

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION

Yamassee Indian Tribe,

Plaintiff,

v.

Allendale County Government; Walter H.  
Sanders, Jr.; Harvey E. Rouse, Tax  
Assessor; Joe Mole, III; Thessa Smith;  
Calvin Brantley; Elouise Brantley,  
Defendants.

**MEMORANDUM IN SUPPORT OF  
MOTION BY DEFENDANTS  
ALLENDALE COUNTY  
GOVERNMENT, SANDERS, MOLE,  
SMITH, AND ROUSE  
TO DISMISS COMPLAINT**

Civil Action 1:13-cv-01577-TLW-SVH

**INTRODUCTION**

This action, brought by the *pro se* Plaintiff Yamassee Indian Tribe, alleges state and federal claims against these defendants, Allendale County, its County Attorney (Sanders), its County Administrator (Smith), its Building and Zoning Director (Mole), and its Tax Assessor (Rouse), as well as two other individual defendants, relating to the plaintiff's interests in real property located in Allendale County. The plaintiff seeks millions of dollars in actual and punitive damages from the defendants in this dispute. The plaintiff's filings this case were signed by Brenda "Red Crow" Webb, the purported Chief of the "Yamassee Indian Tribe," and Al-Golden Owl Bey. Neither Webb nor Bey are attorneys licensed to practice law before the Court. (Doc. 13 at 2.) These defendants have moved to dismiss this action for failure to state a claim, asserting the plaintiff is not an entity with standing to sue or be sued, and, further, that, if the plaintiff is an entity, it cannot appear in this Court without counsel, and thus, the Complaint does not and cannot state a claim.

Pretrial proceedings were referred to the magistrate judge pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(b) and (e). The magistrate judge ordered the Tribe to answer special interrogatories regarding its ability to proceed *pro se*, which it did on June 17, 2013. (Doc. 13.)

In the Complaint, the plaintiff identifies itself as a “Native American Tribal Government,” (Doc. 1 at 1), and in its answers to the special interrogatories, the plaintiff implied that it is a federally-recognized tribe, (Doc. 13 at 2–3). The plaintiff has now clarified that it is not federally recognized and “ha[s] no desire to be such.” (Doc. 20 at 5.) In the plaintiff’s answers to the special interrogatories, it stated that it is an artificial business entity, registered as a public charity with the South Carolina Secretary of State. (Doc. 13 at 1–2.)

The magistrate judge issued a Report and Recommendation (Report) recommending that the plaintiff’s motion to proceed *in forma pauperis* be denied and that the plaintiff be required to submit the filing fee and obtain counsel within 28 days of the date of the order. (Doc. 18 at 6.) The Report also recommends that the plaintiff’s Motion for Writ of Federal Protection and Motion for Writ of Seizure of Assets be denied, without prejudice. (Id. at 7.) The plaintiff filed an objection to the Report, asserting that it now has only \$243.11 in cash and that it should be permitted to proceed *pro se*. (Doc. 20.) The Plaintiff’s Motion for Leave to Proceed *in forma pauperis* (Doc. 3), “Motion for Writ of Federal Protection” (Doc. 5), and “Motion for Writ of Seizure of Assets” (Doc. 6) were denied, by Order of this Court on October 28, 2013. Additionally, this Court declined to decide at that time whether the plaintiff may proceed *pro se*. These defendants assert that question is now properly before the Court, that the plaintiff is not an entity, and that this case should be dismissed. These defendants further assert that, if the plaintiff is an entity, it cannot appear without counsel.

## DISCUSSION

The question before the court is whether the plaintiff is an entity that can sue, and, if so, whether it can proceed *pro se*. If the answer to either of those questions is negative, this action should be dismissed.

