

**TRIBAL COURT
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS**

CARLA LYNN STEINGOLD

Case No. C-142-0312

v.

LITTLE TRAVERSE BAY BANDS OF ODAWA
INDIANS HUMAN RESOURCES DEPARTMENT;
LITTLE TRAVERSE BAY BANDS OF ODAWA
INDIANS TRIBAL JUDICIARY;
DENISE PETOSKEY, HUMAN RESOURCES DIRECTOR;
ALLIE GREENLEAF MALDONADO, CHIEF JUDGE;
JAMES GENIA, ASSOCIATE JUDGE;
WENONA SINGEL, JUSTICE OF THE APPELLATE COURT;
GEORGE ANTHONY, JUSTICE OF THE APPELLATE COURT.

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JUDGEMENT OF NO CAUSE OF ACTION

Consistent with and based upon the reasons stated in the Court's Opinion and Order entered on September 18, 2012, the Court enters judgment in the captioned matter and directs the Court Clerk to enter the same, as follows:

- 1) Judgment is entered against Plaintiff, in favor of the Defendant Little Traverse Bay Band of Odawa Indians Tribal Judiciary, for restitution of for amounts expended by the Defendant Tribal Judiciary for attorney fees, in the amount of \$16,932.46.
- 2) Plaintiff's complaint, and each of Plaintiff's claims contained therein is dismissed with prejudice.

IT IS SO ORDERED.

[REDACTED]
Timothy P. Connors
Assigned Tribal Court Judge

10-15-12P01:33 RCVD

PROOF OF SERVICE

I certify that I mailed a copy of the above Judgment of No Cause of Action upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Ann Arbor, Michigan on the 9th Day of October, 2012

[Redacted signature area]

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

TRIBAL COURT CIVIL DIVISION

CARA LYNN STEINGOLD,

Plaintiff,

V

Case No. C-142-0312

Honorable Timothy P. Connors

HUMAN RESOURCES DPARTMENT,
DENISE PETOSKEY, HUMAN
RESOURCES DIRECTOR, LTBB
TRIBAL JUDICIARY, ALLIE
MALDONADO, JAMESGENIA,
WENONA SINGEL, AND GEORGE
ANTHONY,

Defendants,



Plaintiff in Pro Per:

Cara Lynn Steingold
3394 28th Street
Hopkins, MI 49328

Attorney for Defendants HR Department
and HR Director:

James Bransky (P38713)
9393 Lake Leenlanau Drive
Traverse City, MI 49684

Attorney for Defendants Tribal Judiciary

John Petoskey (P41499)
2848 Setterbo Road
Peshawbestown, MI 49682

OPINION AND ORDER

At a Session of Court held in the
Washtenaw County Trial Court
City of Ann Arbor, on September 18, 2012

PRESENT: Timothy P. Connors, Circuit Court Judge

Opinion and Order Granting Defendants Motion to Dismiss

Defendants separately filed Motions to Dismiss alleging lack of Subject Matter
Jurisdiction by the court based on sovereign immunity of the Tribe, Tribal governmental

entities and employees under article XVIII of the LTBB Constitution. Plaintiff failed to respond in writing, and did not appear for oral argument. After reviewing the briefs in support and hearing oral arguments in support, this Court agrees that it lacks subject matter jurisdiction to hear Plaintiff's complaint. Defendants' motions are GRANTED. Plaintiff's case is dismissed with prejudice, and Defendant Tribal Judiciary's request for attorney fees is GRANTED.

Conclusions of Law

Tribal sovereign immunity is immunity from suit. It is a principle that has similarly been long recognized by the United States and Federal government. *Cohens v. Virginia*, 6 Wheat. (19 U.S.) 264 (1821). Tribal Sovereign immunity is recognized not only by Tribes themselves, but by the United States Supreme Court. In *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505 (1991). Chief Justice William Rehnquist, writing for the majority stated tribes "exercise inherent sovereign authority over their members and territories. Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation" (509)

Tribal sovereign immunity is jurisdictional in nature. *Puyallup Tribe v. Dept. of Game of Wash.*, 433 U.S. 165, 172 (1977). "The Court must address it first and resolve it irrespective of the merits of the claim." *Chemehuevi Indian Tribe v. Cal. St. Bd. Of Equalization*, 757 F.2d 1047, 1051 (9th Cir. 1985), *rev'd on other grounds*, 474 U.S. 9 (1985). It "involves a right which courts have no choice, in the absence of a waiver, but to recognize..." *Id.* At 1055.

