UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BREANDA TAYLOR BYNON
a/k/a BREANDA BYNON

Plaintiff,

Case No. 2:15-cv-00206-GJP

v.

Hon. Gerald J. Pappert

CRAIG MANSFIELD, WILLIAM McKIBBIN, III, KEVIN CRONIN a/k/a KEVIN L. CRONIN, MARK EDWARD WEINER, LOAN SERVICING SOLUTIONS, LLC, AUTO LOANS, LLC, CAR LOANS, LLC, BRYAN CASEY, TOP NOTCH RECOVERY, INC., JVI RECOVERY SERVICES, INC., & VINCE VENEZIA

Defendants.
_____/

Robert F. Salvin
Philadelphia Debt Clinic & Consumer Law Center
Attorney for Plaintiff Breanda Taylor Bynon
Two Bala Plaza, Suite 300
Bala Cynwyd, PA 19004-1573
(215) 300-2388
rfsalvin@hotmail.com

Justin Gray (pro hoc vice)
Tanya Marie Gibbs (pro hoc vice)
Rosette, LLP
Attorneys for Defendant Craig Mansfield
25344 Red Arrow Highway
Mattawan, MI 49071
(269) 283-5005
jgray@rosettelaw.com
tgibbs@rosettelaw.com
_____/

MANSFIELD'S BRIEF IN SUPPORT OF SECOND MOTION TO DISMISS

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INTRODUCTION

This lawsuit is nothing more than a veiled attempt to recover damages from Sovereign Lending Solutions, LLC ("SLS"), undisputedly a wholly owned and operated instrumentality of the Lac Vieux Desert Band of Lake Superior Chippewa Indians ("LVD"), a federally recognized Indian tribe, by suing Defendant Craig Mansfield as an individual rather than suing SLS or Mansfield in his capacity as co-manager. This is the second time attorney Robert F. Salvin has deployed this tactic to deliberately circumvent the jurisdictional bar imposed by SLS's, and therefore Mansfield's, sovereign immunity. (See Second Amended Complaint ["Compliant'] ¶ 4; see also *Ghost v. Victory Recovery Service, Inc., et al*, No. 2:14-cv-00215 (E.D. Pa. Jan. 14, 2014), ECF No. 13.)

The doctrine of tribal sovereign immunity prohibits this suit. The Court need not look further than Plaintiff Breanda Taylor Bynon's allegations to see that it is undisputed that LVD is a sovereign nation; SLS was an arm and instrumentality of LVD; and under the umbrella of the LVD's sovereign immunity, Mansfield was at all times acting in his capacity as co-manager of SLS and never outside the scope of his authority and therefore is also within the umbrella of LVD's sovereign immunity. (Complaint ¶¶ 3, 4, 14.) The long standing legal precedent of the United States Supreme Court and this Circuit, discussed below, extends sovereign immunity to tribal entities, arms and instrumentalities of the tribe and tribal employees acting within the scope of their authority, including Mansfield.

Mansfield respectfully requests that this Court dismiss Bynon's Complaint with prejudice for the following reasons:

I. Mansfield is protected by sovereign immunity. Dismissal is appropriate pursuant to Fed. R. Civ. P. 12(b)(1);

II. Because SLS is dissolved, Bynon has no claim against Mansfield. Dismissal is appropriate pursuant to Fed. R. Civ. Pro. 12(b)(6);

III. Mansfield only ever acted as a co-manager of SLS. Dismissal is appropriate pursuant to Fed. R. Civ. P. 12(b)(2);

IV. Bynon executed a release and contracted away her right to sue Mansfield. Dismissal is appropriate pursuant to Fed. R. Civ. P. 12(b)(6); and

V. Mansfield did not interfere with Bynon's retainer agreement. Dismissal is appropriate pursuant to Fed. R. Civ. P. 12(b)(6).

