IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WESTERN SKY FINANCIAL LLC,	*	
GREAT SKY FINANCE LLC,	*	
PAYDAY FINANCIAL LLC	*	
and MARTIN A. WEBB,	*	
	*	
Plaintiffs	*	**Civil Action No.1:11-CV-01256-WDQ**
	*	
v.	*	
	*	
MARYLAND COMMISSIONER OF	*	
FINANCIAL REGULATION	*	
	*	
Defendant.	*	
	*	

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PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

Plaintiffs, Western Sky Financial LLC, Great Sky Finance LLC, Payday Financial, LLC, and Martin A. Webb (collectively, "Plaintiffs"), respectfully submit this Opposition to Defendant's motion to Dismiss Plaintiffs' Amended Complaint.

INTRODUCTION

This Court has already ruled that Plaintiffs' Amended Complaint is adequately pled. Defendant's present motion is simply a motion for reconsideration. However, Defendant has not provided any justification for reconsideration. Nor has Defendant presented any meaningful reasons for the Court to change its prior decision. As a result, Defendant's motion to dismiss should be denied.

ARGUMENT

I. THIS COURT HAS ALREADY DECIDED THAT THE AMENDED COMPLAINT IS PROPERLY PLED

In considering Plaintiffs' Motion for Leave to File Amended Complaint (ECF No. 12), this Court evaluated whether the Amended Complaint would survive a motion to dismiss. ECF No. 17, p. 1 n.1. Despite the fact that this Court granted Plaintiffs' motion – and explicitly held that the Amended Complaint states a viable claim under 42 U.S.C. § 1983 (Id. at 5-12) – Defendant filed his motion to dismiss the Amended Complaint. Defendant's present motion, therefore, is essentially a motion for reconsideration. However, Defendant fails to even address any of the narrow circumstances under which reconsideration is proper. Indeed, none of these circumstances apply.

Reconsideration of a prior decision is only appropriate under the following circumstances: (1) where the law has changed subsequent to the decision; (2) to consider new evidence; and (3) to correct a clear error of law or to prevent manifest injustice. Collision v. International Chemical Workers Union, 34 F.3d 233, 236 (4th Cir. 1994). Reconsideration cannot be utilized to re-argue issues that have already been decided. Pacific Ins. Co. v. American Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998); Exxon Shipping Co. v. Baker, 128 S.Ct. 2605, 2617, n.5 (2008); Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006).

Defendant does not argue in his motion that there has been a change in the law; that new evidence needs to be considered; or that a clear error of law was committed. Instead, Defendant incorporates the arguments made in his prior filings in this case. ECF 20-2, pp. 1-2. Obviously, Defendant's reliance on arguments previously rejected by this Court does not warrant reconsideration. Pacific Ins. Co., supra; Exxon Shipping Co., supra; Palmer, supra.

II. THE DECISIONS AND STATUTORY AUTHORITY RELIED UPON BY DEFENDANT DOES NOT SUPPORT RECONSIDERATION

Likewise, Defendant's reliance on decisions of other courts (ECF No. 20-2, pp. 2-6) does not support his present motion. Two of the decisions relied upon by Defendant (Colorado federal case No. 11-CV-00887 and Missouri federal case No. 11-CV-01237) are remand decisions and have no relevance to the present declaratory judgment action. Indeed, this Court remanded the administrative action brought by Defendant (11-CV-0735-WDQ) and, nevertheless, held that the present action states a claim under 42 U.S.C. §1983. ECF No. 17, pp. 2-4; 7-12.

Similarly inapposite are the state cases relied upon by Defendant (State of Colorado v. Western Sky Financial, LLC and Martin A. Webb, Case No. 11cv638, and State of West Virginia v. Payday Loan Resource Center, LLC et al., Case No. 10-Misc-372). Neither decision granted a motion to dismiss – let alone in a §1983 case. Instead, the Colorado state court denied a motion to dismiss, where all inferences were drawn in favor of the non-moving party. In West Virginia, although the court granted the state's petition to enforce an investigative subpoena against one of Plaintiff Webb's companies, it **denied** the State's request with respect to Mr. Webb personally. ECF No. 20-7, p. 10. Moreover, the decision against Plaintiff Webb's company was based on specific facts relating to borrowers who testified at an evidentiary hearing. Id. at 8. Here, the Court has already ruled that the issue of whether the loans in this case occurred on the Reservation is a factual question and, therefore, not susceptible to resolution on a motion to dismiss. ECF No. 17, pp. 11-12. Accordingly, state court decisions based on different facts (as well as different law) are not probative.

Defendant also argues in his Memorandum (ECF No. 20-2, p. 7) that, even if the Court does not dismiss the Amended Complaint in its entirety, it should still dismiss the

corporate Plaintiffs' claims. Defendant's argument is based on his contention that South Dakota law considers limited liability companies distinct entities from their members and, as a result, the corporate plaintiffs cannot be entitled to immunity. Id. Defendant fails to mention, however, that the Supreme Court of South Dakota has explicitly held that a corporation owned by an Indian and incorporated under South Dakota law – not tribal law – is a tribal member entitled to tribal immunity.[1] Pourier v. South Dakota Department of Revenue, 658 N.W.2d 395, 403-405 (S.D. 2003), aff'd in part and vacated in part on other grounds, 674 N.W.2d 314 (2004), cert. denied, 541 U.S. 1064 (2004). The United States District Court for the District of South Dakota reached the same conclusion in Giedosh v. Little Wound School Bd., 995 F. Supp. 1052, 1059 (D.S.D. 1997) (fact that school board was incorporated under South Dakota law did "not affect its status as an 'Indian tribe'"); see also, Sage v. Sicangu Oyate Ho, Inc., 473 N.W. 2d 480, 483-484 (S.D. 1991) (Non-profit corporation incorporated under South Dakota law was entitled to Tribal immunity despite the fact that it was not an "instrumentality of tribal government"). Therefore, based on South Dakota law, the corporate Plaintiffs are entitled to the immunity of their owner, Plaintiff Webb.

[1] This Court has recognized that a corporation incorporated under state law can acquire the racial attributes of its owner. In Howard Security Services v. Johns Hopkins Hospital, 516 F.Supp. 508 (D.Md. 1981), this Court held that a corporation owned and operated by an African American could bring a claim under 42 U.S.C. § 1981, despite the fact that the defendant had argued that the statute applied to natural persons and that "corporations cannot be subjected to slavery and cannot have races and thus cannot be covered by the Thirteenth Amendment and § 1981." Id. at 512. In rejecting the defendant's argument, the court determined that the corporate plaintiff had taken on the identity of its owner. Id. at 513. Congress has also recognized the special nature of Indian-owned corporations. 25 U.S.C. § 1521. Indeed, an "Indian corporation" can be organized under state law provided at least 51% of its stock is owned by an Indian. 25 C.F.R. § 286.3. Here, it is undisputed that Plaintiff Webb, an enrolled tribal member, is the sole owner of the corporate Plaintiffs.

CONCLUSION

Defendant has not provided any justification for the Court to reconsider its April 9th ruling. Based on the foregoing, and the arguments contained in Plaintiffs' prior filings concerning dismissal (ECF Nos. 6 and 15), Defendant's Motion to Dismiss Plaintiffs' Amended Complaint should be denied.

Respectfully submitted,

/s/ Charles S. Hirsch
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2012, a copy of the foregoing Plaintiffs' Opposition to Defendant's Motion to Dismiss Amended Complaint was filed and served electronically via the Court's CM/ECF system.

/s/ Charles S. Hirsch
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