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



COUNTY OF SCOTT STATE OF MINNESOTA

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| Gary D. Stopp, et al., Appellants, vs. Little Six, Inc., et al., Appellees. | ) | No. App. 006-95 |

MEMORANDUM OPINION AND ORDER

Summary

This is an action by four persons who seek to enforce the terms of written employment agreements into which they allege they entered with Appellee, Little Six, Inc. ("LSI"). The trial court dismissed the action, on the grounds that the Defendants/Appellees are immune from suit. We affirm, on the grounds that the agreements, upon which the Plaintiffs/Appellants rely, on their face explicitly retain the Defendants' immunity from unconsented suit.

Summary of Procedural History

The Plaintiffs/Appellants, in their Complaint, alleged that they were employees of LSI, and that LSI, in 1994, drafted the employment agreements upon which the Plaintiffs now seek to sue, to allay the Plaintiffs' concerns about their job security. The Plaintiffs further allege that LSI later violated the terms of the

agreements, to the Plaintiffs' detriment.

Each of the employment agreements at issue contains the following provisions:

> **8. Governing Law; Forum; Sovereign Immunity**
>
> **8.1 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota.
>
> **8.2 Forum.** Any action to enforce this Agreement shall be brought in the Judicial Court of the Shakopee Mdewakanton Dakota Community. LSI and Employee hereby expressly consent to the jurisdiction of such Court.
>
> **8.3 Sovereign Immunity.** Nothing in this Agreement shall be construed to be a waiver of LSI's sovereign immunity.

Contemporaneously with the filing of their Complaint, the Plaintiffs/Appellants served interrogatories, requests for admission, requests for production, and notices of deposition, upon the Defendants/Appellees. The Defendants/Appellees moved to dismiss, under Rules 12(b)(1) and 12(b)(6) of this Courts Rules of Civil Procedure, and did not respond to the various discovery requests.

The trial court granted the Defendant/Appellees' motion, based upon its reading of section 8.3 of the employment agreements, quoted above.

## Discussion

Because the trial court dismissed this matter based on its interpretation of the law, we review de novo.

All parties concede that the Defendants are cloaked with immunity from unconsented suit, absent an effective waiver. Hove v. Stade, No. 001-88 (SMSC Court, decided July 15, 1988). But the

Plaintiffs/Appellants argue that the trial court erred when it dismissed, because, they contend, the terms of the employment agreements at issue are not clear on their face, and therefore, under the "well-pleaded complaint" rule, they should have been entitled to discovery on the facts relevant to the jurisdictional issues.

In support of this contention, Plaintiffs/Appellants correctly note that no "magic words" are required to work a waiver of sovereign immunity from unconsented suit (citing Rosebud Sioux Tribe v. Valu-U Construction Co. of South Dakota, Inc., 50 F.3d 560 [8th Cir. 1995]). They note that an agreement merely "to submit the issues to federal court for determination" has been held to be a waiver of immunity that permits federal adjudication of a tribally executed contract (citing United States v. State of Oregon, 657 F.2d 1009 [9th Cir. 1981]). They argue that to give any meaning to section 8.2 of the employment agreements, that section must be interpreted to mean that the parties contemplated that LSI could be sued in the Court of the Shakopee Mdewakanton Sioux (Dakota) Community. Otherwise, they assert, section 8.2 of the agreements would mean that only LSI could sue to enforce the agreements, which "strains all logic and common sense, since clearly LSI need not consent to jurisdiction to bring an action in tribal court. (Appellants brief, at 11.)

In short, Plaintiffs/Appellants urge us to hold that, in section 8.2 of the agreements, LSI waived its immunity for actions to enforce the agreements before this Court, and that, in section

8.3, LSI retained its immunity from suit before all other courts.

In our view, it is the Plaintiffs/Appellants' interpretation of the agreements that strains logic. While it is true that no "magic language" is necessary for a waiver of immunity to be effective, still any waiver must be clear and unequivocal. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). Here, it is the contrary which is clear: LSI expressly did not agree to be sued in this or any other court.

None of the cases cited by the Plaintiffs/Appellants is apposite, because none of those cases--not Valu-U Construction Co., nor State of Oregon, nor any case of which this Court is aware--has found a waiver of sovereign immunity in a contract containing language of the sort that appears in section 8.3 of the Plaintiffs/Appellants' agreements.

Nor does giving effect to the clear meaning of section 8.3 require us to ignore the provisions of sections 8.1 or 8.2. Certainly nothing in "the laws of the State of Minnesota", incorporated by section 8.1, speaks to the immunities of LSI. And section 8.2 can be given independent and consistent meaning by interpreting the section as eliminating a question that might well otherwise have existed, if LSI were to sue Plaintiffs/Appellants: whether a court other than this one would be the appropriate forum for that litigation.

Under these circumstances, it is our view that no construction of the Plaintiffs/Appellants' Complaint can make it well-pleaded, and therefore the trial court's decision to dismiss, rather than to

permit discovery to proceed, was correct.

January 29, 1996

John E. Jacobson,
Judge

Henry M. Buffalo, Jr.,
Judge

Robert Grey Eagle,
Judge

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