Harold DAWAVENDEWA, a single man, Plaintiff–Appellant,

v.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Arizona corporation, Defendant–Appellee,

The Navajo Nation, Appellee.

No. 00–16787.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Oct. 17, 2001.

Filed Jan. 2, 2002.

Unsuccessful applicant for position at power generating facility operated by regional power district located on Indian reservation lands brought Title VII action, challenging employment preference to qualified members of Indian tribe that district was required to grant under terms of its lease with tribe. After initial dismissal of suit was reversed, and matter remanded, 154 F.3d 1117, the United States District Court for the District of Arizona, Stephen M. McNamee, Chief Judge, dismissed suit based on failure to join tribe as party. Applicant appealed. The Court of Appeals, Trott, Circuit Judge, held that: (1) tribe was a necessary party to suit; (2) tribe could not joined as party, since it enjoyed tribal sovereign immunity; and (3) tribe was an indispensable party, whose absence required dismissal of suit.

Affirmed.

1. Federal Courts ⚿818

Court of Appeals reviews a district court's decision to dismiss for failure to join an indispensable party for abuse of discretion. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.

2. Federal Courts ⚿776

To the extent that the district court's determination whether a party's interest is impaired, as will make it an indispensable party to suit, involves a question of law, Court of Appeals reviews that determination de novo. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.

3. Federal Civil Procedure ⚿201

Inquiry used in determining whether a party is indispensable is a practical, fact-specific one, designed to avoid the harsh results of rigid application. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.

4. Federal Courts ⚿763.1

In reviewing grant of motion to dismiss for failure to join an indispensable party, Court of Appeals must determine (1) whether an absent party is necessary to the action, and then, (2) if the party is necessary, but cannot be joined, whether the party is indispensable such that in equity and good conscience the suit should be dismissed. Fed.Rules Civ.Proc.Rule 19, 28 U.S.C.A.

5. Federal Civil Procedure ⚿202

In determining whether a party not named in complaint is a necessary party, court considers whether, in the absence of that party, complete relief can be accorded to the plaintiff, or in the alternative, whether the absent party claims a legally protected interest in the subject of the suit such that a decision in its absence will (1) impair or impede its ability to protect that interest, or (2) expose named parties to the risk of multiple or inconsistent obligations by reason of that interest. Fed.Rules Civ. Proc.Rule 19, 28 U.S.C.A.

6. Federal Civil Procedure ⚿202

An absent party's claimed interest must be more than speculation about future events in order for that party to be

brought by various Indian Tribes against federal officials challenging the United States' continued recognition of the Quinault Indian Nation as the sole governing authority of the Quinault Indian Reservation. 928 F.2d at 1497. In affirming the district court's dismissal of the case for failure to join the Quinault Nation as an indispensable party, we held that "success by the plaintiffs . . . would not afford complete relief to them" because "[j]udgment against the federal officials would not be binding on the Quinault Nation, which could continue to assert sovereign powers and management responsibilities over the reservation." *Id.* at 1498.

Likewise, in *Pit River Home,* plaintiff Association sought judicial review of the Secretary of Interior's designation of the Pit River Tribal Council as the beneficiary of reservation property. 30 F.3d at 1092. We affirmed the district court's dismissal of the suit for the Association's failure to join the Council as an indispensable party. In doing so, we opined that "even if the Association obtained its requested relief . . . it would not have complete relief, since judgment against the government would not bind the Council, which could continue to assert its right to [] the [property]." *Id.* at 1099.

Dawavendewa stands in the same position as the plaintiff Association in *Pit River Home* and the various Indian Tribes in *Confederated Tribes:* he is not assured complete relief even if victorious. Indeed, if the federal court granted Dawavendewa's requested injunctive relief, SRP would be between the proverbial rock and a hard place—comply with the injunction prohibiting the hiring preference policy or comply with the lease requiring it. If, in resolving this quandary, SRP declines to abide by the injunction and instead continues to comply with its lease obligations, Dawavendewa would not be accorded complete relief. Thus, under Rule 19(a)(1), the Nation is a necessary party.

B. Impairment of the Nation's Legally Protected Interest

[9] The Nation is also a necessary party to Dawavendewa's action against SRP under the second prong of Rule 19(a). Under Rule 19(a)(2), an absent party is necessary if it claims "an interest relating to the subject of the action," and disposition of the action in its absence may "as a practical matter impair or impede [its] ability to protect that interest." Fed. R. Civ. P. 19(a)(2)(i).

