

FILED MAR 19 2010

LYNNEA A. FERCELLO
CLERK OF COURT

IN THE TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

In Re the Estate of:
John L. Feezor,
vs
The Shakopee Mdewakanton Sioux
Community

Court File No. 645-09

Memorandum and Order

At the time of his death, the Decedent, John Lee Feezor, a member of the Community, held a lease on lands located within the Shakopee Mdewakanton Sioux (Dakota) Reservation. The lease, by its terms, expired upon Mr. Feezor's death. Fee title to the leased land is held by the United States of America in trust for the Community, and, under Federal and Community law, the property is administered by the Community's Business Council. Under the terms of his lease, the Decedent constructed a home on the property, and, after his death, the Personal Representative of the Estate, the Decedent's daughter, Katherine Elke, made written application for recoupment of the Decedent's leasehold interest in the property under the terms of the Community's Consolidated Land Management Ordinance ("CLMO"). With the application, the estate submitted a professional appraisal of the property, prepared by Mr. Brian Call, which valued the improvements on the property at \$918,812.00.

The CLMO, adopted in 2002 by the Community's General Council (see General Council Resolution 06-28-02-005), sets forth unambiguous rules for the administration of leasehold assignments on lands within the Shakopee Reservation. Section 4.11 of the CLMO deals with the procedure for compensating leaseholders under circumstances such as the ones here at bar: upon

the termination of a lease, the leaseholder is “entitled to recoup the lesser of (1) the appraised value of the improvements to the assigned and leased premises or (2) the current amount of funding available to enrolled Community members through mortgaged and home improvement loans.” Section 4.11 also provides that, if the appraised value of improvements exceeds the amount of funding available to Community members through mortgage and home improvement loans, then the recoupment payment is capped at that mortgage and home improvement loan amount.

In order to apply for the recoupment payment, the leaseholder must submit to the Business Council an application and a professional appraisal. Upon receipt of those documents, the CLMO directs the Business Council to pay the leaseholder the appraised amount, unless that amount exceeds the recoupment cap. If the appraised value is higher than the cap, the Business Council is to pay the cap amount.

The parties agree that the current amount of funding available to enrolled Community members for mortgage and home improvement loans at the date of recoupment is \$850,000.00; hence, that is the maximum amount the Council may pay out in recoupment under the CLMO. The Community concedes that the Estate fulfilled its obligations under the CMLO. Therefore, the Business Council was required to pay the amount “that equals the current amount of funding available to enrolled Community members for mortgage and home improvement loans that is authorized at the date of recoupment”, i.e. \$850,000.00. CLMO section 4.11. The Business Council has not yet done this.

In its arguments to the Court, the Business Council explained that it had thought that both the Estate’s appraisal and the \$850,000.00 cap far exceeded the actual value of the improvements on the Decedent’s lands, and that it had discretion under the CMLO to be guided by an appraisal

of its own. Hence, it commissioned its own appraisal, which valued the improvements to the Decedent's leasehold at \$658,000.00.

Under Rule 28 of this Court's Rules of Civil Procedure, summary judgment must be entered if there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Rule 28, SMS(D)C Rules of Civil Procedure; Welch v. SMS(D)C, 2 Shak. T.C. 79 (Nov., 27 1995); Florez v. Jordan Construction Co., 4 Shak. T. C. 124 (Jan. 15, 2002); Ho v. LSI, 4 Shak. T.C. 117, (Nov. 21, 2001). When considering motions for summary judgment, the Court construes the evidence presented in the light most favorable to the non-moving party and gives that party the benefit of all reasonable inferences that can be drawn from the evidence. Feezor v. SMS(D)C Business Council, 3 Shak. T.C. 155 (May 19, 1999).

Here, the defense conceded, during oral argument, that the Plaintiff filed a valid application for recoupment, in the form of a letter dated February 3, 2009, accompanied by a professional appraisal conducted by a respected appraiser (that in fact had been recommended by the Community). There is no ambiguity in the CMLO's language. Upon receipt of the application and the appraisal the Business Council was obliged to pay the Estate the lesser of the appraised value or the current amount of funding available to Community members for mortgage and home improvement loans. Therefore, the Estate clearly is entitled to judgment, as a matter of law, in the amount of \$850,000.00.

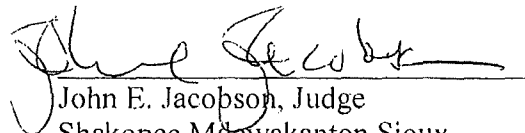
The Estate also seeks the reasonable attorneys fees it has incurred in bringing this action, on the grounds that this litigation was wholly unnecessary. At oral argument, the Business Council asserted that it had believed in good faith that the Estate's appraisal was far too high and that the Council had a trust obligation to protect the Community's resources. Under this Court's

case law, attorneys fees may be assessed for three reasons: to award fees to a party whose litigation efforts directly benefit others, as a sanction for willful disobedience of a court order, or when a party has acted vexatiously, wantonly, or for oppressive reasons. Brooks v. Corwin, 2 Shak. A.C. 5 (Aug. 4, 2008). No award of attorney's fees is appropriate where the party against whom award is sought participated fully in proceedings and acted in a straightforward and honorable fashion throughout. Welch v. Welch, 2 Shak. A.C. 11 (April 15, 2009). In considering that standard here, the Court notes that the results of the Business Council's appraisal provides some significant factual support for the Business Council's view that both Mr. Call's appraisal and the CMLO's maximum payment, which Mr. Call's appraisal triggered, were in fact high. Under these circumstances, the Court concludes that the equitable factors which make the award of attorneys fees appropriate are not present here.

ORDER

Based upon the foregoing, and upon all the pleadings and materials filed herein, it is ORDERED that the Business Council of the Shakopee Mdewakanton Sioux (Dakota) Community shall pay to the Estate of John L. Feezor the amount of \$850,000.00 under the terms of section 4.1 of the Consolidated Land Management Ordinance of the Shakopee Mdewakanton Sioux (Dakota) Community.

Dated: March 19, 2010


John E. Jacobson, Judge
Shakopee Mdewakanton Sioux
Community Tribal Court