IN THE COURT OF APPEALS FOR THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT STATE OF MINNESOTA

In re: Trust Under Little Six, Inc. Retirement Plans	
Robert Burns, John Somers, Plaintiff-Interpleaders,	
v.	Ct. App. No. 024-00
Little Six Inc., Defendant-Intevenor,	
v.	
Leonard Prescott, F. William Johnson, and Peter Riverso, Defendant-Intervenors.	

MEMORANDUM OPINION AND ORDER

INTRODUCTION

In this appeal, we must decide if the Court has subject matter jurisdiction over a dispute involving a trust funded to support employee benefit programs at Little Six, Inc. Plaintiffs are trustees of the trust, and Defendant-Intervenor Little Six, Inc. (LSI) and Defendant-Intervenor Prescott, Johnson, and Riverso (the Claimants) hold conflicting claims to the trust assets. The Claimants assert that the trust and associated benefit plans

were properly created under Community law and that they are each due benefits under the plans. LSI claims the trust and the plans were not validly created and that the trust is revocable and its funds should be returned to LSI. The trustees of the trust filed a petition, and then an Interpleader Complaint, seeking this Court's guidance about how they should proceed in the face of these conflicting claims. The Interpleader Complaint also requests other relief not necessarily associated with the dispute between LSI and the Claimaints, namely for this Court to approve the trustees' accounting of the trust funds and to approve other actions undertaken by the trustees.

The Trial Court first addressed whether it had jurisdiction to hear this matter. After briefing and an evidentiary hearing, the Trial Court concluded that the benefit plans and trust were properly created under Community law, and that these plans are governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1500. The Trial Court then held that under ERISA, this Court lacks subject matter jurisdiction over this dispute, and the Interpleader Complaint was therefore dismissed.

On appeal, LSI argues the Trial Court erred. Specifically, LSI argues that ERISA does not apply to Tribes, and that even if it did the trust and plans at issue here are not subject to ERISA. LSI urges this Court to accept jurisdiction over this dispute and order that the trust funds be returned to LSI.

Because we conclude that the trust and plans at issue here were never properly adopted by LSI under Community law, an ERISA plan was never created, and this Court may entertain this dispute. Since the trust document signed by Prescott and Johnson provides that the trust will remain revocable in the absence of LSI Board approval, we conclude that the trustees may return the trust funds to LSI without fear of liability. We therefore dismiss the claims presented by the Claimants, and remand for the Trial Court to entertain the other requests for relief from the trustees.

FACTUAL BACKGROUND

LSI is a corporation chartered under the laws of the Shakopee Mdewakanton Sioux (Dakota) Community (the Community) and it is wholly owned by the Community. See Article of Incorporation of Little Six, Inc. § 4. Leonard Prescott, William Johnson, and Peter Riverso served as officers, directors and/or managers of LSI from its inception

in 1991 until late 1994-early 1995. It was during this time period that the benefit plans and trust at issue in this suit came into being.

We agree with the Trial Court that this dispute involves five different plans and a related trust. The evidence shows that from 1992 until January, 1995, LSI administered and either paid actual cash benefits, or credited cash amounts to deferred accounts, for various LSI employees under at least five different benefit plans. See, e.g., In re Trust under LSI Retirement Plans, No. 055-95 (SMS(D)C Tr. Ct. March 29, 2000) at 9; LSI Trial Ex. 19-21, 54; Claimants' Trial Ex. 1039-1047, 1094-95, 1101, 1105-06, 1115-1119. The five plans are:

- The LSI Life Insurance Plan
- The LSI Executive 457 Plan (457 Plan)
- The LSI Separation Pay Plan
- The LSI Supplemental Retirement Plan (SERP)
- The Retention Plan (sometimes referred to as SERP II)

These plans included more beneficiaries than just Prescott, Johnson, and Riverso. See, e.g., Original Trust Petition.

