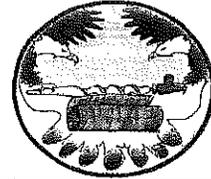


LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Tribal Court



Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740

Phone: 231-242-1462

TRIBAL COURT

Case No: C-205-1214

C-205-1214

Fred Kiogima and Debbie DeLeon

Plaintiffs,

vs.

Little Traverse Bay Bands of Odawa Indians Election Board

Merle Carson, Chairperson
Alice Hughes, Vice-Chairperson
Carol Quinones, Secretary/Treasurer
Jon Shawa, Board Member
Christine A. Shomin, Board Member

Defendants.

Wilson D. Brott (P51446)
Attorney for Plaintiffs
Brott, Settles & Brott, P.C.
5168 U.S. 31 North, P.O. Box 300
Acme, MI 49610
(231) 938-1000 | wbrott@bsb.tc

Carlos H. Alvarado-Jorquera (P68004)
Attorney for Defendants
Carlos Alvarado Law, P.C.
202 S. Harrison Street
1459 Ludington, MI 49431
(231) 425-4444 | carlos@carlosalvardolaw.com

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'
COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION**

Upon consideration of (1) Plaintiffs' Complaint and Election Challenge, filed on December 1, 2014, (2) Defendants Little Traverse Bay Bands of Odawa (LTBB) Election

Board and Merle Carson, Alice Hughes, Carol Quinones, John Shawa, and Christine A. Shomin's (collectively "Defendants") Motion to Dismiss, filed on December 2, 2014, and (3) Plaintiffs' Response to Defendants' Motion to Dismiss, filed on December 9, 2014, the Court finds as follows:

In the Complaint, Plaintiffs ask the Court to: (1) hold that the recall election concluded on November 17, 2014 was unlawful and invalid, and in violation of the LTBB Constitution, statutes and/or election regulations; (2) order that Plaintiffs be reinstated into their respective elected offices; (3) sanction Defendant Election Board and/or any of its members found to have violated Tribal law, including, but not limited to, ordering them to pay Plaintiffs for their reasonable costs and attorney fees necessitated by Defendants' actions in connection with the prior recall election, and such other sanctions as are necessary to deter similar violations in the future; and (4) award such other relief as the Court deems just, necessary and proper under the law.

As a threshold matter, the Court notes that it must possess both personal jurisdiction over the parties to a case and jurisdiction over the subject matter of a case in order to address the merits of a case. *See* LTBBRCP, R. XVI. With respect to subject matter jurisdiction in particular, which is the sole jurisdictional dispute in this matter, a decision issued by a court on the merits while lacking subject matter jurisdiction leaves the decision void *ab initio*. *LaCroix v. Snyder*, No. C-200-0914 (LTBB Tribal Ct. 2014) (citing *Dillon v. Dillon*, 187 P 27 (Cal. App. 1919) and *In Re Application of Wyatt* (Cal. App. 1931).

Under the LTBB Rules of Civil Procedure, a party against whom a claim has been made may move the Court to dismiss the claim of the adverse party for, *inter alia*, a lack of "subject matter" jurisdiction. LTBBRCP, R. XVI(b). In their Motion to Dismiss, Defendants request dismissal of Plaintiffs' Complaint for lack of subject matter jurisdiction due to the Complaint being filed outside of the constitutionally-prescribed period. Brief for Defendants at 3. Specifically, Defendants' note that the LTBB Constitution requires that election challenges be filed within "ten (10) days after the election," yet Plaintiffs filed their Complaint on December 1, 2014, fourteen (14) days

after the election in question concluded. *Id.* at 1 (citing LTBB Const. art. XII, Section F). Defendants' argue that the "ten" days requirement for filing a challenge to an election refers to ten calendar days, as opposed to ten business days, and cite to decisions from this Court adopting such an interpretation. See *Harrington v. LTBB Election Bd.*, No. C-134-1011; *Harrington v. LTBB Election Bd.*, No. C-129-0811 (dismissing an election challenge as untimely and noting "[i]f the Tribal citizens had intended that an election challenger had ten business days to challenge an election, [they] would have said ten business days, just as they had in Article XII [Section] E of the Tribal constitution.")

In their Response, Plaintiffs request that the Court deny Defendants' Motion, arguing that their Complaint was timely filed as the Tribal Court was closed ten consecutive days after the recall election concluded on November 17, 2014 for the Thanksgiving holiday and Plaintiffs filed on the "first available day they could after the Tribal Court reopened for business." Plaintiffs' Reply Brief at 3. Plaintiffs request that this Court depart from prior decisions interpreting the "ten" days requirement cited to by Defendants so as not to deny Plaintiffs the constitutionally allowed "number of days within to file their challenge." *Id.* Put differently, Plaintiffs' request that this Court interpret the "ten" days requirement as referring to ten business days, and cites to the LTBBRCP and foreign legal opinions and rules in support of their argument. *Id.* at 3-5.

After considering Defendants' Motion to Dismiss and Plaintiffs' Response, and reviewing any applicable case law, the Court notes that the LTBB Appellate Court has issued an opinion interpreting the language at issue that is controlling in this matter. Specifically, in *Harrington v. LTBB Election Bd.*, No. A-019-1011 (LTBB Ct. App. 2012), the Appellate Court held that the Constitution's "ten" days limitation for challenging election results refers to "ten consecutive days, without regard for weekends, holidays, or days when tribal administrative offices are open or closed." In reaching this decision, the Appellate Court necessarily, by noting that *weekends, holidays, and days when tribal administrative offices are open or closed*, considered and concluded that citizens challenging election results would not have ten "business days" in which to file a valid petition, a point which invalidates Plaintiffs' efforts to distinguish prior opinions from the case at hand.

Therefore, in light of the LTBB Appellate Court's controlling opinion in *Harrington v. LTBB Election Bd.*, No. A-019-1011 (LTBB Ct. App. 2012),
IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is GRANTED.
Plaintiffs' Complaint is DISMISSED.

IT IS SO ORDERED

December 14, 2014

Date

Honorable Patrick Shannon
LTBB *Pro Tempore* Judge

CERTIFICATE OF MAILING

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

Dec-15-2014
Date

Tribal Court Officer