

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

**Tribal Court
Civil Division**



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

Phone: 231-242-1462

Julie A. Shananaquet, in her
individual capacity
Plaintiff,

V.

Hon. Allie Greenleaf Maldonado
Case No.: C-229-0318

Little Traverse Bay Bands of Odawa
Indians Gaming Enterprise Board,
Denise Petoskey, in her official capacity,
Billi Jo Head, in her official capacity, and
Marvin Mulholland in his official capacity,
Defendants,

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FACTS

On June 23, 2013, the Little Traverse Bay Bands of Odawa Indians ("LTBB") passed into law the Waganakising Odawa Tribal Code 6.4801 et. seq., Statute, titled "Contracting." The purpose of the statute is to protect LTBB by establishing parameters for the legal execution of contracts within LTBB's jurisdiction and to provide consequences to government officials failing to follow the parameters of the law.

On June 9, 2017, the LTBB Gaming Board of Directors ("Board") executed an employment contract between the Gaming Board and Eric McLester, the general manager of Odawa Casino Resort. Gaming Enterprise Board Chair Denise Petoskey and Gaming Enterprise Board Vice Chair Mary Kilmer signed the contract on behalf of the Board. Eric McLester signed the contract on his own behalf.

On March 16, 2018, private LTBB citizen Julie Shananaquet filed a complaint in her individual capacity with the LTBB Tribal Court against the Little Traverse Bay Bands of Odawa Indians Gaming Enterprise Board; Denise Petoskey, in her official capacity; Billi Jo Head, in her official capacity; and Marvin Mulholland, in his official capacity. Plaintiff Shananaquet's complaint alleged that the defendants executed a contract without following LTBB's Contracting Statute

and requested relief provided for under the statute. On April 24, 2018, the Board defendants replied to Plaintiff Shananaquet's complaint. The reply asserted a number of affirmative defenses including the jurisdictional bar of timeliness. In addition, the defendants filed a motion for summary disposition and a corresponding brief in support.

The Court held a hearing on the motion for summary disposition on Tuesday, May 8, 2018. Initially, at the time of filing, Plaintiff Shananaquet was not represented by an attorney. However, at the hearing, attorney Matthew Lesky requested on the record to represent Plaintiff Shananaquet and promised to file the appropriate notice of appearance after the hearing. The defendants did not object. Therefore, the Court granted Mr. Lesky's request.

At the outset of the hearing, the defendants motioned that the Court dismiss the Gaming Enterprise Board as a defendant. The defendants argued that as a subordinate entity of the Tribe, the Gaming Enterprise Board was entitled to sovereign immunity under LTBB's constitution. Only Tribal Council can waive the sovereign immunity of the Tribe or the subordinate entities of the Tribe. The defendants argued that since the Contracting Statute does not waive the Gaming Enterprise Board's sovereign immunity, claims against the Board must be dismissed. On the record, Plaintiff Shananaquet agreed that Tribal Council had not waived the sovereign immunity of the Gaming Enterprise Board and that the Board should be dismissed from the case. Since the parties were in agreement, the Court indicated it would grant their request to dismiss the Gaming Enterprise Board from the case.

Next, the defendants motioned that the general manager's contract that they had admitted into the record, be withdrawn from the record to protect the general manager's privacy. Plaintiff Shananaquet did not object. Therefore, the Court granted the defendant's motion to remove the general manager's contract from the Court record. The defendants then argued the balance of their motion for dismissal. Plaintiff Shananaquet argued against dismissal.

At the end of oral arguments, the Court offered the parties the opportunity to use the voluntary traditional peacemaking to resolve this case. On June 5, 2018, LTBB Tribal Court received a letter from Plaintiff Shananaquet stating that she is not willing to engage in peacemaking. This opinion follows.

ISSUE

The issue before the Court is *not* whether the defendants violated the law by executing a contract without following the procedures designed to protect the Tribe outlined in Waganakising Odawa Tribal Code 6.4801 et. seq., titled, "Contracting." The defendants do not dispute that the general manager's contract was executed without following the law. However, even though the defendants admittedly violated the law, the Court only has the authority to grant the plaintiff the relief requested if the Court has jurisdiction to hear the case.

Therefore, the issue before the Court is a threshold issue - does this Court have jurisdiction to hear this case after the expressly stated statute of limitations in the statute has expired?

ANALYSIS

The first question any court is required to answer at the beginning of every case is whether the court has jurisdiction to hear the case. Jurisdiction gives a court the power to decide a matter. Without jurisdiction, a court has no authority to rule on a matter.

