UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

CRYSTAL HOLTZ,

Plaintiff, Case No. 19-cv-1682

v.

ONEIDA AIRPORT HOTEL CORPORATION,
ROBERT BARTON, STEVE NINHAM,
AIMBRIDGE HOSPITALITY, LLC,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS BY DEFENDANTS STEVE NINHAM AND AIMBRIDGE HOSPITALITY, LLC

INTRODUCTION

Plaintiff Crystal Holtz is a former employee of the Oneida Airport Hotel Corporation d/b/a Radisson Hotel and Conference Center of Green Bay ("Hotel) who has filed an Amended Complaint, (ECF No. 1-3), making allegations arising out of the termination of her employment. Defendants Steve Ninham and Aimbridge Hospitality, LLC ("Aimbridge") move to have Amended Complaint as it is asserted against them dismissed for failing to state a claim and for lack of jurisdiction.

The Amended Complaint fails to state a claim for two separate reasons. First, the claims against Mr. Ninham and Aimbridge are claims made against agents of the Hotel, which is a Tribal Entity, for acts alleged to have been within the scope of their authority as agents of that Tribal Entity. Therefore, tribal sovereign immunity bars Plaintiff's claims against Mr. Ninham and Aimbridge. Second, even disregarding tribal immunity, the allegations in the Amended

Complaint as they relate to Mr. Ninham and Aimbridge fail to state a claim upon which relief can be granted.

Separately, the claims alleged under the Oneida Constitution and laws, the claims under 42 U.S.C. § 1983 and 1985, and the claims under Wisconsin statutes of limitations should be dismissed for lack of jurisdiction.

FACTS

The Oneida Nation ("Nation") is a federally recognized Indian Tribe which is organized under federal law. Indian Entities Recognized and Eligible to Receive Services from the U.S. Bureau of Indian Affairs, 83 Fed. Reg. 4235, 4238 (Jan. 30, 2018).

The Nation is governed according to its Constitution and its Code of Laws. Pursuant to the Oneida Nation Constitution, the Nation is governed by the General Tribal Council "composed of all the qualified voters of the Oneida Nation." Constitution and By-Laws of the Oneida Nation, Art. III, Sec. 1 located at: https://oneida-nsn.gov/dl-file.php?file=2018/05/2015-06-16-Tribal-Constitution.pdf ("Oneida Nation Constitution").

The Nation's Sovereign Immunity law provides that the sovereign immunity of the Tribe and "Tribal Entities, including sovereign immunity from suit in any state, federal or Tribal court, is hereby expressly reaffirmed" and, furthermore, "[n]o suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against the Tribe . . . [or] officers, **employees or agents of a Tribal Entity for actions within the scope of their authority**, unless the Tribe or Tribal Entity has specifically waived sovereign immunity for purposes of such suit or proceeding." Oneida Code of Laws, Title 1, § 112.4-1 and 112.5-1 located at: https://oneida-nsn.gov/government/register/laws (emphasis added). The Sovereign Immunity Law defines "Tribal Entity" as "a corporation or other organization which is wholly owned by the Oneida

Tribe of Indians of Wisconsin, is operated for governmental or commercial purposes, and may through its charter or other document by which it is organized be delegated the authority to waive sovereign immunity." Id. at § 112.3-1(d). "Agent" is defined as a person "who is authorized to act on behalf of the Oneida Tribe of Indians with respect to a specific transaction or transactions." Id., § 112.31(a). Waiver of this broad sovereign immunity can only occur by a resolution in accordance with the Sovereign Immunity law. Id at § 112.6.

The Hotel was issued a corporation charter by the Nation and is owned by the Nation. (Am. Compl., p. 1 (Hotel is "an Oneida Nation-owned company."); Corporate Charter of Oneida Airport Hotel Corporation, Art. I, located at: https://oneida-nsn.gov/dl-file.php?file=2016/02/2011-01-26-OAHC-Corporate-Charter.pdf ("Hotel Charter").

The Hotel is located "on tribal land." (Am. Compl., p. 8 ¶2.A.iii). Defendant Robert Barton is a member of the Nation and the President of the Hotel. (Am. Compl., p. 8 ¶ 1.B). Defendant Steve Ninham is a member of the Nation who works as "the General Manager of the Radisson for Aimbridge [Hospitality, LLC]." (Am. Compl. p. 8, ¶ 1.A). Plaintiff Holtz is also a member of the Nation. (Am. Compl., p. 1).

