UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Annette Nawls and Adrian Nawls,

Plaintiffs,

vs.

Shakopee Mdewakanton Sioux Community Gaming Enterprise ï Mystic Lake Casino,

Defendant.

Case No. 15-cv-2769 (ADM/HB)

Defendant's Memorandum In Support Of Motion To Dismiss

Introduction

The Shakopee Mdewakanton Sioux Community Gaming Enterprise (ñGaming Enterpriseò) files this motion to dismiss for lack of jurisdiction and failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Annette and Adrian Nawls (together, the ñNawlsò) assert that Title VII of the Civil Rights Act of 1964 is the basis for federal court jurisdiction. Title VII, however, exempts tribal employers from its coverage. Further, the Shakopee Mdewakanton Sioux Communityôs (ñSMSCò or ñTribeò) sovereign immunity from suit extends to the Gaming Enterprise, which operates as a bar to this Courtôs exercise of jurisdiction.

Facts

The factual allegations are difficult to understand and many are conclusory. Conclusory statements are not entitled to a presumption of truth because this Court is ñnot bound to accept as true a legal conclusion couched as a factual allegationò when considering a motion to dismiss. Papasan v. Allain, 478 U.S. 265, 286 (1986), see also

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (ñ[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.ò).. ñConclusory statements are notò afforded ñthe preferential status of assumed truth.ò Stadin v. Union Electric Co., 309 F.2d 912, 917 (8th Cir. 1962). Still, even the facts as pled by the Nawls require dismissal for lack of jurisdiction.

The Shakopee Mdewakanton Sioux Community (the ñTribeò) is a federally-recognized Indian tribe. The Gaming Enterprise is a branch of the Tribal government, owned and operated by the Tribe, and conducting gaming under the Indian Gaming Regulatory Act. As alleged in the Complaint, the Gaming Enterprise employed Annette Nawls as a banquet server and Adrian Nawls was employed in the food and beverage department.

On August 9, 2013, Ms. Nawls was subject to a criminal assault while at work when Timothy Scott McCaffrey touched and groped Ms. Nawls. The assault was stopped due to aid rendered by a co-worker. This assault serves as the basis of Ms. Nawlsô alleged injuries. ECF No. 11, p. 3, ¶ 4; see also ECF No. 1-1 (criminal case records provided by the Nawls).

The Gaming Enterprise continued to employ the Nawls after the assault. Adrian Nawls was terminated on January 2, 2014, for repeatedly failing to show up for work. Mr. Nawls request for unemployment benefits was denied because the Administrative Law Judge determined that he had not taken the steps necessary to apply for medical benefits. On October 2, 2015, the Gaming Enterprise notified Ms. Nawls that she was

deemed to have resigned her position because, as a part-time employee, she failed to call-in for a shift for over two years.

State conviction of Timothy Scott McCaffrey for assaulting Ms. Nawls

On October 21, 2013, the State of Minnesota charged Mr. McCaffrey with 5th degree assault, lewd and indecent behavior, and disorderly conduct. ECF No. 1-1, pp. 1-6. On June 8, 2015, Mr. McCaffrey pled guilty to 5th degree assault and disorderly conduct. Id. at p. 10.

Adrian Nawls' Charge of Discrimination with the EEOC

On June 10, 2014, Plaintiff Adrian Nawls filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (ñEEOCò) and the Minnesota Department of Human Rights (ñMDHRò). Ex. 1, Paulson Affidavit. Mr. Nawls alleged that he ñwas denied leave, because it was the holiday season and/or I didnôt turn in the proper doctorôs notes. I was discharged for missing too many days.ò Mr. Nawls also alleged that he was subject to discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. Id.

On June 19, 2014, the EEOC issued a Dismissal and Notice of Rights to Mr. Nawls. Ex. 2, Paulson Affidavit. The EEOC was ñunable to conclude that the information obtained establishes violations of the statutes.ò The EEOC informed Mr. Nawls of his right to sue and that your ñlawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost.ò (emphasis original). On November 21, 2014, the MDHR also dismissed Mr. Nawlôs

complaint and adopted the ñfinal disposition made by the EEOC.ò Ex. 3, Paulson Affidavit.[1]

Mr. Nawls did not file a lawsuit within 90 days.

