

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Sheldon Peters Wolfchild, et al.,

Plaintiffs,

vs.

Redwood County, et al.,

Defendants.

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Civil File No. 0:14-cv-01597

**MEMORANDUM SUPPORTING  
MOTION BY DEFENDANT  
EPISCOPAL DIOCESE  
OF MINNESOTA TO  
DISMISS**

**SYNOPSIS**

Defendant Episcopal Diocese of Minnesota (the “Diocese”) has moved the Court to dismiss the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), 12(b)(7), 12(h)(2), and 19. The Diocese joins and incorporates by reference the extensive memorandum filed by the Defendant Landowners group, which in turn incorporates by reference briefs filed by other groupings of Defendants, namely the Lower Sioux and the Government Defendants.

The Diocese believes that the briefs filed by the various Defendant groupings establish that the First Amended Complaint as against the Diocese and all Defendants should be dismissed with prejudice. The Diocese submits this separate brief not to repeat what has been well-stated by its Co-Defendants but to highlight the circumstances presented by the Diocese’s land that are at once unique and indicative

of the equitable considerations that require dismissal of the action as against all Defendants.

### **FACTS**

As reflected in Exhibits P and Q of the Defendants' Joint Index of Exhibits, the title documents relative to the Diocese's land reflect the following:

- On February 20, 1872, the United States issued to Gilman Bailey a land patent for 160 acres of land in Redwood County; the patent was filed on April 3, 1880.
- On March 3, 1884, Andrew Good Thunder purchased 80 acres from Elon Bailey for \$694.
- On August 7, 1889, Andrew Good Thunder and his wife Sarah transferred 20 acres to the Reverend Henry B. Whipple, Episcopal Bishop of Minnesota, for \$1.00.
- On December 19, 1889, Bishop Whipple conveyed the 20 acres to the Diocese.

Entry 10 of the Abstract of Title states the following purpose of the conveyance from Good Thunder to Bishop Whipple: "To be used as a site for Church, Parsonage, School and Burial Ground for the Mdewanton Sioux Dakota Indians of Minnesota."

The two principals to the conveyance were figures of historical importance, and their circumstances demonstrate the inequity of the remedy sought by Plaintiffs.

Bishop Whipple was the first Episcopal Bishop in Minnesota, serving from 1859 to 1899. See <http://www2.mnhs.org/library/findaids/p1035j.xml>; Anne Allen, *And the Wilderness shall Blossom: Henry Benjamin Whipple, Churchman, Educator, Advocate for the Indians* (2008). His ministry included the substantial Native American populations of Minnesota, and he met with President Lincoln to seek to correct the corruption of federal agents and the mistreatment of Native Americans. See Allen, *supra*, 11-14; Whipple to Lincoln, March 6, 1862 (“I ask only justice for a wronged and neglected race”), reprinted in Henry Benjamin Whipple, *Lights and Shadows of a Long Episcopate*, pp. 510-14 (1900).

Andrew Good Thunder was a leader of the Mdewakanton Sioux who was converted to Christianity by Bishop Whipple. Whipple, *supra*, pp. 61-64. Good Thunder was praised by Whipple for heroism in leading over a hundred White settlers to safety during the Minnesota Sioux uprising in 1862. *Id.* at 105-14. Good Thunder gave the Diocese its 20 acres of land some two decades later to further the mission of the church.

Good Thunder gave me twenty acres of his land for the mission at Birch Coulee. Over twenty-five years ago he left his tribe at the Santee Agency and preempted one hundred and sixty acres of land near Flandreau; but, longing for his old home, before the outbreak he sold this land and bought eighty acres at Birch Coulee. He then came to me and said: --

“I cannot live without a tipi-wa-kan (sacred house). If you will build one, I will give you land.”

I told him that I could not allow him to give me his land. Finally, after several visits, he said to me with great earnestness: --

“I do not give the land to *you*. I give it to the Great Spirit.”

After that there was but one thing to do. I accepted the land, upon which I built a church and a mission house and consecrated a quiet acre of God where sleep the missionary, the Rev. Mr. Hinman, and many of his flock.

