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COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX (DAKOTA) COMMUNITY

CARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Little Six, Inc., et al.)	
)	
Plaintiffs,)	
)	
vs.)	
)	
Leonard Prescott, et al.,)	
)	
Defendants.)	

File No. 048-94

MEMORANDUM AND ORDER

This Memorandum will address two jurisdictional issues which have been the subject of separate briefing: (1) the issue of this Court's subject-matter jurisdiction, in light of Resolution No. 11-14-95-003 ("the Jurisdictional Amendment"), adopted by the General Council ("the General Council") of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community") on November 14, 1995; and (2) the issue of this Court's personal jurisdiction over the Defendant F. William Johnson.

1. Subject Matter Jurisdiction. On June 13, 1996, the Court entered an Order under which the parties were to provide their views with respect to the effect, on this litigation, of the Jurisdictional Amendment. The June 13 Order was necessitated, in my mind, by my conclusion that the General Council's Resolution No. 2-13-88-001 ("the Enabling Resolution"), by which this Court was

created, did not operate to give the Court subject-matter jurisdiction over claims such as those which are presented in this litigation, and by my further conclusion that the Jurisdictional Amendment, though couched in terms of "clarification" of the Enabling Resolution, in fact could not have that function, given what I believe to be the very clear demarcations in the Enabling Resolution.

The parties now have filed two sets of simultaneous briefs on these issues; and on the basis of those materials, I am persuaded that there is no legal bar, arising from the Indian Civil Rights Act, 25 U.S.C. §1302 (1994) or any other source, that prevents the Jurisdictional Amendment from creating jurisdiction, in this Court, over a pending case where, absent the Jurisdictional Amendment, there would not have been jurisdiction. I am further persuaded, from the broad reach of the language of the Jurisdictional Amendment itself, that the General Council intended that its enactment should have the greatest reach it legally could. Hence, I have determined that the Jurisdictional Amendment can and does operate to give this Court subject matter jurisdiction in cases, such as this, which its substance reaches, and which were pending when it was adopted.

The Defendants have cited the Court to certain cases decided by the United States Supreme Court early in this century and late in the nineteenth century, ostensibly for the proposition that subject matter jurisdiction cannot be created in a court, after a case is filed, if there was no such jurisdiction when the case was

commenced. But a review of those cases reveals that none is apposite. Valley v. Northern Fire & Marine Insurance Co., 254 U.S. 348 (1920) merely held that service of process, followed by a default judgment and a failure to contest jurisdiction, did not operate to convey federal bankruptcy jurisdiction over an insurance company, when the law specifically forbade the exercise of such jurisdiction. And Minneapolis & St. Louis R. Co. v. Peoria & Pekin Union R. Co., 270 U.S. 580 (1926), dealt with circumstances where a jurisdictional prerequisite--the continued existence of an Interstate Commerce Commission Order--had disappeared before the case was filed. The Minneapolis court did, in fact, say that the "jurisdiction of the lower court depends upon the state of things existing at the time the suit was brought"; but there was nothing in the record of the case which suggested that any action had taken place subsequent to the filing of the case which purported to breathe new life into the Order which had expired.

The Defendants also have asked the Court to consider Denberg v. United States Railroad Retirement Board, 696 F.2d 1193 (7th Cir. 1983), wherein Judge Posner wrote--

[i]f the court did not have jurisdiction over the Denbergs' action when it was filed, it did not have jurisdiction to certify the action as a class action under Fed. R. Civ. P. 23(c)(1) two years later.

696 F.,2d, at 1197.

But that case, again, is inapposite. In it, the Court of the Appeals was dealing with a matter where, it concluded, the U.S. District Court had possessed no jurisdiction when it had filed its decision, and where there was no subsequent legislative

intervention that could be argued to have created jurisdiction in the court. The thus case has no utility here, we confront a case where there is subsequent legislation, and we are attempting to assess its effect.

