COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX COMMUNITY

COUNTY OF SCOTT		STATE OF MINNESOTA
Anita Barrientez, Plaintiff, vs. The Shakopee Mdwewakanton, Sioux Community, Defendant.	)	No. 007-88

MEMORANDUM OPINION ON
DEFENDANT'S MOTIONS TO AMEND COUNTERCLAIM AND
FOR PARTIAL SUMMARY JUDGMENT, AND ON PLAINTIFF'S
MOTION TO FILE AMENDED COMPLAINT

Before Chief Judge Kent P. Tupper, Judge Henry M. Buffalo, Jr., and Judge John E. Jacobson. The opinion of the unanimous Court was delivered by Judge Jacobson.

On August 10, 1990, this Court heard argument on three motions: motions filed by the Defendant on June 21, 1990 to amend its Counterclaim and for Partial Summary Judgmenta, and a motion filed by the Plaintiff on August 1, 1990 to re-file her Complaint and to amend that Complaint. At the conclusion of the hearing, the Court granted the Defendant's motion to amend its Counterclaim, and today the Court has denied the Defendant's motion for Partial Summary Judgment and granted in part and denied in part the Plaintiff's motion with respect to her Complaint. This Memorandum is filed in support of these rulings.

Procedural History

In fits and starts, the procedural history of this matter has become complex, and an analysis of the Court's rulings on the motions today will be assisted by an initial summary of the proceedings to date.

Early in 1988, the Plaintiff was one of several persons who alleged causes of action against the government of the Shakopee Mdewakanton Sioux Community, in a single large and broad-ranging Complaint filed with the Court under the caption Stade v. Hove, No. 002-88 (Shak. Ct., filed June 20, 1988). After ruling upon motions for preliminary relief (see July 15, 1988 Memorandum Opinion on Motions for Preliminary Injunctions, Hove v. Stade, [Shak. Ct. filed May 18, 1988] and Stade v. Shakopee Mdwakanton Sioux Community, supra), the Court urged the various Plaintiffs in File No. 002-88 to separate their causes of action, to permit manageable proceedings. As a result, the Plaintiff's causes of action were removed from Stade v. Shakopee Mdewakanton Sioux Community, and were filed in this separate action, in September, 1988.

In the amended Complaint which commenced this action, the Plaintiff alleged that the she was lawfully occupying the land which now is at issue in this matter, she alleged that the Community did not recognize her rights in this regard, and she sought declaratory and injunctive relief against the Community's alleged attempts to interfere with her rights to the land.

After the filing of the Plaintiff's amended Complaint, little happened until June 5, 1989. On that date, two documents were filed with the Court: the Plaintiff filed a Notice of Dismissal of her Complaint, which the Court subsequently granted, and the Defendant filed an Answer and Counterclaim. The Defendant's Counterclaim alleged that Ms. Barrientez was improperly occuping the land on which she had alleged she possessed a land assignment, that she had constructed improvements on that land, and that she was trespassing. The Community sought an order directing Ms.

Barrientez to remove from the land, as well as injunctive relief against further occupancy by her and damages for her alleged trespass.

The Plaintiff filed her Reply to the Community's Counterclaim on June 23, 1989. The Reply took the form of a general denial, coupled with a suggestion, not made as a motion, that the Minnesota Dakota Indian Housing Authority possessed an interest in the disputed land which made that entity an indispensable party to the adjudication of the Counterclaim.

Shortly thereafter, Ms. Barrientez's counsel moved the Court for leave to withdraw, on the grounds that she could not pay their fees and that, being unable to find other counsel, she desired to proceed pro se. That motion was granted.

Following that action, there were no formal developments in this matter until July 21, 1990, when the Community filed two of the motions which are the subject of this Memorandum. The Community moved to amend its Counterclaim to include a cause of action to recover possession of the lands at issue in this litigation under the Community's newly enacted Real Estate and Secured Financing Ordinance; and the Community moved for Partial Summary Judgment, under Rule 28 of this Court's Rules of Civil Procedure, with respect to the portions of its Counterclaim that related to the possession of the property here at issue.

At a hearing of the Court on July 3, 1990, the Court directed the Plaintiff to file its responses to the Defendant's motions by August 1, and gave the Community until August 8 to reply. On August 1, the Plaintiff filed memoranda responsive to the Defendant's motions, and also filed the third motion which is the subject of this Memorandum--a motion to re-file her Complaint as it was amended in September, 1988, and to add thereto certain additional claims against the Defendant.

