

FILED

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IN THE TRIAL COURT OF  
THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY  
JEANNE A. KRIEGER  
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

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Ann T. Ho,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 472-00
	)	
Little Six, Inc.,	)	
	)	
Defendant.	)	

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MEMORANDUM OPINION AND ORDER

In her Complaint, Plaintiff alleges that on July 29, 1998, she was injured on the premises of the Defendant, and that the injury was the result of Defendant's negligence. Plaintiff filed this action on December 1, 2000, more than twenty-eight months after her alleged injury. In its Answer, Defendant denied that it was negligent and raised several affirmative defenses; and after filing its Answer, Defendant filed a motion for summary judgment arguing that Plaintiff failed to file this lawsuit within the time mandated by the applicable statute of limitations. For the reasons set forth below, I have concluded that the Defendant's motion must be granted.

Rule 28 of the SMS(D)C Rules of Civil Procedure requires that summary judgment be entered only if there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Little Six, Inc., et al v. Prescott and Johnson, Nos. 020-99, 021-99, 022-99 (SMS(D)C Ct. App. Feb. 1, 2000); Feezor and St. Pierre v. SMS(D)C et al, No. 311-98 (SMS(D)C Tr. Ct. May 19, 1999). When considering whether there is a genuine issue of material fact, it is the duty of the Court to



view the evidence in the light most favorable to the non-moving party, and to give that party the benefit of all reasonable inferences drawn from that evidence. *Id.* However, in the instant case the parties do not dispute any of the facts necessary to resolve Defendant's motion. Therefore, the only question is whether the Defendant is entitled to judgment as a matter of law.

In their briefs and pleadings, the parties agree on the following: Plaintiff alleges she was injured on July 29, 1998. Plaintiff reported the injury to Defendant shortly thereafter. A letter submitted by Defendant makes it clear that at least by March 1999, Plaintiff was represented by legal counsel. Plaintiff sent a demand letter to Defendant on November 19, 1999, and Defendant denied the demand on February 24, 2000. Plaintiff filed this action on December 1, 2000, the summons was issued December 4, 2000, and Defendant was served the Complaint on January 4, 2001.

On November 12, 1996, by General Council Resolution 11-12-96-001, the Shakopee Mdewakanton Sioux (Dakota) Community adopted a Tort Claims Ordinance, which has been in effect since that date. Section 9 of the Tort Claims Ordinance states:

The statute of limitations for all claims brought against the Community is two (2) years and the right to bring a claim against the Community shall begin to accrue on the date of the act or omission giving rise to the claim, or on the date a reasonable person under the same or similar circumstances would have known of the injury, loss or other damages incurred as a consequence of the act or omission of the employee of the Community.

The Tort Claims Ordinance gives this Court jurisdiction to hear tort claims against the Community and its entities, as follows:

The Shakopee Mdewakanton Sioux (Dakota) Tribal Court shall have original and exclusive jurisdiction to hear claims brought pursuant to this Ordinance, subject to the terms of the Ordinance, and all claims not brought in the Shakopee Mdewakanton Sioux (Dakota) Tribal Court shall be deemed invalid.

The undisputed facts make it clear that this is not a case where the Plaintiff was ignorant of her injury or disadvantaged somehow by not being represented by counsel. Plaintiff appears to have been represented by counsel since at least March, 1999; and from the record it appears that Plaintiff and her counsel had ample opportunity to investigate and pursue Plaintiff's claim within the two year period after her injury.



Plaintiff's counsel states that his delay in filing this suit for almost ten months (from the date the demand was rejected by Defendant in February, 2000 until the Complaint was filed in December, 2000) "had to do with arriving at acceptable arrangements for costs needed to prosecute the claim." See Plaintiff's Response to Defendant's Motion for Summary Judgment, at 3. Although it is not clear to the Court how negotiating a client-attorney agreement on costs could drag out for ten months, including the time when the statute of limitations was scheduled to run, such discussions are simply not a reason to toll the statute. To his credit, Plaintiff's counsel does not make that argument.

Plaintiff does argue, however, that her lawsuit is not barred because her notice and demand letters, sent on March 12, 1999 and November 19, 1999 respectively, constitute a "claim" brought within two years of July 29, 1999, such that the Tort Claims Ordinance's statute of limitations was satisfied. Plaintiff argues that the term "claim" in Section 9 of the Tort Claims Ordinance should not be understood to require a lawsuit filed in Tribal Court. Instead, Plaintiff argues that as long as the Defendant is given some level of notice of a claim within two years, the statute is satisfied.

