

IN THE TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Shakopee Mdewakanton Sioux (Dakota)
Gaming Enterprise,

Plaintiff,

vs.

Court File No. 436-00

Leonard Prescott, individually, and as
current and former officer and/or director
of Little Six, Inc.

MEMORANDUM OF DECISION AND ORDER RE:
PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS

This matter comes before the Court pursuant to the Plaintiff, Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise's Motion for Contempt and Sanctions against the Defendant Leonard Prescott pursuant to Rules 24 and 33 of the Shakopee Mdewakanton Sioux Community Rules of Civil Procedure (hereinafter "SMSC R. Civ. P.") The Plaintiff seeks an order: (1) finding Defendant in contempt of court for failure to obey the Court's November 24, 2009 Order to provide discovery (hereinafter "Discovery Order"), (2) imposing civil sanctions in the amount of one thousand (\$1,000.00) dollars per day until such time that the Defendant has fully complied with the Discovery Order, (3) awarding attorneys' fees and costs related to Plaintiff's efforts to obtain responsive records (including efforts connected to the Motion for Contempt and Sanctions), and (4) for other relief as the "Court deems just and necessary."

The basis for this current proceeding in this long-standing controversy is this Court's award to Plaintiff of a judgment against the Defendant in the amount of \$526,871.36 plus interest and attorneys' fees in the amount of \$185,810.08. Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v.

Prescott, 2 Shak. App. Ct. 1 (2006). On November 24, 2009, Judge John E. Jacobson, granted the Plaintiff's motion to compel discovery pursuant to SMSC R. Civ. P. 24, finding that Defendant had failed to meet his burden of demonstrating that the requested discovery is improper. Memorandum Decision and Order, (Nov. 22, 2009) at 2. The Court observed:

. . . obtaining a judgment often is far easier than collecting it. That may prove to be the case here. But nothing precludes the Plaintiff from using all appropriate discovery mechanisms to determine the facts, and it is the opinion of this Court that the Plaintiff's requests for production of documents are not improper here. It may be that the Defendant possesses no assets in a jurisdiction that permits the enforcement of this Court's judgment. *But it may not be, as well, and the Plaintiff is entitled to learn the answer.*

Id. at 3 (Emphasis supplied.)

This Court proceeded to order that the Defendant "produce for inspection, copying and use at deposition all of the documents and other tangible things requested in Plaintiff's Revised Notice of Taking of Deposition and Request for Production of Documents dated July 7, 2009"; that the Defendant attend a rescheduled deposition and fully answer questions relating to his financial and asset information in order to facilitate the execution of this Court's judgment; and denied the Defendant's motion for an award of fees and costs. Id. at 3.

Plaintiff alleges that subsequent to this Court's order on November 24, 2009 that Defendant has failed to produce any documentation of his financial and asset information for property located outside of the Community's reservation. It is also alleged that "Defendant has reneged on his promise to provide full financial and asset information for property located within the SMSC Reservation." Mem. of Law in Support of Pl's Mot. Contempt and Sanctions at 2 citing Affidavit of Todd M. Roen at Ex. A, ¶ 3. It is further alleged that Defendant only produced "two relatively meaningless documents," consisting of a letter from the Tribal Controller reciting the Defendant's home mortgage balance (without identifying

the mortgaged property) and a screen shot from an unidentified financial institution showing the balance, payment and due dates for an auto loan and a line of credit. Id. at 2 (internal citation omitted). The following documents had been sought from the Defendant by the Plaintiff and were ordered to be provided by the Court:

- Defendant's federal and state income tax returns from 2005 to the present
- Defendant's bank, savings and loan association or credit union statements for 2008 and 2009, for both individually owned and joint accounts, including: any and all checking accounts, savings accounts, certificates of deposit, investment funds and retirement accounts
- Documents relating to securities owned by the Defendant
- Real property ownership documents in which Defendant has an ownership interest
- Appraisals on real property in which Defendant has an ownership interest
- Written instruments recording debts Defendant owes or money owed to Defendant since October 27, 2005, including all settlement or closing papers reflecting mortgages, financing and refinancing of all property in which Defendant has an ownership interest
- Documents reflecting any of Defendant's financial transactions with family members since October 27, 2005
- Books and records of Defendant's income and business affairs since October 27, 2005
- All ownership documents for Defendant's assets worth at least \$2,000, including but not limited to motor vehicles, watercraft and recreational vehicles
- All documents showing the name, address and telephone number of anyone with whom Defendant has joint ownership of any real estate, asset or account

Additional Briefing in Support of Pl's Mot. Contempt. and Sanctions, at 4.

Defendant's response to the motion for contempt and sanctions is that, ". . . Plaintiff already has all of the information in regard to Defendant's property within the jurisdiction of the Tribal Court." Supp. Brief in Opp. to Pl.'s Mot. for Contempt and Sanctions at 3. The Defendant does not controvert the Plaintiff's statement that he has only provided two documents, the mortgage statement and the

unidentified financial institution's report regarding an auto loan and a line of credit. This Court's order sustaining the motion to compel discovery explicitly and properly rejected Defendant's argument that discovery should be limited to assets located within the Community's jurisdiction. The Defendant erroneously conflates the issue of permissible post-judgment discovery with that of execution.