Discussion

1. The Defendant's Motion to Amend its Counterclaim.

During oral argument, the Community's counsel stated that the sole purpose of the proposed amendment to the Community's Complaint was to state a statutory basis for its claim to possession of the diputed land, under the Community's Real Estate and Secured Financing Ordinance, to supplement the common law cause of action already before the Court. On this basis, Ms. Barrientez's counsel indicated that he had no objection to the amendment. The Court therefore granted the Community's motion at the conclusion of oral argument.

2. The Plaintiff's Motion to File an Amended Complaint.

The Community has raised two objections to the Plaintiff's motion for leave to re-file and to amend her Complaint. First, the Community asserted that it would be unfair to grant the Plaintiff's motion at this time, because the effect of such action would be to add additional issues to this litigation, with and consequent additional delays attending the proceedings. Second, the Community argued that at least some of the relief which the Plaintiff's amended Complaint would seek might be outside the jurisdiction of this Court to grant; and on that basis the Community argued that to permit the amendment would be inappropriate.

The Court agrees with the Defendant that this matter has dragged on for an unusual period of time; and in the Court's view the Plaintiff has not been notably active in defending or protecting her asserted rights. The Court is sympathetic with the fact that the Plaintiff has limited resources, but even persons with limited resources are obliged to use due diligence to defend the rights which they assert.

Hence, insofar as the Plaintiff's motion might raise new factual or legal issues, the Court believes it would be inappropriate to grant it. Fischer & Porter Co. v. Haskett, 287 F. Supp. 831 (E.D.Pa., 1968). However, to the extent that the Plaintiff's motion can be granted without imposing new

factual or legal issues on the parties, then to that extent--though the grant of the motion would not be completely costless--it would appear to be an appropriate exercise judicial economy. Foman v. Davis, 371 U.S. 178, 182 (1962).

Under this analysis, the Court believes it is appropriate to grant that portion of the Plaintiff's motion which relates to the re-filing of her Complaint as it was amended in September, 1988. As the Court reads that Complaint, it simply puts at issue the Plaintiff's right to occupy the lands involved in this matter, and prays for relief from alleged attempts by the Community to interfere with that right. In other words, the Complaint, as it was amended in September, 1988 does nothing more than present the mirror image of the litigation which the Court presently has before it; and contesting the issues in that Complaint should impose no new burdens upon any party.

The same cannot be said for the amendments to the Complaint which the Plaintiff proposes. (Although the Plaintiff's Memorandum submitted in support of its motion described the new allegations and prayers she seeks to make, the motion was not accompanied by a copy of its proposed Amended Complaint; however, from the description which the Memorandum provided, the Court is comfortable with the conclusions it has reached on this point.) As the Plaintiff described them, her amendments would put at issue her entitlement to share in per capita payments from the Community and to vote in the Community's General Council--matters which are not now at issue in these proceedings.

Hence, the Court denies the Plaintiff's motion to amend the Complaint that was filed in September, 1988. It must be understood, however, that the Court's partial denial of the Plaintiff's motion to amend her pleadings is based only on considerations of judicial economy, as they operate on this particular litigation. Nothing in this Court's opinion should be taken as a bar to the Plaintiff's commencing an independent action before this Court, and in that litigation making her

she has sought to import into this matter. The suggestion by the Community's counsel, to the effect that some matters which the Plaintiff sought to raise might be beyond this Court's jurisdiction, must be answered with the observation that any issue concerning this Court's jurisdiction is a matter for this Court to determine when it is squarely raised by pleadings and motions, accompanied by necessary supporting materials and argument.

3. The Community's Motion for Partial Summary Judgment.

In its motion for Partial Summary Judgment, the Community has sought relief only as to its claim for possession of the land involved here, and not as to any issue concerning monetary damages. It is hornbook law that, when considering a motion for summary judgment it is the duty of the Court to view the case in the light most favorable to the non-moving party, and to give that party the benefit of all inferences that reasonably can be drawn from the evidence. Watts v. Brewer, 588 F.2d 646 (8th Cir., 1978); Giordano v. Lee, 434 F.2d 1227 (8th Cir., 1970), cert. denied 403 U.S. 931 (1971); Cohen v. Curtis Publishing Co., 31 F.R.D. 569 (D. Minn. 1962), aff'd. 312 F.2d 747 (8th Cir. 1963), cert. denied 375 U.S. 850 (1963).

a. The Facts Before the Court.

The basis for the Community's motion is contained in a series of exhibits which accompanied its Memorandum in support of the Motion. The Plaintiff's Reply Memorandum also attached several exhibits, including affidavits executed by the Plaintiff and by the present Director of the Minnesota Dakota Indian Housing Authority.