FACTS

The Lac Vieux Desert Band of Lake Superior Chippewa Indians

LVD is a federally recognized Indian Tribe consisting of Tribal members who continue to reside close to their ancestral homeland near the town of Watersmeet, Michigan. (Attachment 1, 12 U.S.C.A. § 1300(h)(2); Attachment 2, 79 Fed. Reg. 4748, 4750.) As with other sovereigns, since time immemorial, LVD has governed itself according to its laws, regulations, and cultural norms.

As a federally recognized Indian tribe, LVD maintains all the inherent attributes of sovereignty. LVD enacted a constitution as its supreme law. (Attachment 3, LVD Const., Preamble.) The LVD Tribal Council ("Tribal Council") is the governing executive and legislative body of LVD with the authority to manage the economic affairs, enterprises, property, both real and personal, and other interests of the Tribe and to promulgate and enforce ordinances adopt resolutions and to enforce the same. (Attachment 3, Art. IV, §§1(b), (f).)

On August 26, 2014, the Tribal Council approved Tribal Council Resolution No. T2014-068 adopting the LVD Business Entity Ordinance ("Business Ordinance")[1] which allowed LVD

[1] On March 30, 2010, LVD adopted the Lac Vieux Desert Limited Liability Company code pursuant to Tribal Council Resolution No. 2010-018, which allowed LVD to establish Tribally-owned limited liability companies to further its economic growth and development. SLS was

to create economic development arms and instrumentalities to further LVD's self-sufficiency. (Attachment 4, Business Ordinance.) The Business Ordinance establishes comprehensive procedures for the creation, operation and dissolution of various business entities within LVD's jurisdiction and specifically provides that LVD's sovereign immunity extends to its wholly owned and operated economic arms and instrumentalities, as well as their agents, officers, employees and elected officials. *Id.*

After considerable and diligent investigation, LVD enacted the Tribal Consumer Financial Services Regulatory Code ("Regulatory Code") to authorize consumer lending as a viable means of economic development.

Sovereign Lending Solutions, LLC

On July 8, 2011, the Tribal Council passed Resolution No. 2011-031 to create SLS as a tribal lending entity to promoting the self-sufficiency of LVD and to address the socio-economic needs of the LVD, its members, and its community. (Attachment 5, SLS Creation Documents.)

From its creation to its dissolution, SLS was a wholly owned and operated economic arm and instrumentality of LVD. LVD retained full control over SLS operations through its co-managers, appointed by the Tribal Council. From July 2011 to January 2014, Mansfield served as SLS's co-manager and was specifically charged with overseeing the day-to-day operations of SLS. (Complaint ¶ 13, P-1; Attachment 5.) After January 17, 2014, Mansfield had no role or authority with SLS and has not participated in any way in any lending activity. (Attachment 6, Mansfield Affidavit ¶ 2.)

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created pursuant to the Lac Vieux Desert Limited Liability Company Code. When the Business Ordinance was created, SLS submitted an annual report, as required by Tribal Council Resolution No. T2014-068, acknowledging the Business Ordinance as the applicable law to its business.

Bynon's Loan

On March 26, 2013, Bynon executed a Pawn Ticket and Agreement for a $2,400 loan, and on June 28, 2013, refinanced her $2,400 loan and executed a second Pawn Ticket and Agreement for $4,950 ("Loan Documents"). (Complaint ¶¶ 25, 30, P-3.) The Loan Documents clearly specify that LVD's sovereign immunity extends to SLS and, thereby, its officers, agents and employees. *Id*. Bynon made payments to SLS from April 2013 through March 2014. (Complaint, ¶ 29, P-2.)

SLS's dissolution

In April of 2014, SLS chose to cease all business operations: it stopped lending and assigned its assets, including its loans, to Management Solution, LLC, a Delaware limited liability company ("MS"), its successor and assigns. (Attachment 7, SLS Assignment.) As assignee, MS took on all liability for any future claims arising from any of the assigned loans:

> The ASSIGNEE hereby assumes all rights, obligations, and liabilities of ASSIGNOR under the Assigned Retail Loan Documents and Titles arising after the date of this Assignment. [Attachment 6, page 1 ¶ 2.]