Annette Nawls' Charge of Discrimination with the EEOC

On January 27, 2015, Annette Nawls filed a Charge of Discrimination with the EEOC and the MDHR. Ex. 4, Paulson Affidavit. Ms. Nawls alleged that she was ñsexually assaultedò while at work and then ñtook time off of work and was discharged.ò Ms. Nawls further alleged that she was discriminated against based upon her gender and disability and was subject to retaliation in violation of the Title VII and the Americans with Disabilities Act. Id.

On March 18, 2015, the EEOC issued a Dismissal and Notice of Rights to Ms. Nawls. Ex. 5, Paulson Affidavit. The EEOC was ñunable to conclude that the information obtained establishes violations of the statutes.ò The EEOC informed Ms. Nawls of her right to sue and that your ñlawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost.ò (emphasis original). Id. On May 12, 2015, the MDHR also dismissed Ms. Nawls and adopted the ñfinal disposition made by the EEOC.ò Ex. 6, Paulson Affidavit.

This lawsuit followed.

[1] The Court may consider the records of the EEOC proceeding without converting this motion to one under Rule 56. To the extent the EEOC records limit the Courtôs subject matter jurisdiction, they may be considered under Rule 12(b)(1). As public records, they are also admissible on a motion to dismiss. Porous Media Corp. V. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999).

Burden of Proof

The Eighth Circuit Court of Appeals has ñheld that tribal sovereign immunity is a threshold jurisdictional question.ò Amerind Risk Management Corp. v. Malaterre, 633 F.3d 680, 684 (8th Cir. 2011). ñIt is well settled that the plaintiff bears the burden of establishing subject matter jurisdiction.ò Nucor Corp. v. Nebraska Public Power Dist., 891 F.2d 1343, 1346 (8th Cir. 1989). ñAs federal courts are courts of limited jurisdiction, ó[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.ôò Dakota, Minnesota & Eastern R.R. Corp. v. Schieffer, 715 F.3d 712 (8th Cir. 2013), quoting, Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). ñOn a motion invoking sovereign immunity to dismiss for lack of subject matter jurisdiction, the plaintiff bears the burden of proving by a preponderance of evidence that jurisdiction exists.ò Garcia v. Akwesasne Housing Authority, 268 F.3d 76, 84 (2nd Cir. 2001); Chayoon v. Chao, 355 F.3d 141, 143 (2nd Cir. 2004).

Argument

The Court must dismiss the Nawlsô Complaint for lack of jurisdiction because Title VII does not apply to the Gaming Enterprise and because the Gaming Enterprise is immune from suit.

I. The Nawls' lawsuit must be dismissed because the Court lacks jurisdiction to hear the Nawls' Title VII claims against the Gaming Enterprise.

Indian tribes are expressly exempt from Title VII and this exemption has consistently been held to apply to tribal entities, such as the Gaming Enterprise. Accordingly, the Nawlsô lawsuit must be dismissed.

A. The Shakopee Mdewakanton Sioux Community is exempt from Title VII.

Indian tribes, such as the SMSC, are excluded altogether from the Actôs definition of the term ñemployer.ò 42 U.S.C. § 2000e(b). Congress specifically excluded Indian tribes ñfrom the employment discrimination prohibitions of Title VII,ò Morton v. Mancari, 417 U.S. 535, 551 (1974), in order to ñpromote the ability of sovereign Indian tribes to control their own economic enterprises.ò Dille v. Council of Energy Res. Tribes, 801 F.2d 373, 375 (10th Cir. 1986).[2]

The law in the Eighth Circuit is equally clear, ñTitle VII expressly excludes Indian tribes from its scope.ò E.E.O.C. v. Fond du Lac Heavy Equipment and Const. Co., Inc., 986 F.2d 246, 250 (8th Cir. 1993), see also, In re Prairie Island Dakota Sioux, 21 F.3d 302, 304 (8th Cir. 1994) (ñRealizing that an Indian tribe may not be sued under Title VII,

