

presumption of prejudice depending on the length of the delay, and a showing of prejudice based on incarceration, possibility of incarceration, and the disruption caused by, *inter alia*, the presence of unresolved criminal charges.

Appellant has alleged, and it has not been refuted by Appellee, that her defense may be impaired by the length of time between the arraignment and the trial. It is reasonable to find there is a disruption caused by the presence of unresolved criminal charges against her. Appellee asserted in its brief that there was no guarantee Appellant would have gone to trial on August 17, 2006 anyway. He cites to several other cases that may have taken priority. We have recognized prosecutorial discretion in choosing which cases to prosecute. (*See Mellon v. CCT*, 8 CCAR 01, 4 CTCR 17, 32 ILR 6021 and *Campbell v. CCT*, 8 CCAR 28, 4 CTCR 22, 32 ILR 6140). Such discretion includes knowing when to wait on prosecuting a case if there is no time on the docket. It does not include, once the case is filed, unlimited delays until the Prosecutor's Office has time to have a trial. A defendant's right to a speedy resolution is a protected due process right.

There is a stronger presumption of prejudice here in that the length of delay between the arraignment and trial date set is almost five (5) months. To disregard the 90-day limit rule for the reasons before the Trial Court at the hearing on August 14, 2006 ignores the statutory rule of law set by the Tribes' legislators.

A review of the record before the Trial Court on August 14, 2006, does not support a finding of good cause to delay the trial sixty-six days beyond the expiration of the 90-day limit as a matter of law. Appellant has met her burden in showing such a delay violates the standards established by the *Stensgar* rule. We hold this matter should be remanded for an Order to Dismiss without prejudice, unless the statute of limitations have run, which necessitates a dismissal with prejudice.

It is **SO ORDERED**.

BIG R CONSTRUCTION, Appellant,

vs.

Brian & Bonnie TIMENTWA, Appellees.

Case No. AP05-010, 4 CTCR 33

**8 CCAR 91**

[Appellant appeared pro se.  
Appellees appeared pro se.  
Trial Court Case No. CV-OC-2004-24381]

Argued July 21, 2006. Decided November 14, 2006.  
Before Presiding Justice Earl L. McGeoghegan, Justice Edythe Chenois and Justice  
Theresa M. Pouley

McGeoghegan, Per curiam.

### SUMMARY

In late March of 2004, the Appellant, Big R Construction/ Russell Womer (Big R), entered into a construction contract with Appellees, Brian and Bonnie Timentwa, for specific repairs and renovation: new framing and insulation, install windows, space for wood storage and related reconstruction and sheet rocking of the cement block foundation to their home. The estimate provided by Big R for the work was \$6,373.00. A delay of one month was accepted by the Timentwas so Big R could complete another job. In June, Big R installed gutters on their home but additional work was delayed by Big R for a few more weeks to the dismay of the Timentwas. The basement work began near the end of July requiring the Timentwas' daughter and son to move out of the house while the work was being accomplished. Big R discontinued work on the house at the end of July. The Timentwas tried several times to have Big R complete the work and eventually hired Custom Building Services to redo and finish the Big R project for \$42,370.00, which included work not part of the Big R estimate. The Timentwas sued to recover damages from Big R including damages for inconveniences (loss of financial advantage and for relocating their children for extended periods while work was being done on their home). At trial, Big R notified the Court that it had filed for Chapter 7 Bankruptcy. The Court went ahead with the trial and entered judgment against Big R for the full Timentwa claim, \$36,373.00 plus costs for a total of \$36,648.08.

This appeal is before the Court to assure the parties that substantial justice is done.

### COURT OF APPEALS SUMMARY

The appellant raised the following issues on appeal:

1. Whether the Trial Court denied Big R substantial justice by failing to stay the proceedings pending Chapter 7 Bankruptcy?

2. Whether the Trial Court miscalculated the damages caused by Big R and awarded to the Timentwas?

As set out in the opinion below, we first find that the trial should have been stayed pending the Timentwa's creditor claims in Federal Bankruptcy Court. Notwithstanding the failure to stay, the Court failed to set forth its specific calculations of the damages caused by Big R. We remand to the Court below for reconsideration of the decision not to stay the proceedings pending bankruptcy and for an itemized calculation of the damages attributable to Big R.

### STANDARD OF REVIEW

The first issue, whether the judge erred by denying Big R an automatic stay pending a Federal Bankruptcy filing is a question of law, and *de novo* review is required. *Colville Confederated Tribes vs. Naff*, 2 CTCR 08, 22 ILR 6032 2 CCAR 50 (1995); *Wiley, et al v. Colville Confederated Tribes*, 2 CTCR 09, 22 ILR 6059, 2 CCAR 60 (1995); *Palmer v. Millard, et al*, 3 CCAR 27, 2 CTCR 14, 23 ILR 6094 (1996); *Pouley v. CCT*, 4 CCAR 38, 2 CTCR 39, 25 ILR 6024, (1997); *In Re The Welfare of R.S.P.V.*, 3 CTCR 07, 26 ILR 6039, 4 CCAR 68, (1998).

