

**POKAGON BAND OF POTAWATOMI INDIANS
TRIBAL COURT**

AHMAD HADI,

Petitioner,

Case No. 19-5319-CV

v.

Hon. David M. Peterson

THE POKAGON BAND OF POTAWATOMI
INDIANS, and its Instrumentality
POKAGON BAND GAMING COMMISSION,

Respondents.

AHMAD HADI
In pro per
8295 North Mizzen Drive
Boynton Beach, FL 33472

1600 Lake Superior Road, Apt. 305
Valparaiso, IN 46383
(561) 767-2281

DUST & CAMPBELL, P.C.
TOBIN H. DUST (P36741)
Attorneys for Respondents
5090 State Street, Building A, Suite One
Saginaw, MI 48603
(989) 792-2552 tdust@hcdh-law.com

OPINION AND ORDER

INTRODUCTION

On June 17, 2019, the Petitioner filed a Complaint with this Court against the Pokagon Gaming Commission for violation of various Tribal Codes and Federal Laws. Petitioner's Complaint asserted the Tribal Court had jurisdiction because of the Pokagon Band of Potawatomi Indians Tort Claims Act at paragraph 6. The Complaint requested economic and non-economic losses and restoration to his position of Director of Licensing and Investigation, an apology and compensation.

Thereafter, Petitioner filed a Motion for Emergency Injunctive Relief and a Memorandum for Motion to Deny Respondent's Motion to Strike and reiterates Motion for Injunction and Summary/Default Judgment.

Respondent has filed responses and briefs in support of its responses to Petitioner's motions.

In addition, Petitioner has filed an Amended Complaint involving the court's jurisdiction under the Tort Claims Act and again requesting an injunctive order.

Respondent has filed a supporting Brief in Support of its Motion for Summary Disposition.

BACKGROUND

Based on the reading of Petitioner's pleadings, Petitioner was employed as Director of Licensing and Investigations. Petitioner has filed a Complaint alleging the Gaming Commission members have been wrongly receiving funds to which they are not entitled. Petitioner was thereafter terminated and he now claims violation of various Pokagon and Federal Laws and Codes requesting an injunction to be reinstated to his prior position and for money damages.

Respondent has filed Motions for Summary Disposition on numerous grounds and to strike under MCR 2.115.

APPLICABLE LAW AND STANDARD OF REVIEW

Under Section 7 of the Tribal Code Court Code 10-21-2002, Respondent has brought a Motion to Dismiss Petitioner's action under MCR 2.116(C)(8).¹ This tests the legal sufficiency of the Complaint.

¹ Since the Pokagon Band Court of Appeals has not yet promulgated tribal-specific rules of civil procedure, the Court must look to Michigan Rules of Civil Procedure. Pokagon Tribal Court Code, Sections 7(B).

A motion may be granted under MCR 2.116(C)(8) where the claims alleged are so clearly unenforceable as a matter of law that no factual development could justify recovery. The Court only considers the pleadings under MCR 2.116(C)(8) and MCR 2.116(G)(5).

In addition, the Pokagon Tort Claims Act provides at Section 6.01 as follows:

Any Claim brought under this Act shall be determined by the Tribal Court in accordance with the law of the Pokagon Band and, to the extent not inconsistent with any provision of this Act or other laws of the Pokagon Band, may also be determined by the Tribal Court in accordance with the state law applicable at the time of the Injury to similar claims made in the state where the Reservation land on which the Injury occurred is located.

Therefore, as provided above, since there are no rules, practices, and evidence in effect or adopted by the Tribal Court or Court of Appeals regarding injunctive relief or summary disposition, Michigan rules and law applies.

INJUNCTIVE RELIEF

Injunctive relief is an extraordinary remedy that a party requests in addition to other relief when there is no adequate remedy at law. It may be authorized by statute or in other circumstances when the elements for injunctive relief are met.

TYPES OF INJUNCTIVE RELIEF

MCR 3.310 generally authorizes injunctive relief and outlines three types of injunctions:

1. Temporary restraining orders, granted if necessary, for a very limited time until a hearing on a preliminary injunction can take place. MCR 3.310(B);
2. Preliminary injunctions, granted pursuant to Notice and Hearing on a Motion or pursuant to an Order to Show Cause, to preserve the status quo pending a trial on the merits, MCR 3.310(a)(4); and

3. Permanent injunctive orders or judgments granted after a trial or hearing on the merits, MCR 3.310(H).

After carefully reading Petitioner's motion, and complaint and amended complaint, the Court is not clear as to which type of injunction Petitioner is requesting, other than it is not a permanent injunction.