Here, the Nation claims a legally protected interest in its contract rights with SRP. In *Lomayaktewa v. Hathaway* we observed that, "[n]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable." 520 F.2d 1324, 1325 (9th Cir.1975). Accordingly, we held unequivocally that the Hopi Tribe was a necessary (and indispensable) party to a suit by an individual challenging a lease between the Hopi Tribe and the Peabody Coal Company simply by virtue of being a signatory to the lease. *See id.* at 1326.

Since *Lomayaktewa* we have reiterated this fundamental principle on numerous occasions. In *Kescoli,* for example, a member of the Navajo Nation challenged an agreement among a coal company, the United States Department of Interior Office of Surface Mining, the Navajo Nation, and the Hopi Tribe. 101 F.3d at 1307. She claimed that one lease provision permitted mining too close to Navajo burial sites in violation of federal law, 30 U.S.C. § 1272(e)(5). *See id.* at 1308. We determined that, because a judgment invalidating the challenged provision could cause the entire tapestry of the agreement to unravel, the Hopi Tribe had a legally pro-

tected interest in the lease term. *Id.* at 1310; *see also McClendon v. United States,* 885 F.2d 627, 633 (9th Cir.1989) ("Because the Tribe is a party to the lease agreement sought to be enforced, it is an indispensable party under [Rule] 19.").

Quite similar to the suits in *Lomayaktewa* and *Kescoli,* the instant litigation threatens to impair the Nation's contractual interests, and thus, its fundamental economic relationship with SRP. The Nation strenuously emphasizes the importance of the hiring preference policy to its economic well-being. In fact, the Nation asserts that "[without the hiring preference provision], the Navajo Nation leadership would never have approved this lease agreement."

[10] Thus, today we reaffirm the fundamental principle outlined in *Lomayaktewa:* a party to a contract is necessary, and if not susceptible to joinder, indispensable to litigation seeking to decimate that contract.[6] Here, in consideration for "Navajo water and Navajo coal," the Nation bargained for the lease provision requiring SRP to maintain a Navajo hiring preference policy. Because Dawavendewa challenges the Nation's ability to secure employment opportunities and income for the reservation—its fundamental consideration for the lease with SRP—the Nation, like the Hopi Tribe in *Kescoli,* claims a cognizable economic interest in the subject of this litigation which may be grievously impaired by a decision rendered in its absence.

In addition, a judgment rendered in the Nation's absence will impair its sovereign capacity to negotiate contracts and, in general, to govern the Navajo reservation. In *Kescoli,* we determined that, by virtue of its sovereign capacity, the Hopi Tribe claimed an interest in determining the appropriate balance between alternative lease terms. 101 F.3d at 1309–10. Similarly, the Nation has an interest in determining the appropriate balance between alternative lease terms. Nation Amicus Br. at 7 ("[The lease] has cost Navajo water, Navajo coal, Navajo prime land, and the inevitable pollution of the Navajo homeland. It is a bargained for price that the Navajo Nation alone paid in return for jobs for the Navajo people.").

Undermining the Nation's ability to negotiate contracts also undermines the Nation's ability to govern the reservation effectively and efficiently. *See Pit River Home,* 30 F.3d at 1101 (finding impairment of the Council's legally protected interest in governing the Tribe); *Quileute Indian Tribe v. Babbitt,* 18 F.3d 1456, 1460 (9th Cir.1994) (finding impairment of a legally protected interest where outcome would jeopardize the authority of the Quinaults to govern the reservation); *Confederated Tribes,* 928 F.2d at 1498(finding impairment where plaintiffs sought a complete rejection of the Quinault Nation's ability to govern the reservation). Thus, as a result of its multiple economic and sovereign interests, the Nation sufficiently asserts claims relating to this litigation which may be impaired in its absence. Under Rule 19(a)(2)(i) the Nation is, therefore, a necessary party.

C. The Substantial Risk of Inconsistent or Multiple Obligations by Virtue of the Nation's Legally Protected Interests

[11] Any disposition in the Nation's absence threatens to leave SRP subject to substantial risk of incurring multiple or inconsistent obligations.[7] As explained

6. We recognize our adoption of *Lomayaktewa*'s rule requires only that we progress to the analysis of the Nation's sovereign immunity. Nevertheless, we complete the inquiry directed by Rule 19 as alternative grounds, reinforcing the same conclusion.

7. Dawavendewa suggests that inconsistent obligations arise only if the Nation "violates the