

JUL 03 1995

TRIBAL COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

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Gary D. Stopp, Peter Rivero,  
Larry Gregson, and Isaac Esbia,

Plaintiff,

v.

Little Six, Inc., a corporation  
chartered pursuant to the laws  
of the Shakopee Mdewakanton  
Sioux (Dakota) Community, and  
Stanley Crooks.

Court File 050-95  
Court File 051-95  
Court File 052-95  
Court File 053-95

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MEMORANDUM

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I.

## INTRODUCTION AND SUMMARY

This case is before the Court on a motion to dismiss brought by the Defendant, Little Six, Inc. (LSI). The Defendant asserts that this matter should be dismissed for the following reasons that the Court does not have the authority to adjudicate this case on the merits of the Plaintiff's complaint pursuant Rule 12 of the Rules of Civil Procedure for the Court of the Shakopee Mdewakanton Sioux (Dakota) Community. Defendant's motion to dismiss is based on the following Rules of Civil Procedure governing this Court based on Rule 12 (B)1. based upon lack of subject matter jurisdiction, Rule 12 (B) 2. lack of personal jurisdiction, Rule 12(B) 6. failure to claim upon which relief might be granted and the Defendant has not waived its sovereign immunity which must be expressed and unequivocal.

The Court has determined the grounds put forth by the Defendant in their motion to dismiss to be controlling and applicable to the case at hand. Therefore the Court grants the Defendant's motion to dismiss with prejudice with respect to all the Plaintiff's captioned in this matter. The matter was and is consolidated for purposes of the motion to dismiss hearing and argument.

## II.

### STATEMENT OF FACTS

This matter was consolidated based on a motion by the Defendants and stipulated to by the Plaintiff in that the Plaintiff's are in fact similarly situated factually and legally. The Plaintiffs have all filed action to recover damages, alleging breach of employment contract, breach of contract, intentional interference with contractual relations, and violations of certain Minnesota statutes. The basis for the complaints arise from their termination of employment with Little Six, Inc. ("LSI").

The Plaintiffs indicate they signed employment agreements which contained language to the effect a limited waiver of sovereign immunity was given to enforce their employment agreements in tribal court. Plaintiffs further argue that jurisdiction is granted to the Court to adjudicate these issues pursuant to the Shakopee Mdewakanton Sioux (Dakota) Community Ordinance No. 02-13-88-01 as an action arising under the Shakopee Mdewakanton Sioux (Dakota) Community Constitution, its Bylaws, ordinances, and/or resolutions. Plaintiffs also allege that jurisdiction is conferred by virtue of the Shakopee Mdewakanton Sioux (Dakota) Community Corporation, Ordinance No. 2-27-91-004, and in general following common law, and pursuant to principles of pendent jurisdiction.

The Defendant, Little Six, Inc. moves for a dismissal of the Plaintiffs, captioned in this case, against it based on Rule 12 of the Court and that no express and unequivocal waiver of sovereign immunity exists.

### III.

#### DISCUSSION

The doctrine of tribal sovereign immunity protecting the Tribal government itself, enterprises of the Tribe, officials, officers, agents and employees of tribe is a well established and upheld legal principle. Tribes may consent to suit against themselves, however, such consent must be express and unequivocal.

Absent an express and unequivocal waiver of sovereign immunity and consent to suit the Court has no subject matter and personal jurisdiction, and must rule there is no claim brought forward by which this Court may grant relief. The parties in this action articulated well the principles of sovereignty and policy questions concomitant to the premise as to whether sovereignty had indeed been waived in this matter. Plaintiff requests for discovery allude to whether an express and unequivocal waiver had taken place somewhere in the discourse of the dealings involved with the alleged employment agreements. Since consent to suit must be express and unequivocal there is no margin for esoteric knowledge or interpretation. The consent must in a practical sense be obvious and the suit be unobjected to and ripe for adjudication on the merits in order for there to be a finding of consent to suit. The case is pivotal on the point of whether a general grant of jurisdiction to the Court in this instance is the same as an express and unequivocal consent to suit. Jurisdiction is provided as a general backdrop in the Communities sovereign jurisdictional base and may be invoked or triggered

against the Community when a clear and unwavering consent is brought forward. Consent is a prerogative of the sovereign to interpret otherwise divests the sovereign of the longstanding and legal doctrines of sovereign immunity of Indian tribes held in cases as early the noted Cherokee Nation v. Georgia case, 8 L.Ed. 25, 25 (1831) wherein tribes were identified as "domestic dependant nations" possessing attributes of exercising inherent sovereignty.

Both parties agree federally recognized tribes, organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. §§ 476, retain inherent sovereign immunity from suit.