The facts of this case are not in dispute. The individual members of the Gaming Enterprise Board acting in their official roles as board members executed a contract with the general manager of Odawa Casino Resort without following the law. The parties agree that the controlling statute in this case is the Waganakising Odawa Tribal Code 6.4801 et. seq., titled, "Contracting" (hereafter "Contracting Statute" or "WOTC 6.4801.") The Contracting Statute limits the Court's jurisdiction in several important ways. First, the Court's jurisdiction is tightly limited to "officials" who enter into a contract that binds the Tribe or its sub-entities without following this statute. *Section IX, A.* In terms of "who" the Court has jurisdiction over as it relates to the Contracting Statute, "officials" are it. Under the Contracting Statute, the Court does not have jurisdiction over an employee who enters into a contract that binds the Tribe or its sub-entities even if they fail to follow the Contracting Statute. The Contracting Statute expects that employees who violate the statute may be subject to disciplinary actions (like being written up, suspended, or fired) by their employer, but the Contracting Statute does not allow a lawsuit against individual employees. *Id.*

The Contracting Statute does not give the Court jurisdiction over the Gaming Enterprise Board. In order to sue the Gaming Enterprise Board as a whole, the LTBB Constitution requires an express waiver of sovereign immunity. As discussed in the facts, the Contracting Statute does not have an express waiver of sovereign immunity for subordinate entities of the Tribe like the Gaming Enterprise Board which is why the parties agreed to dismiss the Board from the lawsuit. The only persons the statute gives this Court jurisdiction over as it relates to the Contracting Statute is an official who enters into a contract that binds the Tribe or Tribal sub-entities without following the law. The Plaintiff properly named individual Gaming Enterprise Board members in their official capacities, therefore this Court has part of the authority it needs to hear this case. However, the Contracting Statute imposes a second limit on the Court to hear a case -- and that is a limit based on time. *Section X. A* titled, Limited Remedies Before the Tribal Court for Violations expressly restricts the Court as follows:

"Any claim of violation against an Official must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation."

From this section of the law the Court concludes that Tribal Council very clearly meant the Court to only hear cases of alleged violations of the Contracting Statute if those cases were filed within 180 days of the execution of the contract.

The purpose of the Contracting Statute is to protect the Tribe from contracts that would not be in the Tribe's best interest by requiring certain steps for the legal execution of a contract. To ensure that all contracts follow Tribal law and are in the best interest of the Tribe, all contracts entered on behalf of the LTBB or the Odawa Casino Resort (OCR) or other LTBB Tribal entities must be reviewed by Enjinaaknegeng (the Tribe's legal department) and the Financial Signatory Authority before they are executed or take effect. WOTC 6.4801, Section IV A.

In this case, the Gaming Board executed the contract with the general manager on June 9, 2017. The Gaming Board admits that they failed to have the contract reviewed by the legal department before the parties signed the contract, which violates the Contracting Statute. However, the Plaintiff did not file her complaint with the Court until March 16, 2018, 280 days from the execution of the contract, which is 100 days past the time the Court is allowed to hear a complaint under the Contracting Statute. Therefore, while the Plaintiff is correct in asserting that the defendants violated the law when they failed to get legal review of the general manager's contract before executing it, the Court does not have jurisdiction to hear the case. Without jurisdiction to hear the case, the Court cannot address the balance of the Plaintiff's complaint and therefore must dismiss.

For the sake of future litigants, the Court does want to clarify when it is not appropriate to request attorney fees. The defendants in this case asked the Court not just to dismiss this case, but to also award the defendants attorney fees. The Court believes this request was inappropriate for several reasons.

The Contracting Statute gives the Court wide discretion to assess attorney fees. Therefore, the Court must look to LTBB Tribal Court Rules of Civil Procedure for further guidance:

RULE XXIII JUDGMENT AND COSTS "Section 4. Attorney's or Advocate's Fees. The Court shall award attorney's or advocate's fees in a case where such has been specifically provided by contract or agreement of the parties under dispute, *unless it has been clearly and convincingly shown that the case has been prosecuted in bad faith for purposes of harassment only, and that there was no reasonable expectation of success on the part of the affirmatively claiming party.* Attorney's or advocate's fees shall be awarded when provided by statute. Attorney's or advocate's fees may be awarded at other times in the Court's discretion." (Emphasis added.)

The purpose of the Contracting Statute is to protect the assets of the Tribe by setting up safeguards in the contracting process. When employees of the Tribe fail to follow this process therein violating the law, their supervisors are left to handle the matter. Yet when public officials violate the law, the Contracting Statute expressly waives the official's sovereign immunity to allow LTBB citizens to guard the Tribe's assets by filing suit. The law asks our citizens to step up and help protect the Tribe. In this instance, that is exactly what Plaintiff Shananaquet sought to do. She discovered an instance where public officials broke the law and she sought to address that by filing a suit in Tribal Court. She paid a filing fee out of her own pocket and filed a complaint. Initially, she acted without a lawyer of record. The defendants asked the Court to award attorney fees but presented no evidence in writing or on the record that even remotely suggests Plaintiff Shananaquet filed the suit in bad faith for purposes of harassment. Furthermore, but for a procedural issue of timeliness that a party without a lawyer might not reasonably identify, Plaintiff Shananaquet would have been more likely than not to prevail.

Finally, the defendants in this matter do not have "clean hands" and therein are not in a position where it is appropriate to request attorney fees. This statute specially seeks to encourage individuals to come forward and challenge the system when necessary. Therefore, in the future this Court discourages defendants who have violated the laws of the Tribe from requesting attorney fees without providing evidence of "bad faith" as discussed in the LTBB Rules of Civil Procedure cited above.