The matters which are disclosed by these materials are as follows: The lands at issue are described as Lot 16, Block 2 on the General Development Plan in the North Half of the Sothwest Quarter (N/2, SW/4), Section 22, Range 155 North, Range 22 West of the Fith Principal Meridian, Scott County, Minnesota. They lie within the Shakopee Mdewakanton Sioux Community's reservation, and are held in trust for the

Minnesota. They lie within the Shakopee Mdewakanton Sioux Community's reservation, and are held in trust for the Community by the United States of America.

On August 29, 1980, the Bureau of Indian Affairs issued an Indian Land Certificate for these lands, authorizing a Ms. Ramona Jones to occupy the land under the Certificate's terms. Shortly thereafter, on October 9, 1980 the Bureau of Indian Affairs and Ms. Jones entered into a twenty-five year lease for the lands, and by the terms of the lease the Indian Land Certificate was cancelled. Thereafter, the provisions of Public Law No. 96-557, 94 Stat. 3262 (Dec. 19, 1980), were signed into law, specifying that the United States of America held the Community's lands in trust, that Community owned the beneficial rights for the lands on its reservation, and that no valid pre-existing rights were affected thereby.

On October 1, 1981, Ms. Jones and the Community executed a second lease for the disputed lands, which subsequently was approved by the Bureau of Indian Affairs. The second lease form provided that it was made for the "express purpose" of enabling Ms. Jones to obtain a loan from the Minnesota Dakota Indian Housing Authority, in order that Ms. Jones could make improvement to the leased premises. It provided that if she failed to obtain such a loan, the lease could be terminated. It provided that the Community consented to the granting of the loan and the mortgage, and granted permission to Ms. Jones "to execute and deliver to the Mortgagee a real estate mortgage covering the Tenant's leasehold interest..." The lease also required Ms. Jones to continue to occupy the property; it gave the Community the right to purchase the leasehold; and it stated that this right could be exercised within thirty days from the receipt of written notice of the default.

On November 4, 1981, Ms. Jones executed a standard-form real estate mortgage in favor of the Minnesota Dakota Indian Housing Authority. The mortgage form does not indicate the identity of its draftsperson. On its face, the mortgage form purported to convey a mortgage for the entirety of the disputed

lands, not merely Ms. Jones' leasehold. The form provided--

> This Mortgage shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision...
>
> Nov. 4, 1981 Mortgage, at §15.

There is no indication on the face of the mortgage or in the record presently before the Court as to whether or not the mortgage was presented to the Bureau of Indian Affairs, or whether the Bureau of Indian Affairs considered it necessary to review such a document, given the terms of Ms. Jones' lease and the Bureau of Indian Affairs' approval thereof.

Ms. Jones executed Notes in favor of the Minnesota Dakota Indian Housing Authority in 1981, 1983, and 1984, in increasing amounts. Although no copy of the 1984 Note has been located by the parties, it apparently was in the amount of forty-five thousand dollars.

At some time after the events described above, Ms. Jones failed to make the payments contemplated by the various documents she had executed, and left the premises.

In May, 1987, the Plaintiff and the disputed lands were the object of a resolution adopted by a group of persons who purported to constitute the Community's General Council. The Community now vehemently disputes both that this body actually was a functioning General Council and that it had any authority to effect any Community business. The document executed by this body stated that--

> "...on January 14, 1987, Ms. Anita Barrientez has been accepted by the Shakopee Mdewakanton Sioux Community for [a land] assignment as described on the attached sheet; and ... BE IT FURTHER RESOLVED that the Bureau of Indian Affairs be directed to authorize the land certificate to Ms. Barrientez ... as soon as possible."

The record before the Court does not contain a copy of any sheet which might have been attached to the above-described

document, and the parties apparently agree that no Indian Land Certificate was issued as a result of the foregoing document. However, on September 10, 1987, Ms. Barrientez accepted a loan from the Minnesota Dakota Indian Housing Authority, in the principal amount of forty thousand dollars, to improve the premises on the disputed lands. In turn she executed a real estate mortgage form in favor of the Minnesota Dakota Indian Housing Authority. Again, the mortgage form purported to create an interest in the entirety of the land at issue, not merely in a leasehold or an assignment; and again, the record does not indicate who drafted the mortgage, or whether the mortgage form was presented to the Bureau of Indian Affairs, or whether in the view of that agency it should have been thus presented.