On September 15, 2014, pursuant to Chapter 5, Section 22(A)(2) of the Business Ordinance, the Tribal Council authorized the dissolution of SLS; SLS filed its Articles of Dissolution with the Tribal Secretary. (Attachments 8, Dissolution Documents.) SLS posted a notice of its dissolution to unknown claimants on the LVD Economic Development website and received and responded to all claims made within the notice period. On January 8, 2015, SLS finalized winding up by filing the required certificate of notice of publication with the Tribal Secretary. (Attachment 8.) Bynon did not allege that she filed a claim with SLS within the notice period.

Bynon's Amended Complaint

On January 21, 2015, Bynon filed her amended complaint.[2] She sued Mansfield in his individual capacity, not as co-manager of SLS. Bynon correctly alleges that Mansfield "is a manager in charge of day-to-day operations at . . . [SLS]" and that he "authorizes these loans in his capacity as manager." (Complaint, ¶¶ 3-4.) Bynon also correctly alleges that SLS "is not named as a party because it is protected from liability under the doctrine of tribal immunity." (Complaint, ¶ 14.)

Bynon's Release

On January 22, 2015, Bynon reached an agreement with Defendant Car Loan, LLC and executed a "General Release/Confidentiality Agreement" to settle her claims. (Compliant, ¶ 53, P-7.) Mansfield had no knowledge of the release. (Attachment 6 ¶ 7.) He had no part in negotiating a release. *Id.* Mansfield has not spoken or otherwise communicated with anyone about any SLS loans since he left the company on January 17, 2014. *Id.* Mansfield has never spoken with Bynon. *Id.*

In the release, Bynon acknowledged her default and agreed to discharge SLS and Car Loan, as well as "its respective affiliates, successors, subsidiaries, and agents . . . of and from all, and all manner of actions, causes of action, suits, proceedings . . . whatsoever in law and equity . . . arising from a loan made by Lender to Borrower." (Compliant, P-7.) Bynon also agreed to drop the instant lawsuit and to keep the agreement confidential. In return, Car Loan agreed to

[2] On January 16, 2015, Bynon filed her Complaint. (ECF-1.) Then on January 21, 2015, amended by right explaining in her Amended Complaint that the amended version corrected technical issues. (Amended Complaint, fn 1, ECF-2.) On March 6, 2013, filed her Second Amended Complaint. (ECF-13.) Bynon's Complaint, Amended Complaint, and Second Amended Complaint are nearly identical. All citations herein refer to the Second Amended Complaint.

return her vehicle, release its lien on her vehicle, wipe out any outstanding balance on her loan, and pay her $2,500.

Bynon's Second Amended Complaint

On February 15, 2015, Mansfield filed a Motion to Dismiss. Instead of responding to the Motion and in violation of Fed. R. Civ. P. 15(a), on March 6, 2015, Bynon filed her Second Amended Complaint. On March 9, 2015, Bynon filed her proof of service. On March 10, 2015, this Court's Order accepted the Second Amended Complaint and dismissed Mansfield's Motion as moot.

As to the allegations against Mansfield, the difference between the Amended Complaint and the Second Amended Complaint is negligible:

- Bynon added a new allegation (that violate Fed. R. Civ. P. 8(d)(1)) in an attempt to incorporate an entirely separate lawsuit, and all documents associated with the separate lawsuit, into her Complaint. Such an incorporation by reference is not a "simple, concise, and direct" allegation. (Complaint ¶ 14.)

- Bynon added new factual allegations where she alleges that she knowingly breached her retainer agreement with her lawyer when some defendants worked directly with Bynon to reach a settlement agreement and avoid litigation. (Complaint ¶¶ 50-57.)