The second issue Appellant raised regarding the judge's calculation of the damages necessitates a review of whether there are sufficient facts and findings for the judgment awarded. If administration of justice favors the Court of Appeals, we review *de novo*. If it favors the Trial Court, we review under the clearly erroneous standard. In this instance the administration of justice favors the Trial Court. The Trial Judge's role is both administrative and decision-making. We review the last issue under the clearly erroneous standard.

### DISCUSSION

#### A. FEDERAL BANKRUPTCY

The Court found that Big R had filed for Chapter 7 Bankruptcy in United States Bankruptcy Court around April 2005 (prior to the trial), but because the parties were tribal members and Big R was a "100% Colville Business Enterprise", the Court did not automatically stay the proceedings pending action by the Bankruptcy Court and subsequently entered judgment against Big R. This finding was made without any consideration of the applicability of federal bankruptcy court orders in the tribal court and without considering whether as a matter of "comity" the Tribal Court should extend full faith and credit to the bankruptcy court order.

In *R.S.P.V. v. CCT Children and Family Services*, 4 CCAR 68, the Court allowed a federal criminal judgment to be used as “clear and convincing proof” in a child dependency proceeding. The Court extensively analyzed the federal proceeding and concluded that it was proper for the trial court to give effect of the federal guilty plea in a child dependency proceeding. Similarly, in *Carson v. Barham*, 7 CCAR 17 2003), the Court gave effect to a state court proceeding and declined jurisdiction in a child custody proceeding as a matter of “comity”. The Court went on to recognize the importance honoring the orders of other courts in certain circumstances, not as a diminishment of the Court or the Tribes sovereignty, but as an important exercise of sovereignty. The Court said: [to allow the case to moved to tribal court just because the child had an IIM account] “would encourage forum shopping and conflicting judgments between other courts and the Colville Tribal Court. This in turn would have the effect of obliterating judicial certainty and undermining cooperation among courts”. *Id.* At 21.

In this matter, we find no evidence in the record regarding the bankruptcy except the statements of the parties. The Court did not include any Bankruptcy Court Orders as part of the record. The Trial Court did not address or weigh the issues of comity or full faith and credit. We know of no creditor actions that are not subject to the automatic stay provisions of federal bankruptcy regulations (monetary sanctions can apply) and no rationale is supplied explaining why the Tribal Court should not honor these automatic stay provisions. Notwithstanding the Court's well intentioned interpretation of the holding in *Confederated Tribes of the Colville Reservation v. Melvin White*, 139 F.3rd 1268 (9th Cir. 1998), the Court should have made a record of the Bankruptcy Court orders, have properly weighed the federal statute and its policy, and have addressed issues of comity before its summary ruling. In all likelihood, the actions probably should have been stayed and the Trial Court should have deferred action until the Federal Bankruptcy Court timely addressed whether the creditor claims of the Timentwas should be tried for a determination of the creditor's claim against the bankrupt Big R. Sovereignty of the Tribe is unaffected and fairness to all creditors is the reason to defer to Bankruptcy Court. We hold that the judge erred in failing to properly create a factual record and in failing to balance the legal issues before making its determination not to stay the Trial Court’s proceedings until after the Bankruptcy matter was finished.

## B. DAMAGES

The Court provided no detailed calculations or description of how it reached its damage award to the Timentwas. The judgment total appears to be excessive on its face and has Big R paying for almost the entire renovation/reconstruction project with little to no cost to the Timentwas.

Big R estimated the Timentwa basement project to cost around \$6,373.00. No payments for materials, labor etc. were paid by the Timentwas to Big R. Big R expended monies to purchase materials and equipment, and expenses could be attributed to labor costs to Big R for partial work on the project by employees of Big R. Some damages to the Timentwa's basement foundation was found by the Court to be caused by Big R but were not distinguished from the pre-existing condition of the basement. The Custom Building Services estimate of \$42,370.00 included improvements that may not have been part of the original Big R project. The Court did not specify whether any inconvenience damages were awarded to the Timentwas. No off-set for materials and equipment provided by Big R or the labor value of the work accomplished by Big R was used by the Court in its judgment. Absent specific calculations for damages awarded by the Court below, this Court cannot determine whether the damages awarded are fair to the parties and that substantial justice is done. We hold that the judge erred in her calculations for damages awarded.

#### CONCLUSION

We grant the appeal and REMAND for re-consideration of the application of the automatic stay provisions of federal bankruptcy regulations to tribal court actions, and for specific calculations for a damage award to the Timentwas.

Shawn DESAUTEL, Appellant

vs.

COLVILLE BUSINESS COUNCIL, Appellee.

Case No. AP06-009, 4 CTCR 34, 34 Indian L. Rep. 6001

**8 CCAR 95**

[Appellant appeared *pro se*.

Appellee appeared through counsel, Juliana Repp, Spokane WA.

Trial Court Case No. CV-OC-2005-25353]

Decided December 13, 2006

Before Chief Justice Anita Dupris, Justice David C. Bonga and Justice Dennis L. Nelson

Nelson, J.