COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX COMMUNITY

COUNTY OF SCOTT STATE OF MINNESOTA

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

MEMORANDUM AND ORDER

Before Kent P. Tupper, Chief Judge; Henry M. Buffalo, Jr., Associate Judge; and John E. Jacobson, Associate Judge.

Per Curiam.

Summary

The undisputed facts in this matter were summarized by the Court in its September 9, 1990 Memorandum Opinion, and they will not be reviewed again here. On November 20, 1990 the Plaintiff in this matter filed a Motion to Dismiss or for Other Relief, urging that one entity and two persons--the United States of America, and Ms. Ramona Lee Childs-Jones and Mr. John Barrientez--were necessary and indispensable parties, and that the Amended Counterclaim of the Shakopee Mdewakanton Sioux

Community ((herafter, "the Community") should be dismissed.

Thereafter, on February 5, 1991, appearing specially to contest this Court's jurisdiction, the Third-Party Defendant Minnesota Dakota Indian Housing Authority (hereafter, "MDIHA") moved to dismiss the Community's Third-Party Complaint against it. The Community had served the MDIHA with the Third-Party Complaint in response to this Court's October 31, 1990 Memorandum Opinion, holding that MDIHA was a necessary party to this action under the terms of Rule 18 of Rules of Civil Procedure of the Court of the Shakopee Mdewakanton Sioux Community. In support of its Motion to Dismiss, the MDIHA has argued that it is immune from suit; that the Community in 1980 specifically legislated in such a fashion as to make all laws of the Community inapplicable to the actions of the MDIHA on the Community's reservation; and that, even if the MDIHA is not immune from suit, still there is no grant to this Court either of subject matter or of personal jurisdiction over the MDIHA, and no law to apply to the MDIHA.

For the reasons set forth below, the Court herewith denies all of the foregoing motions, and directs counsel for the parties to make themselves available for a pre-trial conference.

Discussion

1. The United States of America, Ramona Lee Childs-Jones and John Barrientez are not necessary parties in this action.

a. The United States of America. Ms. Barrientez's

contention that the United States is a necessary party is based on several undisputed facts respecting the lands, the right to possession here at issue. (The lands involved in this matter are described as Lot 16, Block 2, on the General Development Plan in the North Half of the Southwest Quarter (N/2 SW/4), Section 22, Township 155 North, Range 22 West of the Fifth Principal Meridian, Scott County, Minnesota [hereafter, "the Lands"]). Ms. Barrientez argues that the United States is a necessary party in this action, first, because fee title to the Lands is in the United States of America; and second, because Ms. Barrientez's claim of title to the Lands originates in a lease between the Community and Ms. Ramona Jones (now Ms. Childs-Jones), which was approved by the Bureau of Indian Affairs of the United States Department of the Interior. And Ms. Barrientez argues that the United States of America is not amenable to this Court's jurisdiction, and therefore this matter should be dismissed for want of an indispensable party.

In our view, however, Ms. Barrientez's arguments in support of the contention that the United States is a necessary party are misplaced, and we therefore are not obliged to reach the indispensability question.

It is clear that the mere fact that the United States of America holds lands, or is alleged to hold lands, in trust for an Indian tribe does not mean that the United States is a necessary or an indispensable party to an action by the tribe to establish its rights in the lands. See generally, Red Lake Band of Chippewas v. City of Baudette, Minnesota, 730 F. Supp.

972 (D. Minn. 1990); Puyallup Indian Tribe v. Port of Tacoma, 717 F.2d 1251 (9th Cir. 1983), cert. denied 465 U.S. 1049 (1984).

In this action, the connection between the United States of America and the issues before the Court is vanishingly small. In its Amended Counterclaim, the Community seeks possession of the Lands, and contends that Ms. Barrientez received no rights from Ms. Childs-Jones. In response, Ms. Barrientez does not contend that the United States has granted or formally approved Ms. Barrientez's claim to the lands. The parties agree that the United States of America neither approved nor disapproved the instruments by which Ms. Barrientez claims her interest to the Lands. They also aagree that the United States took action to cancel the lease between the Community and Ms. Childs-Jones in 1989--although they dispute the effect of that action.

