

**POKAGON BAND OF POTAWATOMI INDIANS
TRIBAL COURT**

DAVID C. DRAKE,

Plaintiff,

v.

POKAGON BAND OF POTAWATOMI
INDIANS, TRIBAL COUNCIL, AND
POKAGON BAND OF POTAWATOMI
INDIANS HOUSING AUTHORITY

Defendants.

Consolidated Cases:
No. 04-001-CV and
No. 04-005-CV

Ruling on Defendants' Motion
For Summary Disposition

RULING ON DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

This proceeding is based upon two (2) separate Complaints filed by Plaintiff. The two (2) separate cases were consolidated by this Court on September 28, 2004.

The first Complaint, filed on April 5, 2004, names the Pokagon Band of Potawatomi Indians and its Tribal Council as Defendants. The claims are: (1) denial of due process, (2) violation of civil rights, (3) defamation of character, and (4) breach of contract. The sole prayer for relief seeks punitive damages in the amount of two hundred fifty thousand dollars (\$ 250,000.00).

The second Complaint, filed on August 20, 2004, names the Pokagon Band of Potawatomi Indians Housing Authority as Defendant. The claims are: (1) denial of due process, and (2) breach of contract. The prayer for relief seeks: (1) monetary damages and (2) reinstatement.

On September 28, 2004 this Court granted Defendants' *Motion to Correct Pleadings* after a hearing. The *Order* issued by the Court declared that the two (2) Complaints were separate lawsuits and further ordered that the cases be consolidated. Additionally, Plaintiff was ordered to prepare supplemental pleadings for each of the two (2) cases that properly identifies and includes as attachments copies of the specific contracts each Defendant was alleged to have breached.

On October 27, 2004 this Court conducted a hearing on Defendants' *Motion For Summary Disposition*. In support of the *Motion*, Defendants argue that :

- (1) this Court lacks personal jurisdiction over the Defendants;
- (2) this Court lacks subject-matter jurisdiction over Plaintiff's claims;
- (3) Plaintiff's claims are barred by tribal sovereign immunity; and
- (4) Plaintiff has failed to state any claim on which relief can be granted.

A threshold issue presented to the Court in this matter is whether the Tribal Court has jurisdiction, i.e. the authority and/or power, to hear Plaintiff's claims.

CASE ANALYSIS AND REASONING:

I. Tribal Sovereign Immunity Under Federal Law

In regard to lawsuits against Indian tribes for money damages, the inherent sovereign immunity of Indian tribes is well-established and has been long recognized in the law. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) and *Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991). The United States Supreme Court has consistently held that Indian tribal governments have sovereign immunity unless such immunity has been **expressly waived** by either Congress or the particular tribal government. See *Santa Clara*, *supra*, p.58. It is federal law which provides the parameters for tribal sovereign immunity.

Also, see *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 118 S. Ct. 1700 (1998).

Whether a tribe has waived its sovereign immunity is a jurisdictional question which speaks to a court's authority to hear a case. This authority determination must be made regardless of case merits. **The particular facts do not matter.** See *Puyallup Tribe v. Department of Game State of Washington*, 433 U.S. 165, 172-73 (1974); *Hagen v. Sisseton Wahpeton Community College*, 205 F.3d 1040, 1043 (8th Cir. 2000); and *Pan American v. Sycuan Band of Mission Indians*, 884 F.2d 416, 418 (9th Cir. 1989).

Federal recognition of the Pokagon Band of Potawatomi Indians was affirmed by the United States Congress on September 21, 1994. See P.L. 103-323, Section 2. The statute **expressly provides** that "*all Federal laws of general application to Indians and Indian tribes ...shall apply ...to the Band and its members.*"

Subordinate Entities and Enterprises

Tribal sovereign immunity covers subordinate tribal entities and enterprises. The cases involving subordinate tribal entities and enterprises have all restated the long-standing principle that without Congressional approval, tribes are immune from suit **and it follows that subordinate entities and enterprises are also immune.** See *Morgan v. Colorado River Indian Tribe*, 443 P.2d 421 (1968) and *White Mountain Apache v. Shelley*, 107 Ariz. 4, 480 P.2d 654 (1971).

II. Tribal Sovereign Immunity Under Tribal Law

Having found that Congress has not waived tribal sovereign immunity, the threshold issue identified at the outset becomes narrower. It is whether the Tribe itself has waived its immunity to allow the present suit.

The inherent sovereign immunity of Indians tribes recognized by federal law is also

recognized by tribal law. See Tribal Court Code, Section 3(A)(1)(c) and *Tort Claims Ordinance*, Section 4. Both laws require express waivers of sovereign immunity.

Without an express waiver the Band, its officials and employees, and/or subordinate entities or enterprises cannot be sued for money damages.

III. Application of Instant Facts to the Law

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The **sole** prayer for relief is for money damages against the Band and its Tribal Council. The inherent sovereign immunity of the Band, which serves the purpose of protecting very limited tribal assets and resources, bars this Court from granting the relief requested. Therefore, Defendants' *Motion For Summary Disposition* must be granted. The Court has no discretion in the matter.

Case No. 04-005-CV

On the other hand, this case prays for reinstatement, in addition to its prayer for money damages. This Court can not grant money damages in this case either. Therefore, the remaining issue is one of reinstatement.

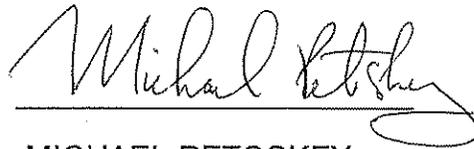
The prayer for reinstatement is founded upon two claims: (1) denial of due process and (2) breach of contract. Dealing with the latter first, the authority of this Court is limited in contract actions by the *Tribal Court Code* to contracts that expressly include a waiver of sovereign immunity. Assuming for the sake of argument only that Plaintiff has valid contracts with the Defendant, this Court lacks jurisdiction to hear Plaintiff's claims because the documents do not contain any statements expressing a waiver of sovereign immunity by the Band. Therefore, reinstatement must be denied for the claim of breach of contract.

The last issue for this Court to consider is whether reinstatement (to an alleged contract) is a remedy that is available to Plaintiff for denial of due process. Plaintiff was ordered by this Court to attach each alleged contract to his supplemental pleadings. Plaintiff did submit his documentation. **The submissions are not contracts.** They are merely *Work Proposals* and *Contractor's Invoices*. None of the *Work Proposals* are signed as accepted, even though the forms themselves provide a place for the acceptance to be executed. This Court cannot reinstate Plaintiff to any contracts, if no contracts existed. If Plaintiff's prayer for reinstatement is one for eligibility to engage in future work with the Band, that prayer has been already made several times by the Plaintiff to the Tribal Council. Each time his requests were heard and rejected. This Court cannot direct the Band to engage in any relationships that are **at will**, i.e. both parties, and only the parties, decide for themselves with whom they shall enter into a relationship.

**FOR ALL OF THE FOREGOING, THIS COURT GRANTS
DEFENDANT'S *MOTION FOR SUMMARY DISPOSITION* AS TO BOTH
CASES AND DISMISSES PLAINTIFF'S CLAIMS.**

12/08/04

DATED



MICHAEL PETOSKEY
TRIBAL JUDGE