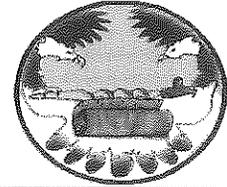


LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Tribal Court



Court Address: 911 Spring Street, Petoskey, MI 49770

Phone: 231-242-1462

TRIBAL COURT

Case No: C-120-0411

Kenneth Harrington

Plaintiff,

vs.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBAL COUNCILORS:
Belinda Bardwell, Aaron Otto, John Bott, Regina Gasco-Bentley, Melvin Kiogima Sr.,
Marvin Mulholland, Gerald Chingwa, Rita Shananaquet, and Julie Shananaquet in their
individual capacities.

Defendants.

ORDER FOLLOWING TRIAL HEARING

A trial hearing was held on May 17, 2012 at 1:52pm, the Hon. James Genia, Little Traverse Bay Bands of Odawa Indians (LTBB) Associate Judge presiding. Kenneth Harrington, Plaintiff, was present at the hearing. Defendants are represented by Jodi Doak, who was also present at the hearing. At 5:18pm, the hearing concluded for the day and resumed on June 29, 2012. Following the hearing on June 29, 2012, Plaintiff and Defendants, through their representatives, submitted written copies of their closing arguments to the Court for consideration.

FACTUAL SUMMARY

Plaintiff Kenneth Harrington filed suit against Defendants on April 21, 2011. Plaintiff served as Tribal Chairperson of the Little Traverse Bay Bands of Odawa Indians at the time of filing, while Defendants served as Tribal Councilors of the Tribe.

resolutions and laws provide the Tribal Chairperson or Tribal Council the power to veto or disapprove of matters brought before them. LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. VIII, § C(2). Nowhere is the Tribal Chairperson empowered to administer motions. Because the Tribal Chairperson is required to administer the appropriation of funds passed by Tribal Council, but is later limited to only administering laws and resolutions, it reasonably follows that Tribal Council's appropriation of funds must at the very least be submitted to the Tribal Chairperson for his approval or opportunity to veto. These appropriation requests sent to the Tribal Chairperson, consistent with Article VIII, must take the form of a proposed statute. Any other reading would require the Tribal Chairperson to exercise powers not granted to him under the Constitution, which is expressly prohibited under the Constitution. *Id.* at § F. When there are conflicting interpretations of the Tribal Constitution, the interpretation that is most consistent with a reasonable reading of the document, and does not threaten to explicitly violate any other section of the document, will prevail. The Court thus finds that Defendants violated the Constitution by appropriating funds by motion. In violating the Tribal Constitution by appropriating funds by simple motion, Defendants acted beyond the scope of their duties and authorities.

IV.

Plaintiff also alleges that Defendants violated the Constitutional requirement that Tribal Council enact a budget formulation statute that allows for comment from the Tribal citizenry. However, since this case can be resolved without further interpreting the Constitution, the Court declines to address the merits of this claim.

CONCLUSION

In light of the Court's finding, Plaintiff's request to enjoin Defendants from appropriating funds by motion that do not, at a minimum, allow for the Tribal Chairperson to approve or veto the motion, is granted. Such actions are unconstitutional on their face, as is any application of statutes that has the same effect of allowing Tribal Council to appropriate funds without allowing the Tribal Chairperson the opportunity to approve or veto the funding appropriations.

Consequently, Section XII G(11) of the Administrative Procedures Statute, May 23, 2011 Amendment, which grants Tribal Council the authority to appropriate funds by motion without presenting such motions to the Tribal Chairperson for approval or veto, is STRICKEN as a violation of the Tribal Constitution.

IT IS SO ORDERED

11-29-12
Date

James Genia
James Genia, LTBB Associate Judge

CERTIFICATE OF MAILING

I certify that on this date copies of this *Order* were served to the parties by First-Class Mail and/or E-Mail.

11-29-12
Date

Cynthia Brouchaert
Tribal Court Officer

Cynthia Brouckaert

From: Raymond Mensah
Sent: Wednesday, November 21, 2012 3:25 PM
To: Cynthia Brouckaert
Cc: James Genia; jmgenia@yahoo.com; Bernadece Kiogima; mr.s.o.president@gmail.com
Subject: Case No: C-120-0411 final draft for publication
Attachments: HarringtonCaseOrderNov.20.docx

Dear Cynthia,

I hope this email finds you well.

Please find attached a final draft of Case No: C-120-0411, Harrington v. Tribal Councilors. I just got through speaking with Judge Genia, and he has authorized publication of the opinion by the Court Clerks.

Thanks so much for everything. Have a great Thanksgiving.

Respectfully,

Ray Mensah