On the other hand, the Plaintiffs, in my view, have cited several cases which make it clear that subject-matter jurisdiction can, indeed, be conveyed to a court after litigation has been filed. The discussion of the United States Supreme Court in Landgraf v. USI Film Products, Inc., 511 U.S. 244 (1994) is particularly instructive. In that case, the majority reviewed in detail the factors to which a court should look when considering the retroactive effect not only of jurisdictional provisions but of substantive provisions, as well. As to jurisdictional amendments, the Court said:

We have regularly applied intervening statutes conferring or ousting jurisdiction, whether or not jurisdiction lay when the underlying conduct occurred or when the suit was filed. [cits]. ... Application of a new jurisdictional rule usually "takes away no substantive right but simply changes the tribunal that is to hear the case. [cits.]

511 U.S., at ___, 114 S.Ct. at 1501-2.

A case in point is United States v. State of Alabama, 362 U.S. 602 (1960), where, after the United States District Court had dismissed a voting rights case on jurisdictional and other grounds, Congress passed the Civil Rights Act of 1960. The Court observed:

Among other things [the Civil Rights Act of 1960] amends [previous law] by expressly authorizing actions such as this to be brought against a State. Under familiar principles, the case must be decided on the basis of law now controlling, and the provisions of [the new statute]

are applicable to this litigation.

362 U.S., at 364.

The Landgraf Court makes it clear that, among the considerations to which courts should look in assessing the effect of subsequent legislation, the intent of the legislative body which adopted the provisions in question should weigh heavily. In that regard, there seems to be little doubt that the General Council intended the Jurisdictional Amendment to have the broadest reach which its language and other law would permit. I cannot read the Jurisdictional Amendment to be a "clarification"; but I can and do read it to have retroactive applicability to this case.

The Defendants have urged that the Jurisdictional Amendment should be regarded either as an Ex Post Facto provision, or as a Bill of Attainder; but clearly it is neither. The provisions against Ex Post Facto legislation apply only to criminal law, and this Court has no criminal jurisdiction, either before or after the adoption of the Jurisdictional Amendment. And a Bill of Attainder is a legislative action that is directed at, and is aimed to punish, a specific individual or entity, whereas the Jurisdictional Amendment is of uniform and general applicability, and without punitive effect.

I note that even legislation which is very specific in its target has been found to be free of Constitutional defects, if the legislation permits judicial scope and does not specify the results of the judicial process. See e.g. Robertson v. Seattle Audubon Society, 503 U.S. 429 (1992). And the Jurisdictional Amendment

clearly does not dictate or even suggest any result to this litigation. The result will be determined on an unbiased reading of the facts and the law, in accordance with the rules of the Court. What the Jurisdictional Amendment has done is make it possible for the Court to arrive at that result.

2. Personal Jurisdiction. The Defendant F. William Johnson ("Johnson") has moved to dismiss this matter on the grounds that this Court does not have personal jurisdiction over him. The Plaintiffs' Complaint alleges, and Johnson does not dispute, that for a period of time prior to the commencement of this action, Johnson was an employee of Little Six, Inc. ("LSI"), a corporation chartered by and wholly owned by the Community¹. The Complaint alleges, and Johnson does not dispute, that Johnson was LSI's President, Chief Executive Officer, and Chief Operating Officer, and that during his period of employment he regularly entered the Community's Reservation and conducted business on the Reservation. The Community asserts, but Johnson does dispute, that Johnson affirmatively consented to the jurisdiction of this Court in an employment contract. No contract signed by Johnson has been provided to the Court, to this date. Johnson was served with process by mail, and his counsel has participated in these proceedings specially, for the purpose of raising the jurisdictional issues which this Memorandum and Order resolve.

¹ Johnson is a member of the Turtle Mountain Band of Chippewa Indians. Because of my conclusion with respect to Johnson's other arguments with respect to personal jurisdiction, I am not obliged to reach the question of whether Johnson's tribal membership has any consequence to this Court's jurisdiction over him.

In urging this Court to dismiss him, Johnson's central contention is a territorial one--he says that he is outside the boundaries of the Reservation, and that he therefore can't be the subject of the Community's reach:

Basically, Johnson is outside the Tribal Court's jurisdiction because no entity of the Community may regulate persons or property outside the boundaries of the Community's Reservation... .

