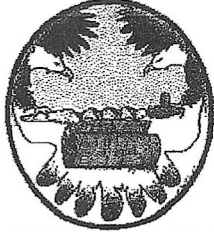


<p>Little Traverse Bay Bands of Odawa Indians Tribal Court Civil Division</p>	<p>OPINION AND ORDER</p>	
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Court Address: 911 Spring St., Petoskey, MI 49770

Phone: 231-242-1462 ~ Fax: 231-242-1470

Case No: C-261-0823

<p>Petitioner: Nichlos Peltier 301 Lafayette Ave. Apt. B201 Petoskey, MI 49770</p> <p>Attorney: <i>In Pro per</i></p>	<p>v.</p>	<p>Respondent: O.E.A.H.C., Tribal Council, Zack Welcker, Legislative Attorney 7500 Odawa Circle Harbor Springs, MI 49770</p> <p>Attorney: James A. Bransky (P38713)</p>
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BACKGROUND INFORMATION

This matter is before the Court on a complaint filed August 24, 2023, by Nichlos Peltier against the Odawa Economic Affairs Holding Corporation (O.E.A.H.C.), the Little Traverse Bay Bands of Odawa Indians (LTBB) Tribal Council, and Zach Welcker, the LTBB Tribal Council Legislative Services Attorney.

Mr. Peltier appears *in pro per*. The O.E.A.H.C., the Tribe, and Mr. Welcker are represented by James A. Bransky.

The Defendants filed a response—Answer, Affirmative Defenses, and Motions to Dismiss and for Summary Judgment on September 15, 2023. A hearing on the above was set for October 11, 2023.

JURISDICTION

Jurisdiction in this matter is based on Article IX(C) of the Little Traverse Bay Bands of Odawa Indians Constitution: *The judicial power of the Tribal Court shall extend to all civil and criminal cases arising under this Tribal Constitution, statutes, regulations or judicial decisions of the Little Traverse Bay Bands of Odawa Indians. This jurisdiction is based on the Tribe's inherent sovereignty, traditional custom, and Federal law.*

The Plaintiff is a Tribal Citizen and the Defendants are employees, Council , and the O.E.A.H.C., a Tribally chartered Corporation. The Tribal Court has proper jurisdiction over the issues and parties.

SUMMARY OF PROCEEDINGS

Plaintiff Nichlos Peltier, in his pleadings and testimony stated as follows:

Mr. Peltier requested the Court enforce his contract that was dated September 23, 2021, and signed by Mr. Peltier on March 11, 2022. This contract was presented by Mr. Peltier, acknowledged by the Defendant, and is incorporated herein by reference. Mr. Peltier included in his complaint several email correspondences including one dated July 17, 2023, from OEAHC Board member Jeremy Steele. Mr. Peltier points out that Mr. Steele sent said email with reference to the contract and maintains that this email directly referenced the severance payment. His communications also included emails from Zack Welker wherein he (Welker) directed the payment of only the accumulated PTO and no severance. As a result, Mr. Peltier has filed suit in Tribal Court for enforcement of his contract, that is, payment of severance as he understood the contract.

In response, the Tribe has stated that Mr. Welker is immune from suit as he was acting within the scope of his authority and duties. Citing Article XVIII of the LTBB Constitution he would be immune from suit based on Tribal Sovereignty. As to the Tribal Council, such body must clearly and expressly waive its sovereign immunity which it did not do. As to O.E.A.H.C., the Plaintiff did not finish his term under the O.E.A.H.C. contract and must be held to its terms.

Defendant submitted detailed briefs on the Motion to Dismiss for lack of jurisdiction, and for failure to state a claim upon which relief can be granted.

DISCUSSION AND FINDINGS

As the Court reviewed the pleadings and briefs of the parties, the misunderstandings and miscommunications became apparent. It was evident that the O.E.A.H.C. Corporate structure was not stable, both from the activities of the employees, but also the Corporate Board and to some extent, Tribal Council. However, when the legal dust settles and the parties are left in their relative positions, there are some clear facts and attendant findings;

There was a contract between Mr. Peltier and the O.E.A.H.C. This contract was not amended, modified, renounced, rescinded, and even when the O.E.A.H.C. was dissolved and reinstated, was still in existence. It is upon this contract that the Court must rule.

The resulting issues on which this case is based—communications between O.E.A.H.C. Board members, with Finance personnel, Tribal Attorneys—must be dependent on the language of the contract signed March 11, 2022, effective September 23, 2021. If terminated by the O.E.A.H.C. with less than 12 months left on the contract, employee shall be paid salary to the end of the contract term. If more than

12 months left, a generous severance package. Here two months were left, to which Mr. Peltier would be entitled, along with other employee benefits such as PTO, but he resigned July 18, 2023. Thus, the OEAHC bears no particular responsibility under its specific waiver of Sovereignty expressed in the contract. Had Mr. Peltier remained, he would be paid, even if the O.E.A.H.C. no longer existed. See WOS 12.118.

As to Attorney Welker, the court cannot find that he did anything more than his duties, as harsh as his action may appear to Mr. Peltier. As such he is immune from suit under LTBB Constitution Article XVIII(A). (It should be noted that Article XVIII(B) does allow suit in Tribal Court if that official and/or employee acts beyond the scope of their duties and authority.)

Finally, Tribal Council has established its Sovereign Immunity pursuant to Article XVIII of the LTBB Constitution. There is no clear and express waiver of Immunity from the Council as is seen in the O.E.A.H.C. contract with Mr. Peltier. The court will not comment on the Certified Motions 062923 and 071823 except to indicate that the Council is presumed to have acted in the best interest of the Tribe. See Constitution Article VII(D)ff; Tribal Council and particularly Article VII(D)(24).

The Court finds jurisdiction to decide the issues presented, and affirms Tribal Sovereignty as to Tribal Council and Attorney Welker.

The legitimacy of the contract and the actions of Mr. Peltier leave the Court with the decision that there are no issues as to any material fact and the Motion for Summary Disposition should be granted. LTBBRCP XVII.

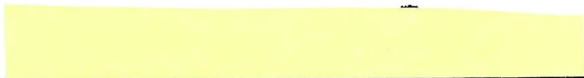
The Tribal Court is always left with a heavy heart when Tribal Citizens have differences with other Citizens, Tribal officials, or with Tribal institutions. However, this does not diminish the Court's responsibility to decide cases before it in a fair and just manner.

BASED ON THE FOREGOING:

It is ordered that this matter be dismissed with prejudice.

IT IS SO ORDERED.

11-15-2023
Date



Hon. John J. Lemire, LTBB Associate Judge

CERTIFICATE OF MAILING

I certify that on this date copies of this *Opinion and Order* were served upon the parties by E-Mail and/or First-Class mail to the addresses shown.

11-15-2013
Date



Tribal Court Officer