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SSM Chippewa Tribal Court

SAULT STE. MARIE CHIPPEWA TRIBAL COURT

**LINDA A. LESPERANCE and
STANLEY LESPERANCE,
Plaintiffs,**

-v-

Case No. T- 14-01

**SAULT STE. MARIE TRIBE
OF CHIPPEWA INDIANS,
Defendant.**

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**ORDER
(Granting Defendant's Motion for Summary Judgment)**

INTRODUCTION

The Court must determine whether to grant the Defendant's motion for summary judgment. Because the Plaintiffs failed to comply with the pre-suit notice requirements proscribed by the Board of Directors within Chapter 85, the Court cannot redress the Plaintiffs' alleged harms, and consequently enters summary judgment in favor of the Defendant, pursuant to Federal Rule of Civil Procedure 56(c).

FACTS AND PROCEDURAL HISTORY

Plaintiff Linda Lesperance tripped over a threshold at the Midjim Convenience Store in St. Ignace, Michigan, on April 14, 2011, and suffered severe injuries. The Plaintiffs sought to recover damages from the Tribe for her injuries. Tribal Code §85.106(2) requires that the injured person must serve a notice on the Tribe of the occurrence of the injury and the defect within 120 days from the time the injury occurred. “The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant. The notice shall be served on the Tribal Secretary, 523 Ashmun Street, Sault Ste. Marie, Michigan 49783, either personally or by certified mail, return receipt requested.” *Id.*

Plaintiffs did not file a notice upon the Tribal Secretary by personal service or certified mail within 120 days. However, they did engage in numerous contacts with Patti Simi of the Tribe’s Insurance Department. These contacts included phone calls, letters and emails from around the time of the incident until May 2012. On June 22, 2011, Ms. Simi received a letter from Mr. Lesperance including information about medical problems and visits and also included a specific request payment for pain and suffering and future medical bills. On May 3, 2013, more than two years after the incident, Ms. Simi received a Claim for Damages and accompanying documentation from Attorney Baron on behalf of the Plaintiffs. On December 6, 2013, Plaintiffs Linda and Stanley Lesperance filed a complaint against the Defendant, the Sault Ste. Marie Tribe of Chippewa Indians, seeking damages for personal injury based on the Tribal Tort Claims Ordinance. The complaint averred that the Defendant’s property had a defect in the threshold, that the Defendant had actual or constructive knowledge of the threshold defect, and that the Defendant had created the defective and dangerous condition that caused Plaintiff’s injuries. The Plaintiffs sought judgment in the amount of \$1.926 Million.

In a motion filed on June 2, 2015, the Defendant moved for the judgment on the pleadings or summary judgment, on the grounds that “the Lesperances failed to provide a timely written notice of the claim as required by Tribal Code Chapter 85, Section 85.106, Public Buildings” and because “tribal sovereign immunity is not waived for consortium claims.”

The Plaintiffs conceded that the loss of consortium claim was not permitted under tribal law. However, citing federal and various states’ case law, Plaintiffs argue that they substantially complied with the notice requirements of the Tribal Code. They contend that Mr. Lesperance’s letter sent to and received by the Insurance Department on June 22, 2011, satisfied the pre-suit notice requirements, that the defective notice was timely, and that the error did not result in any prejudice to the Defendant, and that the Plaintiffs are entitled to access to the Court. The Court held oral argument on the Defendant’s motion on October 23, 2015.

ANALYSIS

The Sault Ste. Marie Tribe of Chippewa Indians (hereinafter “Sault Tribe”) retains sovereign immunity from suit, absent an express waiver by Congress or the Sault Tribe’s Board of Directors. *Michigan v. Sault Tribe*, 737 F. 3d 1075, 1078-79 (6th Cir. 2014) (citing *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998)). Sault Tribe has waived its immunity from liability as to certain tort actions with the Tribal Tort Claims Ordinance, Chapter 85 of the Tribal Code. Because Sault Tribe has voluntarily waived its immunity and subjected itself to liability, it may also place conditions or limitations on that liability. *E.g.*, *Rowland v. Washtenaw Co. Rd. Comm.*, 731 N.W.2d 41; 477 Mich. 197 (2007). The notice provision of the Tribal Tort Claims Ordinance as to claims related to public buildings is one of those very conditions.