At the laying of the corner-stone of this church Good Thunder brought me a paper signed by the Indians, which read: --

[“] We were once wild men. We are now Christians. It was you who led us to the light. You have always been our Father. You are to lay the first stone of a tipi-wa-kan to-day. We ask you, Father, to name it after one we loved so well, Saint Cornelia.[”]

*Id.* at 181-82.

### ANALYSIS

Plaintiffs cite an 1863 statute as setting aside specific lands to be conveyed to the Sioux who were peaceful and who refused to join in the 1862 conflict in which hundreds of settlers were killed – and which ended in the mass execution of 38 Sioux in Mankato, Minnesota. As noted in some detail by the Diocese’s Co-Defendants, Plaintiffs misread the statute and the subsequent history and are barred from recovery on the merits as well as on numerous procedural grounds, including standing, the statute of limitations, and res judicata. The Diocese agrees that the case should be dismissed on these bases.

But from the larger perspective of the Diocese, Plaintiffs’ case is equitable in nature and must be viewed against the backdrop of not just the 1863 Act, but a

longstanding pattern and practice of mistreatment and exploitation that Bishop Whipple opposed. Indeed, proper treatment of Native Americans in Minnesota and love and reconciliation across racial lines were a critical part of the mission and history of the Diocese. The question presented is whether such a reconciliation can be accomplished involuntarily and unilaterally through the equitable powers of the Court. The Diocese submits that the questions underlying this dispute are moral, cultural, and religious best addressed by society as a whole -- and that it is beyond the power of the Court to craft a legal remedy that attempts to turn back the clock to 1863 by conveying land to some 20,000 members of the class that Plaintiffs seek to create.

The United States Supreme Court has recognized that Native American lawsuits to remedy grievances centuries after the fact implicate important doctrines valuing repose and defining limits on the institutional powers and competence of the judiciary. “The principle that the passage of time can preclude relief has deep roots in our law.” *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 217 (2005). “[I]his Court has recognized the impracticability of returning to Indian control land that generations earlier passed into numerous private hands.” *Id.* at 219. The passage of two centuries, the long delay in seeking relief, and development of the land in the interim will bar such claims under the “doctrines of laches, acquiescence, and impossibility.” *Id.* at 221.

In the present case, a leader of the very class that Plaintiffs seek to create – Andrew Good Thunder, the most “loyal” of Mdewakanton who saved many lives –

chose to purchase land and deed it to the Diocese that worked for peace and reconciliation of the races. Invoking equity to undo such an act of reconciliation and to imperil the continued existence of an historic church built on the site to serve all races would seem to be a step backward, would work against the ends the Plaintiffs profess to seek, and would embroil the Court in a dispute far too complex and multifaceted to remedy with a decree.

While the circumstances of the Diocese are uniquely unsuited to the remedy sought by Plaintiffs, there is no doubt that every parcel of land at issue has its own unique story spanning the past 150 years. Congress, the executive branch, Minnesota governmental bodies, thousands of Minnesota citizens, and the Sioux themselves have taken an untold number of actions in reliance on the choice of the United States to issue patents deeding the land – rather than to set the land aside and conveying same to particular Native Americans. It is beyond the powers of equity to restore the status quo ante, and much injustice and harm would result from attempting to accomplish the impossible by decree.

In sum, the equitable defenses of laches, acquiescence, and impossibility articulated by the Supreme Court in *Sherrill* are dispositive. In addition to the many compelling grounds for dismissal itemized by the Diocese's Co-Defendants, the Court should conclude that the Plaintiffs' claim is a fundamentally ill-considered appeal to equity and is beyond the powers of the judiciary to remedy. The parties, which ultimately include all members of American society, should rather follow the examples

of Bishop Whipple and Andrew Good Thunder in building lasting and harmonious relationships.

**CONCLUSION**

For the reasons noted above, as well as for those cited by the Diocese's Co-Defendants, the First Amended Complaint should be dismissed.

Dated: September 26, 2014.

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