

TRIBAL COURT  
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

03-05-07

KATHRYN ANN WYSOCKI,

Plaintiff,

Case No. C-050-0104 and

Case No. C-051-0104

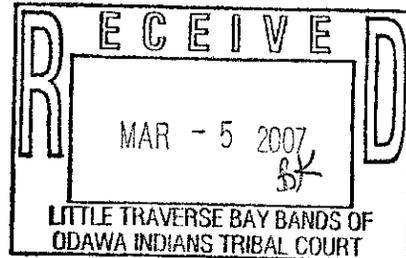
v.

*Decision on Motion For  
Summary Disposition*

JAMIE BARIENTOZ, YVONNE SALGAT,  
AL COLBY, and the LITTLE TRAVERSE  
BAY BANDS OF ODAWA INDIANS,

Defendants.

---



**DECISION ON DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**

This matter comes to this Court on two (2) claims by the Plaintiff which have been previously consolidated by this Court. One is against the Little Traverse Bay Bands of Odawa Indians Economic Development Director, Human Resources Director, and the Tribal Administrator for wrongful termination and false allegations of impropriety. Plaintiff asks for punitive damages to the "*fullest extent possible*". The second claim is based upon the same facts, arguments, asks for the same relief and is made against the Tribe as a whole.

Defendants have asked for summary disposition of the present suit based upon several affirmative defenses. Chief among which is the defense of tribal sovereign immunity. Plaintiff argues that tribal governmental sovereign immunity does not apply in the instant matter because Defendant was not afforded due process and "*because there are factual questions relating to the issue of employment and punitive damages*".

#### A. Dominant Backdrop

The dominant backdrop for resolution of the instant matter is the inherent immunity of Indian tribal governments and its officials while performing their duties and carrying out the responsibilities of their various offices. 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 defense of sovereign immunity is rooted in protection of the public treasury. 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. Application of Instant Matter to the Law and *McFall* Interplay

Plaintiff argues the *McFall* waiver of tribal sovereign immunity applies in the present matter because she was not afforded complete due process. See *McFall v. Victories Casino*, Appellate Case No. A-002-1102 (2003). She concedes that she was afforded most of her due process, but she was denied a meaningful hearing before the Tribal Administrator because “*she was denied her due process rights of presenting evidence, presenting documents, or at a minimum explaining her version of the complaint...*”. Defendants argue that the grievance procedure does not grant Plaintiff those kind of hearing rights and that the procedure allows the Tribal Administrator to

determine what kind of "hearing" is appropriate based upon the circumstances.

The commonsense essence of a hearing is listening to a complainant and gathering information such as is necessary to make a fully-informed decision. The right to a "hearing" means the right to be heard. It means more than the opportunity for a complainant to listen. **There are always two sides, or more, to every story.**

**Accordingly, this Court understands that the present parties might have different versions of the hearing events.**

In the present matter, Plaintiff has sued for punitive damages. This Court has no authority whatsoever to grant punitive damages. It cannot even grant compensatory damages against the Tribe in the face of tribal sovereign immunity protections, and it cannot grant such damages against Tribal officials where they have not acted beyond the scope of their authority. The only options available to a tribal court, when relief is appropriate, are limited to injunctive and declaratory relief. Injunctive relief is prospective in nature, and must be sought while matters are in progress. On the other hand, declaratory relief may be sought after everything is over. Declaratory relief may play a vital role in the development of governmental systems and tribal law, but may be a hollow victory for one who prevails because it does not provide damages. In any disposition by a court, the written opinion or decision can provide direction and constructive guidance for the future. Accordingly, it is clear that in order for the right to be heard to be meaningful, the right must include the following minimum standards: an opportunity to present the complainant's version of events, an opportunity to present additional documents for a full and complete consideration of the documentary evidence, and presenting other individuals with knowledge for interview or testimony. Fundamental fairness means listening to both sides of a story before making a decision.

This Court cannot say whether Plaintiff would have been entitled any relief whatsoever from this Court, but if so it would have been limited to declaratory relief only.

C. Decision of the Court

In the present matter, Plaintiff has asked for punitive damages against both sets of Defendants. This Court cannot grant the relief requested. The Court could not even grant compensatory damages in this case. There is nothing to show that the named Tribal officials acted beyond the scope of their authority. Thus, the Court need not go any further. Plaintiff is simply dissatisfied with the resolution of her grievance.

There are other arguments raised by the parties, but they are not determinative in the present matter. Thus, they are not addressed here.

FOR ALL OF THE FOREGOING, THIS COURT GRANTS  
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND HEREBY  
DISMISSES THIS MATTER.

03/02/07

DATED

MICHAEL PETOSKEY  
PRESIDING JUDGE