TRIBAL COURT
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

YVONNE SANDELL,

Plaintiff,

v.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS REGULATORY COMMISSION,

Defendants.

_____/

Case No. C-056-1004

Decision on Motion For Summary Disposition; Motion To Amend Complaint and Motion To Amend Answer

DECISION ON DEFENDANTS' *MOTION FOR SUMMARY DISPOSITION*; PLAINTIFF'S *MOTION TO AMEND THE COMPLAINT*; AND DEFENDANT'S *MOTION TO AMEND THE ANSWER*

This matter comes to this Court on three (3) separate motions. Defendants have filed a *Motion For Summary Disposition*. Plaintiff then filed a *Motion To Amend Complaint/Add Defendant*. Defendants subsequently filed a *Motion To Amend Answer*. Each of these Motions will be consider in turn.

I. Defendants' *Motion For Summary Disposition*:

The legal standard for summary disposition is clear. A trial court considers affidavits, pleadings, depositions, admissions, and other documentary evidence filed in the action or submitted by the parties, in reviewing a motion for summary disposition. A motion should be granted if the affidavits and other documentary evidence show that there is no genuine issue in respect to any material fact and the moving party is entitled

to judgment as a matter of law.

The Defendants' *Motion For Summary Disposition* is based upon the defense of tribal sovereign immunity. The legal principles surrounding the defense of tribal sovereign immunity are clearly set forth in federal Indian law.

A. Tribal Sovereign Immunity Under Federal Law

The inherent sovereign immunity of Indian tribes is well-established and has been long recognized in the law. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) and *Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991). The United States Supreme Court has consistently held that Indian tribal governments have sovereign immunity unless such immunity has been **expressly waived** by either Congress or the particular tribal government. See *Santa Clara*, supra, p.58. It is federal law which provides the parameters for tribal sovereign immunity. Also, see *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 118 S. Ct. 1700 (1998).

B. Subordinate Entities and Enterprises

Tribal sovereign immunity covers subordinate entities and enterprises owned by tribes. The cases involving subordinate tribal entities and enterprises have all re-stated the long-standing principle that without Congressional approval, tribes are immune from suit and it follows that subordinate entities and enterprises are also immune. See *Morgan v. Colorado River Indian Tribe*, 443 P.2d 421 (1968) and *White Mountain Apache v. Shelley*, 107 Ariz. 4, 480 P.2d 654 (1971).

C. Effect of the Indian Civil Rights Act

Congress enacted the Indian Civil Rights Act (ICRA) in 1968. It has been argued by some that this federal law provision, which granted persons certain rights vis-a-vis an overly-intrusive tribal government, is in effect a Congressional waiver of tribal sovereign immunity. However, others argue that, while the ICRA created rights, its remedies are limited. The United States Supreme Court in *Santa Clara* decided that Congress only intended habeas corpus relief because that was the only relief **expressly** created. Tribal courts must provide a consistent interpretation of that federal statute. *"It would be [a] contradiction of Santa Clara to hold on the one hand that the Indian Civil Rights Act is ineffective to waive tribal sovereign immunity by implication in the federal courts and on the other hand to hold that the same legislative enactment is effective to waive the sovereign immunity by implication in tribal courts." McCormick v. Election Committee of the Sac & Fox Tribe*, Okla. Trib. 8, 20; WL 128844 (Sac & Fox CIO 1980). This Court is persuaded by the tribal Court's reasoning in *McCormick* that the ICRA does not waive tribal sovereign immunity.

For all of the foregoing, this Court finds that federal law recognizes the inherent immunity of tribal governments and its subordinate entities and that there has not been any express abrogation of that immunity by Congress.

D. Application of Instant Facts to the Law

Plaintiff's sole prayer for relief is one for money damages. The defense of sovereign immunity is rooted in protection of the public treasury. The Tribal courts do not have the power to award money damages in any case before them, regardless of the facts.

Plaintiff argues that *McFall* provides a waiver of immunity for the present case.

However, this is a much different case than was presented in *McFall*. In that case, reinstatement to a position of employment was the primary relief sought. In addition, Plaintiff in the present case decided herself to forgo the administrative process because she had accepted employment elsewhere. It was only with the passage of considerable time and a changed mind that she filed the present suit.

II. *Motion To Amend Complaint/Add Defendant* and *Motion To Amend Answer*

Plaintiff alleged malicious prosecution and abuse of process against the named Defendants. Plaintiff alleges that both she and her counsel were under the impression that the Tribal Prosecutor was an employee of the Defendant Tribe. Plaintiff wishes to add the Tribal Prosecutor as a named Defendant.

Prosecutors are immune from suit to the extent that they act within the scope of their authority. They must be free to independently make decisions regarding the filing and prosecution of charges against those who are alleged to have violated the Tribe's criminal laws. In the performance of their duties, prosecutors must be insulated from suits against them. The public policy considerations regarding protections for the offices of prosecutors are rooted in the recognition that defendants are aggrieved against those who prosecute them. Without immunity, the justice system will not function appropriately.

Defendants' *Motion To Amend Answer* was filed in response to Plaintiff's *Motion To Amend Complaint/Add Defendant*. It was a reaction to try to deal with a moving target in the event that the Court granted permission to amend the *Complaint*.

III. Order

FOR ALL OF THE FOREGOING, THIS COURT GRANTS DEFENDANTS' MOTION FOR SUMMARY DISPOSITION; DENIES PLAINTIFF'S MOTION TO AMEND COMPLAINT/ADD DEFENDANT AND DEFENDANTS' MOTION TO AMEND ANSWER; AND DISMISSES PLAINTIFFS' *COMPLAINT* AS DEFENDANTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW.

09/21/06

DATED

Honorable Michael Petoskey
Chief Judge