

26<sup>th</sup> ANNUAL  
NATIONAL NATIVE AMERICAN LAW STUDENTS ASSOCIATION  
MOOT COURT COMPETITION  
PROBLEM

Yuma Indian Nation Supreme Court

*Yuma Indian Nation, Plaintiff/Appellee v. Thomas Smith & Carol Smith,  
Defendants/Appellants, Case No. 17-024*

In 2007, the Yuma Indian Nation (“YIN”), located in southwest Arizona, signed a contract with Thomas Smith, a certified financial planner and accountant. Thomas agreed to provide the Nation with financial advice on an as-needed basis regarding economic development issues. The contract was signed by the parties at Thomas’ office in Phoenix, Arizona. Thomas lives and works in Phoenix. The contract provided for any and all disputes arising from the contract to be litigated in a court of competent jurisdiction. The contract also required Thomas to maintain absolute confidentiality regarding any and all tribal communications and economic development plans.

From 2007 to 2017, Thomas provided the Nation with financial advice on a wide range of economic development issues. He exchanged emails and telephone calls on a nearly daily basis with various tribal chairs and Tribal Council members, and, after the Nation created the YIN Economic Development Corporation (“EDC”) in 2009, Thomas primarily communicated with Fred Captain, the EDC CEO, and EDC employee/accountant Molly Bluejacket. Thomas also prepared and submitted to the YIN Tribal Council written reports on a quarterly basis and presented these reports in person at Council meetings on the reservation.

The Nation created the EDC under a 2009 tribal commercial code to promote the prosperity of the Nation and its citizens. The Tribal Council funded the EDC with a one-time \$10 million loan from the Nation’s general fund. The primary purpose of the EDC is stated in the corporate charter that created it: “to create and assist in the development of successful economic endeavors, of any legal type or business, on the reservation and in southwestern Arizona.” The commercial code authorizes the Nation, pursuant to its inherent sovereign powers, to create and charter public and private corporations to operate businesses on and off the reservation. The Tribal Council created the EDC via a corporate charter as a wholly owned subsidiary of the Nation and as an “arm-of-the-tribe.” But the EDC is to be operated by its own board of directors consisting of five people who must be experienced in business endeavors. The Tribal Council selected the initial board of five directors to serve staggered terms with one director’s term expiring and being reelected or replaced each year. The charter provided that the sitting directors would by majority vote elect or reelect a person for the expiring seat. At all times, three of the directors have to be tribal citizens and two have to be non-Indians or citizens of other tribes. The Tribal Council retained the authority to remove any director for cause, or for no cause, at any time, by a 75% vote.

The EDC is authorized to buy and sell real property in fee simple title on or off reservation, to buy any other types of property in whatever form of ownership, and to sue and be sued. However, no debts of the EDC could encumber, or implicate in any way, the assets of the Nation. The EDC also does not possess the power to borrow or lend money in the name of, or on behalf of, the Nation or to grant or permit any liens or interests of any kind to attach to the assets of the Nation. The EDC is required to keep detailed corporate and financial records and submit them on a quarterly basis to the Tribal Council for review and approval. Finally, fifty percent of all EDC net profits are to be paid to the YIN general fund on an annual basis. Unfortunately, due to a lack of success in its endeavors to date, the EDC has only repaid the Nation \$2 million.

The charter requires the EDC to apply tribal preference in hiring employees and contracting with outside entities. The EDC has employed an average of 25 tribal citizens full-time every year since its creation in 2009. The Tribal Council also mandated in the charter that the EDC, its board, and all employees are protected by tribal sovereign immunity to the fullest extent of the law. The Council included this provision, as it states in the charter, to protect the entity and the Nation from unconsented litigation and to assist in the success of the EDC's endeavors.

In 2010, with the written permission of the Nation's Tribal Council, Thomas signed a contract with his sister Carol Smith who lives and works in Portland, Oregon. The contract she and Thomas signed is identical to the one Thomas signed with the Nation in 2007 and, in fact, it includes a term that both parties are required to comply with the YIN-Thomas contract. Carol is a licensed stockbroker and was retained to give her brother, the EDC, and the YIN advice regarding stocks, bonds, and securities issues.

Carol Smith provides her advice directly to her brother via email, telephone, and postal and delivery services. She submits monthly bills via email to the EDC CEO Fred Captain and the EDC mails her payments. She visited the YIN reservation along with her brother on two occasions when she was on vacation in Phoenix. Thomas forwards many of her communications and advice on various issues to the Nation's Tribal Council, the EDC CEO and accountant Bluejacket on many occasions.

In 2016, the EDC began investigating the possibility of engaging in marijuana cultivation and sales. Marijuana is legal under Arizona state law for medical use but a state-wide referendum to make marijuana legal for recreational use failed in the fall of 2016. The EDC, however, conferred with the YIN Tribal Council and convinced the Council to enact a tribal ordinance making marijuana cultivation and use on the reservation legal for any and all purposes. The EDC began quietly pursuing the development of a marijuana operation. It conferred with Thomas Smith on this issue several times. For moral reasons, Thomas and Carol are personally opposed to being involved in any way in the marijuana business. Ultimately, Thomas informed his acquaintance, the Arizona Attorney General, of the Nation's plans. Subsequently, the A.G. wrote the Nation and the EDC a cease and desist letter regarding the development of recreational marijuana operations.

The Tribal Council and the EDC were enraged at the Smiths. Consequently, the Tribal Council filed suit versus the Smiths in tribal court for breach of contract, violation of fiduciary duties, and violation of their duties of confidentiality. The Nation sought recovery of the liquidated damages amount set out in the contracts.

The Smiths filed special appearances and identical motions to dismiss the YIN suit based on lack of personal jurisdiction and lack of subject matter jurisdiction over them and this suit, and in the alternative, for the trial court to stay the suit while the Smiths pursue a ruling in Arizona federal district court as to whether the tribal court has jurisdiction over them. The trial court denied both motions.

Claiming to continue under their special appearances, the Smiths filed answers denying the YIN claims and counterclaimed against the Nation for monies due under their contracts and for defamation for impugning their professional skills.

The YIN court ordinance has rules of procedure very similar to the Federal Rules of Civil Procedure.<sup>1</sup> Therefore, the Smiths also impleaded the EDC, and the EDC's CEO Fred Captain and accountant Molly Bluejacket in their official and individual capacities. The Smiths made the same claims against the third party defendants as they had made against the YIN.

The trial court dismissed all of the Smiths counterclaims against YIN and claims against the third party defendants due to sovereign immunity.

The Smiths filed an interlocutory appeal in the Yuma Indian Nation Supreme Court requesting that the Court decide these issues and issue a writ of mandamus ordering the trial court to stay the suit.

The Supreme Court granted the interlocutory appeal on two issues:

1. Whether the Yuma Indian Nation courts have personal and subject matter jurisdiction over Thomas Smith and Carol Smith, or in the alternative, whether the trial court should stay this suit while the Smiths seek a ruling in the Arizona federal district court.
2. Whether sovereign immunity, or any other form of immunity, protects the Yuma Indian Nation, the YIN Economic Development Corporation, and/or the EDC CEO and accountant from the Smiths' claims.

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<sup>1</sup> In 2005, the YIN Tribal Council enacted an ordinance adopting Titles 1, 2, and 11 of the Winnebago Tribe of Nebraska code (at <http://www.winnebago-tribe.com/index.php/government/tribal-court>). The YIN ordinance sets out that the names of the tribe and any tribal corporations mentioned in the Winnebago code are to be conformed to YIN and any economic development corporations created by YIN.