So, as the Community observed in its December 5, 1990 Memorandum, the United States will hold beneficial title to the Lands no matter how the dispute between the parties before Court is resolved, and no interest of the United States will be impaired by any conceivable outcome of this matter. Under these circumstances, the United States simply is not a necessary party.

b. Ramona Lee Childs-Jones. Ms. Barrientez contends that she is the successor to certain rights of Ramona Lee Childs-Jones. In order to succeed in this action, therefore, Ms. Barrientez must demonstrate that Ms. Childs-Jones no longer

has any interest in the Lands. On its side of things, the Community contends that neither Ms. Childs-Jones nor Ms. Barrientez has any rights in the Lands. Neither Ms. Barrientez nor the Community seeks anything from Ms. Childs-Jones in this action; so it is apparent that, like the United States of America, Ms. Childs-Jones has no interest which can be affected in this action, and she, too, is not a necessary party.

c. John Barrientez. Ms. Barrientez has represented to the Court, and the Community has not disputed, that John Barrientez is her husband, and that the parties are separated and that he is not living on the Lands or on the Community's reservation. He is, however, a co-signer on a mortgage instrument which Ms. Barrientez maintains incumbers the Lands, and also is a co-signer with her on a promissory note running to the MDIHA.

The Court notes that Mr. Barrientez attended one pre-trial conference in this action. It therefore is clear that he is aware of the existence of the matter; but the Court has received no indication from him that he has any continuing interest in these proceedings. Ms. Barrientez's counsel quite properly has represented to the Court that he does not and cannot represent Mr. Barrientez.

As with Ms. Childs-Jones, the dispositive factor in this Court's consideration of Mr. Barrientez's status is simply that we cannot conceive that any action which we might take here could affect Mr. Barrientez's interests. This is an action for the possession of Indian lands, and for trespass damanges. Ms.

Barrientez does not contende that Mr. Barrientez had any interest in the Lands. Her contention has been that, by virtue of actions of the Community and MDIHA, she has received the right to occupy the Lands. And, of course, the Community contends that it has that right. In any case, since the Lands are Indian lands, so between these marital partners it is only Ms. Barrientez, not her estranged husband, who under any circumsances could properly possess this property in dispute.

It is true that, if Ms. Barrientez does not prevail, Mr. Barrientez, as a joint obligor on a promissory note, may face attempts at recourse from the MDIHA. But the instant case is not such an action. The decision in this case will determine only whether Ms. Barrientez has the right to possess the Lands, and whether she has any liability for trespass damanges. Like Ms. Childs-Jones and the United States, therefore, Mr. Barrientez is not a necessary party.

2. The MDIHA is properly before this Court.

a. The MDIHA is not shielded by sovereign immunity from suit. In support of its Motion to Dismiss, the MDIHA has argued that it cannot be brought before this Court because it is the creation of four Indian tribal governments--including the government of the Shakopee Mdewakanton Sioux Community--and it partakes of the sovereign immunity from suit which each of those governments possesses.

The materials submitted to the Court by the MDIHA--the correctness of which, again, are not disputed by the Community--indicate that the MDIHA was created when each of the

Federally recognized Sioux tribal governments in Minnesota adopted an identical ordinance (hereafter, "the MDIHA Ordinance"). The effect of the Community's action in adopting the MDIHA Ordinance was to establish a joint housing authority, authorized to accept and administer funds from the United States Department of Housing and Urban Development under the regulations appearing in Title 24, Part 900, of the Code of Federal Regulations.

