

COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Anita Barrientez,)	
)	
Plaintiff,)	
)	
vs.)	No. 007-88
)	
)	
The Shakopee Mdewakanton,)	
Sioux Community,)	
)	
Defendant.)	

MEMORANDUM OPINION

Summary

During a telephone pre-trial conference in this matter on September 20, 1990, the Court on its own motion raised the question of whether, under Rule 18 of this Court's Rules of Civil Procedure, the Minnesota-Dakota Indian Housing Authority ("MDIHA") is a necessary and indispensable party in these proceedings. The Court requested the parties to provide the Court with their views. By written memoranda, they did so; and by this Memorandum Opinion the Court now states its position.

For the reasons set forth in more detail below, it is the view of this Court that as matters presently stand, the MDIHA clearly is a necessary party to these proceedings. MDIHA claims an interest in property, the title to which is at issue here; and as matters stand that interest could be jeopardized if the Defendant Shakopee Mdewakanton Sioux Community ("the Community") were to prevail. Therefore, we are today ordering

that, unless the status quo changes in a manner we describe below, the MDIHA must be joined as a party in this matter.

In its memorandum on this issue, the Community asserted that it would consent to assume all of the obligations that the Plaintiff, Anita Barrientez, has to MDIHA, should the Community prevail. Without more, this representation would not seem to create an obligation that MDIHA clearly could enforce. However, if the Community were either to execute a hold-harmless agreement with the MDIHA, or post a bond with the Court in the amount of Ms. Barrientez's obligation to MDIHA, then the interests of MDIHA no longer be in jeopardy in this action, and its joinder no longer would be required.

Discussion

Rule 18 of the Rules of Civil Procedure of this Court is identical to Rule 19 of the Federal Rules of Civil Procedure. Both Rules provide:

(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. ...

(b) If a person, as described in subdivision (a)(1) - (2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the

person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

In this litigation, the MDIHA claims a mortgage interest in the residence being occupied by the Plaintiff; and the Community claims that the Plaintiff has no right to occupy the residence. Clearly, then, the MDIHA both claims an interest in the subject matter of this litigation, and is so situated that, if the Community's position were to prevail, MDIHA's interest would be jeopardized. Routinely, where the adjudication of a case will affect the validity of an interest in property, United States Courts have held that an entity claiming such an interest is a necessary party. See e.g., Naartex Consulting Corp. v. Watt, 722 F.2d (D.C. Cir. 1983), cert. denied 467 U.S. 1210 (1984); Vasser v. Shilling, 91 F.R.D. 146 (E.D. La., 1982); and Local 670, United Rubber, Cork, Linoleum and Plastic Workers of America v. United Rubber, Cork, Linoleum and Plastic Workers of America, 822 F.2d 613 (6th Cir. 1987), cert. denied ___ U.S. ___, 108 S.Ct. 731 (1988). We concur with those holdings.

Therefore, in this case, the Community will be obliged either to join the MDIHA or to effectively eliminate the jeopardy that this litigation creates for MDIHA's claimed rights. In pretrial proceedings on October 17, 1990, counsel for MDIHA indicated that that entity probably would not willingly enter this litigation; so, unless that position were to change, the Community will be obliged to attempt to join MDIHA as an involuntary Plaintiff.

However, as we have said, the need to join the MDIHA would vanish, under our Rules, if MDIHA's interest clearly cannot be damaged by any outcome of this litigation. We do not believe that a statement in the Community's Memorandum, standing alone, does cause that jeopardy to vanish: it is not clear to us that such a statement creates a binding obligation which MDIHA could enforce. However, either a written agreement between MDIHA and the Community, under which the Community guarantees the payment

of MDIHA's loan to the Plaintiff, or a bond posted with the Court, in similar terms, would in our view eliminate the need of joinder.

October 31, 1990



Chief Judge Kent P. Tupper for
the Court

COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Anita Barrientez,
Plaintiff,

vs.

No. 007-88


The Shakopee Mdewakanton,
Sioux Community,
Defendant.

ORDER

Based on the Memorandum Opinion accompanying this Order, and upon all the pleadings and materials herein, it is hereby ORDERED:

1. That the Defendant Shakopee Mdewakanton Sioux Community of Minnesota join the Minnesota-Dakota Indian Housing Authority as an involuntary Plaintiff in these proceedings, or
2. That by agreement between the Shakopee Mdewakanton Sioux Community, or by the posting of a bond with the Court, the Shakopee Mdewakanton Sioux Community eliminate the possibility that the Minnesota Dakota Indian Housing Authority may experience monetary loss from the adjudication of this matter.

October 31, 1990


Kent P. Tupper
Chief Judge