IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX
COMMUNITY
FILED
AUG 0 6 2008
LYNNEA A. FERCELLO
CLERK OF COURT

COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT STATE OF MINNESOTA

Shakopee Mdewakanton Sioux
Community 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.

Defendant.

Memorandum Opinion and Order

On October 27, 2005, after years of litigation and many published opinions, the Court entered judgment in this matter, in favor of the Plaintiff, in the amount of $516,871.46, plus pre-judgment and post-judgment interest on that amount, plus $185,810.08 in legal fees and costs. The Court thought that perhaps the entry of that judgment might end the Court's involvement in the matter. But it was not to be. After initiating collection proceedings against the Defendant in the Courts of the State of Minnesota – proceedings that are ongoing at the present time – the Plaintiff filed a motion in this Court seeking to have the Defendant held in contempt of court.

The Plaintiff asserted that the Defendant has the means to pay the judgment, has failed to pay the judgment, and – in resisting the Plaintiff's collection efforts in the Minnesota Courts – has asserted that this Court repeatedly had acted improperly in deciding matters against him.

On June 9, 2008, the Court denied the contempt motion, holding that the Plaintiff's actions in the Courts of the State of Minnesota did not constitute contempt of this Court. On June 17, 2008, the Plaintiff filed another motion, seeking reconsideration of its contempt motion. The Court set a briefing schedule, permitting the Defendant to file a response by July 3, 2008, and allowing the Plaintiff to file any reply to the

Defendant's response by July 11. In fact, the Defendant did not file a timely response[1]; but, surprisingly, on July 11, 2008 the Plaintiff nonetheless filed a pleading styled a "Reply in Support of Motion to Reconsider".

In an affidavit that the Plaintiff filed in support of its motion, Plaintiff's counsel asserted that the Court, in focusing on the proceedings in the Minnesota State Courts, had missed the point of the Plaintiff's contempt motion. Counsel's affidavit asserted that three things, and only three things, should matter to the Court: the fact that this Court's money judgment exists, the fact that the Plaintiff has the resources to pay the judgment, and the fact that he has not paid it. The Plaintiff's subsequent "Reply" declared that, if this Court were to take a view different from the Plaintiff's, then –

> ...[the Court] will have neutered itself, and word will quickly spread that one need not be concerned about complying with any order *this* Court issues; one need simply ignore it, for the Court itself will refuse to exercise its valid powers to enforce it.
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> Plaintiff's Reply in Support of Motion to Reconsider, at 2 (filed July 11, 2008).

Nonetheless, the Court now denies the Plaintiff's motion to reconsider.

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 a judgment, under Rule 59(e), if the motion is filed within ten days of the entry of the order at issue, and as a motion for relief from judgment if it is filed after that time. *See* Saunders v. Clemco Industries, 862 F.2d 161, 168 n.11 (8th Cir. 1988) (citing Venable v. Haislip, 721 F.2d 297, 299 (10th Cir. 1983) (*per curiam*). For purposes of considering the Plaintiff's motion, the Court will accept that time-driven distinction, and will consider the Plaintiff's motion, filed eight days after the order at issue, as a motion to alter or amend a judgment.

A party seeking to invoke Federal Rule 59(e) must either establish that the decision of the Court at issue involves a manifest error of law or fact, or must present newly discovered evidence. Here, the Plaintiff contends that the Court misunderstood the law of the Community relative to contempt of Court. The Plaintiff asserts – without any citation, it must be noted – that "[u]nder Shakopee Mdewakanton Sioux Community law, the method of obtaining compliance [with a money judgment] is contempt, not

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[1] On August 6, 2008, the day that the Court finalized this Memorandum and Order, a "Contempt Reply Memorandum" and a supporting Affidavit signed by Defendant's counsel arrived in the mail. The envelope indicated that the materials were mailed on August 4, 2008, more than thirty days outside the time specified by the Court's scheduling order. The materials therefore were not filed by the Clerk or considered by the Court.

garnishment, and the remedy must be applied here." (Affidavit of Jeffrey S. Rasmussen in Support of Motion to Reconsider, at paragraph 7, filed June 17, 2008, at 9.)

But that argument ignores Rule 30 of this Court's Rules of Civil Procedure, which has been the law of the Community since the Rule was adopted some twenty years ago. Rule 30 incorporates Rule 69(a) of the Federal Rules of Civil Procedure, which provides:

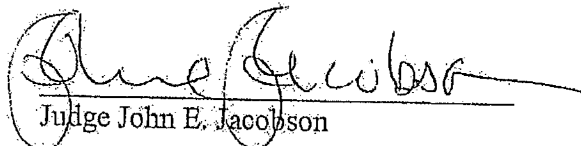
> (1) *Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

Federal case law interpreting Rule 69(a) holds that equitable relief in collecting a money judgment – which can be awarded under the "unless the court directs otherwise" proviso of the Rule – is appropriate only if the judgment debtor has engaged in culpable conduct, or if the circumstances before the court are exceptional. *See e.g.*, Ardex Laboratories, Inc. v. Cooperider, 319 F.Supp.2d 507 (E.D. Pa. 2004). The Court takes this to be the law of the Shakopee Community, and the Court finds nothing that is either culpable or exceptional here. As the Court observed in its June 9, 2008 decision, the Plaintiff has obtained a valid judgment, and has begun proceedings to execute on that judgment in a fashion that is consistent both with the laws of the Community and with the laws of the State of Minnesota; in response, the Defendant has sought to assert defenses that he believes the laws of the Minnesota may afford him. Nothing in these circumstances is, in this Court's view, culpable or exceptional.

Contempt powers, which this Court clearly possesses, must be used very carefully, and should not be used merely as a collection tool when other mechanisms are available. *See e.g.*, Shuffler v. Heritage Bank, 720 F.2d 1141, 1147 (9th Cir. 1983) (holding that the proper means to secure compliance with a money judgment ordering payment of attorney fees is to seek a writ of execution); Bahre v. Bahre, 230 N.E.2d 411, 414-415 (Ind. 1967) (holding that contempt proceedings are inappropriate remedies to enforce the payment of counsel fees); and In re Estate of Bonham, 817 A.2d 192, 195 (*accord*).

In short, the Plaintiff has failed, under Rule 28 of this Court's Rules of Civil Procedure, to establish that any manifest error of law was committed by the Court when it denied the Plaintiff's motion for a contempt finding. Therefore the Plaintiff's instant motion must be and is DENIED.

August 6, 2008



Judge John E. Jacobson