The United States Supreme Court has long held in effect Indian tribes to be sovereign governments with inherent rights, powers and privileges as inherent sovereigns, pre-dating the U.S. Constitution, including having sovereign immunity from suit, such cases were cited by the parties now before the Court. Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 14 (1987), Worcester v. Georgia, 31 U.S. (6 Pet) 515, 519 (1832); Santa Clara Pueblo v. Martinez, 436 U.S. 49,55 (1978); United States v. Wheeler and National Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845, 854-855(1985).

The policy considerations of recognizing and furthering the tribes status as sovereigns immune from suit is stated in the Supreme Court decision of Oklahoma Tax Commission v. Potawatomi Tribe, 498 U.S. 505, 510 (1991) wherein the Supreme Court discussing the U.S. Congress's plenary authority to legislate regarding the tribes immunity from suit cited various Acts of Congress observed and held that "These Acts reflect Congress' desire to promote the goal of Indian self-government, including its over-riding goal of encouraging tribal self-

sufficiency and economic development---[u]nder these circumstances, we are not disposed to modify the long established principle of sovereign immunity."

This Court hence continues along the same reasoning and policy considerations that tribes need and have the inherent right of sovereign governments and sovereign immunity defenses in order to accomplish their greater goals of self-government and development that the Community defendants as a federally recognized tribe, along with its officials, enterprises are protected by sovereign immunity defenses.

The plaintiff's would have the Court determine that the employment agreement clause as contained in paragraph 8.2 which states "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." and paragraph 8.3 "Sovereign Immunity. Nothing in this Agreement shall be construed to be a waiver of LSI's sovereign immunity" that the paragraphs when read "harmoniously" lead to a legal conclusion that this action is properly before the Court for an adjudication on the merits of their claims. As the defendants have expressed "nothing means nothing".

The Court upon review of the parties arguments determines the legal premise that "a waiver of sovereign immunity must be express and unequivocal" dictates the outcome of this case as to the jurisdiction arguments. A forum exists, however, this does not mean the Tribe or its enterprises consents to a specific suit. One might say the tribe will never consent to suit thus the clause is useless and meaningless. The Court has assumed more jurisdiction since its inception and as cases become more legally complex and numerous the tribe and its enterprises may refer matters either specifically or generally to the Courts for resolution.

Until such time the Court herein now rules that absent a specific case by case consent, an express and unequivocating waiver of sovereign immunity by a formal distinct and separate act of government, whether by resolution, ordinance or other use or practice, that is, in no uncertain terms, a consent to suit and a waiver of sovereign immunity by nonmembers seeking to sue the Community, its officers, or enterprises that this Court until such time lacks subject matter and personal jurisdiction over the defendants and as such the plaintiffs have failed to state a claim by which this Court can grant relief.

Insofar as the Stanley Crooks matter the Court determines the Chairperson of the Community has broad and expansive administrative and executive authority, privileges, rights and immunities as the elected leader of the Community. It has not been established whether the chairperson had discussions regarding the said employment agreements, even if he had his statements could not be construed as outside the scope of his authority or as his consent to suit. For these reasons the matter before this Court and undersigned is dismissed with prejudice. So Ordered.

Dated: July 3, 1995

  
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Robert Grey Eagle  
Judge of the Tribal Court

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ORDER

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The above entitled matter came on for a hearing before the undersigned Judge of the Tribal Court on the 5th day of April, 1995 at 2330 Sioux Trail Northwest in the City of Prior Lake, County of Scott, State of Minnesota, pursuant to the Defendant's Motion to Consolidate and to Dismiss.

John M. Lee, Esquire. appeared on behalf of the Plaintiffs. Steve F. Olson, Esq. appeared on behalf of the Defendants.

The Court being fully advised of the premises and based on the files, records and evidence herein, as well as the arguments of counsel of both parties issues the following:

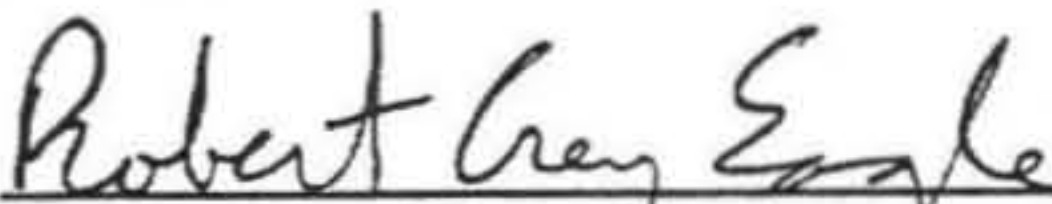
IT IS HEREBY ORDERED,

1. That the Defendant, Little Six Inc.'s motion to dismiss with prejudice be and hereby is GRANTED;

2. That the Court based on a stipulation of both parties for purposes of hearing the legal issues involved with the Defendant's Motion to Consolidate does hereby issue that the Defendant's Motion to Consolidate be and is hereby GRANTED;

Date: June 30, 1995

BY THE COURT

  
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Robert A. Grey Eagle  
Judge of the Tribal Court