

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

FILED SEP 25 1996 *als*

CARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

COURT FILE NO. 063-96

Vance Gillette,)
)
)
Plaintiff,)
)
)
v.)
)
)
Karen Anderson, Barbara Anderson and)
Keith Anderson,)
Defendants.)

MEMORANDUM

I.

This matter came before the Court as a result of attorney's fees for work performed in a discovery dispute between the parties. In the underlying action, the Plaintiff seeks action in this Court fashioned as Smith v. SMSC, No. 038-94. That action involved the claim of a number of plaintiffs, including the Andersons, that they had been wrongfully denied the benefits of membership in the Shakopee Mdewakanton Sioux (Dakota) Community. On July 5, 1993 the Defendants executed a retainer with the Plaintiff wherein the Plaintiff agreed to file and pursue Anderson's claims against the Community, and Andersons agreed to pay Gillette 30 percent of any "gross recovery," which was defined by the agreement as "any initial benefits, and back pay should back pay be recovered" in the Tribal Court action. The Plaintiff filed and pursued the Defendants' action in this Court until his services were terminated by the Defendants' letter dated March 24, 1995.

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On January 26, 1996 the Plaintiff filed the instant action in which he sought the recovery of attorney's fees based on a number of claims, including breach of contract, a "prevailing party" theory, quantum meruit and an "Indian custom (law)" theory. On February 23, 1996 the Plaintiff filed a First Amended Complaint in which he seeks damages (attorney's fees) based on breach of contract and quantum meruit theories. At the hearing on this motion the Plaintiff indicated that he believed that the parties agreed that damages were sought based on quantum meruit, not a contract price or contingency fee indicated in the contingent fee agreement. Trans., p. 4, ll. 11-16.¹ The Plaintiff has not submitted a second amended complaint removing his claim for "30 percent of the funds held in escrow in accordance with the fee agreement."

II.

Although the Court's record does not reflect a written request for such discovery, it does indicate that in April 1996 the Plaintiff requested, among other things, a statement of the gross amount in the escrow account created as a result of the Smith v. SMSC case, when and whether the Defendants had received payment from that escrow account, and the net amount of any such payment, and copies of the Defendants' 1994 and 1995 tax returns. After a failed attempt to resolve the dispute among themselves, the Plaintiff moved to compel the aforesaid discovery in May 1996.

The Plaintiff's position is that the amount of the Defendants' recovery, as evidenced in part by the amount in the escrow account, impacts his claim for reasonable attorney's fees by demonstrating the "amount of recovery realized" as a result of his work. The Defendants

¹ "I think the parties pretty much agree that when [an] attorney [is] discharge[d], its not the contract price or contingency amount we are going for, it's the reasonable value of the attorney's services is the legal standard."

suggest that the amounts in the escrow account are unrelated to the efforts of the Plaintiff, and so that information is irrelevant to his claim for attorney's fees and so are undiscoverable under the Shakopee Mdewakanton Sioux Court Rule of Civil Procedure. The Defendants further contend that inasmuch as the Defendants' 1994 and 1995 tax returns were requested in an attempt to determine amounts received by the Defendants from the escrow accounts, those documents, likewise, are irrelevant and undiscoverable.

III.

The Shakopee Rules of Civil Procedure, especially as they relate to discovery, are subject to liberal interpretation. In similar context under the federal rules, which are incorporated at various points in the Shakopee rules, federal courts have, likewise, determined that those rules are subject to liberal interpretation. (cite) While a court is not to allow a party to engage in a mere "fishing expedition," (cite) it likewise must allow discovery where it falls within the scope of Rule 23, which incorporates Rule 34 of FRCP. In the current case, the Plaintiff is seeking disclosure of information which he contends reveals the quality of his representation, and so is necessary for him to prepare a case for recovery of his reasonable attorney's fees. While the amounts in escrow may, or may not, be the result of the Plaintiff's efforts, the question is irrelevant at this stage. At a minimum, the Court is faced with a situation in which the parties have a factual dispute as to whether or not the Plaintiff's efforts led in any way to the recovery of the amounts placed in escrow in Smith v. SMSC. It is virtually impossible to demonstrate, at this stage of the litigation, that the Plaintiff's efforts in no way led to a recovery of the amounts placed in escrow. The parties will have to address this issue at a later stage of this proceeding. At this stage, however, the Plaintiff's request falls within the ambit of Rule 23 and