"A waiver of sovereign immunity ' cannot be implied but must be must be unequivocally expressed.'" *Santa Clara Pueblo v. Martinez* 436 U.S. 49, 98 S. Ct. 1670, 56 L.Ed. 2d 106.

Plaintiff bears the burden of proving that the tribal entity is not entitled to immunity. *James Joseph Morrison Consultants, Inc v. Sault Ste. Marie tribe of Chippewa Indians*, 1998 WL 1031492 at 3-4 (W.D. Mich., Aug. 6, 1998). Tribal officials are protected by the tribe's immunity as long as they act in their representative capacity and within the scope of their authority. *Cameron v Bay mills Indian Community*, 843 F. Supp. 334, 336 (WD Mich, 1994).

Findings of Fact

Plaintiff provided no evidence of any waiver of tribal sovereign immunity. The court requested defense counsel to address LTBB Statute #2008-001, Section IV., Limited Waiver of Sovereign Immunity in their brief and they have done so. Article XVIII of the LTBB Constitution provides for immunity for officials and employees of the Little Traverse Bay Bands of Odawa Indians who act within the scope of their duties and authority.

LTBB Judiciary's opinion in *Carey v Espinos and Eckholm*, case No. A-001-1008 (May 2, 2011) established that the scope of duties and authorities of tribal employees must be determined by the type of action, rather than the circumstances of a particular case. There the court held that termination of employment is within the scope of defendant's authority, and immunity applied.

DECISION


The facts in this case indicate that Plaintiff herein solicited a \$1,500 loan from a Drug Court client. This solicitation was in violation of the LTBB Judiciary Code of Conduct for its employees. Plaintiff was aware of this Code. Pursuant to her duties as Chief Judge, Defendant Maldonado terminated Plaintiff's employment. Judge Maldonado's actions clearly were within the scope of her authority, immunity applies and this Court lacks subject matter jurisdiction. Plaintiff's claim against Defendant Maldonado is dismissed. As to the remaining Defendants, there is no allegation that they acted at all with respect to Plaintiff's termination, but were simply added by virtue of their employment. Immunity applies to the remaining Defendants as well, this Court lacks subject matter jurisdiction, and the remaining Defendants are likewise dismissed.

Defendant LTBB Judiciary seeks attorney fees under LTBBRCP, XXIII Sections 3 and 4. That request is GRANTED. Plaintiff violated the LTBB Judiciary Code of Conduct, was terminated, then sought retaliation against numerous employees who were not involved whatsoever in her termination. Her actions required the costs of two attorneys to defend the allegations. She failed to appear for hearings or otherwise respond to the briefs and arguments of Defendants.

Defendant LTBB Judiciary has submitted a bill of particulars as to the amount of attorney fees incurred. This Court finds the fees to be reasonable and necessary. Attorney fees are GRANTED for the entire amount requested.

Counsel for Defendant LTBB Judiciary is requested to file a proposed Judgment of No Cause For Action against all Defendants, together with an award of attorney fees in full on behalf of Defendant LTBB Judiciary, consistent with this Opinion, within thirty days.

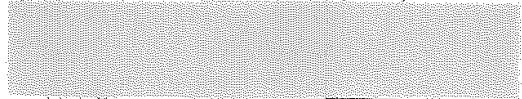
IT IS SO ORDERED.



Timothy P. Connors
Assigned Tribal Court Judge

PROOF OF SERVICE

I certify that I mailed a copy of the above Opinion and Order upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Ann Arbor, Michigan on this 18th day September, 2012.



Jennifer L. Sullivan
Judicial Attorney