Plaintiff was an employee of the Hotel. (Am. Compl., p. 2). She claims her employment was terminated pursuant to the Hotel's "Drug and Alcohol Screening Policy." (Am. Compl., p. 2). She alleges that Mr. Ninham approved this Policy. (Am. Compl. p. 8). She alleges that the Defendants suspected that she was under the influence of alcohol while at work and escorted her to the hospital for a drug and alcohol screening. (Id., pp. 2, 8). She further alleges that the Defendants claim she was terminated because of her failure to comply with the drug and alcohol screening policy. (See generally Am. Compl., p. 13). Based on these and other allegations, the Amended Complaint refers to a number of statutes, constitutional provisions and common law

theories and attempts to articulate claims against all Defendants arising out of the termination of her employment. For a remedy, she seeks alleged lost wages and damages for the stress of being escorted out of the Radisson when she was terminated. She also seeks an equitable remedy requiring the Hotel to apply its Drug Policy in an equitable manner on other employees. (Am. Compl., pp. 14-15).

LEGAL STANDARD

Courts review assertions of tribal sovereign immunity pursuant to motions to dismiss for failure to state a claim. *Meyers v. Oneida Tribe of Indians of Wisconsin*, 836 F.3d 818, 822-23 (7th Cir. 2016)(court may choose among different non-merits threshold grounds for dismissing an action, including tribal sovereign immunity). *See also Miller v. Coyhis*, 877 F. Supp. 1262, 1267-68 (E.D. Wis. 1995) (dismissing suit pursuant to Rule 12(b)(1) due to tribal sovereign immunity).

To state a claim upon which relief can be granted, a Complaint must assert facts demonstrating a claim for relief that "is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, (2007). A claim is "plausible on its face" when the Complaint includes "factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A reasonable inference only exists when the Complaint alleges facts showing "more than a sheer possibility that a defendant had acted unlawfully." *Id.* An inference is not reasonable when a Complaint "pleads facts that are merely inconsistent with" an allegation that a party acted unlawfully. *Id.* A Complaint's allegations must "raise a right to relief above the speculative level." *Twombly, 550 U.S. at, 570.*

When addressing a motion to dismiss for failure to state a claim, courts take a "two pronged approach": (1) eliminate any allegations in the Complaint that are merely legal conclusions; and (2) when there are well-pleaded factual allegations, "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.'" *Iqbal*, 556 U.S. at 679.

When a defendant challenges subject-matter jurisdiction, the plaintiff, as the party asserting jurisdiction, bears the burden of establishing jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "When reviewing a dismissal for lack of subject-matter jurisdiction . . . [the] district court must accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff." *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 625 (7th Cir. 2007). The Court may look beyond the allegations in the Complaint to determine whether subject matter jurisdiction actually exists. *Id.*

ARGUMENT

I. Mr. Ninham and Aimbridge are immune from suit because the Plaintiff alleges they acted as agents of a Tribal Entity and within the scope of their authority.

The doctrine of tribal sovereign immunity is rooted in federal common law and reflects the federal Constitution's treatment of Indian tribes as sovereign entities under the Indian commerce clause. See U.S. Const. art. I, § 8. Tribal sovereign immunity "is a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 890 (1986). Tribal sovereign immunity protects Indian tribes from suit in their governmental activities, as well as their "commercial activities," absent express authorization by Congress or clear waiver by the tribe. *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754–56, 118 S. Ct. 1700, 1703, 140 L. Ed. 2d 981 (1998)

The Supreme Court has not "drawn a distinction between governmental and commercial activities of a tribe." *Id.* at 754. Tribal entities, such as the Hotel, are treated the same as the tribe itself and, therefore, are also protected by sovereign immunity. *Barker v. Menominee Nation Casino*, 897 F.Supp. 389, 393-94 (E.D. Wis. July 26, 1995) (applying tribal sovereign immunity to corporation whose charter was issued through tribal ordinance). The Tribal Sovereign Immunity law expressly recognizes this in section 112.5, which also protects "employees or agents of a Tribal Entity for actions within the scope of their authority…."

