

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:
AMENDMENT OF JUDGMENT

This matter comes before the Court pursuant to the Plaintiff, Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise's Motion for Reconsideration dated November 3, 2010 of this Court's October 26, 2010 order denying Plaintiff's motion for contempt and sanctions. Earlier in this case, the Court found that motions to reconsider are not contemplated by the Shakopee Mdewakanton Sioux Community Court Rules of Civil Procedure. *Shakopee Mdewakanton Sioux Community Gaming Enterprise v. Leonard Prescott* (Mem. Opinion and Order, Aug. 6, 2008) 1, 2. The Court found however that:

Motions to reconsider, as such are not contemplated by this Court's Rules of Civil Procedure. Our Rule 28 does, however, incorporate Rules 59 and 60 of the Federal Rules of Civil Procedure which, respectively, deal with "amendment of" and "relief from" judgments; and a body of federal case law exists under which a motion to reconsider will be treated as a motion for amendment of judgment under Rule 59(e), if the motion is filed [no later than 28 days after the entry of judgment] . . .

Id. at 2. (Internal citations omitted.) In this instance the Plaintiff filed its motion eight days after entry of the order at issue. This Court will consider the motion as a timely motion to alter or amend a judgment pursuant to Fed. R. Civ. P. 59(e) as adopted by SMSC R. Civ. P. 28.

In support of its motion, the Plaintiff asserts that:

The Court did properly find that SMSC R. Civ. P. 30 incorporates by reference the provision of Fed. R. Civ. P. 69(a). However, the Court then pointed to Fed. R. Civ. P. 69(a)(1) as authority for the position that the Court must look to State of Minnesota procedure for guidance on proper post-judgment discovery. . . . The proper procedure for post-judgment discovery is not governed by Fed. R. Civ. P. 69(a)(a), but rather by Fed. R. Civ. P. 69(a)(2).

Pl. Mem. In Support of M. for Recon. 2. This Court agrees with the Plaintiff's reading of Fed. R. Civ. P. 69(a)(1) and (a)(2). Rule 69(a)(1) addresses judgment *execution* procedure whereas Rule 69(a)(2) controls post-judgment *discovery*. 1 Fed. R. Civ. P., Rules and Commentary, Rule 69. The Commentary to Rule 69, notes that the judgment creditor under the post-judgment discovery provision, 69(a)(2), "has the choice of using either the federal discovery rules or state discovery rules. *Id.* citing *In re Clerici*, 481 F.3d 1324, 1336-1337 (11th Cir. 2007), cert. denied, 552 U.S. 1140 (2008); *British Intern. Ins. Co. v. Seguros La Republica, S.A.*, 200 F.R.D., 586, 594 (W.D. Tex. 2000). The Rules Commentary also instructs that, "[t]he scope of post-judgment discovery is very broad to permit a judgment creditor to discover assets upon which execution may be made." Commentary citing *F.D.I.C. v. LeGrand*, 43 F. 3d 163, 172 (5th Cir. 1995) (additional citations omitted.) This Court finds that it erroneously limited Plaintiff's discovery to that permitted by state law in its October 26, 2010 order.

Judge John E. Jacobson, finding that Plaintiff's discovery requests were proper, previously ordered 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..

Memorandum Decision and Order, (Nov. 22, 2009) at 3.

The following documents are sought from the Defendant by the Plaintiff and were ordered to be provided by the Court under Judge Jacobson's order:

- 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.

This Court's order regarding Plaintiff's Motion for Contempt and Sanctions had erroneously restricted Plaintiff's discovery to that permitted by Minnesota state law, M.S.A. § 550.011. The Defendant has however made significant efforts to comply with that order. Def. Supp. Resp. at 3 ("A good faith attempt was made by Defendant to acquire all necessary documentation.") Defendant has served on Plaintiff's counsel and provided the Court with a very large package of financial information apparently in response to this Court's October 26, 2010 order. Plaintiff's counsel in his Reply Memorandum (regarding the motion for reconsideration) asserts that the Defendant has still failed to comply entirely--even in regard to this Court's unduly restrictive discovery order of October 26, 2010. Pl. Reply Mem. 4. Plaintiff asserts that Defendant has not complied in the following ways:

- Failed to complete, sign and date the Financial Disclosure Form
- Failed to list account numbers for his checking and savings accounts at Prior Lake State Bank and SMFCU in response to question 20 of the Financial Disclosure Form
- Failed to list the address for the Fairbault, Minnesota property, as well as the estimated value of the Fairbault, Minnesota and Thunderbird Circle properties in question 23 of the Financial Disclosure Form
- Failed to list motor vehicles, motorcycles, boats, snowmobiles, trailers, etc. in question 24 of the Financial Disclosure Form. Although Defendant lists "LLP Vehicle" there is no indication what LLP refers to or the license plate numbers, market value, or amounts owed for these vehicles.
- Failed to provide a full description of the cash, household goods, life insurance policy, National Housing Authority business, and Jordan Properties, as well as the location, estimated value, amount owed and to whom in question 25 of the Financial Disclosure Form


Id. at 4-5. The Plaintiff continues to press for this Court to find Defendant in contempt for failure to comply with this Court's discovery mandates. More than one year has passed since Judge Jacobson issued his order to Defendant to comply with Plaintiff's discovery requests. Moreover, the Defendant failed to fully comply with this Court's more limited discovery order of October 26, 2010. Nonetheless, while Defendant's compliance has been imperfect and incomplete, he has provided to the Plaintiff with a significant amount of documentation, at least some of which, was included in Judge Jacobsen's discovery order. It has been the rule of this case that this Court's contempt powers "must be used very carefully . . ." *SMSC v. Prescott*, (Mem. Opinion and Order, Aug. 6, 2008) at 3. It also continues to be the hope of this Court that the parties might reach a settlement of the means by which the judgment in this matter may be paid. Defendant appears to be cooperating in providing discovery in a way that he has not done so before. However, there is still a great deal of documentation and specific information that is missing from what Defendant has provided thus far.

The Plaintiff's motion for reconsideration, recast as a motion to alter or amend judgment, is hereby GRANTED. The Court finds however that the Defendant has made significant efforts to comply with the Court's October 26, 2010 discovery order and thus declines to hold him in contempt at this time. In accordance with this ruling, the Court hereby ORDERS THAT:

1. The Defendant shall complete and sign the Financial Disclosure Form and send it by certified mail to Plaintiff's counsel on or before December 4, 2010.
2. The Defendant shall provide to Plaintiff, as previously ordered by Judge Robertson, "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," those items that remain missing, on or before December 10, 2010.

3. In the event the Plaintiff wishes to reschedule a deposition of Defendant, the Defendant is ordered to attend such deposition and fully answer questions relating to his financial and asset information in order to facilitate the execution of this Court's judgment.¹

Dated this 23rd day of November 2010.



Judge Jill E. Tompkins
Pro Tem

¹This Court is aware that Defendant has filed a Complaint and Motion to Enjoin to curtail the interception of SMSC Community Business Proceeds Distribution Funds ordinarily allocated for his benefit pursuant the Writ of Execution issued in this matter. (*Prescott v. Shakopee Mdewanton Sioux (Dakota) Community*, Court file no. 677-10). Without deciding the issue of whether the interception of the Business Proceeds Distribution Funds is lawful, this Court encourages the Defendant to continue to cooperate and to fully disclose his assets so that alternatives to the interception of the funds may be explored as a means of satisfying the judgment.