[2] The Actôs substantive exemption also encompasses businesses on or near a reservation. 42 U.S.C. § 2000e-2(i). Title VIIôs exemption has also been read into other federal statutes. Reich v. Great Lakes Indian Fish and Wildlife Comm'n, 4 F.3d 490, 496 (7th Cir. 1993) (Title VII exemption read into Fair Labor Standards Act for benefit of tribal warden and police officers); E.E.O.C. v. Cherokee Nation, 871 F.2d 937, 939 (10th Cir. 1989) (Title VII exemption read into Age Discrimination in Employment Act); Wardle v. Ute Indian Tribe, 623 F.2d 670, 672 (10th Cir. 1980) (Indian Civil Rights Act and 42 U.S.C. §§ 1981, 1983, 1988, and 2000d cannot be relied upon to end run the Title VII exemption).

plaintiffs moved to amend their complaint to delete the federal law claims.ò). This Court has likewise determined that Title VII does not apply to Indian tribes. See Charland v. Little Six, Inc., 112 F.Supp.2d 858, 865 (D. Minn. 2000) (ñan Indian tribe is not an employerò under Title VII; Little Six, Inc. was the tribal corporation that preceded the Gaming Enterprise, which is not a corporation). Other Circuits are also in accord that Title VII does not apply to Indian tribes. ñClearly this language exempts a single Indian tribe from the definition of ôemployerô and therefore from the legal requirements of Title VII.ò Dille, 801 F.2d at 374, see also, Taylor v. Alabama Intertribal Council Title IV J.T.P.A., 261 F.3d 1032, 1035 (11th Cir. 2001) (ñCongress expressly exempts Indian tribes from the definition of employer under Title VII.ò); Nanomantube v. Kickapoo Tribe in Kansas, 631 F.3d 1150, 1152 (10th Cir. 2011) (ñCongress specifically exempted Indian tribes from the definition of ôemployersô subject to Title VII's requirements.ò). The SMSC cannot be sued under Title VII.

B. The Gaming Enterprise, as a branch of an Indian tribal government, is exempt from Title VII.

ñThe Gaming Enterprise, like its predecessor Little Six, Inc., is a branch of the [SMSC] tribal government.ò Ferguson v. SMSC Gaming Enterprise, 475 F.Supp.2d 929, 931 (D.Minn. 2007), see also, Prescott v. Little Six, Inc., 387 F.3d 753, 757 (8th Cir. 2004) (SMSCôs gaming operation ñis a branch of the sovereign tribal governmentò created under the Tribal Constitution). As a branch of the SMSC, the Gaming Enterprise is likewise excluded from the definition of an ñemployerò against whom suit can be brought under Title VII. The Eighth Circuit Court of Appeals has affirmed this Courtôs

determination that the Gaming Enterprise is exempt from Title VII, Charland v. Little Six, Inc., 198 F.3d 249 (8th Cir. 1999), and affirmed this Courtôs imposition of sanctions against the plaintiff for suing the Gaming Enterprise without a waiver of sovereign immunity. Charland v. Little Six, Inc., 112 F.Supp.2d 858 (D. Minn. 2000), *aff'd* 13 Fed. Appx. 451 (8th Cir. 2001) (per curiam).[3] ñTitle VII claims cannot be brought against Indian tribes or their agencies or businesses.ò Ferguson, 475 F.Supp.2d at 931. ñBecause Title VII does not apply to [the Gaming Enterprise], there is no federal question presented to this Court.ò Id. at 932.