The Shakopee Mdewakanton Sioux Community has adopted a three part process for the enforcement of unsatisfied Tribal Court judgments: (1) determining the judgment debtor's assets; (2) once the nature and description of the judgment debtor's assets are determined then a writ of execution may be issued; and (3) a sheriff (or tribal law enforcement officer), judgment creditor or judgment creditor's attorney may enforce the writ. See SMSC R. Civ. P. 30. The present motion for contempt is solely concerned with the first step—discovering the debtor's assets. Rule 30 of the Shakopee Mdewakanton Sioux Community Rules of Civil Procedure, entitled "Execution of Judgments," incorporates by reference the provisions of Rule 69(a) of the Federal Rules of Civil Procedure. See id. ("The provisions of Rule 69(a) of the Federal Rules of Civil Procedure relating to the enforcement of a judgment for the payment of money shall apply to actions before the Court of the Shakopee Mdewakanton Sioux Community.") Federal Rule of Civil Procedure 69(a)(1) provides that "[a] money judgment is enforced by a writ of execution" and that "the procedure on execution . . . must accord with the procedure of the state where the court is located." Therefore, this Court must look to State of Minnesota procedure governing executions of judgments for guidance on the permissible scope of post-judgment discovery. Minnesota Statute section 550.011, "Judgment Debtor Disclosure" sets out the procedure by which a judgment creditor may obtain information regarding, ". . . the nature, amount, identity, and locations of *all* the debtor's assets, liabilities, and personal earnings."¹ (Emphasis supplied.)

¹ The statute, M.S.A. § 550.011, provides in full:

Unless the parties have otherwise agreed, if a judgment has been docketed in district court for at least 30 days, and the judgment is not satisfied, the judgment creditor's attorney as an officer of the court may or the

Notably, the statute does not limit the judgment debtor's duty to disclose only to assets, liabilities and personal earnings to those within the jurisdiction of the State of Minnesota.

Once a judgment is entered and not satisfied within thirty days, then the judgment creditor's attorney, acting as an officer of the court, or the court itself shall, at the request of the judgment creditor, ". . . order the judgment debtor to mail to the judgment creditor . . . information as to the nature, amount, identity, and locations of all the debtor's assets, liabilities, and personal earnings." M.S.A. § 550.011 (2010). Under Minnesota law, adopted as Community rule of procedure, by operation of Fed. R.Civ.P. 69(a)(1), "[a]ll property, real and personal, including rights and shares in the stock of corporations, money, book accounts, credits, negotiable instruments, and all other evidences of indebtedness, may be levied upon and sold on execution." M.S.A. § 550.10. The debtor is to list the information on a form prescribed by the Minnesota Supreme Court, "and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor." Id. This form is Minnesota Judicial Branch Form JGM301, "Financial Disclosure Form."

Under M.S.A. § 550.011, if the judgment debtor fails to fill out the financial disclosure form and mail it by certified mail to the judgment creditor within ten days then a citation for civil contempt of court may be issued. Id. Additionally, if the debtor is cited for civil contempt of court, and posts cash bail as a result, that bail "may be ordered payable to the creditor to satisfy the judgment." Id. (The

district court in the county in which the judgment originated shall, upon request of the judgment creditor, order the judgment debtor to mail by certified mail to the judgment creditor information as to the nature, amount, identity, and locations of all the debtor's assets, liabilities, and personal earnings. The information must be provided on a form prescribed by the Supreme Court, and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order must contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this section may be ordered payable to the creditor to satisfy the judgment, either partially or fully.


Community does not have a detention facility to hold the Defendant until he complies, thus the posting of cash bail is not a remedy available to the Tribal Court.)

In this case, Plaintiff did not follow the procedure sets forth in M.S.A. § 550.011, made applicable by operation of Fed. R. Civ. P. 69(a) by incorporation by SMSC R. Civ. P. 30. While the post-judgment discovery requests and the order subsequently granting the Plaintiff's motion to compel, would garner much of the same information required by the Financial Disclosure Form, certain requested items exceed the scope of the form, most notably the request for supporting documentation such as income tax returns, bank statements, real estate documents, business records and ownership documents for assets worth at least \$2,000.00. In view of the fact, that the Plaintiff has not properly followed the procedure set out and adopted by SMSC R. Civ. P. 30, the matter is not ripe for a motion for contempt and sanctions. Therefore the Motion for Contempt and Sanctions is DENIED.

However, due to the Court's earlier order granting the motion to compel which has confused the post-judgment proceedings, this Court issues the following orders:

1. The Clerk of Court shall provide a copy of this Memorandum of Decision and Order Re: Plaintiff's Motion for Contempt to counsel of record by facsimile or email and by regular first class U.S. mail.
2. The Defendant shall complete the Financial Disclosure Form which accompanies this Memorandum of Decision and mail it by certified mail to Plaintiff's counsel on or before November 8, 2010. The Defendant shall provide information sufficiently detailed to enable the Plaintiff to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the Defendant. The Defendant must disclose all income and asset information requested by the form regardless of location. If the Defendant claims an exemption from execution for any income or asset, that claim, including citation to legal authority if any, must be separately stated. Such claimed exemption (for example, that per capita distribution payments are not subject to attachment) shall not relieve Defendant of the obligation to disclose such income or assets.
3. If Defendant fails to complete the form in its entirety and mail it by certified mail to the Plaintiff's counsel on or before November 8, 2010, the Court will entertain a renewed Plaintiff's motion to find Defendant in contempt for his failure to do so.

Dated this 26th of October 2010.



Judge Jill E. Tompkins
Pro Tem