

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 12-22439-CIV-COOKE/MCALILEY

MICCOSUKEE TRIBE OF INDIANS  
OF FLORIDA,

Plaintiff,

v.

BILLY CYPRESS, *et al.*,

Defendants.

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**DEXTER LEHTINEN'S OPPOSITION TO MICCOSUKEE TRIBE'S MOTION  
FOR RECONSIDERATION OF OMNIBUS ORDER GRANTING DEFENDANTS'  
MOTIONS TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

Dexter Lehtinen, by his undersigned attorneys, hereby opposes the Miccosukee Tribe's Motion for Reconsideration of Omnibus Order Granting Defendants' Motions to Dismiss Plaintiff's Second Amended Complaint (D.E. 283) (the "Reconsideration Motion"), and states as follows:

While Plaintiff frames the Reconsideration Motion as a Rule 59(e) motion, and concedes that such relief "is an extraordinary remedy to be employed sparingly" (Reconsideration Motion at 3), Plaintiff utterly fails to comply with the requirements for asserting such a motion. As the Eleventh Circuit has summarized the standard:

The only grounds for granting a [Rule 59] motion are newly-discovered evidence or manifest errors of law or fact. [A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.

Arthur v. King, 500 F.3d 1335, 1343 (11<sup>th</sup> Cir. 2007) (citations omitted), cert. denied, 552 U.S. 1040 (2007); see Atlantic Hospitality of Fla., Inc. v. General Star Indemnity Co., 2010 WL 5313493, at \*1 (S.D. Fla. Dec. 20, 2010) (Cooke, J.). Plaintiff is merely re-arguing its prior oppositions to the motions to dismiss; to do so, is improper. See Jacobs v. Tempur-Pedic Int'l, Inc., 626 F.3d 1327, 1344 (11<sup>th</sup> Cir. 2010) (district court properly denied Rule 59(e) motion that “did nothing but ask the district court to reexamine an unfavorable ruling”).

If anything, the Reconsideration Motion actually reinforces this Court’s ruling on the motions to dismiss. The crux of Plaintiff’s argument is that this is not an “intra-tribal dispute”--- an issue that was already thoroughly briefed on the motion to dismiss papers. Plaintiff now asserts “based upon the Miccosukee Tribe’s Constitution that Defendant Cypress’s use of tribal funds was improper and unauthorized.” (Reconsideration Motion at 2.) In any event, as was pointed out in the Mr. Lehtinen’s motion to dismiss, in the Second Amended Complaint, Plaintiff alleged that Plaintiff gave Billy Cypress “unrestricted access and control over all the financial funds and records of the MICCOSUKEE TRIBE which are the subject of this lawsuit” (Second Amended Complaint, ¶ 6). In the Reconsideration Motion, Plaintiff contends that an “intra-tribal” dispute can be one that deals with tribal constitutional law. (Reconsideration Motion at 4.) Plaintiff apparently--- and unwittingly--- is attempting to couch this episode involving Mr. Cypress as a tribal constitutional issue, meaning that, even under Plaintiff’s standard, this is an intra-tribal dispute.

For the foregoing reasons, the Reconsideration Motion should be summarily denied. The Court’s rulings on the motions to dismiss were eminently correct and must stand.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **October 25, 2013**, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the Service List below via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Bryan T. West  
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