ñTitle VIIôs express exemption of Indian tribes from employer status eschews subject matter jurisdiction of the federal courts to hear employment discrimination complaints...brought against unincorporated commercial enterprises entirely owned and operated by recognized Indian tribes.ò Thomas v. Choctaw Mgmt./Serv. Enter., 313 F.3d 910, 911 (5th Cir. 2002). The Fifth Circuit further characterized the plaintiffôs Title VII claims as being ñwholly without merit and thus legally frivolous.ò Id. In addition to the Gaming Enterprise, the Eighth Circuit has determined that Title VII does not apply to a tribal housing authority, Dillon, 144 F.3d at 584 n.3, nor to a tribal equipment and

[3] The plaintiff in Charland was a former Casino employee who brought a variety of employment and discrimination claims, including Title VII claims, against the Gaming Enterpriseôs predecessor, Little Six, Inc. Ms. Charland argued that the phrase ñIndian tribeò in Title VII ñshould not be construed in such a way as to include Indian Casinos as those which are excluded from the statutory definition of employer.ò Charland, 112 F.Supp.2d at 860. In response to this argument, this Court determined that ñ[t]his argument has not been accepted when it has been presented to other courts.ò Id.

construction company, Fond du Lac Heavy Equipment, 986 F.2d 246; see also Garcia v. Akwesasne Hous. Auth., 268 F.3d 76, 88 (2nd Cir. 2001) (Tribal housing authority exempt from Title VII); Duke v. Absentee Shawnee Tribe of Oklahoma Hous. Auth., 199 F.3d 1123, 1126 (10th Cir. 1999), *cert. denied*, 529 U.S. 1134 (2000) (tribal housing authority organized under state law exempt from Title VII); Dille, 801 F.2d at 374 (council consisting of thirty-nine Indian tribes exempt from Title VII); Pink v. Modoc Indian Health Project, Inc., 157 F.3d 1185, 1188 (9th Cir. 1998), *cert. denied*, 528 U.S. 877 (1999) (nonprofit corporation created and controlled by two federally recognized tribes exempt from Title VII).

In sum, the Gaming Enterprise, as a tribal entity, is exempt from Title VII. Consequently, there is no federal question jurisdiction because the Nawlsô Title VII claims do not apply to the Gaming Enterprise. Accordingly, the Nawlsô Complaint must be dismissed.[4]

C. Mr. Nawls' Title VII claims are time barred.

Title VII ñspecifies with precision the jurisdictional prerequisites that an individual must satisfy before he is entitled to institute a lawsuit.ò Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974), see also McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973) (referring to the 90-day right to sue timeline as a ñjurisdictional

[4] The Nawls appear to allege state law claims for ñassaultò and ñsexual assault,ò and ñdiscrimination.ò See Amended Complaint, ECF No. 11, p. 3. Lacking any basis for federal jurisdiction, these claims cannot be litigated in federal court. Tribal sovereign immunity would also preclude these claims being refiled in state court. See fn. 5, below, see also, Part II below. They should, like the Title VII claims, be dismissed.

prerequisite.ò). Failure to file within the statutory 90-day timeline, 42 U.S.C. § 2000e-5(f)(1), results in the underlying claims being time barred. Williams v. Thomson Corp., 383 F.3d 789, 790 (8th Cir. 2004); Braxton v. Bi-State Development Agency, 728 F.2d 1105, 1108 (8th Cir. 1984). Here, there is no dispute that the failure to timely file this lawsuit is an additional reason to dismiss Mr. Nawls Title VII claims.

II. Sovereign Immunity Requires Dismissal of the Nawls' Lawsuit Against The Tribe For Lack Of Jurisdiction

The Tribe is immune from suit and the Gaming Enterprise, as a tribal entity and branch of the tribal government, is likewise immune from suit. Neither Congress, nor the Tribe, has waived its immunity.

A. The Tribe is immune from suit.

ñIndian tribes enjoy immunity because they are sovereigns predating the Constitution, and because immunity is thought necessary to promote the federal policies of tribal self-determination, economic development, and cultural autonomy.ò American Indian Agricultural Credit Consortium, Inc. v. Standing Rock Sioux Tribe, 780 F.2d 1374, 1378 (8th Cir. 1985). The Supreme Court held in Santa Clara Pueblo v. Martinez that,

> Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers. This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress.