The MDIHA correctly argues that an agency or corporate arm of an Indian tribal government may possess the same immunity from suit that is enjoyed by the government itself. See generally, F. Cohen, Handbook of Federal Indian Law, 324-7 (1982). And the MDIHA accurately states the law when it observes that an express waiver of immunity is required before a tribal entity which otherwise is cloaked with immunity will be deemed to have shed that cloak. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

But these arguments do not lead to the conclusion that the MDIHA is immune from suit, because Article V, section 2 of the MDIHA Ordinance provides:

> Each of the Local Councils [that is, the governing councils of the Minnesota Sioux Communities] hereby gives its irrevocable consent to allowing the Joint Authority [that is, MDIHA] to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this ordinance and hereby authorizes the Joint Authority to agree by contract to waive any immunity from suit which it might otherwise have; but none of the Communities shall be liable for the debts or obligations of the Joint Authority.

The United States Court of Appeals for the Eighth Circuit has

interpreted virtually identical language in the charter of the Oglala Sioux Housing Authority to constitute the sort of express waiver which makes a tribal government or an agency created by a tribal government susceptible of suit. Weeks Construction, Inc. v. Oglala Sioux Housing Authority, 797 F.2d 668 (8th Cir. 1986). See also, Namekagon Development Co., Inc. v. Bois Forte Reservation Housing Authority, 517 F.2d 508 (8th Cir. 1975).

The MDIHA has argued--without specifying any salient differences--that the waiver language in Weeks and Namekagon are distinguishable from the language at issue here; but this Court does not see it so. The language here is virtually identical to the language discussed in each of those two cases, and the apparent intent of the Communities in adopting the language was to create an agency which would be answerable before a judicial tribunal. A sound policy supports such an approach: because the MDIHA is thus answerable, it can operate in the open market, unhindered by any apprehensions, on the part of persons and entities with which it deals, that its obligatinos and undertaking cannot be enforced.

b. The Third-Party Complaint can be maintained against the MDIHA despite the terms of Article V, Section 5 of the MDIHA Ordinance. The MDIHA argues that, when the General Council of the Shakopee Mdewakanton Sioux Community adopted the MDIHA Ordinance by General Council Resolution No. 00081 on May 22, 1980, and the Community thereby agreed to participate in the MDIHA, the Community also legislated in such a fashion

as to mandate the dismissal of the MDIHA in this action. The MDIHA relies on the following language in the MDIHA Ordinance:

> No ordinance or other enactment of any of the Local Communities with respect to the acquisition, operation, or disposition of Local Community property shall be applicable to the [MDIHA] in its operations pursuant to this ordinance.
>
> MDIHA Ordinance, Art. V, sec. 5

The MDIHA argues that, in view of this language, the Community has made itself unable to create a Court with authority to hear any action where the MDIHA is a party.

In our view, this argument reads the reach of the MDIHA Ordinance far too broadly. The MDIHA Ordinance was intended to give a measure of independence to the joint powers housing agency it was creating. It was intended to prevent the Community, or the other participating tribal governments, from adopting substantive or procedural barriers to the MDIHA's accomplishment of its tasks. But it was not intended to neutralize all <u>other</u> law, or to prevent the establishment, by a participating tribal government, of a forum where the MDIHA's compliance with such other applicable law could be heard. Article V, Section 5 speaks to an "ordinance or other enactment of any of the Local Communities <u>with respect to the acquisition, operation, or disposition of Local Community property</u>". In this case, the Community has not adopted, and does not invoke, any provision that pertains in any way to the acquisition, operation, or disposition of property. The Community's claims in this matter appear to be based on Federal statutes and regulations, pertaining the assignment of leases

of Indian trust lands, and on Minnesota law.

