

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI (Northern (Jackson))**

HOWARD BROWN and BRANDON SIBLEY,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	Civil Action No. 3:22-cv-00256-DPJ-FKB
	)	
CHOCTAW RESORT DEVELOPMENT ENTERPRISE, ET AL.,	)	
	)	
Defendants.	)	
	)	

**MOTION TO STAY ALL PROCEEDINGS IN THIS CASE, INCLUDING PLAINTIFFS’
MOTION FOR PARTIAL SUMMARY JUDGMENT (DOC. 28), EXCEPT FOR RULE 11
MATTERS**

COME NOW the Defendants by and through their counsel of record, C. Bryant Rogers, VanAmberg, Rogers, Yepa, Abeita, Gomez & Wilkinson, LLP, and hereby moves that the Court stay all further proceedings in this case except for Rule 11 matters, state as follows:

1. Plaintiffs have sought dismissal of this suit for Plaintiffs’ failure to exhaust tribal remedies (Docs. 6 and 22). Those requests are now fully briefed and pending before the Court.
2. Both parties have asked the Court to *sua sponte* impose Rule 11 sanctions per Docs. 18 and 24. Defendants agree that notwithstanding their request that this suit be dismissed for Plaintiffs’ failure to exhaust their tribal remedies that the Court may properly retain and adjudicate any Rule 11 issues as the Court deems appropriate, including addressing Plaintiffs’ recent contention that this Court may have violated various canons of Judicial Conduct in issuing its Doc. 16 Order of August 16, 2022, and Plaintiff Brandon Sibley’s recent public

statement in a You Tube video that Plaintiffs have encountered a “bad district judge” in this case. *See*, Doc. 30.

3. Plaintiffs’ Motion for Partial Summary Judgment goes to the merits of some of their claims and could not properly be ruled upon by this Court until and after Defendants’ pending Motion to Dismiss for Failure to Exhaust Tribal Remedies (Doc. 6, modified by Doc. 22) is ruled upon by the Court; and, then only if that Motion to Dismiss were denied. If Defendants’ pending requests that this entire suit be dismissed for Plaintiffs’ failure to exhaust tribal remedies as sought at Doc. 6 and Doc. 22 are granted, the Court will be dismissing Plaintiffs’ Complaint for failure to exhaust their tribal remedies. Hence, this Motion is not properly before this Court at this time and in the interests of judicial economy and in fairness to Defendants they should not be required to respond Plaintiffs’ Doc. 28 Motion unless the Court denies Defendants’ request for dismissal, nor should any other proceedings be permitted (except with respect to Rule 11 matters), pending this Court’s ruling on the pending dismissal requests.

4. Defendants also point out that Plaintiffs have utterly failed to identify any source of substantive law which can give rise to actionable claims in this Court in this case regarding their arguments attacking the wisdom or constitutionality of the tribal mask mandate as attacked in Plaintiffs’ Complaint and as elaborated upon by them at page 2, fn. 1 and at page 3 of their Doc. 28 Motion., or which gives this Court subject matter jurisdiction to rule upon those claims.

5. For the reasons previously set out (Doc. 7, page 9, n.3; Doc. 11, page 2, and n.1; Doc 12, page 5, ¶ 6), Plaintiffs’ reliance on the Indian Civil Rights Act of 1968 (25 U.S.C. § 1302 *et seq.*) and “Article X of the Constitution and Charter of the Mississippi Band of Choctaw Indians” (p. 2 of Doc. 28) is wholly misplaced since neither § 1302 nor the Tribe’s Constitution can give rise to actionable claims (or jurisdiction in this Court to address any such claims); and,

for the reasons previously set out (Doc. 7, page 9, n.3; Doc. 11, page 2, and n.1; Doc 12, page 5, ¶ 6) to the extent Plaintiffs are attempting to state claims founded on the Bill of Rights of the U.S. Constitution, none of those Constitutional provisions are applicable to the actions or inactions of the Tribe or its officials or employees; hence, also fail to state any claims upon which relief may be granted by this Court or which properly invoke this Court's jurisdiction.

6. As Defendants will argue later if Plaintiffs refile in the Choctaw Tribal Court their suit and anything like the Motion for Partial Summary Judgment (Doc. 28) which they have just filed, a movant is not entitled to summary judgment simply because they contend there are no disputed issues of material fact bearing on the legal issues presented, although the question whether any disputed issues of material fact exist has not yet been addressed by Defendants. Instead, Plaintiffs must also show that based on the undisputed material facts that Plaintiffs are entitled to judgment as a matter of law based on the governing law bearing on that issue, including law bearing on defenses to such claims. *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986); *Celotex Corporation v. Catrett*, 477 U.S. 324 (1986). Plaintiffs have utterly failed to identify any substantive law entitling them to relief on any of their "constitutional" claims. But, again, none of these issues are properly before this Court at this time and this Court has the inherent authority to stay, and is hereby requested to stay, all proceedings in this case (except for Rule 11 matters), including any further proceedings based on Plaintiffs' Doc. 28 Motion for Partial Summary Judgment.

WHEREFORE, Defendants' pray that the Court stay all proceedings in this case (except for Rule 11 matters), including any further proceedings based on Plaintiffs' Doc. 28 Motion for Partial Summary Judgment, and for such other and further relief as the Court deems just.

Respectfully submitted,

VanAMBERG, ROGERS, YEPa, ABEITA
GOMEZ & WILKINSON, LLP

By: /s/ C. BRYANT ROGERS
C. BRYANT ROGERS
Post Office Box 1447
Santa Fe, NM 87504-1447
Phone: (505) 988-8979
Fax: (505) 983-7508
E-mail: cbrogers@nmlawgroup.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to the Plaintiffs by United States Mail, postage prepaid, on September 16, 2022.

/s/ C. BRYANT ROGERS
C. BRYANT ROGERS

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Respectfully submitted,

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By: /s/ C. BRYANT ROGERS
C. BRYANT ROGERS
Post Office Box 1447
Santa Fe, NM 87504-1447
Phone: (505) 988-8979
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/s/ C. BRYANT ROGERS
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