436 U.S. 49, 58 (1978). Just last year, the Supreme Court reaffirmed the vitality of tribal sovereign immunity. ñCongress must unequivocally express its purpose to subject a tribe

to litigation.ò Michigan v. Bay Mills Indian Community, 134 S.Ct. 2024, 2034 (2014). Tribal sovereign immunity precludes a court from hearing any claim against an Indian tribe unless ñCongress has authorized the suit or the tribe has waived its immunity.ò Kiowa Tribe v. Mfg. Technologies, Inc., 523 U.S. 751, 754 (1998). Any alleged waiver by Congress or a tribe ñcannot be implied but must be unequivocally expressed.ò Santa Clara Pueblo, 436 U.S. at 58.

The Eighth Circuit has determined that the Shakopee Mdewakanton Sioux Community is a federally recognized Indian tribe and possesses sovereign immunity from suit. Smith v. Babbitt, 100 F.3d 556 (8th Cir. 1996); see also Prescott v. Little Six, Inc., 387 F.3d 753, 757 (8th Cir. 2004) (recognizing the ñsovereign tribal governmentò of the Shakopee Tribe). This Court has likewise determined that the Shakopee ñCommunity is a federally recognized Indian tribeò possessing sovereign immunity. Smith v. Babbitt, 875 F. Supp. 1353, 1357 (D. Minn. 1995), affôd, 100 F.3d 556 (8th Cir. 1996).

The Tribeôs federally-recognized status and corresponding sovereign immunity is beyond question. Congress enacted the Federally Recognized Indian Tribe List Act of 1994 (the ñList Actò) to require, among other things, that the Secretary of the Interior annually publish a list of federally recognized Indian tribes in the Federal Register. See 25 U.S.C. §§ 479a & 479a-1.[5] The Tribe has always been listed in the Federal Registerôs

[5] In 1980 Congress reaffirmed the Tribeôs governmental status and its Reservation land base. Pub. L. No. 96-557, 94 Stat. 3262 (1980). Eleven years ago, Congress once again recognized the Tribe by enacting legislation providing that all of the lands held in trust for the Tribe, including those acquired under Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, are not subject to alienation or encumbrance. Native American Technical Corrections Act of 2004, Pub. L. No. 108-204, 118 Stat. 542 (2004). Once an

list, which acknowledges that the Tribe possesses ñthe immunities and privileges available to federally recognized Indian tribes by virtue of their government-to-government relationship with the United States.ò Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 80 Fed. Reg. 1942-02, 1946 (Jan 14, 2015). ñFederally recognized Indian tribes enjoy sovereign immunity from suit.ò Pit River Home and Agric. Coop. Assôn v. United States, 30 F.3d 1088, 1100 (9th Cir. 1994).

Here, Congress has not waived the Tribeôs immunity from suit and neither has the Tribe. Because ñsovereign immunity is jurisdictional in nature,ò In re Prairie Island Dakota Sioux, 21 F.3d 302, 304 (8th Cir. 1994), citing FDIC v. Meyer, 510 U.S. 471, 475 (1994), an Indian tribe may assert immunity ñat any stage of the proceedings.ò Hagen v. Sisseton-Wahpeton Cmty. College, 205 F.3d 1040, 1044 (8th Cir. 2000). Absent jurisdiction, a court ñcannot proceed at all in any cause.ò Steel Co. v. Citizens For A Better Envôt, 523 U.S. 83, 94 (1998) (citation omitted).

B. As a Tribal entity, the Tribe's sovereign immunity from suit extends to the Gaming Enterprise.

The Gaming Enterprise is ña branch of the sovereign tribal governmentò Prescott v. Little Six, Inc., 387 F.3d at 757, and is immune from suit, Charland, 198 F.3d 249. This Court, likewise, has determined that the ñGaming Enterprise, like its predecessor

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Indian tribe is recognized, ñthe United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government.ò 25 U.S.C. § 3601(2). All federally-recognized Indian tribes operate on an equal footing under federal law. 25 U.S.C. § 476(f).