If the MDIHA's argument were to prevail--if neutral Federal law and state law could not be applied to the MDIHA in a court created by a tribal ordinance--it would appear that no Indian tribal court ever could hear any case involving a tribal housing authority if the housing authority's ordinance contained language like that in Article V, Section 5. And inasmuch as the MDIHA Ordinance, including Article V, Section 5, is based on a model supplied by the United States Department of Housing and Urban Development, we cannot read the section to have that meaning. Federal policy favors the use of tribal courts to resolve disputes involving Indian lands and property, cf. Weeks Construction, Inc. v. Ohlala Sioux Housing Authority, 797 F.2d, at 673 (8th Cir. 1986), and we cannot assume that a Federal regulation would establish a policy that would run directly contrary to that policy.

c. This Court has personal and subject matter jurisdiction over the MIDHA. There is a relation between MDIHA's arguments concerning Article V, Section 5 of the MDIHA Ordinance and its argument with respect to this Court's personal and subject matter jurisdiction. And in making each argument, the MDIHA has misapprehended the nature of the law that confers jurisdiction on this Court and that this Court will apply in this case.

The MDIHA correctly notes that the mere fact that an entity does not have immunity from suit will not suffice to confer judicial jurisdiction over that entity. Personal

jurisdiction over a party, subject matter jurisdiction, and law to apply, all clearly are also requisite.

But the MDIHA does not correctly read the ordinances which give this Court its jurisdiction, nor the nature of the claim in the Third-Party Complaint. The ordinance which created this Court originally granted it the jurisdiction to decide cases relating to the membership of the Community, the rights of Community members, and the actions of the Community's government. See Hove v. Stade, Shak. Mdw. Comm. Ct. No. 001-88 (Memorandum Opinion on Motions for Preliminary Injunctions, filed July 13, 1988), at 5. Subsequently, by adopting Ordinance 3-27-90-003 the Community's General Council has given this Court--

> Personal jurisdiction over all persons, to the maximum extent permitted by law, including, but not limited to, lessees, occupants, guests, and persons in possession of, and all persons having or claiming any interest in or right to, Reservation lnads, whether Indian or non-Indian...

Clearly, the MDIHA has done business on the Community's Reservation; and in this matter it claims to own a mortgage interest in a leasehold on lands within the Reservation. THese are sufficient contacts with the Community to permit the Community's Court to exercise personal jurisdiction over the agency. Calder v. Jones, 465 U.S. 783 (1984).

As to subject matter jurisdiction, the Community's General Council has given this Court--

> [s]ubject matter jurisdiction over all cases, controversies and proceedings to the maximum extent permitted by law, including, but not limited to those

involving the ownership, possession, use or occupancy of Reservation lands...

Ibid., §10(a).

The Community's claims against the MDIHA in this case are that the interest in the Lands which MDIHA claims were not properly created under Federal law, and that Ms. Barrientez should be removed from the premises and subjected to trespass damanges under State law. The Community's claims against the MDIHA are that its claimsed interest in the Lands, like Ms. Barrientez's, are not cognizable under Federal law. These claims fall within the foregoing grant of subject mattter jurisdiction, and give the Court law to apply to this case--law which does not in any way contravene the provisions of the MDIHA Ordinance.

Before leaving this subject we feel obliged to note that we agree with the Defendant that one session of the Community's General Council cannot pass legislation which eliminates the ability of future sessions of the General Council to legislate in a different manner. But, given our analysis of the issues before us, we do not find it necessary here to consider whether General Council actions subsequent to the adoption of the MDIHA ordinance have changed or contravened that ordinance. The issues that pertain to the MDIHA's rights in this action appear simply to be issues of Federal law.

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

1. That the Motion to Dismiss and for Other Relief of the Plaintiff is denied; and

2. That the Motion to Dismiss of the Third Party Defendant Minnesota Dakota Indian Housing Authority is denied; and

3. A telephonic pre-trial conference shall be held at 10:00 a.m., Monday, June 24, 1991 to establish trial dates for this matter. The Court will initiate the conference, and in advance of the conference counsel for the parties shall inform the Court as to the telephone number at which they should be called.

June 12, 1991

Kent P. Tupper
Chief Judge

Henry M. Buffalo
Associate Judge

John E. Jacobson
Associate Judge