

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Loretta-Lynn Begay Dobbs

Case No: 0:19-cv-01289-SRN-LIB

Plaintiff(s)

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS
AMENDED COMPLAINT**

v.

Fond Du Lac Reservation Business
Committee

Defendant(s)

Introduction

The Defendant, the Fond du Lac Reservation Business Committee, is the governing body of the Fond du Lac Band of Lake Superior Chippewa (“the Band”). MCT Const. art. III, § 2.¹ The Band is federally recognized. *See* 83 Fed. Reg. 34863, 34865 (July 23, 2018) (listing the “Fond du Lac Band” as one of six component bands of the Minnesota Chippewa Tribe).

The Band previously filed and served by mail a motion to dismiss in this case on June 10, 2019. (Mot. to Dismiss, [Docket No. 8]). The Court issued a scheduling order requiring the Plaintiff, Loretta-Lynn Begay Dobbs (“Dobbs”), to file a response to the motion no later than July 3, 2019. (Order, [Docket No. 16]).

¹ The Revised Constitution and Bylaws of the Minnesota Chippewa Tribe are available at:
<http://www.mnchippewatribe.org/pdf/REVISED%20CONSTITUTION%20AND%20BYLAWS%2011RMS.pdf>

On June 13, 2019, Dobbs filed a “Notice of Treaty Rights of Native Americans” and a “Sovereign Debt Notice.” [Docket No. 17]. On July 2, 2019, Dobbs filed an amended complaint. (Am. Compl., [Docket No. 19]). The amended complaint alleges the following: “That the Fond du Lac Reservation Business Committee has [through] fraud and deception taken my Allotment lands. Fond du Lac Reservation Business Committee has entered into Easement Agreements with outside Businesses without getting consent from being a Heir.” (*Id.* at 1.)

In response to the amended complaint, the Band brought a second motion to dismiss. Like the first motion to dismiss, the second motion to dismiss is also based on failure to state a claim under Fed. R. Civ. P. 12(b)(6) and lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

Argument

The amended complaint now contains allegations about the Band, as opposed to other entities. One problem with the original complaint was that it contained no allegations about the Band. Nonetheless, the amended complaint still does not contain adequate allegations.

Although the complaint now contains allegations about the Band, the problems with the amended complaint are largely the same as the problems with the original complaint. Furthermore, it is unclear whether Dobbs intends to incorporate by reference the allegations in her original complaint. Therefore, the Band requests that the Court incorporate by reference its previous Memorandum in Support of Motion to Dismiss, [Docket No. 10].

I. The amended complaint fails to adequately state a claim.

In a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), a court must “accept as true all of the factual allegations contained in the complaint.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2011). The “complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). In alleging fraud, “a party must state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). “Although pro se complaints are to be construed liberally, they still must allege sufficient facts to support the claims advanced.” *Stringer v. St. James R-1 Sch. Dist.*, 446 F.2d 799, 802 (8th Cir. 2006) (quotation omitted).

Based on the information Dobbs has provided, the Band can only speculate about the factual and legal grounds for her complaint. The complaint does not meet even the most minimal requirements for notice pleading. That is, the complaint does not provide the Band with notice of what legal theories the claims are based on. Furthermore, the complaint does not satisfy the requirement under *Iqbal* to plead “sufficient factual matter” and does not state with particularity the circumstances constituting fraud. Dobbs does not specify what fraud she is alleging, what land she believes was taken, what easement agreements she is referring to, or why she believes her consent was necessary for an easement agreement. Because there are almost no factual allegation in the complaint, it does not provide “sufficient factual matter.” Therefore, because the complaint does not

provide notice of Dobbs's claims and does not allege sufficient factual matter, the case should be dismissed for failure to state a claim

II. Dobbs has failed to establish subject matter jurisdiction.

In addition to failing to allege sufficient factual matter and failing to provide notice of Dobbs's claims, the complaint fails to establish subject matter jurisdiction. The complaint therefore fails to meet the requirement under Fed. R. Civ. P. 8(a) that it contain a short and plain statement of the grounds for the court's jurisdiction.

Accordingly, the case should also be dismissed under Fed. R. Civ. Pro. 12(b)(1). In a facial challenge to subject matter jurisdiction under Rule 12(b)(1), “all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction.” *Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993).

The complaint fails to establish subject matter jurisdiction for the same reasons it fails to state a claim. In addition to not providing notice of what Dobbs's claims are, the complaint does not provide any basis for concluding the Court has subject matter jurisdiction. Therefore, Dobbs has failed to allege an element necessary for subject matter jurisdiction and the complaint should be dismissed under Rule 12(b)(1).

III. Dobbs's claims are barred by tribal sovereign immunity.

The case should also be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. Pro. 12(b)(1) based on tribal sovereign immunity. The doctrine

of tribal sovereign immunity is well established. The Supreme Court has repeatedly upheld the ability of tribes to assert sovereign immunity, even in disputes occurring off reservation. *Michigan v. Bay Mills Indian Cnty.*, 572 U.S. 782, 785 (2014) (recognizing tribal sovereign immunity); *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754 (1998) (recognizing tribal sovereign immunity). Sovereign immunity is jurisdictional in nature. *Hagen v. Sisseton-Wahpeton Community College*, 205 F.3d 1040, 1043 (8th Cir. 2000). Tribal sovereign immunity bars suits against tribes unless the tribe has expressly waived its immunity or Congress has authorized the suit. *See, e.g., Kiowa Tribe of Okla.*, 523 U.S. at 754 (stating that “an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity”).

In this case, the Band possesses sovereign immunity as an Indian tribe. Similarly, the Reservation Business Committee, as the Band’s governing body is immune from suit. *See Hagen*, 205 F.3d 1043-44 (sovereign immunity extends to tribal agencies). The Band has not waived its immunity to suit and Dobbs has not alleged any waiver. Therefore, Dobbs has failed to allege an element necessary to establish subject matter jurisdiction and the case should be dismissed under Fed. R. Civ. P. 12(b)(1).

Conclusion

THEREFORE, Defendant Fond du Lac Reservation Business Committee respectfully requests that the motion be granted and that this action be dismissed.

Respectfully submitted,

Dated: July 15, 2019

/s Sean Copeland

Sean Copeland

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