

TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

FILED FEB 06 1996 *als*
CARRIE L. SVENDAHL
CLERK OF COURT
STATE OF MINNESOTA

COUNTY OF SCOTT

Leonard Prescott,
Plaintiff,

Court File No. 043-94

v.

MEMORANDUM OF LAW

Shakopee Mdewakanton Sioux
(Dakota) Community Business
Council,
Defendant.

I.

This lawsuit was initiated on July 28, 1994. The Plaintiff seeks a declaratory judgment determining the validity of Shakopee Mdewakanton Sioux (Dakota) General Council Resolution 7-27-94-007, which amends the Shakopee Mdewakanton Sioux (Dakota) Community Business Ordinance. The Plaintiff also seeks an injunction pending this Court's decision and for the recusal and disqualification of the Judges of this Court, John E. Jacobson, Henry M. Buffalo, Jr., and Robert A. Grey Eagle, for bias, prejudice or appearance of impropriety and for the disqualification of Counsel for the Defendant.

The Defendant seeks a Motion to Dismiss pursuant to Rule 12(b)(6) of this Court's Rules of Civil Procedure.

Argument on the Motion to Disqualify Counsel and for the recusal and disqualification of the Judges and on the Motion to Dismiss were heard on December 7, 1994. An Order by the undersigned Judge was issued on April 5, 1995, denying the Plaintiff's Motion to Disqualify Counsel and for the recusal and disqualification of the Judges. The Plaintiffs appealed the Order

which was subsequently affirmed by the Court of Appeals of the Shakopee Mdewakanton Sioux (Dakota) Community on November 8, 1995.

The Motion to Dismiss was taken under advisement pending the conclusion of the appeal and is now addressed in this Order and Memorandum of Law.

II

On July 27, 1994, the General Council of the Shakopee Mdewakanton Sioux (Dakota) Community convened its meeting to consider amendments to the Community's Corporation Ordinance as proposed in Resolution 7-27-94-001. The procedures governing meetings of the General Council are found in Article III of the Bylaws of the Community. The General Council supplemented its Bylaw procedures in the adoption of Resolution No. 7-27-90-003 and Ordinance No. 7-27-003 which sets forth a procedure whereby the General Council may provide for a vote on an issue which said vote must be in the nature of a written secret ballot which must be returned to the Community Center up to, but no longer than twenty-four (24) hours after the date and time the meeting was originally noticed to convene.

In addition, the Shakopee Mdewakanton Sioux (Dakota) Community Corporation Ordinance, 2-27-91-004, as amended in Section 63.0 reserves the right of the General Council to repeal or amend provisions of the Corporation Ordinance subject to a finding by this Court that such repeal or amendment is in the best interest of the Community pursuant to the filing of a declaratory judgment action.

On July 28, 1994, an action was filed in this Court pursuant to Section 63.0, In re: the Matter of the Amendments to the Shakopee Mdewakanton Sioux (Dakota) Community Corporation Ordinance Passed on July 27, 1994, Court File 044-94.

On September 12, 1994, this Court, by full panel, heard the Petition in the above-referenced matter and ruled unanimously that the amendments to the Corporation Ordinance proposed and adopted by the General Council pursuant to Resolution No. 7-27-94-007 were "in the best interests of the Community". See generally, Shakopee Mdewakanton Sioux Community, No. 025-92 (Tribal Court of the Shakopee Mdewakanton Sioux Community, June 3, 1993). By Order of the Court the amendments became effective on September 12, 1994.

III

The Plaintiff contends that Section 1.01 of Ordinance 07-27-90-003 requires distribution of any resolution, ordinance or other business to be voted upon by the General Council at least forty-eight hours before any regular or special meeting. Further, that Section 1.01 requires that such information, in complete written form, be freely available on request at the Community Center at least forty-eight (48) hours prior to the meeting. That Defendants failed to comply with the advance notice requirements and failed to provide copies of the amendments proposed for consideration at least forty-eight (48) hours prior to the meeting. And, that this failure entitles Plaintiff to a declaration that the amendment is not validly adopted and is of no legal force and effect.

IV

The Defendant, Shakopee Mdewakanton Sioux (Dakota) Business Council, moves for a dismissal of this case pursuant to Rule 12(b)(6) of the Court in that the matter is either moot, in light of this Court's ruling In Re: the Matter of Amendments to the Shakopee Mdewakanton Sioux (Dakota) Community Corporation Ordinance Passed on July 27, 1994, Court File No. 044-94, that the Plaintiff lacks standing to bring such an action, or that the procedures engaged

by the General Council for voting on the proposed amendments fully comply with the requirements of Article III of the Bylaws and that the procedure did not engage Ordinance No. 7-27-003, the twenty-four (24) hour voting procedure.

V

This Court has jurisdiction in this matter pursuant to Ordinance No. 02-13-88-01.

