

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

TOWN OF BROWNING, a  
Montana Municipal Corporation,

Plaintiff,

v.

WILLIE A. SHARP, JR.;  
FORRESTINA CALF BOSS RIBS;  
PAUL McEVERS; WILLIAM OLD  
CHIEF; CHERYL LITTLE DOG;  
SHAWN LAHR; ALVIN YELLOW  
OWL; DEREK KLINE; HARRY  
BARNES; ILIFF KIPP; TYSON  
RUNNING WOLF; JOE McKAY;  
EARL OLD PERSON; and NELSE  
ST. GODDARD,

Defendants.

CV-14-24-GF-BMM-JTJ

**FINDINGS AND  
RECOMMENDATIONS**

**BACKGROUND**

Plaintiff alleges five causes of action against Defendants. Plaintiff first seeks injunctive relief to restrain Defendants from depriving the Town of Browning of its property. Plaintiff also alleges tortious interference with business relations, malice, conversion, and mail fraud. Defendants have filed a motion to dismiss Plaintiff's amended complaint. (Doc. 72). Defendants contend that Plaintiff has failed to state a claim under Rule 12(b)(6).

### **STANDARD**

Federal Rule of Civil Procedure 12(b)(6) compels dismissal of a complaint if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. *Aguayo v. U.S. Bank*, 653 F.3d 912, 917 (9th Cir. 2011).

### **ANALYSIS**

The Honorable Judge Brian Morris considered whether tribal sovereign immunity prevented this Court from exercising jurisdiction over Defendants. (Doc. 123). Judge Morris determined that this Court possesses jurisdiction to hear Plaintiff's claim under the doctrine of *Ex Parte Young*. (Doc. 123). The exclusive remedy for an action pursuant to *Ex Parte Young* is prospective, injunctive relief. *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1092 (9th Cir. 2007).

Plaintiff requests injunctive relief in count 1. (Doc. 57). Plaintiff's other claims request relief beyond a prospective injunction, however. Plaintiff alleges in counts 2-5 that Defendants committed tortious interference with business relations, malice, conversion, and mail fraud. Plaintiff seeks compensatory damages, exemplary damages, treble damages, as well as costs and attorney fees.

The relief sought by Plaintiff for counts 2-5 cannot be granted. This Court has jurisdiction only under the doctrine of *Ex Parte Young*. (Doc. 123). This Court therefore can grant only prospective, injunctive relief. Under these circumstances,

Plaintiff cannot prove any set of facts that would entitle Plaintiff to the relief sought in counts 2-5. *Aguayo*, 653 F.3d at 917. Defendants' motion to dismiss counts 2-5 should be granted with prejudice.

Defendants also seek to dismiss count 1. Defendants argue that this Court lacks jurisdiction to enjoin the Tribe. Defendants further argue that the Plaintiff must first exhaust tribal court remedies.

Judge Morris addressed Defendants' arguments in his order denying Defendants' motion to dismiss for lack of jurisdiction. (Doc. 123). Judge Morris determined that Plaintiff could bring an *Ex Parte Young* action against members of the Tribe. (Doc. 123 at 8-9). Judge Morris determined that Plaintiff need not exhaust tribal court remedies. (Doc. 123 at 9-13). Defendants' motion to dismiss count 1 should be denied.

The Court **FINDS:**

1. Plaintiff fails to state a claim for which relief can be granted in counts 2-5.
2. Defendants failed to demonstrate that Plaintiffs have not stated a claim for which relief can be granted in count 1.

The Court **RECOMMENDS:**

The District Court should GRANT IN PART AND DENY IN PART Defendants' motion to dismiss (Doc. 72). Counts 2, 3, 4, 5 should be dismissed with prejudice. Count 1 should not be dismissed.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO  
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

DATED this 23rd day of February, 2015.

  
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John Johnston  
United States Magistrate Judge