In the hearing below, Prescott, Johnson, and Riverso presented evidence that the plans were created as a bona fide effort to retain qualified high level employees, particularly in light of the restrictions placed on the ability of a tribal corporation to offer standard employee benefit programs, such as stock options or 401K plans. Transcript of 10/5/99-10/7/99 Hearing (Tr.) at 632, 247, 732. LSI, on the other hand, argued that these plans were initiated and executed by Prescott and Johnson in an attempt to covertly compensate themselves with little scrutiny from others within LSI or the Community. See Appellant LSI's Reply Brief, at 6-7; Post Hearing Brief of LSI at 4-5.

To secure funding for at least some of these plans, a trust was established. LSI Trial Ex. 5. On March 25, 1993, on behalf of LSI, Prescott and Johnson signed a trust instrument naming Burns and Somers as trustees. LSI Ex. 5. Section (d) of the preamble to the trust document makes it clear that the parties to the trust contemplated that it would be associated with the employee benefit plans involved in this case. Id. In addition, the trust instrument states that the trust will only become irrevocable if it is approved by the LSI Board of Directors. LSI Ex. 5 at 1(b).

Prescott, Johnson, and Riverso all left LSI by early 1995. By that time, a new Board of Directors had been slated and the new Board passed a resolution on January 14, 1995 specifically stating that it had never adopted or approved any of the benefit plans involved in this dispute. LSI Trial Ex. 26. The Board also noted it had never formally adopted the trust used to secure funding for these plans, and the Board specifically directed the trustees to return the trust funds to the Community. LSI Trial Ex. 26. This resolution did acknowledge that LSI had incurred liabilities under the 457 Plan and SERP I for the period between 1/1/93 and 12/31/94, and that LSI would authorize payments for these periods under the terms of the plans. Id. However, the resolution stated that no additional amounts would be credited to participants in these plans after December 31, 1994. Id. The resolution also unilaterally terminated the Life Insurance Plan. Id.

Since the request from LSI to return the trust assets conflicted with the actions of the trustees to date, and since the trustees were aware that the beneficiaries held conflicting claims to the trust funds, the trustees filed a petition in this Court for an order approving their actions, and requesting guidance on how to proceed in the future.

Almost contemporaneously, Prescott and Johnson filed a complaint in federal district court alleging that the trust and benefit plans were subject to the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1500, and that under that federal statute they were entitled to relief. The United States District Court did not rule on the merits of Prescott and Johnson's claims, but instead ruled that they must first exhaust their tribal remedies before proceeding in federal court. Prescott v. Little Six, 897 F.Supp. 1217 (D. Minn. 1995). Specifically, the District Court concluded that this Court should have the first opportunity to determine if it had jurisdiction to consider Prescott and Johnson's claims, and it dismissed Prescott and Johnson's claims pending exhaustion of tribal court remedies. Id. at 1224.

In an order dated June 19, 1999, the Trial Court allowed Prescott and Johnson to intervene in this action. The Trial Court also denied Prescott and Johnson's motion to dismiss on various grounds, and ordered the trustees to restyle their petition as a Interpleader Complaint under Rule 18 of the SMS(D)C Rules of Civil Procedure. To address the remaining question of subject matter jurisdiction, the Trial Court ordered an evidentiary hearing to be held on whether the trust supporting the benefit plans was

approved by LSI or the Community. The Trial Court framed the issue in the following manner: if the trust and benefit plans were properly formed under Community law, it seemed the ERISA would apply and the federal courts would have exclusive jurisdiction; if the trust and benefit plans were not properly formed, Community law provided the Court with a jurisdictional basis to address the claims of the parties.

At the hearing, ten witnesses testified over the course of three days, and the parties have submitted numerous tangible exhibits and documents. After the hearing, the parties submitted briefs. The Trial Court concluded that although there was no evidence that the LSI Board ever formally adopted the trust and the plans, there was sufficient evidence of other actions by LSI to find that its had adopted the trust and benefit plans at issue here. Because we agree with LSI that there is no evidence in the record that the LSI Board adopted these plans or the trust in conformance with Community law, we reverse.