- Bynon added a new Count II to allege violations of Pennsylvania's Fair Credit Extension Uniformity Act ("FCEUA"), 73 P.S. § 2270.3 *et seq*. (Complaint, ¶¶ 73-79.)

- Finally, Bynon added Count IV alleging tortious interference with contractual relations where she alleges that by executing a release agreement, she was damaged because she became personally liable for all of her attorney's fees. (Complaint, ¶¶ 124-127.)

ARGUMENT

I. Mansfield is protected by sovereign immunity.

A. Standard of Review for Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1)

Motions to dismiss for lack of subject matter jurisdiction fall into two general categories: (1) facial attacks and (2) factual attacks. A *facial attack* is a challenge to the sufficiency of the

pleading itself. On such a motion, the court must take the material allegations of the petition as true and construed in the light most favorable to the nonmoving party. *Mortensen v. First Fed. Sav. and Loan Ass'n.*, 549 F.2d 884, 891 (3d Cir. 1977).

A *factual attack* challenges the factual existence of subject matter jurisdiction. *Id*. On such a motion, no presumptive truthfulness applies to the factual allegations and the court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. *Id*.

"When subject matter jurisdiction is challenged under Rule 12(b)(1), the plaintiff must bear the burden of persuasion." *Kehr Packages, Inc. v. Fidelcor, Inc*., 926 F.2d 1406, 1409 (3d Cir. 1991); *cert denied*, 501 U.S. 1222 (1991).

B. As a co-manager for SLS, Mansfield is immune from suit.

Bynon has acknowledge that LVD and SLS are immune from suit under the doctrine of Tribal sovereign immunity. (Compliant ¶ 14.) As co-manager for SLS, Mansfield is also immune from suit.

This Court has held that "[t]ribal officials are entitled to sovereign immunity when they 'act in their official capacity and within the scope of their authority.'" *Magyar v. Kennedy*, No. 12-5906, Slip Op., 2013 WL 6119243, *3 (E.D. Pa. Nov. 20, 2013); citing *Imperial Granite Co. v. Pala Band of Missouri Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991). Similarly, other courts have held that sovereign immunity extends to tribal employees acting in their official capacity and within the scope of their authority unless immunity is: (1) clearly and unequivocally abrogated by Congress; (2) waived by the tribal council through an ordinance or resolution; or (3) the tribe's Constitution permits a suit to enforce such rights. *Imperial Granite*, 940 F.2d at 1271; *United States v. Oregon*, 657 F.2d 1009, 1012, n.8 (9th Cir. 1981); *Native Am. Distrib. v.*

Seneca-Cayuga Tobacco, Co., 491 F. Supp. 2d 1056, 1071 (10th Cir. 2000)); *Romanella v. Hayward*, 933 F. Sup. 163, 168 (D. Conn. 1996).

As discussed above, Bynon admits that LVD and SLS are immune from her lawsuit. (Complaint, ¶ 14.) Bynon *never* alleges that Congress abrogated sovereign immunity or that there is any express waiver of sovereign immunity. As to Mansfield, Bynon only alleges that Mansfield acted in his capacity as a manager of SLS. (See *e.g.*, Complaint, ¶¶ 3, 4, 13, 67, 68, 74, 88, 89, 93, 105, 106, 111.) That is to say that Bynon *never* alleged Mansfield *acted outside* of his capacity as a co-manager of SLS and *never* alleged Mansfield *acted in* his individual capacity. So the Court can rely on Bynon's own allegations to show that Mansfield is entitled to sovereign immunity as a tribal official acting in his official capacity and within the scope of his authority.

Therefore, this Court does not have subject matter jurisdiction over Bynon's cause of action against Mansfield because he is immune. This Court should dismiss Bynon's claims against Mansfield pursuant to Fed. R. Civ. P. 12(b)(1).