A plaintiff thus cannot circumvent tribal immunity by the simple "expedient" of naming officers or employees as defendants, "rather than the sovereign entity." *Cook v. AVI Casino Enters., Inc*., 548 F.3d 718, 727 (9th Cir. 2008). Tribal sovereign immunity "extends to tribal officials when acting in their official capacity and within the scope of their authority" and to employees and agents of the tribe and tribal entities when acting within the scope of their authority. *Cook v. AVI Casino Enters*., Inc., 548 F.3d 718, 726–27 (9th Cir. 2008)(sovereign immunity applied to two employees of casino who allegedly "acted in the course and scope of their authority as casino employees"); *Bynon v. Mansfield*, No. CIV.A. 15-00206, 2015 WL 2447159, at *1-2 (E.D. Pa. May 21, 2015) (manager "in charge of day-to-day operations" of tribal corporation was immune from suit where "factual allegations regarding Mansfield pertain to his role as manager"); *Catskill Development, LLC. v. Park Place Entertainment Corp.*, 206 F.R.D. 78, 91 (S.D.N.Y. 2002)(sovereign immunity applied to attorney acting as agent of tribe within scope of authority); *Romanella v. Hayward*, 933 F. Supp. 163, 168 (D.Conn. 1996) (sovereign immunity barred claims against two employees who allegedly were negligent in maintaining parking lot of casino where plaintiff fell).

Plaintiff's claims arise out of the termination of her employment with the Hotel. The Hotel is a Tribal Entity, a chartered tribal corporation owned by the Nation. Plaintiff's allegations are allegations of Mr. Ninham and Aimbridge acting as agents of the Hotel within the scope of their authority.

Plaintiff alleges the "Oneida Defendant Steve Ninham is the General Manager of the Radisson and [he] works for Aimbridge Hospitality." (Am. Compl. p. 8, ¶ 1.A). She goes on to allege that Mr. Ninham "approved and authorize[d] the crude 2.8 Drug and Alcohol Screening Policy that is the cause to remove the Plaintiff from the Radisson property in front of colleagues and guests." (Id., ¶ 2.A.i). She alleges Mr. Ninham had the "motive to wrongfully terminate the Plaintiff…" (Id., p. 9, ¶ vi). The remedy Plaintiff seeks – lost wages and damages for the stress caused by the termination of her employment – are employment-related damages. And the equitable remedy she is seeking regarding the enforcement of the drug testing policy is a remedy that would need to be implemented by the Hotel as employer. Thus, the sovereign entity, the Hotel, is the real party Plaintiff is suing. *See Lewis v. Clarke*, 137 S. Ct. 1287, 1291-92 (2017).

Accordingly, the doctrine of sovereign immunity applies to Mr. Ninham and Aimbridge. To abrogate tribal immunity, Congress must clearly and unequivocally express that purpose. *Id. See also, Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 789 (2014); *C & L Enters., Inc. v. Citizen Band Potawatomi Tribe of Okla.*, 532 U.S. 411, 418, 121 S. Ct. 1589, 149 L.Ed.2d 623 (2001); *United States v. Dion*, 476 U.S. 734, 738–39, 106 S. Ct. 2216, 90 L.Ed.2d 767 (1986); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S. Ct. 1670, 56 L.Ed.2d 106 (1978). Any ambiguity must be interpreted in favor of sovereign immunity. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143–44, 100 S. Ct. 2578, 65 L.Ed.2d 665 (1980) ("Ambiguities in federal law have been construed generously in order to comport with these traditional notions

of sovereignty and with the federal policy of encouraging tribal independence."); *Meyers v. Oneida Tribe of Indians of Wisconsin*, 836 F.3d 818, 824 (7th Cir. 2016) .

The Complaint does not identify any statute in which Congress has abrogated tribal sovereign immunity with respect to the claims Plaintiff has alleged against Mr. Ninham and Aimbridge. There is none. Furthermore, the Complaint does not allege waiver; and none of the Defendants have waived sovereign immunity.

Therefore, Plaintiff cannot sue the Aimbridge or Mr. Ninham. *Barker*, 897 F. Supp. at 394 ("Because Barker cannot sue the . . . the Casino in federal court based simply on a prior employment relationship, his wrongful termination, breach of promise and discrimination claims must be dismissed, and instead may only be heard in Tribal Court.") Accordingly, the claims against them should be dismissed. *Meyers v. Oneida Tribe*, 736 F.3d at 827.