LEGAL DISCUSSION

In their Interpleader Complaint the trustees have asked for an order approving their actions to date, and giving them guidance on how to resolve the conflicting claims to the trust. We agree with the Trial Court that the best way to analyze the issues presented by the trustees' request is begin by determining whether an ERISA plan exists.

Since we conclude that an ERISA plan was not formed as to these particular Claimants, we need not address whether ERISA applies to Indian tribes. We note, however, that our research to date, and the argument of each party, has not identified one case in any jurisdiction that exempts Indian tribes from ERISA's broad reach.[1]

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[1] Curiously, LSI urges us to follow the reasoning of an Eighth Circuit case not dealing with ERISA, rather than the Seventh or Ninth Circuit cases relied on by the Trial Court, both of which directly address the applicability of ERISA to Indian tribes. Opening Brief of Appellant LSI, at 8-16. In arguing that this Court should stay away from the Seventh and Ninth Circuit cases that hurts its argument, LSI states "where the legal principle upon which the jurisdiction of this Court is predicated have been subject to a decision of the 8th Circuit (as the circuit in which this Court is located), that decision would be considered to control the reach of this Court's jurisdiction." Opening Brief of Appellant LSI. While we do not reach the applicability of ERISA in this case, we do want to be clear on one point. Contrary to LSI"s argument, nothing in the Community's Constitution, the jurisdictional ordinances of this Court, the SMS(D)C Court Rules, or this Court's common law, delegate jurisdictional questions, or the resolution of any factual or legal issues, to the determination of the Eighth Circuit, or the courts of any other sovereign. While we have consistently encouraged litigants to refer us to authority from other jurisdictions for guidance in resolving novel legal issues, there is nothing in this Community's law that makes the decisions of any other jurisdiction binding on this Court.

An ERISA plan does not exist as to these Claimants because, the trust and benefit plans were not properly adopted by LSI. LSI argues that there is no evidence in the record that LSI formally approved these plans or the trust, that the LSI Board could not have approved these plans and trust without a conflict of interest, and LSI maintains that Prescott and Johnson did not have the authority to enter into the trust agreement because § 8.6 of the LSI Articles of Incorporation reserves the right to set officer compensation exclusively to the LSI Board of Directors.[2] See Opening Brief of Appellant LSI, at 23-24; Reply Brief of Appellant LSI, at 2-7; LSI Post Hearing Brief at 17.

Indeed, there is no evidence in the record that the LSI Board ever expressly approved the trust or the associated plans. In fact, there is evidence that suggests that at least some of the former LSI Board members do not ever recall approving or discussing the trust or plans. See, e.g., Transcript of 10/5/99-10/7/99 Hearing (Tr.) at 33-38, 369-370. We also note that we have not been able to find any reference to the trust in any of the minutes or notes from LSI Board meetings in the record below (although there are some ambiguous references to some of the plans in question here).

To be fair, this is hardly an easy case. LSI concedes in its brief that there is support in the record for at least some of the Trial Court's conclusions. For example, LSI does not argue on appeal that these plans and the trust never existed in some form, or that there were no references in various corporate records to some of the plans. See Appellant's Little Six, Inc.'s Opening Brief, at 26. And we certainly do not dispute the Trial Court's conclusion that the time period in question was a turbulent one in which records may have been lost or never created. However, at the end of the day, we simply cannot impute to LSI liability on these plans without some evidence that LSI formally intended to adopt or approve the trust or plan documents in accordance with its Articles of Incorporation. To do so would be to ignore the carefully crafted body of corporate law laid out in this Community's Corporation Ordinance and in LSI's Articles of Incorporation.