II. Because SLS is dissolved, Bynon has no claim against Mansfield.

A. Standard of Review for Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6)

When considering a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), a district court must take three steps to determine the sufficiency of a complaint: (1) identify the required elements of the claim; (2) identify conclusory allegations not entitled to an assumption of truth; and (3) evaluate the well-plead parts of the complaint and determine whether they plausibly give rise to an entitlement for relief. *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011); *Trunzo v. Citi Mortg*., 876 F.Supp.2d 521, 531 (W.D. Pa. 2012). A complaint will survive a Fed. R. Civ. P. 12(b)(6) motion only if it has

sufficient factual allegations, that if accepted as true, "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

B. Bynon's claim is barred because she failed to file her claim with SLS within the notice period after SLS's dissolution.

The capacity to sue a corporation is determined by the law under which the corporation was organized. Fed. R. Civ. P. 17(b)(2). So whether a cause of action has abated because of the dissolution of a corporation is controlled by the law of the jurisdiction in which it was formed. *Okla. Natural Gas Co., v. Okla*., 273 U.S. 257, 259 (1927); *Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Bldg. Corp.*, 302 U.S. 120, 123-27 (1937); *Abington Heights School Dist. v. Speedspace Corp.*, 693 F.2d 284, 285-86 (3d Cir. 1982); *Gross v. Houghland*, 712 F.2d 1034, 1040 (6th Cir. 1983).

SLS was organized under LVD's Business Ordinance so LVD law governs whether Bynon has a claim. As discussed above, to cut off the possibility of never ending liability, SLS adhered to LVD's Business Ordinance and strictly followed the process to dissolve and bar future claims. (Attachment 4, Ch. 5 § 22(G)(1).) SLS filed its Articles of Dissolution, published notice of its dissolution to unknown claimants which specified how to make a claim, and responded to all claims filed.

Bynon did not file a claim within SLS's notice period. SLS ended its legal existence and its capacity to be sued upon filing of its confirmation of publication of notice with the Tribal Secretary. (Attachment 8.)

SLS's dissolution bars Bynon's claims against Mansfield in his capacity as a co-manager. In an attempt to avoid this bar on her claims, Bynon sued Mansfield as an individual. But Bynon only alleged Mansfield acted as a manager of SLS, not as an individual. (Compliant ¶¶ 3, 4, 13, 67, 68, 74, 88, 89, 93, 105, 106, 111.) Bynon should not be allowed to employ this back door

approach to avoid immunity and dissolution to pressure Mansfield and indirectly sue SLS and LVD. Pursuant to Fed. R. Civ. P. 12(b)(6), this Court should grant Mansfield's Motion to Dismiss because Bynon's claims are barred, and thus she has failed to state a claim upon which relief can be granted.

C. SLS's assignment of Bynon's loan cut off any liability of SLS and Mansfield.

Generally, an assignor of a contract assigns its rights and delegates its duties to the assignee such that the assignee "stands in the shoes of the assignor." *Crawford Cent. School Dist. v. Com.*, 585 Pa. 131, 137 (2005); citing *Hedlund Mfg. Co., Inc. v. Weiser, Stapler & Spivak*, 517 Pa. 522 (1998). An assignee is only responsible for the liabilities of the assignor that the assignee expressly assumes or otherwise agrees to. See *Trippe Mfg. Co. v. Niles Audio Corp*., 401 F.3d 529, 532 (3d Cir. 2005); *Digital 2000, Inc. v. Bear Comm., Inc*., 130 Fed. Appx. 12, 18 (6th Cir. 2005).

As discussed above, on April 8, 2014, SLS assigned its assets to MS. That assignment included Bynon's loan. (Complaint, ¶ 68; Attachment 7, page 1.) The assignment of the loans to MS cut off all future liability to SLS and Mansfield for any actions taken by MS or any of MS's successors or assigns:

> The ASSIGNEE hereby assumes all rights, obligations, and liabilities of ASSIGNOR under the Assigned Retail Loan Documents and Titles arising after the date of this Assignment," therefore relieving SLS and Mansfield of liability such as this Complaint. [*Id*. at page 1, ¶ 2.]