Defendant Johnson's Reply
Memorandum, at 5 (May 7, 1996).

The Plaintiffs have the burden of establishing that this Court has personal jurisdiction; and what is necessary is a prima facie showing, taking the Plaintiffs' allegations as true. Wessels, Arnold & Henderson v. National Medical Waste, Inc., 65 F.3d 1427 (8th Cir. 1995).

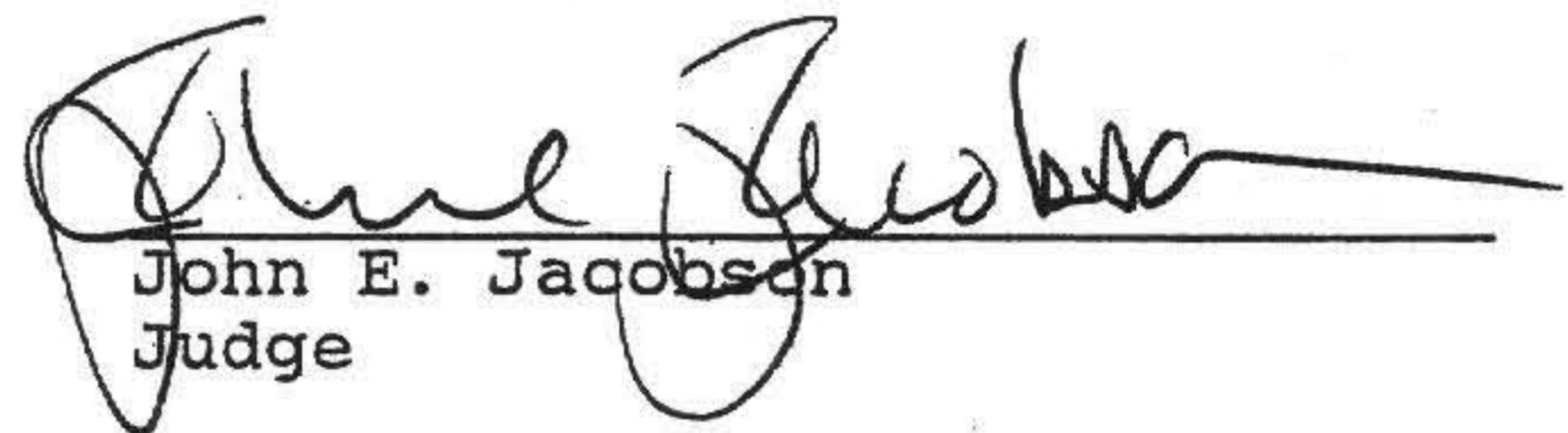
To meet this burden, the Plaintiffs have asserted that what is required are allegations of "minimum contacts" sufficient to meet the requirements established by International Shoe Co. v. Washington, 326 U.S. 310 (1945). Johnson responds that, given the nature of the jurisdiction of an Indian tribe, the International Shoe standard is inapplicable--because, he asserts, the Full Faith and Credit Clause of the United States Constitution underpins the International Shoe standard. But, in my view, the short answer to Johnson, in this respect, is that it is the International Shoe test which courts have used when considering the power of tribal courts over persons who are not members of the tribe, see Hinshaw v. Mahler, 42 F.3d 1178 (8th Cir. 1994); and I consider that it is appropriate here.

The Plaintiffs' pleadings clearly allege sufficient minimum contacts with the Community to survive the International Shoe analysis. It may be true, as Johnson asserts, that he declined to sign a contract with LSI which explicitly contained a consent to the jurisdiction of the Community or this Court; but it is alleged and not contested that thereafter he served LSI, worked on the Community's Reservation, and dealt with LSI's property. Those alleged contacts are sufficient, if proved, to extend the jurisdiction of the Community and this Court to his person.

ORDER

For the foregoing reasons, the Defendant Johnson's Motion to Dismiss for lack of personal jurisdiction is DENIED.

July 1, 1996


John E. Jacobson
Judge