Ms. Barrientez gave the Court an affidavit signed by the present Executive Director of the Minnesota Dakota Indian Housing Authority, stating the view of that officer that in 1987 the Authority thought it had been assigned Ms. Jones' interest in her leasehold; that it had the right to further assign that interest to Ms. Barrientez; and that it in fact did assign the interest when it accepted Ms. Barrientez's mortgage and provided her with her loan. The affidavit stated that, when the Authority entered into its arrangement with Ms. Barrientez, it believed that it was acting in accordance with the wishes of the Community's General Council.

On May 8, 1990, the Minneapolis Area Office of the Bureau of Indian Affairs sent a letter to Ms. Jones notifying her that her 1980 lease had been cancelled for non-payment of rent. The letter contained no reference to Ms. Jones' 1981 lease which the Bureau of Indian Affairs had approved, or to any of the subsequent transactions and documents described above.

b. <u>The facts, viewed in the light most favorable to the Plaintiff.</u>

The Community contends that on these facts there can be no doubt--

(1) that Ms. Jones second lease was void, or at a minimum was voided when the Bureau of Indian Affairs cancelled the first lease;

(2) that Ms. Barrientez could take nothing from the Minnesota Dakota Housing Authority since--

(a) Ms. Jones' purported mortgage of the entirety of the disputed land could not possibly be effective, inasmuch as all Ms. Jones possessed was a leasehold;

(b) even if the mortgage were somehow partially valid, the Community was never notified in writing of its default and therefore could not exercise its right of first refusal to purchase Ms. Jones' interest; and

(3) Ms. Barrientez could take nothing from the purported actions of the General Council since--

(a) the body which claimed to be the General Council was a rump group with no power or claim of right; and

(b) no assignment ever was issued by virtue of the General Council's resolution.

The facts recited in this Memorandum present a forceful case for the Community; but when the Court views all of the facts in the light most favorable to Ms. Barrientez, and gives her the benefit of all inferences which can be made from them, we cannot say that as a matter of law the Community is entitled to summary judgment.

The Community was a party to Ms. Jones' second lease, and the Bureau of Indian Affairs approved the lease after its execution--and that lease not only permitted but required Ms. Jones to mortgage her interest. Certainly, the Community participated in the transaction with the knowledge that the validity of the transaction would be relied upon, not only by Ms. Jones but by persons who would derive from Ms. Jones. It seems possible, from the evidence presently before us, that Ms. Barrientez could present evidence at trial to the effect that the practice and policy of the Bureau of Indian Affairs at the time of Ms. Jones' transactions was merely to review leases, and not to review encumbrances executed subsequent to the

leases' approval. And although Ms. Jones patently was unable to mortgage anything more than her leasehold interest--and if the Authority purported to obtain a greater interest from Ms. Jones and to convey a greater interest to Ms. Barrientez, such attempts would be nullities--still we think it is possible that the Plaintiff at trial could produce evidence to the effect that the Authority commonly used mortgage forms of the type present in this case, that the Community and the Bureau of Indian Affairs were generally aware of that fact, that all parties understood that the interest conveyed thereby was nothing more than the leasehold interest which each individual mortgagor possessed. Under such circumstances, Ms. Jones mortgage instrument could perhaps be read merely to convey a lien on her leasehold. See generally, 73 A.L.R.4th, at 482, et seq..

With respect to the Community's right of first refusal, in the event of Ms. Jones' default, Ms. Barrientez furnished the Court with documents indicating that several members of the Community's government were aware of Ms. Jones' default. She contended that therefore, although no written notice of that default and of the Community's consequent right to purchase Ms. Jones' interest was given to the Community, still the Community had actual knowledge of these facts sufficient to preclude their being argued against Ms. Barrientez here. We cannot say, based on the record, that such arguments would fail as a matter of law.

So far as we are aware, the issue of estoppel has never been argued against the Community, and any person seeking to enforce an estoppel against any government has a heavy burden to carry; but under the proper circumstances we cannot say that an estoppel would not lie against the Community to the same extent, and for the same cause, as it would against the United States Government. See e.g. United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir., 1973). Hence, although Ms. Barrientez may have a very difficult time in attempting to carry her burdent, the facts presently before the Court at this point do

not preclude Ms. Barrientez from arguing that the Community is estopped from denying the validity of the action of the putative General Council in 1987, given Ms. Barrientez's alleged detrimental reliance thereon.

For all of the foregoing reasons, we are today denying the Community's motion for summary judgment.

September 7, 1990

Judge John E. Jacobson for the Court