II. Disregarding sovereign immunity, the Complaint still fails to state a claim upon which relief can be granted.

Disregarding sovereign immunity, the allegations in the Amended Complaint fail to state a claim upon which relief can be granted for multiple separate reasons.

A. There is no federal basis for holding Mr. Ninham or Aimbridge responsible for any alleged violation of an employment-related law.

The Hotel was Plaintiff's employer. Her claims arise out of the termination of her employment. The general rule is that the employer, rather than employees or agents of an employer, are responsible for violation of laws governing employment. *See, e.g., Alberte v. Anew Health Care Servs., Inc.*, 2000 WI 7, ¶ 35, 232 Wis. 2d 587, 605, 605 N.W.2d 515, 523 (2000)(joining the Seventh Circuit and the majority of federal circuit courts in concluding that individual agent of employer is not personally liable under Title VII or the ADA.); *Sullivan v. Village of McFarland*, 457 F. Supp. 2d 999, 913 (W.D. Wis. 2006) The employment-related

theories referred to in the Amended Complaint do not impose liability on an employee or agent of a Plaintiff's employer.

Additionally, tribes and businesses operating on tribal land are excluded from the definition of "employer" under statutes like the Americans with Disabilities Act and Title VII. *See generally, Wardle v. Ute Indian Tribe,* 623 F.2d 670, 672 (10th Cir. 1980); *Charland v. Little Six, Inc.* 112 F. Supp. 2d 858, 865 (D. Minn. 2000)

Thus, all such employment-related claims fail to state a claim against Mr. Ninham and Aimbridge.

B. The allegations under the Wisconsin Fair Employment Act fail to state a claim because claims under the Wisconsin Fair Employment Act must be litigated in the administrative forum.

It is well-established that claims under the Wisconsin Fair Employment Act must be litigated in the administrative forum. *See Bachand v. Connecticut General Life Ins.*, 101 Wis. 2d 617, 624, 305 N.W.2d 149 (Ct. App. 1981) ("Thus, since the Wisconsin Fair Employment Act specifically states that all remedies are to be pursued through [the Department of Workforce Development] Sec. 111.33(i), Stats., that avenue is the exclusive means by which the remedy may be pursued."). *See also Staats v. County of Sawyer*, 220 F.3d 511, 516 (7th Cir. 2000)("the Equal Rights Division was the exclusive forum in which Staats could bring his WFEA claims: the WFEA does not create a private right of action"); *Bourque v. Wausau Hosp. Ctr*., 145 Wis. 2d 589, 427 N.W.2d 433, 437 (Wis. Ct. App. 1988)(same).

Plaintiff's claims, if any, under the Wisconsin Fair Employment Act cannot be litigated in this forum and must be dismissed as a matter of law. *See Bachand,* 101 Wis. 2d at 624. The Amended Complaint's allegations concerning the Wisconsin Fair Employment Act fail to state a claim.

C. The allegations regarding the Americans with Disabilities Act fail to state a claim.

The Amended Complaint also repeatedly refers to the Americans with Disabilities Act ("ADA"). While Plaintiff indicates at one point she "is not currently suing the Defendants under violations of the Act" the Amended Complaint is unclear on that point. (Amended Compl. p. 11)("intentionally disregards the Plaintiff' [sic] ADA protected class") To the extent Plaintiff intends to make a claim under the ADA, that claim fails for at least two separate reasons.

First, although she alleges having an impairment, an impairment does not make her an individual with a disability within the meaning of the ADA. Additionally, the Complaint fails to allege (under the ADA or the WFEA) that the Hotel knew of an alleged disability, or that the Hotel took any adverse action against her because of that disability. (Am. Compl. p. 7). Moreover, as noted above, tribes and related businesses are exempt from the ADA's definition of "employer."

Second, the Amended Complaint fails to allege that Plaintiff has complied with a condition precedent to filing suit under the ADA. She does not allege she filed and received the requisite Notice of Right to Sue letter from the Equal Employment Opportunity Commission. 42 U.S.C. § 12117(a), 42 U.S.C. § 2000e-5(b), (e), (f)(1). Alexander v. Gardener-Denver Co., 415 U.S. 36, 47 (1974); Rush v. McDonald's Corp., 966 F.2d 1104, 1109 (7th Cir. 1992). Plaintiff has not exhausted her administrative remedies. (Additionally, if she made such an administrative claim, it would fail on the ground that Mr. Ninham and Aimbridge were not Plaintiff's "employer." See 42 U.S.C. §§ 12112(a), 12111 (definition of "covered entity")). The Amended Complaint fails to state a claim under ADA.