Claimants argue that formal approval of the trust and plans is not required. They cite to federal ERISA cases that show that federal courts generally look to the totality of

[2] Section 8.6 of the LSI Articles of Incorporation states, "The officers [of LSI] shall receive such salary or compensation as may be fixed by the Board of Directors." LSI Ex. 4.

the circumstances when deciding if an ERISA plan exists. See, e.g., Donovan v. Dillingham, 688 F.2d 1367 (11th Cir. 1982). We understand these cases to be based on the principle that an employer should not be able to entice employees with promises of future benefits, and then later claim the benefit plans were ineffective because of a formalistic technicality. See generally Donovan, 688 F.2d at 1370; Bennett v. Gill & Duffus Co., 1987 U.S. Dist. Lexis 12037, at 12-14; 29 U.S.C. § 1001 (purpose of ERISA is to protect employees and their dependents). However, we agree with LSI that the facts in this case are different than those federal cases. Here, the Claimant's reliance was not induced by their employer – instead, it was the Claimants themselves who sought to establish these plans for themselves. For example, in Bennett, the question was whether an employer had created a plan by informally distributing some severance benefits to certain workers. Bennett, at 12-14. In contrast, in this case it was Claimants themselves who acted as both the employer and employee. If there was anyone who was responsible for insuring that these plans were formally approved, it should have been the Claimants. The principles underlying those federal cases simply do not extend to protect the Claimants under the particular facts of this case.

The Claimants also argue that LSI ratified these plans and the trust by not renouncing them earlier. The new LSI Board, however, did not take office until 1994, and arguably did not receive reports concerning the existence of the plans and trust until May or June of 1994. Given the testimony below concerning the state of LSI record keeping and business practices, it was not unreasonable, under these specific facts, for the Board to take action with respect to the plans until six months later in January 1995. That six month period is not a timeframe during which Claimants can claim reliance. We conclude, therefore, that LSI failed to ratify these plans or the trust.

The text of the trust instrument, and the testimony below from trustee Burns, indicate that even after Prescott and Johnson signed the trust documents, the trust would only become irrecovable upon approval by the LSI Board. See LSI Trial Ex. 5 at § 1(b). Evidence of that approval is simply missing from the record, and we cannot expect the trustees to treat the trust as irrevocable in the absence of formal Board approval. We would not want to place the trustees in this case, or in future cases, in a position where they would have to make distinctions between whether LSI has formally approved a trust

document, informally ratified it, informally rejected it through inaction, or formally rejected it. Imputing approval of the trust and plans to LSI based on the conflicting evidence in the record below would create precedent in this Court which would make it more difficult for outside professionals hired as trustees for Community resources to do their jobs. We believe the more prudent route is to hold that in the absence of Board approval in conformance with the LSI Articles of Incorporation, there is no evidence LSI approved the trust or the plans, and the trust is therefore revocable.

Since the trustees' original interpleader complaint requests relief broader than the issues presented in this appeal, we remand this case with very specific instructions. Because these plans were never formally approved by LSI, there is no ERISA plan created that affects the rights of the Claimants. Because the trust was never formally approved by the LSI Board, the trust, by its terms, is revocable, and LSI, as grantor of the trust, is able to revoke the trust. The trust agreement itself states that "Plan participants and their beneficiaries shall have not a preferred claim on, or any beneficial ownership interest in, any assets of the Trust." LSI Trial Ex. 5, at § 1(d). Claimants, therefore, are dismissed from this action because they no longer have an interest in this litigation as articulated in their original motion to intervene or in their answer.

On remand, the trustees are free to present their accounting, consistent with this opinion, to the Trial Court. If necessary, the Trial Court is obviously free to take additional evidence on any of the remaining questions under the trustees' original interpleader complaint.

ORDER

For the foregoing reasons, the Trial Court is reversed, the Claimants are dismissed from this action, and the case is remanded to the Trial Court in order to conduct further proceedings consistent with this opinion.

Dated: October 26, 2001

Judge Henry M. Buffalo Jr.

Judge Robert A. Grey Eagle