting of a wholly spurious claim that has no bearing on the sole issue before this Court –whether or not the proposed sale will impact tribal Treaty rights, and Director Creagh has made a binding judicial admission of that fact. Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 711. (1990) *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524 (9th Cir. 1993)

Given that the Defendant, Director Creagh, has made a binding judicial admission that he agrees with the Plaintiffs who argue that the sale would impact their tribal Treaty rights, with no reference of the rights of "the public" by Defendant Creagh (beyond the spurious claims of his counsel) there is no question of fact or law that might allow a "public right" defense to succeed. Also, there is no set of circumstances that can be anticipated that would suggest that a "public right" defense could or would succeed, regardless of what evidence could be marshaled to support such a "public right" defense. Given that the Defendant has made a binding judicial admission that the case revolves around "tribal Treaty rights," agreeing with and supporting the Plaintiffs' claim, allowing a "public right" defense to proceed would cause prejudice to the Plaintiffs' case, and cause unnecessary delay and confusion. *N. Penn Transfer, Inc. v. Victaulic Co. of Am.,* 859 F. Supp. 154, 158 (E.D. Pa. 1994).

Given that any and all references to "the public" by the Defendant's counsel in this litigation contradict the Defendant's own binding judicial admission that the proposed sale will impact the tribal Treaty rights of the Plaintiffs are irrelevant, spurious, immaterial, impertinent, and prejudicial, Plaintiffs move this honorable Court will strike all references to "the public" from all pleadings, responses, answers, etc. proffered by the Defendant's counsel in this case.

Respectfully Submitted,

/s/ 
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