Because MS expressly assumed all liability for future claims, this Motion to Dismiss should be granted because Mansfield has been relieved of all liability.

III. Mansfield only ever acted as a co-manager of SLS.

A. Standard of Review for Motion to Dismiss Under Fed. R. Civ. P. 12(b)(2)

When a district court elects to dispose of a Fed. R. Civ. P. 12(b)(2) motion to dismiss for lack of personal jurisdiction without holding an evidentiary hearing, the plaintiff must make a "prima facie" showing that its proffered evidence is enough to support findings of all facts essential to personal jurisdiction. *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 316 (3d Cir. 2007). The prima facie showing of personal jurisdiction must be based on factual allegations that suggest with reasonable particularity sufficient contacts exist between the defendant and the forum state. *Mellon Bank (East) PSFS, Nat'l Assoc. v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992). In determining whether a prima facie showing has been made, the district court is not acting as a factfinder. It accepts properly supported proffers of evidence by a plaintiff as true. *Pinker v. Roche Holdings Ltd*., 292 F.3d 324, 368 (3d Cir. 2002). To defeat a motion to dismiss when the court uses this method the plaintiff must make the showing as to every fact required to satisfy both the forum's long-arm statute and the due process clause of the Constitution. *Id.*.

B. Taking every allegation as true, Bynon never alleged Mansfield acted in his individual capacity—only as a manager of SLS.

"It is insufficient for [a plaintiff] merely to allege that [a defendant] violated state and federal law in order to state a claim. . .[a plaintiff] would have to allege and prove that [a defendant] acted 'without any colorable claim of authority,' apart from whether [a defendant] acted in violation of federal or state law." *Bassett v. Mashantucket Pequot Museum & Research Ctr., Inc*., 221 F. Supp. 2d 271, 281 (D. Conn. 2002); citing *Doe v. Phillips*, 81 F.3d 1204, 1210 (2d Cir. 1996); *Native Amer. Distrib. v. Seneca-Cayuga Tobacco, Co*., 491 F.Supp.2d. 1056, 1070-72 (N.D. Okla. 2007).

Bynon was required to allege facts to show that Mansfield acted beyond the scope of his authority as co-manager of SLS and as an individual in Pennsylvania. There are no allegations that Mansfield acted as an individual or had any contact in any way with Pennsylvania. Bynon has not even acknowledged Pennsylvania's long-arm statute in her Complaint. And Bynon has not stated any basis for this Court's jurisdiction over Mansfield as an individual as required by Fed. R. Civ. P. 8(a)(1).

Everything in Bynon's Compliant seems to indicate that she sued Mansfield in his individual capacity to avoid suing SLS directly, then only alleged facts showing Mansfield acted within his authority to affix liability to SLS. Bynon cannot have it both ways. By only alleging acts by Mansfield as co-manager of SLS, her allegations are self-defeating of her causes of action against Mansfield as an individual.

Because Bynon has not alleged that Mansfield acted outside of his official capacity or beyond the scope of his authority as co-manager, Bynon has failed to show this Court has personal jurisdiction over Mansfield. Pursuant to Fed. R. Civ. P. 12(b)(2), Mansfield's Motion to Dismiss should be granted.

IV. Bynon executed a release and contracted away her right to sue Mansfield.

A. Standard of Review for Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6)

See Argument II(A).

B. Argument

"Settlement of matters in dispute are favored by the law and must, in the absence of fraud and mistake, be sustained. Otherwise, any settlement agreement will serve no useful purpose." *Greentree Cinemas, Inc. v. Hakim*, 289 Pa.Super. 39, 42; 432 A.2d 1039 (1981). Settlement agreements are encouraged as a matter of public policy because they promote the

amicable resolution of disputes and lighten the increasing load of litigation faced by courts. *D.R. v. East Brunswick Bd. of Educ*., 109 F.3d 896, 901 (3rd Cir.1997); citing *McDermott, Inc., v. AmClyde*, 511 U.S. 202, 213-215 (1994).