so must be produced. It should be further noted that even if one were to determine that the Plaintiff's efforts did not lead to a recovery of the funds placed in the escrow, that does not change the claim of the Defendant for his attorney's fees, nor should it alter his entitlement to discovery the nature and extent of the Defendant's assets, whatever they be, in order to determine the recoverability of his attorney's fees should he prevail in this matter. There is no dispute before the Court that a portion of the funds placed in escrow are, indeed, earmarked for the Defendants and, when released, will constitute income to them. Accordingly, a determination of the total sum of those funds is relevant to the Plaintiff's requested relief, irrespective of whether that amount reflects the quality of his representation. Based on the reasons noted, *supra*, a copy of Defendants' tax returns for the last two years must be provided.

Accordingly, the Court has determined that the Plaintiff's request to compel discovery should be granted, and rejects the Defendants' contention that the documents and information sought by the Plaintiff are undiscoverable because they are irrelevant to the pending matter. Further, the Defendants' suggestion that the documents and information sought will not lead to the discovery of evidence relating to the value of the Plaintiff's services likewise Court rules speculation at this point in the litigation.

IV.

The Court notes in passing that information regarding income derived by community members from the community's gaming operations has been, and continues to be, sensitive information. Accordingly, the Court has determined that the release of information regarding the escrowed funds and any amounts received by the Defendants therefrom, as well as the Defendants' federal tax returns for 1994 and 1995 should be the subject of a confidentiality

Accordingly, the Court has determined that the Plaintiff's request to compel discovery should be granted, and rejects the Defendants' contention that the documents and information sought by the Plaintiff are undiscoverable because they are irrelevant to the pending matter. Further, the Defendants' suggestion that the documents and information sought will not lead to the discovery of evidence relating to the value of the Plaintiff's services likewise Court rules speculation at this point in the litigation.

IV.

The Court notes in passing that information regarding income derived by Community members from the Community's gaming operations has been, and continues to be, sensitive information. Accordingly, the Court has determined that the release of information regarding the escrowed funds and any amounts received by the Defendants therefrom, as well as the Defendants' federal tax returns for 1994 and 1995 should be the subject of a confidentiality agreement between the parties. Accordingly, the Court directs the Defendants to draft a confidentiality agreement and agree on the language of the same with the Plaintiff, that the agreement shall be executed and filed with the Court prior to the disclosure requested by the Plaintiff and that the confidentiality agreement should provide for substantial financial penalties to a party who discloses, or allows, to be disclosed any information contained in or related to the discovered documents and information.

TEJ

V.

The Plaintiff also made a motion for the award of fees and costs related to the bringing of the Motion to Compel Discovery. At the hearing the Plaintiff withdrew or "waived" that claim. (See trans. at p. 9, ll. 22-p. 10, l. 17) The Court has granted the request that the claim be withdrawn.

BY THE COURT,

Dated: September 25, 1996.

Robert Gray Eagle
Robert A. Grey Eagle
Tribal Court Judge

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MARIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

COURT FILE NO. 063-96

Vance Gillette,

Plaintiff,

v.

Karen Anderson, Barbara Anderson and
Keith Anderson,

Defendants.

ORDER

The above-encaptioned matter came on before the Court on September 10, 1996 by telephone conference, pursuant to the Plaintiff's Motion to Compel Discovery.

The Defendants were represented by Jeannice M. Reding, attorney at law, and the Plaintiff appeared pro se.

Based on the records and files herein, as well as the arguments, briefs and affidavits submitted by the parties herein, IT IS HEREBY ORDERED,

1. The Plaintiff's Motion to Compel Discovery be, and hereby is, GRANTED;
2. The Defendants shall prepare, and the parties shall execute, a confidentiality agreement governing the disclosure of the information compelled by this Order, prior to the production of that information or those documents; and,
3. The attached Memorandum is incorporated herein and made a part of this Order.
4. A scheduling teleconference is hereby set for Monday, September 30, 1996, at 2:00 p.m..

Dated: September 25 1996.

Robert Grey Eagle
Robert A. Grey Eagle
Tribal Court Judge