In a Motion to Dismiss, the Court must assume that all the facts alleged in the complaint are true and view the factual allegations in the light most favorable to the Plaintiff. Alright v. Oliver, ____ U.S. ____, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994); Schever v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); Kohl v. Casson, 5 F.3d 1141, 1148 (8th Circuit 1993).

A dismissal for failing to state a claim is disfavored, and not granted routinely. St. Marie & Son, Inc. v. Hartz Mountain Corp., 414 F. Supp. 71 (D. Minn. 1976), Hall v. City of Santa Barbara, 883 F.2d 1270, 1274, (9th Cir. 1986), cert. denied 485 U.S. 940 (1988).

However, a case may be dismissed under Rule 12(b)(6) if it appears beyond a reasonable doubt that the pleader can prove no set of facts in support of the claim that would entitle the pleader to relief. Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed. 80 (1957).

Although this Rules of Civil Procedure mirror in most respects the Federal Rules, this Court is not bound to apply them in the same manner as applied in the federal system.

Here, the Complaint rightfully states that Article V of the Community's Constitution establishes the power of the Community to promulgate and enforce ordinances. It further states that the General Council approved Resolution No. 2-27-91-004 enacting the Business Corporation Ordinance which further provides for the incorporation of business corporations

under this law.

The complaint further asserts that Resolution No. 2-27-91-004 directed the Business Council to incorporate Little Six Inc. (LSI) pursuant to the Business Corporation Ordinance as the Plaintiff states "in an effort to insulate the business activities conducted by the corporation, in particular management of the Community's gaming enterprise, from tribal politics." Complaint, Paragraph II.

The Plaintiff then states that the amendments that were before the General Council on July 27, 1994, seeks to repeal the Business Corporation Ordinance and implement vast and far reaching changes in the operation of LSI.

The Plaintiff argues that there were procedural irregularities in the method by which the amendments came before the General Council. The Court rejects this argument because it suggests that there is only one procedure for voting on these matters and that procedure is found in Ordinance No. 07-27-90-003, known as the 24 Hour Voting Procedure Ordinance. This completely ignores the procedures of the General Council set forth in Article III of the Bylaws of the Community. It also ignores the clear requirement of Section 1.02 of the Ordinance which sets forth the manner in which the 24 Hour Procedure is activated. The Complaint on its face, fails to plead that any of these requirements were met, much less raised, which would give some credence to the claim that the 24 Hour Procedure was activated.

The Shakopee Bylaws in Article III, Section A.3., state that "[A]ll meetings shall be held in public places at all times practical, and all eligible voters shall be notified of the time and place in writing by mail within forty-eight (48) hours notice in advance and a copy of the agenda to be included with said notice." The Plaintiff concedes that a notice was mailed " on or about

July 21, 1994" which far exceeds the requirements for a forty-eight (48) hour notice.

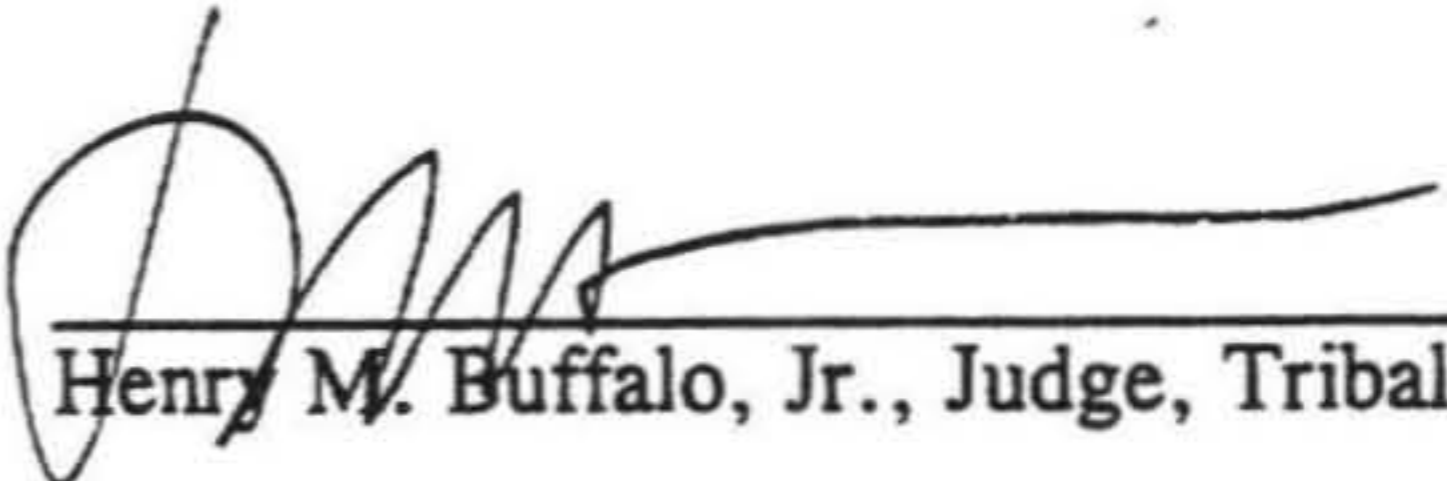
The Court is persuaded that the voting procedure utilized in the July 27, 1994 meeting complied with the requirement of the Bylaws.