Little Six, Inc., is a branch of the tribal government . . . [a]s such, it enjoys sovereign immunity.ò Ferguson, 475 F.Supp.2d at 931.[6]

The Supreme Court has made it clear that the ñdoctrine of tribal immunity ï without any exceptions for commercial or off-reservation conduct ï is settled law and controls.ò Michigan v. Bay Mills Indian Community, 134 S.Ct. at 2036, see also, Kiowa 523 U.S. at 760 (ñTribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation.ò). The Supreme Court has noted that in the ñeconomic context, immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims.ò Kiowa, 523 U.S. at 758. Rather than confine sovereign immunity ñto reservations or to noncommercial activitiesò the Supreme Court determined to ñdefer to the role Congress may wish to exercise.ò Id. Last year, the Supreme Court once again noted the success of ñtribal gaming revenuesò and ñthe flourishing of other tribal enterprises, ranging from cigarette sales to ski resorts,ò but once again deferred to Congress to make any alteration in the scope of tribesô immunity. Bay Mills, 134 S.Ct. at 2037. ñThe special brand of sovereignty the tribes retain ï both its nature and its extent ï rests in the hands of Congress.ò Id.

[6] The Gaming Enterprise is also immune from suit in Minnesota state courts. Gavle v. Little Six, Inc., 555 N.W.2d 284 (Minn. 1996), *cert. denied*, 524 U.S. 911 (1998); Cohen v. Little Six, Inc., 543 N.W.2d 376 (Minn. Ct. App. 1997), *aff'd*, 561 N.W.2d 881 (Minn. 1997), *cert. denied*, 524 U.S. 903 (1998).

An Indian tribeôs gaming operation is uniquely governmental. The Indian Gaming Regulatory Act (ñIGRAò) requires the Tribe to ñhave the sole proprietary interest and responsibility for the conduct of gaming activity.ò 25 U.S.C. § 2710(a)(2)(A). Under IGRA, Tribal gaming is a ñmeans of promoting tribal economic development, self-sufficiency, and strong tribal governments.ò 25 USCA § 2702. Here, the Gaming Enterprise is a branch of the Tribeôs government. It was created by the Tribe, it is owned by the Tribe, it is controlled by the Tribe, and its purpose is to provide governmental revenue to the Tribe.

Other Circuit Court of Appeals have also held that an Indian tribeôs sovereign immunity extends to its gaming operation. Allen v. Gold Country Casino, 464 F.3d 1044, 1047 (9th Cir. 2006); Cook v. AVI Casino Enterprises, Inc., 548 F.3d 718 (9th Cir. 2008); Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort, 629 F.3d 1173, 1183 (10th Cir. 2010).

The Gaming Enterprise is immune from suit and the Nawlsô claims must be dismissed for lack of jurisdiction.

III. The Nawls May Pursue Remedies in Tribal Court.

The Nawls voluntarily subjected themselves to Tribal law and Tribal Court jurisdiction by working for the Tribeôs Gaming Enterprise on its Reservation. On several occasions the Supreme Court has determined that non-Indians entering Indian country are subject to the Tribeôs exercise of civil jurisdiction. Indian tribes retain ñconsiderable control over nonmember conduct on tribal land.ò Strate v. A-1 Contractors, 520 U.S. 438, 454 (1997). ñIt is immaterial that (the person who brought suit) is not an Indian. He

was on the Reservation and the transaction with an Indian took place there. The cases in this Court have consistently guarded the authority of Indian governments over their reservations.ò Williams v. Lee, 358 U.S. 217, 223 (1959).

ñIndian tribes possess a broad measure of civil jurisdiction over the activities of non-Indians on Indian reservation lands in which the tribes have a significant interest.ò Washington v. Confederated Tribes of Colville Reservation, 447 U.S. 134, 152-53 (1980). ñNonmembers who lawfully enter tribal lands remain subject to the tribeôs power to exclude them. This power necessarily includes the lesser power to place conditions on entry, on continued presence, or on reservation conduct.ò Merrion v. Jicarilla Apache Indian Tribe, 455 U.S. 130, 144 (1982). ñTribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty.ò Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 17 (1987).

Here, the Court must dismiss the Nawlsô federal lawsuit; however, the Tribe maintains a Tort Claims Ordinance, which contains a limited waiver of immunity, and may provide the Nawls with a remedy in the SMSC Tribal Court.

Conclusion

For the foregoing reasons, the Court must dismiss the Nawlsô Complaint for lack of jurisdiction.

Dated: December 28, 2015

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