Plaintiff's attorney fails to offer any case law or textual support for this interpretation; but he argues that the Tort Claims Ordinance should be strictly construed against the Defendant because, he asserts, the Defendant was responsible for drafting the Ordinance. Even assuming, without deciding, that common law rules of contract construction may apply to questions of statutory interpretation (a proposition with respect to which there would appear to be significant question), the Plaintiff is simply incorrect about the facts. The Defendant here, Little Six, Inc. (LSI), is not the government of the Shakopee Mdewakanton Sioux (Dakota) Community. LSI has no responsibility for promulgating the laws of the Community. Rather, LSI is a subsidiary economic enterprise of the Community, possessing no power under the SMS(D)C Constitution to pass legislation. Therefore, under these facts, the Plaintiff clearly is not entitled to any special interpretive presumptions.

And -- with or without presumptions -- Plaintiff's interpretation of Section 9 is simply unpersuasive. Statutes of limitation are created to give certainty to the relationship between those who claim injury and those purportedly responsible for the injury, by putting a finite end to any potential legal liability one party may have to another. The



practical effect of Plaintiff's interpretation would be to completely erase that certainty. Under Plaintiff's approach, there would be no known, finite time within which a potential plaintiff would be required file in this Court, before his or her claim would be time-barred.

It is true that the Tort Claims Ordinance does not specifically define the term "claim"; and Section 10 of the Ordinance requires that the "claim" be presented to legal counsel for the Community. But it also is absolutely clear that, if an allegedly injured party wishes to seek judicial redress, the party's "claim" must be brought to this Court under Section 6 of the Tort Claims Ordinance; and Rule 4 of our Rules of Civil Procedure of this Court (which has been in place since 1988, and which was modeled after Rule 3 of the Federal Rules of Civil Procedure) leaves no doubt as to the only way in which a claim can be heard in this Court:

A civil action shall be commenced by filing a complaint with the Clerk of Court.

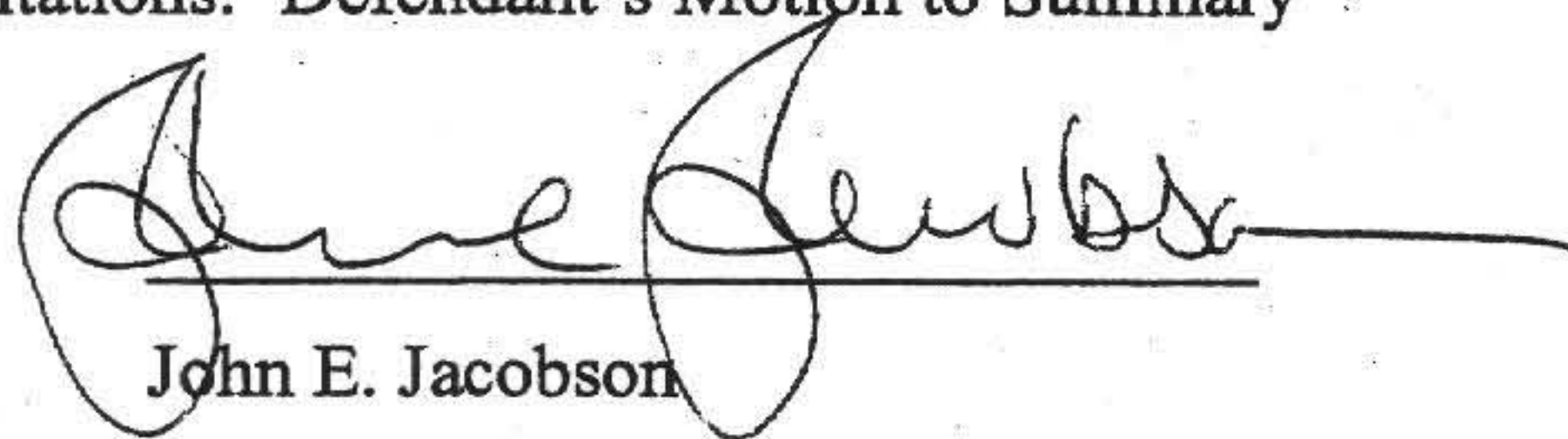
Therefore, the term "claim", as used in both Sections 6 and 9 of the Tort Claims Ordinance, clearly means the initiation of a lawsuit by filing a complaint in this Court.

Under the plain language of Section 9, Plaintiff had two years from her alleged injury on July 29, 1998 to bring a claim, by filing a lawsuit, in this Court. To comply with the statute of limitations in the Tort Claims Ordinance, Plaintiff would have had to file her suit by July 29, 2000. She did not file her lawsuit until December 1, 2000, and her suit therefore is barred by the statute of limitations.

#### **ORDER**

For the foregoing reasons, this action is barred because the Plaintiff failed to file this lawsuit within the applicable statute of limitations. Defendant's Motion to Summary Judgement is GRANTED.

Dated: 11/21/01



John E. Jacobson

Judge