No where does the Plaintiff suggest that the General Council does not have the power to amend the Business Corporation Ordinance. In fact, the General Council had amended the Ordinance pursuant to Resolution No. 11-05-92-001 in 1992. In essence, however, the relief that the Plaintiff seeks is complete immunity from any changes by the General Council. There are no set of facts that Plaintiff can prove that would offer such complete immunity from General Council action. The Ordinance contemplates such change and has created a specific procedure found in Section 63.0 which promotes stable change. Therefore, the Complaint is properly dismissed pursuant to Rule 12(b)(6) of the Tribal Court of the Shakopee Mdewakanton Sioux (Dakota) Community's Rules of Civil Procedure.

The Plaintiff seeks to overturn the adoption of these amendments after the General Council had properly convened its meeting, reviewed the amendments and voted 37 for, 0 against, and 1 abstention, at a meeting which the Plaintiff, himself, failed to appear. This the Court cannot and will not do.

The Court in its order does not reach the issue of mootness or standing as raised by the Defendant.

Dated: February 6, 1996


Henry M. Buffalo, Jr., Judge, Tribal Court

TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

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CARRIE L. SVENDAHL
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COUNTY OF SCOTT

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ORDER

Shakopee Mdewakanton Sioux
(Dakota) Community Business
Council,
Defendant.

The above-entitled matter came on for hearing before the undersigned Judge of Tribal Court on the 7th day of December, 1994, at 2330 Sioux Trail Northwest, in the City of Prior Lake, County of Scott, State of Minnesota, on the Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) of the this Court's Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

Steven F. Olson, Esq. appeared on behalf of the Defendant. Steven E. Wolter, Esq. appeared on behalf of the Plaintiff.

The Court being fully advised of the premises and based upon the files, records and evidence herein, as well as the arguments of Counsel for both parties,

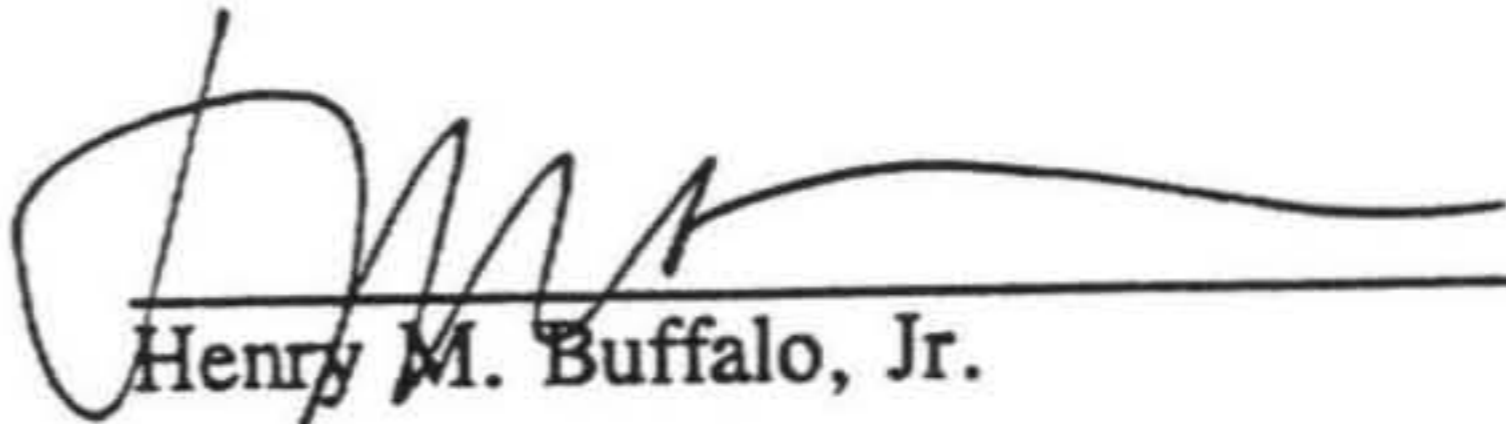
IT IS HEREBY ORDERED,

1. That the Defendants Motion to Dismiss be, and hereby is, in all things GRANTED;
2. That the attached Memorandum of Law be, and hereby is, INCORPORATED, into this Order.

C0043.005

BY THE COURT,

Dated: February 6, 1996


Henry M. Buffalo, Jr.

C0043.005