Plaintiff is clearly not an individual. Therefore, Plaintiff must retain counsel, in order to proceed. The United States Supreme Court said, “the lower courts have uniformly held that 28 U.S.C. § 1654, providing that ‘parties may plead and conduct their own cases personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney. *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993) (citations omitted) (emphasis added). Here, Plaintiff is not an individual. Likewise, Plaintiff is not an organized business entity under Title 33 of the South Carolina Code. The Court may take judicial review of the public records of the South Carolina Secretary of State’s Office, available online. A search of the online record reveals no corporate business entity formed using the plaintiff’s name. The plaintiff is not an incorporated or other legal business entity. The records of the Office do include a registered charity by the plaintiff’s name, but registering as a charity does not serve to form a business entity in South Carolina under Title 12 of the South Carolina Code of Laws. Nonetheless, even the charity registration has been suspended at present. *Exhibit 1*.

Likewise, the plaintiff is not an Indian tribe to be afforded tribal status in this Court. The plaintiff is not an Indian tribe as defined by 25 USC §479. The United States Government does not recognize Plaintiff as an Indian tribe. *See* 78 Fed.Reg. 26385-26389 (May 6, 2013), attached as *Exhibit 2*. In *Cherokee of Lawrence Cnty., Tennessee v. United States*, the Court noted,

Pro se representation of an Indian tribe has been permitted in another court where the tribe was federally acknowledged as a sovereign entity. See *Fraass Survival Sys., Inc. v. Absentee Shawnee Economic Dev. Auth.*, 817 F.Supp. 7 (S.D.N.Y.1993). In *Fraass*, the court allowed an agency of the Shawnee Tribal Government to represent the Tribe *pro se*, while reserving the right to order appearance of counsel, should “*pro se* conduct [cause] any injustice to the interests of [opposing party] or the Court.” *Id.* at 11. Judge Lowe regarded the tribe’s sovereignty and its dependency on the United States as creating an “expectation of responsible interaction with other sovereigns.” *Id.* at 10.7 However, an acknowledged Indian tribe which is not federally acknowledged is not considered a legal entity by the federal government. See *Hopland Band of Pomo Indians*, 855 F.2d 1573, 1576 (Fed.Cir.1988) (“[I]n proper circumstances, Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory.”); *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir.2004) (“[A]s far as the federal government is concerned, an American Indian tribe **does not exist as a legal entity** unless the federal government decides that it exists.”).

*Cherokee of Lawrence Cnty., Tennessee v. United States*, 06-158L, 2006 WL 5668261 (Fed. Cl. Sept. 1, 2006). Moreover, “acknowledgment under these regulations is a prerequisite for certain federal services and benefits, entitling tribes ‘to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States . . . .’ 25 C.F.R. §83.2.” *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273-74 (9th Cir. 2004).

Here, the plaintiff is not an Indian tribe acknowledged by the federal government. Thus, *Fraass* does not support permitting the plaintiff to be represented by a lay person, or to appear *pro se* by its Chief. Plaintiff has brought this action without an attorney, and as “Chief” Webb admits, she is not an attorney. (Doc. 13 at 2.) Therefore, Webb is unqualified to represent Plaintiff in this case. (Doc. 13 at 2.) Likewise, “Chairman” Bey admits he is not an attorney.

Thus, he is unqualified to represent Plaintiff in this case. (Doc. 13 at 2.) Therefore, Plaintiff's complaint must be stricken. *Cherokee of Lawrence Cnty., Tennessee v. United States*, 06-158L, 2006 WL 5668261 (Fed. Cl. Sept. 1, 2006) citing *Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 830-31 (7th Cir.1986) (striking appearance and appellate brief filed by non-attorney (Chief) on behalf of unrepresented litigant.); 7 C.J.S. *Attorney & Client* § 29 (2004) ("Any acts or steps of the unauthorized petitioner will be disregarded and the papers and documents which he or she drafted should be stricken.").

Federal courts may also look to the state courts to determine whether a litigant may appear *pro se*. If Plaintiff is an entity, it may not appear *pro se* under South Carolina law, but can only appear through an attorney. See *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); *Renaissance Enters., Inc., v. Summit*, 334 S.C. 649, 515 S.E.2d 257 (1999); *State v. Wells*, 191 S.E.2d 468, 5 S.E.2d 181 (1939).

### CONCLUSION

Having fully set forth their position, these defendants request the Court examine the filings and dismiss this action for failure to state a claim.

Respectfully submitted,

NESS & JETT, LLC

February 22, 2014

Bamberg, SC

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