

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 07-265L

(Filed: March 27, 2008)

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KERMIT A. BELGARDE, also known as )  
KERMIT REDEAGLE-BELGARDE, )  
Plaintiff, )  
v. )  
UNITED STATES, )  
Defendant. )

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ORDER

In this Indian trust case, the government has filed a motion for a stay of proceedings pending resolution of an interlocutory appeal in a related case, *Wolfchild v. United States*, No. 03-2684L. In that case, this court certified two questions of law for review by the Court of Appeals for the Federal Circuit, *see Wolfchild v. United States*, 78 Fed. Cl. 472 (2007), and the Federal Circuit granted the ensuing petition for review. *See Wolfchild v. United States*, Misc. Docket No. 861 (Fed. Cir. Dec. 10, 2007) (order granting permission for appeal) (appeal docketed as No. 2008-5018 (Fed. Cir.)).

Plaintiff's Second Amended Complaint was filed as a consequence of this court's order dated January 8, 2008. That complaint alleges a breach of trust that closely tracks the complaints of the numerous plaintiffs and intervening plaintiffs in the *Wolfchild* case. In essence, the government's pending motion seeks to stay this action pending a decision by the Federal Circuit on the certified questions based upon the matching claims in *Wolfchild*. In support of its motion, the government notes that the court on December 19, 2007 stayed proceedings in the *Wolfchild* litigation to await the Federal Circuit's decision.

In the circumstances, there is merit to the government's motion for stay and that motion will be granted. However, as the government also observes, plaintiff's Second Amended Complaint couples the claim for breach of trust with a claim for breach of contract that is in all material respects equivalent to a claim that was previously deemed time-barred by the court in the *Wolfchild* litigation. *See Wolfchild v. United States*, 62 Fed. Cl. 521, 549 (2004). Because the applicable statute of limitations, 28 U.S.C. § 2501, is jurisdictional for this court, *see John R.*

*Sand & Gravel Co. v. United States*, \_\_\_ U.S. \_\_\_, \_\_\_, 128 S. Ct. 750, 756-57 (2008), the jurisdictional validity of plaintiff's claim for breach of contract should be addressed at this early stage of these proceedings. See *Consolidation Coal Co. v. United States*, 351 F.3d 1374, 1378 (Fed. Cir. 2003) (“[U]nder federal rules any [federal] court at any stage in the proceeding may address jurisdictional issues.”).

Upon examining the file with a specific focus on plaintiff's claim for breach of contract, the court can discern nothing about that claim to differentiate it from the corresponding claim dismissed in *Wolfchild*. Paragraph 39 of plaintiff's Second Amended Complaint actually incorporates the claim for breach of contract as originally stated in *Wolfchild*. Consequently, the claim for breach of contract in this case also is time-barred and must be dismissed.

### CONCLUSION

For the reasons stated, the claim for breach of contract set out in paragraph 39 of plaintiff's Second Amended Complaint is dismissed for lack of jurisdiction because it is time-barred. The government's motion for stay of further proceedings in this case pending resolution by the Federal Circuit of the questions certified for interlocutory appeal in the *Wolfchild* litigation is GRANTED. The parties shall file a joint status report within twenty days following a decision by the Federal Circuit in *Wolfchild*.

It is so **ORDERED**.

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Charles F. Lettow  
Judge