

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS**

**Tribal Court**



Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740

Phone: 231-242-1462

**TRIBAL COURT**

Case No: C-155-0113

Northern Shores Loan Fund, Inc.

Plaintiff,

vs.

Laura L. and Thomas J. Esford  
aka Lah Lahs

Defendants.

**ORDER FOLLOWING MOTION TO GRANT PETITIONER THE AUTHORITY  
TO SELL COLLETERAL ITEMS IN ITS POSSESSION**

A motion hearing was held on February 28, 2013, the Honorable Allie Greenleaf Maldonado, LTBB Chief Judge presiding. Jodi Doak, attorney for the plaintiff; Betsy Hanson; Laura Esford; and Thomas Esford were present at the hearing.

The Court denies the Plaintiff's Motion in full because it is unnecessary as the Plaintiff possesses the authority to seize the business assets under the original contract.

**FINDINGS OF FACT**

On August 23, 2011, Northern Shores Loan Fund, Inc. (Plaintiff) and Laura L. and Thomas J. Esford aka Lah Lahs (Defendants) entered into a loan agreement whereby the Plaintiff agreed to loan the Defendants \$15,165 with interest to accrue at a rate of 10% per annum. *See* Exhibit 1. The parties agreed that the Defendants would be responsible for making 48 monthly payments of \$386.64, beginning on October 2, 2011. *Id.* The Defendants pledged as collateral all of its business assets and granted the Plaintiff a security interest in the "proceeds of all the foregoing collateral." *Id.* The security interest was granted to secure the "Borrower's performance of the covenants, conditions, warranties and agreements" entered into with the Plaintiff. *Id.* Upon a potential default,

the security agreement between the parties gave the Plaintiff the right to "enter upon any premises of [the Defendants] without legal process and to remove all or any of the Collateral from said premises and to take possession of said Collateral" and the Defendants waived "all claims in connection therewith or arising therefrom and releases [the Plaintiff] from the same." See Exhibit 2. The Defendant agreed upon "request by [the Plaintiff] to assemble all Collateral and to make it available to [the Plaintiff] at a place or places designated by [the Plaintiff]." *Id.*

Sometime thereafter, the Defendants failed to make monthly payments as agreed to in the loan agreement and the Plaintiff informed the Defendants that they were in default. Following an October 10, 2012 hearing at Tribal Court, the Court approved a confidential settlement agreement between the parties that called for, among other things, the Defendants to pay the Plaintiff \$13,410.52 out of Thomas Esford's 401k Retirement Fund. Upon satisfaction of payment, the Plaintiff agreed to release to the Respondent individually tagged consignment items, one mannequin form, artist jewelry, computer printer, and a seventy (70) year old wedding dress and associated picture in wooden frame. *Northern Shores Loan Fund, Inc. v. Lah Lah's Preloved Clothing Boutique*, No. C-149-0912 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Oct. 10, 2012); Exhibit 3.

After the Court approved the settlement agreement, the Defendants received word that Thomas Esford was barred from withdrawing funds from his retirement account to cover the Defendants' debt, a fact which put the Defendants in breach of the settlement agreement. Following this development, the Plaintiff filed a Motion with the Court to approve the sale of assets the Plaintiff had earlier seized from the Defendants. Additionally, the Plaintiff's Motion requested an order requiring the Defendants to surrender the remaining "business assets in working condition, including the printer, computer and software," and an order stating that the settlement agreement was breached and, "therefore collection costs are properly charged against the account." Finally, the Motion requested that the Court specify that the verified owners or gents of the wedding dress and photo, Kleenex boxes, lamps and homemade keychains be required to claim their property within seven days or that the property may be sold as part of the business assets of the Defendants.

### JURISDICTION

The Court has jurisdiction to hear this case under Waganakising Odawak Statute 2003-07, Aug. 3, 2003, "Preamble and General Definitions" section of Title XII. Corporations, Businesses and Commercial Transaction. Additionally, both Plaintiff and Defendant explicitly submitted to the Court's jurisdiction in the terms of the contract at issue.

### DISCUSSION

The Plaintiff filed a Motion requesting the Court to (1) issue an order allowing the Plaintiff to sell the Defendants' business assets held by the Plaintiff; (2) issue an order requiring the Defendants' to surrender any remaining business assets to the Plaintiff; (3)

issue an order denoting that the settlement agreement between the Plaintiff and the Defendants was breached by the Defendants; and (4) issue an order that the verified owners or gents of the wedding dress and photo, Kleenex boxes, lamps and homemade keychains be required to claim their property within seven days or that the property may be sold as part of the business assets of the Defendants. The Court denies the Plaintiff's Motion because it is unnecessary as the Plaintiff possessed the authority to seize the business assets under the original contract.

In the Security Agreement signed by both parties on August 23, 2011, the Defendants agreed to grant the Plaintiff a security interest in "all business assets" as collateral. *See* Plaintiff's Exhibit 2, p. 1. The Parties also agreed that "Upon the occurrence of any Event of Default; all indebtedness secured by this Agreement shall become immediately due and payable in full without demand or notice and Lender may proceed to exercise one or more of the rights and remedies accorded by the Uniform Commercial Code." *Id.*, p. 3. Article 9 of the Uniform Commercial Code addresses secured transactions. Article 9-609 states that "after default, a secured party: may take possession of the collateral." U.C.C. Text § 9-609(a)(1). Further, "after default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition." U.C.C. Text § 9-610. Michigan's provisions mirror this language, stating that "After default, a secured party may . . . take possession of the collateral." Mich. Comp. Laws Ann. § 440.9609(1)(a). The Michigan UCC goes further to state "A secured party may proceed under subsection (1) either pursuant to judicial process, or without judicial process if it process without a breach of peace." Mich. Comp. Laws Ann. § 440.9609(2). This Court finds that there was not a breach of peace in this case, and therefore it is appropriate for the Plaintiff to proceed without judicial process.

Because the agreement signed by the Plaintiff and Defendants clearly laid out the authority of the Plaintiff to exercise the rights and remedies within the UCC after the Defendants defaulted, the Plaintiff possesses the authority to seize and sell the Defendants' business assets. Therefore, the Court finds it unnecessary to grant the Plaintiff's motion.

#### CONCLUSION

Based on the above reasoning the Court denies the Plaintiff's Motion in full because it is unnecessary as the Plaintiff possesses the authority to seize the business assets under the original contract.

#### IT IS SO ORDERED

8/7/13  
Date

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Allie Greenleaf Maldonado, LTBB Chief Judge