D. The allegations of wrongful termination fail to state a claim.

The Amended Complaint alleges Mr. Ninham "wrongfully terminated" Plaintiff. (Amended Compl. p. 9-10) The general rule in Wisconsin is that employment is terminable at

will by either the employer or employee without cause. *Forrer v. Sears Roebuck & Co*., 36 Wis. 2d 388, 393 153 N.W.2d (1967). Wisconsin has "a strong presumption in favor of employment at-will." *Thelen v. Marc's Big Boy Corp*., 64 F.3d 264, 269 (7th Cir. 1995).

The Amended Complaint refers to "workplace tort"; but work-related torts are generally precluded by the exclusive remedy of the Workers Compensation Act. Section 102.03(2) Wis. Stat. And the Complaint's references to tort statutes of limitations – Sections 893.53, 893.54, and 893.57 – do not state a claim.

The Amended Complaint cites *Strozinsky v. School District of Brown Deer*. That case discussed Wisconsin's limited wrongful discharge against public policy theory. But Plaintiff has not alleged a claim under that theory.

To establish such a claim, a Plaintiff must first "identify a fundamental and well defined public policy in their complaint sufficient to trigger the exception to the employment-at-will doctrine." *Strozinsky v. School Dist. of Brown Deer*, 237 Wis. 2d 19, 40, 614 N.W.2d 443, 453 (2000). A "fundamental and well-defined public policy" can be articulated by constitutional, statutory, or administrative provisions. *Id*. at 46. Second, the Plaintiff must "demonstrate that the termination violated that fundamental and well defined public policy." *Id*. at 40. The Complaint must also allege that she was terminated for refusing to violate this public policy. *Winkelman v. Beloit Memorial Hospital*, 168 Wis. 2d 12, 483 N.W.2d 211, 215 (1992); *Wandry v. Bulls Eye Credit Union*, 129 Wis. 2d. 37, 42-43, 384 N.W. 2d. 325 (1986). The Amended Complaint refers to the *Strozinsky* case, but fails to allege even one of these three requirements. Moreover, the Amended Complaint alleges that she was discharged so that the Defendants could

avoid tribal law. (Am. Compl. pp. 9-11). This allegation negates causation, an essential element of a wrongful discharge against public policy claim.[1]

E. The allegation under 25 U.S.C. § 1302 fail to state a claim.

Although the Amended Complaint refers to the Indian Civil Rights Act, that does not state a claim here either. The ICRA applies to tribal governments. The ICRA authorizes "federal judicial review of tribal actions only through the habeas corpus provisions of § 1303." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 70, 98 S. Ct. 1670, 1683, 56 L. Ed. 2d 106 (1978) ("§1302 does not impliedly authorize actions" in a civil context in federal court). Plaintiff therefore fails to state a claim.

F. The allegations under 42 U.S.C. § 1983 and § 1985 fail to state a claim.

The Amended Complaint refers to 42 U.S.C. § 1983 and alleges deprivations under the Fifth and Fourteenth Amendment. But these fail to state a claim because they do not allege a deprivation caused by the government. *Sanders v. A.J. Canfield*, 635 F. Supp. 85, 87 (N. D. Ill. 1986)(Section 1983 claim against private employer failed because it did not involve state action). Viewed another way, a section 1983 action is unavailable 'for persons alleging deprivation of constitutional rights under color of tribal law'" *Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006). The allegation here is that the Hotel, the Tribal Entity and its agents, took the actions that Plaintiff alleges violated her constitutional rights under the Fifth and Fourteenth Amendments. That fails to state a claim.

The Amended Complaint also refers to an alleged violation of 42 U.S.C. § 1985. But Holtz is not a government official and is not a party, witness, or juror. Therefore subsections (1) and (2) of section 1985 cannot apply here.

