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JUN 07 2010

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE:		DATE & DEPT.	NUMBER
Canyon National Bank v. Timbisha Shoshone Tribe et al		June 7, 2010 2G	INC090449
COUNSEL		**REPORTER**	
None	None	None	

PROCEEDING

Ruling on Submitted Matter—Motion to Quash and Dismiss for Lack of Personal Jurisdiction; Motion for Discharge of Plaintiff

Plaintiff Canyon National Bank filed this interpleader action in connection with a bank account it holds in the name of defendant Timbisha Shoshone Tribe (the "Tribe"), alleging that there is a dispute among certain factions of the Tribe and seeking to discharge its responsibility for the funds in the account, which totaled $92,358.17 when the case was filed. The defendants include the Tribe; Joseph Kennedy, Madeline Esteves, Pauline Esteves, Angela Boland, and Erick Mason (the "Kennedy Faction"); and Edward Beaman, Virginia Beck and Cleveland Lyle Casey (the "Beaman Faction). Plaintiff moves for a discharge order and seeks to recover its attorney's fees and costs from the interpleaded funds. The Kennedy Faction moves to dismiss for lack of jurisdiction, contending that the Tribe's sovereign immunity prohibits the Court from exercising jurisdiction over them and over the Tribe. It is not clear who speaks for the Tribe; it is listed as one of the moving parties in the Kennedy Faction's motion and as one of the parties that does not oppose plaintiff's discharge motion in a brief filed by the Beaman Faction.

The Court took the matter under submission, but then, after reviewing the matter, concluded that the parties had not extensively briefed the issue of the effect of Public Law 280 and extended the opportunity for the parties to file supplemental briefs on that issue. Supplemental briefs were filed, including a copy of a federal district court decision remanding a case to state court, in which the federal district court discussed the effect of Public Law 280.

"For every wrong there is a remedy." *Cal. Civ. Code* § 3523. Unfortunately, this maxim of jurisprudence cannot be reconciled with the facts and federal law which apply to this case and therefore the Court grants the Kennedy Faction's motion to quash and denies plaintiff's motion for discharge.

The key issue is whether the Kennedy Faction may act on behalf of the Tribe and elect not to assert sovereign immunity as a defense in this action. The doctrine of sovereign immunity is extensive and appears to cover even an action such as this, in which no liability will be placed on the Tribe or any of the individual officers of the Tribe, except for authorizing payment of attorney's fees and costs to plaintiff out of the interpleaded funds. In its opposition, the Beaman faction does not argue that sovereign immunity would not apply to this action, but that the Kennedy Faction may not assert it. The Tribe's constitution has a specific, but somewhat ambiguous provision relating to the assertion or waiver of sovereign immunity. It states that the General Council (the members of the tribe) have delegated to the Tribal Council the authority "to assert as a defense to lawsuits against the Tribe, the sovereign immunity of the Tribe, except that no waiver of sovereign immunity can be made by the Tribal Council without prior approval of the General Council." Tribal Constitution, Art. V, § 2(q).

This provision might be construed to permit the Tribal Council to decide whether to assert sovereign immunity in a particular lawsuit such as this or whether to defend the suit and forego the defense of sovereign immunity. The Tribal Constitution does grant the Tribal Council the authority to assert sovereign immunity and tacitly the authority to decide not to assert sovereign immunity. However, this would in effect give the Tribal Council the authority to waive sovereign immunity in a particular law suit. The Tribal Constitution specifically reserves that power to the General Council. Thus,

the Court finds that the better interpretation is that the Tribal Council has the authority to assert the defense of sovereign immunity, but that if it desires not to assert that defense, to waive it, in a particular situation, that it must obtain the prior approval of the General Council. Because there appears to be no dispute that the General Council has not authorized the Tribal Council to waive sovereign immunity, the Court finds that the Tribe has not waived it.

Nor does Public Law 280 give the Court jurisdiction over the Tribe. It provides that California has "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in [California] to the same extent that [California] has jurisdiction over other civil causes of action, and those civil laws of [California] that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere in [California]. 28 U.S.C. § 1360(a).

The United States Supreme Court has recognized that the primary purpose of Public Law 280 is to "grant jurisdiction over private civil litigation involving reservation Indians in state court." *Bryan v. Itasca County* (1976) 426 U.S. 373, 379.

However, nothing in Public Law 280 limits a tribe's sovereign immunity. The Supreme Court did not address this question directly in *Bryan*, which related to a state government's power to tax Indians beyond taxes expressly permitted by Public Law 280. However, the Supreme Court stated that nothing in Public Law 280's "legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to the States should result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than 'private voluntary organizations,' *United States v. Mazurie* (1975) 419 U.S. 544, 557, a possible result if tribal government and reservation Indians were subordinated to the full panoply of civil regulatory powers, including taxation, of state and local governments. The Act itself refutes such an inference: there notably absent any conferral of state jurisdiction over the tribes themselves . . . ." 426 U.S. at 388-389. Indeed, the Beaman Faction acknowledges that "Public Law 280 does not affect tribal sovereign immunity, nor does it diminish or expand the sovereign immunity of an Indian tribe, tribal entity or tribal official." Supplemental Brief on Public Law 280 filed April 16, 2010 at 2, citing *Three Affiliated Tribes v. Wold Engineering* (1986) 476 U.S. 877, 892.

Thus, the Court concludes that sovereign immunity bars it from exercising jurisdiction over the Tribe. Nevertheless, the Beaman Faction would have the Court find that it could exercise jurisdiction over the Kennedy Faction to resolve this case. The Kennedy Faction contends that its members are protected by sovereign immunity. The Court need not resolve this issue. Because it cannot exercise jurisdiction over the Tribe, it cannot hear the interpleader action: to hear such an action all potential stakeholders must be parties. *California Code of Civil Procedure* section 386(b) provides "Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more person which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims." The statute does not permit an action against only *some* of the claimants for an obvious reason: the purpose of the statute is to permit the stakeholder to require *all* of the competing claimants to litigate their claims. Without all of the competing claimants being joined in the litigation, a court could not determine which was entitled to the funds. Obviously, a court cannot adjudicate the rights of parties who are not before it. *Holloway v. Thiele* (1953) 116 Cal. App. 2d 68, 74. Here, without the Tribe being a litigant, the Court does not have all of the potential claimants before it—indeed, it is lacking the most important litigant, the one in whose name the other parties claim to have the authority to act—and thus cannot adjudicate the competing claims.

Further, Public Law 280 does not give state courts authority to resolve disputes between Indians concerning who has the authority to govern the tribe. None of the authorities cited by the Kennedy Faction nor the language of the statute itself suggests that it does. That appears to be the real dispute here. *Schaghticoke Tribal Nation v. Harrison* (Conn. 2003) 826 A.2d 1102 does not hold to the contrary. There, the plaintiff was the tribe itself; obviously the tribe could choose to litigate in state court to enforce its rights. The Connecticut Supreme Court held that the trial court should have permitted the plaintiff tribe to prove that it had the authority to bring the action. Here, regardless of whether the Beaman Faction is correct or the Kennedy Faction is correct about who is entitled to govern the tribe, there appears to be no dispute but that the General Council has not waived its sovereign immunity and has not consented to be sued by plaintiff.

Therefore, plaintiff's motion for discharge is denied and the Kennedy Faction's motion to dismiss is granted.

Kennedy Faction to prepare a proposed order and circulate it in the manner required by Rule 3.1312.

Clerk to give notice.

Harold W. Hopp, Judge
M. Dinius, Clerk