As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the Tribe of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant. The notice shall be served on the Tribal Secretary, 523 Ashmun Street, Sault Ste. Marie, Michigan 49783, either personally or by certified mail, return receipt requested.

Tribal Code, § 85.106(2). Accordingly, this section makes the giving of timely and proper notice of the claim a prerequisite to “any recovery for injuries.” *Id.* Plaintiffs first argue that Mr. Lesperance’s June 2011 letter to Ms. Simi in the Insurance Department satisfies the requirements of this notice provision and that Sault Tribe was not prejudiced by the Plaintiffs’ failure to file notice of the injury and defect in strict compliance with the Code because the Insurance Department would have been the recipient of the information directly from the Tribal Secretary regardless.

The June 2011 letter was received within the 120 day deadline and did detail how and where the injury occurred, the type of injuries sustained, and specifically asked for payment of \$45,000-\$50,000 to cover past and future pain, and medical expenses. However, the notice was not served on the Tribal Secretary by personal service or certified mail, but rather sent to Ms. Simi by regular first-class mail.

The plain language of the Code is clear. Not only does § 85.106(2) clearly spell out what the notice must contain and where it must be sent and in what matter, the Code also mandates strict adherence to the procedures within the Chapter.

The sovereign immunity of the Tribe is hereby waived for tort claims brought in accordance with this Chapter. This waiver is subject to all of the restrictions, limitations and procedures set forth in this Chapter. This Chapter is to be strictly construed, and all procedures, restrictions and limitations are to be adhered to

strictly. No waiver of any kind is made beyond the scope or outside the limitations and restrictions of this Chapter.

§85.104(1). The plain language of the Code requires the notice to be provided in a specific manner in order to pursue a claim against Sault Tribe. The Plaintiffs argue that even if the pre-suit notice was defective, it was timely and the Defendant was not prejudiced, therefore their suit should survive. However, the reliance on the case law cited by the Plaintiffs is misplaced in this circumstance. Those cases involved private lawsuits and did not involve waivers of sovereign or governmental immunity.

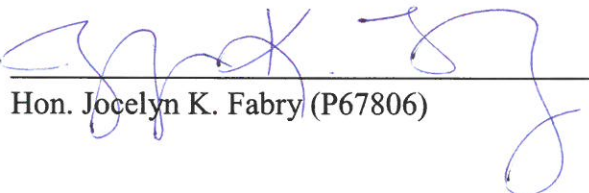
The Court cannot overlook the Plaintiffs' failure to comply with the Code. See also, *Nguyen v. Spirit Mountain Casino*, No. 04-06-002 (Confederated Tribes of the Grand Ronde Community Tribal Court 2004) (suit against tribe under Tort Claims Ordinance dismissed due to plaintiff's failure to provide timely, written notice of the claim as required under tribal law.) When a Tribe conditions the ability to pursue a claim against the Tribe on a Plaintiff's having provided specific statutory notice, the Court cannot create an "actual prejudice" factor onto the statute before enforcing that statute. The Plaintiffs are asking the Court to do what it cannot here, that is, forgive non-compliance with the strict notice requirements under the Code or "engraft an actual prejudice requirement or otherwise reduce the obligation to comply fully with statutory notice requirements." *McCahan v. Brennan*, 822 N.W. 2d, 747; 492 Mich. 730 (2012).

CONCLUSION

Plaintiff Linda Lesperance's injuries occurred on April 14, 2011. Her action is for personal injuries, and Tribal Code requires that notice of the injury and defect was to be filed with the Tribal Secretary within 120 days. The Plaintiffs failed to file notice of the injury and defect within 120 days from the date of the injury, with the Tribal Secretary, in the manner required by Tribal Code. Therefore, their claims are barred by the plain language of the Code and this case is hereby dismissed.

Any person adversely affected by a decision of the Tribal Court in a civil case may file an appeal within 30 days after entry of the written judgment or order in accordance with Tribal Code Chapter 82: Appeals.

IT IS SO ORDERED this 15th day of December 2015, by the Sault Ste. Marie Chippewa Tribal Court located in Sault Ste. Marie, Michigan within the sovereign lands of the Sault Ste. Marie Tribe of Chippewa Indians.


Hon. Jocelyn K. Fabry (P67806)