

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

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The Estate of John Lee Feezor, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 The Shakopee Mdewakanton Sioux )  
 Community, by and through its )  
 Business Council, )  
 )  
 Defendant. )

TRIBAL COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX  
(DAKOTA) COMMUNITY

Court File No. 645-09

FILED DEC 17 2012

LYNN K. McDONALD  
CLERK OF COURT

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**Memorandum Opinion and Order**

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Two issues remain before the Court in this protracted matter: (1) whether the Court has the power to award pre- and post-judgment interest against the Shakopee Mdewakanton Sioux (Dakota) Community (“the Community”), in cases where the Court has entered a money judgment against the Community; and (2), if the Court has that authority, whether the authority should be exercised in this case. After long (too long ) reflection, I have concluded that the answer to the first question must be in the negative, and therefore the second question is moot.

The history of these proceedings is set forth in detail in Shakopee Mdewakanton Sioux (Dakota) Community, by and through its Business Council v. Estate of John Lee Feezor, Shakopee Appellate Court File 038-11 (decided April 5, 2012). It is a history that would, in my opinion, justify the award both of pre- and post-judgment interest, under the general rule established by SMS(D)C Gaming Enterprise v. Prescott, 5 Shak. T.C. 11, 25 – 26 (June 9, 2005), *aff’d* SMS(D)C Gaming Enterprise v. Prescott, 2 Shak. A.C. 1, 3 (August 8, 2006), if the Court possessed the authority to make such an award. But the Community has argued, persuasively, that the waivers of the Community’s sovereign immunity from unconsented suit that permit the Court to award money judgments against the Community do not include the authority to award interest on those judgments.

Common law uniformly provides that, if interest were to be awarded against a sovereign, the sovereign must first expressly and specifically waive its immunity as to such an award. *See e.g., United States ex rel. Angarica v. Bayard*, 127 U.S. 251, 260 (1888), and Library of Congress v. Shaw, 478 U.S. 310 (1986). In federal law, interest on judgments against the federal government has been expressly authorized by Congress under the provisions of a specific statute, 28 U.S.C. §1961 (2012). But no such

specific authorization ever has been adopted by the Community. To the contrary, during the pendency of this litigation – and evidently in direct response to this litigation – the Community’s General Council adopted a Resolution which, *inter alia*, provides:

**BE IT FURTHER RESOLVED**, The Tribe is not subject to pre- or post-judgment interest unless the General Council specifically and expressly consents to the award of interest, which must be separate from a general waiver of immunity to suit. The requirement of a separate waiver is afforded to other sovereigns and, as an act of self-governance, to make our own law and be ruled by them, the General Council determines that pre- or post-judgment [sic] shall not be assessed against the Tribe. The Business Council, its officers, and all other officials and employees of the Tribe are prohibited from paying any interest to the Estate of Feezor ...


Shakopee Mdewakanton Sioux (Dakota)  
Community General Council Resolution  
No. 05-08-12-008

It is important to note that if, when the Court was created, or at some time thereafter but before the adoption of Resolution 05-08-12-008, the Court had been given the power to award pre- and post-judgment interest, then under the terms of the Resolution that created the Court, Resolution 02-13-88-001, the withdrawal of that power would have required a supermajority vote of “an absolute three-fourths majority of all of the enrolled and eligible voting members” of the Community – a vote total that Resolution 05-08-12-008 did not receive.

But I am persuaded that, prior to the adoption of Resolution 05-08-12-008, the Court in fact never received the specific grant of authority to award interest against the sovereign that the law would require. Accordingly, though the circumstances of this case would justify the award of interest against a private party, the Court is unable to award it here.

For the forgoing reasons **IT IS ORDERED**: that the Plaintiff’s motion for pre-judgment and post-judgment interest is DENIED.

Dated: December 17, 2012

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