1. Bynon's release is a settlement agreement.

A release is effectively a settlement agreement and encompasses the compromise of a pending legal claim. *Oakmont Presbyterian Home v. Department of Public Welfare*, 150 Pa.Cmwlth. 562, 572; 633 A.2d 1315 (1993); relying on *Barsons and Overbrook, Inc. v. Arce Sales Corp*., 227 Pa.Superior Ct. 309; 324 A.2d 467 (1974). A signed release is binding on the parties unless executed by fraud, duress, accident, or mutual mistake. *Three Rivers Motor Co. v. Ford Motor Co*., 522 F.2d 885, 892 (3d Cir. 2012). A court has the inherent authority to enforce agreements settling litigation before it. *Bowater North America Corp. v. Murray Machinery, Inc*., 773 F.2d 71, 76–77 (6th Cir.1985). Under Pennsylvania law, settlement agreements and releases are contracts. See *Evans v. Marks*, 421 Pa. 146, 151–52; 218 A.2d 802 (1966) (treating a release as a contract and applying contract principles); *Oakmont Presbyterian Home v. Dep't of Pub. Welfare*, 159 Pa.Cmwlth. 562, 572; 633 A.2d 1315 (1993) (finding that a settlement agreement is considered a contract under Pennsylvania law.) Accordingly, the courts apply the rules of contract construction in interpreting releases. *Sparler v. Fireman's Insurance Company of Newark, N.J*., 360 Pa.Super, 597; 521 A.2d 433 (1987).

2. Bynon's release is not a waiver of Pennsylvania's Loan Interest and Protection Act.

Pennsylvania's Loan Interest and Protection Law explains that, "the provisions of this act may not be waived by any oral or written agreement executed by any person." 41 P.S. § 408. However that provision does not apply to Bynon's settlement and release, which is not an agreement waiving the protections of the law. The basis of Bynon's usury allegations arise from

the terms of her loans. (Complaint, P-3.) The loan document does not purport to waive Pennsylvania's Loan Interest Protection Law and she sued based on alleged violations of the Pennsylvania's law. Her settlement and release was a contract to resolve her lawsuit, not a waiver of Pennsylvania law. The prohibition on a contractual waiver is not applicable to a settlement executed after a debtor files a lawsuit. If the prohibition did apply, settlement would be impossible.

Bynon executed the general release and has contracted away her right to state a claim against Mansfield. While Mansfield had no part in obtaining the release from Bynon, and had no knowledge of the lawsuit until he was served on January 27, 2015, he is nonetheless protected by the contract. (Attachment 6 ¶ 7.) This Court should grant Mansfield's Motion to Dismiss because the release does not allow Bynon to state a claim upon which relief can be granted.

V. Mansfield did not interfere with Bynon's retainer agreement.

A. Standard of Review for Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6)

See Argument II(A).

B. Argument

For tortious interference of contract claims, the Pennsylvania Supreme Court has adopted the Restatement (Second) of Torts § 766, which provides as follows:

> One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract. [*Daniel Adams Associates, Inc. v. Rimbach Publishing, Inc.*, 360 Pa.Super. 72, 78; 519 A.2d 997 (1987)]

Under Pennsylvania law, a cause of action for tortious interference with contractual relations has the following elements:

> (1) the existence of a contractual, or prospective contractual relation between the complainant and a third party;
>
> (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring;
>
> (3) the absence of privilege or justification on the part of the defendant; and
>
> (4) the occasioning of actual legal damage as a result of the defendant's conduct. [*CGB Occupational Therapy, Inc v. RHA Health Services, Inc.*, 357 F.3d 375, 384 (3rd Cir. 2004).]