The rules regarding a preliminary injunction are set out at MCR 3.310(A) and may not be granted before a hearing.

MCR 3.310(A) provides in part as follows:

(A) Preliminary Injunctions.

- (1) Except as otherwise provided by statute or these rules, an injunction may not be granted before a hearing on a motion for a preliminary injunction or on an Order to Show Cause why a preliminary injunction should not be issued.
- (3) A motion for a preliminary injunction must be filed and noticed for hearing in compliance with the rules governing other motions unless the court orders otherwise on a showing of good cause.
- (4) At the hearing on an Order to Show Cause why a preliminary injunction should not issue, the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued, whether or not a temporary restraining order has been issued.

The Michigan Court Rules governing temporary restraining orders are found at MCR 3.310(B) and provide in part as follows:

(B) Temporary Restraining Orders.

(1) A temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party's attorney only if:

(a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued;

(b) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.

**DISTINCTION BETWEEN TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

(A) Temporary Restraining Order. A temporary restraining order is an order issued by a court to preserve the status quo before the court has a hearing on a preliminary injunction. It is limited to duration, typically lasting 14 days or less. A motion is often filed seeking a temporary restraining order as well as an Order to Show Cause why a preliminary injunction should not be entered. A temporary restraining order provides relief until a hearing on a preliminary injunction can take place. At that time the court may extend the relief provided by the temporary restraining order.

(B) Preliminary Injunction. If a temporary restraining order is not sought, a preliminary injunction request may be brought by (1) filing a motion for a preliminary injunction and a notice of hearing or (2) filing a motion for preliminary injunction and obtaining an order from the court to show cause why a preliminary

injunction should not be issued. The order should contain a hearing date set by the court.

ANALYSIS

The Petitioner has filed a "Motion for Emergency Injunction". Pursuant to Section 7.B of the Tribal Court Code and Section 6 of the Tort Claims Act, the Court is governed by the Michigan Court Rules (MCR).

It is not clear to the Court which type of an injunction the Petitioner is requesting. The Court believes that a permanent injunction is not applicable at this time.

Therefore, Petitioner must meet the requirements set out for a temporary restraining order or a preliminary injunction and has not met the burden under either instance.

A. Temporary Restraining Order.

Under MCR 3.310(B) the party requesting a TRO must make it clear by affidavit or verified complaint that immediate and irreparable harm will result from a delay required to provide the Notice. The Petitioner has failed to meet this requirement because there has been no affidavit or verified complaint filed.

B. Preliminary Injunction.

Under MCR 3.310(A) the Court may not grant a request for a Preliminary Injunction before a hearing on a motion or an Order to Show Cause why a preliminary injunction should not be issued. The Petitioner has failed to meet this requirement because there has been no show cause hearing requested.

C. Injunctive Relief Generally.

Lastly, a party seeking a temporary restraining order or a preliminary injunction must demonstrate that the following elements weigh in its favor:

- (1) it has a likelihood of success on the merits of the claim,
- (2) it will suffer irreparable injury if the injunction is not granted,
- (3) the harm it will suffer outweighs any harm that the opposing party will suffer if the injunction is entered, and
- (4) the injunction is in the public interest.

State Employees Ass'n v Department of Mental Health, 421 Mich 152, 365 NW2d 93 (1984);
Davies v Department of Treasury, 199 Mich App 437, 502 NW2d 693 (1992).

The Petitioner has not indicated any of the above elements in his favor. Indeed, his complaint relies in the Pokagon Tort Claims Act ("TCA"). Section IV "Relief Requested" and page 3 of 3 of the Complaint and page 13 of 13 of the attachment to the Complaint.

The claim for both economic and non-economic losses under the TCA could be satisfied by monetary awards and is therefore not irreparable harm. Because none of the above four elements have been shown neither a temporary restraining order nor a preliminary injunction could be granted.

CONCLUSION

After the Court's reading and consideration of all pleadings including the Complaint and Amended Complaint and Petitioner's "Motion for Emergency Injunction" and additional research, the Petitioner's Motion clearly does not meet the elements for an injunction. Nor are the requirements under the Michigan Court Rules for injunctive relief. Therefore, the Petitioner's Motion for Emergency Injunction is denied and accordingly, the Complaint and Amended Complaint are both dismissed for the reasons set out above.

ORDER

IT IS SO ORDERED.

Dated: September 26, 2019

David M. Peterson
David M. Peterson, Tribal Judge