[1] A wrongful discharge claim is also not available when the legislature has provided a statutory remedy for the same conduct, such as the Fair Employment Act. *E.g.*, *Repetti v. Sysco Corp*., 300 Wis. 2d. 568, 578, 730 N. W. 2d. 189 (Wis. Ct. App. 2007).

To assert a claim under § 1985(3), a plaintiff must allege, "first, that the defendants conspired; second, that they did so for the purpose of depriving any person or class of persons the equal protection of the laws; and third, that the plaintiff was injured by an act done in furtherance of the conspiracy." *Hartman v. Bd. of Trustees of Community College Dist. No. 508*, 4 F.3d 465, 469 (7th Cir. 1993) (citation omitted). Section 1985(3) does not create rights. A plaintiff must identify a right independently secured by state or federal law. *Stevens v. Tillman*, 855 F. 2d. 394, 404 (7th Cir. 1988). Plaintiff has failed to establish "independent substantive rights enforceable in the federal courts to serve as a predicate violation" under the statute. *Gallegos v. Jicarilla Apache Nation*, 97 F. App'x 806, 812 (10th Cir. 2003). Instead, she alleges that she was discharged in order to avoid tribal laws. (Am. Compl. pp. 9, 11). She alleges this was a violation of her rights under Article VII of the Oneida Constitution. (Am. Compl. p. 11, ¶ vii) That is not a conspiracy to deprive her of federal or state rights.[2]

Accordingly, the claims alleged under Section 1983 and 1985 fail to state a claim.

III. The Court lacks jurisdiction over claims asserted under the Oneida Constitution and laws, 42 U.S.C. sections 1983 and 1985 and Wisconsin statutes of limitations.

The Amended Complaint asserts that Mr. Ninham violated the Oneida Constitution. (Am. Compl. pp. 8-9) This Court lacks jurisdiction over Plaintiff's claim that Mr. Ninham violated Article VII of the Oneida Nation Constitution and tribal employment laws because federal courts lack jurisdiction to hear claims based on tribal law. *Dallas v. Hill*, 2019 WL 403713, at *2 (E.D. Wis. Jan. 31, 2019). Application and enforcement of tribal law is "solely a matter within the jurisdiction of the courts" of that Nation. *Talton v. Mayes*, 163 U.S. 376, 385, 16 S. Ct. 986, 989–90, 41 L. Ed. 196 (1896) ("the decision of such a question in itself necessarily

[2] Additionally, an allegation of "due process and equal protection violations cannot serve as predicate violations for a § 1985(3) claim because those provisions of the United States Constitution do not constrain tribes and their officials." *Id*.

involves no infraction of the constitution of the United States). Therefore, any claim that Mr. Ninham and Aimbridge violated the Oneida Nation Constitution or tribal employment laws is not subject to the jurisdiction of this Court.

Additionally, for the same reasons they fail to state a claim, the alleged claims under 42 U.S.C. § 1983 and 1985 fail to provide jurisdiction. *Dallas v. Hill*, 2019 WL 407313.

Further, the Amended Complaint makes allegations against Mr. Ninham under section 893.53 and 893.54 of the Wisconsin Statutes. (Am. Compl. pp. 1, 9, ¶ v). But these are statutes of limitations that apply to a number of potential types of claims; they do not provide the basis for a specific substantive claim. Section 893.53 applies a six year statute of limitations to certain common law claims, not based on contract, related to the character of a person. Section 893.54 applies a six year statute of limitations to personal injury claims. These statutes do not provide a court with jurisdiction. The Amended Complaint also refers to section 893.57 of the Wisconsin statutes, the statute of limitations for intentional torts. It is unclear whether the Amended Complaint intends to assert a claim against Mr. Ninham and Aimbridge under section 893.57. (See Am. Compl. p. 1). But to the extent it does, section 893.57 is a statute of limitations and does not provide a basis for jurisdiction.

CONCLUSION

The Defendants Steve Ninham and Aimbridge respectfully request that the Court dismiss the Amended Complaint in its entirety against them because they are immune from suit and because even disregarding sovereign immunity the allegations in the Amended Complaint fail to state a claim upon which relief can be granted. Additionally, the claims asserted against them under the Oneida Constitution and laws, under 42 U.S.C. § 1983 and 1985, and under Wisconsin statutes of limitations should be dismissed for lack of jurisdiction.

Dated this 21st day of November, 2019.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

s/ Mark A. Johnson

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