A tortious interference claim does not accrue until, at least, the plaintiff suffers actual legal damage as a result of the defendant's conduct. *Id.*

Bynon does not allege sufficient facts to support the elements of tortious interference by Mansfield. Bynon knows only some defendants participated in negotiating the release agreement, but alleges that all defendants interfered. As discussed above, Mansfield had no participation in negotiating the release, no knowledge the release had been executed until afterward, no communicating with any of the co-defendants, and no communication with Bynon. (Attachment 6 ¶ 7.)

As to the first element of the allegation, while Bynon alleges she executed a retainer agreement with her lawyer, she does not allege that Mansfield knew of the contract, only that "defendants knew Ms. Bynon was represented." (Complaint, ¶¶ 52, 54.) Without having read the retainer agreement or its contents, there is no way any defendant could have known whether the settlement would have interfered.

As to the second element, Bynon does not allege that Mansfield had any intent to interfere with her retainer agreement. Bynon only alleges that, "[d]efendants actions were wrongful, wonton [sic] and intentional, carried out for the purpose of fulfilling the defendants'

criminal illegal usury scheme." The second element is not met because the alleged intent was not aimed at harming the contractual relationship. (Complaint, ¶ 126.)

As to the third element, any of the defendants were privileged and justified in working directly with Bynon to settle the dispute. See PA Code § 81.4, Rule 4.2, Comment 4 ("Parties to a matter may communicate directly with each other.") As discussed above, public policy favors settlement—that doesn't necessarily include settlement though costly attorneys.

As to the fourth element, whether executing the release exposed Bynon to liability for her attorney's fees is a matter between Bynon and her attorney, but as the lawsuit is ongoing, Bynon has failed to show any actual damages arising from executing her release agreement. The fourth element cannot be met.

CONCLUSION AND RELIEF REQUSTED

As a wholly owned and operated instrumentality of a federally-recognized Indian tribe, sovereign immunity protects LVD, SLS, and Mansfield from suit. Congress has not abrogated Mansfield's immunity. LVD has not waived Mansfield's immunity. Therefore, this Court lacks subject matter jurisdiction over Bynon's claims and this Court should grant Mansfield's Motion to Dismiss pursuant to Fed. R. Civ. Pro. 12(b)(1).

Bynon's claims are barred because she failed to file a claim with SLS within the notice period after dissolution. SLS's assignment of Bynon's loan relieves SLS and Mansfield from liability.

Bynon failed to allege any facts about any actions taken by Mansfield outside of his official capacity as co-manager. Bynon has failed to allege that LVD, SLS, or Mansfield consented to the personal jurisdiction of this Court and has failed to prove that this Court has

jurisdiction over Mansfield. Thus, this Court lacks personal jurisdiction over Mansfield and Mansfield's Motion to dismiss should be granted pursuant to Fed. R. Civ Pro. 12(b)(2).

Finally, Bynon executed a settlement and received a settlement-payment and her vehicle was returned in exchange for her agreement to dismiss this lawsuit. Bynon has failed to state any claims upon which relief can be granted and this Court should grant Mansfield's Motion to Dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6). This Court lacks jurisdiction over Bynon's claims and Mansfield's Motion to Dismiss should be granted.

Respectfully Submitted By:

/s/ Justin Gray
Justin Gray (MI P73704)
(Admitted Pro Hac Vice)
Rosette, LLP
25344 Red Arrow Hwy.
Mattawan, MI 49071
(269) 283-5005 (voice)
(517) 913-6443 (fax)
jgray@rosettelaw.com

/s/ Tanya M. Gibbs
Tanya M. Gibbs (MI P78619)
(Admitted *Pro Hac Vice*)
Rosette, LLP
25344 Red Arrow Hwy.
Mattawan, MI 49071
(269) 283-5005 (voice)
(517) 913-6443 (fax)
tgibbs@rosettelaw.com

Pro Hac Vice Sponsor
/s/ John M. Willis
John M. Willis, Esq. (PA 38622)
The Law Offices of John M. Willis
Three Penn Center
1515 Market Street, Suite 1510
Philadelphia, PA 19102
(215) 498-1000 (office)
jwillislaw@gmail.com

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